

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
February 6, 2018**

**AGENDA**

9:00	<b>Held</b>	Reception for Don Smith Award, Conference Center Reception Area
9:30	<b>Done</b>	<a href="#">Presentations</a>
10:00	<b>Done</b>	<a href="#">Presentation of the Don Smith Award</a>
10:10	<b>Adopted Report #2</b>	<a href="#">Report on General Assembly Activities</a>
10:20	<b>Done</b>	<a href="#">Items Presented by the County Executive</a>

**ADMINISTRATIVE  
ITEMS**

1	<b>Approved</b>	<a href="#">Authorization to Advertise a Public Hearing on the Proposed Consolidated Plan One-Year Action Plan for FY 2019</a>
2	<b>Approved</b>	<a href="#">Extension of Review Period for 2232 Applications (Lee and Dranesville Districts)</a>
3	<b>Approved</b>	<a href="#">Streets into the Secondary System (Dranesville, Braddock, Sully, Mason, Hunter Mill Districts)</a>

**ACTION ITEMS**

1	<b>Approved</b>	<a href="#">Board Approval of the First Interim Agreement: Master Development Plan Between the Board of Supervisors of Fairfax County, Virginia and The Alexander Company and Elm Street Development (Mount Vernon District)</a>
2	<b>Approved</b>	<a href="#">Approval of Revisions to Chapters 2, 9, 10, and 17 of the Personnel Regulations to Align Definitions, Correct Typographical Errors, Align Practice With Policy, and Provide Administrative Clarification</a>

**CONSIDERATION  
ITEM**

1	<b>Deferred to 2/20/18</b>	<a href="#">Proffer Interpretation Appeal Associated with The Reserve at Tysons Corner Related to Proffers Accepted for RZ/FDP 2003-PR-008</a>
10:30	<b>Done</b>	<a href="#">Matters Presented by Board Members</a>
11:20	<b>Done</b>	<a href="#">Closed Session</a>

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
February 6, 2018**

**PUBLIC  
HEARINGS**

3:30	<b>Deferred to 2/20/18 at 3:30 p.m.</b>	Decision Only on PRC-C-378 (Kensington Senior Development, LLC) (Hunter Mill District)
3:30	<b>Deferred to 2/20/18 at 3:30 p.m.</b>	Decision Only on SE 2016-HM-024 (Kensington Senior Development, LLC) (Hunter Mill District)
3:30	<b>Deferred to 3/20/18 at 3:30 p.m.</b>	Public Hearing on SE 2017-MA-001 (BYCJJ, LLC) (Mason District)
3:30	<b>Approved</b>	Public Hearing on AR 91-D-004-03 (Tarry A. Faries) (Dranesville District)
3:30	<b>Approved</b>	Public Hearing on SEA 82-M-093-02 (7231 Arlington Boulevard, LLC) (Mason District)
3:30	<b>Deferred to 3/6/18 at 3:30 p.m.</b>	Public Hearing on RZ 2017-MA-013 (Vulcan Materials Company, LLC) (Mason District)
3:30	<b>Deferred to 3/6/18 at 3:30 p.m.</b>	Public Hearing on SE 2017-MA-009 (Vulcan Materials Company, LLC) (Mason District)
3:30	<b>Deferred to 2/20/18 at 4:30 p.m.</b>	Public Hearing on SEA 96-L-034-05 (Greenspring Village, Inc.) (Lee District)

# **REVISED**



## ***Fairfax County, Virginia*** ***BOARD OF SUPERVISORS*** ***AGENDA***

**Tuesday**  
**February 6, 2018**

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9:30 a.m.

### **PRESENTATIONS**

#### **DESIGNATIONS**

- PROCLAMATION – To designate February 2018 as African-American History Month in Fairfax County. Requested by Chairman Bulova.

#### **RECOGNITIONS**

- RESOLUTION – To recognize the National Association for the Advancement of Colored People (NAACP) for its 100th anniversary in Fairfax County. Requested by Chairman Bulova.

#### **STAFF:**

Tony Castrilli, Director, Office of Public Affairs  
Bill Miller, Office of Public Affairs  
Lisa Connors, Office of Public Affairs

Board Agenda Item  
February 6, 2018

10:00 a.m.

Presentation of the Don Smith Award

ENCLOSED DOCUMENTS:

None.

PRESENTED BY:

Victoria L. Kammerude, Chairman, Employee Advisory Council (EAC)



Board Agenda Item  
February 6, 2018

10:10 a.m.

Report on General Assembly Activities

ENCLOSED DOCUMENTS:

None. Materials to be distributed to the Board of Supervisors on February 6, 2018, and printed copy available for review in the Office of the Clerk to the Board and available online at:

<https://www.fairfaxcounty.gov/legislation/sites/legislation/files/assets/documents/pdf/2018/legislative-report-2.pdf>

PRESENTED BY:

Supervisor Jeff McKay, Chairman, Board of Supervisors' Legislative Committee  
Bryan J. Hill, County Executive

Board Agenda Item  
February 6, 2018

10:20 a.m.

Items Presented by the County Executive

REVISED

Board Agenda Item  
February 6, 2018

## ADMINISTRATIVE – 1

### Authorization to Advertise a Public Hearing on the Proposed Consolidated Plan One-Year Action Plan for FY 2019

#### ISSUE:

Board of Supervisors (the Board) authorization is requested to advertise a public hearing on the proposed Consolidated Plan One-Year Action Plan for FY 2019 (Action Plan), as forwarded by the Consolidated Community Funding Advisory Committee (CCFAC).

#### RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of a public hearing on the proposed Action Plan; the public hearing will be held at ~~4:30~~ **4:00** p.m. on Tuesday, March 20, 2018. The public will have an opportunity to comment on the proposed use of funds as described in the proposed Action Plan in accordance with U.S. Department of Housing and Urban Development (HUD) regulations and guidelines. Citizens may also comment on housing and community service needs in Fairfax County as well as provide information concerning changes in housing and community service trends since the last Board public hearing on the Consolidated Plan for FY 2018 held in 2017.

#### TIMING:

Board action is requested on February 6, 2018, to advertise the public hearing to comply with the public notification required by HUD, and to maintain the schedule for the Consolidated Plan process.

#### BACKGROUND:

HUD requires that a consolidated plan be submitted every five years for proposed uses of Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), and Emergency Solutions Grants (ESG) funding and that an annual action plan be submitted for each year covered by the five-year plan. The proposed Action Plan (Attachment 1) presents the proposed uses of funding for programs to be implemented in the fourth year of the Five-Year Consolidated Plan for FY 2016 - 2020.

Board Agenda Item  
February 6, 2018

The proposed Action Plan includes an allocation of CDBG funding to the Consolidated Community Funding Pool (CCFP) to fund the first year of the two-year (FY 2019-2020) funding cycle. The CCFP awards are based on the recommendations of the Selection Advisory Committee appointed to review the proposals received through the CCFP Request for Proposal process for FY 2019-2020. Although the CCFP FY 2019 funding awards will be made by the Board in May 2018, the awards are subject to annual appropriations.

Funding allocations under the proposed Action Plan have been reviewed by the Fairfax County Redevelopment and Housing Authority (FCRHA) and are based on the recommendations of the CCFAC-FCRHA Working Advisory Group (WAG). The WAG is a group established to strengthen coordination between the CCFAC and the FCRHA for the development of the proposed uses of federal entitlement funds. The WAG is composed of seven members: three appointed by the FCRHA Chairman, three appointed by the CCFAC Chairman, and one who serves on both the FCRHA and the CCFAC. Recommendations from the WAG were presented to the CCFAC on January 9, 2018, and reviewed by the FCRHA on February 1, 2018. The proposed Action Plan incorporates the final recommendations of the CCFAC.

Estimated allocations for FY 2019 are based on projected entitlement amounts for County FY 2019 (Federal FY 2018) of \$4,974,689 for CDBG, \$1,530,449 for HOME, and \$443,226 for ESG, as will be shown in the FY 2019 Advertised Budget Plan. With the approval of this item, a total of \$790,045 in anticipated unallocated FY 2018 balances from CDBG funded activities will be carried forward for use in FY 2019. A total estimated \$1,200,730 of CDBG (\$366,060) and HOME (\$834,670) program income also will be programmed for use in FY 2019 through this action.

The recommended CDBG, HOME, and ESG FY 2019 allocations in the proposed Action Plan are based on estimates of the formula allocations and, therefore, are subject to reductions or increases based on the actual final formula allocations by HUD for FY 2019. HUD mandated contingency language regarding how to account for differences between the estimated and actual allocation amounts was recommended by the WAG, approved by the CCFAC and included in the proposed Action Plan.

The proposed Action Plan was released by the CCFAC for a 30-day public comment period prior to the Board hearing and will be the subject of the public hearing by the Board on March 20, 2018, as authorized by this item. Following the public hearing and the conclusion of the public comment period, the CCFAC will make any necessary revisions and forward the Action Plan to the Board for adoption on May 1, 2018.

**REVISED**

Board Agenda Item  
February 6, 2018

The Fairfax County Citizen Participation Plan and HUD regulations require advertisement of the public hearing prior to the date of the Board meeting. The notice will include sufficient information about the purpose of the public hearing to permit informed comment from citizens. Upon approval of the Board, a public hearing on the proposed Action Plan will be scheduled for Tuesday, March 20, 2018 at ~~4:30~~ **4:00** p.m. An advertisement will appear in one or more newspapers of general circulation as well as in one or more minority and non-English speaking publications at least 15 days prior to the date of the public hearing.

STAFF IMPACT:

None. No positions will be added as a result of this action.

FISCAL IMPACT:

Funds identified in the proposed Action Plan include CDBG (\$4,974,689), HOME (\$1,530,449), and ESG (\$443,226). A total of \$790,045 in unallocated CDBG funds is recommended to be carried forward from FY 2018 for use in FY 2019. In addition, an as yet undetermined amount of previously programmed funds are expected to be carried forward as previously allocated. Total estimated CDBG program income of \$366,060 and HOME program income of \$834,670 also will be programmed for use in FY 2019 through this action.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Consolidated Plan One-Year Action Plan for FY 2019  
(The Proposed Consolidated Plan One-Year Action Plan for FY 2019 is available online at <http://www.fairfaxcounty.gov/rha>).

STAFF:

Tisha Deeghan, Deputy County Executive  
Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)  
Hossein Malayeri, Deputy Director, Real Estate, Finance and Development, HCD  
Aseem K. Nigam, Director, Real Estate Finance and Grants Management Division (REFGM), HCD  
Laura O. Lazo, Associate Director, REFGM, HCD  
Beverly A. Moses, Senior Program Manager, REFGM, HCD

**CONSOLIDATED PLAN  
ONE-YEAR ACTION PLAN  
  
FOR  
FY 2019  
(July 1, 2018 – June 30, 2019)**



A Publication of Fairfax County, VA

**Fairfax County, Virginia**

*[For Board Consideration on May 1, 2018]*

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## Executive Summary

### AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

#### 1. Introduction

The Executive Summary of the Fairfax County Consolidated Plan One-Year Action Plan for FY 2019 (FY 2019 One-Year Action Plan) is intended to help facilitate citizen review and comment. This One-Year Action Plan indicates Fairfax County's intended use of Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME) and Emergency Solutions Grant (ESG) funds. It represents the fourth year's operationalization of the County's Five-Year Consolidated Plan for these sources of federal funds and is based on the goals and strategies in the Five-Year Plan.

This FY 2019 One-Year Action Plan covers the period July 1, 2018, through June 30, 2019 and contains a description of how Fairfax County intends to utilize funds from the programs included in the Consolidated Plan in order to meet the identified needs.

#### 2. Summarize the objectives and outcomes identified in the Plan

*This could be a restatement of items or a table listed elsewhere in the plan or a reference to another location. It may also contain any essential items from the housing and homeless needs assessment, the housing market analysis or the strategic plan.*

The priority housing needs identified for the FY 2016-FY 2020 Five-Year Consolidated Plan and in this FY 2019 One-Year Action Plan are consistent with the priority needs identified in the Housing Blueprint. The Blueprint identifies the residents who have the greatest need as: 1) individuals and families who are homeless; 2) persons with low- and extremely-low incomes; 3) persons with disabilities; and 4) low-income seniors.

The identified affordable housing priorities respond to three critical elements of the affordable housing crisis in Fairfax County: (1) the severity of need, (2) the limited and dwindling supply of affordable housing, in both the owner occupied and renter occupied sectors, and (3) the increase in the number of low-income households who need these units. The severity of the housing problem for people experiencing homelessness and the need for renewed vigor in providing basic shelter warrants placing a high priority on people experiencing homelessness.

Low-income households, particularly those with incomes below 30 percent Area Median Income (AMI), are the most disadvantaged in finding and keeping housing in the current market. The economic downturn contributed to putting hard-working families at risk of homelessness.



The elderly are the fastest growing age segment in Fairfax County and are projected to comprise 21.6 percent of the County's population by the year 2020. Elderly homeowners make up a significant portion of the low-income elderly households experiencing housing problems (including housing cost burden).

Persons with physical or mental disabilities require special attention as this group is likely to have both service and housing needs. Housing cost burden, overcrowding and inadequate living facilities are common problems faced by renters and owners with disabilities across income levels. Over two-thirds of renters and nearly two-thirds of owners with disabilities whose incomes are greater than 80 percent AMI had at least one housing problem (greater than 30 percent housing cost burden, overcrowding, or lack of complete kitchen or bathroom facilities). As with other segments, the lower the household income for persons with disabilities, the greater the disadvantages in finding and keeping housing in the current market. In addition, the Americans with Disabilities Act (ADA) and the Olmstead decision provide legal protections for persons with physical or mental disabilities that must be honored.

Finding ways to ensure that housing is affordable for all residents is essential to the long term economic health of Fairfax County. An adequate supply of "workforce housing" (housing that is affordable to essential workers) is especially critical to meet the demands of projected job growth and to ensure that the County can keep workers that provide services crucial to all citizens.

### **3. Evaluation of past performance**

This is an evaluation of past performance that helped lead the grantee to choose its goals or projects.

Fairfax County's Consolidated Annual Performance and Evaluation Report (CAPER) for FY 2017 is available at: <http://www.fairfaxcounty.gov/rha/caper>. This document includes major initiatives and highlights that were proposed and executed during the period of July 1, 2016-June 30, 2017.

*Highlights of accomplishments in FY 2017 include:*

- *Housing Blueprint: The Fairfax County Redevelopment and Housing Authority (FCRHA) implemented the FY 2017 Housing Blueprint, which set specific goals in the areas of preventing and ending homelessness, providing affordable housing to persons with special needs, providing housing for low-income working families and producing workforce housing. Through implementation of the Housing Blueprint, the FCRHA played a critical role in meeting the 2016 goals of Fairfax County's Ten-Year Plan to Prevent and End Homelessness. A total of 244 formerly homeless households received permanent housing in FY 2017. Of the 244 formerly homeless households provided with permanent housing, a total of 139 (57 percent) came from either FCRHA or Fairfax County Department of Housing and Community Development (HCD) resources.*
- *Moving to Work (MTW): In FY 2018, the FCRHA continued to implement several activities that required MTW flexibility. These activities included reducing the frequency of reexaminations for*

*continued participation in the Public Housing and Housing Choice Voucher (HCV) programs, eliminating the Earned Income Disregard Calculation and beginning streamlined inspections of HCV units. The FCRHA also established a gateway for clients to move from Bridging Affordability to sustainable (Fair Market Rent – FMR) and/or subsidized housing. The Total Housing Reinvention for Individual Success, Vital Services and Economic Empowerment initiative (THRIVE) provided prioritization of 43 households, placing 22 in the HCV program and 21 in Public Housing (PH), including RAD PBV-PH.*

- *Bridging Affordability: Implementation of the Bridging Affordability program, which provides rental subsidies to households experiencing homelessness and persons on the County's affordable housing waiting lists, individuals with physical and sensory disabilities, and victims of domestic violence continued in FY 2017. The program is operated by a collaborative of non-profit organizations, led by Northern Virginia Family Service (NVFS), under contract with Fairfax County. In FY 2017, a total of 65 new households were leased up under the program. The average income of all households under the program is \$18,862 or 17.3 percent of Area Median Income (AMI) for a family of four.*
- *Affordable Housing Preservation: As of June 30, 2017, a total of 2,786 units had been preserved under the Board of Supervisors' Affordable Housing Preservation Initiative. Purchases in FY 2017 by non-profit affordable housing providers financed utilizing CDBG and HOME funds preserved 23 of the affordable units/beds. All properties will remain affordable for at least 30 years.*
- *Multifamily Rental Housing and Tenant Subsidy Programs: The FCRHA and HCD operate four principal affordable housing programs: the federal Public Housing and HCV programs, the Fairfax County Rental Program (FCRP) and the Bridging Affordability Program. The average household income served in these programs in FY 2017 was \$23,795 which was approximately 24 percent of the AMI for a family of three and met the federal definition of "extremely low income". A total of 18,209 individuals were housed in the Public Housing, HCV, and FCRP programs in FY 2017.*

#### **4. Summary of Citizen Participation Process and consultation process**

Summary from citizen participation section of plan.

A Citizen Participation Plan was adopted by the Fairfax County Board of Supervisors on December 8, 1997 and was revised and amended by the Board of Supervisors on April 30, 2007. The purpose of the Citizen Participation Plan is to serve as a guide for public input and participation in the Consolidated Plan process. The full Citizen Participation Plan may be found in the Grantee Unique Appendices section.

Per the Citizen Participation Plan, the County provided for and encouraged citizen participation from all sectors of the community in developing this FY 2019 One-Year Action Plan. Particular emphasis was placed on participation by residents whose household incomes are below the federal poverty line, residents with low and moderate household incomes who reside in areas that are blighted or in which federal funds are used or are proposed to be used, and residents who are minority and non-English speaking, as well as participation by residents with mobility, visual, speech or hearing impairments.

The County provided citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to this FY 2019 One-Year Action Plan and the use of assistance provided by federal funding sources in prior years. Information was shared through a variety of communication channels to include the County website, a press release and stakeholder newsletter. Outreach also was conducted through various community newspapers, which included minority and foreign language publications.

Citizens had opportunities to comment on housing, community development, public services, and the population and program priority needs identified to be addressed by community-based organizations and this FY 2019 One-Year Action Plan at public hearings and meetings, as well as by directly contacting the appropriate County agency, prior to the submission of this FY 2019 One-Year Action Plan to the U.S. Department of Housing and Urban Development (HUD).

Citizen input on housing, community development and needs for public services to be provided by community-based organizations was received at a public hearing held by the Consolidated Community Funding Advisory Committee (CCFAC) on November 14, 2017. The CCFAC is composed of representatives from a variety of boards, authorities and commissions. Membership may also include representation from human services provider groups, and consumer and community organizations, as appropriate. Members are appointed by the County Executive and serve for a term of three years.

A second public hearing was held by the Board of Supervisors on March 20, 2018, to allow citizens an additional opportunity to comment on the FY 2019 One-Year Action Plan. Citizens were encouraged again to express their views on housing and community development needs, fair housing and the proposed community development programs. A Draft Consolidated Plan One-Year Action Plan for FY 2019 was released on February 6, 2018, to meet the federal requirement of a 30-day comment period which ended on March 20, 2018.

## **5. Summary of public comments**

This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.

The CCFAC held a public hearing on November 14, 2017, at which testimonies were presented on behalf of nonprofit providers of services for residents with very low household incomes, adults and youth with autism, and residents with limited English language proficiency. Testimony was presented by (1) Service Source, (2) Britepaths (formerly, Our Daily Bread), (3) The Literacy Council of Northern Virginia, (4) Annandale Christian Community for Action, and (45) the Fairfax County Human Services Council.

Needs and concerns discussed at the November 14, 2016 public hearing by the CCFAC, included:

- There are 3,000+ students with autism in FCPS.
- There is a need for more assistance for programs focusing on employment readiness of autistic youth and adults and availability of employment opportunities for them.
- There is a 5-7 year waiting list for affordable housing through HCD-administered programs.
- There is a connection between lack of English proficiency and poverty.
- The effect of having unmet human services needs and unmet essential basic needs are different for different people.
- There are needs for:
  - more funding for affordable housing affordable to lower income residents;
  - more integrated comprehensive supportive services from various non-profit service providers and government programs for self-sufficiency and financial counseling;
  - promotion and encouragement of collaboration between non-profits, private and government sectors;
  - workforce development and apprenticeship programs;
  - more adult language and literacy programs for residents with extremely low English language proficiency;
  - industry-specific language skills training to allow for more promotional opportunities;
  - the continuation of safety net services and assistance for low-income working families;
  - more assistance for basic needs, such as for food and utilities;
  - more affordable childcare; and
  - training on how to advocate for unmet needs.

At the Public Hearing on March 20, 2018, Board of Supervisors Chairman Sharon Bulova invited all interested persons to present testimony about the Draft FY 2019 One-Year Action Plan.

## **6. Summary of comments or views not accepted and the reasons for not accepting them**

Any and all written and oral testimony presented before or during the Public Hearings on either November 14, 2017, or March 20, 2018 were accepted for inclusion in the final version of the FY 2019 One-Year Action Plan submitted to the Board of Supervisors for approval.

## **7. Summary**

### **Summary of Response to Comments Received at the Public Hearing Held on November 14, 2017.**

The priorities are set for the Consolidated Community Funding Pool (CCFP) in a two-year funding cycle. During the course of the CCFP priority-setting process for FY 2019-2020, the Consolidated Community Funding Advisory Committee (CCFAC) received information from Fairfax County staff on the trends and emerging needs affecting the human services system in its delivery of services. Based on the data provided by staff, the CCFAC revised the CCFP priorities framework to identify targeted focus areas within each priority area for which competitive CCFP funding proposals are solicited bi-annually.

The identified CCFP targeted focus areas represent growing needs within the human services system. Many of the comments shared at the November 14, 2017 public hearing on the FY 2019 One-Year Action Plan are addressed by the new CCFP targeted focus areas that were identified in the Request for Proposal issued for the FY 2019 – FY 2020 CCFP funding cycle. The CCFAC held its public hearing on November 14, 2017, prior to the December 4, 2017 competitive proposals due date for FY 2019 – FY 2020 CCFP funding. The CCFAC continues to emphasize the targeted focus areas and to encourage all applicant organizations to apply solely or collaboratively for funding of programs which will help meet the priority needs of the Fairfax County.

Additionally, the needs identified at the November 14, 2017 public hearing are addressed by the Annual Goals and Objectives, described in AP-20 of this Draft FY 2019 One-Year Action Plan.

## PR-05 Lead & Responsible Agencies – 91.200(b)

### 1. Agency/entity responsible for preparing/administering the Consolidated Plan

Describe the agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
CDBG Administrator	FAIRFAX COUNTY	Department of Housing and Community Development
HOME Administrator	FAIRFAX COUNTY	Department of Housing and Community Development
ESG Administrator	FAIRFAX COUNTY	Office to Prevent and End Homelessness

Table 1 – Responsible Agencies

### Narrative (optional)

Fairfax County's affordable housing and community development programs are administered by the Fairfax County Department of Housing and Community Development (HCD). In addition to its role as a department of the County government which reports to the County Executive and the Board of Supervisors, HCD also serves as the staff for the Fairfax County Redevelopment and Housing Authority (FCRHA). The FCRHA is a separate political body whose members are appointed by the Board of Supervisors and which possesses specific powers granted by state code.

Every five years, the Board of Supervisors adopts a Consolidated Plan describing the County's needs, gaps in service and priorities for affordable housing, community service, homeless assistance, community development, neighborhood preservation and revitalization, employment and economic opportunity services, as well as the resources and strategies to be used to meet these needs. Each year, the Board also approves a Consolidated Plan - One Year Action Plan which sets forth how the County will utilize several large federal grants, including the Community Development Block Grant and the HOME Investment Partnerships Program grant, to meet the needs and priorities identified in the Consolidated Plan. These grants are administered by HCD. The Consolidated Plan and One-Year Action Plan are prepared by HCD staff through an intensive citizen involvement process under the leadership of the Consolidated Community Funding Advisory Committee. Annually, a Consolidated Annual Performance Evaluation Report is submitted to HUD detailing how these funds have been spent.

### **Consolidated Plan Public Contact Information**

Fairfax County Department of Housing and Community Development

3700 Pender Drive, Suite 300 Fairfax, Virginia 22030

*Thomas Fleetwood, Director*

Telephone: (703) 246-5100 or TTY: (703) 385-3578

DRAFT

## **AP-10 Consultation – 91.100, 91.200(b), 91.215(l)**

**Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(l))**

The County worked closely with the Fairfax County Redevelopment and Housing Authority (FCRHA) to solicit the input of area housing and service providers through a variety of means. Examples include:

- **Housing Blueprint:** The County and the FCRHA coordinated the development of the Housing Blueprint with the interagency Housing Options Group, which is comprised of a variety of County agencies and non-profit organizations, and is focused on developing housing opportunities for people experiencing homelessness. The main body overseeing the development of the Housing Blueprint is the Affordable Housing Advisory Committee, which includes representatives of the FCRHA, the Community Services Board, the Disability Services Board, the County's Homelessness Governing Board, representatives of a number of non-profit housing providers, the business community and others.
- **Moving to Work/THRIVE Initiative:** The FCRHA has convened a THRIVE Advisory Committee, which assists in the development and implementation of activities related to the FCRHA's Moving to Work designation. Most recently, the THRIVE Advisory Committee was instrumental in creating the strategic framework for the FCRHA's response to federal budget sequestration in the Housing Choice Voucher and Public Housing programs.
- **Consolidated Community Funding Pool Steering Committee:** The Consolidated Community Funding Advisory Committee (CCFAC) overhauled the priority setting process for the FY 2019-2020 cycle to ensure that the approach is more aligned with existing human services efforts, reflects community input and supports the recommendation of the CCFP Steering Committee. Based on community feedback, supportive data, and human services outcome information provided by staff, the CCFAC identified and developed six new priority categories which were approved by the Fairfax County Board of Supervisors on June 20, 2017. These new priority categories were incorporated into the Request for Proposal (RFP) funding application package for FY 2019-2020, which was released on October 2, 2017.

The CCFP Selection Advisory Committee (SAC) reviewed and evaluated all proposals in response to the RFP during the months of January through March 2018. As part of the SAC process, committee members identified 12 programs to be placed on the restoration of funds list. The identified programs will receive additional funding if there are any unspent funds from the FY 2018 allocations. The SAC also was charged with creating a contingency plan to mitigate against any shortfall that might occur as a result of a reduction in either federal allocations of Community Development Block Grant (CDBG) or Community Services Block Grant (CSBG) funding.



**Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.**

The Fairfax County Office to Prevent and End Homelessness (OPEH) manages, coordinates, and monitors day-to-day implementation of the plan to end homelessness. As part of this responsibility, OPEH assures coordinated execution of the work of the Continuum of Care (CoC) and the many interagency workgroups functioning within the CoC. Workgroups have been formed to address the specific needs of families and individuals who chronically experience homelessness, families with children, veterans and unaccompanied youth. These workgroups consist of professional and volunteer staff from relevant organizations, including government, nonprofit, businesses and faith communities. Significant initiatives implemented by these workgroups include the local 100k Homes campaign, the redesign of the intake and assessment system, and the national Mayors Challenge to End Veteran Homelessness.

**Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS**

As part of its responsibility to manage, coordinate and monitor day-to-day implementation of the plan to end homelessness, OPEH assures coordinated execution of the work of the CoC and leads collaborative decision-making efforts in the uses of federal homeless assistance funding, including the ESG. Partners in the use of ESG funds include HCD and a number of community-based nonprofit organizations that provide emergency shelter, homelessness prevention and rapid rehousing assistance. Through collaborative discussions, these partners assist OPEH in making decisions about the type of programs to be supported, the organizations that will utilize the funding, and the policies and procedures required to ensure compliance with applicable federal regulations for effective and efficient use of the funding. Performance standards and evaluation outcomes are developed by OPEH and community partners to support and complement homeless system performance measures as defined by HUD.

**Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdiction's consultations with housing, social service agencies and other entities**

Table begins on next page.

**Table 2 – Agencies, groups, organizations who participated**

1	<b>Agency/Group/Organization</b>	Fairfax County Redevelopment and Housing Authority
	<b>Agency/Group/Organization Type</b>	PHA
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
2	<b>Agency/Group/Organization</b>	Fairfax County Community Action Advisory Board
	<b>Agency/Group/Organization Type</b>	Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Persons with HIV/AIDS Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Service-Fair Housing Services - Victims

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
3	<b>Agency/Group/Organization</b>	Fairfax County Public Schools/PTA/Schools Community
	<b>Agency/Group/Organization Type</b>	Child Welfare Agency Other government - County
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
4	<b>Agency/Group/Organization</b>	Fairfax-Falls Church Community Partnership on Ending Homelessness

	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services-homeless
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
5	<b>Agency/Group/Organization</b>	Fairfax County Health Care Advisory Board
	<b>Agency/Group/Organization Type</b>	Services-Health Health Agency
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
6	<b>Agency/Group/Organization</b>	Fairfax-Falls Church Community Services Board

	<b>Agency/Group/Organization Type</b>	Services - Housing Services-Persons with Disabilities Health Agency
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Anti-poverty Strategy Lead-based Paint Strategy
7	<b>Agency/Group/Organization</b>	Fairfax County Alliance for Human Services
	<b>Agency/Group/Organization Type</b>	Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Persons with HIV/AIDS Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Service-Fair Housing Services - Victims

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
8	<b>Agency/Group/Organization</b>	Fairfax County Human Services Council
	<b>Agency/Group/Organization Type</b>	Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Persons with HIV/AIDS Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Service-Fair Housing Services - Victims

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy
9	<b>Agency/Group/Organization</b>	Fairfax Area Disability Services Board
	<b>Agency/Group/Organization Type</b>	Services-Persons with Disabilities
	<b>What section of the Plan was addressed by Consultation</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy
10	<b>Agency/Group/Organization</b>	Fairfax Area Commission on Aging
	<b>Agency/Group/Organization Type</b>	Services-Elderly Persons

	<b>What section of the Plan was addressed by Consultation</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy
11	<b>Agency/Group/Organization</b>	FCRHA Resident Advisory Council
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
12	<b>Agency/Group/Organization</b>	SkillSource Group, Inc.
	<b>Agency/Group/Organization Type</b>	Services-Employment Regional organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Economic Development
13	<b>Agency/Group/Organization</b>	Northern Virginia Affordable Housing Alliance
	<b>Agency/Group/Organization Type</b>	Housing Regional organization



	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
14	<b>Agency/Group/Organization</b>	Cornerstones Housing Corporation
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Persons with HIV/AIDS Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Service-Fair Housing Services - Victims
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
15	<b>Agency/Group/Organization</b>	GOOD SHEPHERD HOUSING AND FAMILY SERVICES INC.

	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services-homeless
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
16	<b>Agency/Group/Organization</b>	Shelter House, Inc.
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services-Victims of Domestic Violence Services-homeless
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs

17	<b>Agency/Group/Organization</b>	FAIRFAX AREA CHRISTIAN EMERGENCY & TRANSITIONAL SERVICES (FACETS)
	<b>Agency/Group/Organization Type</b>	Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Persons with HIV/AIDS Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Service-Fair Housing Services - Victims
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs
18	<b>Agency/Group/Organization</b>	NEW HOPE HOUSING, INC.
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services-homeless

	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
19	<b>Agency/Group/Organization</b>	Madison Homes, Inc.
	<b>Agency/Group/Organization Type</b>	Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
20	<b>Agency/Group/Organization</b>	WESLEY HOUSING DEVELOPMENT CORPORATION
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy

21	<b>Agency/Group/Organization</b>	Insight Property Group LLC
	<b>Agency/Group/Organization Type</b>	Housing Business Leaders Business and Civic Leaders
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
22	<b>Agency/Group/Organization</b>	INOVA Health System
	<b>Agency/Group/Organization Type</b>	Services-Health Publicly Funded Institution/System of Care
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
23	<b>Agency/Group/Organization</b>	Federal Home Loan Mortgage Corporation
	<b>Agency/Group/Organization Type</b>	Housing Private Sector Banking / Financing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
24	<b>Agency/Group/Organization</b>	Advisory Social Services Board
	<b>Agency/Group/Organization Type</b>	Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Persons with HIV/AIDS Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Service-Fair Housing Services - Victims

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
25	<b>Agency/Group/Organization</b>	Fairfax County School Board
	<b>Agency/Group/Organization Type</b>	Services-Education Child Welfare Agency
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
26	<b>Agency/Group/Organization</b>	Fairfax County Professional Fire Fighters and Paramedics, IAFF Local 2068
	<b>Agency/Group/Organization Type</b>	Employee Member Organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
27	<b>Agency/Group/Organization</b>	Northern Virginia Association of REALTORS
	<b>Agency/Group/Organization Type</b>	Housing Regional organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
28	<b>Agency/Group/Organization</b>	Tetra Partnerships
	<b>Agency/Group/Organization Type</b>	Commercial Real Estate
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
29	<b>Agency/Group/Organization</b>	Fairfax County Federation of Citizens Associations
	<b>Agency/Group/Organization Type</b>	Civic Leaders
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs

30	<b>Agency/Group/Organization</b>	AHOME
	<b>Agency/Group/Organization Type</b>	Housing Regional organization Business and Civic Leaders
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
31	<b>Agency/Group/Organization</b>	HABITAT FOR HUMANITY OF NORTHERN VIRGINIA
	<b>Agency/Group/Organization Type</b>	Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
32	<b>Agency/Group/Organization</b>	Northern Virginia Regional Commission
	<b>Agency/Group/Organization Type</b>	Regional organization Planning organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Non-Homeless Special Needs
33	<b>Agency/Group/Organization</b>	Virginia Housing Development Authority (VHDA)
	<b>Agency/Group/Organization Type</b>	Housing Other government - State
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
34	<b>Agency/Group/Organization</b>	City of Alexandria, Virginia
	<b>Agency/Group/Organization Type</b>	Other government - Local

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
35	<b>Agency/Group/Organization</b>	ARLINGTON COUNTY
	<b>Agency/Group/Organization Type</b>	Other government - County Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy



36	<b>Agency/Group/Organization</b>	Prince William County Department of Housing and Community Development
	<b>Agency/Group/Organization Type</b>	Housing Other government - County Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
37	<b>Agency/Group/Organization</b>	LOUDOUN COUNTY
	<b>Agency/Group/Organization Type</b>	Other government - County Other government - Local

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
38	<b>Agency/Group/Organization</b>	MONTGOMERY COUNTY GOVERNMENT
	<b>Agency/Group/Organization Type</b>	Other government - County Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

39	<b>Agency/Group/Organization</b>	PRINCE GEORGE'S COUNTY-DHCD
	<b>Agency/Group/Organization Type</b>	Other government - County Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
40	<b>Agency/Group/Organization</b>	DISTRICT OF COLUMBIA DEPT OF HOUSING AND COMMUNITY DEV
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

41	<b>Agency/Group/Organization</b>	City of Falls Church
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
42	<b>Agency/Group/Organization</b>	TOWN OF VIENNA
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

43	<b>Agency/Group/Organization</b>	TOWN OF HERNDON
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
44	<b>Agency/Group/Organization</b>	City of Fairfax
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

45	<b>Agency/Group/Organization</b>	Town of Clifton
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
46	<b>Agency/Group/Organization</b>	Metropolitan Washington Council of Governments
	<b>Agency/Group/Organization Type</b>	Regional organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

47	<b>Agency/Group/Organization</b>	Virginia Department of Housing and Community Development
	<b>Agency/Group/Organization Type</b>	Housing Other government - State
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

**Identify any Agency Types not consulted and provide rationale for not consulting**

Not applicable.

**Other local/regional/state/federal planning efforts considered when preparing the Plan**

<b>Name of Plan</b>	<b>Lead Organization</b>	<b>How do the goals of your Strategic Plan overlap with the goals of each plan?</b>
Continuum of Care	Fairfax County Office to Prevent and End Homelessness	The metrics set forth in the County's homelessness plan are tied directly to the Housing Blueprint and are reflected in this Action Plan.
Housing Blueprint (local)	FCRHA/Department of Housing and Community Development	The Strategic Plan goals are directly driven by the goals and metrics identified in the Housing Blueprint.
Moving to Work (federal)	FCRHA/Department of Housing and Community Development	The Strategic Plan is consistent with the THRIVE Housing Continuum, which is the central concept behind the FCRHA's Moving to Work program.
FCRHA Strategic Plan/Action Plan (local)	FCRHA/Department of Housing and Community Development	The activities described in the FCRHA's annual Strategic Plan/Action Plan are largely derived from the Housing Blueprint, and serve as a yearly work plan for the agency.
10-Year Plan to Prevent & End Homelessness (local)	Fairfax County Office to Prevent and End Homelessness	The metrics set forth in the County's homelessness plan are tied directly to the Housing Blueprint and are reflected in this Action Plan.
Fairfax County Comprehensive Plan/Zoning Ordinance	Fairfax County Department of Planning and Zoning	The Comprehensive Plan and Zoning Ordinance provide, respectively, the policy and regulatory underpinnings for land use issues related to affordable housing, as described in this Action Plan. This includes elements such as the Affordable Dwelling Unit and Workforce Housing programs.

**Table 3 – Other local / regional / federal planning efforts**



## **AP-12 Participation – 91.105, 91.200(c)**

### **1. Summary of citizen participation process/Efforts made to broaden citizen participation Summarize citizen participation process and how it impacted goal-setting**

A Citizen Participation Plan was adopted by the Fairfax County Board of Supervisors December 8, 1997 and revised and amended by the Board of Supervisors on April 30, 2007. The purpose of the Citizen Participation Plan is to serve as a guide for public input and participation in the Consolidated Plan process. The full Citizen Participation Plan may be found in the Grantee Unique Appendices section.

Per the Citizen Participation Plan, the county provided for and encouraged citizen participation from all sectors of the community in developing this One-Year Plan. Particular emphasis was placed on participation by persons below the federal poverty line, low and moderate income residents of blighted areas and of areas in which federal funds were used or were proposed to be used; and the participation of minority and non-English speaking residents, as well as persons with mobility, visual, speech or hearing impairments.

The county provided citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the county's One-Year Plan. Information was shared through a variety of communication channels to include the county website, social media, press releases, and a stakeholder newsletter. Outreach was also conducted through various community newspapers, which included minority publications.

Prior to its submission to HUD, citizens had an opportunity to comment on housing, community development, public service needs, and population and program priority needs identified to be addressed by community-based organizations and the proposed One-Year Action Plan at public hearings, meetings, through written correspondence, or by directly contacting the appropriate county agency.

Citizen input on housing, community development, and needs for services to be provided by community-based organizations was also received at public hearings, including one held on November 14, 2017 by the Consolidated Community Funding Advisory Committee (CCFAC). The CCFAC is composed of representatives from a variety of boards, authorities and commissions. CCFAC membership may also include representation from human services provider groups, and consumer and community organizations which relate to the Human Services Community, as appropriate. CCFAC members are appointed by the County Executive to serve for three year terms. A public hearing also was held by the Board of Supervisors on March 20, 2018, to allow citizens the opportunity to comment on the Draft Consolidated Plan One-Year Action Plan for FY 2019. Citizens were encouraged to express their views on housing and community development needs, fair housing, and

the County's community development programs. The Draft Action Plan document was released on February 6, 2018 to meet the federal requirement for a 30-day comment period.

#### Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
1	Public Hearing	<p>Minorities</p> <p>Non-English Speaking - Specify other language: Spanish, Vietnamese</p> <p>Persons with disabilities</p> <p>Non-targeted/broad community</p> <p>Residents of Public and Assisted Housing</p>	Representatives of the CCFAC, the FCRHA and the public attended the public hearing on 11/14/17	Testimony was received about the need for increased services for residents with (a) autism (b) very low household income, (c) limited English language proficiency, and/or (d) unmet human services and basic needs.	N/A	

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
2	Public Hearing	<p>Minorities</p> <p>Non-English Speaking - Specify other language: Spanish, Vietnamese</p> <p>Persons with disabilities</p> <p>Non-targeted/broad community</p> <p>Residents of Public and Assisted Housing</p>	<p><i>Board of Supervisors Public Hearing on the FY 2019 One-Year Action Plan was held on March 20, 2018.</i></p>	<p><i>There was no written nor oral testimony presented for inclusion in the final version of the FY 2019 One-Year Action Plan submitted either before or at the Public Hearing.</i></p>	N/A	

Table 4 – Citizen Participation Outreach

## Expected Resources

### AP-15 Expected Resources – 91.220(c) (1, 2)

#### Introduction

The funding levels incorporated in the Draft FY 2019 One-Year Action Plan and released for public comment are based on estimates of the CDBG, HOME and ESG funding to be awarded to Fairfax County for FY 2019, and estimated amounts of Program Income that will be available for use in FY 2019 as a result of projects previously funded by CDBG and HOME. The contingency instructions included below explain how adjustments are to be made to the advertised draft proposed allocation amounts if there is a difference between the estimates used in the Draft FY 2019 One-Year Action Plan and the actual CDBG, HOME and/or ESG funding awarded to the County and Program Income available for use in FY 2019.

The CDBG, HOME and ESG funding awarded to Fairfax County for FY 2018 will be used as estimates for FY 2019 until formal notification of the actual allocations for FY 2019 is received from HUD. Use of estimates until notice of actual allocations is customary and allows the County to meet citizen participation requirements while planning for future HUD grants prior to the official notification from HUD. Historically, official notification of the actual allocations for the next fiscal year typically has been received in March.

#### Federal Funding Allocations for FY 2019

If there is greater than a 10 percent difference between the estimated and actual CDBG, ESG and/or HOME funding allocations for FY 2019, the County's Board of Supervisors reserves the right to reconsider the proposed funding allocations. If there is no more than a 10 percent difference, Fairfax County will utilize the following contingency provision governing the use of CDBG, HOME and ESG funds, and will request citizen comment on this planned process for the allocation of federal funding for FY 2019:

#### CDBG

All CDBG funded activities are to be proportionally increased or decreased from the estimated funding levels to match the actual allocation amount with the following exceptions:

- The Section 108 Loan Payment will remain as represented in the plan.
- General Administration, Planning, and Fair Housing are to be capped at 20 percent of the CDBG allocation based on HUD limits. Total allocation for these three activities will be 20 percent of the actual CDBG allocation.
- The Targeted Public Services allocation is to be capped at 15 percent of the CDBG allocation based on HUD limits. Targeted Public Services allocation will be 15 percent of the actual CDBG allocation.
- The Affordable Housing Fund in the CCFP will be funded at \$704,500.

Funding allocations for Section 108 Loan, General Administration, Planning, Fair Housing, Targeted Public Services, and the Affordable Housing Fund are to be made prior to any other proportional adjustments to remaining CDBG-funded activities.

## **HOME**

All HOME funded activities are to be proportionally increased or decreased from the estimated funding levels to match the actual allocation amount with the following exceptions:

- HOME Administration and Fair Housing are to be capped at 10 percent of the HOME allocation based on HUD limits. The HOME Administration and Fair Housing allocations will be 10 percent of the actual HOME allocation.
- Federal regulations require that jurisdictions set-aside a minimum of 15 percent of the HOME allocation each year for Community Housing Development Organization (CHDO) investment. The CHDO set-aside will be 15 percent of the actual HOME allocation.

Funding allocations for HOME Administration, Fair Housing and CHDO are to be made prior to all other proportional adjustments to remaining HOME funded activities.

## **ESG**

All ESG funded activities are proportionally increased or decreased from the estimated funding levels to match the actual allocation amount.

### Program Income Available for Use in FY 2019

Excluding the guidance that was provided and approved by the Board on January 24, 2017, with respect to the use of Program Income from the North Hill project, all Program Income received from CDBG and/or HOME activities in excess of the estimates is to be allocated as follows:

- 50% of the excess Program Income is to be allocated to the Rehabilitation of FCRHA Properties, and
- 50% of the excess Program Income is to be allocated to the NOFA/RFP.

**Table**

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 4				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	4,974,689	366,060	790,045	6,130,794	6,130,794	Annual allocation based on HUD FY 2018 / County FY 2019 grant allocations received from HUD on <b>XXX, 2018</b> .  Program Income allocation based on historical average and projections from current activities.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 4				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
HOME	public - federal	Multifamily rental rehab TBRA	1,530,449	834,670	0	2,365,119	2,365,119	<p>Annual allocation based on HUD FY 2018 / County FY 2019 grant allocations received from HUD on <b>XXX, 2018.</b></p> <p>Program Income allocation based on historical average and projections from current activities.</p>

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 4				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
ESG	public - federal	Conversion and rehab for transitional housing Financial Assistance Overnight shelter Rapid re-housing (rental assistance) Rental Assistance Services Transitional housing	443,226	0	0	443,226	443,226	Annual allocation based on HUD FY 2018 / County FY 2019 grant allocations received from HUD on <b>XXX, 2018.</b>  Program Income allocation based on historical average and projections from current activities.

Table 5 - Expected Resources – Priority Table



**Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied**

Fairfax County leverages federal CDBG, HOME and ESG funds through a variety of local resources, including private investments, donations and other County funds.

CDBG funded targeted public services activities are supported by private cash and in-kind donations, as well as other County funds. The gaps between CDBG funding for non-profit sponsored affordable housing capital projects and the total associated acquisition, renovation and leasing costs are funded by equity investments, private financing and/or other local funds, as well as by in-kind donations of cash, services and materials.

*Fairfax County meets and exceeds its HOME Match requirement through a General Fund allocation for the direct cost of supportive services provided by the Fairfax-Falls Church Community Services Board to residents of HOME-assisted group housing. These supportive services facilitate independent, community based, housing for individuals with intellectual and developmental disabilities.*

Additionally, the County created a Housing Trust Fund (HTF) in FY 1990, which is used to encourage and support the acquisition, preservation, development and redevelopment of affordable housing by the FCRHA, non-profit sponsors and private developers. The majority of all units developed with HTF financing are HOME-eligible. Housing Trust Fund awards are anticipated in FY 2019. HOME and CHDO funded capital projects by non-profit sponsors also are leveraged by equity investments, private financing and/or other local funds, as well as by in-kind donations of cash, services and materials.

Fairfax County matches ESG funding with a one-to-one match of local General Fund financing which is appropriated on an annual basis as a part of the normal Fairfax County budget cycle, typically in April.

**If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan**

Fairfax County and the FCRHA have a long and successful track record of utilizing public land for the development of housing to meet a continuum of need identified in this Draft FY 2019 One-Year Action Plan. Projects that are expected to be completed, under construction or in planning during the time covered by this plan include the following:

**Lincolnia Residences Renovation (Mason District):** the project scope includes the renovation of the building complex which provides space for three separate operations: 1) Senior Housing and Assisted Living managed by HCD, 2) a Senior Center operated by the Department of Neighborhood and Community Services, and 3) an Adult Day Health Care Center managed by the Health Department. The Housing portion is comprised of 26 units of affordable apartments for seniors, 52 beds of licensed Assisted Living, common areas for the Housing residents, and a commercial kitchen which supports all on-site activities. The renovation includes replacement of the HVAC system and the emergency generator, extensive interior overhauls and upgrades of lighting and the fire alarm system, elevator modernization, roof and fire pump replacement, numerous accessibility modifications, and minor site enhancements. Phase I of the Lincolnia Senior Center Renovations project was completed in FY 2016. Phase II, which includes trim work, cabinetry replacement, hot water heater replacement, the addition of electrical circuits, and other miscellaneous improvements will be completed in FY 2019.

**Lewinsville Center (Dranesville District):** The planned redevelopment of the 8.6 acre McLean property includes the demolition of the current facility and construction of two buildings which will: 1) create 82 units of “Independent Living” senior housing; 2) provide space for the Health Department’s Adult Day care facility; 3) create two child day care centers; and 4) allow for the expansion of services through the existing Senior Center programs operated by the Department of Neighborhood and Community Services. The residential component of the project will be developed and operated by a private developer under the Virginia Public Private Educational Facilities Infrastructure Act (PPEA). One building will contain the affordable senior housing which will be constructed and operated at no cost to the County utilizing tax credits and a long term ground lease. The second building will be the community support building which will house the senior center and the adult and child day care facilities. Construction completion is anticipated for spring 2019.

**North Hill (Lee District):** The FCRHA has selected a private developer, under PPEA, for the development of the 35 acre North Hill site, which was acquired by the FCRHA in the 1980s. The selected developer received the necessary zoning approvals in FY 2018 to construct 278 mixed-income, affordable multi-family units and 175 market-rate townhouses. The approximately 12 acre remaining balance of the site will be maintained as a

park. The project was awarded competitive 9% tax credits by the Virginia Housing Development Authority, which provides a critical part of the funding for the project. Negotiations are underway for the sale of the market-rate townhouse land bay, the sale proceeds of which will be used as development funding for the affordable units. Site plan preparation is underway. Negotiation of one or more additional agreements, including a Master Development Agreement, has to be completed before development begins.

**Murraygate Renovation (Lee District):** The project scope includes extensive renovations of the 200-unit Murraygate Village apartment complex. Anticipated rehabilitation will include replacement of the central heating and cooling system with individual HVAC units in each apartment, electrical system upgrades, accessibility improvements, kitchen and bathroom modernization, other miscellaneous enhancements, and minor site work. The construction of Phase I is underway to address the necessary electrical upgrades and will be completed in FY 2018. Phase II will address the majority of the renovations and will be completed in FY 2021.

**Route 50/West Ox Road (Sully District):** This project is the development of a one-acre County owned property located in the northwest quadrant of the Route 50/West Ox Road interchange to construct up to 30 units of permanent supportive housing for victims of domestic violence and/or formerly homeless individuals, including formerly homeless veterans.

**Wedgewood Renovation (Mason District):** The scope of the project is intended to sustain the Wedgewood property for 10 or more years and preserve the Board's flexibility for future redevelopment of the property. Work completed includes condition assessment studies; a site plan for grading and drainage improvements; permits; basement water proofing and wall reinforcement; roofing and gutter replacements and repairs; one chiller replacement; repairs of cooling towers and control valves in central heating and cooling plants; and repairs of patios, walkways, stairs and retaining walls. Planned work includes site grading and drainage improvements; repaving parking lots; and improving reliability of the central plant systems. Additional basement waterproofing will be assessed after the grading and drainage improvements. The renovation effort began in FY 2017 and will continue through FY 2019.

**Mount Vernon Gardens (Mount Vernon District):** The project scope includes the renovation of the 34-unit Mount Vernon Garden apartment complex. A Physical Needs Assessment study was completed in FY 2017, which resulted in the identification of health and safety items that are needed to keep the property operational for the next 7 – 10 years. The scope of the rehabilitation includes central water heating systems upgrade; roof replacement; limited electric system upgrade; hand rail and guardrail repairs; and common area window replacement.

**Oakwood (Lee District):** The project scope is to develop the 6.2 acres County-owned site at the intersection of Oakwood Road and Van Dorn Street. The site has the potential to develop up to 150 units of affordable independent senior housing. Potential funding includes Low Income Housing Tax Credits (LIHTC).

**One University (Lee District):** The project scope is to redevelop the site at the intersection of Route 123 and University Drive. An unsolicited proposal has been received for replacing the existing affordable housing complex (Robinson Square) and the existing FCRHA facilities. The proposed development will include up to 240 units of affordable housing and student housing. A request for competing proposals has been posted on the County website. The competing proposals are due in early January 2018.

**Little River Glen Expansion (Braddock District):** The project scope includes the construction of 60 units of affordable independent senior housing on land owned by the FCRHA. A funding source has not been determined.

## Annual Goals and Objectives

### AP-20 Annual Goals and Objectives - 91.420, 91.220(c)(3) & (e) [to be updated by VRogers]

#### Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Homelessness	2016	2020	Homeless	Countywide	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing Community Services	CDBG: \$4,000,000 HOME: \$700,000 ESG: \$431,214	Rental units rehabilitated: 10 Household Housing Unit Tenant-based rental assistance / Rapid Rehousing: 50 Households Assisted
2	Special Needs	2016	2020	Affordable Housing Non-Homeless Special Needs	Countywide	Affordable Rental Housing Homeownership Access and Rehabilitation Community Services	CDBG: \$1,200,000 HOME: \$500,000	Public service activities other than Low/Moderate Income Housing Benefit: 100 Persons Assisted Public service activities for Low/Moderate Income Housing Benefit: 20 Households Assisted Rental units rehabilitated: 5 Household Housing Unit Tenant-based rental assistance / Rapid Rehousing: 20 Households Assisted

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
3	Working Families	2016	2020	Affordable Housing	Countywide	Affordable Rental Housing Homeownership Access and Rehabilitation Community Services	CDBG: \$300,000 HOME: \$300,000	Rental units rehabilitated: 2 Household Housing Unit Tenant-based rental assistance / Rapid Rehousing: 20 Households Assisted
4	Workforce Housing	2016	2020	Affordable Housing	Countywide	Affordable Rental Housing Homeownership Access and Rehabilitation	CDBG: \$200,000 HOME: \$200,000	Rental units constructed: 200 Household Housing Unit Homeowner Housing Added: 25 Household Housing Unit
5	Human Service System	2016	2020	Non-Housing Community Development	Countywide	Community Services Administration and Planning	CDBG: \$0 HOME: \$0 ESG: \$0	Other: 1 Other
6	Poverty Reduction/Self Sufficiency	2016	2020	Non-Housing Community Development	Countywide	Community Services	CDBG: \$0 HOME: \$0 ESG: \$0	Public service activities other than Low/Moderate Income Housing Benefit: 50 Persons Assisted
7	Reinvestment	2016	2020	Non-Housing Community Development	Countywide	Administration and Planning	CDBG: \$0 HOME: \$0 ESG: \$0	Other: 1 Other
8	Community Input	2016	2020	Institutional	Countywide	Administration and Planning	CDBG: \$250,000	Other: 1 Other

**Table 6 – Goals Summary**

## Goal Descriptions

1	<b>Goal Name</b>	Homelessness
	<b>Goal Description</b>	<p><b><i>To End Homelessness in 10 Years by 2018</i></b></p> <p>The County will address the 10-year need for 2,650 additional units/permanent housing opportunities for individuals and families who are experiencing homelessness. Outcomes will be achieved through a variety of County programs and activities, including programs and activities funded through the CCFP.</p> <p><u>Projected Outcomes:</u></p> <ul style="list-style-type: none"> <li>• Housing opportunities created by turnover in federal resources: 121</li> <li>• New housing opportunities (non-turnover): 26</li> </ul> <p>New homeless households served in local Bridging Affordability program: 29</p>
2	<b>Goal Name</b>	Special Needs
	<b>Goal Description</b>	<p><b><i>To Provide Affordable Options to Special Needs Populations</i></b></p> <p>The County will provide affordable housing options to special needs populations including households with low to extremely-low income, seniors and persons with physical or mental disabilities through several means, including programs and activities funded through the CCFP. (Note: Persons with special needs are also served throughout the other goals identified in the Housing Blueprint and the Consolidated Plan.)</p> <p><u>Projected Outcomes:</u></p> <ul style="list-style-type: none"> <li>• Housing opportunities created by turnover in federal resources: 5</li> <li>• New housing opportunities (non-turnover): 30</li> </ul> <p>New special needs households served in the local Bridging Affordability program: 12</p>

3	<b>Goal Name</b>	Working Families
	<b>Goal Description</b>	<p><b><i>To Meet the Affordable Housing Needs of Low-income Working Families</i></b></p> <p>The County will work to address the current need, estimated at about 31,000 units, for affordable housing among working families with low-income via a variety of means. The goal will be accomplished through a variety of County programs and activities, including those funded through the CCFP.</p> <p><u>Projected Outcomes:</u></p> <ul style="list-style-type: none"> <li>• New low-income households served in the local Bridging Affordability program: 65</li> <li>• Housing opportunities created by turnover in federal resources: 190</li> <li>• Housing opportunities created by turnover in local housing resources: 200</li> </ul> <p>New housing opportunities (non-turnover): 100</p>
4	<b>Goal Name</b>	Workforce Housing
	<b>Goal Description</b>	<p><b><i>To Increase Workforce Housing through Creative Partnerships and Public Policy</i></b></p> <p>The County will address the need for nearly 50,000 net new housing units affordable to households earning up to 120 percent of AMI based on projected job growth through 2032 (source: George Mason University) through bolstering existing resources and initiating other efforts.</p> <p><u>Projected Outcomes:</u></p> <p>New housing opportunities: 225</p>



5	<b>Goal Name</b>	Human Service System
	<b>Goal Description</b>	<p><b><i>Maintain and strengthen a safe, healthy and vibrant community through a human service system that is responsive to all populations and their diverse needs including children, the elderly, persons with disabilities, or those with other special needs, with emphasis on benefiting low and moderate income persons and families</i></b></p> <p>The County will promote healthy child and youth development, identify strategies to meet current and emerging service needs, and encourage and support public and private network of community services that fosters stability and maximizes self-sufficiency. The programs and activities funded through the CCFP also support the accomplishment of this goal.</p> <p><u>Specific Objectives:</u></p> <p>1.1 Promote healthy, positive child and youth development through a community support system that meets the diverse needs of all children and provides positive alternatives that help in the prevention of gang activity.</p> <p>1.2 Identify gaps and develop strategies to meet critical current and emerging service needs in the community.</p> <p>1.3 Encourage and support a coordinated public and private network of community services that fosters stability and maximizes independence of individuals and families.</p> <p>1.4 Promote a human service system that ensures residents are able to meet basic and emergency human needs, that emphasizes prevention and early intervention to minimize crises and that preserves individual and family stability.</p> <p>1.5 Encourage best practices, sensitivity to cultural differences and enhanced performances in service delivery to ensure residents receive high quality services as needed.</p>

6	<b>Goal Name</b>	Poverty Reduction/Self Sufficiency
	<b>Goal Description</b>	<p><b><i>Reduce poverty and foster self-sufficiency by using public and private resources to provide essential training and support services, and by encouraging employment opportunities and development of business</i></b></p> <p>The County will strengthen self-sufficiency for program participants via a variety of means, including programs and activities funded through the CCFP. Consistent with the FCRHA's Moving to Work/THRIVE program, particular emphasis will be placed on promoting self-sufficiency activities for those participating in the various affordable housing programs operated by the FCRHA and Fairfax County.</p> <p><u>Specific Objectives:</u></p> <p>2.1 Strengthen current job skill training and employment programs to prepare potential workers for better job opportunities and strengthen communication and partnerships with employers to remove barriers and to improve access to and increase the number of job placements in better employment, especially for families with low income.</p> <p>2.2 Promote training and educational opportunities for workers to gain skills necessary for jobs that provide wages for individuals and families to be self-sufficient and that support family stability.</p> <p>2.3 Strengthen the provision and flexibility of supportive services for individuals to begin new jobs or continue in existing jobs by ensuring they have access to affordable child care, disabled adult and elderly care, transportation, English as a Second Language programs and/or other needed support.</p> <p>2.4 Support community efforts in the development and assistance to micro-enterprises and small businesses to reduce small business failures and to retain and create more jobs.</p> <p>2.5 Ensure that the commercial revitalization program serves as a resource to achieve a portion of these objectives.</p> <p>2.6 Implement Fairfax County's Strategic Plan to Facilitate Economic Success, which has an overall focus on maintaining, diversifying, and enhancing the County's strong and vital community in order to sustain and foster economic prosperity.</p>

7	<b>Goal Name</b>	Reinvestment
	<b>Goal Description</b>	<p><b><i>In commercial and residential areas that are vulnerable to instability, facilitate reinvestment, encourage business development, promote public and private investment and reinvestment, preserve affordable housing and prevent or eliminate the negative effects of disinvestment</i></b></p> <p>The County will continue to implement the Strategic Plan to Facilitate Economic Success of Fairfax County, which focuses on four fundamentals – people, places, employment and governance. In terms of places, Fairfax County will focus on infrastructure, mobility, redevelopment and fostering the retail industrial and other emerging uses.</p> <p><u>Specific Objectives:</u></p> <p>3.1 Develop strategies of prevention and early intervention in communities in danger of deterioration to reduce the need for greater community investment and improvements in the future.</p> <p>3.2 Review existing plans for Conservation Areas, Redevelopment Areas, residential Revitalization Areas, Commercial Revitalization Districts and Commercial Revitalization Areas to promote a comprehensive and coordinated approach to meeting community development needs while maintaining the affordable housing stock and the unique character of each community.</p> <p>3.3 Build on community strengths and involve the residents in decision making on needs, priorities, plans, improvements, and solutions to community concerns, in cooperation with the County's Department of Code Compliance.</p>
8	<b>Goal Name</b>	Community Input
	<b>Goal Description</b>	<p><b><i>Ensure broad community input throughout the development and implementation of the Consolidated Plan, build public/private partnerships to implement the Plan, and monitor and evaluate the goals, strategies and program outcomes</i></b></p> <p><u>Overarching Objective:</u> The County will implement the Citizen Participation Plan and monitor and evaluate the effectiveness of community outreach and education on community needs, plans and priorities; funded programs and results; and the effectiveness of the citizen participation process under the Consolidated Plan.</p>

**Table 7 – Goal Descriptions**

## AP-35 Projects – 91.220(d)

### Introduction

All HOME, CDBG and ESG entitlement funds and any subsequent leveraging of local and private resources for FY 2019 will be invested in the following seventeen projects. Project #7- Targeted Public Services also receives an allocation of local general and CSBG funds totaling approximately \$11m. The County General Funds figure reflects the County FY 2019 Adopted Budget amount, and includes estimated CSBG revenue to the General fund.

#	Project Name
1	Section 108 Loan Payments
2	Fair Housing
3	Planning
4	General Administration
5	HOME Administration
6	Affordable Housing Fund (CCFP)
7	Targeted Public Services (CCFP)
8	Home Repair for the Elderly & Community Rehabilitation Programs
9	Tenant Based Rental Assistance
10	FCRHA Properties – Rehabilitation and/or Acquisitions
11	Homeownership Program
12	Relocation Program
13	CHDO Set-Aside
14	Special Needs Housing
15	Emergency Solutions Grant
16	CDBG/HOME Affordable Housing Request For Proposals
17	North Hill

**Table 8 – Project Information**

### **Describe the reasons for allocation priorities and any obstacles to addressing underserved needs.**

On January 26, 2010, the Fairfax County Board of Supervisors adopted a “Housing Blueprint”, which establishes the County’s affordable housing policy direction for FY 2011 and beyond. The goals and priority needs set forth in the Housing Blueprint are revised and updated each year, and have evolved over time as a product of ongoing input from the community.

The **housing goals** established in the Housing Blueprint incorporated into the Consolidated Plan for FY 2016-2020 are as follows:

- **Goal 1:** To end homelessness in 10 years
- **Goal 2:** To provide affordable housing options to special needs population
- **Goal 3:** To meet the affordable housing needs of low-income working families; and
- **Goal 4:** To increase workforce housing through creative partnerships and public policy

This FY 2019 One-Year Action Plan reflects the overarching goals of the Housing Blueprint and is the product of the input gathered through the process of bringing together County officials and staff, representatives from the nonprofit and for-profit development sectors, and the citizens of Fairfax County, supplemented by data compiled from local sources, HUD and the U.S. Census Bureau. To accomplish these goals, Fairfax County will draw upon the community and private sector to leverage resources through partnerships. The County will complete projects already in the pipeline as well as embark on new initiatives.

As reflected in the Housing Blueprint, the philosophy driving the priority needs in the Consolidated Plan is that affordable housing is a continuum ranging from the needs of residents who are experiencing homelessness to first-time home buyers. Included in this range are the diverse housing needs of hard-working, but low paid families, senior citizens, persons with physical or mental disabilities, and the workforce across Fairfax County. This FY 2019 One-Year Action Plan is the fourth year of the County's Consolidated Plan for FY 2016-2020 and will continue as established in FY 2016.

The main obstacle facing the County is the affordable housing gap for residents who are low-and moderate-income. The bulk of all proposed projects endeavor to combat the shortage of affordable housing in the County.

## Projects

### AP-38 Projects Summary

#### Project Summary Information

Table 9 – Project Summary

1	<b>Project Name</b>	Section 108 Loan Payments
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Reinvestment
	<b>Needs Addressed</b>	Affordable Rental Housing Community Services
	<b>Funding</b>	CDBG: \$1,099,481
	<b>Description</b>	Annual payments on four loans under Section 108 of the Housing and Community Development Act of 1974, as amended. Funding through the loans has been used by the FCRHA for affordable housing development and preservation, reconstruction of Washington Plaza in Reston and preservation and Olley Glen, and road and storm drainage improvements in five Conservation Areas (Bailey's, Fairhaven, Gum Springs, James Lee, and Jefferson Manor). Loan applications were approved by the Board of Supervisors, who pledged future CDBG funds for the payment of annual interest and principal premiums due on the notes.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	All beneficiary data related to each of the projects was reported in the CAPER for the year in which the project was completed.
	<b>Location Description</b>	Not applicable.
2	<b>Planned Activities</b>	Matrix Code- 19F Planned Repayments of Section 108 Loans
	<b>Project Name</b>	Fair Housing
	<b>Target Area</b>	Countywide

	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing Human Service System Poverty Reduction/Self Sufficiency Reinvestment Community Input
	<b>Needs Addressed</b>	Community Services Administration and Planning
	<b>Funding</b>	CDBG: \$183,000 HOME: \$24,760
	<b>Description</b>	Funding to support the County's Office of Human Rights and Equity Programs to contract for fair housing testing, to conduct fair housing outreach and education activities, and to investigate fair housing complaints. In addition, funds will be used in FY 2019 for activities that affirmatively further fair housing for FCRHA clients and tenants.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	General fair housing outreach and education is made available to all County residents, businesses and organizations. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	Matrix Code- 21D Fair Housing Activities (subject to Admin Cap)
3	<b>Project Name</b>	Planning
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing Human Service System Poverty Reduction/Self Sufficiency Reinvestment Community Input
	<b>Needs Addressed</b>	Administration and Planning

	<b>Funding</b>	CDBG: \$277,875
	<b>Description</b>	Continued funding to provide for planning and implementation of the County's housing and community development programs. Funding is required to meet CDBG and HOME regulations and local procedures, prepare and process the County's Consolidated Plan and related citizen participation and public input processes, prepare community plans, and implement housing and community development projects, as well as identify and pursue funding sources to match and leverage entitlement funding. Planning will include FCRHA activities to affirmatively further fair housing.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Planning as a required administrative function of the CDBG entitlement is not limited to a specific number and type of beneficiaries.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	Matrix Code- 20 Planning
4	<b>Project Name</b>	General Administration
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing Human Service System Poverty Reduction/Self Sufficiency Reinvestment Community Input
	<b>Needs Addressed</b>	Administration and Planning
	<b>Funding</b>	CDBG: \$573,730



	<b>Description</b>	Funding for the general administration of the County's CDBG- and HOME-funded programs and projects, as well as projects funded under the Section 108 and the Economic Development Initiative. Funding provides for administration of housing and community development programs and projects, including contract management for targeted public services and affordable housing fund programs and activities funded through the CCFP; preparation of required local, state, and federal reports; preparation of other documents; and provision of technical assistance, financial management, and administrative and professional support to the CCFAC and various citizen participation processes. General Administration will include FCRHA activities that affirmatively further fair housing. Funding provides for salaries and fringe benefits plus related operating costs.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The required administrative function of the CDBG entitlement is not limited to a specific number and type of beneficiaries.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	Matrix Code- 21A General Program Administration
5	<b>Project Name</b>	HOME Administration
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families
	<b>Needs Addressed</b>	Administration and Planning
	<b>Funding</b>	HOME: \$128,284
	<b>Description</b>	Under the HOME Program, local jurisdictions may designate 10% of the annual HOME grant for administrative costs. Administrative funds will be used to support the operation of the HOME Program and the projects receiving HOME funding. Proposed funding provides for salaries and fringe benefits, plus related operating and equipment costs and eligible preliminary costs related to the planning and design of housing development proposed by the FCRHA.
	<b>Target Date</b>	6/30/2019

	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Planning as a required administrative function of the HOME entitlement is not limited to a specific number and type of beneficiaries.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	See description.
6	<b>Project Name</b>	Affordable Housing Fund (CCFP)
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families
	<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing
	<b>Funding</b>	CDBG: \$704,500
	<b>Description</b>	An allocation to the CCFP to provide funding to eligible nonprofit corporations or CDBG Participating Jurisdictions (Towns of Clifton, Herndon, and Vienna, and the City of Fairfax) for the provision, development and preservation of affordable housing in accordance with CDBG eligibility criteria and priorities and the CCFP priorities adopted by the Board of Supervisors. Funding for specific programs and projects are subject to appropriations by the Board of Supervisors.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The numbers of families and individuals assisted will vary depending on specific projects. All beneficiaries served will have incomes at or below 50% AMI. It is anticipated that a minimum of four housing units will be acquired and/or rehabilitated as a direct result of the planned investment. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	Matrix Code- 14G Rehab: Acquisition
7	<b>Project Name</b>	Targeted Public Services (CCFP)
	<b>Target Area</b>	Countywide

<b>Goals Supported</b>	Homelessness Special Needs Working Families Human Service System Poverty Reduction/Self Sufficiency Reinvestment Community Input
<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing Homeownership Access and Rehabilitation Community Services
<b>Funding</b>	CDBG: \$746,203
<b>Description</b>	An allocation to the CCFP will be determined by a HUD-required limit of 15% of CDBG award to be used for Targeted Public Services. Funds are provided for CCFP awards to eligible nonprofit corporations or CDBG Participating Jurisdictions (Towns of Clifton, Herndon, and Vienna, and the City of Fairfax) for the delivery of public services in accordance with CDBG eligibility criteria and priorities and the CCFP priorities adopted by the Board of Supervisors. Funding for specific programs and projects are subject to appropriations by the Board of Supervisors.
<b>Target Date</b>	6/30/2019
<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The number of families and individuals assisted will vary, but all will have incomes at or below 50% AMI. A majority of those served will be either experiencing homelessness or at-risk of homelessness. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
<b>Location Description</b>	To be determined.
<b>Planned Activities</b>	Funding allocated to the Targeted Public Services project will fund the CCFP program in FY 2019. Programs typically provide a variety services aimed at promoting stability and self-sufficiency, including case management, training in life skills, employment, financial management, and ESOL, and limited direct financial assistance and in-kind donations to prevent homelessness and/or meet basic needs. Applications for the FY 2019 - FY 2020 round were submitted in December 2017 with funding awards distributions beginning in July 2018, as funds become available.
<b>Project Name</b>	Home Repair for the Elderly & Community Rehabilitation Programs

8	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Human Service System Poverty Reduction/Self Sufficiency
	<b>Needs Addressed</b>	Homeownership Access and Rehabilitation
	<b>Funding</b>	CDBG: \$387,323
	<b>Description</b>	<p>As in past fiscal years, funding of the Home Repair for the Elderly Program (HREP) provides minor repairs at no cost to the homeowner for an estimated 100 homes of eligible low-income elderly or disabled persons. The HREP provides up to one week of labor and \$500 in material expenses by the HREP crew. Proposed funding provides for salaries and fringe benefits, plus related operating and equipment costs. These funds are supplemented by County funds generated from payments on loans through the Home Improvement Loan Program for the costs of outside contracting and materials.</p> <p>In FY 2018, this project was expanded to include a Community Rehabilitation Program to provide technical assistance, training and referral services to preserve affordable single and multi-family housing units in need of renovation to comply with local codes, to install accessibility features and/or correct other deficiencies necessary to preserve the housing and/or to prevent the occupants from experiencing homelessness.</p>
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	<p>Approximately 100 elderly households with low incomes will be served by the Home Repair for the Elderly Program.</p> <p>The numbers of families and individuals assisted through the Community Rehabilitation Program will vary depending on the requests for assistances and the specific projects. All beneficiaries will be the owners of housing units in the Town of Herndon. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.</p>
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	Matrix Codes- 14A Rehab: Single-Unit Residential; 14B Rehab: Multi-Unit Residential

9	<b>Project Name</b>	Tenant Based Rental Assistance
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families
	<b>Needs Addressed</b>	Homeless Prevention and Rapid Re-Housing Affordable Rental Housing
	<b>Funding</b>	HOME: \$673,399
	<b>Description</b>	Rental assistance to prevent families/individuals from becoming homeless, assistance for families/individuals experiencing homelessness to obtain permanent housing, rental assistance for households with special needs, funding to respond to reasonable accommodation requests and funding to subsidize units for clients of the Progress Center.
	<b>Target Date</b>	June 30, 2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 50 families or individuals will receive TBRA vouchers. All beneficiaries will have outcomes at or below 50% of the AMI. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined
	<b>Planned Activities</b>	Provision of TBRA vouchers
10	<b>Project Name</b>	FCRHA Properties – Rehabilitation and/or Acquisition
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Special Needs Working Families Workforce Housing
	<b>Needs Addressed</b>	Affordable Rental Housing
	<b>Funding</b>	CDBG: HOME:
	<b>Description</b>	Funding will be used to rehab FCRHA residential properties and group homes to maintain safety and quality of life. A portion of the funding also may be used to purchase Affordable Dwelling Units or other property for rental.
	<b>Target Date</b>	June 30, 2019

	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The number of families and individuals who will benefit from the activities will be determined by the projects. The majority of the beneficiaries will have incomes at or below 30% of AMI. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined
	<b>Planned Activities</b>	Matrix Code-14D Rehab: Other Public-Owned Residential Buildings
<b>11</b>	<b>Project Name</b>	Homeownership Program
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Working Families Workforce Housing
	<b>Needs Addressed</b>	Homeownership Access and Rehabilitation
	<b>Funding</b>	CDBG: \$502,391
	<b>Description</b>	The proposed funding provides for salaries and fringe benefits to support full-time positions involved in homeownership activities related to the First-Time Homebuyer Program. Duties include application intake/data entry, waiting list maintenance, application processing, applicant eligibility certification, marketing new and resale units, conducting lotteries for purchase applicants, establishing resale prices, monitoring second trust loans, conducting required annual occupancy certifications, dissemination of program information, providing educational programs and/or counseling for applicants/homeowners, and, when available, providing financial assistance to homebuyers.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	This program benefits approximately 50 families who are currently housed but not on the waiting list of certified eligible applicants and approximately 200-250 families who are on the waiting list. Approximately 6,000 additional families will be served through orientations and other marketing activities. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	Matrix Code- 13 Direct Homeownership Assistance
<b>12</b>	<b>Project Name</b>	Relocation Program
	<b>Target Area</b>	Countywide

	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing Human Service System Poverty Reduction/Self Sufficiency
	<b>Needs Addressed</b>	Affordable Rental Housing
	<b>Funding</b>	CDBG: \$170,750
	<b>Description</b>	Provision of relocation benefits to residents of FCRHA owned property as needed to facilitate rehabilitation of housing units and the buildings in which the units are located. Funding may also be used to support staff to provide federally mandated relocation and advisory services or reviews and technical assistance for CDBG and HOME funded non-profit development.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The numbers of families assisted will vary depending on the project specific needs. Large-scale rehabilitation of FCRHA owned multi-family properties typically involves some level of relocation. Of those populations receiving benefit, most have incomes that are at or below 50% AMI. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	Matrix Code- 08 Relocation
13	<b>Project Name</b>	CHDO Set-Aside
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing
	<b>Needs Addressed</b>	Affordable Rental Housing Homeownership Access and Rehabilitation
	<b>Funding</b>	HOME: \$229,568
	<b>Description</b>	CHDO set-aside activities will serve to acquire and/or rehabilitate existing affordable housing or develop additional affordable housing units for homebuyers and renters with low incomes.

	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Based on past applications it is anticipated that the funding allocated to this project will have the potential to serve one family at or below 50% AMI. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined based on applications.
	<b>Planned Activities</b>	Typical CHDO projects include the acquisition and rehabilitation of housing units to provide affordable housing to beneficiaries with income at or below 50% AMI.
14	<b>Project Name</b>	Special Needs Housing
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families
	<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing
	<b>Funding</b>	CDBG: \$600,545 HOME: \$300,000
	<b>Description</b>	The development, preservation, acquisition, modification and rehabilitation of housing and facilities to serve a special needs population as defined by the Housing Blueprint include those who are experiencing homelessness, those with disabilities, the elderly who have low incomes, large families with severely limited housing options, those who are severely rent burdened and victims of domestic violence.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.



	<b>Planned Activities</b>	Typical projects will include the removal of architectural barriers that restrict the mobility and accessibility of elderly persons or person with disabilities, and acquisition of housing units for the purpose of providing deed restricted, long-term affordable housing options for residents with special needs. Funding in this category may be utilized by the FCRHA on property owned by the FCRHA or by non-profits. Funding will remain available for FCRHA projects until June 30, 2019. Any uncommitted funds in this activity may be made available for the FY 2019 Affordable Housing Request For Proposal and awarded to non-profits on a competitive basis.
15	<b>Project Name</b>	Emergency Solutions Grant
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness
	<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing
	<b>Funding</b>	ESG: \$443,226
	<b>Description</b>	The Emergency Solutions Grant program under the HEARTH Act has a greater emphasis on using funding to prevent homelessness and to rapidly re-house persons and families who become homeless. Funds will be used to support all eligible Emergency Solutions Grant Program activities.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Emergency Solutions Grant (ESG)-supported programs are estimated to serve in excess of 1,500 individuals in FY 2019. Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.

	<b>Planned Activities</b>	The ESG program funds will support homelessness prevention and rapid rehousing assistance to people who are at-risk of homelessness and those experiencing homelessness. The ESG funds will be used specifically to provide housing relocation and stabilization services, as well as short-to medium-term rental assistance to help program participants regain stability in current permanent housing or move into other more suitable permanent housing in order to achieve stability. Services will include case management, housing search and placement, and financial assistance for rental application fees, security deposits, last month's rent, utility deposits and payments, and moving costs.
16	<b>Project Name</b>	HOME/CDBG Affordable Housing Request For Proposals
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing
	<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing Homeownership Access and Rehabilitation
	<b>Funding</b>	CDBG: \$264,783 HOME: \$1,009,108
	<b>Description</b>	The FY 2019 CDBG/HOME Affordable Housing Request for Proposal will serve to preserve, acquire and/or rehabilitate existing affordable housing or develop additional affordable housing units for renters with low income. The notice of funding availability will coincide with the availability of the CHDO funding.
	<b>Target Date</b>	6/30/2019

	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	<p>Number and type of beneficiaries to be determined based on applications. Scoring preference will typically be given to projects that include the preservation and/or acquisition of units to be used as affordable housing and meet criteria such as:</p> <ul style="list-style-type: none"> <li>• Incorporates Fairfax County's Consolidated Plan and Housing Blueprint goals; <b>AND/OR</b></li> <li>• Results in affordable housing that is accessible to persons with disabilities; <b>AND/OR</b></li> <li>• Serves households with extremely low incomes (at or below 30% AMI) ; <b>AND/OR</b></li> <li>• Provides housing for families or individuals who are experiencing homelessness or who are at-risk of homelessness; <b>AND/OR</b></li> <li>• Provides housing for Seniors (62 and above) ; <b>AND/OR</b></li> <li>• Provides housing for youth transitioning out of foster care; <b>AND/OR</b></li> <li>• Provides beneficiaries with direct access to public transportation and/or community retail centers and/or supportive services; <b>AND/OR</b></li> <li>• Can be completed in an expedited manner.</li> </ul> <p>Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.</p>
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	Typical projects include the acquisition and rehabilitation of housing units to provide affordable housing to beneficiaries with income at or below 50% AMI.
17	<b>Project Name</b>	North Hill
	<b>Target Area</b>	North Hill area in Mount Vernon District
	<b>Goals Supported</b>	Working Families Workforce Housing Reinvestment
	<b>Needs Addressed</b>	Affordable Rental Housing Community Services
	<b>Funding</b>	CDBG: \$573,128 Local: \$47,085

	<b>Description</b>	<p>The funding will support pre-development costs associated with the following projects:</p> <p>North Hill Affordable Multifamily Development: Under this Fairfax County Redevelopment and Housing Authority (FCRHA) activity, funding will support infrastructure work. The scope of work includes earth work, erosion and sediment control, utility installation, road improvements, storm water management, site improvements, removal of marine clay soils, and building of needed retaining walls.</p> <p>North Community Park: Under this FCRHA activity, approximately \$1.5 million will be made available for the initial phase of the development of the community park which will be available for the residents of the new development as well as the existing residents of Woodley Hills Estates. The scope of work for this initial phase includes demolition, removal and disposal of existing improvements; treatment of invasive plants; site grading; and restoration and seeding of disturbed areas.</p>
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	<p>North Hill Affordable Multifamily Development: 278 low-moderate income families</p> <p>North Hill Community Park: Approximately 3,260 persons with approximately 1,480 low-moderate income persons</p> <p>Beneficiary demographics will be tracked as services are provided and reported in the CAPER for FY 2019.</p>
	<b>Location Description</b>	The North Hill Project is approximately 33 acres in the Mount Vernon District. The site is located within U.S. Census Tract (CT) 415401 Block Group (BG) 3 and the community park will serve persons from CT 415401 BG 3 as well as neighboring CT 415401 BG 2.
	<b>Planned Activities</b>	North Hill Affordable Multifamily Development and Community Park.

## **AP-50 Geographic Distribution – 91.220(f)**

### **Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed**

Fairfax County in general is opportunity-driven in the allocation of affordable housing resources, while at the same time working actively to promote the de-concentration of poverty, particularly in the programs operated by the FCRHA. With respect to the investment of capital resources for affordable housing development, the FCRHA finances the acquisition and development of properties in locations across the County and will continue to operate its program on a countywide basis.

### **Geographic Distribution**

Target Area	Percentage of Funds
Countywide	100

**Table 10 - Geographic Distribution**

### **Rationale for the priorities for allocating investments geographically**

Not applicable

## Affordable Housing

### AP-55 Affordable Housing – 91.220(g)

#### Introduction

The goals represented below are taken from the FY 2017 Housing Blueprint. A copy of this document is attached in the Grantee Unique Appendices section of this document.

<b><i>One Year Goals for the Number of Households to be Supported</i></b>	
<i>Homeless</i>	<i>181</i>
<i>Non-Homeless</i>	<i>970</i>
<i>Special-Needs</i>	<i>390</i>
<i>Total</i>	<i>1,541</i>

**Table 11 - One Year Goals for Affordable Housing by Support Requirement**

<b><i>One Year Goals for the Number of Households Supported Through</i></b>	
<i>Rental Assistance</i>	<i>821</i>
<i>The Production of New Units</i>	<i>665</i>
<i>Rehab of Existing Units</i>	<i>0</i>
<i>Acquisition of Existing Units</i>	<i>55</i>
<i>Total</i>	<i>1,541</i>

**Table 12 - One Year Goals for Affordable Housing by Support Type**

## **AP-60 Public Housing – 91.220(h)**

### **Actions planned during the next year to address the needs to public housing**

The current Fairfax County Moving to Work Plan highlights planned capital fund expenditures for Public Housing properties in FY 2019. The variety of need is portrayed through the different repairs needed and the estimated cost at these Public Housing properties.

Barros Circle – complete replacements of failing concrete sidewalks, site lighting and kitchen appliances at an estimated cost of \$115,195

Colchester – complete replacements of kitchen appliances at an estimated cost of \$82,000

Greenwood II – complete replacements of site lighting and kitchen appliances at an estimated cost of \$291,820

Kingsley Park – complete replacements of kitchen appliances at an estimated cost of \$111,820

Robinson Square – complete replacement of HVAC systems at an estimated cost of \$211,165

Rosedale Manor – complete replacements of kitchen appliances, smoke detectors in all bedrooms, carbon monoxide detectors, balcony decking, timber retaining wall and walkways at an estimated cost of \$522,150

Tavenner Lane – complete replacements of HVAC systems at an estimated cost of \$45,620

Total planned capital funding expenditures for FY 2019 on Public Housing units is \$1,379,770.

### **Actions to encourage public housing residents to become more involved in management and participate in homeownership**

As a part of the THRIVE initiative, the Fairfax County Homeownership and Relocation Division (HRD) is developing an intake and counseling strategy for public housing residents who have homeownership as a goal. For example, HRD plans to make efforts to recruit PHA residents into the program early in order to get PHA residents on the waiting list for the opportunity to purchase a home through the FCRHA Affordable Dwelling Unit (ADU) Program, which increases the probability that they will have the opportunity to buy an affordable home before they earn too much money to be eligible for the ADU Program. PHA residents can earn up to 100% of AMI, while ADUs are only available to those who earn up to 70% of AMI. Residents moving from public housing to homeownership will get the best long term

“deal” if they are able to purchase a unit provided through the ADU program.

**If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance**

Not applicable.

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## **AP-65 Homeless and Other Special Needs Activities – 91.220(i)**

### **Introduction**

Fairfax County is committed to the goal to ensure that every American has affordable, stable place to call home as established by the Opening Doors: Federal Strategic Plan to Prevent and End Homelessness. This commitment is reflected in the Fairfax County Board of Supervisors' adoption of the local Blueprint for Success: Strategic Directions for the Plan to Prevent and End Homelessness in the Fairfax-Falls Church Community. Our strategies are to prevent homelessness due to economic crisis and disability; preserve and increase the supply of affordable housing to prevent and end homelessness; deliver appropriate support services to obtain and maintain stable housing; and create a management system for plan implementation with the collaboration of the public and private sectors that ensures adequate financial resources and accountability. Federal housing programs, such as the Continuum of Care Program and the Emergency Solutions Grant, are essential resources for local efforts; therefore Fairfax County strives to utilize these resources in the most effective and efficient way possible.

### **Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including:**

#### **Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs.**

In FY 2019, the Fairfax County Continuum of Care (COC) will continue working to enhance its coordinated referral system. The efforts to create a more coordinated system will mean that people have fair, equal access to homeless assistance programs; that they will be assessed in standardized ways across the community; they will be prioritized and referred to the programs that best fit their needs; and a system will be in place to hold housing and service providers accountable to these processes. Regular monitoring and evaluation will be utilized to ensure continued system-wide improvement in effectiveness and efficiency. Assessment tools, such as the Vulnerability Index – Service Prioritization and Decision Assistance Tool (VI-SPDAT), will be used and replace some existing forms so that individuals and families' needs will be better understood and the appropriate intervention can be applied more quickly. The Homeless Management Information System (HMIS) will continue to be an important tool in coordinating the flow of individuals and families through the homeless system.

#### **Addressing the emergency shelter and transitional housing needs of homeless persons.**

In FY 2017, a bond referendum was approved to renovate or relocate four of the County's emergency shelters as part of the Capital Improvement Program. Planned renovations will make necessary repairs and enhancements to the facilities so that they are in safe, suitable conditions and ensure that they can meet the emergency shelter needs for individuals and families in the future. In FY 2016, Fairfax County's Office to Prevent and End Homelessness executed new contracts for the management of emergency

shelters by nonprofit organizations. The new contracts establish formal standards for the improvement of program performance with respect to shortening the lengths of stay and moving a greater percentage of households to permanent housing.

Transitional housing programs will continue to be evaluated for effectiveness and efficiency as per the goals of the Ten-Year Plan. As appropriate, transitional housing programs will be converted to permanent housing or will adapt services to meet the changing needs of special populations in the community's homeless population.

**Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again.**

In FY 2019, the Fairfax COC will continue to invest in rapid rehousing, permanent supportive housing and other permanent housing opportunities for people experiencing homelessness. Investments in permanent housing for people experiencing homelessness has proven effective in increasing the number of people moving to permanent housing from homelessness and shortening the length of stay in homelessness since the adoption of the Ten-Year Plan.

The number of people exiting emergency shelters to permanent destinations increased from 599 people in FY 2012 to 1,068 people in FY 2017. The average length of stay in shelters for families with children has dropped from 96 days in FY 2012 to 59 days in FY 2017. Similarly, the average length of stay in shelters for single adults has been reduced from 51 days in FY 2012 to only 41 days in FY 2017.

As mentioned above, the continued development of a Coordinated Entry System will facilitate quick return to stable housing for individuals and families. Improvements to the homeless delivery system have also made significant reductions in the number of individuals identified as chronically experiencing homelessness. By 2017, the number had decreased to 150 – a reduction of 65 percent. This is due in great part to improvements in prioritizing permanent supportive housing (PSH) programs for the chronically homeless and dedicating a significant portion of new and reallocated Continuum of Care grant funds for PSH units.

Fairfax County and the local COC joined the Mayors Challenge to End Veterans Homelessness in December 2014. Since that time, the COC has made significant improvements in its ability to identify homeless veterans and quickly move them into housing. COC continues to work on achieving the benchmarks defined by the United States Interagency Council on Homelessness and partners. The COC is on average housing more veterans than are being newly identified as experiencing homelessness, the

average length of time between identification and housing is less than 90 days and veterans experiencing homelessness rarely utilize transitional housing. The Veterans Affairs Supportive Housing (VASH) vouchers and Supportive Services for Veterans Families (SSVF) resources have been particularly helpful in serving homeless veterans. However, there is a small group of veterans who experience chronic homelessness for whom it has proven difficult to find and secure housing opportunities.

**Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.**

Homelessness prevention remains a priority for the Fairfax COC. In FY 2018, resources were committed to homelessness prevention and shelter diversion assistance in the form of direct financial and rental assistance, as well as community case management and housing location. New contracts between the Fairfax County Office to Prevent and End Homelessness and nonprofit organizations providing homelessness prevention and rapid rehousing assistance began in FY 2016 and set standards for system-wide improvement, including in prevention efforts. Finally, the workgroups that further the development of the coordinated referral system will also have opportunities to find better ways to help individuals and families avoid becoming homeless by reviewing intake and referral procedures in existing homeless assistance programs and connections with other systems of care.

## **AP-75 Barriers to affordable housing – 91.220(j)**

**Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment**

The Fairfax County Board of Supervisors has adopted the following affordable housing goals as part of the Housing Blueprint:

- **Goal 1:** To end homelessness in 10 years
- **Goal 2:** To provide affordable housing options to special needs population
- **Goal 3:** To meet the affordable housing needs of low-income working families; and
- **Goal 4:** To Increase workforce housing through creative partnerships and public policy

In implementing these goals, it is the intention that opportunities should be available to all who live or work in Fairfax County to purchase or rent safe, decent, affordable housing within their means. Affordable housing should be located as close as possible to employment opportunities without adversely affecting quality of life standards. Affordable housing should be a vital element in high density and mixed-use development projects, should be encouraged in revitalization areas, and encouraged through more flexible zoning wherever possible.

The following policies demonstrate the breadth and depth of the County's commitment to creating affordable housing opportunities for its citizens including those groups identified as having priority needs and to removing regulatory impediments. Examples include:

- Provide bonus densities in exchange for affordable housing via the Affordable Dwelling Unit and Workforce Housing programs and increase community acceptance of affordable housing
- Residential rezoning should not be approved above the low end of the Plan range unless an appropriate commitment of land, dwelling units, and/or a cash contribution to the Housing Trust Fund is provided
- Capitalize the Housing Trust Fund so that it can be used as a mechanism to fund the development of affordable housing
- Encourage affordable housing as a development option for infill sites, particularly in commercial areas and near employment concentrations
- Give priority for the use of County and other government-owned buildings and land as sites for the provision of affordable housing

- Promote and facilitate innovative site design and construction techniques, as well as encourage the use of manufactured housing and manufactured housing components, when aimed at providing affordable housing
- Support the efforts of the Fairfax County Redevelopment and Housing Authority in producing a portion of these affordable housing units through the use of County resources and the approval of suitable housing sites.

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## **AP-85 Other Actions – 91.220(k)**

### **Introduction**

The following describes other actions to be taken as part of this Action Plan.

### **Actions planned to address obstacles to meeting underserved needs**

To increase the supply of housing available to special populations, including persons with physical and mental disabilities, who are experiencing homelessness, who are elderly with low-income and large families, the County employs the following policies:

- Locate housing resources for special populations in all parts of the County as a way of improving accessibility to employment opportunities, County services, as well as cultural and recreational amenities
- Facilitate the development of single room occupancy residences and other types of permanent housing for persons and families experiencing homelessness, as well as others in need of these housing options
- Enforce fair housing laws and nondiscriminatory practices in the sale and rental of housing to all citizens
- Promote multifamily housing for residents who are elderly and have disabilities that is conveniently located to public transportation and community services
- Encourage the creation of accessible housing for those with disabilities
- Participation in the Virginia Housing Development Authority (VHDA) Virginia Housing Registry, which serves as an information clearinghouse for landlords with accessible housing, and persons searching for accessible housing (see [https://www.socialserve.com/tenant/Search.html?ch=VA&type=rental&region\\_id=32931&accessibility=t](https://www.socialserve.com/tenant/Search.html?ch=VA&type=rental&region_id=32931&accessibility=t))
- Redesign of Domestic Violence service system making sheltering services community-based

Additionally, the County will utilize regional approaches to address the impact of government regulations on the overall supply of housing. Fairfax County advocates “fair growth” within the region, a strategy that requires regional cooperation to assure sufficient land is planned and zoned for residential development and reduces the reliance on land use planning and rezoning as a technique to control development.

Predicted job growth through 2032 will continue to strain the supply of new housing in Fairfax County. The challenge is to identify opportunities for increased housing development despite a decreasing supply of developable “green” land (i.e. vacant land suitable for development), as the County has

become more and more “built out”. In developing the remaining areas of green land, the County will seek to reduce development cycle times by limiting development in areas that require rezoning and the associated time-consuming processes for approval.

As Fairfax County becomes increasingly built-out, the County is promoting an increased supply of housing through redevelopment. Opportunities for redevelopment will mainly occur in older, commercial corridors, rather than in residential areas. Including mixed-income, transit-oriented residential development and mixed-use commercial redevelopment is a strategy that the County is using to generate a significant number of housing units.

### **Actions planned to foster and maintain affordable housing**

The County is committed to encouraging the provision of affordable housing in all parts of the County. Policies implementing this objective include:

- Expand housing opportunities in or near mixed-use Centers as a way of providing the opportunity for persons employed in the County to live near their jobs
- Promote the development of multifamily housing in both mixed-use Centers and existing residential areas, as appropriate, in an effort to diversify the housing stock and expand lower cost housing options (the County has adopted Locational Guidelines for Multifamily Residential Development as part of the Countywide Land Use)
- Promote affordable housing opportunities throughout the County, particularly in areas where existing supply is low
- Encourage the creation of affordable housing for persons with special needs via the Independent Living provisions in the Zoning Ordinance

Fairfax County strives to conserve stable neighborhoods and encourage rehabilitation and other initiatives that will help to revitalize and promote the stability of older neighborhoods. Policies implementing this objective include:

- Provide assistance to seniors with low and moderate incomes and homeowners with disabilities to stay in their homes, via the Home Repair for the Elderly and Community Rehabilitation Programs
- Encourage redevelopment through tax abatement
- Improve and maintain existing housing and neighborhood quality by upgrading substandard housing and improving physical community facilities (e.g., streets, sidewalks, lighting) in existing neighborhoods
- Maintain housing quality in existing neighborhoods and preserve neighborhood stability through the abatement of “spot” blight
- Facilitate improvement and maintenance of existing neighborhoods by initiating community

development programs, in communities where needed, with as little displacement as possible; and incorporating affordable housing units as part of all major housing rehabilitation efforts

- Retain existing below market rental housing through acquisition, rehabilitation assistance and other subsidies
- Facilitate the retention of existing mobile home parks which are identified in the Area Plans as appropriate for mobile home park use (the County has adopted Guidelines for Mobile Home Retention as part of the Countywide Land Use)

### **Actions planned to reduce lead-based paint hazards**

The Fairfax County website displays a lead poisoning prevention page (<http://www.fairfaxCounty.gov/hd/eh/lead/>). The webpage defines some of the major sources of lead in people's homes: dust from deteriorating lead-based paint primarily due to opening and closing windows in older homes (built pre-1978), residual lead dust in residential soils, and lead pipes. In addition, the Fairfax County Health Department educates household members about reducing lead exposure. To reduce risk of lead poisoning, the County recommends that residents remove peeling paint and chips from the home, not allow for children to be present when scraping or cleaning up paint chips, minimize dust through frequent damp mopping of floors and using wet cloths to wipe down windows, and discourage children from playing in bare soil surrounding the home. In addition, the Fairfax County lead poisoning prevention website provides links to numerous websites with information on lead exposure. Telephone consultation, literature, and referrals to private lead testing companies are provided to citizens who call regarding lead-based paint or other potential environmental lead hazards in the community.

### **Actions planned to reduce the number of poverty-level families**

While Fairfax County has one of the highest median household incomes in the nation (estimated \$113,208 in 2015), there were an estimated 69,657 persons living below the poverty level in 2015 (based on data from the American Community Survey (ACS)). Although the percent of the population below poverty in Fairfax County (6.1 percent) is among the lowest of Virginia jurisdictions, the number of persons below poverty in Fairfax County is larger than any other jurisdiction in Virginia.

The Community Action Advisory Board (CAAB) serves as an advisory body to the Fairfax County Board of Supervisors. The CAAB advises the Board on the needs, concerns and aspirations of low-income persons and recommends policies that promote meaningful change. The following are goals established by CAAB:

- Identify review and develop policies as they relate to low-income residents.
- Support, when possible, increases in programs and services providing the greatest supports to low-income families and individuals and, when necessary, actions that minimize reductions to



such programs.

- Maximize opportunities to provide input based on identified priority areas.
- Oversee the disposition of Community Service Block Grant funds, to include.

Specific programs administered by Fairfax County that help reduce the number of poverty-level families include Housing Choice Voucher, Transitional Housing, Permanent Supportive housing, and Unification Program. The FCRHA's PROGRESS (Partnership for Resident Opportunities, Growth, Resources and Economic Self-Sufficiency) Center undertakes family self-sufficiency initiatives and links Public Housing residents with county resources to prevent eviction, assist with family crises, meet lease obligations, access mental health services and participate in economic self-sufficiency programs.

The Fairfax County Department of Housing and Community Development also administers the Bridging Affordability Program, a locally-funded rental subsidy program operated through a consortium of nonprofit organizations. The collaborative provides rental subsidies as well as an array of supportive services to program participants. Bridging Affordability is intended to be a gateway to the county's Housing Continuum as part of the FCRHA's Moving to Work program. The Housing Continuum and the FCRHA THRIVE initiative are approaches that provide work incentives, service supports, and permanent housing to residents of FCRHA properties. The THRIVE initiative is focused on self-sufficiency and establishes goals to help residents move to their highest level of success.

#### **Actions planned to develop institutional structure.**

The County plans the following actions:

**Strategy #1: *Make a segment of Bridging Affordability rental assistance resources available to individuals with disabilities who have been admitted to residential programs for more than 90 days and no longer need this level of care but would be otherwise discharged to homelessness.***

As the gateway to the County's housing continuum, the Bridging Affordability program provides access to locally funded rental assistance for two to three years with a bridge to other County housing programs or market housing, depending on individual need. Currently, in order to be eligible for Bridging Affordability rental assistance, a household must be on a County or CSB housing waitlist. Rather than base eligibility on housing waitlist status, the County is looking at a new approach which makes eligibility for individuals with disabilities contingent upon achievement of service plan goals and no longer needing the level of care the residential program provides. This approach focuses on those who have stabilized their medical, mental health, and substance abuse conditions and/or developed basic adaptive skills yet do not have enough income to move to more integrated housing to continue their recovery and growth. Those who would be discharged to homelessness but do not qualify for homeless services due to their length of stay in the residential program should receive priority. This

process frees up resources for those waiting to receive more intensive residential services.

**Strategy #2: Stimulate alternative affordable housing opportunities through development of a roommate referral program.**

Those with disabilities and very low incomes who live in precarious housing situations but are not homeless and who are unable to get on housing waitlists need other affordable alternatives. The County or a contracted entity could coordinate matches between individuals who need housing and persons with safe, decent rooms to rent. Individuals could receive guidance on what to look for in a housemate, what questions to ask, how to check references, and how to develop a rental agreement.

**Strategy #3: Expand the Housing Locator program to serve non-homeless individuals with disabilities in precarious housing situations.**

Persons with low-incomes and disabilities who are living in precarious housing situations but are not homeless need assistance to find other affordable alternatives that meet their specific needs. The County's Housing Locator Network currently prioritizes work persons who are experiencing homelessness, which work generally keeps the program operating at capacity. Adding staff resources to serve non-homeless persons with disabilities living in unsafe, overcrowded or unaffordable housing would reduce the odds that these individuals become homeless.

**Actions planned to enhance coordination between public and private housing and social service agencies.**

Human and social services agencies work together in Fairfax County and coordinate services to help combat poverty and help low-income residents to become self-sufficient.

In addition, the Fairfax County Consolidated Community Funding Pool (CCFP) is a countywide grant process for funding private community-based human services programs that meet community identified needs. Begun in 1997, the CCFP combines Fairfax County General Fund dollars along with the Community Development Block Grant (CDBG) and the Community Services Block Grant (CSBG) to provide funding supports programs that target low-income households and residents with special needs. The CCFP provides funding for program and services that meet priorities developed based on community input and reflecting the most critical needs for a continuum of stability, connectedness, well-being, and self-sufficiency services and opportunities for individuals and families, including housing, literacy, educational development, financial stability, health and support networks. Programs funded through the CCFP with CSBG funds are specifically targeted toward households with incomes at or below the poverty program guidelines.

The Fairfax County Redevelopment and Housing Authority (FCRHA)/Fairfax County Department of Housing and Community Development (HCD), the Fairfax County Department of Family Services (DFS),

and the Community Action Advisory Board (CAAB) share responsibilities in combating poverty. HCD and DFS have entered into a cooperative agreement to share information and/or target supportive services. Other coordination efforts between HCD and DFS include client referrals, information sharing regarding mutual clients (for rent determinations and otherwise), coordination of the provision of specific social and self-sufficiency services and programs to eligible families, and joint administration of programs.

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## **Program Specific Requirements**

### **AP-90 Program Specific Requirements – 91.220(l)(1,2,4)**

#### **Introduction**

The use of CDBG, HOME and ESG entitlement funds in Fairfax County are guided by the following Vision and Mission:

#### **Vision**

- A community that cares about its children, the elderly, persons with physical or mental disabilities and those less able to meet their basic needs.
- A community that values creative endeavors, arts and diversity which creates a strong, diverse and vibrant community that cares about the strengths and needs of its residents, where all can live to the best of their abilities in thriving, supportive neighborhoods.
- A community which adequately supports its human services system to ensure optimal service delivery.
- A community which actively participates in the planning, needs assessment, priority setting and decision-making processes to allocate community resources to meet the needs of its citizens.
- A community which addresses these needs by building dynamic, flexible partnerships among the public, private, and non-profit sectors, and community volunteers.

#### **Mission Statement**

The mission of the County is to maximize the effective and efficient use of resources in the Consolidated Plan through a citizen-driven, staff-supported process to develop and preserve affordable housing, promote healthy, thriving and safe neighborhoods, and provide quality, accessible human services that meet essential existing and emerging needs throughout Fairfax County.

A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. For CDBG, Fairfax County uses a three-year average to ensure compliance with the low moderate-income benefit. The three years to which this FY 2019 One-Year Action Plan is applicable are: 2017, 2018 and 2019.

The County program specific requirements for CDBG, HOME and ESG are listed below.

**Community Development Block Grant Program (CDBG)  
Reference 24 CFR 91.220(I)(1)**

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed	366,060
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan.	0
3. The amount of surplus funds from urban renewal settlements	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan	0
5. The amount of income from float-funded activities	0
<b>Total Program Income:</b>	<b>366,060</b>

**Other CDBG Requirements**

1. The amount of urgent need activities	0
2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan.	95.00%

**HOME Investment Partnership Program (HOME)  
Reference 24 CFR 91.220(I)(2)**

1. A description of other forms of investment being used beyond those identified in Section 92.205 is as follows:

The County has no plan or required HUD approval to utilize other forms of investment not specifically eligible under Section 92.205.

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in 92.254, is as follows:

The County has no plan to utilize HOME funding in FY 2019 for homebuyer activities under 92.254.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR 92.254(a)(4) are as follows:

The County has no plan to utilize HOME funding in FY 2019 for homebuyer activities under 92.254.

4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR 92.206(b), are as follows:

Fairfax County does not currently utilize HOME funds to refinance existing debt.

**Emergency Solutions Grant (ESG)  
Reference 91.220(l)(4)**

1. Include written standards for providing ESG assistance (may include as attachment)

The Fairfax County Office to Prevent and End Homelessness (OPEH) established a set of policies and procedures for the provision of financial and rental assistance that is funded by the federal Emergency Solutions Grant (ESG), as well as local tax dollars. These written standards were developed in collaboration for public and private partners from the Continuum of Care and designed to be in compliance with the authorizing laws, regulations and Federal Register Notices for the ESG program. (See attached).

2. If the Continuum of Care has established centralized or coordinated assessment system that meets HUD requirements, describe that centralized or coordinated assessment system.

The Fairfax County Continuum of Care (CoC) has developed a Coordinated Entry System of ensuring that families and individuals who are homeless can access the appropriate homeless assistance programs in a manner that is fair and efficient. Most people seeking assistance contact a centralized, telephone-operated information and referral hotline operated by the Fairfax County Department of Neighborhood and Community Services' Coordinated Services Planning office before being referred to emergency shelters or homelessness prevention and rapid rehousing assistance providers. Homeless outreach services, staffed by local nonprofit case managers as well as nurses from the Homeless Healthcare Program and social workers from the Community Services Board, work to engage unsheltered individuals. All homeless families and individuals are assessed in a way that is consistent across programs with many standardized questions and tools, such as a housing barrier assessment and the Vulnerability Index – Service Prioritization Decision Assistance Tool (VI-SPDAT). The answers from the assessments provide valuable information to homeless assistance providers and the system in making decisions as to where families and individuals should be referred for assistance and who will be prioritized for the most resource-intensive programs.

More work continues to be done to improve the effectiveness and efficiency of the local housing crisis response system. Current initiatives are placing a particular emphasis on making improvements to quickly addressing the needs of homeless veterans and people who are chronically homeless.

More work continues to be done to improve the effectiveness and efficiency of the local housing crisis response system. Current initiatives are placing a particular emphasis on making improvements to quickly addressing the needs of veterans experiencing homelessness, and people who chronically experience homelessness.

3. Identify the process for making sub-awards and describe how the ESG allocation available to private nonprofit organizations (including community and faith-based organizations).

The Fairfax County Office to Prevent and End Homelessness in consultation with the Fairfax County Department of Housing and Community Development has allocated Emergency Solutions Grant (ESG) program funding to Northern Virginia Family Services, a private nonprofit organization that is contracted by the county to provide financial and rental assistance to families and individuals, along with case management and housing location services. Through this contract, NVFS provides homelessness prevention and rapid rehousing services to families and individuals throughout the community in collaboration with a group of community-based nonprofit organizations that includes Cornerstones, FACETS, Good Shepherd Housing and Family Services, New Hope Housing, Shelter House.

4. If the jurisdiction is unable to meet the homeless participation requirement in 24 CFR 576.405(a), the jurisdiction must specify its plan for reaching out to and consulting with homeless or formerly homeless individuals in considering policies and funding decisions regarding facilities and services funded under ESG.

Currently the Fairfax County Continuum of Care (CoC) has a formerly homeless individual participating as member in the Governing Board for the Fairfax-Falls Church Community Partnership to Prevent and End Homelessness, which is the executive-level leadership group that provides high-level policy direction and overall accountability necessary for the successful implementation of the plan to end homelessness. The same representative on the board is also the chairperson of the CoC's Consumer Advisory Council, which reviews important policy and procedure documents with staff from the county's Office to Prevent and End Homelessness and provides valuable feedback based on the perspective of individuals who were formerly homeless.

5. Describe performance standards for evaluating ESG.

Emergency Solutions Grant (ESG) program funding is only used to support homelessness prevention and rapid rehousing assistance in the Fairfax County Continuum of Care. A web-based Homeless Management

Information System database application is used to record, measure and evaluate data related to ESG-funded programs. There are three primary performance standards used to evaluate ESG supported programs: (1) the number of families and individuals served over the course of a fiscal year; (2) the length of time that services are provided; (3) the destination of families and individuals exiting the program. In order to increase the effectiveness and efficiency of homeless assistance programs the goal is to increase the number of people assisted each year, reduce the length of time that services are provided and increase the number of people exiting programs to permanent housing destinations.

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ADMINISTRATIVE – 2

Extension of Review Period for 2232 Applications (Lee and Dranesville Districts)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following applications: 2232-L17-18 and 2232-D17-39.

TIMING:

Board action is required February 6, 2018, to extend the review period of the applications noted above before their expiration date.

BACKGROUND:

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

The review period for the following applications should be extended:

2232-L17-18	Department of Public Works and Environmental Services Springfield Community Business Center Commuter Parking Garage 7039 Old Keene Mill Road Springfield, VA Lee District Accepted June 9, 2017 First Extension to February 8, 2018 Extend to November 8, 2018
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2232-D17-39      Fairfax County Park Authority  
Riverbend Park  
8700 Potomac Hills Street  
Great Falls, VA  
Dranesville District  
Accepted December 11, 2017  
Extend to November 9, 2018

FISCAL IMPACT:  
None.

ENCLOSED DOCUMENTS:  
None.

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

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ADMINISTRATIVE – 3

Streets into the Secondary System (Dranesville, Braddock, Sully, Mason, Hunter Mill Districts)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the street(s) listed below be added to the State Secondary System.

<b><u>Subdivision</u></b>	<b><u>District</u></b>	<b><u>Street</u></b>
Leonard Adler Parcels 47 & 51 (Agape House)	Braddock	Frontage Road (FR-1023) Transfer to Secondary System  Service Drive for Lee Highway
Bittersweet Farms	Dranesville	Seneca Farm Way
Hillbrook Springs	Mason	Winter Lane
McLearen Road Property – Education Drive	Sully	Education Drive
Maymont Section 1	Hunter Mill	Maymont Drive  Verrier Court  Newcombs Farm Road  Carnot Way

TIMING:

Routine.

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BACKGROUND:

Inspection has been made of these streets, and they are recommended for acceptance into the State Secondary System.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Street Acceptance Forms

STAFF:

Robert A. Stalzer, Deputy County Executive

William D. Hicks, P.E., Director, Land Development Services

## Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<b>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</b>  Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.		<b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b>  REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.  <b>PLAN NUMBER:</b> 3615-SD-004 <b>SUBDIVISION PLAT NAME:</b> Bittersweet Farms <b>COUNTY MAGISTERIAL DISTRICT:</b> Dranesville	
<b>ENGINEERING MANAGER:</b> Imad A. Salous, P.E.  <b>BY:</b> <u>Nadia Alphonse</u>		<b>FOR OFFICIAL USE ONLY</b>  <b>DATE OF VDOT INSPECTION APPROVAL:</b> <u>10/26/2017</u>	

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Seneca Farm Way	CL Seneca Road (Route 602) - 1,440' S CL Great Falls Way (Route 8019)	543' E to Beginning of Temporary Turnaround	0.10
<b>TOTALS:</b>			0.10
NOTES:			

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<b>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</b>		<b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b>	
<b>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</b>		REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.	
		PLAN NUMBER: 7861-SD-01	
		SUBDIVISION PLAT NAME: Hillbrook Springs	
ENGINEERING MANAGER: Imad A. Salous, P.E.		COUNTY MAGISTERIAL DISTRICT: Mason	
BY: <u>Nadia Alphonse</u>		FOR OFFICIAL USE ONLY DATE OF VDOT INSPECTION APPROVAL: <u>11/02/2017</u>	
STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Winter Lane	Existing Winter Lane (Route 3477) - 265' W CL Kingston Drive (Route 3476)	559' S to End of Cul-de-Sac	0.11
<b>NOTES:</b>			<b>TOTALS:</b>
Winter Lane: 4' Concrete Sidewalk on East Side to be maintained by Fairfax County.			0.11

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<b>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</b> Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.		<b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b> REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.	
		<b>PLAN NUMBER:</b> 9287-SP-02	
		<b>SUBDIVISION PLAT NAME:</b> Leonard Adler Parcels 47&51 (Agape House)	
		<b>COUNTY MAGISTERIAL DISTRICT:</b> Braddock	
<b>ENGINEERING MANAGER:</b> Imad A. Salous, P.E. <b>BY:</b> <u>Nadia Alphonse</u>		<b>FOR OFFICIAL USE ONLY</b> <b>DATE OF VDOT INSPECTION APPROVAL:</b> <u>10/24/2017</u>	
STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Frontage Road (FR-1023) Transfer to Secondary System	CL Stevenson Drive (Route 1028)	0.02 miles E to End of FR-1023 and 0.03 miles W to End of FR-1023	0.05
Service Drive for Lee Highway	Existing (FR-1023) - (0.03 miles) W CL Stevenson Drive (Route 1028)	183' W to End of Dedication	0.03
<b>NOTES:</b>			<b>TOTALS:</b> 0.08
Service Drive: 8' Asphalt Trail on South Side to be maintained by Fairfax County			

# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<b>FAIRFAX COUNTY BOARD OF SUPERVISORS</b> <b>FAIRFAX, VA</b> Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.		<b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b> REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.	
		<b>PLAN NUMBER:</b> 6553-SD-001	
		<b>SUBDIVISION PLAT NAME:</b> Maymont Section 1	
		<b>COUNTY MAGISTERIAL DISTRICT:</b> Hunter Mill	
<b>ENGINEERING MANAGER:</b> Imad A. Salous, P.E. <b>BY:</b> <i>Nadia Alphonse</i>		<b>FOR OFFICIAL USE ONLY</b> <b>DATE OF VDOT INSPECTION APPROVAL:</b> <i>11/30/2017</i>	
STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Maymot Drive	CL Beulah Road (Route 702) - 238' N CL Bent Creek Lane (Route 5701)	2,227' W/Loop to Maymont Drive	0.42
Verrier Court	CL Maymont Drive - 273' W CL Beulah Road (Route 702)	356' N/around Traffic Circle	0.07
Newcombs Farm Road	CL Maymont Drive - 311' W CL Verrier Court	252' N to Existing Newcombs Farm Road	0.05
Carnot Way	CL Maymont Drive - 762' W CL Newcombs Farm Road	388' W to CL Blairstone Drive (Section 2)	0.07
<b>NOTES:</b>			<b>TOTALS:</b> 0.61



# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

**FAIRFAX COUNTY BOARD OF SUPERVISORS  
FAIRFAX, VA**

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

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

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

**PLAN NUMBER:** 6064-PI-001

**SUBDIVISION PLAT NAME:** McLearen Road Property - Education Drive

**COUNTY MAGISTERIAL DISTRICT:** Sully

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

**BY:** Nadia Alphonse

**FOR OFFICIAL USE ONLY**

**DATE OF VDOT INSPECTION APPROVAL:** 11/03/2017

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Education Drive	CL McLearen Road (Route 668) - 799' S Towerview Road (Route 3861)	1,010' NW to Station 20+10	0.19

**NOTES:**

**TOTALS:** 0.19

5' Concrete Sidewalk on East Side to be maintained by VDOT

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ACTION – 1

Board Approval of the First Interim Agreement: Master Development Plan Between the Board of Supervisors of Fairfax County, Virginia and The Alexander Company and Elm Street Development (Mount Vernon District)

ISSUE:

Board approval of the First Interim Agreement: Master Development Plan, between the Board of Supervisors of Fairfax County, Virginia and The Alexander Company and Elm Street Development (collectively, the “Developer”) for the master development plan for the Original Mount Vernon High School Redevelopment.

RECOMMENDATION:

The County Executive recommends that the Board approve the First Interim Agreement: Master Development Plan between the Board of Supervisors of Fairfax County, Virginia and The Alexander Company and Elm Street Development.

TIMING:

The Board held a public hearing on December 5, 2017. Pursuant to the proposal review process outlined in the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”), there must be a minimum of 30 days between the public hearing and authorization of the Agreement. Assuming approval of the First Interim Agreement, work is expected to begin in early 2018.

BACKGROUND:

The County owns approximately 22 acres of land located at 8333 Richmond Highway, Alexandria, Virginia (Mount Vernon District), and the Original Mount Vernon High School is located on this property. The building was constructed in 1939 and vacated in 2016 at the conclusion of a long-term lease. Current planning efforts are focused on both immediate occupancy and long-term redevelopment planning. The long-term planning and redevelopment will also consider the 18 acres of adjacent land owned by the Fairfax County Park Authority, and on which the George Washington RECenter is located. The County-owned property and the Park Authority property total approximately 42 acres.

On May 26, 2017, the Department of Procurement and Material Management (DPMM) advertised a Request for Proposals pursuant to the PPEA, seeking a qualified firm to enter into an agreement to develop a master development plan for the combined Original Mount Vernon High School and George Washington RECenter sites.

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On June 30, 2017, the County received proposals from two offerors, both of which were determined to be responsive and were publicly posted under the PPEA notice requirements. After review and recommendation by the Selection Advisory Committee, the County entered negotiations with both offerors.

Negotiations with each offeror concluded on October 23, 2017, with a recommendation to enter into the Agreement with the Developer. The drafting of the master development plan is Phase 1 of the overall redevelopment effort and will be followed by Phase 2 for the master development plan implementation. Staff will return to the Board at a future date for authorization of Phase 2 work.

FISCAL IMPACT:

The County will pay the Developer for the actual cost of developing the master development plan up to \$399,000. With the additional county contingency in the amount of \$61,000 (approximately 15% of the master development plan cost), the total required funding is \$460,000. Funding is available in Project 2G25-102-000 – Original Mount Vernon High School Redevelopment. This project is included in in the Adopted FY 2018 – FY 2022 Capital Improvement Program (with Future Fiscal Years to FY 2027).

ENCLOSED DOCUMENTS:

Attachment A – First Interim Agreement: Master Development Plan

STAFF:

Robert A. Stalzer, Deputy County Executive  
Joseph Mondoro, Chief Financial Officer, Department of Management and Budget  
Kirk Kincannon, Director, Fairfax County Park Authority  
Cathy Muse, Director, Department of Procurement and Material Management  
Martha Reed, Capital Programs Coordinator, Department of Management & Budget  
James Patteson, Director, Department of Public Works and Environmental Services (DPWES)  
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:

Cynthia Bailey, Deputy County Attorney, Office of the County Attorney  
Susan Timoner, Assistant County Attorney, Office of the County Attorney

**RFP2000002301 – ORIGINAL MOUNT VERNON HIGH SCHOOL REDEVELOPMENT**

**FIRST INTERIM AGREEMENT: MASTER DEVELOPMENT PLAN**

THIS FIRST INTERIM AGREEMENT: MASTER DEVELOPMENT PLAN (the "Agreement") is dated as of the \_\_\_\_ day of January 2018 (the "Contract Date"), by and between The Alexander Company, Inc. and Elm Street Development, Inc. (jointly, the "Developer"), and the Board of Supervisors of Fairfax County, Virginia (the "County"). The Developer and the County may be referred to collectively in this Agreement as the "Parties."

**RECITALS**

- R-1.** The Original Mount Vernon High School ("OMVHS" or the "Property") is located at 8333 Richmond Highway, Alexandria, Virginia and is comprised of the following Tax Map Parcels: Tax Map No. 101-4 ((01)) Parcels 5A, 57, 58A, and 47A; Tax Map No. 101-4 ((07)) Parcels 1 and 39; Tax Map No. 101-4 ((8E)) Parcel 1; Tax Map No. 101-4 ((8A)) Parcel A1. The Property also includes approximately 1.4 acres of right-of-way. Attached Exhibit A shows the general location of the Property. Built in 1939, with additions in the 1950s and renovations in the 1980s, the school is a classic example of Colonial Revival Architecture, and sits on the land that was once part of the estate of President George Washington. The facility has been nominated and is currently under review for inclusion in the National Register of Historic Places.
- R-2** The building and the overall 42-acre site offer a unique opportunity to create a dynamic destination for residents of the entire region and harness innovative models of design, community building, social impact, and business ingenuity.
- R-3** To that end, on May 26, 2017, the County issued a Request for Proposals ("RFP"), RFP No. 2000002301, to solicit a development partner pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, as amended ("PPEA") to transform the OMVHS into an innovative campus that serves the surrounding communities.
- R-4** The RFP included General Conditions and Instructions to Bidders, which General Conditions are attached as Exhibit B and are fully incorporated into this Agreement, as applicable.
- R-5** The County has selected the Developer to perform the first phase ("Phase One") of the OMVHS redevelopment by creation of a Master Development Plan ("Master Development Plan") that will detail the vision for the Property such that its implementation can be economically and expeditiously achieved.
- R-6** Following completion of Phase One, the Parties will endeavor to reach a mutual understanding upon subsequent agreements that will provide for the implementation of the OMVHS redevelopment effort ("Phase Two") in a manner consistent with the Master Development Plan.
- R-7** The Parties want to enter into this Agreement to outline each of their respective responsibilities with respect to Phase One.

Accordingly, in consideration of the mutual promises in this Agreement, and other valuable consideration, the receipt and legal sufficiency of which are acknowledged by the Parties, the Parties agree to the following:

## **ARTICLE I THE SCOPE OF WORK**

Section 1.01. The Recitals are fully incorporated into this Agreement.

Section 1.02. The Developer will, within nine months from the Contract Date, provide the County with a Master Development Plan that will specifically detail an economically feasible plan to redevelop the Property in a form and with all substantive requirements as may be deemed necessary by County staff for presentation to the Board of Supervisors (the "Services") in accordance with the schedule described in Article III.

Section 1.03. The Master Development Plan documents will include the following items:

- A. Existing context land uses, plans, and accompanying densities/intensities, construction type, and square footage of buildings;
- B. Proposed land use and building uses with accompanying densities/intensities, construction type, and square footage, vehicular circulation and parking, open space and pedestrian circulation, and campus infrastructure;
- C. Compliance with the County's Comprehensive Plan, and all governing ordinances, codes, policies, and regulations;
- D. Identification of zoning actions and regulatory process for the implementation of the development;
- E. Development alternatives with priorities and principals, and scenarios based on community needs, master development plan goals, and market conditions;
- F. Environmental impacts and proposed solutions to mitigate such impacts;
- G. A detailed development implementation schedule that may include a phasing plan with realistic and agreed upon timeframes for certain development components;
- H. A long-term maintenance regime and property management plan;
- I. Coordination and compliance with the land use, transportation grid, and design standards set forth in the Embark Richmond Highway Plan Amendment (2015-IV-MV1);
- J. A description of possible proffered contributions including road and frontage improvements, stormwater management facilities, open space, affordable housing, infrastructure construction, and other public and community use/need facilities;
- K. A detailed analysis of existing and proposed recreational amenities and open spaces as coordinated with the Fairfax County Park Authority's Needs Assessment, including use or replacement options for the George Washington RECenter located on the Property;

- L. A comprehensive internal pedestrian network that connects all proposed uses within the Property and is integrated with the future Route 1 widening project and the Embark Bus Rapid Transit Station;
- M. A detailed description of how to address the issues and challenges outlined by the following assessments, studies, and evaluations previously prepared:
  - 1. The ADA Compliance Assessment Report;
  - 2. The Facility Condition Assessment;
  - 3. The Hazardous Material Feasibility Study;
  - 4. The Historic Structure Report;
  - 5. One Fairfax principals, including efforts to target economic opportunities to underserved segments of the Fairfax County community;
  - 6. The Fairfax County Economic Success Strategic Plan; and
  - 7. The OMVHS Re-utilization Task Force Report.
- N. A detailed cost model showing the analysis of the detailed costs, and financial feasibility necessary to effectuate the Master Development Plan, including options that will allow flexibility to adapt to future needs. The Master Development Plan will address the relationship between type and quality of development versus development cost, and will outline economical design elements that include innovative approaches to aesthetics, construction methods and materials, sustainable design, life cycle, and maintenance, among others. Alternative funding sources should also be evaluated for the development, such as federal and state tax credits and possible grants;
- O. The Master Development Plan will ensure that the on-site gymnasium services will be fully available throughout the duration of the Property's development, subject to temporary closure or relocation for reasonable periods of time (with coordination and approval by the County) when necessary for code-required improvements, maintenance, or repairs;
- P. At the County's request, the Developer will provide alternative development concepts and land use scenarios with associated costs and development priorities.

Section 1.04. Development of the Master Development Plan must include engagement and formal input from the various County and community stakeholders, including, but not limited to, Fairfax County Neighborhood and Community Services, the Fairfax County Park Authority, the Fairfax County Department of Public Works and Environmental Services, the Fairfax County Department of Transportation, the Fairfax County Department of Planning and Zoning, members of the Fairfax County Board of Supervisors, the OMVHS Steering Committee, and other agencies and community organizations as the County may identify ("Stakeholders").

Section 1.05. The Developer will conduct at least three formal community meetings at intervals mutually agreed upon that are sufficiently advertised among the Stakeholders.

Section 1.06. The Developer will provide bi-weekly progress plans and reports and written updates ("Updates"), which the County may disseminate to the Stakeholders during the development of the Master Development Plan.

Section 1.07. The Developer may be required to present the Draft Master Development Plan and the Final Master Development Plan (as they are more fully described in Article II below) to designated community and/or County officials.

## **ARTICLE II DELIVERABLES**

Section 2.01. Preparation of the Master Development Plan will consist of three phases, reflecting in greater detail for each phase the items set forth in Section 1.03:

- A. Preliminary Master Development Plan, to include: cost models, draft narratives, including an executive summary, preliminary site plan with a minimum of three proposed land use layouts and densities/intensities, and proposed vehicular and pedestrian connections, parking and open space areas throughout the public and private facilities and site. The Preliminary Master Development Plan will identify any actions required for implementation of proposed land uses and densities/intensities. With regard to the alternative proposed concepts to be included in the Preliminary Master Development Plan, Developer will provide development concept options offering different scenarios/types/mixes at concept level with sufficient information to provide for a cost model to aid in the evaluation and selection of the final option.
- B. Draft Master Development Plan, to include:
  - 1. Site Plan, describing proposed land uses, building types/uses, and densities/intensities, and proposed vehicular and pedestrian connections, parking and open space areas throughout the public and private facilities and site;
  - 2. Executive Summary and Narratives explaining project vision;
  - 3. Additional drawings/schematic plans and three dimensional models/views, as appropriate, to clearly demonstrate the proposed Master Development Plan elements, goals, and phasing;
  - 4. Master Development Plan implementation plan and schedule; and
  - 5. Phasing plan as may be applicable.
- C. Final Master Development Plan, to be prepared consistent with all matters described in Section 1.03 and Section 2.01(B), in form and substance satisfactory to the County, including without limitation:
  - 1. Final Site Plan;
  - 2. Final Cost Model to include total Property development costs, hard costs by product type (total and by square foot), soft costs, and development fees;
  - 3. Sources and Uses of Funds Table;
  - 4. Detailed Development & Operating Pro Forma;
  - 5. Structure of Public-Private Partnership;
  - 6. Narrative describing financial plan and party obligations; and
  - 7. Maintenance and Operations Regime and Property Management Plan.

Section 2.02. The Master Development Plan will be in both PDF format and in native source format, including Microsoft Word, Microsoft Project, PowerPoint, etc.

Section 2.03. The County retains all ownership rights to the Master Development Plan, without limitation, including any supporting data and the Developer work product (collectively all of the

foregoing are defined as the "Work Product"). The County has the right to provide the Master Development Plan together with all other Work Product to another developer or developers for the development of the Property or other related projects. The Developer will assign to the County all Work Product in the form acceptable to the County (the "Assignment"). In addition, the Developer will provide the County with a consent to the Assignment from all consultants of the Developer and other parties who may have an interest in the Work Product to assure the County of the legal right to use all of the Work Product without limitation.

### **ARTICLE III PURCHASE PRICE AND PAYMENT SCHEDULE**

Section 3.01. This Agreement is for a total amount of \$399,000 ("Contract Price"), which is made up of the following, as set forth in Exhibit C: \$340,000 ("Base Contract Amount"); \$25,000 ("Reimbursable Expenses"); and \$34,000 ("Contingency"). Payment of the Contract Price will be according to Section 3.02, and is contingent on the Developer's timely delivery of all deliverables as described in this Agreement, reasonably satisfactory to the County, in accordance with the following schedule:

- A. Initial 30-Day Period. Within 30 days after the Contract Date, the Developer will provide a reasonable schedule to meet the development milestones showing start and end dates for each task and any critical path milestones and deliverables.
- B. Initial Six-Month Period. Within six months after the Contract Date, during which time Developer will conduct all information gathering, Stakeholder outreach, preparation of a concept master plan and financial feasibility analysis, the Developer will provide the County with the all of the initial deliverables as set forth in Section 2.01(A) and (B) ("Initial Deliverables").
- C. Final Two-Month Period. Within two months after the County reasonably determines that it has received all of the Initial Deliverables, but not later than eight months after the Contract Date, the Developer will update and refine the Initial Deliverables as described in Section 2.01(C) in a final draft format sufficient to enable County staff to commence preparation of a formal submission and recommendation to the Board of Supervisors of the Master Development Plan ("Draft Master Development Plan").
- D. Final 30-Day Period. Within 30 days after the completion of all tasks for the Final Two-Month Period described in Section 3.01(C), the Developer will work with the County to finalize work on the Master Development Plan, including the Developer working with County staff on a Board item to be presented to the Board of Supervisors. The Developer will participate, if requested, in the presentation to the Board of Supervisors when the Board considers staff recommendations with regard to the Master Development Plan ("Final Master Development Plan").

Section 3.02. Payment of the Base Contract Amount will be in installments according to the schedule below. In addition, the County will reimburse Developer for all reasonable and necessary expenses directly related to the Services up to the Reimbursable Expenses. An invoice for such expenditures, with appropriate backup, will be provided by Developer to the County upon completion of each milestone as described in this Article III. Payment from the Contingency will be available only with justification for need and with the County's prior written authorization.



- A. Within twenty-five business days of completion of the Initial Six-Month Schedule described in Section 3.01(B), as reasonably determined by the County, the County will pay up to 50% of the Base Contract Amount, based upon work performed by the Developer with supporting invoices and other documentation of costs and payments.
- B. Within twenty-five business days of completion of the Final Two-Month Schedule as described in Section 3.01(C), as reasonably determined by the County, the County will pay up to an additional 25% of the Base Contract Amount, based upon work performed by the Developer with supporting invoices and other documentation of costs and payments.
- C. Within twenty-five days after the County accepts the Master Development Plan following consideration by the Board of Supervisors, the County will pay up to the remaining balance of the Contract Price, based upon work performed by the Developer with supporting invoices and other documentation of costs and payments.
- D. If, at any point during the duration of this Agreement, County staff chooses not to present the Master Development Plan to the Board of Supervisors, or the County elects not to accept the Master Development Plan after a presentation to the Board of Supervisors, the County will pay to the Developer an equitable portion of the Base Contract Amount, based upon work performed by the Developer with supporting invoices and other documentation of costs and payments.

#### **ARTICLE IV STAFFING**

Section 4.01. The Developer has assigned the following personnel/consultants to perform the Services (the "Consultants"):

- |                                      |                       |
|--------------------------------------|-----------------------|
| A. Alexander Company                 | Co-Developer          |
| B. Elm Street Development            | Co-Developer          |
| C. Walter L. Phillips                | Civil Engineer        |
| D. Gorove/Slade                      | Traffic Engineer      |
| E. Wetland Studies & Solutions       | Environmental Studies |
| F. Geo-Technology Associates         | Geotechnical Engineer |
| G. McGuire Woods LLP                 | Land Use Counsel      |
| H. Heise Jorgenson & Stefanelli P.A. | Title Attorney        |
| I. LandDesign                        | Land Planning         |
| J. Smart Site                        | Value Engineering     |

Section 4.02. The Developer acknowledges that the County selected the Developer based, in critical part, on the qualifications of the Consultants. Accordingly, absent circumstances beyond the Developer's control such as death, illness, or turn-over, these Consultants will not be changed or substituted during the term of the Agreement without the County's consent. If any of the Consultants are unable or unwilling to meet the requirements of 7.02(A) or 7.02(B), which will be determined within 30 days of the Contract Date, the County may either amend the insurance requirements for that Consultant or allow the Developer, with the County's consent, to change or make a substitution for such Consultants. The Developer's competing business priorities shall not be a basis for a change or substitution of these Consultants. Any substitutions of key personnel of the Developer or the Consultants must be approved in advance by the County.

## **ARTICLE V TERMINATION**

Section 5.01. If the County terminates this Agreement for either convenience or cause as set forth under Paragraph 31 of the General Conditions attached as Exhibit B, the County reserves the right to work with any other developer who responded to RFP No. 2000002301.

## **ARTICLE VI PHASE TWO**

Section 6.01. After the Developer's delivery of the Master Development Plan and the County acceptance of the Master Development Plan, the County intends to negotiate in good faith with the Developer to reach subsequent agreements regarding the actual development of the Property. The County, however, is under no obligation to continue to Phase Two with the Developer. It is anticipated that Phase Two will involve at least two separate agreements. The first agreement, which is anticipated to be titled the Second Interim Agreement: Land Entitlements ("Second Interim Agreement"), will cover the portion of Phase Two where rezoning and other land entitlements will be pursued jointly by the County and the Developer and will detail the sharing of responsibility and costs for such land entitlements. While land entitlements are pursued under the terms of the Second Interim Agreement, the Parties will negotiate in good faith to reach a comprehensive agreement for the actual physical implementation of the redevelopment. Should the Parties be unable to agree on the terms of a comprehensive agreement, the County is under no obligation to continue Phase Two with the Developer. The Second Interim Agreement and the comprehensive agreement (which may consist of one or more contracts) will be presented to the Board of Supervisors for approval in accordance with the provisions of the PPEA.

Section 6.02. If the County, in its sole discretion, elects to move forward with the Developer on Phase Two, in whole or in part, County staff and the Developer will work collaboratively following the County's acceptance of the Master Development Plan to reach agreement on the terms of the Second Interim Agreement within 90 days of such acceptance, with the expectation that the Second Interim Agreement will be presented to the Board of Supervisors for its consideration and approval in accordance with the provisions of the PPEA.

Section 6.03. If the Developer fails to reach agreement with County staff on the terms of the Second Interim Agreement within 90 days of the County's acceptance of the Master Development Plan, the County will have the right to offer one or more developers the right to implement Phase Two, or in its sole discretion, it may extend the time in which to reach agreement on the Second Interim Agreement.

Section 6.04. Nothing in this Agreement shall prohibit the County, in its sole discretion, from using or leasing the Property in any manner during any period before the implementation of Phase Two. If any such use, however, materially impacts the implementation of the Master Development Plan, the Parties will address any such impacts pursuant to their negotiation the Second Interim Agreement, or as applicable, a comprehensive development agreement.

## **ARTICLE VII INSURANCE**

Section 7.01. The Developer is responsible for its work and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the project, whether owned by the Developer or by the County. The Developer and its Consultants assume all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under this Agreement, or in connection in any way whatsoever with the contracted work.

Section 7.02. The Developer shall, during the continuance of all work under this Agreement provide the following:

- A. Maintain statutory Worker's Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Developer from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or Consultants, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
- B. Maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Developer, its Consultants, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under this Agreement or in connection with contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.
- C. Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Developer. In addition, all mobile equipment used by the Developer in connection with the contracted work will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.
- D. Maintain Professional Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to cover each individual professional staff.
- E. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

F. Rating Requirements:

1. The Developer agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Developer's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.

G. Indemnification: See Article 63 of the General Conditions and Instructions to Bidders (Exhibit B).

H. The Developer will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein, and shall have it filed with the County Purchasing Agent or Risk Manager before any work is started.

I. If the Developer delivers services from a County-leased facility, the Developer is required to carry property insurance on all equipment, to include County-owned installed and maintained equipment used by the Developer while in their care, custody and control for use under this Agreement.

J. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five day written notice to the County Purchasing Agent or Risk Manager. The Developer shall furnish a new certificate prior to any change or cancellation date. The failure of the Developer to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

K. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

## **ARTICLE VIII DELAYS AND SUSPENSIONS**

Section 8.01.

A. The County may direct the Developer, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time deemed appropriate for the convenience of the County. The County will extend the Developer's time of completion by a period of time that in the discretion of the County is reasonably suited for completion of work. The County may further amend this Agreement by mutual agreement for any increase in the cost of performance of the Agreement (excluding profit) resulting solely from the delay or suspension of the Agreement. No adjustment shall be made under this provision for any delay or interruption resulting from any other cause, including the fault or negligence of the Developer or its Consultants.

B. If the County does not direct the Developer, in writing, to suspend, delay, or interrupt the Agreement, the Developer must give the County written notice if the County fails to provide data or services that are required for completion of this Agreement by the Developer. The County may extend the Developer's time of completion by a period of time that in the

discretion of the County is reasonably suited for completion of work. The County may further amend this Agreement by mutual agreement for any increase in the cost of performance of the Agreement (excluding profit) resulting solely from the delay or suspension of this Agreement. No adjustment shall be made under this provision for any delay or interruption resulting from any other cause, including the fault or negligence of the Developer or its Consultants.

## **ARTICLE IX ACCESS TO AND INSPECTION OF WORK PRODUCT**

Section 9.01. County designated staff will, at all times, have access to the Work Product being performed under this Agreement wherever it may be in progress or preparation.

## **ARTICLE X PROJECT AUDITS**

Section 10.01.

- A. The Developer shall maintain books, records, and documents of all costs and data in support of the services provided to the County in accordance with the County standard audit requirements as set forth in the RFP. The County or its authorized representative shall have the right to audit the books, records, and documents of the Developer under the following conditions:
1. If the Agreement is terminated for any reason in order to arrive at equitable termination costs;
  2. In the event of a disagreement between the Developer and the County on the amount due the Developer under the terms of this Agreement;
  3. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Developer's efficiency or effectiveness under this Agreement; and
  4. If it becomes necessary to determine the County's rights and the Developer's obligations under the Agreement or to ascertain facts relative to any claim against the Developer that may result in a charge against the County.
- B. These provisions for an audit shall give the County unlimited access during normal working hours to the Developer's books and records under the conditions stated above.
- C. Unless otherwise provided by applicable statute, the Developer, from the effective date of final payment or termination hereunder, shall preserve and make available to the County for a period of three (3) years thereafter, at all reasonable times at the office of the Developer but without direct charge to the County, all its books, records, documents, and other evidence bearing on the costs and expenses of the services relating to the work hereunder.
- D. The County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated herein. The Developer shall include this "Right of Audit and Preservation of Records" clause in all subcontracts or consulting agreements issued by it and it shall require same to be inserted by all lower tier subcontractors in their subcontracts, if the lower tier subcontract amount is \$10,000 or more, for any portion of the work.

- E. If the Developer fails to include this clause in any such contract or lower tier contract, or otherwise fails to insure the County's rights hereunder, the Contractor shall be liable to the County for all reasonable costs, expenses and attorneys' fees that the County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to the County from said persons. Such audit may be conducted by the County or its authorized representative. If the County is unable to audit the actual cost records as a result of the Developer's failure to ensure the County's rights to inspect cost records as set forth in this paragraph, then the County will be entitled to commercially reasonable costs as reasonably estimated by the County.

## **ARTICLE XI DISPUTE RESOLUTION**

### **Section 11.01.**

- A. Any dispute concerning a question of fact as a result this Agreement which is not disposed of by the mutual agreement of the Parties shall be decided by the County Purchasing Agent, who shall reduce his/her decision to writing and mail or otherwise forward a copy to the Developer within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Developer appeals within six months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. The Developer may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.
- B. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the Developer's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

## **ARTICLE XII NOTICES**

### **Section 12.01.**

- A. All notices, demands, or other communications between the Parties ("Notice") must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally-recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works and Environmental Services  
Public Private Partnership Branch  
12000 Government Center Parkway, Suite 449  
Fairfax, Virginia 22035  
Attn: Katayoon Shaya, Chief, P3 Branch

With a copies to:

Fairfax County  
Office of the County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
Attention: County Attorney

and:

Fairfax County Department of Procurement and Material Management  
12000 Government Center Parkway, Suite 427  
Fairfax, Virginia 22035-0064  
Attention: Director

If to Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the party to which it is given.
- C. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the party to which it is given pursuant to one of the delivery methods described in subsection (A) above.
- D. Either Party may change its Notice address from time to time by informing the other Party in writing of such new address.

### **ARTICLE XIII MISCELLANEOUS**

Section 13.01. Entire Agreement. This Agreement, together with the attached Exhibits, all of which are incorporated by reference, is the entire agreement between the Parties. The terms of this Agreement may be amended or modified only by a written instrument executed by the Parties.

Section 13.02. Severability. If any provision of this Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person

or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.

Section 13.03. Applicable Law. This Agreement and any dispute, controversy, or proceeding arising out of or relating to this Agreement (whether in contract, tort, common or statutory law, equity or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than Virginia.

Section 13.04. Venue. All claims and litigation arising out of or related to this Agreement must be brought and resolved in the courts of the Commonwealth of Virginia located in the County of Fairfax, Virginia, or U.S. District Court for the Eastern District of Virginia, Alexandria Division.

Section 13.05. Assignability. The County may assign all of its rights and obligations under this Agreement without the written consent of the Developer; provided, however, that any assignee of the County will assume all of the obligations of the County under this Agreement. The Developer does not have the right to assign this Agreement.

Section 13.06. Captions; Interpretation. (a) The captions of this Agreement are for reference only and do not describe the intent of this Agreement or otherwise alter the terms of this Agreement. (b) When a reference is made in this Agreement to an Article, a Section, or an Exhibit, such reference is to an Article of, a Section of, or an Exhibit to this Agreement. (c) Whenever the words "include," "includes," or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." (d) The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine, feminine, and non-genders of such terms. Whenever the context requires, any pronouns used in this Agreement include the corresponding masculine, feminine, or non-gender forms.

Section 13.07. No Partnership. Nothing contained in this Agreement will be construed to create a partnership or joint venture between the Parties or their successors or permitted assigns.

Section 13.08. Time of Essence. Time is of the essence with respect to the performance of the obligations of the Parties under this Agreement.

Section 13.09. Counterparts and Distribution. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

Section 13.10. Waiver. No waiver of any breach of this Agreement will be deemed a waiver of any preceding or succeeding breach under this Agreement or any other agreement. No extension of time for the performance of any obligation or act will be deemed an extension of time for the performance of any other obligation or act.

Section 13.11. Business Days. If any date set forth in this Agreement for the performance of any obligations by the Parties or for the delivery of any instrument or notice falls on a Saturday, Sunday, Legal Holiday, or day in which Fairfax County governmental offices are closed, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday, Legal Holiday, or closing. The term "Legal Holiday" will mean



any Fairfax County, Commonwealth of Virginia, or federal holiday on which post offices are closed in Virginia.

Section 13.12. Contract Date. The Contract Date is the date on which this Agreement is executed by and delivered to the Parties, which date will be inserted at the top of the first page.

Section 13.13. Waiver of Jury Trial. The Parties each waive all rights to a trial by jury in any claim, action, proceeding or counterclaim arising out of or in any way connected with this Agreement.

Section 13.14. Safeguard of Information. Unless approved in writing by the County, the Developer may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Developer or its consultants under this Agreement.

Section 13.15. Prohibition of Developer News Release. Unless approved in writing by the County, the Developer may not sell or give to any individual or organization any information, reports, or other materials given to, prepared or assembled by the Developer or its consultants under this Agreement or otherwise publicize Developer's role and involvement with the Property. Any public announcement of the proposed project pursuant to the Master Development Plan must be fully coordinated with the County.

Section 13.16. Americans with Disabilities Act.

- A. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities, and services. Fairfax County government contractors, subcontractors, vendors, and suppliers are subject to this ADA policy. The Developer must make the same commitment and the Developer's execution of this Agreement is an express acknowledgement of the Developer's commitment and compliance with ADA.
- B. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Anyone requesting special accommodations should call the Department ADA representative at 703-324-3201 or TTY 1-800-828-1140. Please allow seven working days in advance of the event to make the necessary arrangements.

Section 13.17. Authorization to Conduct Business in the Commonwealth. In accordance with mandatory County policy, the Developer shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The Developer 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 this Agreement. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this Section.

Section 13.18. Drug Free Workplace. During the performance of this Agreement, the Developer agrees to (i) provide a drug-free workplace for the Developer'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 Developer'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 Developer that the Developer 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 the Developer in accordance with this Section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

Section 13.19. Immigration Reform and Control Act. The Developer agrees that it does not, and shall not during the performance of this Agreement in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

Section 13.20. Survival. All representations, warranties, and indemnities contained in this Agreement or in any instrument, document, or agreement delivered pursuant to this Agreement will survive termination of this Agreement unless otherwise provided herein.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**

**DEVELOPER:**

The Alexander Company, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DEVELOPER:**

Elm Street Development, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RFP2000002301 - Original Mt. Vernon High School Redevelopment  
Alexander Company

**THE COUNTY:**

Fairfax County Board of Supervisors

By: \_\_\_\_\_  
Bryan Hill

Exhibit A - General Location Map



Rev 8-2013

**COUNTY OF FAIRFAX  
COMMONWEALTH OF VIRGINIA**

**GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

**I. AUTHORITY-**

The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

**2. DEFINITIONS-**

**AGENCY:** Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

**BEST VALUE:** As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

**BID:** The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

**BIDDER/OFFEROR:** Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

**CONSULTANT SERVICES:** Any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.

**CONTRACTOR:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

**COUNTY:** County of Fairfax.

**GOODS:** All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

**INFORMALITY:** A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

**INVITATION FOR BID (IFB):** A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

**OPEN MARKET PROCUREMENT (OMP):** A method of competitive bidding for the purchase or lease of goods, non-professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than \$50,000.

**PROFESSIONAL SERVICES:** Any type of professional service performed by an independent Contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with the Fairfax County Purchasing Resolution).

**PURCHASING AGENT:** The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

**REQUEST FOR PROPOSAL (RFP):** A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

**RESPONSIBLE BIDDER/OFFEROR:** An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability

which will assure good faith performance, and having been prequalified, if required.  
(Reference paragraph 24, General Conditions and Instructions to Bidders).

**RESPONSIVE BIDDER/OFFEROR:** An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

**SERVICES:** Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

**SOLICITATION:** The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an Open Market Procurement (OMP), or telephone calls to prospective bidders.

**STATE:** Commonwealth of Virginia.

## **CONDITIONS OF BIDDING**

### **3. BID FORMS-**

Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope or package. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid.

Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

### **4. LATE BIDS & MODIFICATIONS OF BIDS-**

- a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. A late bid/modification will not be considered for award except under the following conditions only:

- 1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or

2. The bid/modification was sent by mail and it is determined by the County Purchasing Agent that the late receipt was due solely to mishandling by the County after receipt at the address specified in the solicitation.
- b. If an emergency or unanticipated event or closing interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, the due date/time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal County business operations resume.
- c. The official time used for receipt of bids/modifications is the Bid Clerk's time and date stamp clock located in the Department of Procurement and Material Management. "No other clocks, calendars, or timepieces are recognized. All bidders are responsible to ensure all bids/modifications are received prior to the scheduled due date/time.
- d. A late hand-carried bid, or any other late bid not submitted by mail, shall not be considered for award.

#### **5. WITHDRAWAL OF BIDS-**

- a. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing to the Purchasing Agent of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
- b. A bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:
  1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.



2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- d. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.
- e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- f. If the county denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.
- g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

#### **6. ERRORS IN BIDS-**

When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices, or in preparation of bid otherwise, will not relieve the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

#### **7. MAILING OF BIDS-**

All bids and proposals submitted in response to a Fairfax County solicitation shall be submitted in a sealed envelope or package identified with the solicitation number, title, and bidders name and address clearly marked on the outside of such envelope or package.

#### **8. COMPLETENESS-**

To be responsive, a bid must include all information required by the solicitation.

**9. ACCEPTANCE OF BIDS/BINDING 90 DAYS-**

Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.

**10. CONDITIONAL BIDS-**

Conditional bids are subject to rejection in whole or in part.

**11. BIDS FOR ALL OR PART-**

Unless otherwise specified by the County Purchasing Agent or by the bidder, the Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.

**12. AREA BIDS-**

For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.

**13. TIME FOR RECEIVING BID-**

Bids received prior to the time of opening will be securely kept, unopened. The representative of the Purchasing Agent assigned to open them will decide when the specified time has arrived, and no bid received thereafter will be considered, except as provided in paragraph 4, General Conditions and Instructions to Bidders. No responsibility will attach to the Purchasing Agent or his or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered.

**14. BID OPENING-**

All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 68, General Conditions and Instructions to Bidders. Tabulations of bids received are posted on the Department of Purchasing & Supply Management Bulletin Board as well as the County's web site: <http://www.fairfaxcounty.gov/dpsm/bidtab.htm>. Proposals received in response to a Request for Proposal (RFP) will be made available as provided in paragraph 68, General Conditions and Instructions to Bidders.

**15. OMISSIONS & DISCREPANCIES-**

Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.

**16. RESPONSE TO SOLICITATIONS-**

In the event a vendor cannot submit a bid on a solicitation; he or she is requested to return the solicitation cover sheet with an explanation as to why he or she is unable to bid on these requirements.

**17. BIDDER INTERESTED IN MORE THAN ONE BID-**

If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

**GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

**18. TAX EXEMPTION-**

The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

**19. PROHIBITION AGAINST UNIFORM PRICING-**

The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

## **SPECIFICATIONS**

### **20. QUESTIONS CONCERNING SPECIFICATIONS-**

Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening of bids. No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the County Purchasing Agent, will be expressed in the form of an addendum to the specification which will be sent to all prospective bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.

### **21. BRAND NAME OR EQUAL ITEMS-**

Unless otherwise provided in the invitation for bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

### **22. FORMAL SPECIFICATIONS-**

When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

### **23. FEDERAL SPECIFICATIONS-**

Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

## **AWARD**

### **24. AWARD OR REJECTION OF BIDS-**

The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in

combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. The number and scope of the conditions attached to the bid;
- j. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
- k. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

## **25. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS-**

A written award (or Acceptance Agreement) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

- a. County of Fairfax Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable;
- b. General Conditions and Instructions to Bidders;
- c. Special Provisions and Specifications;
- d. Pricing Schedule; and
- e. Any Addenda/Amendments/Memoranda of Negotiations.

## **26. TIE-BIDS-**

If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of 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 there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

## **27. PROMPT PAYMENT DISCOUNT-**

- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer.

## **28. INSPECTION-ACCEPTANCE-**

For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

## **29. DEFINITE BID QUANTITIES-**

Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.

## **30. REQUIREMENT BID QUANTITIES-**

On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

## **CONTRACT PROVISIONS**

### **31. TERMINATION OF CONTRACTS-**

Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause; and
- b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

### **32. TERMINATION FOR CONVENIENCE-**

A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

### **33. TERMINATION OF CONTRACT FOR CAUSE-**

- a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- b. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

### **34. CONTRACT ALTERATIONS-**

No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.

### **35. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS-**

It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person,

firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

**36. FUNDING-**

A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

**37. DELIVERY/SERVICE FAILURES-**

Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

**38. NON-LIABILITY-**

The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at his or her discretion, cancel the contract.

**39. NEW GOODS, FRESH STOCK-**

All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

**40. NON-DISCRIMINATION-**

During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.



- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

#### **41. SMALL AND MINORITY BUSINESS UTILIZATION-**

- a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.
- b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
- c. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

**42. GUARANTEES & WARRANTIES-**All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

**43. PRICE REDUCTION-**If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Purchasing Agent. The Contractor, if requested, shall furnish, within ten days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Purchasing Agent within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such

reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

**44. CHANGES**-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

**45. PLACING OF ORDERS**-Orders against contracts will be placed with the Contractor on a Purchase Order (or Procurement Card) executed and released by the Purchasing Agent or his or her designee. The Purchase Order must bear the appropriate contract number and date. Where Blanket Purchase Agreements (BPAs) have been executed and a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

## **DELIVERY PROVISIONS**

**46. SHIPPING INSTRUCTIONS - CONSIGNMENT**-Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

**47. RESPONSIBILITY FOR SUPPLIES TENDERED**-Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

**48. INSPECTIONS**-Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

**49. COMPLIANCE**-Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Special Provisions for the individual solicitation.

**50. POINT OF DESTINATION**-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

**51. ADDITIONAL CHARGES**-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

**52. METHOD AND CONTAINERS**-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

**53. WEIGHT CHECKING**-Deliveries shall be subject to re-weighing over official sealed scales designated by the County. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights only, exclusive of containers or wrapping, shall be paid for by the County.

**54. DEMURRAGE AND RE-SPOTTING**-The County will be responsible for demurrage charges only when such charges accrue because of the County's negligence in

unloading the materials. The County will pay railroad charges due to the re-spotting of cars, only when such re-spotting is ordered by the County.

**55. REPLACEMENT**-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

**56. PACKING SLIPS OR DELIVERY TICKETS**-All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

1. The Purchase Order Number,
2. The Name of the Article and Stock Number (Supplier's),
3. The Fairfax County Identification Number (FCIN), if specified in the order,
4. The Quantity Ordered,
5. The Quantity Shipped,
6. The Quantity Back Ordered,
7. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

## **BILLING**

**57. BILLING**-Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

## **PAYMENTS**

**58. PAYMENT**-Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

**59. PARTIAL PAYMENTS**-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

**60. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING**-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up

or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

## **GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

### **61. GENERAL GUARANTY-Contractor agrees to:**

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
- e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

### **62. SERVICE CONTRACT GUARANTY-Contractor agrees to:**

- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector

is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

**63. INDEMNIFICATION**-Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

**64. OFFICIALS NOT TO BENEFIT-**

- a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia

22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

**65. LICENSE REQUIREMENT**-All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: [http://www.fairfaxcounty.gov/dta/business\\_tax.htm](http://www.fairfaxcounty.gov/dta/business_tax.htm). The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

**66. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**67. COVENANT AGAINST CONTINGENT FEES**-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**68. VIRGINIA FREEDOM OF INFORMATION ACT**-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. 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 paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, 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.
  - d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

## **BIDDER/CONTRACTOR REMEDIES**

### **69. INELIGIBILITY-**

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
  - 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
  - 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
  - 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;

3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
  4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
    - (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
  5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
  6. The Contractor has abandoned performance or been terminated for default on any other Fairfax County project;
  7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

#### **70. APPEAL OF DENIAL OF WITHDRAWAL OF BID-**

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4 a.9, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

## **71. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-**

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

## **72. PROTEST OF AWARD OR DECISION TO AWARD-**

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 3, Section 4, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4d of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4d, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an

award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

### **73. CONTRACTUAL DISPUTES-**

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**74. LEGAL ACTION-**No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

**75. COOPERATIVE PURCHASING-**The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in

any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

**76. PROFESSIONAL AFFILIATION-**The Department of Purchasing & Supply Management holds membership in the National Institute of Governmental Purchasing, Inc., a non-profit, educational and technical organization that includes among its goals and objectives the study, discussion, and recommendation of improvements in governmental purchasing and the interchange of ideas and experiences on local state, and national governmental purchasing problems.

**77. DRUG FREE WORKPLACE-**During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each sub-Contractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**78. IMMIGRATION REFORM AND CONTROL ACT:** Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

**APPROVED:**

**/S/ Elizabeth D. Teare**  
**COUNTY ATTORNEY**

**/S/ Cathy A. Muse**  
**COUNTY PURCHASING AGENT**

**Exhibit C**

**Cost Summary 10-23-17**

		<b>Preliminary Master Development Plan (A)</b>	<b>Draft Master Development Plan (B)</b>	<b>Final Master Development Plan (C)</b>	<b>Totals</b>
<b>Consultant</b>	<b>Function</b>				
Land Design	Planning	\$52,000	\$15,000	\$13,000	\$80,000
Walter L. Phillips	Civil Engineering	\$45,200	\$18,000	\$8,000	\$71,200
Wetland Studies	Environmental	\$32,000	\$2,000	\$2,000	\$36,000
Gorove Slade	Traffic	\$32,000	\$8,000	\$6,000	\$46,000
GTA	Geotechnical	\$17,300			\$17,300
SmartSite	Cost Estimates/Value Engineering	\$32,500	\$7,500		\$40,000
McGuire, Woods	Land Use Counsel	\$8,000	\$15,000	\$15,000	\$38,000
Heise, Jorgensen	Title	\$11,500			\$11,500
Subtotal		\$230,500	\$65,500	\$44,000	\$340,000
Contingency (10%)		\$23,050	\$6,550	\$4,400	\$34,000
Authorized Reimbursable Expenses		\$9,000	\$7,000	\$9,000	\$25,000
<b>Totals Per Phase (Guaranteed Maximum Price)</b>		<b>\$262,550</b>	<b>\$79,050</b>	<b>\$57,400</b>	<b>\$399,000</b>

Board Agenda Item  
February 6, 2018

ACTION - 2

Approval of Revisions to Chapters 2, 9, 10, and 17 of the Personnel Regulations to Align Definitions, Correct Typographical Errors, Align Practice With Policy, and Provide Administrative Clarification

ISSUE:

Revisions to the Fairfax County Personnel Regulations are proposed to ensure compliance with Virginia Code, provide administrative direction and policy clarification.

RECOMMENDATION:

The County Executive recommends the Board of Supervisors approve the proposed revisions to Chapters 2, 9, 10 and 17 of the Personnel Regulations, as specified below.

TIMING:

Routine.

BACKGROUND:

Periodically, the Department of Human Resources (DHR) brings forward proposed revisions to the Personnel Regulations for Board consideration.

Following an advertised public hearing held on November 29, 2017, the Civil Service Commission considered the below referenced proposed revisions to the Personnel Regulations. Prior to the hearing, extensive discussions occurred between DHR Staff, Office of County Attorney (OCA), employee groups and agency personnel to promote aligned understanding and agreement with the proposed changes. OCA reviewed all proposed changes.

At the hearing the Director of Human Resources gave an overview of the proposed changes for each chapter. There were no speakers signed up in advance or who wanted to speak at the public hearing. There were several staff from Employee Relations, DHR; Human Resource Managers present, and there were also approximately 5 employees in attendance from employee groups.

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The following content highlights proposed changes, by chapter.

Chapter 2 – Definitions (Attachment #1 – Pages 4, 6, 11 and 12)

- Consolidates the definitions of Separation in one place, under the Separation definition.

Chapter 9 – Separations (Attachment # 2—Pages 1, 7, 8, and 9)

- Updates the types of separation to reflect consistency with Chapter 2
- Updates the language from Affirmative Action Plan to County Diversity Plan
- Updates and add clarification language regarding Unsatisfactory Service Separations

Chapter 10 – Leave (Attachment #3—Page 20)

- Add language regarding time accountability requirements for officers of the Employee Advisory Council and employee organizations

Chapter 17 – Grievance Procedure (Attachment #4—Pages 6, 7, 15 and 16)

- The remedy for unsatisfactory service separations is now the same as for dismissals
- Clarifies Prehearing Requirements process and time requirements
- The County, not the employee, will now be the moving party for unsatisfactory service separations

In accordance with the Merit System Ordinance, the proposed revisions were forwarded to the Civil Service Commission for public hearing. The public hearing was held on November 29, 2017 and the Commission's comments are included as Attachment Five (5).

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Revisions to Chapter 2 of the Personnel Regulations  
Attachment 2: Proposed Revisions to Chapter 9 of the Personnel Regulations  
Attachment 3: Proposed Revisions to Chapter 10 of the Personnel Regulations  
Attachment 4: Proposed Revisions to Chapter 17 of the Personnel Regulations  
Attachment 5: Civil Service Commissioners' Memorandum

STAFF:

Catherine Spage, Director, Department of Human Resources

ASSIGNED COUNSEL:

Karen Gibbons, Deputy County Attorney, Office of the County Attorney



## CHAPTER 2

### Definitions

#### Allocation

The assignment of a position to its appropriate class in relation to duties performed.

#### Anniversary Date

Initially, the date on which an employee is appointed to start in a merit position. The anniversary date for public safety employees can change based on promotion dates, with exceptions noted in chapter four of these regulations.

#### Appeal

An application or procedure for review of an alleged grievance submitted or instituted by an employee to the Civil Service Commission or to other higher authority.

#### Appointing Authority

The officer, board, commission, person, or group of persons having the power by virtue of state law or County ordinance to make appointments. The appointing authority is generally responsible for personnel administration within a given department. As used in these regulations, the term "appointing authority" is synonymous with the term "department head."

#### Appointment

The offer to and acceptance by a person of a position.

#### Assembled Examination

An examination for which applicants are required to appear at a specific place for the purpose of taking a test.

#### Break in Service

Any separation from the service of Fairfax County whether by resignation, lay-off, dismissal, unsatisfactory service, disability, retirement, or absence without leave of three days or more when the employee is subsequently reemployed. An authorized leave without pay shall not be considered as constituting a "break in service."

#### Bullying

Unnecessary, unwelcome, unwarranted and repeated mistreatment of a targeted individual or group by an individual or group. The actions are sufficiently severe and/or pervasive as to create a work environment such that a reasonable person would consider it intimidating, humiliating, dehumanizing, or offensive. Establishing behaviors as bullying depends on factors such as severity, pervasiveness, context, work relationships, employee performance and intent of action. Bullying is separate and discrete as compared to harassment, discrimination and workplace violence.

#### Business Day

Calendar days exclusive of Saturdays, Sundays, and legal holidays.

#### Class

A group of positions, which are sufficiently alike in general duties and responsibilities to warrant the use of the same title, specification and pay range.

#### Class Series

A number of classes of positions which are substantially similar as to the types of work involved and differ only in rank as determined by the importance of the duties and degree of responsibility involved and the amount of training and experience required. Such classes constitute a series and each is usually given a designation either by Roman numerals, beginning with the lowest level as I, next level II, or by rank adjectives such as the junior, intermediate or senior level, etc.

#### Class Specification

A written description of a class consisting of a class title, a general statement of the level of work, a statement of the distinguishing features of work, some examples of work, and the minimum qualifications for the class.

#### Classification

The grouping of positions in regard to: (a) kinds of duties performed and responsibilities; (b) level of duties performed; (c) requirements as to education, knowledge and experience and ability; (d) tests of fitness; (e) ranges of pay.

#### Classification Review or Reclassification Review

An evaluation of the duties and responsibilities of a position performed by the Department of Human Resources to determine the appropriateness of the present class. Appropriateness will be determined on the basis of: (a) kinds of duties performed and responsibilities; (b) level of duties performed; (c) requirements as to education, knowledge and experience and ability; (d) tests of fitness; (e) ranges of pay. The review will result in the position retaining its present class assignment; or being assigned to an

existing lower class, or being assigned to an existing higher class; or being assigned to a new class created by amendment to the Classification and Compensation Plans.

#### Classification Plan

The official or approved system of grouping positions into appropriate classes, consisting of three parts: (1) a schematic index to the class specifications; (2) the class specifications; and (3) rules for administering the classification plan.

#### Compensation

The standard rates of pay, which have been established for the respective classes of work, as set forth in the compensation plan.

#### Compensation Plan

The official schedule of pay approved by the Board of Supervisors assigning one or more rates of pay to each pay grade.

#### Compensatory Leave

Time off in lieu of monetary payment for overtime worked.

#### Compensatory Time Eligible

Employees in pay grades S-26, P/O/C-27, F-31 or above and L-02 or above, excluding any classes designated as exceptions in a procedural memorandum issued by the Human Resources Director.

#### Competitive Promotion

A promotion based on a competitive examination with appointment to the higher-level position restricted to a specific number of persons receiving the highest ratings.

#### Competitive Service

All officers and positions in the service of Fairfax County as defined in the Merit System Ordinance.

#### Continuous Service

Employment without interruption, including merit service with the Fairfax County School System, except for absences on approved leave or absences to serve in the Armed Forces of the United States, or absences of less than one calendar year when followed by reemployment or reinstatement. Service prior to normal or early retirement from a County retirement system shall not be counted.

### Deferred Retirement Option Plan (DROP)

An option in lieu of immediate retirement in which an employee remains employed by his/her department, but no longer contributes to his/her respective retirement system and must retire within 3 years of election to DROP. DROP participants retain the rights and privileges of merit employees.

### Definition of Duties

The work requirements for each position in terms of the importance, difficulty, and extent of supervision and responsibility attaching thereto.

### Demotion

Assignment of an employee from one class to another, which has a lower maximum rate of pay.

### Department

An administrative branch including a line of work and a group of employees under the immediate charge of a chief executive officer or officers of a department, institution, court, board, or commission of the County government, which latter officer or officers shall be known as the department head.

### Dismissal

Separation from County employment for cause.

### Department Head

An employee appointed by the Board of Supervisors to oversee, direct or manage a major functional division of County government, whether formally known as a department or not, under the general direction of the County Executive, and to act as the appointing authority for the positions assigned to that organization. As used in these regulations, the term "department head" is synonymous with the term "appointing authority."

### Deputy

One or more individuals authorized to act in specific functional areas for the department head.

### Eligible

A person who has successfully met required qualifications for a particular class.

### Eligible List

The ranking of eligibles by class in order of score earned.

### Employee

An individual who is legally employed by the County and is compensated through the County payroll for his services. Individuals or groups compensated on a fee basis are not included.

### Examination

The process of testing, evaluating or investigating the fitness and qualifications of applicants.

### Exempt Service

Those positions not included in the competitive service as defined in the Merit System Ordinance.

### Extended Family Including Household Member

Includes employee's spouse, son, daughter, parents, parent in-laws, siblings, grandparents, grandchildren, aunt, uncle, niece, nephew, employee's respective in-laws, first cousin, or children for whom the employee has legal guardianship or is designated as primary caregiver, and any person who resides in the employee's home.

### Fire Protection Personnel

24-hour shift employees in the Fire and Rescue Department who perform suppression and rescue duties as defined in the Fair Labor Standards Act (29 CFR Sec. 553.3).

### Fair Labor Standards Act (FLSA)

Legislation originally enacted by Congress in 1938, which establishes requirements with respect to minimum wage, overtime, compensation and record keeping.

### FLSA Eligible (FLSA Non-exempt)

An employee who holds a position covered by the minimum wage, mandatory overtime, or recordkeeping provisions of the FLSA. FLSA Eligible employees must be compensated with overtime pay or compensatory time for all hours worked over the FLSA threshold for overtime, as outlined in the definition of overtime. FLSA Eligible employees are in pay grades S-21, P-23, O/C-21, F-27 and below. Exceptions are noted in a procedural memorandum issued by the Human Resources Director.

### FLSA Exempt

An employee who holds a position that is not covered by the mandatory overtime provisions of the Fair Labor Standards Act.

### Full-Time Employee

Any employee who is regularly scheduled to work at least 2,080 hours in 12 consecutive months, or fire protection personnel regularly scheduled to work at least 2,912 hours in 12 consecutive months.

### Full-Time Position

Any position which is authorized to be filled for at least 2,080 hours in 12 consecutive months or fire protection personnel position authorized for at least 2,912 hours in 12 consecutive months.

### Hourly Rate of Pay

The hourly rate of pay is shown on the County pay plans for the minimum, midpoint, and maximum of each pay range. Public safety pay plans shall include such intermediate rates as deemed appropriate. Hourly rates are carried out to four places after the decimal. The hourly rate is derived by dividing annual salary by 2,080, which is the number of scheduled hours for a full time employee. The hourly rate for fire protection personnel assigned to a 24-hour shift is derived by dividing the annual salary by 2,912, which is the number of scheduled hours for a full time fire protection employee.

### Immediate Family Including Household Member

Includes employee's spouse, son, daughter, parents, parents-in-law, siblings, grandparents, children for whom the employee has legal guardianship or is designated as primary caregiver, and any person who resides in the employee's home.

### Incumbent

An employee occupying a position in the County service.

### Law Enforcement Personnel

Sworn employees of the Police Department (including animal protection police officers), Fire and Rescue Department, and Office of the Sheriff who are empowered to enforce laws, have the power of arrest and have undergone (or will be undergoing) on-the-job training or similar instruction as defined in the Fair Labor Standards Act (29 CFR Sec. 553.4). The term also includes security personnel in correctional institutions.

### Lay Off

Separation of an employee from a position to which he was legally certified and appointed as a result of the abolition of a position, lack of work or lack of funds.

### Longevity Pay Increment

An increase in compensation established in the compensation plan as a reward for long and faithful service for public safety employees. Longevity pay increments are granted in accordance with the conditions specified in Chapter 4 of the Personnel Regulations and are subject to Board of Supervisors appropriation.

### Merit Employee

Any employee in the competitive service, as defined in the Merit System Ordinance.

### Merit System

The system of personnel administration applicable to the competitive service. It includes the Merit System Ordinance, any applicable provisions of other County ordinances, Personnel Regulations, and all applicable and lawful personnel management directives of the Board of Supervisors, County Executive, or Human Resources Director.

### Minimum Wage

The minimum hourly wage to be paid to employees as designated by the United States Department of Labor, or Commonwealth of Virginia (whichever is higher).

### Multi Rater Option

The use of feedback from persons in addition to the immediate supervisor as part of the performance review process.

### Negative Time Reporting

The time and attendance reporting method for employees only required to report exceptions to scheduled hours.

### Open Examination

An examination open to the public and not limited to applicants in County service.

### Overtime (FLSA)

Time worked or on paid leave by an employee (excluding employees in law enforcement and fire protection as defined herein) in excess of 40 hours during his/her seven consecutive days work period. Overtime for law enforcement personnel shall be time worked or on paid leave in excess of 86 hours (80 hours for sworn Police Officers, Animal Protection Police Officers, and Deputy Sheriffs scheduled to work a 40-hour week) during his/her 14 consecutive day work period. Overtime for fire protection personnel shall be time worked or on paid leave in excess of 212 hours during his/her 28 consecutive day work period.

Non-FLSA overtime includes hours worked in excess of the employee's scheduled hours but less than the eligibility requirement for FLSA overtime stated above.

#### Overtime Pay

Compensation paid to an employee for overtime work performed in accordance with these rules. The rate of pay for overtime compensation will be either 1 times the hourly rate or 1 and 1/2 times the regular rate of pay as prescribed in Section 4.15 of these rules.

#### Part-Time Employee

An employee who is not regularly scheduled to work at least 2,080 hours in 12 consecutive months, or fire protection personnel not regularly scheduled to work at least 2,912 hours in 12 consecutive months.

#### Part-Time Position

Any position, which does not meet the definition of full-time position.

#### Pay Grade

A combination of letter and number symbol indicating the pay range on a county pay schedule assigned to one or more classes in the Compensation Plan.

#### Pay Grade Reallocation Review

An evaluation of a class performed by the Department of Human Resources to determine the appropriateness of the present pay grade. The review will result in the class retaining its present pay grade assignment; or being assigned a higher or lower pay grade requiring amendment to the Compensation Plan. Such a review may include, but is not limited to pay factors including prevailing area levels of pay, internal evaluation of the relative worth of the class and economic and related fiscal concerns.

#### Pay Period

The 14 consecutive calendar day period utilized for the calculation of paychecks and the crediting of leave earned.

#### Pay Range

Rates of pay assigned to a pay grade on a County pay schedule in the Compensation Plan. For non-public safety employee classes, a pay range shall consist of the minimum and maximum rates of pay and the mid-point of the range. Pay ranges assigned to grades allocated to classes of public safety employees shall consist of the minimum (step 1) and maximum rates of pay (step 9) as well as intermediate and longevity steps.



### Pay Rate

A specific dollar amount expressed as an annual rate, a bi-weekly rate, or an hourly rate, as shown in a County Pay Plan.

### Pay Status

Any period in which an employee is actually working or using paid leave.

### Performance Pay Increase

An increase in compensation, which may be granted to an employee by his/her department head or designee for performance that meets the requirements specified for such pay increases.

### Performance Pay Increase (PPI) Date

The date an employee's performance pay increase is effective. The PPI date for non-uniformed public safety employees will be at the start of the first full pay period at the beginning of the fiscal year, during years when performance pay increases are granted by the Board of Supervisors. Public safety employees' PPI dates will be the beginning of the first full pay period following the incumbent's anniversary date, during years when performance pay increases are granted.

### Performance Review Period

The 12-month performance evaluation review period for non-uniformed public safety employees begins July 1 and concludes on June 30, each year. Review periods for public safety staff correspond to each incumbent's anniversary date.

### Position

Any office or employment, whether occupied or vacant, full-time or part-time, consisting of duties and responsibilities assigned to one individual by competent authority.

### Positive Time Reporting

The time and attendance reporting method for employees required to report all absences and hours worked.

### Primary Position

When an employee holds more than one position with the County, one of the positions is designated as the primary and the other as the secondary for the purpose of calculating pay and benefits and tracking employment history. If the two positions are equal in pay and scheduled hours, the primary position is the one the employee occupied first. Otherwise, the primary position is the position with higher pay and/or

hours.

### Probationary Period

The working test or trial period of employment beginning with the date of appointment to a particular class.

### Promotion

Assignment of an employee from one class to another, which has a higher maximum rate of pay.

### Promotional Examination

A competitive examination restricted to persons who are on regular appointment in the County classified service or to persons who are eligible to reinstatement thereto.

### Public Safety Employees

For the purposes of these regulations, public safety employees include all uniformed employees in the Police Department, Fire and Rescue Department and the Office of the Sheriff. It also includes all other job classes that are included on P/O/C/F pay scales.

### Qualifications

The minimum educational, experience and personal requirements, which must be fulfilled by a person preliminary to appointment or promotion.

### Reduction in Rank

Assignment of an employee from one class to another class, which has a lower maximum rate of pay. Same as demotion.

### Reemployment

Reappointment of a former merit employee, who had completed the probationary period and was separated in good standing but did not retire, which is not considered a reinstatement as defined herein.

### Reemployment List

A list of names of former County employees with a break in service of less than one calendar year, arranged in order of their right to reinstatement as defined in Section 2.60, or reemployment in lower classes of the same or similar series as that in which the employee was serving at the time of termination.

### Regular Rate of Pay

The rate of pay to be utilized for the calculation of overtime pay in accordance with FLSA requirements. The regular rate is derived by dividing the total amount of eligible pay for the work period (including the hourly rate and shift differential) by the number of hours worked during the work period.

### Reinstatement

Reappointment of a former merit employee who had completed the probationary period and was separated in good standing, but did not retire, after a break in service of less than one calendar year to the position or class formerly held.

### Restoration

A return to a position in a class in which status was formerly held where there has been no break in service.

### Scheduled Hours

The number of hours that an employee is scheduled to work on a recurring basis as reflected in the personnel record for the position occupied. Scheduled hours serve as the basis for planning and budgeting activities as well as leave calculation rules as specified in Chapter 10 of the Personnel Regulations.

### Self-Assessment

The completion of a performance evaluation form by the employee to provide his/her assessment of their performance during the review period.

### Separation

Leaving a position including resignation, lay off, dismissal, unsatisfactory service, disability, and death for any of the following reasons:

- Resignation
- Lay-Off (Separation of an employee from a position to which s/he was legally certified and appointed as a result of the abolition of a position, lack of work, or lack of funds.)
- Dismissal for Cause or Dismissal (Separation from County employment for cause. This designation is the most severe form of discipline and bars the individual from further employment with Fairfax County Government.)
- Unsatisfactory Service Separation; (A department head may separate an employee for unsatisfactory service whenever the work habits, attitudes, production or personal conduct of an employee falls below the desirable standards for continued employment. A resignation initiated by an employee may be designated as unsatisfactory service by a department head if adequate grounds exist. Reasons for unsatisfactory service separations shall include but are not limited to: insufficient advance notice prior to resignation; unsatisfactory performance in

the duties of the position; separation during the initial probationary period; and undesirable behavior or other similar reasons not of a degree warranting dismissal. This designation does not automatically bar the individual from employment with Fairfax County Government.

- Disability
- Death

#### Straight Pay Eligible

Employees in pay grades S-22 to S-25, P-24 to P-26, O-22 to O-26, C-22 to C-26, F-29 and L-01. Exceptions are noted in a procedural memorandum issued by the Human Resources Director.

#### Suspension

An enforced leave of absence without pay for disciplinary purposes or pending investigation of charges made against an employee.

#### Transfer

Assignment of an employee from one position to another position. Transfers can take place within a department, between departments, between positions of the same pay range, between positions of different pay ranges, between positions of the same class or between positions of different classes.

#### Unassembled Examination

An examination in which qualifications are evaluated on the basis of records or education and experience submitted by the applicants, supplemented by any information obtained by an investigation.

#### Vacancy

A position which has been newly established or which has been rendered vacant by the resignation, death or other removal of the previous incumbent.

#### Veteran

Any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active duty service in the armed forces of the United States or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

#### Workday

Days of the week and number of hours an employee is scheduled to work. Work schedules vary by operation and agency.

### Workweek

The seven consecutive day period beginning at 12:00 a.m. Saturday and ending the following Friday at 11:59 p.m. during which an employee (excluding law enforcement and fire protection personnel as defined herein) is scheduled to work.

### Work Period

The period during which an employee is scheduled to work. For all employees except law enforcement and fire protection personnel as defined herein, the work period shall be the work week which comprises one half of a pay period. The work period for fire protection personnel shall be a 28 consecutive calendar day period beginning at 12:00 a.m. Saturday and ending at 11:59 p.m. Friday and covering two pay periods. The work period for law enforcement personnel shall be a 14 consecutive calendar day period beginning at 12:00 a.m. Saturday, ending at 11:59 p.m. Friday, and covering one pay period.

## CHAPTER 9

### Separations

#### 9.1 Separations

All separations of employees from positions in the competitive service shall be designated as one of the following types, based on separation definitions in Chapter 2 of these Regulations and information contained herein:

- 1 Resignation; ~~(also to be used for retirement);~~
- 2 Lay-off;
- 3 Dismissal for Cause;
- 4 Unsatisfactory ~~S~~service Separation;
- 5 Disability;
- 6 Death;

#### 9.2 Resignation

- 1 It is the responsibility of an employee who plans to resign from the competitive service to notify his/her immediate supervisor at least ten business days prior to the last day of work.
- 2 An employee who resigns without sufficient prior notice and thereby, in the opinion of the department head, impairs the effectiveness of the County service may ~~shall~~ have his/her separation designated as unsatisfactory service separation ~~or dismissal~~ according to the rules governing such separations. In addition, for each day less than the required notice given, one day of annual leave may be deducted from the employee's record.
- 3 Employees who resign shall receive payment for all compensatory time and annual leave credit for which they are eligible according to the rules governing such leave, except as provided above.
- 4 An employee who retires from County service may be reemployed in any position for which qualified subject to the following conditions:
  - a. A 30 day break in service between retirement date and reemployment date is required. The only exception to the 30 day break in service requirement is the retiree who agrees,

pursuant to the provisions of the retirement ordinances, to waive his/her retirement allowance during the period of his/her reemployment.

b. No retiree may be reemployed by the same department head under whom the employee was serving upon retirement unless:

- a) the retiree agrees to waive his/her annuity while reemployed;
- b) if the reemployment would qualify him/her for membership in a retirement system other than that from which he/she retired; or
- c) if the reemployment is in an exempt-benefits-eligible position with maximum hours worked not to exceed 1560 per calendar year unless authorized by the County Executive or his/her designee.

c. No retiree will be permitted to participate in a second County retirement system.

d. The combined total of the retiree's annuity and salary after reemployment may not exceed the cap established by the Board of Supervisors.

-5 A merit employee who resigns in order to join the military forces of the United States or who is inducted into such service is entitled, upon discharge, to be restored to his/her former position or to a position of like seniority, status and pay in accordance with guidelines set forth in federal law.

### 9.3 Reinstatement

An employee eligible for reinstatement as defined in Chapter 2 may be reinstated in accordance with Chapter 4 to the position or class formerly held; provided that no other employee with merit status in the class to which such person is being returned shall be demoted or laid off in order to make such a reinstatement possible.

### 9.4 Lay-Offs

-1 Definitions:

a. Active Class: The class to which the employee is assigned when he/she becomes subject to the Reduction-in-Force Procedure. For the purpose of this procedure the active class for employees serving in an acting promotional capacity shall be the employee's class prior to being temporarily promoted. The active class for employees who are serving under a non-competitive underfill agreement shall be the class at which the position is authorized to be filled (i.e., the higher class). The active class for employees who are serving under a competitive underfill agreement shall be the class in which the employee is currently serving (i.e., the lower class).

b. Continuous Service: Employment including merit service with the Fairfax County Public School System, without interruption except for absences on approved leaves, absences to serve in the Armed Forces of the United States or absences of less than one

calendar year when followed by reemployment or reinstatement. Service prior to normal or early retirement from a County retirement system shall not be counted.

c. Department: For the purpose of this section, shall include all offices, divisions, and other work units, which are under the control of a single department head.

d. Minimum Qualifications: Qualifications as stated in the official class specifications approved by the County Executive.

e. Month: For the purposes of this section, month shall be defined as 30.4166 days (365 days ÷ 12 months.)

f. Probationary Employee: For the purpose of this section, probationary employee shall be defined as an employee serving the initial probationary period with the County.

g. Secondary Class: A class in which an employee is not actively employed when he/she becomes subject to this procedure which is equal to or lower in grade than the active class and in which the employee has previously been assigned for a period of one year or more during his/her continuous service period with the County. Secondary class includes lower classes within the active class series. Secondary class also includes lower classes within the class series where the employee was previously assigned for a period of one year or more. Secondary class shall not include any class from which the employee was removed for disciplinary or inadequate performance reasons.

h. Seniority: The sum of the employee's continuous service points. An employee shall receive one point for each month of merit employment during the employee's period of continuous service. Credit will be given for partial months. Credit for employment time shall be deducted on a year-for-year basis (12 points) for each pay increase denied or annual performance review with a rating of unsatisfactory (deficient or unacceptable rating for public safety employees or non- public safety employees ratings prior to July 1, 2000) received within the 3 years prior to the date the County Executive invokes the RIF.

## -2 Reduction-In-Force

The County Executive may invoke a reduction-in-force procedure (RIF) when he/she determines that there is an excess number of employees under his/her supervision and control, as a result of, for example, the abolishment of a position(s), the lack of funds, or the lack of work.

Additionally, when the Human Resources Director approves the abolition of a position held by a non-probationary merit employee in the competitive service, the procedures in this section are applicable. The reduction-in-force procedure shall not be utilized as long as there are probationary employees in the department and in the active class in which the reduction-in-force is to be implemented. All positions held by exempt-benefits-eligible, , exempt-temporary employees as well as other positions held by probationary employees in the affected department shall be examined by the department head to determine if separation of such employees will provide placement opportunities for non-probationary employees in their department affected by the reduction-in-force.



### -3 Reduction-In-Force Procedures

- a. The department head or deputy shall recommend the class (es) within a department in which there are an excess number of employees. Final approval of the affected classes and numbers to be reduced rests with the County Executive or his/her designee.
- b. When advised by the County Executive that a reduction-in-force is under consideration, the Human Resources Director is authorized to suspend the filling of any vacant position within the classes of work to be affected by the scheduled reduction-in-force action, as well as all lower graded classes within all class series of which said affected classes are a part and any other class in which placement of displaced employee may be likely. Notwithstanding any other provisions in this procedure, the County Executive may suspend indefinitely the filling of vacant positions when it is deemed to be in the best interest of the County to do so.
- c. Employees in classes designated as excess shall be subject to the following procedures provided that if there is more than one position available, the Human Resources Director shall designate the position to which the employee shall be assigned:
  - (1) The Human Resources Director shall rank the employees in the departments with excess positions according to seniority, as defined in 9.4-1h, and establish seniority list for each affected class in each affected department. The least senior employees in an affected class in an affected department shall be subject to the steps listed below, regardless of whether their specific position is to be abolished. Once it is determined which employees are subject to the reduction-in-force procedure based upon their seniority and the number of excess positions, the Human Resources Director shall rank all of them, regardless of department, according to seniority, as defined in 9.4-1h. All employees to be placed shall be processed through each step listed below, starting with those with the most seniority, before progressing on to the next step in the procedure.
  - (2) An employee in a class designated as excess shall be transferred to a vacancy in his/her class in any department. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority. Transfer to such vacancy shall be mandatory and if refused the employee shall be terminated.
  - (3) An employee in a class designated as excess shall be transferred to a vacancy for which he/she meets the minimum qualifications in another class at the same pay grade in any department. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority. Transfer to such a vacancy is voluntary.
  - (4) If there is no vacancy as specified in 2 above and the employee is not transferred as indicated in 3, an employee in a class designated as excess shall

displace a probationary employee in his/her class in another department. Transfer to such a position is mandatory and if refused, the employee shall be terminated. If more than one probationary employee is serving in the class, the employee with the least seniority shall be displaced first. Probationary employees so displaced shall be terminated.

- (5) If there are no opportunities as identified in 2 and 4 above, and the employee is not transferred as indicated in 3, the employee shall have an opportunity to transfer to vacancies in his/her or another department in secondary and other classes which are at a lower grade than his/her active class. Transfer to such vacancy shall be voluntary. The employee must meet the minimum qualifications for the vacancy to which he/she desires to transfer. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority.
- (6) If there are no opportunities as specified in 2 and 4 above, and the employee does not utilize or is not eligible to utilize the procedures set forth in 3 and 5, an employee in a position designated as excess shall displace a probationary employee in a position in a secondary class in his/her department or another department. The employee must accept the first available displacement opportunity. Displacement opportunities will be available beginning with the secondary class with the highest pay grade and continuing in descending pay grade order. Transfer to such positions shall be voluntary. If more than one probationary employee is serving in the secondary class, the employee with the least seniority shall be displaced first. Probationary employees so displaced shall be terminated.
- (7) If placement pursuant to 2 and 4 is not available and the employee does not utilize or is not eligible to utilize the procedures set forth in 3, 5, and 6, then the employee is eligible to bump within secondary classes within his/her department, according to the following procedures:
  - (a) An employee may not bump in a secondary class wherein the employee has elected not to accept placement under Sections 5 and 6 above.
  - (b) An employee with more seniority shall be eligible to bump within his/her department in secondary classes as defined in 9.4-1g in which there is presently assigned a person with less seniority. The employee must accept the first available bumping opportunity. Bumping opportunities will be available beginning with the secondary class with the highest pay grade and continuing in descending pay grade order. If more than one bumping opportunity at the same pay grade level is available; the employee displaced shall be the one with the least seniority. Failure to accept a bumping opportunity as defined herein results in lay off of the employee in the position designated as excess.

- (c) An employee who is bumped pursuant to this procedure will be eligible to utilize the procedure set forth in this policy.

#### -4 Transition Period Following Placement

If an employee, displaced by a reduction-in-force and subsequently placed in a new position in accordance with the procedures outlined above, is separated for unsatisfactory performance during the first year following placement in the new position, he/she shall be laid off and entitled to the reemployment, notice and severance pay benefits outlined in this procedure.

#### -5 Reemployment

An employee who is demoted, who does not successfully complete the one year transition period following a RIF placement due to unsatisfactory performance, or is unable to utilize a transfer or bumping opportunity under these procedures and is laid off shall have his/her name placed on the reemployment list for his/her active classification. All employees on the reemployment list for a specific job class shall be certified for vacancies in that class. The certification list shall include the seniority rating for each employee; however, selection for a specific vacancy shall be at the sole discretion of the department head or deputy. All employees on the reemployment list for a specific job class must be offered reemployment prior to the certification or selection of applicants not on the reemployment list. Employees who return to apposition in their active class under this procedure shall be treated as reinstatements with respect to pay and leave accrual. If an employee is offered and rejects an opportunity for reemployment in the active class, his/her name shall be removed from all reemployment lists. The employee's salary shall not be affected.

In addition, at the employee's option, his/her name may be placed on the reemployment lists for secondary classifications as defined in this procedure. Should a vacancy occur in such a secondary class, employees on the reemployment list shall be certified for the vacant position but are not guaranteed placement. Selection for such positions shall be at the discretion of the department head or deputy. If an employee is offered and rejects an opportunity for reemployment in a secondary classification, his/her name shall be removed from only the referenced list. Employees shall remain on reemployment lists created under this procedure for two years or until the employee accepts placement in the active class. In no case, however, shall an employee be eligible for non-competitive appointment to a position higher in pay grade than the position in which the employee was serving at the time of layoff or demotion.

Exempt-benefits-eligible and exempt-temporary positions that become available in a class in which there are persons with reemployment rights will be offered to persons with reemployment rights in that classification on the basis of seniority. If an employee accepts an exempt-benefits-eligible or exempt-temporary position, he/she will remain eligible for reemployment as described above.

#### -6 Pay Retention Provisions

An employee who accepts a demotion under this procedure shall continue to receive the salary he/she had been receiving prior to the demotion until the employee accepts another position in

the former pay grade or in a pay grade in a higher range of pay than the former pay grade. The employee shall not be entitled to an increase in salary until his/her salary falls below the maximum rate of pay for the new pay grade. The performance pay increase date shall not be affected by the demotion. If the employee is returned to his/her active class, the rate of pay shall not change upon return to the active class.

#### -7 Notice and Severance Pay

a. Prior to lay-off, a merit employee shall be given at least 30 calendar days notice. The employee's notice of lay-off shall be accomplished by hand delivery or by mailing by certified mail to the employee's listed address, a written communication notifying him/her of the lay-off.

b. Severance pay to be paid at the rate of pay at time of lay off will be granted to non-probationary merit employees laid off in accordance with this procedure according to the following formula:

YEARS OF SERVICE	WEEKS SEVERANCE PAY
2 to 5	3 weeks pay
6 to 10	4 weeks pay
11 to 15	5 weeks pay
16 or more	6 weeks pay

Unless otherwise specified by the Board of Supervisors, severance pay shall be forfeited by the employee who declines a transfer, reassignment or demotion to another vacant position or who declines a bumping opportunity prior to the effective date of any such separation due to a reduction-in-force. Upon the effective date of the separation, an employee shall be entitled to receive the employee's total severance pay allowance at bi-weekly intervals until the total severance pay to which the employee is entitled has been exhausted. Employees will not accrue leave or other benefits related to severance pay. Severance payments to an employee shall cease, if not exhausted, upon the reemployment of the employee to a position in the competitive service.

#### -8 Workforce Composition Review

Due to the transfers, demotions and bumping that occur as a RIF is implemented; it is not possible to ascertain the impact on the workforce composition until the RIF has been completed. At that time, the County Executive shall examine the results of the reduction in force to determine if the County's workforce composition has been significantly altered and if so, shall recommend appropriate future changes to the County Diversity Affirmative Action Plan.

#### -9 Miscellaneous

- a. When advised by the County Executive of a reduction-in-force, the Human Resources Director or his/her designee shall prepare a reduction-in-force roster ranking each employee within the affected class(es). This roster shall be open for employee inspection.
- b. Ties in seniority shall be resolved by ranking tied employees on the basis of the last 4 digits of their social security number. The employee ranked first numerically would be considered for lay-off first. Further ties shall be determined by lot.
- c. Lateral transfers under this procedure shall not be mandatory if the number of scheduled hours of the vacant position or the position occupied by a probationary employee to be displaced differ from the number of scheduled hours of the employee's current position.
- d. Notwithstanding any other provision, the Human Resources Director is authorized to review records related to the reduction-in-force procedure and investigate allegations of unfair application of these procedures.

#### 9.5 Unsatisfactory Service Separations

-1 A department head may separate an employee with an unsatisfactory service separation whenever the work habits, attitudes, production or personal conduct of an employee falls below the desirable standards for continued employment in the current position. A resignation initiated by an employee may be designated as unsatisfactory service by the department head if adequate grounds exist.

~~-2 Reasons for unsatisfactory service separations shall include:~~

~~a. Insufficient advance notice prior to resignation;~~

~~b.;~~

~~c. Unsatisfactory performance in the duties of the position; reasons;~~

~~d. C/behaviors;~~

~~ee. Other Undesirable behavior or other similar reasons not of a degree requiring dismissal.~~

-~~23~~ Employees who have completed their initial probationary periods and who are separated for unsatisfactory service are entitled to an advance notice of ten business days in accordance with the criteria set forth in Section 16.6.

-~~34~~ Employees separated for unsatisfactory service shall be paid for all compensatory time and annual leave credits for which they are eligible according to the rules governing such leave, except as provided in the section on resignation without sufficient notice.

-~~45~~ If an employee who has been separated for unsatisfactory service applies to the Department of Human Resources for reemployment is selected to interview for the position, the hiring manager/appointing authority shall investigate the facts surrounding his previous separation with his/her former department head or other informed supervisor as part of the standard reference check process. The employee may be certified for any class for which he/she is qualified, including his/her former class only when it appears highly probable that the reason for his/her

unsatisfactory service separation will not recur. ~~The prospective department head or deputy shall be notified prior to the time of interview with the employee of the facts surrounding the prior unsatisfactory service separation as stated on the separating personnel action form.~~

#### 9.6 Restrictions on Activities of Former Employees

-1 Restrictions; Authority therefore. For one year after their terms of office have ended or their employment ceased, former officers and employees of Fairfax County are prohibited from assisting for remuneration a party, other than a governmental agency, in connection with any proceeding, application, case, contract, or other particular matter involving the County or an agency thereof, if that matter is one in which the former officer or employee participated personally and substantially as a County officer or employee through decision, approval, or recommendation; provided, however, the provisions of this section shall not limit or restrict those former County employees who are displaced, laid off or whose employment with the County is terminated as a result of the award of a privatization contract from accepting employment with the contractor who is awarded such contract unless such an employee was involved personally and substantially in the selection of the contractor through decision, approval, or recommendation while employed by the County. The authority for these restrictions is contained in VA. Code, Section 15.2-810.

-2 Applicability. The term "officer or employee," as used in this section, includes members of the Board of Supervisors, County officers and employees, and individuals who receive monetary compensation for service on or employment by agencies, boards, authorities, sanitary districts, commissions, committees, and task forces appointed by the County Board of Supervisors.

-3 Definitions. For purposes of the Article, the following phrases shall have the following meanings:

a. "Assisting for remuneration" shall mean doing anything that reasonably could be expected to help or aid a party, not a governmental agency, to obtain anything of benefit in any proceeding, application, case, contract or other matter involving the County, or any of its agencies, where the former officer or employee receives anything of value in consideration of, as compensation for, or as a result of his/her providing that help or aid. The term "assisting" shall include, but is not limited to, providing information that a former officer or employee obtained by reasons of his/her employment with the County and that is either protected by the attorney client privilege, is confidential as a matter of law, or is exempt from disclosure under the Virginia Freedom of Information Act, VA. Code Section 2.1-340, et. seq.

b. "Participated personally and substantially" means direct participation, including the participation of a subordinate when actually directed in the matter by the former officer or employee, and means that the former officer or employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. "Substantially" requires more than official responsibility (although official responsibility may be a factor in determining the substantiality of the involvement), knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue, and is based not only on the effort devoted to matter, but on the importance of the

effort. As used in this definition, "official responsibility" means direct administrative or operating authority, whether intermediate or final, exercisable either alone or with others and either personally or through subordinates, to approve, disapprove, or otherwise direct County actions.

c. Privatization contract shall mean a contract between the County and a person, firm, corporation or other legal entity to provide services previously performed by County employees which results in the laying off of merit employees or the termination of exempt employees who had been providing those services.

-4 Defense. It shall be an affirmative defense to a criminal charge under this Section that, prior to providing assistance for remuneration to a party other than a governmental agency in connection with a matter that he/she personally and substantially participated in as a County officer or employee, the former officer or employee requested and received from the County Executive a determination that the proposed assistance for remuneration did not fall within the prohibitions of this section. Such determination is a defense only to the extent that the former officer or employee fully and completely disclosed all material facts and circumstances in his/her request for determination. Requests for such a determination shall be in writing. The County Executive shall render his determination in writing no sooner than ten (10) days after receipt of the request and after obtaining the opinion of the County Attorney. Such determinations shall be kept on file in the Office of the Clerk to the Board of Supervisors and be indexed under the name of the former officer or employee.

## CHAPTER 10

### Leave

#### 10.1 Leave Defined

Leave is any authorized absence during regularly scheduled work hours that has been approved by proper authority. Leave may be authorized with or without pay. Absence without approval is considered unauthorized absence.

#### 10.2 Leave Policy

All merit employees are encouraged to take annual leave for vacation purposes of two consecutive weeks each year. During the year, careful consideration shall be given to the desire and needs of employees in the granting of shorter periods of annual leave. Department heads or designees shall grant leave in accordance with these rules on the basis of the work requirements in the department, and whenever possible, the personal wishes of the employee.

#### 10.3 Maintenance of Leave Records

The Department head or his/her designee shall be responsible for the maintenance of accurate leave records. Such records shall be kept on a form prescribed by the Human Resources Director, who may periodically inspect them to insure that departments are adhering to the provisions of these rules.

#### 10.4 Procedures for Requesting Leave

- 1 For all leave, with the exception of official holiday, unscheduled sick and administrative emergency leave, a request indicating the kind of leave, duration and dates of departure and return must be approved prior to the taking of the leave. The request for leave should be submitted to the department head or designee the same number of days prior to beginning the leave as the number of days leave requested. In the case of unscheduled sick leave, the request shall be completed and submitted for approval immediately upon the employee's return to duty.
- 2 Unless an absence is approved by the department head or his/her designee, an employee shall not be paid for any absences from scheduled work hours.

#### 10.5 Unauthorized Absence

- 1 An employee who is absent from duty without approval shall:
  - a. Receive no pay for the duration of the absence;
  - b. Be subject to disciplinary action, which may include dismissal.



- 2 It is recognized there may be extenuating circumstances for unauthorized absence and due consideration shall be given each case.
- 3 Failure of an employee to report for work at the expiration of an authorized leave or to request an extension of such leave shall be considered an absence without leave.

#### 10.6 Types of Leave

The following types of leave, and no other, are officially established:

- 1 Annual leave (Section 10.7 - 10.12);
- 2 Sick leave (Section 10.13 - 10.21);
- 3 Extraordinary sick leave (Section 10.16);
- 4 Parental Leave (Section 10.23)
- 5 Leave for injury in line of duty (Section 10.24);
- 6 Bereavement leave (Section 10.25);
- 7 Compensatory leave (Section 10.26 - 10.28);
- 8 Military leave (Section 10.29);
- 9 Civil leave (Section 10.30);
- 10 Volunteer activity leave (Section 10.31);
- 11 Leave without pay (Section 10.32);
- 12 Education leave (Section 10.33);
- 13 Holiday leave (Section 10.34 - 10.35);
- 14 Administrative leave (Section 10.36);
- 15 Leave for inclement weather or other emergencies (Section 10.37).

#### 10.7 Granting Annual Leave

Department heads or designees shall grant annual leave with pay in accordance with the following provisions:

- 1 Annual leave shall normally be granted unless a department head or designee specifically defers an employee's absence because of work requirements.
- 2 Annual leave shall not exceed the total amount credited to an employee at the beginning of the pay period in which the absence occurs.

#### 10.8 Crediting of Annual Leave

Annual leave shall be credited as follows for merit employees and senior managers as designated in Chapter 4.

- 1 During pay periods in which a merit employee is in paid status for at least one hour, annual leave shall be credited according to scheduled hours. Incumbents in positions with 80 scheduled work hours per pay period will receive the following annual leave credits, based on length of service:
  - a. Less than three years of service receive four (4) hours;
  - b. Three (3) years but less than fifteen (15) years receive six (6) hours;
  - c. Fifteen (15) and greater years of service receive eight (8) hours.
- 2 Merit employees with scheduled hours other than 80 hours per pay period shall receive leave prorated according to total scheduled hours. Employees working in more than one merit position will accrue annual leave in all positions.
- 3 Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting annual leave.
- 4 Employees reemployed or reinstated within one calendar year of their separation in good standing should have their annual leave computed on the basis of total years of service. Revised leave computation dates shall be rounded to the nearest day.
- 5 Employees with less than ten (10) years of service may accumulate annual leave up to 240 hours. Employees with ten (10) or more years of service may accumulate annual leave up to 320 hours.
- 6 Annual leave in excess of the limits imposed by this section existing at the end of each calendar year shall be converted to sick leave.
- 7 Employees shall not receive dual compensation from the County for annual leave.
- 8 Employees designated as senior managers shall receive 208 hours (26 days) of annual leave at the beginning of each calendar year. Senior managers appointed after the start of a calendar year shall receive annual leave credit on a prorated basis for that year.

#### 10.9 Debiting Annual Leave

Annual leave shall be debited as follows:

- 1 The amount of annual leave to be debited shall be computed on the basis of the exact number of days or hours an employee is scheduled to work in the period when leave is taken.
- 2 Annual leave shall be debited in no less than one-tenth hour units.
- 3 Overdrawn annual leave shall be debited in the following order: compensatory leave, leave without pay.

10.10 Transfer of Annual and Sick Leave

Annual or sick leave may be transferred from one employee to another employee in the following situations:

- 1 Annual or sick leave may be transferred from one employee to another when the employee-in-need has exhausted his/her sick leave and is facing an absence without pay due to his/her extended illness or that of an immediate family or household member as defined in Chapter 2, with the following provisions:
  - a. Annual or sick leave may be transferred to any County employee eligible to receive sick leave.
  - b. Employees transferring sick leave may not transfer more than 80 hours in any calendar year.
  - c. The employee transferring annual or sick leave relinquishes all rights to that leave. Annual or sick leave transferred under this policy cannot be recovered at a later date.
  - d. An employee may not transfer leave to his/her immediate supervisor or reviewing authority for performance evaluations.
  - e. Unused transferred leave may be transferred to another leave recipient or returned to the donor.
  - f. Transferred leave may be granted only to employees who have exhausted their sick leave balance and whose combined annual and compensatory leave balance does not exceed 80 hours (120 hours for 24-hour shift employees).
  - g. This policy does not preclude or in any way limit the right of an employee to apply for advanced or extraordinary sick leave under existing procedures.
  - h. Final approval of leave transfer requests rests with the department head or designee.

- i. An employee who returns to work before using all received transferred leave may use the balance for subsequent treatment or recuperation from the ailment for which the leave was granted. This balance may be used for up to one year from the date transferred leave was approved.
- 2 Annual leave may be transferred from one employee to another when the employee-in-need is a member of the National Guard or an organized military reserve of the United States who has volunteered or been ordered to active duty pursuant to an order by the President of the United States or a competent State authority. The transfer of annual leave under this Section is subject to the following conditions:
  - a. Annual leave may be transferred to any merit County employee who is a member of the National Guard or an organized military reserve of the United States.
  - b. The employee transferring annual leave relinquishes all rights to that leave. Annual leave transferred under this policy cannot be recovered at a later date. Once the leave has been used by the employee, it cannot be recovered.
  - c. An employee may not transfer leave to his/her immediate supervisor or reviewing authority for performance evaluations.
  - d. Transferred annual leave may only be used when the employee called to active military duty has reduced his/her accrued annual and compensatory leave to a combined balance no greater than 80 (120 hours for 24-hour shift employees) hours.
  - e. Final approval of leave transfer requests rests with the department head or designee.

#### 10.11 Effect of Transfers on Annual Leave Credits

A merit employee who transfers from one department to another shall have his/her total annual leave credits transferred to the new department.

#### 10.12 Effect of Separation on Annual Leave Credits

Upon separation, an employee shall be paid for the unused portion of his/her accrued annual leave, except as modified by the rules governing resignation without sufficient notice.

#### 10.13 Sick Leave Policy

Sick leave shall be used when an employee is incapacitated by sickness or injury; for childbirth, placement of a child for adoption or foster care; for medical, dental, or optical diagnosis or treatment; for necessary care and attendance or death of a member of the

employee's immediate family or household member, as defined in Chapter 2; exposure to a contagious disease when the attendance at duty jeopardizes the health of others. Sick leave for childbirth and adoption/foster care placement shall comply with the provisions in Section 10.22 of these Regulations.

10.14 Granting Ordinary Sick Leave

Department heads or designees shall grant sick leave with pay to merit employees in accordance with the following provisions:

- 1 Ordinary sick leave shall not exceed the total amount credited to an employee at the beginning of the pay period in which the absence occurs;
- 2 Leave without pay may be granted for sickness extending beyond the earned credit;
- 3 For merit employees' annual or compensatory leave credits may be used for sick leave.

10.15 Granting Advance Sick Leave

- 1 Advance sick leave, not to exceed 192 hours (288 hours for 24 hour shift employees), may be granted to merit employees qualified to earn ordinary sick leave in cases of serious disability or ailments of the employee, the spouse, minor or disabled child, parent or parent-in-law of an employee when it is to the advantage of the County to do so.
- 2 Advance sick leave may be granted to employees whose combined annual and compensatory leave balance does not exceed 80 hours.
- 3 Advance sick leave shall not normally be advanced to a merit employee qualified to earn ordinary sick leave during his/her first year of service with the County.
- 4 Advance sick leave shall not be approved retroactively to restore hours previously charged to the employee's annual or compensatory leave balance for an ailment or disability.
- 5 When a department head or designee believes that a request for advance sick leave is justified, a personnel action form shall be prepared with the following supporting documentation:
  - a. The circumstances and the need for such leave verified by a physician's statement;
  - b. The time and date when accrued sick leave will be exhausted;

- c. The number of hours of advance sick leave requested and date to which such leave will extend;
  - d. Probable return to duty and prospect for continued employment;
  - e. Recommendation of the department head or designee;
  - f. Statement notifying employee of the repayment requirement if advance sick leave is approved.
- 6 The Human Resources Director shall consider the information provided and make a recommendation to the County Executive.
  - 7 Advance sick leave shall be approved by the County Executive or his/her designee.
  - 8 Advance sick leave shall be charged to future accruals of sick leave. An employee may not use regular sick leave until the approved advance sick leave is repaid.
  - 9 An employee who returns to work before using all approved advance sick leave may use the balance for subsequent treatment or recuperation from the ailment for which the leave was granted. This balance may be used for up to one year from the date advance sick leave was first used.
  - 10 An employee returning to work before using all approved advance sick leave may request an adjustment to his/her leave record to eliminate or reduce the remaining approved advance sick leave.
  - 11 When an employee who receives advance sick leave leaves County service for any reason and the advance sick leave has not been repaid, the County will be financially reimbursed for the balance of sick leave remaining, except in the case of full disability or death.

#### 10.16 Granting Extraordinary Sick Leave

- 1 When the above provisions do not adequately allow for the illness or injury of a merit employee qualified to earn sick leave, and when the department head or designee believes that it is to the advantage of the County to do so, he/she may request of the County Executive, through the Human Resources Director, that the employee be granted an extraordinary sick leave not to exceed 4 hours (6.0 hours for 24-hour shift employees) for each month of service.
- 2 Extraordinary sick leave shall be recorded on the employee's leave record but shall not be charged to future accrued leave of any kind.

#### 10.17 Crediting Sick Leave

Sick leave shall be credited as follows for merit employees and senior managers as designated in Chapter 4.

- 1 During pay periods in which a merit employee is in paid status for at least one hour, sick leave shall be credit based on scheduled hours. Incumbents in positions with 80 scheduled work hours per pay period will receive a four (4) hour sick leave credit.
- 2 Merit employees with scheduled hours other than 80 shall receive sick leave prorated accordingly. Employees holding multiple merit positions are eligible to accrue sick leave on scheduled hours in all positions.
- 3 Unused sick leave may be accumulated without limit.
- 4 Employees, when separated in good standing and reemployed or reinstated within one calendar year of separation, shall have their unused sick leave reinstated.
- 5 Senior managers shall receive 104 hours (13 days) of sick leave at the beginning of each calendar year. Sick leave balances granted senior managers appointed after the start of a calendar year shall be prorated accordingly.
- 6 Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting sick leave.

#### 10.18 Debiting Sick Leave

Sick leave shall be debited as follows:

- 1 The amount of sick leave to be debited shall be computed on the basis of the exact number of days or hours an employee is scheduled to work in the period when leave is taken.
- 2 Sick leave shall be debited in no less than one-tenth hour units.
- 3 Overdrawn sick leave shall be debited in the following order: annual leave, compensatory leave, and leave without pay.

#### 10.19 Effect of Transfer on Sick Leave Credits

A merit employee who transfers from one department to another shall have his/her total sick leave credits transferred to the new department.

#### 10.20 Effect of Separation on Sick Leave Credits

- 1. Sick leave credits shall not be paid to an employee upon separation.

2. Upon application for retirement, an employee's sick leave credits can be applied towards membership service credit at the rate of one month of credit for each 172 hours of accrued unused sick leave, and prorated for any fraction of this amount.
3. Employees who are participants in the Deferred Retirement Option Plan may apply all sick leave credits towards membership service credit for retirement, or retain 40 hours as an initial sick leave balance, while the remaining sick leave credits are applied towards membership service credit for retirement.

#### 10.21 Other Factors Relative to Sick Leave

- 1 Reporting of sickness.  
Employees who are absent from duty for reasons which entitle them to sick leave shall notify their respective supervisors within the time frame established by the Department unless physically unable to do so. Upon return to work, the employee shall submit immediately to his/her supervisor an authorization for leave form.
- 2 Medical certificate.  
A department head or designee may require a medical statement for sick leave when it occurs before or after a holiday or other scheduled day off, or when it is in excess of two workdays. When an employee has a record of repetitious usage of short amounts of sick leave over an extended period a department head or designee may require a medical certificate for each day of sick leave taken. Employees shall be provided advance notice that a medical certificate will be required for future absences.
- 3 The department head or designee may require an employee returning from sick leave to take a medical examination, or, with the concurrence of the Human Resources Director, on such other occasions that he/she deems it in the best interest of the County. The medical examination shall be given by a medical doctor designated by the Human Resources Director or his designee.
- 4 Investigation of sickness. A department head or designee may investigate the alleged illness of an employee absent on sick leave.
- 5 False or fraudulent use of sick leave. False or fraudulent use of sick leave shall be cause for disciplinary action against the offending employee. Such disciplinary action may include dismissal.
- 6 An employee on annual leave who presents a medical certificate giving the dates of illness may have that portion of his/her annual leave converted to sick leave.
- 7 Conversion of sick leave. Conversion of sick leave to annual leave shall not be permitted.
- 8 State worker's compensation insurance. An employee, who is eligible to receive state



worker's compensation payments beyond the year of injury leave, may elect to use accumulated sick leave and/or annual leave. The use of such leave will be coordinated with worker's compensation payments so that the total amount received from both sources does not exceed the employee's full wage or salary until such sick and/or annual leave is depleted or until the employee returns to work.

Leave hours used will be calculated only on that portion of total compensation over the workers' compensation payment. While using sick and/or annual leave the employee will continue accruing sick and annual leave.

#### 10.22 Family and Medical Leave

Eligible employees, as defined by the implementing regulations of the Family and Medical Leave Act, may take job-protected, unpaid leave, or substitute appropriate paid leave, for up to a total of 12 workweeks in any 12 months for the birth of a child, for the placement of child for adoption or foster care, because the employee is needed to care for a family member (child, spouse, parent or parent-in-law) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, parent or parent-in-law is a covered military member on covered active duty. In addition, eligible employees may take job-protected, unpaid leave or substitute appropriate paid leave for up to a total of 26 workweeks in a single 12-month period to care for a covered service member with a covered serious injury or illness. The terms "covered military member," "covered active duty," and "covered serious injury or illness" shall be defined as set forth in the Family and Medical Leave Act as amended.

Family and medical leave consists of any combination of sick leave, annual leave, compensatory leave, and leave without pay. Sick leave used for the purpose of family or medical leave must conform to the requirements in Section 10.13. If parental leave (Section 10.22) is taken for the birth, adoption, or foster care placement of a child, the leave must be applied towards the employee's Family and Medical Leave entitlement if applicable.

- 1 Family and medical leave shall be granted to any merit employee for a period of up to twelve work weeks over a twelve-month period. The twelve-month period during which family leave may be taken for the birth of or placement of a child shall expire at the end of the twelve-month period beginning on the date of birth or placement. Service member caregiver leave is granted for up to 26 workweeks during a single 12-month period on a per-covered service member and per-injury/illness basis. Work week is defined as the hours an employee is regularly scheduled to work in a seven (7) consecutive day period.
- 2 The twelve-month period for family and medical leave usage shall commence with the first use of family or medical leave. The single twelve-month period for service member caregiver leave shall commence with the first day the eligible employee

takes service member caregiver leave and ends 12 months after that date regardless of the 12 month period established for prior FMLA qualifying events.

- 3 Requests for leave beyond 12/26 work weeks are subject to regular leave policies with approval determined by the department head or designee.
- 4 Requests for family and medical leave must be made in writing and submitted 30 calendar days in advance whenever the necessity for such leave is foreseeable.
- 5 The mother may take six (6) weeks of sick leave immediately following the birth of her child. Use of additional sick leave requires medical certification. The father may take four (4) weeks of sick immediately following the birth of his child. Use of additional sick leave requires medical certification.
- 6 Mothers and/or fathers may take four (4) weeks of sick leave immediately following placement of a child for adoption or foster care. Use of additional sick leave requires medical certification.
- 7 Family leave to include exigency leave may be taken on an intermittent or reduced schedule basis with the approval of the department head or designee. Medical leave may be taken on an intermittent or reduced schedule basis if certified as necessary by the health provider.
- 8 At the request of the department head or designee, the employee shall provide certification from a health care provider in connection with a request for medical leave. Additionally, an employee may be required to provide medical documentation concerning the continuing necessity for medical leave and in connection with any issue concerning his/her ability to return to work at the expiration of medical leave.
- 9 At the request of the department head or designee, the employee shall provide certification of a qualifying exigency in connection with a request for exigency leave.
- 10 At the discretion of the department head or designee, an employee requesting family leave for the birth or adoption of a child may be required to use accrued annual or sick leave prior to use of leave without pay. Employees requesting family or medical leave for all other reasons may be required to use accrued sick, and/or annual leave prior to use of leave without pay.
- 11 During the leave period, the County will provide coverage under the health insurance plan which the employee had selected prior to going on leave at the level and under the conditions coverage would have been provided if the employee had not gone on leave.
- 12 If the employee fails to return to work for a reason other than the continuation,

recurrence, or onset of a serious health condition for him or herself, children, spouse, parents, parents-in-law, or injured family service member or other circumstances beyond the control of the employee, the County may recover the employer's contribution to the health insurance premium paid during any period of unpaid leave.

- 13 No employee shall be prevented from returning to work prior to the expiration of the 12/26 week period.
- 14 Employees shall return to the position vacated or, with the approval of the Human Resources Director, to another position in the same class.
- 15 Employees who do not plan to return to work should notify their department no later than at the expiration of the leave. Failure to return to work without giving notice at the expiration of the leave without good cause may result in an unsatisfactory service separation.
- 16 This regulation shall be construed as to ensure compliance with the minimum requirements of the Family and Medical Leave Act of 1993.

#### 10.23 Parental Leave

Paid leave granted for the birth, adoption, or foster care placement of a child. Merit employees are provided 80 hours per qualifying event (120 hours for full time 24-hour shift fire protection employees). Merit employees scheduled to work less than 80 hours per pay period shall have parental leave pro-rated on the basis of scheduled hours. The parental leave must be applied towards the employee's Family and Medical Leave entitlement if applicable. If an employee has already exhausted that entitlement for the qualifying period, the mother or father is still eligible to take the 80 hours of parental leave (120 hours for full time 24-hour shift fire protection employees).

Mothers and/or fathers are entitled to take up to 80 hours of paid parental leave (120 hours for full time 24-hour shift fire protection employees) up to 12 months immediately following the birth, adoption, or foster care placement of a child. Such time will run concurrently with Family Medical Leave (FML) to the extent that FML is available to the employee. In some instances when deemed medically necessary, parental leave may be taken prior to the birth. If an employee has already exhausted FML for the qualifying period, the mother or father is still eligible to take the 80 hours of parental leave.

#### 10.24 Leave for Injury in Line of Duty

- 1 A merit employee who is injured while performing the duties of his/her position, without fault or negligence on his/her part, and who is accepted as compensable under the Virginia Worker's Compensation Act, shall be granted injury leave with pay, as approved by the County Executive or his/her designee. Such eligibility for injury leave with pay begins on the first day of injury and shall expire not later than twelve calendar

months from the original injury date. Reinjuries do not extend the period of eligibility for injury leave. Such leave requires a medical certificate from an approved licensed physician authorized by the County to treat worker's compensation claims. This certificate must set forth the nature and extent of the injury and the probable period of disability.

- 2 Extensions of injury leave beyond twelve calendar months may be granted by the department head or designee. In no case shall the employee be granted injury leave in excess of 2080 (2912 for 24-hour shift fire protection employees) total hours. In evaluating such requests, the following elements shall be considered:
  - a. The circumstances in which the injury occurred to include consideration of the nature and extent of the injury;
  - b. The nature and extent of treatment providing that the employee has continued under the regular care of the authorized physician requiring an office visit at minimum intervals of at least once every three months; and providing that the medical records clearly substantiate a relationship between the current prescribed treatment and the original injury;
  - c. The likelihood of the employee's return to duty;
  - d. The employee's past injury, leave and service record;
  - e. The employee's compliance with injury leave policies and requirements.
- 3 When possible, employees who have been injured but are not totally disabled, will be placed in temporary assignments without loss of pay with duties that fall within the medical restrictions prescribed by the treating physician.
- 4 When injury leave is used other leave benefits shall not accrue.
- 5 An employee on injury leave is expected to follow medical procedures and complete necessary forms/reports so as to insure that worker's compensation payment will be credited to the appropriate account.
- 6 An employee on injury leave is specifically prohibited from engaging in activities that may impair his/her recovery. This includes:
  - a. Engaging in strenuous recreational or other physical activities without the approval of the authorized physician.
  - b. Being employed or self-employed to perform work of any kind without the prior written approval of the authorized physician and the Human Resources Director.

- 7 An employee on injury leave is not required to remain at home, but is required to be available for contact by his/her supervisor and to notify the supervisor of any change of residence during authorized absence.
- 8 Failure of an employee on injury leave to follow prescribed procedures or to accept appropriate medical treatment, vocational rehabilitation, or medically appropriate temporary assignments, may result in disallowal of full salary continuation and reversion to straight worker's compensation wages, if eligible, for the time period of noncompliance, with the employee being liable for repayment of the monetary differential.

#### 10.25 Bereavement Leave

Bereavement leave may be used to cover an absence resulting from the death of an employee's extended family or household member, as defined in Chapter 2. Department heads or designees shall grant bereavement leave with pay to merit employees in accordance with the following provisions:

- 1 Full time merit employees shall be eligible to use up to 16 hours of bereavement leave per calendar year (24 hours for full time 24-hour shift fire protection employees). Merit employees scheduled to work less than 80 hours per pay period shall be eligible for bereavement leave on a pro-rated basis.
- 2 Bereavement leave may not be carried over from one calendar year to the next.
- 3 The amount of bereavement leave to be debited shall be computed on the basis of the exact number of hours an employee is scheduled to work in the period when the leave is taken.
- 4 Bereavement leave shall be debited in no less than one-tenth hour units.
- 5 Sick leave may be granted for absences extending beyond bereavement leave eligibility in accordance with the sick leave provisions herein.

#### 10.26 Compensatory Leave

- 1 Compensatory leave shall be credited to an employee as provided for in the rules governing overtime. Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting compensatory leave.
- 2 Compensatory time for overtime worked shall be granted at the discretion of the employee at a time convenient to and approved by the department head or designee.
- 3 Overdrawn compensatory leave shall be debited in the following order: annual leave, leave without pay.

10.27 Effect of Transfers on Compensatory Leave

An employee who transfers from one department to another shall have his/her compensatory leave transferred to the new department.

10.28 Effect of Separation on Compensatory Leave

An employee who is separated from service may only be paid for any accrued overtime for which he/she has not been granted compensatory leave in accordance with the provisions of section 4.15-4.

10.29 Military Leave

-1 A merit employee who is a member of the National Guard or an organized military reserve of the United States, or is a former member of the Armed Services and has been reactivated by a competent authority shall be allowed military leave under the following circumstances:

a. Leaves of absence with pay not to exceed fifteen workdays during any one federal fiscal year (October 1 - September 30) to attend federally funded military duty, including duty for training. For the purposes of this section, one 24-hour shift workday shall equate to two military leave workdays. The employee shall report to work in accordance with the following schedule:

1. If the period of service is less than 31 days, the employee must report back to work not later than the beginning of the next regularly scheduled workday after the military duty, including travel time and an 8-hour rest period, is completed.
2. If the period of service is more than 30 days but less than 181 days, the employee must report back to work not later than 14 calendar days after completing service.
3. If the period of service is more than 180 days, the employee must report back to work not later than 90 days after completing service.
4. If the employee is hospitalized or convalescing from an injury or illness incurred during the period of service, then the time for the employee to report back to work will be extended.

b. Leaves of absence without pay for training not covered above. The employee shall report to work the next regularly scheduled workday after the training period, including travel time and an 8-hour rest period, is completed.

-2 A merit employee who is a member of the Virginia National Guard and who is called to emergency duty by the Governor to combat floods, riots, winter storms, hurricanes, or

other disasters shall be allowed military leave with pay for each day of such service. A merit employee who is a member of any National Guard organization other than the State of Virginia and who is called to emergency duty by the competent authority of that state may elect to be placed on military leave without pay for each day of such service.

- 3 The employee shall notify his/her supervisor as far in advance as possible when taking military leave. The employee's notice may be either verbal or written. A copy of military orders may be requested, but cannot be required. Failure to notify the County in advance shall not deprive the employee of rights and benefits.
- 4 An employee who leaves the County service in order to join the military forces of the United States or who is inducted into such service has resigned and is not considered to be on military leave. (Section 9.2-5).
- 5 In the event of any conflict between County regulations and federal or state law, the latter shall take precedence.

#### 10.30 Civil Leave

A merit employee shall be given time off without loss of pay when performing jury duty, when subpoenaed or requested to appear before a court, public body or commission except when the employee is a party to the suit, when performing emergency civilian duty in connection with national defense, or for the purpose of voting. Leave for the purpose of voting shall only be granted when the employee's work schedule prohibits voting before or after duty hours or through absentee balloting.

#### 10.31 Volunteer Activity Leave

Volunteer activity leave may be used to participate in volunteer activities and initiatives to support the neighborhoods in which employees live and work to include educational and charitable institutions, religious/faith-based, and community service entities. Department heads or designees shall grant volunteer activity leave with pay to merit employees in accordance with the following provisions:

- 1 Full time merit employees shall be eligible to use up to 16 hours of volunteer activity leave per calendar year (24 hours for full time 24-hour shift fire protection employees). Merit employees scheduled to work less than 80 hours per pay period shall be eligible for voluntary activity leave on a pro-rated basis.
- 2 Voluntary activity leave may not be carried over from one calendar year to the next.
- 3 The amount of voluntary activity leave to be debited shall be computed on the basis of the exact number of hours an employee is scheduled to work in the period when the

leave is taken.

- 4 Voluntary activity leave shall be debited in no less than one-tenth hour units.

#### 10.32 Leave Without Pay

A department head or designee may grant a merit employee a leave without pay for a period not to exceed one year, subject to the following conditions:

- 1 Leave without pay shall be granted only when it is in the interests of the County to do so. The interests of the employee shall be considered when he/she has shown by his/her record to be of more than average value to the County and when it is desirable to return the employee even at some sacrifice.
- 2 At the expiration of a leave without pay, the employee shall be reinstated in the position he/she vacated or in any other vacant position in the same class.
- 3 The employee does not earn leave while on leave without pay.
- 4 Failure on the part of the employee to report promptly at the expiration of a leave without pay may be cause for dismissal.

#### 10.33 Education Leave

A merit employee engaged in professional or technical work may be granted a leave of absence with full or partial pay for enrollment in a special institute or course of study of direct benefit to the County service, at the discretion of the department head or designee.

Such leave may be granted on the assumption that the employee will remain with the County service for a reasonable period to be recommended by the department head or designee, upon completion of the institute or course of study.

#### 10.34 Holiday Leave

- 1 The following holidays are observed by the County and shall be granted to merit employees with pay, unless such employees are required to be on scheduled duty.
  - a. New Year's Day (January 1);
  - b. Martin Luther King, Jr.'s Birthday (Third Monday in January);
  - c. Washington's Birthday (Third Monday in February);
  - d. Memorial Day (Last Monday in May);



- e. Independence Day (July 4);
- f. Labor Day (First Monday in September);
- g. Columbus Day (Second Monday in October);
- h. Veteran's Day;
- j. Thanksgiving Day (Fourth Thursday in November);
- k. Fall Holiday (Friday after Thanksgiving);
- l. Christmas Eve (One-half day on December 24);
- m. Christmas Day (December 25);
- n. Inauguration Day (January 20, every fourth year) when it falls on a business day, Monday through Friday.

-2 The County Executive may also set aside other days as holidays.

#### 10.35 Granting Holiday Leave

The granting of holidays observed by the County shall be subject to the following provisions:

-1 Holidays on a weekend.  
When a holiday falls on Saturday, it shall be observed on the preceding Friday. When a holiday falls on Sunday, the following Monday shall be observed as the holiday.

-2 Holiday on scheduled workday

a. Holiday on scheduled workday; employee works.

Employees who are required to work on a holiday (actual or County observed) shall be compensated for the time worked in accordance with the rules governing hours and overtime. Holiday compensation will be provided on an hour for hour basis for an employee's regular scheduled hours not to include overtime hours. If an employee who would not normally work the holiday, is scheduled to work to meet staffing or other operational needs, the employee is entitled to receive holiday compensation for hours worked not to exceed the number of his/her regularly scheduled hours.

b. Holiday on scheduled workday; employee does not work. Employees who are required to work on a holiday (actual or County observed) but do not work, shall be compensated as follows. Holiday compensation will be provided on an hour for hour basis up to the number of regularly scheduled hours for that day.

- 3 Holiday on scheduled day off. Within the policy established in the section on holiday leave, whenever one of the designated holidays falls on an employee's scheduled day off, the employee shall be granted either holiday pay or holiday compensatory time in accordance with the rules governing hours and overtime. To receive holiday compensation on an actual holiday, an employee must be directed by his/her supervisor to work due to staff shortage or other operational necessity.
- 4 Holidays for merit part-time employees. Part-time merit employees shall be granted holiday time off with pay on a pro-rated basis regardless of the number of hours scheduled on the day a holiday falls computed at the rate of one-tenth of an hour times the employees bi-weekly scheduled hours.
- 5 Holidays during paid leave. A holiday falling within a period of paid leave shall not be counted as a workday in computing the amount of leave debited.
- 6 Holiday during unpaid leave. When a holiday falls within a period of leave without pay, the employee shall be granted either holiday pay or holiday compensatory time in accordance with the rules governing hours and overtime.
- 7 Appointment on a holiday. The appointment of a merit employee shall not be effected on a holiday except when the employee works that day.

#### 10.36 Administrative Leave

- 1 Administrative leave shall be any paid leave authorized by the County Executive, which is not otherwise classified by these Regulations.
- 2 Administrative leave will normally<sup>1</sup> be granted to any full-time or part-time employee by an appointing authority or the County Executive for any of the following reasons:
  - a. Where an employee is required to appear before a public body, public agency, board or commission during normal working hours on matters relating to County business.
  - b. For the attendance in an official capacity during normal working hours as a representative of the County at meetings, symposiums, conferences, conventions or hearings.
  - c. During the investigation of an alleged improper act by an employee which may result in formal disciplinary actions and/or when the retention of the employee on

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<sup>1</sup> Exceptions to be justified and made a matter of record.

an active duty status may be detrimental to the interests of the County or injurious to the employee, his/her fellow workers or the general public. Administrative Leave for this purpose will not exceed ten business days without prior approval of the County Executive. A memorandum to the Human Resources Director will be submitted by the department head or designee giving details of the Administrative Leave for all situations covered by this paragraph. In lieu of the use of Administrative Leave for situations of this type, a department head or designee may temporarily assign the employee to other duties.

- d. For participation in the blood donor program for which purpose up to four hours may be granted, at the discretion of department head or designee, for each recuperative purpose.
  - e. For the purpose of undergoing a medical examination as may be required by the employee's department head or designee.
  - f. To recognize long term service to general county employees who earn length of service awards of 20, 25, 30, 35, 40 and 45 years or more shall be eligible for one day of administrative leave (12 hours for 24 hour shift firefighters) in the year after they have qualified for the length of service award.
  - g. To recognize outstanding performance such as Outstanding Performance Awards or Team Excellence Awards. The number of hours received for Outstanding Performance Awards or Team Excellence Awards shall be equal to two days of administrative leave (24 hours for 24 hour shift firefighters).
  - h. For officers of the Employees Advisory Council and employee organizations, ~~which~~ who participate in payroll dues deduction to attend conventions and training related to employee relations. Administrative Leave for this purpose shall not exceed 30 workdays (240-hours) per year per employee organization. In the accrual of hours toward the 240-hour limit, one 24-hour shift shall equate to 16 hours of administrative leave. Employees must submit such leave requests as far in advance as possible and provide written verification upon return to duty of attendance at the convention or employee relations training. Accountability requirements and use of administrative leave shall be in accordance with the Personnel/Payroll Administrative Policies and Procedures issued by the Human Resources Director.
  - i. When a non-Office of Elections employee volunteers to work for *Fairfax County's* Office of Elections on an election day or completes training for election volunteer workers.
- 3 In addition to the provisions of paragraph -2 above, Administrative Leave may be granted to any full-time or part-time employee by the County Executive or his/her designee for any of the following reasons:

- a. Breakdown of essential facility services such as heating, air conditioning, or water or other problems wherein facilities must be closed and employees released early from work or not required to report to work.
- b. Breakdowns of equipment making it impossible to accomplish assigned tasks.

10.37 Leave for Inclement Weather or Other Emergency

- 1 When extreme inclement weather or other emergencies occur, the County Executive or his/her designee shall have the option to declare one of the following types of leave:
  - a. Unscheduled Leave - may be declared by the County Executive or his/her designee when it is deemed advisable to provide employees flexibility regarding reporting to work due to inclement weather or other emergency. Unscheduled leave authorizes all employees, except those designated as emergency service personnel, to use their own leave to remain home from work or to leave work early without obtaining prior approval from their supervisor. Employees, however, must notify their supervisors if they opt to stay home on unscheduled leave. Employees may only use annual leave, compensatory leave, or leave without pay for this purpose. Such leave is authorized only for the period of time designated by the County Executive or his/her designee.
  - b. Emergency Administrative Leave - may be declared by the County Executive or his/her designee when it is determined necessary to close the general County government due to extreme inclement weather or other emergency. Emergency administrative leave authorizes all merit County employees, except those designated as emergency service personnel, to remain home from work or to leave work early without prior approval of the supervisor and without the use of personal leave or leave without pay. Such leave shall be limited to the time periods designated by the County Executive or his/her designee. Employees required to work during a period of such emergency administrative leave shall receive extra compensation in accordance with provisions contained in Chapter 4.
- 2 When leave for inclement weather or other emergency is declared, emergency service personnel must report to work. Emergency service personnel are those employees, designated by the department head or designee, who due to the nature of the emergency, which has occurred, must report to work to ensure that public health and safety needs or critical departmental requirements are met.

## CHAPTER 17

### GRIEVANCE PROCEDURE

#### 17.1 Purpose

The purpose of the grievance procedure is to provide a fair, detailed process whereby employees may voice complaints concerning issues related to their personal employment experience and/or circumstance with the County. The objective is to improve employee-management relations through a prompt and fair method of resolving problems.

#### 17.2 Coverage of Personnel

- 1 All merit employees in the competitive service of the County who have satisfactorily completed their initial probationary period are eligible to file complaints under this procedure.
- 2 Excluded from the grievance procedure are the following:
  - a. Employees in the exempt service, except as specifically provided otherwise in the procedural directives for the administration of the exempt service issued by the County Executive with the approval of the Board of Supervisors pursuant to Fairfax County Code § 3-1-2(c);
  - b. Employees serving their initial probationary periods unless their complaints include allegations of discrimination as defined in Section 17.3-2d and 17.3-2e;
  - c. Sworn police employees who have elected to proceed under the "Law-Enforcement Officers Procedural Guarantee Act." Such employees shall be given written notification of their right to initiate a grievance under the County's Grievance Procedure. They may choose to file the grievance under either procedure, but not both

#### 17.3 Types of Complaints

- 1 Employee complaints will be classified at the point of grievability determination (see Section 17.5-4) as one of the following:
  - a. Grievable, with a binding decision from a hearing panel of the Civil Service Commission;
  - b. Nongrievable but eligible for a hearing and an advisory decision from a hearing officer appointed by the Chair of the Civil Service Commission;

- c. Nongrievable with no hearing.
- 2 Grievable complaints which receive binding decisions from a three-member panel of the Civil Service Commission hearing the appeal include:
- a. Dismissals, unsatisfactory service separations, demotions and suspensions;
  - b. The application of specific County personnel policies, procedures, rules and regulations;
  - c. Acts of retaliation as a result of utilization of this procedure, or for participation in the grievance of another county employee;
  - d. Discrimination against an employee, including a probationary employee, on the basis of race, color, creed, religion, age, disability, national origin, sex, political affiliation, marital status, union affiliation, genetic information, veterans status, or disabled veterans status;
  - f. Discrimination or retaliation against an employee, including a probationary employee, because of participation in political activities permitted under state law and County ordinances or failure to participate in political activities, whether permitted or not by state law or County ordinance;
  - g. Acts of retaliation because the employee (i) has complied with any law of the United States or of the Commonwealth, (ii) has reported any violation of such law to a governmental authority, (iii) has sought any change in law before the Congress of the United States or the General Assembly (iv) has reported an incidence of fraud, abuse, or gross mismanagement to the Board of Supervisors Audit Committee, the Auditor to the Board, his/her department head, or to any other federal, state, or County government authority, such as the Commonwealth's Attorney for the County of Fairfax, or the U.S. Attorney for the Eastern District of Virginia.
  - h. For the purpose of sub-paragraphs (c) and (f) of this section, there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.
- 3 Nongrievable complaints eligible to receive advisory decisions from a hearing officer appointed by the Chair of the Civil Service Commission include:
- a. The physical plant;
  - b. The methods and conditions of the specific job;
  - c. Relations with fellow employees;

- d. Performance appraisals;
- e. Written reprimands;
- f. 120-day Performance Improvement Plans (as defined in section 12.6-2(b) and provided for in 12.11-2 of these regulations).

#### 17.4 Nongrievable Complaints

- 1 Complaints that are not grievable under this procedure include:
  - a. The establishment and revision of wages or salaries, position classification, employee benefits;
  - b. Oral reprimands;
  - c. The contents of ordinances, statutes, or established personnel policies, procedures, rules and regulations;
  - d. Failure to promote, except where the employee contends that established promotional policies or procedures were not followed or applied fairly;
  - e. Discharge, lay-off or suspension from duties because of lack of work or reduction-in-work-force, except where such actions affect an employee who has been reinstated within the previous six months by the Civil Service Commission as the result of the final determination of a grievance. In such cases, the department must show that there was a valid business reason for the action and that the employee was notified of such reason in writing prior to the effective date of the action;
  - f. Management of County employees including the right to make personnel appointments in accordance with adopted selection policies and techniques, to establish rules and regulations governing work performance and performance evaluations, to transfer and assign employees within the County, to determine the need for shift operation and rotation of the workweek, to assign overtime, to determine job training and career development, and to determine duties or actions in emergency situations.
- 2 Appeals of position classification are handled in accordance with the criteria set forth in Section 3.6.

### 17.5 Steps of the Procedure

#### -1 Step 1: Immediate Supervisor

An employee who has a complaint shall discuss the problem directly with his/her supervisor within twenty (20) business days of the date the employee should have reasonably gained knowledge of the event giving rise to the complaint.

A verbal reply by the Supervisor shall be made to the complaint during the discussion or within five business days following the meeting.

#### -2 Step 2: Division Supervisor

If the complaint is not resolved after the first step meeting and where there is a division supervisor, the employee may reduce the complaint to writing on "Complaint Form - Second Step." All grievance forms are obtainable from the Department of Human Resources.

The employee shall specify the relief sought through the use of this procedure. The fully completed Complaint Form shall be delivered by the employee to the division supervisor within five (5) business days of the first step meeting or the supervisor's reply, if given at a later date. The division supervisor shall meet with the employee within five business days of receipt of the Complaint Form.

A written reply by the division supervisor shall be made to the complaint within five business days following the meeting.

#### -3 Step 3: Department Head

If the reply from the second step meeting is not acceptable to the employee, or where no division supervisor exists, the employee may appeal the last response to the department head.

"Complaint Form - Third Step" shall be completed by the employee and delivered to the department head within five business days of receipt of the last response. The department head shall meet with the employee within five business days of receipt of the Complaint Form.

A written reply by the department head shall be made to the complaint within five business days following the meeting.

When it is necessary for a department head to obtain relevant technical guidance from a centralized department director (i.e. human resources, budget, procurement) in order to respond to a grievance, a written request for assistance will be made to the alternate department head outlining the scope of the issue and



assistance required. The complainant's department head retains responsibility for providing the written Step 3 response.

-4 Step 4: Grievability Determination

- a. When a complaint cannot be satisfactorily resolved pursuant to Steps 1 through 3 above, the employee shall request on the appropriate form a determination concerning the grievability of the complaint within ten business days of receipt of the third step reply.
- b. All requests for grievability determination shall be submitted to the County Executive. The County Executive will determine whether the employee is entitled to access to the grievance procedure and if the complaint is grievable, and if so, based upon the criteria set forth in Section 17.3, establish whether the grievant shall receive a binding or an advisory decision. Grievability and access determinations by the County Executive shall be made within ten calendar days of receipt of such request.
- c. Decisions regarding grievability and access are appealable only to the Fairfax County Circuit Court. Such appeals shall be made by filing a notice of appeal with the County Executive within ten calendar days from the date of receipt of the decision. The County Executive, or his/her designee, shall transmit to the Clerk of the Circuit Court a copy of the County Executive's decision, a copy of the notice of appeal, and the exhibits constituting the record of the grievance within ten calendar days of receipt of the notice of appeal. A list of the evidence furnished to the County shall also be provided to the grievant.
- d. The Circuit Court shall have a hearing on the issue of grievability and/or access within thirty (30) days of receipt of the record of the grievance by the Circuit Court Clerk. The Court may affirm, reverse or modify the decision of the County Executive.
- e. The decision of the Circuit Court is final and is not appealable. Procedures governing the review by the Circuit Court are found in Virginia Code §15.2-1507(a)(9).
- f. In no case shall the County or Commonwealth's Attorney be authorized to decide the issue of grievability.

-5 Step 5: Appeal to the Civil Service Commission

- a. If the complaint has been determined to be grievable, with a binding decision or nongrievable with an advisory decision as provided herein, the employee may file a request for hearing on the appropriate form with the Fairfax County Civil Service Commission. The employee shall file the request

within ten business days following the receipt of the determination that the complaint is grievable.

- b. Appeals of complaints that have been determined to be grievable shall be heard by a three-member panel of the Commission (hearing panel or panel) as soon as possible after receipt of the employee's appeal request. Appeals of complaints that have been determined to be non-grievable but entitled to an advisory and non-binding opinion shall be heard by a hearing officer or by the Executive Director of the Commission when the parties are not represented by counsel, as soon as possible after the receipt of the employee's appeal request. The Executive Director of the Commission in scheduling hearings on appeals shall give priority on its docket to dismissal and unsatisfactory service separation cases. The Executive Director of the Commission shall notify the employee and the department head in writing of the time and place of the appeal hearing.
- c. The jurisdiction and authority of the hearing panels of the Civil Service Commission shall be confined exclusively to those complaints previously determined to be grievable as provided herein. While a panel of the Commission hearing the appeal has authority to determine the appropriate application of an existing rule or policy, they do not have the authority to add to, detract from, alter, amend or modify in any way County or department policy or procedure, and its findings shall be consistent with all applicable laws and ordinances.
- d. No member of the Civil Service Commission or an appointed hearing officer shall hear a grievance if he/she has direct involvement with the grievance being heard, or with the complaint or dispute giving rise to the grievance. The following relatives of a participant in the grievance process or a participant's spouse are prohibited from hearing said grievance: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin.

#### 17.6 Remedies

- 1 The panel of the Commission hearing the appeal is empowered to uphold or reverse the action being grieved or, in appropriate circumstances, choose a modified remedy.
- 2 In grievances entitled to a binding decision the following guidelines pertaining to remedial action shall apply:
  - a. Dismissals and Unsatisfactory Service Separations- The panel of the Commission hearing the appeal may deny relief, reinstate the employee while imposing lesser disciplinary actions such as demotion or suspension, or reinstate the employee.

- b. Disciplinary Demotions pursuant to Personnel Regulation 16.5-5 - The panel of the Commission hearing the appeal may deny relief, impose lesser disciplinary sanctions, or revoke the disciplinary demotion.
- c. Suspensions - The panel of the Commission hearing the appeal may deny relief, impose a lesser suspension, instruct that a written reprimand be substituted for the suspension, or revoke the disciplinary suspension.
- d. ~~Unsatisfactory Service Separations—The panel of the Commission hearing the appeal may deny relief; reinstate with a demotion to the employee's previously held class, or in the case where an employee's class is part of a class series, reinstate with a demotion to the next lower class in the series; reinstate with a new probationary period with or without a demotion; or reinstate the employee in the class he was in at time of separation.~~
- ed. Back Pay and Restoration of Benefits in Appeals of Dismissals, Demotions, Suspensions, and Unsatisfactory Service Separations:
  - i If an employee is reinstated, he/she shall be given back pay for the period of separation contingent upon his/her making full disclosure of all earnings he/she received during separation, which shall be an offset against back pay. In the event the employee fails to provide to the panel of the Commission hearing the appeal such evidence as it deems necessary to determine the amount of the offset, the employee shall forfeit his/her right to back pay.
  - ii In cases of suspension, the employee shall be entitled to back pay for the period of suspension revoked by the panel of the Commission hearing the appeal under the same conditions as sub-section (1).
  - iii A lesser sanction in dismissal cases shall include a suspension without pay covering some or all of the period of separation, notwithstanding any other provision of the Personnel Regulations.
  - iv In the event that the panel of the Commission hearing the appeal imposes a demotion in lieu of an unsatisfactory service separation or dismissal, back pay may be awarded, at the discretion of the panel of the Commission hearing the appeal, for the period of separation at the rate of pay for the lower level classification.
  - v Back pay shall be computed on the basis of the employee's regularly scheduled hours of work and shall not include any overtime that the employee might have earned.
  - vi For any period of time that an employee is entitled to receive back

pay, he/she shall be given service credit towards retirement and shall be reinstated in the appropriate retirement system with his/her previous plan election, provided that he/she repays into the system all contributions that he/she withdrew on separation. The employer shall ensure that all contributions and deductions attributable to such service are made.

- vii Similarly, for purposes of accruing leave, the employee shall be given credit towards his/her total years of service for any period of time that he/she is entitled to back pay. The employee shall also be credited with any leave that he/she would have accrued during that period.
- viii Upon reinstatement, the employee shall be placed in the health plan that he/she was in at the time of separation with the same options that he/she had previously elected. The effective date of coverage will be the first of the month following reinstatement. A reinstated employee may opt for retroactive coverage in the event that it would be to his or her advantage. The employee must pay his or her share of retroactive coverage premiums. Claims expenses incurred for the retroactive period will be adjusted upon payment of the premium and the employee will be reimbursed for out-of-pocket costs above those he or she will have incurred had the coverage been in effect. The employee may be reimbursed for monies expended by the employee to obtain medical insurance during the period of separation up to the amount of the employer's contribution that would have been incurred had the employee been in service during the period of separation. In no event shall the employee be entitled to reimbursement for medical costs incurred during the period of separation. In the event the employee elected to continue his or her County health insurance under COBRA during the period of separation, the employee shall be reimbursed the difference between the premium he or she paid under COBRA and what he or she would have paid had he or she continued to be employed during the period of separation. In no event shall the employee be entitled to reimbursement for medical costs during the period of separation, except as provided above.

Upon reinstatement, an employee's salary shall be adjusted to reflect any performance pay increases that would have been received had the employee not been separated. f.Promotions - The panel of the Commission hearing the appeal may deny relief, order the promotional procedure redone, order a retroactive promotion, order the grievant promoted immediately if there is an available vacancy or promoted to the next available vacancy.

- 3 In cases other than dismissals, unsatisfactory service separations, demotions, suspensions, or performance evaluations, the panel of the Commission hearing the

appeal may deny the relief sought by the employee or grant such relief as is necessary to place the employee in the situation he/she would have been in had the Personnel Regulations or policies been properly interpreted and/or applied in the first instance. In no event shall the employee be awarded any damages, nor shall the relief granted by the panel of the Commission hearing the appeal affect the rights of other employees.

- 4 Acts of Reprisal and Discrimination - Where the panel of the Commission hearing the appeal determines that any act of reprisal or discrimination as defined in this chapter is the reason for the adverse employment action grieved by the employee, the panel of the Commission hearing the appeal shall have the authority to revoke the adverse employment action. In the event the adverse employment action is one of the actions described in Sections 2 or 3 of this section, the panel of the Commission hearing the appeal may apply the remedial actions provided under those subsections. The panel of the Commission hearing the appeal shall also affirm such adverse employment actions taken to the extent that they were not the result of reprisal or discrimination.
- 5 Damages, Attorney's Fee and Costs - The panel of the Commission hearing the appeal shall have no authority to order the payment of damages of the grievant's or the County's attorney's fees or costs.
- 6 Recommendations - Regardless of whether the panel of the Commission hearing the appeal grants the individual grievant any relief, such panel may make whatever recommendations to the Board of Supervisors or County Executive it deems appropriate.

#### 17.7 Conduct of Grievance Step Meetings

- 1 Personal face-to-face meetings are required at all steps. The employee and the County management may have a representative present at all steps. If the employee is represented by legal counsel, management likewise has the option of being represented by counsel. The parties to the grievance may by mutual agreement waive any or all intermediate steps or meetings, with the exception of the initial complaint, reducing the complaint to writing and the request for grievability determination.  
Upon written request from the grievant to the Department head, County management shall waive the first and second step grievance meetings in cases of termination, suspension, or demotion. Time spent attending grievance step meetings, Circuit Court hearings or a hearing before a panel of the Civil Service Commission during the grievant's regularly scheduled hours shall be considered work time and the use of personal leave is not required.
- 2 At all steps, appropriate witnesses also may be asked to provide information. Witnesses shall be present only while actually providing testimony.

- 3 In any complaint involving a charge of discrimination, at the request of any party to the grievance, the Director of the Office of Equity Programs, or his/her designee, may attend step meetings.

#### 17.8 Grievant's Expenses

- 1 The grievant must bear any cost involved in employing representation or in preparing or presenting his/her case.
- 2 Whenever possible, grievances will be handled during the regularly scheduled workhours of the parties involved. Civil Service Commission hearings are held during the County's business day whenever possible.
- 3 A panel of the Civil Service Commission has no authority to award legal fees or punitive damages.

#### 17.9 Extension of Time

- 1 The parties to the grievance, by mutual agreement, or the County Executive or his/her designee, upon the request of one of the parties and showing of just cause, may extend any or all of the time periods established in this procedure.

#### 17.10 Compliance with Procedural Requirements of this Procedure

- 1 After the initial filing of a written complaint, failure of either the employee or the respondent to comply with all substantial procedural requirements of the grievance procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the County Executive, or his/her designee.
- 2 The County Executive, or his/her designee, may require a clear written explanation of the basis for just cause extensions or exceptions to any of the substantial procedural requirements. The County Executive, or his/her designee, shall determine all compliance issues.
- 3 Any party aggrieved by the determination of the County Executive or his/her designee on a compliance issue may obtain judicial review of the determination by filing a petition with the Fairfax County Circuit Court within thirty days of the compliance determination.

#### 17.11 Resolution Prior to Hearing

Any grievance shall be considered settled at the completion of any step if all parties are satisfied. In fact, it is expected that the great majority of grievances will be settled at the first or second step. However, nothing in this procedure should be construed as limiting the employee's right to exhaust the remedies provided by this procedure.

#### 17.12 Hearings

- 1 Hearings shall be conducted as described in Addendum 1 to Chapter 17.
- 2 Hearings shall be open to the public. However, upon request of either party, the hearing shall be private. The hearing officer or the panel of the Commission hearing the appeal, by majority vote, may close a hearing to the public if the testimony about to be presented might impugn the personal reputation of a party or witness to said hearing, or if the right to privacy of such party or witness requires that the hearing be closed. Parties and their representatives shall be allowed to attend the hearing at all times. All witnesses shall be excluded from the hearing, except when testifying, at the request of either party.
- 3 Failure of either party without just cause to comply with all substantial procedural requirements at the hearing shall result in a decision in favor of the other party in accordance with the procedures under Pers. Reg. §17.10.
- 4 The decision of the panel of the Commission hearing the appeal shall be announced after the deliberations by that hearing panel at the conclusion of the hearing and shall be filed in writing by the Chairperson of that hearing panel of the Civil Service Commission or by the Hearing Officer with the parties not later than ten business days after the completion of the hearing. Copies of the decision shall be transmitted to the Human Resources Director, the employee, the employee's department head and the County Executive. The Hearing Officer also shall transmit a copy of the advisory decision to the Executive Director of the Civil Service Commission.
- 5 The majority decision of the panel of the Commission hearing the appeal shall be final and binding. Either party may petition the Fairfax County Circuit Court for an order requiring implementation of a binding decision from the panel of the Commission hearing the appeal. Notwithstanding any other provision of this chapter to the contrary, a final decision of a panel of the Civil Service Commission hearing the appeal rendered under this procedure which would result in the reinstatement of any employee of the Sheriff's Department, who had been terminated for cause, may be reviewed by the Fairfax County Circuit Court upon the petition of the County. Such review by the Circuit Court shall be limited to the question of whether the decision of the panel of the Civil Service Commission hearing the appeal was consistent with the provisions of law and written policy.

- 6 The decision of the Hearing Officer shall be advisory to the County Executive.
- 7 All decisions in the grievance procedure shall be consistent with the provisions of law and written policy. Any challenge to the relief granted by the decision of a panel of Civil Service Commission hearing the appeal on the grounds of inconsistency with written policy shall be submitted by either party within five (5) workdays to the County Executive, or his/her designee, who is empowered to decide such questions and to direct reconsideration by the Commission, where appropriate. If the County Executive or his/her designee has a direct involvement in the grievance the decision shall be made by the Commonwealth's Attorney. Notwithstanding the above, after receipt of a decision of a hearing panel of the Civil Service Commission the County Executive or his/her designee, may on his/her own action, within ten business days, remand to the panel of the Commission that heard the appeal for further consideration a decision in which the relief granted appears to be inconsistent with written policy.

#### 17.13 Severability

Should any article, section, subsection, sentence, clause, or phrase of these regulations, procedures and/or addenda, be held unconstitutional or invalid for any reason, such decision or holding shall have no effect on the validity of the remaining portions hereof. It is the intent of the Board of Supervisors to enact or have enacted each section and portion thereof, individually, and each such section shall stand alone, if necessary, and be in force regardless of the determined invalidity of any other section or provision.



## **ADDENDUM NUMBER 1**

### **PROCEDURE FOR GRIEVANCE HEARINGS AND APPEALS**

#### Preamble

The panel of the Commission hearing the appeal shall not be bound by Statutory or Common Law rules of pleading or evidence. Hearings will be conducted so as to ascertain the rights of the parties accurately and expeditiously.

#### The Commission

The Commission consists of twelve members who will sit in rotating panels of three to hear grievance appeals. Panels will be randomly assigned to a schedule as needed to conduct appeal hearings. When a hearing is scheduled, the next three Commissioners on the schedule will be contacted to participate in that hearing. If a Commissioner is unable to participate in an assigned hearing, the next available member on the schedule will fill in when the absence of a scheduled panel member cannot be avoided, as no hearing can be conducted by a panel unless all three members designated to hear that appeal are present throughout the hearing. If an appeal is settled or withdrawn prior to the scheduled hearing, the panel members assigned to hear that appeal will be assigned to the next appeal scheduled. The schedule and the assigned panel members are considered confidential. The names of the panel members will not be released prior to a scheduled hearing.

The Commission consists of twelve members who will sit in panels of three to hear grievance appeals. Each of the four panels of three members will meet as needed to conduct appeal hearings. The member and chair of each hearing panel hearing the appeals will rotate on a monthly basis according to a set schedule. Three members of the Commission will be designated as “on call” each quarter to fill in when the absence of a scheduled panel member cannot be avoided as no hearing can be conducted by a panel unless all three members designated to hear that appeal are present throughout the hearing. The members designated as “on call” will rotate each quarter according to a set schedule. Each member of the Commission will receive his or her schedule in advance for a three month period.

Appeals of complaints that have been determined to be grievable shall be heard by a three-member panel of the Commission (hearing panel or panel) as soon as possible after receipt of the employee’s appeal request. Appeals of complaints that have been determined to be non-grievable but entitled to an advisory and non-binding opinion shall be heard by a hearing officer or, by the Executive Director of the Commission when the parties are not represented by counsel, as soon as possible after receipt of the employee’s appeal request.

A simple majority of the hearing panel will prevail in any decision made by the panel. The panel hearings will be held during the County’s normal business hours continuing until all evidence has

been heard and arguments made. Upon the conclusion of the evidence and argument, the hearing panel will recess the hearing while it deliberates in closed session and makes its findings. Upon the conclusion of the panel's deliberations, the panel will come out of closed session and resume the hearing to cast the panel members' individual votes, state the findings of the panel, and conclude the hearing. A written decision prepared by the Hearing Officer and signed by the chair of the panel that heard the appeal will be filed with the Executive Director and distributed to the parties within ten days of the conclusion of the hearing.

### The Hearing Officer

The Hearing Officer is an independent attorney retained by the Commission to conduct hearings on grievances which receive advisory decisions and to advise the panel of the Commission hearing the appeal concerning legal and procedural matters in cases in which the parties are represented by counsel. The Hearing Officer does not vote on matters before the panel of the Commission hearing the appeal and participates in deliberations only to the extent of advising the panel of the Commission hearing the appeal concerning legal and procedural matters. The Hearing Officer is responsible for conducting hearings in an orderly and expeditious fashion; and makes rules on evidentiary and procedural questions. The rulings are advisory and may be overturned by the panel of the Commission hearing the appeal.

In hearings before the panel of the Commission hearing the appeal in which the parties are not represented by counsel, and at all prehearing conferences, the Executive Director of the Commission shall act as hearing officer.

#### A. Prehearing Requirements

- A Prehearing Conference will be held by the Prehearing Officer prior to a panel hearing or the Hearing Officer. The following matters will be addressed:
  - 1. Definition of the scope of the case, the specific issues to be presented to the panel of the Commission hearing the appeal, and the specific regulations and/or ordinances allegedly violated.
  - 2. Stipulations and agreements which will expedite the hearing are greatly encouraged, including but not limited to (1) stipulations of fact; (2) stipulations as to evidence which will be admitted without objection; (3) stipulations with respect to testimony which will be admitted in written form.
  - 3. All exhibits and documents will be exchanged at or before the Prehearing Conference. Documents shall be marked for identification and tabbed for ease of reference. Any exhibit not provided at or before the Prehearing Conference will not be admitted as evidence, absent a showing of good cause. If as a result of the Prehearing Conference there is an outstanding request for the production of documents, such request must be complied with not later

than ten business days prior to the date of the hearing, or the date set in the Prehearing Conference Report, whichever is sooner. Any objection to the admissibility of a proposed exhibit or document shall be raised ~~at the Prehearing Conference~~ no later than the date set at the Prehearing Conference and if not resolved, the issue will be clearly defined by the Prehearing Officer for consideration by the panel of the Commission hearing the appeal or the Hearing Officer.

4. Witness lists will be exchanged at or before the scheduled Prehearing Conference. Any witness not so designated will not be permitted to testify, absent a showing of good cause. If as a result of the Prehearing Conference, there are to be deletions or additions to the witness lists, such changes will be submitted no later than ten business days prior to the date of the hearing, or the Prehearing Conference Report, whichever is sooner. Witness lists shall include the name, address and telephone number of each witness identified and a brief statement of the substance of the expected testimony. If, upon the petition of a party, the County Executive finds that a witness who is listed by a party and who is a County employee has relevant, material, and non-cumulative testimony and that the party seeking to call the witness at the panel hearing has been unable to secure attendance of the witness before the hearing panel despite the party's reasonable and diligent efforts, the County Executive shall order the County employee witness to appear at the hearing to give testimony. Upon such order to appear being issued by the County Executive to a County employee, any County employee so ordered who fails to appear at the hearing may be subject to disciplinary action as provided in Chapter 16.
5. County management shall provide the Commission with copies of the grievance record ~~prior to the hearing as part of its exhibits submitted at the Prehearing Conference.~~ A copy of the grievance record shall be provided to the grievant by County management at the same time but in no event any later than ten days prior to the hearing before the panel of the Commission hearing the appeal.
6. The hearing date(s) will be set at the Prehearing Conference in accordance with the time estimates provided by both parties.

B. Continuances

Requests for continuances shall be in writing with a copy to the opposing party and submitted to the panel of the Commission hearing the appeal and/or Hearing Officer at least five workdays prior to the hearing date. The panel of the Commission hearing the appeal and/or Hearing Officer may grant such requests only where good cause is shown.

C. Hearing Procedure

Hearings on appeals will be heard by the panel of the Commission hearing the appeal or the Hearing Officer in accordance with the following order and procedures:

1. Opening statement by the moving party. (The County shall be considered as the moving party in suspensions, demotions, ~~and dismissals~~ and Unsatisfactory Service Separations. In all other cases, the employee is considered to be the moving party.)
2. Opening statement by the responding party.
3. Presentation of moving party's case by direct examination.
4. Cross-examination.
5. Questions, if any, by members of the hearing panel or the Hearing Officer.
6. Redirect and recross examination.
7. Presentation of responding party's case by direct examination.
8. Cross-examination.
9. Questions, if any, by members of the hearing panel or the Hearing Officer.
10. Redirect and recross examination.
11. Presentation of rebuttal witnesses, if any, by moving party by direct examination may be presented in documentary form. Rebuttal testimony should ordinarily be included in the party's original presentation. However, rebuttal evidence may be permitted where, in the judgment of the panel of the Commission hearing the appeal or the Hearing Officer, it is necessary to the party to rebut new material, which could not reasonably have been anticipated. The panel of the Commission hearing the appeal or the Hearing Officer will judge the necessity of rebuttal testimony on the basis of a proffer or statement by the party seeking to introduce the rebuttal.
12. Cross-examination, questions, if any, by members of the hearing panel or the Hearing Officer, redirect and recross examination of rebuttal witnesses. If rebuttal evidence is in documentary form, provision shall be made for response by opposing party.
13. Closing statement by moving party. Proposed findings of fact and conclusions of law may be submitted at the party's option or at the request of the panel of the Commission hearing the appeal or the Hearing Officer.
14. Closing statement by responding party. Proposed findings of fact and conclusions of law may be submitted at the party's option or at the request of the panel of the

Commission hearing the appeal or the Hearing Officer.

15. The hearing record may be held open upon request of either party or upon the panel of the Commission hearing the appeal or the Hearing Officer's own motion for the receipt of additional exhibits or documentary evidence which in the opinion of the panel of the Commission hearing the appeal or the Hearing Officer are necessary for a full and complete hearing. Any opposing party shall be allowed a period of ten calendar days after such receipt to respond thereto. If the panel of the Commission hearing the appeal or the Hearing Officer finds that additional oral testimony is necessary, a hearing may be recessed for scheduling of such testimony.
16. The panel of the Commission hearing the appeal may alter the foregoing procedures in a hearing if it deems it necessary to afford the parties a full and equal opportunity to all parties for the presentation of their evidence.

D. Record of Hearing

Recorded tapes will serve as the formal record of grievance hearings. Any party to the appeal may obtain a copy upon payment of reproduction and administrative costs.

E. Posthearing Procedures

1. Reopening Hearing

A hearing may be reopened by the panel of the Commission hearing the appeal or the Hearing Officer at any time prior to final decision on the ground of newly discovered evidence or for other good cause shown and if the panel of the Commission hearing the appeal or the Hearing Office finds that reopening the hearing is required for a full and true disclosure of facts or to assure that the parties receive a fair hearing in accordance with the relevant law and regulations. Petitions for reopening shall set forth the specific newly discovered evidence or other good cause, and will be granted only under exceptional circumstances. If a party files a petition for reopening the hearing, the opposing party shall file a response to said petition within five calendar days of service of the petition.

2. Reconsideration

The Hearing Officer or the panel of the Commission hearing the appeal, upon majority vote, may reconsider a Decision prior to the actual implementation of that decision. The panel of the Commission hearing the appeal or the Hearing Officer will only reconsider on the ground of newly discovered evidence or other good cause shown. Petitions for reopening shall set forth the specific newly discovered evidence or other good cause, and will be granted only under exceptional circumstances. Petitions for reconsideration must be filed with the panel of the Commission hearing the appeal and or the Hearing Officer within five calendar days of receipt of the

decision. The opposing party shall file a response to said petition within five calendar days of service of the petition.



## County of Fairfax, Virginia

**MEMORANDUM**

**DATE:** December 1, 2017

**TO:** Catherine Spage, Director  
Department of Human Resources

**FROM:** *Sara J. Simmons*  
Sara J. Simmons, Executive Director  
Civil Service Commission

**SUBJECT:** Public Hearing on Proposed Revisions to the Personnel Regulations - Chapters 2, 9, 10 & 17

Following an advertised public hearing held on November 29, 2017, the Civil Service Commission considered the above referenced proposed revisions to the Personnel Regulations. Members of the Commission present at the public hearing included: Rosemarie Annunziata; Broderick Dunn; Jason Fong; Tom Garnett; John Harris; Lee Helfrich; Herb Kemp; and Pat Morrison.

Cathy Spage, Director, Department of Human Resources (DHR) gave an overview regarding the proposed changes for each chapter; during the discussion section she was assisted by Leslie Clough, Manager, Employee Relations and Policy Administration, DHR. Ms. Spage noted that the proposed revisions had been reviewed by the County Attorney's Office.

There were no speakers signed up in advance or who wanted to speak at the public hearing. There were several staff from Employee Relations, DHR; Human Resource Managers present, and there were also approximately 5 employees in attendance from employee groups.

Ms. Spage explained that the Department of Human Resources (DHR) routinely requests updates to align the Personnel Regulations with changes in law, policy, classifications or other reasons. The proposed changes to Chapter 2 consolidates the definitions of "Separation" in one place, under the Separation definition. The Proposed changes to Chapter 9 update the types of separation to reflect consistency with Chapter 2 and provide updates to the language from Affirmative Action Plan to County Diversity Plan. The proposed changes to Chapter 10 add language regarding time accountability requirements for officers of the Employee Advisory Council and employee organizations. The proposed changes to Chapter 17 include the addition of "Unsatisfactory Service Separations" under the remedy entitled to a binding decision and deletes the separate bullet for Unsatisfactory Service Separations. The changes also clarify the Prehearing Requirements process and time requirements.

**Chapter 2**

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted and advertised for Chapter 2 on pages 2-7 and 2-11 with the following amendment on page 2-11:

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**Civil Service Commission**  
12000 Government Center Parkway, Suite 258  
Fairfax, Virginia 22035  
Phone 703-324-2930 Fax 703-653-9431  
[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)

Separation

Leaving a position for any of the following reasons:

- Resignation
- Lay-Off (Separation of an employee from a position to which s/he was legally certified and appointed as a result of the abolition of a position, lack of work, or lack of funds.)
- Dismissal for Cause or referred to as simply Dismissal (Separation from County employment for cause. This designation is the most severe form of discipline and bars the individual from further employment with Fairfax County Government.) .....

The Commission included in their motion the proposed corrections in Chapter 2-7 (Noted as CORRECTED on the attached) as proposed by Service Employees International Union in Attachment 1.

**Chapter 9**

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted and advertised for Chapter 9. The Commission included in their motion the proposed corrections in Chapter 9-2, 9-3, 9-6, & 9-9 (Noted as CORRECTED on the attached) as proposed by Service Employees International Union in Attachment 1.

**Chapter 10**

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted and advertised for Chapter 10. The Commission included in their motion the proposed corrections in Chapter 10-20 (Noted as CORRECTED on the attached) as proposed by Service Employees International Union in Attachment 1.

**Chapter 17**

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted and advertised for Chapter 17 on pages 17-1 and 17-4.

Attachment: a/s

If the Commission can be of further assistance in clarifying these proposed changes, please let me know.

cc: Board of Supervisors  
Commissioners, Civil Service Commission  
Kirk Kincannon, Acting County Executive  
Karen Gibbons, Deputy County Attorney  
Vicki Kammerude, Chair, EAC  
John Niemiec, President, Local 2068  
Joseph Abbate, President, Fairfax Deputy Sheriff's Union, SEIU  
Brad Carruthers, President, Fraternal Order of Police, Lodge 77  
Sean Corcoran, IUPA, Local 5000  
Tammie Wondong, President, FCEGU, SEIU  
Kirt Cleveland, Fairfax Worker's Coalition  
Edgar DeJesus, AFSCME



# Attachment 1

Begin forwarded message:

**From:** Karen Conchar <karen.conchar@seiuva.org>

**Date:** November 2, 2017 at 1:52:05 PM EDT

**To:** "Catherine M. Spage" <Catherine.Spage@fairfaxcounty.gov>

**Subject:** Review notes

## Chapter 2 – “Definitions”

- 2-7 – There is a missing space between “Open Examination” and the line above it. CORRECTED.
- 2-11 – There are no grounds for “dismissal” described in the definitions of separations.

## Chapter 9 – “Separations”

- 9-2 – There seem to be two typos in 9.2(4)(b) b and c. Both “ifs” should be deleted. CORRECTED
- 9-3 – There are an extra comma and space in 9.4(2) “Reduction-in-Force” CORRECTED
- 9-5 – In 9.4(3)(c)(7)(b) the term “bumping” is used without definition and it is not included in Chapter 2 “Definitions.” It might be good to include a definition.
- 9-6 – In 9.4(5), paragraph 1, the word “apposition” appears, but in context it appears it should be “a position.” CORRECTED
- 9-9 – In 9.6(2) the word “byte” should be “by the” CORRECTED

## Chapter 10 – “Leave”

- 10-20 – In 10.36(h), line 3, there seems to be a period before “Administrative Leave” where there should be a comma. CORRECTED

In Unity,  
Karen Conchar, Secretary Treasurer  
3545 Chain Bridge Road, Suite 106  
Fairfax, VA. 22030  
Office: 571-432-0209  
Fax: 571-432-0289  
Cell: 703-509-8755

CONSIDERATION – 1

Proffer Interpretation Appeal Associated with The Reserve at Tysons Corner Related to Proffers Accepted for RZ/FDP 2003-PR-008

ISSUE:

Board consideration of an appeal of a proffer interpretation that determined Proffer 49 of RZ/FDP 2003-PR-008 remains in effect, but is not enforceable against a property not included in the subject rezoning.

TIMING:

Board deferred decision only at the October 24, 2017 Board meeting until November 21, 2017; at which time it was deferred until December 5, 2018; and again deferred to January 23, 2018 at which time it was further deferred to 2/6/18.

BACKGROUND:

On December 22, 2016, the Department of Planning and Zoning (DPZ) received a request for an interpretation of the proffers associated with RZ/FDP 2003-PR-008, a land use application that permitted the development of a residential community now referred to as “The Reserve at Tysons Corner” (hereinafter the “Reserve Property”). In this request, The Reserve at Tysons Corner Association, Inc., as the owners association, requested an interpretation regarding whether the proffers accepted in RZ/FDP 2003-PR-008 created a continuing obligation to provide offsite parking on an adjacent property (the “Meridian Property”), which was not subject to the proffers accepted with RZ/FDP 2003-PR-008. (See Zoning Determination in Attachment 1).

The Reserve Property and the Meridian Property were originally part of a single, 33.74-acre parcel zoned to the I-P District (now I-3) under RZ 75-7-004. In 2003, two concurrent applications were submitted to develop a portion of the property with residential development. One application, PCA 75-7-004-02, was submitted and approved to delete 19.04 acres from RZ 75-7-004. The other application, RZ/FDP 2003-PR-008, proposed to rezone the same 19.04 acres of land to the PDH-30 District. On March 15, 2004, the Board approved PCA 75-7-004-02 first, thereby deleting the 19.04-acre parcel, now the Reserve Property, from the original proffered conditions. On the same day, the Board then approved RZ 2008-PR-003. See Clerk’s March 15, 2004, Board summary, Attachment 2 (describing the approval as an “[a]mendment of the Zoning Ordinance, *as it applies to the property which is the subject*

*of Rezoning Application RZ 2003-PR-008, from the I-3 and HC Districts to the PDH-30 and HC Districts, subject to the proffers dated March 14, 2004”).*

The Reserve Property consists of 570 homes – 478 apartments owned by Simpson Property Group, LP and 92 townhomes which are owned individually and governed by the Townhouse at the Reserve Homeowners Association, Inc. It is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. Although it still shared the same tax map number as the Meridian Property at the time of the Reserve Property rezoning (RZ/FDP 2003-PR-008), it was separated, for zoning purposes, upon the Board’s approval of PCA 75-7-004-02. It is now identified as Tax Map Nos. 39-2((56)) A1, B3, 1-92, 39-2((1)) 13A5 and A6.

The Meridian Property (Tax Map Nos. 39-2((1)) 13D and 13E), is currently owned by Tysons Enterprise West, LLC, and Tysons Enterprise East, LLC, and is developed with two existing office/data center buildings and a surface parking lot.

Proffer 49, the proffer at issue in this appeal, was approved in connection with the Reserve Property rezoning (RZ/FDP 2003-PR-008). It envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

*Prior to the approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

The “adjacent I-3 parcel” referenced in this proffer is the Meridian Property, which was not included in RZ 2003-PR-008. In fact, by referring to it as “the adjacent I-3 parcel,” the proffer language makes clear that the Meridian Property was not part of the Application property subject to Proffer 49.

### Zoning Determination

The Meridian Property recently obtained approval of PCA 75-7-003-3 and SE 2015-PR-021, which allow for redevelopment of the property, in part, with a full-size athletic field and parking garage. Because of the proposed redevelopment, the prior owner of the Meridian Property notified the Appellant in December of 2016 of its intent to terminate the parking agreement under the terms of a Declaration of Covenants recorded in 2005. The Appellant submitted its proffer interpretation request to ask

whether the Meridian Property is entitled to terminate the 150 offsite parking spaces in light of Proffer 49.

On May 30, 2017, the Zoning Evaluation Division (ZED) issued a determination letter in response to the Appellant's proffer interpretation request. Staff determined that, at the time of site plan approval, the Reserve Property demonstrated compliance with Proffer 49 by providing a copy of the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195, which provided that the Meridian Property owner would provide to the Reserve Property owner the right to use 150 overflow parking spaces. The determination letter stated that the accepted proffers become part of the Zoning map for the property subject to the rezoning only, in this case the Reserve Property, and are not enforceable against an off-site property, in this case the Meridian Property. In addition, while the Meridian Property was included in a concurrent, but separate application (PCA 75-7-004-02), a proffer requiring provision of this parking was not included in proffers pertaining to that land area. Staff determined that Proffer 49 remains in effect for the Reserve Property and can be removed only through a Proffered Condition Amendment (PCA) approved by the Board of Supervisors.

The subject appeal was filed with the Board of Supervisors on June 29, 2017, by Lucia Anna Trigiani, agent for the Reserve, in the name of The Reserve at Tysons Corner Association, Inc. ("Association" and "Appellant") (See Attachment 3). The justification for the filing of the appeal alleges the following:

The Appellant is an aggrieved party and thus entitled to appeal the Zoning Determination regarding the proffers relating to RZ/FDP 2003-PR-008, because:

1. The Zoning Determination renders the Reserve Property in non-compliance with Proffer 49 through no fault of the Association or any of the members or residents who reside at the Reserve Property, and with no means of recourse or redress.<sup>1</sup>
2. Members of the Association and residents of the Reserve Property bear significant hardship without access to the overflow parking.
3. The resulting non-compliance and lack of adequate parking have negative impacts on property values and the ability to sell property in the Reserve Property.

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<sup>1</sup> Emphasis added by appellant.

For the reasons that follow, these allegations do not establish that the Appellant is aggrieved by the Zoning Determination.

#### Discussion

The Board's authority to accept proffered conditions arises from Virginia Code §§ 15.2-2296 and 15.2-2303, under the development scheme known as conditional zoning. The Virginia Code defines "conditional zoning," when part of classifying land within a locality into areas and districts by legislative action, as "the allowing of reasonable conditions governing the use of *such property*." Va. Code § 15.2-2201 (emphasis added). Once the Board approves a rezoning subject to proffered conditions, the proffers become a part of the zoning regulations *applicable to the property in question*. Zoning Ordinance § 18-204(3). Any development of the *property in question* must then be in substantial conformance with the proffered conditions. Zoning Ordinance § 18-204(4). Once proffered and accepted as part of an amendment, such conditions shall continue in effect until a subsequent amendment changes the zoning *on the property covered by the conditions*. Va. Code § 15.2-2303(A). The only way to impose (or enforce) proffered conditions on a property not subject to the original rezoning is by applying for an amendment. Zoning Ordinance § 18-204(6). The Meridian Property was not part of RZ 2003-PR-008, nor has the Board approved a proffered condition amendment to include the Meridian Property.

An applicant attempting to appeal a proffer determination to the Board must demonstrate that it is "aggrieved" by that determination. Va. Code § 15.2-2301; see Zoning Ordinance § 18-204 (10). For the reasons discussed below, the Appellant has not demonstrated that it is aggrieved by the Zoning Determination.

#### The Appellant has available means of redress.

For the reasons discussed above, Proffer 49 only applies to the Reserve Property. It required the demonstration of the provision of at least 150 overflow off-site parking spaces on the Meridian Property, which was to be secured via a parking agreement to be recorded in the land records prior to site plan approval. This private agreement was recorded in Deed Book 16927 at Page 2195, as required, and the proffer was noted as met for the purposes of site plan approval. The County has no legal authority to enforce Proffer 49 against the Meridian Property owner, and it also cannot enforce the provisions of a private agreement to which it was not a party.

The Zoning Determination does not render the property in noncompliance with Proffer 49 "with no means of recourse or redress," however. To the contrary, it plainly states that the Appellant may seek to amend the proffered conditions to delete the overflow parking requirement (notably, no enforcement action has been taken or even threatened against the Appellant due to its noncompliance). Alternatively, the Appellant could also take private legal action against the Meridian Property owner to restore the offsite

parking spaces, if necessary, or it could seek to, renegotiate a parking agreement with the Meridian Property owner.

The Reserve Property has Adequate Parking

The Appellant asserts in its second claim that it's left with inadequate parking. The Staff Report and Addendum prepared in conjunction with RZ/FDP 2003-PR-008, however, make no reference to the need for overflow parking. Rather, those documents state that "parking will be provided via structured parking within and/or adjacent to each of the multi-family buildings as well as on each single-family attached lot with additional visitor parking on the streets. Single-family attached units which are front-loaded will have driveways a minimum of 18 feet long<sup>2</sup>." Additionally, Sheet 2 of 13 of the approved CDP/FDP for RZ/FDP 2003-PR-008 demonstrates how adequate parking will be provided in accordance with Article 11 of the Zoning Ordinance in effect at the time of approval and in fact, the approved site as built for both The Reserve at Tysons Corner Townhomes (2481-SAB-002-1) and Multi-Family (2481-SAB-005-2) demonstrate that an excess of parking was provided on-site (total of 1,088 provided versus 997 spaces required). This excess parking does not include the 150 off-site overflow spaces. Based on this documentation, it appears that excess parking is already provided on the Reserve Property.

Impact on Property Values is Irrelevant to Zoning Determination

Finally, the Appellant contends that its non-compliance and lack of adequate parking have negative impacts on property values and the ability to sell property in the Reserve. Fiscal impacts are not taken into consideration during the staff's review of proffer language in response to a request for a determination. For the reasons described above, the Appellant may exercise various means of recourse to come into compliance with Proffer 49. It also has excess parking spaces onsite and could seek to renegotiate a new parking agreement with the Meridian Property for additional off-site parking.

Summary

The Zoning Determination properly concluded that accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. Proffer 49 is therefore unenforceable against the Meridian Property. Accordingly, and for the reasons stated above, staff requests that the Board of Supervisors uphold staff's determinations in the May 30, 2017, letter.

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<sup>2</sup> See Page 18 of Staff Report Applications RZ/FDP 2003-PR-008 (concurrent with application PCA 75-7-004-2) dated September 4, 2003 in Attachment 4.

Board Agenda Item  
February 6, 2018

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Zoning Determination, dated May 30, 2017

Attachment 2: March 15, 2004, Clerk's Board Summary

Attachment 3: Letter dated June 28, 2017, to Clerk of the Fairfax County; Notice of  
Appeal of Zoning Determination for RZ/FDP 2003-PR-008 The Reserve  
at Tysons Corner

STAFF:

Robert A. Stalzer, Deputy County Executive

Fred R. Selden, Director, Department of Planning and Zoning (DPZ)

Leslie Johnson, Zoning Administrator, DPZ

Tracy Strunk, Director, Zoning Evaluation Division (ZED), DPZ

Suzanne Wright, Chief, Special Projects/Applications/Management Branch, ZED, DPZ

Kelly M. Atkinson, Sr. Staff Coordinator, ZED, DPZ

ASSIGNED COUNSEL:

Laura S. Gori, Senior Assistant County Attorney



# County of Fairfax, Virginia

Attachment 1

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Lucia Anna Trigiani, Esq.  
MercerTrigiani  
112 South Alfred Street  
Alexandria, VA 22314



May 30, 2017

Re: Interpretation for RZ/FDP 2003-PR-008; The Reserve at Tysons Corner; Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6: Parking Obligation

Dear Ms. Trigiani:

This determination is in response to your letter of December 22, 2016, requesting an interpretation of the proffers, as well as the approved development conditions and Conceptual/Final Development Plan (C/FDP), accepted and approved in conjunction with the above-referenced application. As I understand it, you are requesting an interpretation of proffer language relating to parking on an adjacent offsite parcel. Specifically, your request concerns whether the proffers accepted in RZ/FDP 2003-PR-008 create a continuing obligation to provide offsite parking on an adjacent property (aka the "Meridian Property"). This determination is based upon your letter dated December 22, 2016, and Exhibit 1, entitled "Proffers RZ 2003-PR-008" dated March 14, 2004. Copies of this letter and exhibits are attached.

The subject property is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. The property is zoned PDH-30 pursuant to the approval of RZ 2003-PR-008 by the Board of Supervisors on March 15, 2004, with the Planning Commission approving FDP 2003-PR-008 on April 7, 2004, subject to proffers and development conditions. These applications permitted development of the property with 92 single-family attached and 478 multi-family dwelling units.

Prior to the approval of RZ/FDP 2003-PR-008, the subject property was part of a larger 33.74-acre property identified as Tax Map Number 39-2 ((1)) Parcel 13. This larger property was originally zoned to the I-P District (now I-3) pursuant to the approval of RZ 75-7-004 by the Board of Supervisors on October 29, 1975, subject to proffers. In 2003, two concurrent applications were submitted by Lincoln Property Company Southwest, Inc., in order to develop a portion of this overall property with the residential development described above. PCA 75-7-004-02 was submitted and approved on the entire 33.74 acres in order to delete 19.04 acres from RZ 75-7-004. RZ/FDP 2003-PR-008 was then approved, subject to proffers, to rezone that same 19.04 acres of land to the PDH-30 District. As the property included in all these applications was under single ownership, the proffers for both applications were signed by the same owner, Campus Point Realty Corporation II. The proffer at issue, however, was approved only in connection with the rezoning

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[www.fairfaxcounty.gov/dpz/](http://www.fairfaxcounty.gov/dpz/)





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of the 19.04-acre parcel. Subsequent to the approval of RZ/FDP 2003-PR-008, the property subject to RZ/FDP 2003-PR-008 was subdivided from the larger property via approved site plans and record plats.

The proffer at issue with your current request is Proffer 49 of RZ 2003-PR-008, which envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

*Prior to the approval of the final site plan on the Application Property<sup>1</sup>, the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

It appears, through submitted plans for the subject property, that compliance with Proffer 49 was demonstrated to Fairfax County through the recordation of a parking agreement in the land records of Fairfax County. You state that you believe the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195 in the Fairfax County land records is the document meant to satisfy Proffer 49—specifically, Section 12.17 of the Declaration of Covenants, Restrictions and Easements as it relates to Overflow Parking Spaces.

The 150 overflow parking spaces were to be located offsite from the 19.04 acres zoned PDH-30, on the portion which retained its I-3 zoning - the Meridian Property (Tax Map Numbers 39-2 ((1)) 13D and 13E), which is currently owned by Tysons Enterprise West LLC and Tyson Enterprise East LLC, and is developed with two existing office/data center buildings and surface parking. In accordance with PCA 75-7-003-3 and SE 2015-PR-021, the Meridian Property will be redeveloped, in part, with a full-size athletic field and parking garage. You now state that the Reserve at Tysons Corner Association Board has been notified that the prior owner of the Meridian Property seeks to terminate the parking agreement with the Association.

In accordance with Section 18-201 of the Zoning Ordinance (“Ordinance”), Board of Supervisors approval of a rezoning application constitutes a permanent (unless further amended) amendment to the Zoning Map. Further, per Section 18-204, any proffered conditions submitted as part of the rezoning application and accepted by the Board of Supervisors become “part of the zoning regulations applicable to the subject property in question, unless subsequently changed by an amendment to the Zoning Map.” Therefore, an approved rezoning and accepted proffers become a part of the Zoning map only for the subject property included in the application, in this case the 19.04 acres described in the application for RZ/FDP 2003-PR-008. Proffer 49 was a commitment

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<sup>1</sup> Proffer #1 associated with RZ 2003-PR-008 states that “Development of the Application Property shall be in substantial conformance with the Conceptual/Final Development Plan (CDP/FDP) prepared by VIKI Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004...” As shown on Sheet 2 of the CDP/FDP, the portion of the property rezoned to the PDH-30 District per RZ 2003-PR-008 contains 19.04 acres, which is the Application Property referenced in Proffer 49. Please refer to Appendix 1 depicting the 19.04 acres subject to RZ 2003-PR-008, which is from the Staff Report published as part of this rezoning application.

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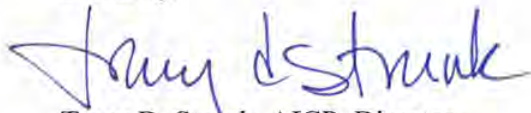
that required the demonstration of the provision of at least 150 overflow parking spaces on the offsite Meridian Property, which was to be secured via a parking agreement to be recorded in the land records. As noted above, this agreement was recorded in Deed Book 16927 at Page 2195 prior to the approval of the site plan, as required.

Proffer 49 specifically required that the overflow parking spaces on an offsite parcel were to be implemented by a private agreement. As noted above, accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. By referring to the Meridian Property as the "adjacent I-3 parcel," the proffer language makes clear that that property was not part of the Application property subject to the proffer.

Based on the foregoing, it is my determination that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008. Although Proffer 49 remains in effect, a proffer violation cannot be enforced on Meridian because the proffer does not apply to them. The proffer can be removed only through a Proffered Condition Amendment (PCA) application approved by the Board of Supervisors. Information on how to apply for a PCA can be found on our website at: <http://www.fairfaxcounty.gov/dpz/zoning/applications/>.

The determination has been made in my capacity as duly authorized agent of the Zoning Administrator and address only those issues discussed herein and not any separately recorded private agreements. If you have any questions regarding this interpretation, please feel free to contact Kelly M. Atkinson at (703) 324-1290.

Sincerely,



Tracy D. Strunk, AICP, Director  
Zoning Evaluation Division, DPZ

N:\Interpretations\Reserve At Tysons Corner RZ 2003-PR-008\2017-02-22 Proffer Interpretation Response - Reserve At Tysons Corner RZ 2003-PR-008.Doc

Attachments: A/S

Cc: Linda Smyth, Supervisor, Providence District  
Phillip Niedzielski-Eichner, Planning Commissioner, Providence District  
Laura Gori, Esq., Assistant County Attorney, Office of the County Attorney  
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ  
Ellie Coddington, Acting Director, Code Development and Compliance Division, LDS  
Ken Williams, Manager, Site and Technical Services, LDS  
Michael Davis, Section Chief for Site Analysis, DOT  
Suzanne Wright, Chief, Special Projects/Applications Management Branch, ZED, DPZ  
Tysons Enterprise West, LLC, Owner, Tax Map 39-2 ((1)) 13D  
Tyson Enterprise East, LLC, Owner, Tax Map 39-2 ((1)) 13E  
File: RZ 2003-PR-008, PCA 75-7-004-03 and SE 2015-PR-021, PI 17 01 001, Imaging

# MERCERTRIGIANI

Lucia Anna Trigiani  
Pla.Trigiani@MercerTrigiani.com

Direct Dial: 703-837-5008  
Direct Fax: 703-837-5018

December 22, 2016

## OVERNIGHT MAIL

Barbara C. Berlin  
Director of the Zoning Evaluation  
Division Department of Planning and Zoning  
12055 Government Center Parkway, Suite 801  
Fairfax, Virginia 22035

RE: Proffer RZ 2003-PR-008 dated March 14, 2004  
Zoning Interpretation Request

Dear Ms. Berlin:

This firm represents The Reserve at Tysons Corner Association, Inc. ("Association"). The Association Board of Directors ("Association Board") has requested our assistance in submitting this interpretation request to you for consideration and response.

### Background

The Association is a Virginia nonstock corporation responsible for the operation and administration of property located in Fairfax County, Virginia known as The Reserve at Tysons Corner ("Reserve Property").

The Reserve Property is subject to a Declaration of Covenants, Conditions, Restrictions and Reservations of Easements recorded on March 24, 2006 in Deed Book 18311 at Page 1041 among the Fairfax County land records ("Land Records") and amended by the First Amendment to Declaration of Covenants, Restrictions and Reservation of Easements recorded on August 27, 2008 in Deed Book 20085 at Page 425 among the Land Records (as amended, the "Master Declaration"). A copy of the Declaration is enclosed behind Exhibit 1.

The Reserve Property is also subject to Declaration of Covenants, Restrictions and Easements ("SAIC Declaration") which was recorded on January 28, 2005 in Deed Book 16927 at Page 2195 by Campus Point Realty Corporation ("Campus"), which presumably owned the Reserve Property at that time – prior to creation of the Association. The Reserve Property is referred to as *Parcel 1* in the SAIC Declaration. A copy of the SAIC Declaration is enclosed behind Exhibit 2.

The SAIC Declaration also encumbers property located immediately north of the Reserve Property (on the north side of Science Applications Court) – referred to as *Parcel 2* in the SAIC Declaration ("Meridian Property"), which is owned or was recently owned by the Meridian

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Group or its affiliates. The Meridian Property is in the process of being redeveloped into a project we believe is referred to as *Tysons Technology Center*. The Meridian Property, or a portion thereof, is currently under contract or has sold to another party as of the date of this letter. To our knowledge, the Meridian Property, as subdivided, consists of property identified as Tax Map Numbers 039-01-0013D and 039-2-01-0013E.

We also believe that the Meridian Property is subject to development conditions imposed by Fairfax County pursuant to Proffers RZ 2003-PR-008 dated March 14, 2004 ("Conditions") – referred to as the *Application Property* therein. A copy of the Conditions is enclosed behind **Exhibit 3**. Number 49 of the Conditions provides:

*Prior to approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking arrangement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 p.m.) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

The foregoing condition requires the owner of the Meridian Property to make available to residents of the Reserve Property a minimum of 150 "overflow" parking spaces on the Meridian Property. We are unaware of this condition being subsequently amended. The condition is *unqualified* in terms of its permanency.

Section 12.17 of the SAIC Declaration contemplates the overflow parking requirement, presumably in response to Number 49 of the Conditions. Section 12.17 provides:

*The Parcel 2 Owner shall provide to the Parcel 1 Owner, for the benefit of the residents of Parcel 1, the right to use a minimum of 150 parking spaces on Parcel 2 during non-business hours on weekdays (i.e. after 6:00 p.m.) and on weekends ("Overflow Parking"). Prior to the sale or rental of the first housing units on Parcel 1, the Parcel 1 Owner or the Master Association shall establish, subject to the reasonable approval of the Parcel 2 Owner, reasonable rules and regulations for the use of the Overflow Parking. The Master Association (or, before there is a Master Association, the Parcel 1 Owner) shall enforce such rules and regulations. If the Parcel 1 Owner of the Master Association, as applicable, fails to establish and/or enforce such rules and regulations, in addition to any other remedies that may be available to it, the Parcel 2 Owner shall have the right to terminate the Parcel 1 Owner's right to use the Overflow Parking by sending a notice to the Parcel 1 Owner and, if the Parcel 2 Owner so elects, recording the same in the land records.*

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Barbara C. Berlin  
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However, unlike Condition 49, the language in Section 12.17 is *qualified* in that it provides that the Parcel 2 Owner (the owner of the Meridian Property) can *unilaterally* terminate the overflow parking arrangement if rules and regulations are not promulgated within a certain time frame.<sup>1</sup>

Less than two weeks ago, in conjunction with the sale of the Meridian Property, Meridian presented the Association Board with a copy of a Parking Agreement for execution contemplating reduced parking (under the 150 required parking spaces) during construction on the Meridian Property, as well as a right of the owner of the Meridian Property to unilaterally terminate the Parking Agreement (and the right of the Association to park on the Meridian Property) with 30 days' prior written notice.

Because the Association will not execute the Parking Agreement in substantially the form presented to the Association Board, counsel for Meridian yesterday advised that Meridian will now terminate the right of the Association residents to use the overflow parking on the Meridian Property pursuant to the termination language contained in 12.17 of the SAIC Declaration. The Board anticipates this letter will be received shortly.

We believe that termination of the right of Reserve Property residents to overflow parking on the Meridian Property is in direct contravention of the requirement that Meridian make at least 150 parking spaces available to such residents pursuant to Number 49 of the Conditions, which although establishes limitations on such parking, does not contemplate termination.

Inquiry

With the foregoing context, the Association Board respectfully requests the following question be answered:

*Is the owner of the Meridian Property entitled to terminate the right of individuals residing on the Reserve Property to 150 overflow parking spaces on the Meridian Property under Number 49 of the Conditions?*

In conjunction with this question, the Association Board requests, pursuant to the Freedom of Information Act, copies of all documents in Fairfax County's possession pertinent to these inquiries which are not included with this correspondence. Please advise whether there is a cost associated with providing copies of these documents.

<sup>1</sup> The Master Declaration also makes reference to this overflow parking, although it is not so qualified. Specifically, Article XIV, Section 8 provides: *The Property is benefitted by the right to the use of the "Overflow Parking" as described in Section 12.17 of the SAIC Declaration. It is expressly agreed that the Association is empowered to act on behalf of all Lot Owners with respect to the use and maintenance of the Overflow Parking and any dealings in connection therewith the owner of the land on which such Overflow Parking is located. The Association shall have the right to promulgate from time to time and enforce reasonable, non-discriminatory rules and regulations with respect to the use of such Overflow Parking by the Lot Owners and Residents.*

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December 22, 2016  
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Should you have any questions, please contact me directly. Your consideration of this matter is greatly appreciated.

Sincerely,



Lucia Anna Trigiani

LAT/jlr

Enclosures - Exhibits 1, 2, 3 and 4 and Application Fee

cc: Supervisor Linda Smyth

The Reserve at Tysons Corner Association, Inc. Board of Directors

#131072

**LINCOLN PROPERTY COMPANY SOUTHWEST INC.****PROFFERS****RZ 2003-PR-008****March 14, 2004**

Pursuant to Section 15.2-2303(a), Code of Virginia, 1950 as amended, and subject to the Board of Supervisors approving a rezoning to the PDH-30 District for property identified as Tax Map 39-2 ((1)) part 13 (hereinafter referred to as the "Application Property"), Lincoln Property Company Southwest, Inc., the Applicant in RZ 2003-PR-008 proffers for the owners, themselves, and their successors and assigns the following conditions. In the event that this Application is approved, any previous proffers for the Application Property are hereby deemed null and void and hereafter shall have no effect on the Application Property.

**Development Plan**

1. Development of the Application Property shall be in substantial conformance with the Conceptual Plan/Final Development Plan (CDP/FDP) prepared by VIKI Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004, which CDP/FDP proposes a maximum of 570 dwelling units (including ADUs), with a maximum of 92 single family attached dwellings and 478 multi-family dwelling units. With the development of 570 dwelling units, there will be a minimum of 30 affordable dwelling units provided, based on compliance with Section 2-800 of the Zoning Ordinance. . If fewer number of market rate units are built, a proportionately fewer number of ADUs will be provided. The Generalized Development Plan for companion application PCA 75-7-004-2 is shown on Sheets 4 and 5.

Secondary uses shall be limited to unmanned bank teller machines, swimming pool and associated facilities, fitness centers, basketball half-court/racquetball court/sports court, business/telecommuting centers, video/entertainment centers, leasing offices, recreational/community rooms, outdoor recreational uses, and other accessory uses typically provided in multi-family communities.

2. Notwithstanding that the CDP/FDP is presented on thirteen (13) sheets and said CDP/FDP is the subject of Proffer 1 above, it shall be understood that the CDP shall be the entire plan shown on Sheets 2 and 3, relative to the points of access, the maximum number and type of dwelling units, the amount of open space, the general location and arrangement of buildings and parking, and the peripheral setbacks. The Applicant or successors have the option to request a FDPA for elements other than the CDP elements from the Planning Commission for all of or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance, if in conformance with the approved CDP and proffers.
3. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the CDP/FDP may be permitted as determined by the Zoning Administrator. The



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Applicant or successors shall have the flexibility to modify the layouts shown on Sheets 2 and 3 of the CDP/FDP without requiring approval of an amended CDP/FDP provided such changes are in substantial conformance with the CDP/FDP as determined by the Department of Planning and Zoning ("DPZ") and do not increase the number of dwelling units, decrease the amount of open space, or decrease the setback from the peripheries.

4. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein, including road dedications, park dedications and school dedications, or as may be required by Fairfax County or Virginia Department of Transportation ("VDOT") at the time of site plan approval.

#### Owner Associations

5. Prior to the issuance of the first Residential Use Permit ("RUP") on the Application Property, the Applicant shall establish an Umbrella Owners Association ("UOA") in accordance with Virginia law. Individual homeowner associations and/or condominium owners associations ("HOA/COAs") shall be formed for various areas of the Application Property in accordance with Virginia law. Each HOA/COA and rental component shall be a member of the UOA with voting rights based on the number of dwelling units within each. The respective UOA and HOA/COA documents shall specify the maintenance obligations as may be outlined in these proffers and as may be agreed upon between the HOA/COAs and rental components.

#### Transportation

6. At the time of site plan approval, or upon demand by Fairfax County, whichever shall occur first, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Application Property's Gallows Road frontage measuring a minimum of seventy-four (74) feet from the existing centerline as shown on Sheet 3 of the CDP/FDP.

Townhouse units fronting on Gallows Road shall be set back a minimum of 15 feet from the dedicated right-of way. Initial purchasers of the townhouses along Gallows Road shall be advised in writing prior to entering into a contract of sale that Gallows Road is planned to be widened in the future.

7. At the time of site plan approval, the Applicant shall escrow the cost of constructing a future right-turn deceleration lane along the Gallows Road frontage of the Application Property, in an amount to be determined by Department of Public Works and Environmental Services ("DPWES"). The escrow shall include the cost of relocating, if determined necessary, the underground utilities existing at the time of rezoning approval which include a fiber optic line and water easement. This new turn lane is anticipated to



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RZ 2003-PR-008  
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be needed at such time as the existing right-turn deceleration lane becomes a future through lane on Gallows Road.

8. The Applicant shall construct extensions of the existing left turn lanes on northbound Gallows Road at the Merry Oaks Lane intersection and southbound Gallows Road at Science Applications Court within the existing right-of-way as may be approved by DPWES and VDOT. Such extensions, if permitted, shall be completed prior to the issuance of the 100th Residential Use Permit (RUP) for the Application Property.
9. Science Applications Court shall remain a private street. Commensurate with development of the Application Property, the Applicant shall construct improvements to Science Applications Court on a new alignment as shown on the CDP/FDP. The Science Applications Court approach to Gallows Road shall accommodate two lanes entering and three lanes exiting the Application Property.
10. Prior to site plan approval, the Applicant shall perform a warrant analysis to determine if a traffic signal is warranted at the intersection of Gallows Road and Madrillon Road. If the study shows a signal is warranted now or will be warranted with the build-out of the Application Property, the Applicant shall escrow the sum of \$25,000 with DPWES at the time of first site plan approval towards the design and installation of said traffic signal at the intersection of Gallows Road and Madrillon Road. If the signal has not been installed within five (5) years of the date of the rezoning approval, the escrowed amount shall be redirected to the Providence District Trails Fund.
11. The Applicant shall provide one (1) bus shelter along its Gallows road frontage with specific location determined by WMATA. The bus shelter shall be the typical open type and the installation shall be limited to the concrete pad, the shelter itself and a trash can. No bus turn outs or special lanes shall be provided by the Applicant. If, by the time of final bond release, WMATA has not determined the exact location of the bus shelter, the Applicant shall escrow the amount of \$20,000 with DPWES for the installation of a bus shelter by others in the future. Once installed, the bus shelter and trash can shall be maintained by the Application Property's UOA. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA shall be responsible for the maintenance of the bus shelter. The UOA/HOA/COA documents shall specify that the UOA is responsible for the maintenance of the bus shelter.

At the time of final site plan approval, the Applicant shall escrow the amount of \$20,000 with DPWES for the installation of a bus shelter by others along the southbound frontage of Gallows Road in the vicinity of the Merry Oaks Lane intersection, with the specific location determined by WMATA. If, by the time of final bond release, WMATA has not determined the exact location of the bus shelter, the \$20,000 escrow shall be redirected to DPWES for funding of another shelter elsewhere in the Dunn Loring/Tysons Corner area.

12. At the time of site plan approval, the Applicant shall dedicate in fee simple to the Board of Supervisors right-of-way along the Application Property's I-495 frontage measuring 25

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feet from the existing right-of-way as shown on Sheet 3 of the CDP/FDP. The Applicant shall provide ancillary utility and grading easements to a width determined by VDOT provided VDOT reconstructs any permanent improvements and landscaping disturbed with use of the easement. Subject to approval of a licensing agreement with Fairfax County, the Applicant shall maintain and have the usage of the dedicated area for open space until such time as construction of the I-495 improvements commence.

13. The use of mass transit, ride-sharing and other transportation strategies shall be utilized to reduce single occupancy vehicular (SOV) traffic from the Application Property during peak hours by a minimum of 20 percent of the trips generated according to the Institute of Transportation Engineers (ITE) Trip Generation Manual, 6<sup>th</sup> Edition. The transportation demand management ("TDM") plan shall consist of at least two Level 3 TDM elements as outlined in Attachment A and as defined by Fairfax County Department of Transportation ("FCDOT") for residential communities, in order to achieve the equivalent Level 4 (Platinum) program status. Tenants and purchasers shall be advised of this transportation strategy development proffer.

The Applicant shall designate an individual(s) to act as the Transportation Coordinator(s) whose responsibility shall be to implement the TDMs in coordination with the FCDOT. The transportation strategies management position may be a part of other duties assigned to the individual(s). The transportation management strategies shall be implemented after issuance of the 200<sup>th</sup> RUP for the Application Property. Strategies shall include the following:

- A. Providing amenities for bicycle storage;
- B. Providing a telecommuting center for all residents' use with the potential for upgrading to T-1 or similar secure lines;
- C. Providing internet connections in all dwelling units to facilitate working at home;
- D. Providing a concierge service/central area where residents can arrange certain services such as dry cleaning/pharmacy/grocery deliveries;
- E. Sidewalk system designed to encourage/facilitate pedestrian circulation; and
- F. Participation in a shuttle service as outlined in Proffer 14.

Strategies may include the following:

- A. Participation in the Fairfax County Ride Share Program;
- B. Dissemination of Ridesharing information in residential lease and purchase packages;
- C. Making ridesharing display maps and forms available to in each multi-family building;
- D. Providing Metro checks with rental contracts;
- E. Instituting a "Preferred Employer" program for SAIC offering reduced application fees, reduced deposits, and other incentives to encourage SAIC employees to live on the Application Property;

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- F. Implementing a comprehensive Ozone Action Days Program;
- G. Developing a web page for residents of the Application Property describing and updating information on TDM strategies and services; and
- H. Any other strategies found to be effective in reducing the number of single-occupancy vehicle trips, mutually agreed upon by the Applicant and FCDOT.

The Transportation Coordinator may work with adjacent homeowner associations to develop and share carpool, vanpool and other ride sharing information.

The Applicant shall notify FCDOT of the date that the TDM strategies are implemented. One year after the TDM strategies are implemented the Applicant shall conduct a survey of residents, visitors and employees to determine the transportation characteristics of building tenants and employees. This survey will form the basis of the on-going transportation management program.

Annually thereafter, the Transportation Coordinator shall conduct a multi-modal transportation split survey of the residents to demonstrate whether the goal of reducing SOV trips by 20 percent has been met during peak hours. The Transportation Coordinator shall prepare an annual report, in coordination with, and for review and approval of the FCDOT, which shall include the results of the survey and assess the success of the TDM strategies in reaching the stated goal and recommend adjustments in TDM strategies.

If the annual multi-modal transportation split surveys indicate that a reduction of SOV trips by 20 percent has not occurred, \$40.00 per occupied dwelling unit shall be contributed annually to a TDM fund for the Application Property until such time as the reduction has occurred. The TDM fund shall be used by the Transportation Coordinator to implement existing or new strategies to reduce SOV trips during peak hours. The terms of this proffer with regard to contributing to a TDM fund shall expire fifteen (15) years after the last RUP is issued.

14. The Applicant shall provide a shuttle bus/van service from the Application Property to the Dunn Loring Metro Station and other office campuses within Tysons Corner. The Applicant may provide this shuttle service in concert with an existing shuttle service provided by the adjacent I-3 property and may share in the cost of operation. The shuttle service shall be provided to meet peak hour demand and shall, at a minimum, operate on weekdays (except for federal holidays) for three hours during the morning peak and three hours during the evening peak. The shuttle service shall commence prior to the occupancy of the 200th RUP on the Application Property and shall operate for at least three years following the issuance of the last RUP. Cost of the shuttle service shall be borne by the UOA. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA will fund the cost of operating the shuttle. The UOA/HOA/COA documents shall expressly state that the UOA shall be responsible for operation of the shuttle. If it is determined by the Applicant that demand for the shuttle service does not warrant continuation, the Applicant may elect to cease operation.

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However, the Applicant shall provide ninety (90) days advance written notification to residents of the Application Property and FCDOT of the planned cessation of shuttle service. In addition, if FCDOT determines that the shuttle service interferes with the public bus service and notifies Applicant of same, the Applicant shall cease operation of the shuttle service upon ninety (90) days advance written notification to residents.

15. All private streets shall be constructed with materials and depth of pavement consistent with public street standards in accordance with the Public Facilities Manual, as determined by DPWES. The Applicant and subsequent UOA/HOA/COAs shall be responsible for the maintenance of all private streets. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA/HOA/COAs will be responsible for the maintenance of the private streets. The UOA/HOA/COA documents shall expressly state that the individual HOA/COA or rental component shall be responsible for the maintenance of the private streets serving that entity's development area.
16. The Applicant shall make a cash contribution to a fund administered by the FCDOT to be used toward Tysons Corner Area transportation improvements. The amount of the contribution shall be in keeping with the policy and formula adopted by the Board of Supervisors at the time of the approval of the rezoning (anticipated to be \$734.00 per dwelling). Using the rezoning approval date as the base date, this cash contribution shall be adjusted accordingly to the construction cost index as published in the *Engineering News Record*. The contribution shall be paid in two equal (2) installments; the first installment to be paid at the issuance of the first RUP; the remaining installment shall be paid twelve (12) months later, but no later than final bond release.
17. The Applicant shall install appropriate warning signage and/or markers on the east side of Gallows Road as determined by VDOT, advising motorists of the curve in Gallows Road immediately north of Science Applications Court. If by the time of final bond release for the Application Property, VDOT has not determined what signers or markers would be appropriate, the Applicant's obligation under this proffer shall be null and void.
18. To increase pedestrian safety crossing Gallows Road at Science Applications Court, the Applicant shall make the following improvements subject to VDOT approval:
  - A. Widen the existing concrete median located on the northern Gallows Road approach to a width of six (6) feet to provide for a pedestrian refuge. This shall be accomplished by shifting the Gallows Road curbing along the Application Property's frontage.
  - B. Re-paint the pedestrian crosswalk.
  - C. Install a new pedestrian signal that counts down the time available to cross the road.
  - D. Work with VDOT to ensure adequate crossing time.



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- E. Install "no turn on red while pedestrians are present" signage on the Gallows Road northern approach and on Merry Oak Lane's eastbound approach to the intersection.
19. The Applicant shall construct a secondary emergency only access point onto Gallows Road as shown on the CDP/FDP, commensurate with development of the townhouse section. This access shall be constructed of grasscrete, ritter rings or other similar materials and shall be chained at the property line so that it is used only in emergency situations.

Architectural/Landscaping Details

20. The architectural design of the multi-family buildings and townhomes shall be in substantial conformance with the general character of the elevations shown on Sheet 13. The Applicant reserves the right to refine the elevations as a result of final architectural design, so long as the character and quality of design remains consistent with those shown. The townhouses shall be a maximum of three stories above grade with an additional optional loft incorporated into the roof structure (maximum building height of 45 feet). Building materials may include one or more of the following: brick, stone, pre-cast concrete, siding, stucco (excluding dryvit or other similar synthetic stucco material) and glass. Building facades will be predominantly masonry. The façade of the parking structure associated with Building 2 shall be predominantly either masonry or pre-cast concrete.

A copy of the architectural plans shall be submitted to the Providence District Planning Commissioner for review and comment prior to final site plan approval. At the time of each submission of the final site plan to the County, a copy of the submission shall be provided to the Providence District Planning Commissioner for review and comment.

21. A landscape plan shall be submitted as part of the first and all subsequent submissions of the site plan and shall be coordinated with and approved by the Urban Forester. This plan shall be in substantial conformance with the landscape concepts plan as to quantity and quality of plantings, and in general conformance with the location of plantings as shown on Sheets 6. The Applicant shall work with the Urban Forester to select plant species that in addition to meeting other landscaping requirements such as durability, availability and aesthetics, also aid in the maintenance of air quality. Location of plantings may be modified based on utility location, sight distance easements, and final engineering details as approved by the Urban Forester, but shall be consistent in the number and type of plantings.
22. The design details shown on Sheets 6, 8, 9 and 10 submitted with the CDP/FDP illustrate the design intent and overall community organization of the proposed development. Landscaping and on-site amenities shall be substantially consistent in terms of character and quantity with the illustrations and details presented on these sheets. Specific features

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such as exact locations of plantings, pedestrian lighting, sidewalks to individual units, etc. are subject to modification with final engineering and architectural design. Landscaping and on-site amenities shall include:

- a. A landscaped entry feature to be provided on site to include an entrance monument and/or signage, ornamental trees and shrubs;
- b. Installation of streetscape elements and plantings along the Application Property's Gallows Road frontage as shown on Sheets 6 and 10 of the CDP/FDP. A planting strip a minimum of six (6) feet in width shall be provided between the future curb of Gallows Road anticipated with construction of an additional lane and the proposed asphalt trail. Street trees on the east side of the trail shall be planted at twice the density as street trees in the planting strip west of the trail, as shown on Sheet 10 of the CDP/FDP. Street trees shall be a minimum of three-inch caliper at the time of planting. Trees located within VDOT rights-of-way are subject to VDOT approval.
- c. Installation of streetscape elements and plantings along the south side of Science Application Court as shown on Sheet 9 of the CDP/FDP.
- d. A large community green in the eastern portion of the Property as shown on Sheet 8 of the CDP/FDP. This passive recreational area shall include pedestrian pathways, specialized landscaping, seating areas, and pedestrian lighting and shall be available for use by all residents of the Application Property.
- e. Landscaped courtyards within the multi family Buildings 2 and 3 as shown on Sheet 6 and detailed on Sheet 8 of the CDP/FDP. These courtyards shall incorporate a courtyard walk, special paving areas with seating or picnic areas, a mixture of deciduous, evergreen and ornamental plantings, and a lawn panel. Each courtyard may vary in design detail and amenities.

#### Sidewalk/Trails

23. The Applicant shall provide sidewalks on both sides of Science Applications Court and throughout the Application Property linking buildings as shown on Sheet 6 of the CDP/FDP. Such construction shall occur commensurate with the development of each section of the Application Property. In addition, the Applicant shall construct a minimum five (5) foot wide asphalt trail around the stormwater management pond and between the I-495 frontage and the proposed parking garage as shown on the CDP/FDP. Trail construction shall occur concurrently with the construction of the stormwater management ponds.

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24. The Applicant shall construct an eight (8) foot wide asphalt trail within the dedicated right-of way along the Gallows Road frontage as shown on Sheets 6 and 10 of the CDP/FDP.

#### Environment

25. All outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Fixtures used to illuminate residential streets, parking areas and walkways shall not exceed twenty (20) feet in height, shall be of low intensity design and shall utilize full cut-off fixtures which shall focus directly on the Application Property. All upper level parking deck lighting fixtures shall not exceed the height of the parapet wall. Lighting on the lower level of parking decks shall be installed between the ceiling beams to reduce glare.

To prevent parking deck lighting impacts on Tysons Executive Village, the southern façade of the parking deck located adjacent to I-495 shall be solid including a solid garage door or panel door which will not allow light to pass through.

26. Signage on the Application Property shall be provided in accordance with Article 12 of the Zoning Ordinance. If lighted, signage shall be internally lighted or directed downward.
27. Unless modified by DPWES, the Applicant shall provide stormwater detention and Best Management Practices as required by the Public Facilities Manual (PFM) and as depicted on the CDP/FDP in up to three enhanced extended detention facilities. Plantings shall be provided within these ponds to the extent permitted by the PFM. The design of the southern pond will require a modification of the PFM to allow the installation of a dam cut-off wall. The ponds shall be maintained by the UOA, in association with the owners of the commercial structures governed by PCA 75-7-004-2.
28. Within 90 days of the Board's approval of the rezoning of the Application Property, the Applicant shall submit a written comparative analysis to the Tysons Executive Village ("TEV") Homeowners Association Board of Directors [Tax Map 39-2 ((48))], DPWES, and the Providence District Supervisor analyzing the effects of existing and future development on the existing wet pond in the TEV subdivision for the entire watershed of the pond and comparing the advantages and disadvantages of converting it to a dry pond or maintaining it as a wet pond. The TEV HOA shall be given the opportunity to review the analysis and provide a written determination to the Applicant and Providence District Supervisor as to its decision to maintain or convert the pond. As a result of that determination and after review of that analysis by DPWES, the Applicant shall undertake the following actions:
  - a. If TEV elects to maintain their stormwater management facility as a wet pond, the Applicant shall remove accumulated sediment from the pond and restore the pond

it to its originally designed storage capacity at no cost to TEV. Such improvement shall be made concurrent with initiation of clearing and grading on the Application Property subject to TEV providing any necessary permission and/or easements at no cost to the Applicant. The Applicant shall perform a bathometric survey of the TEV pond following completion of the pond improvements and shall perform a second bathometric survey following completion of construction on the Application Property. Should these surveys show an unacceptable level of sedimentation has occurred, as determined by DPWES, the Applicant shall restore the pond to its approved storage volume prior to final bond release on the Application Property.

The Applicant shall then enter into an agreement with TEV agreeing to pay its proportionate share of all future pond maintenance costs (as defined in said agreement). Said agreement shall be recorded in the land records.

- b. If TEV elects to convert their wet pond to a dry pond, the Applicant shall revise the TEV site plan accordingly and shall make the necessary improvements at no cost to TEV subject to TEV's written authority to do so and subject to DPWES approval. Landscaping in the pond shall be provided by Applicant as permitted by the Urban Forester and DPWES. In order to convert the pond it is understood that it may be necessary to provide Best Management Practices (BMPs) for TEV on the Application Property. Conversion of the pond shall occur concurrent with clearing and grading activities on the Application Property provided 1) the TEV site plan revision has been approved; and 2) TEV provides any necessary permission and/or easements at no cost to the Applicant. If the TEV site plan revision is not approved and/or necessary easements not provided prior to clearing and grading activities on the Application Property, the Applicant shall delay conversion of the pond until necessary approvals and easements are obtained but shall be allowed to proceed with clearing, grading and construction on the Application Property. Once the pond has been converted to a dry pond, TEV shall petition Fairfax County to accept maintenance of the pond. The Applicant shall be responsible for any additional improvements needed to ensure County acceptance.
- c. The Applicant shall bond these public improvements in keeping with standard County policies.

If TEV does not provide a written determination to the Applicant and Providence District Supervisor within 60 days of its receipt of the Applicant's written comparative analysis, the Applicant shall implement improvements specified in Paragraph "a" above.

- 29. In an effort to mitigate existing drainage problems within the adjacent Courts of Tysons ("COT") community, the Applicant shall:



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- a. Design and install a storm drain system to intercept stormwater from Gallows Road currently being piped along the COT northern boundary line. The new system shall redirect this storm drainage through the Application Property as generally shown on the CDP/FDP.
  - b. Provide an underground TV inspection of the condition of the existing storm drain from Gallows Road to the proposed intercepts and correct any breaks, malfunctions, or sedimentation found, as determined necessary and approved by DPWES. Implementation of this proffer is dependent on the COT granting any necessary easements or letters of permission at no cost to the Applicant.
  - c. The Applicant shall bond these public improvements in keeping with standard County policies.
30. A tree preservation plan shall be submitted as part of the site plan in conformance with the tree save areas shown on the CDP/FDP. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Division. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees twelve (12) inches in diameter and greater within fifteen (15) feet of either side of the limits of clearing and grading. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the *Guide for Plant Appraisal* published by the International Society of Arboriculture.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing using four foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the limits of clearing and grading as shown on the CDP/FDP. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. Three (3) days prior to the commencement of any clearing, grading, or demolition activities, the Urban Forestry Division shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

The Applicant shall strictly conform to the limits of clearing and grading as shown on Sheet 3 of the CDP/FDP.

The limits of clearing and grading shall be marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the limits of clearing and grading shall be walked with an Urban Forestry Division representative to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading. Representatives of the COT and TEV HOAs shall be invited to participate in walking the

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limits of clearing and grading adjacent to their communities with the Applicant and the Urban Forester. Trees that are not likely to survive construction due to their species and/or their proximity to disturbance will also be identified at this time and removed as part of the clearing operation.

Any trees identified to be preserved adjacent to the COT, Courthouse Station and TEV property lines, which fail to survive within two years following construction activity shall be replaced by the Applicant with species as determined appropriate by the Urban Forester, in consultation with designated representatives of the COT HOA, Courthouse Station HOA, and TEV HOA and the UOA for the Application Property. To supplement the normal conservation escrow required, the Applicant shall post an additional \$10,000 in the conservation escrow at the time of site plan approval to ensure replacement of construction damaged trees.

31. A fence a minimum of six feet in height shall be provided between the southernmost stormwater management pond on the Application Property and the adjacent TEV, Courthouse Station, and COT subdivisions as depicted on the CDP/FDP. The fence shall be constructed with masonry piers and wooden inserts. The fence shall be field located, with review by the Urban Forester, to ensure minimal disturbance to existing vegetation. Deciduous and evergreen trees shall be installed between the wall/fence and adjacent subdivisions to supplement existing vegetation to be preserved, as determined by the Urban Forester. Any trees identified to be preserved which fail to survive a two year period following construction shall be replaced by the Applicant with species determined appropriate by the Urban Forester, in consultation with designated representatives of the COT HOA, Courthouse Station HOA, and TEV HOA and the UOA for the Application Property.

Installing the above-referenced fence will result in a double set of fencing along the COT eastern boundary. If, in the future, both the COT HOA and the UOA for the Application Property jointly decide to eliminate the second fence located inside the Application Property, nothing in this proffer should prevent removal of that fence. In the event the removal of such second fence is jointly decided, a shared fence maintenance agreement for the eastern boundary of COT shall be executed prior to any removal.

32. Within the tree save area shown on the Application Property immediately north of the COT and around the south end of the Kidwell Drive cul-de-sac, the Applicant shall provide supplemental evergreen and deciduous trees as determined by the Urban Forester in consultation with the COT HOA and Heritage Point HOA in an effort to create an effective year round screen. Care shall be taken to retain healthy quality vegetation to the maximum extent possible, while augmenting the screening opportunities.
33. All units constructed on the Application Property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES for either electric or gas energy homes, as applicable.

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34. Polysonics Corp. has prepared a Traffic Noise Analysis of the Application Property dated August 2003. This report provides an analysis of noise impacts associated with I-495 and Gallows Road. Based on the findings of that report, the Applicant shall provide the following noise attenuation measures:

- a. In order to reduce interior noise associated with Interstate 495 to a level of approximately 45 dBA Ldn, the garage associated with Building 3 shall be utilized as a noise attenuation barrier as shown on the CDP/FDP.
- b. In order to reduce interior noise to a level of approximately 45 dBA Ldn, for units which are projected to be impacted by highway noise from I-495 having levels projected to be greater than 70 dBA Ldn after the garage is in place, located on the eastern façade of Building 2 and the northern and southern facades of Building 3, these units shall be constructed with the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 45. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

- c. In order to reduce interior noise to a level of approximately 45 dBA Ldn for units which are projected to be impacted by roadway noise from Gallows Road having levels projected to be between 65 and 70 dBA Ldn, located on the western façade of Building 1 and the townhouse units facing Gallows Road, these units shall be constructed with the following acoustical measures:

Exterior walls should have a laboratory sound transmission class (STC) rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

- d. Prior to the issuance of building permits, alternative interior noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DPWES after consultation with the Department of Planning and Zoning.

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- e. Due to the placement of structures on the site, additional exterior noise mitigation is not necessary for most of the outdoor recreational uses on the site. The jogging trail with exercise stations located adjacent to I-495 will be impacted by noise but mitigation is not provided.
- 35. If required by DPWES, a geotechnical engineering study shall be submitted to DPWES for review and approval prior to final site plan approval, and recommendations generated by this study shall be implemented as required by DPWES.
- 36. Prior to the issuance of a demolition permit or land disturbance permit, a rodent abatement plan shall be submitted to Fairfax County Health Department that will outline the steps that will be taken to prevent the spread of rodents from the construction site to the surrounding community and sewers. The Applicant shall implement the rodent abatement plan.

Miscellaneous

- 37. The Applicant shall contribute the amount of \$150,000 to Kilmer Intermediate School for the purchase of wireless computers or other technology based programs at the discretion of the principal. The Applicant shall provide documentation that this contribution has been made. Such contribution shall occur prior to the issuance of the first RUP for the Application Property
- 38. The Applicant shall contribute the amount of \$465,000 to the Board of Supervisors for the construction of capital improvements to schools in the vicinity of the Application Property. The contribution shall be paid in two (2) installments; the first installment of \$232,500 to be paid prior to issuance of the 100<sup>th</sup> RUP and the second installment of \$232,500 shall be paid prior to the issuance of the 300<sup>th</sup> RUP.
- 39. The Applicant shall comply with the Affordable Dwelling Unit (ADU) Program as set forth in Section 2-801 of the Zoning Ordinance unless modified by the ADU Advisory Board. The Applicant reserves the right to provide ADUs for all of the Application Property within the multi-family buildings. Two of the required ADUs (one one-bedroom unit and one two-bedroom unit) shall be designed and constructed to be fully handicapped accessible. Three of the required ADUs shall be designed and constructed as handicapped adaptable units and shall be made fully handicapped accessible if demand dictates.
- 40. No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 of Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant's direction to assist in the initial sale or rental of residential units on the Application Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale and/or rental of residential units on the Application Property to adhere to this proffer.



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41. The Applicant shall comply with Paragraph 2 of Section 6-110 of the Zoning Ordinance by contributing \$955 per dwelling unit for developed recreational facilities. The Applicant shall receive credit for the on-site recreational facilities which shall include, but not be limited to a swimming pool; a community center with exercise facilities; a tot lot; an indoor basketball half-court/racquetball court/sport court (either within one of the residential buildings or in a separate structure as shown on the CDP/FDP); and a jogging trail with exercise stations. Any additional money remaining which is not spent for on-site facilities shall be contributed to the Fairfax County Park Authority.
42. Prior to the issuance of the first RUP on the Application Property, the Applicant shall contribute the amount of \$150,000.00 to the Fairfax County Board of Supervisors for the acquisition of park land or improvement of park facilities in the Dunn Loring/Tysons Corner area.
43. A covenant shall be recorded which provides that townhouse garages shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g., parking of vehicles) and that parking shall not be permitted in driveways that are less than 18 feet in length. This covenant shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of the UOA/HOA/COA and the Fairfax County Board of Supervisors. Initial purchasers shall be advised in writing of the use restrictions prior to entering into a contract of sale and said restrictions shall be contained in the HOA/COA documents.
44. All front loaded townhouse driveways on the Application Property shall be a minimum of eighteen (18) feet in length from the garage door to the sidewalk.
45. A joint maintenance agreement between the UOA and the owners of the commercial structures governed by PCA 75-7-004-2 shall be provided for the maintenance of Science Application Court, pedestrian trails, and the stormwater management facilities serving the Application Property and the property subject to PCA 75-7-004-2. Purchasers shall be advised in writing prior to entering into a contract of sale that the UOA will share in the cost of such maintenance. The UOA documents shall expressly state that the UOA shall be responsible for shared maintenance of these facilities.
46. Property owners of two adjacent lots in TEV identified as Tax Map 39-2 ((48)) 9 and 10 have been utilizing portions of the Application Property as extensions of their rear yards. In order to allow this use to continue, the Applicant shall convey in fee simple the Outlot A-1 shown on the CDP/FDP to the owner of Lot 10 and Outlot A-2 as shown on the CDP/FDP to the owner of Lot 9. Conveyance shall occur prior to bonding of the site plan for the Application Property. The Deeds of Conveyance shall include restrictive covenants which provide, among other things, that (1) density from the out lots shall be reserved in perpetuity for the benefit of the remainder of the Application Property; (2) no structures shall be constructed on the out lots, rather the out lots shall be left as open space with existing trees preserved to the maximum extent feasible; and (3) any future rezoning, proffered condition amendment, final development plan amendment, or site

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plan approvals for the remainder of the Application Property shall not require the inclusion of the out lots or the joinder or consent of the owners of the out lots so long as the rezoning, proffered condition amendment, final development plan amendment or site plan does not include the area of the out lots.

47. In order to provide a tot lot for the COT Homeowners Association [Tax Map 39-2 ((27))], the Applicant shall convey in fee simple Outlot A-3 as shown on the CDP/FDP to the COT. Prior to the conveyance, the Applicant shall:
- a. Install a tot lot on the outlot based on a determination as to the type of equipment COT desires. Such equipment cost shall not exceed \$20,000. Care shall be taken to minimize disturbance to existing quality vegetation. The final location of the tot lot shall be determined by the Urban Forester;
  - b. Construct a pedestrian connection between the existing COT property and the tot lot as generally shown on the CDP/FDP; and
  - c. Install a fence around the perimeter of Outlot A-3 and remove sections of the existing fence between COT and Outlot A-3 to allow the pedestrian connection.
  - d. Bond these improvements in keeping with standard County policies.

Such improvements shall be made subject to COT providing any necessary permission and/or easements at no cost to the Applicant, and COT providing timely input into the type of tot lot equipment and fencing desired. In the event COT has not provided information with regard to equipment selection and fencing in a timely manner prior to the Applicant applying for its 100<sup>th</sup> RUP, the Applicant may elect to contribute \$20,000 to the COT along with the fenced outlot conveyance and thereby be relieved of any further obligation to install the tot lot and pedestrian connection.

Conveyance of Outlot A-3 shall occur prior to issuance of the 100<sup>th</sup> RUP for the Application Property. The Deed of Conveyance shall include restrictive covenants which provide, among other things, that (1) density from the outlot shall be reserved in perpetuity for the benefit of the remainder of the Application Property; (2) no structures other than the tot lot shall be constructed on the outlot, (3) existing trees shall be preserved to the maximum extent feasible; and (4) any future rezoning, proffered condition amendment, final development plan amendment, or site plan approvals for the remainder of the Application Property shall not require the inclusion of the outlot or the joinder or consent of the owner of the outlot so long as the rezoning, proffered condition amendment, final development plan amendment or site plan does not include the area of the outlot.

48. Prior to the issuance of the first RUP on the Application Property, the Applicant shall either:

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- a. Contribute the sum of \$25,000 to the COT Homeowners Association for the maintenance and future replacement of the fence installed by the COT along its common boundary with the Application Property. The Applicant shall provide documentation to DPWES that this contribution has been made; or
- b. Enter into a fence maintenance agreement with the COT Homeowners Association. Said agreement shall specify that the COT and the Applicant, its successors or assigns shall share equally in the cost of future maintenance and/or replacement of the existing wooden fence along the Courts of Tysons northern boundary. The COT fence along its eastern boundary and the future fence around the tot lot described in Proffer 45 shall be the responsibility of the COT Homeowners Association. This agreement shall be recorded among the land records of Fairfax County. In the event an agreement to the satisfaction of both the parties has not been reached by the time the Applicant has applied for its first RUP, the Applicant shall contribute the sum of \$25,000 to the COT Homeowners Association for the maintenance and future replacement of the fence and shall be released of its obligation to enter into a joint fence agreement.

The COT Homeowners Association shall be given the opportunity to inform the Applicant in writing of which of the two alternatives they prefer. If COT fails to provide a written determination to the Applicant within 60 days of its receipt of the Applicant's request for a determination, the Applicant shall implement the alternative in Paragraph "a" above.

49. Prior to approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.
50. Construction activity shall be permitted Mondays through Fridays from 7:00 a.m. to 7:00 p.m., Saturdays from 8:00 a.m. to 6:00 p.m. No construction activity shall be permitted on Sundays, Thanksgiving Day, Christmas Day and New Years Day. These construction hours shall be posted on the Application Property prior to any land disturbing activities. The Applicant shall include a construction hour notice in its contract with its general construction contractor.
51. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.
52. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

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53. The individual sections within the Application Property may be subject to Proffered Condition Amendments and Final Development Plan amendments without joinder and/or consent of the other property owner of the other sections/buildings.

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[SIGNATURES BEGIN ON NEXT PAGE]



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APPLICANT/CONTRACT PURCHASER  
OF TAX MAP 39-2 ((1)) 13 pt.

LINCOLN PROPERTY COMPANY  
SOUTHWEST, INC.




By: Richard N. Rose  
Its: Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

TITLE OWNER OF TAX MAP 39-2 ((1)) 13

CAMPUS POINT REALTY CORPORATION II

  
By: Frederick R. Hazard  
Its: President

[SIGNATURES END]

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Tax Parcel ID No. 039-2-01-0013

**DECLARATION OF CONDITIONS, RESTRICTIONS,  
AND EASEMENTS**

THIS DECLARATION OF CONDITIONS, RESTRICTIONS, AND EASEMENTS (hereinafter "Declaration"), is made this 28<sup>th</sup> day of January, 2005 (the "Effective Date"), by CAMPUS POINT REALTY CORPORATION, a California corporation (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant owns fee simple title to those certain tracts of land located in Fairfax County, Virginia, described on (i) Exhibit A-1 attached hereto and made a part hereof ("Parcel 1") and (ii) Exhibit A-2 attached hereto and made a part hereof ("Parcel 2"); and

WHEREAS, Declarant intends to convey Parcel 1 to a third party; and

WHEREAS, Declarant desires to create and establish (i) certain conditions and restrictions relating to construction on Parcel 1, (ii) certain easements for the benefit of Parcels 1 and 2 for (a) access, ingress, egress and regress, and (b) storm water management and (iii) rights with respect to signage,

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), the covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant agrees, covenants, and declares as follows:



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## ARTICLE I

## GENERAL

Section 1.1. Definitions. The following words, when used in this Declaration, shall have the following meanings:

"Access Easement" shall have the meaning set forth in Section 3.1(a).

"Access Easement Area" shall mean those certain portions of Parcel 2 that are more particularly described in Exhibit B attached hereto and made a part hereof.

"Access Expenses" shall mean the reasonable costs and expenses of maintaining, repairing, and operating the Current Access Area and/or Access Easement Area. Access Expenses shall not include any amounts which would otherwise be included in Access Expenses which are paid to any Affiliate (as defined below) of the Parcel 1 Owner (as defined below) to the extent the costs of such services exceed the amount which would have been paid in the absence of such relationship for similar services of comparable level, quality and frequency rendered by persons of similar skill, competence and experience.

"Access Improvements" shall mean asphalt or concrete pavement, curbs, landscaping, directional signage, striping, lighting, utilities and other similar improvements constructed or installed in the Access Easement Area from time to time.

"Access Monument Sign" shall have the meaning set forth in Article VI.

"Affiliate" shall mean any person or entity controlling, controlled by, or under common control with, another person or entity. "Control" as used herein means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such controlled person or entity (the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, at least fifty-one percent (51%) of the voting interest in, any person or entity shall be presumed to constitute such control).

"Business Days" shall mean Mondays through Fridays other than those days on which national banks are not open for business in the Commonwealth of Virginia.

"Current Access Area" shall mean the area on Parcel 1 and Parcel 2 identified on Exhibit E hereto which, as of the Effective Date, serves, and until such time as the Access Improvements are completed will serve, as the access to and from Gallows Road for Parcels 1 and 2.

"Current Access Improvements" shall mean the pavement, curbs, landscaping, directional signage, striping, lighting, utilities and other similar improvements existing in the Current Access Area as of the date hereof or constructed or installed from time to time.

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"First Class Standards" shall mean a quality that is equal to or in excess of the quality of similar facilities, services or improvements provided to or for the benefit of Class A office and/or luxury residential projects located in Fairfax County, Virginia.

"Governmental Authorities" shall mean the United States, the state, county, city and political subdivision in which the Parcels (as defined below) are located or which exercise jurisdiction over the Parcels or the Improvements (as defined below), and any agency, department, commission, board, bureau or instrumentality of any of them which exercises jurisdiction over the Parcels or Improvements, including, without limitation, the Virginia Department of Transportation.

"Improvement" or "Improvements" shall mean the buildings, structures, driveways, sidewalks and other improvements located on the Parcels from time to time.

"Initial Access Improvements" shall mean the Access Improvements to be constructed in the Access Easement Area in accordance with the Initial Development Plan and Section 3.2 hereof.

"Initial Development" shall mean the initial construction on Parcel 1 of Improvements that do not exist on Parcel 1 as of the Effective Date.

"Interest Rate" shall mean the lesser of (i) the rate per annum equal to the interest rate published from time to time as the prime rate in the Money Rates column of the Wall Street Journal (Eastern edition) (said rate to change on the first day of each calendar month) plus 300 basis points, or (ii) the then applicable maximum interest rate permitted to be charged by the laws of the Commonwealth of Virginia.

"Legal Requirements" shall mean any applicable law, statute, ordinance, order, rule, regulation, decree or requirement of a Governmental Authority and any other applicable public or private covenant, condition, restriction or other title matter affecting the Parcels as of the Effective Date.

"Mortgage" shall mean a lien, mortgage, deed of trust, deed to secure debt or other similar instruments securing the repayment of a debt to a bona fide third party (which is not an Affiliate of the borrower) and encumbering all or any portion of a Parcel or any interest (including any ground leasehold interest) therein; provided, however, that such term shall not include judgment or mechanic liens.

"Mortgagee" shall mean the mortgagee or beneficiary of a first lien Mortgage.

"Normal Business Hours" shall mean 7:00 a.m. to 7:00 p.m. on Business Days.

"Owner" shall mean the Person (as defined below) which is from time to time the record owner of fee simple title to any Parcel or any portion thereof, or the record lessee under any ground lease; provided, however, that such term shall not include any trustee under any Mortgage or any Mortgagee who may hold a lien against any such Parcel or leasehold interest under a ground lease pursuant to a Mortgage unless and until such party shall acquire record fee simple title or record leasehold title to any such Parcel through foreclosure, deed in lieu of foreclosure, or otherwise. A reference herein to "Owners" shall mean all Owners.

"Parcels" shall mean, collectively, Parcel 1 and Parcel 2.

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"Parcel 1 Owner" shall mean the Owner or Owners of Parcel 1 or any portion thereof, from time to time and as applicable.

"Parcel 2 Owner" shall mean the Owner or Owners of Parcel 2 or any portion thereof, from time to time and as applicable.

"Permittees" shall mean any Owner, and its tenants, licensees, invitees, subtenants or authorized occupants of any portion of a Parcel and/or the Improvements located thereon and the respective officers, directors, employees, agents, partners, contractors, subcontractors, customers, visitors, invitees, guests, licensees and concessionaires of any such Person.

"Person" or "Persons" shall mean individuals, partnerships, associations, corporations and any other forms of organization, or one or more of them, as the context may require.

"Substantial Completion of the Improvements" shall mean the completion of the applicable Improvement except for details of construction, decoration or mechanical adjustment that, in the aggregate, are minor in character and do not, either by their nature or because of the repair or completion work necessary, materially interfere with the intended use or enjoyment of the applicable Improvement, such that it would be reasonable under the circumstances for such Improvement to be made available for its intended use and completion of any such details would not unreasonably interfere with such use in due course after such Substantial Completion thereof. To "Substantially Complete" shall mean to bring the applicable Improvement to Substantial Completion.

"Taking" shall mean any taking or condemnation for public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof.

Section 1.2 Property Subject to this Declaration. Each Parcel or portion thereof and any right, title or interest therein shall be owned, held, leased, sold and/or conveyed by the existing Owners, and any subsequent Owner of all or any part thereof, subject to this Declaration and the covenants, conditions, restrictions, easements, charges and liens (except as set forth in Section 8.4 below) set forth herein; provided, however, that after Substantial Completion of the Improvements contemplated in the Initial Development Plan (as hereinafter defined), the following provisions of this Declaration shall no longer be applicable and no Parcel or any Owner thereof shall be subject to such provisions: (a) Article II; (b) Section 3.2(a); and (c) Section 11.5. Notwithstanding the foregoing, as to each of the outlot parcels described in Exhibit F attached hereto (each an "Outlot Parcel"), when such Outlot Parcel is conveyed to the owner of the property adjacent to said Outlot Parcel pursuant to the "Lincoln Property Company Southwest Inc. Proffers (R2 2003-PR-008)" dated March 11, 2004 applicable to Parcel 1 (and, in particular, proffers numbered 46 and 47), then such Outlot Parcel shall automatically be released from this Declaration.

Section 1.3 Applicability to Parcel 2. Nothing in this Declaration shall be construed to require any demolition, alteration, construction or reconstruction of any Improvement, any landscaping or grading, or any thing whatsoever on Parcel 2 except the work to be done by the Parcel 1 Owner pursuant to Article III hereof or to empower the Parcel 1

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Owner or any other party to require any such demolition, alteration, construction or reconstruction, or to restrict or prohibit the Parcel 2 Owner or the owner of any Improvement on Parcel 2 from demolishing, altering, rebuilding, restoring, repairing or reconstructing such Improvement following any casualty (whether partial or total) or from doing any other thing with Parcel 2 or the Improvements thereon.

## ARTICLE II

### CONSTRUCTION CONDITIONS AND RESTRICTIONS

Section 2.1 Conditions and Restrictions on Construction. Any and all construction activities on Parcel 1 and in the Access Easement Area shall be subject to the following conditions and restrictions:

(a) Diligent Completion of Construction. Subject to the last sentence of this Section 2.1(a), once commenced, demolition, alteration or construction of any Improvements on Parcel 1 or in the Access Easement Area, including, without limitation, demolition, alteration or construction connected with the Initial Development, shall be diligently pursued to completion as quickly as is commercially reasonable, subject to *force majeure*, so that it is not left in a partly finished condition any longer than is required by prudent construction practices. Notwithstanding anything to the contrary herein, the Initial Development may be constructed in phases, provided that once a phase is commenced, the Parcel 1 Owner of the phase under construction shall, subject to *force majeure*, pursue the construction of any Improvements commenced in such phase to final completion in accordance with the previous sentence or demolish said partially constructed improvements and promptly return the area substantially to the condition it was in prior to commencement of construction of said phase.

(b) Unobstructed and Safe Use of Access Easement. Throughout any period of construction on Parcel 1, the Parcel 1 Owner shall:

(i) subject to Section 3.3(c), not permit obstruction of the Parcel 2 Owner's use of the Access Easement or the Current Access Area as applicable; and

(ii) during hours of construction activity, post a traffic guard or guards on and/or in the vicinity of the Current Access Area and/or Access Easement Area as applicable in order to ensure the safety of all those using the Access Easement and, in all events, at least one such guard shall be posted during Normal Business Hours, when necessary or as determined by the Parcel 2 Owner, at the intersection of the Access Easement Area or the Current Access Area, as applicable, and Gallows Road.

(c) Vehicular Traffic. To the extent permitted by Legal Requirements, all vehicular traffic related to construction activities undertaken on Parcel 1 shall be diverted from the Access Easement Area or the Current Access Area, as applicable, onto an alternate path, road or other route on Parcel 1 as close to the Gallows Road end of the Access Easement Area or the Current Access Area, as applicable, as commercially reasonable so as to minimize the portion of the Access Easement Area and the Current Access Area, as applicable, that such vehicular traffic

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utilizes. The Parcel 1 Owner shall implement reasonable speed limits for such vehicular traffic so as to minimize the disturbance of dust and/or other airborne particles and to protect individuals and property from harm related to such vehicular traffic.

(d) Construction Parking. All vehicles utilized for or otherwise related to construction activities (including, without limitation, construction machinery and vehicles utilized by contractors, subcontractors and their employees and agents) shall be parked in a designated area on a portion of Parcel 1, and as far removed as feasible from Parcel 2.

(e) Minimization of Noxious Substances. During construction, the Parcel 1 Owner, shall minimize noise, odor and dust and/or other airborne particles, debris or any other thing that potentially may materially adversely affect Parcel 2, the Parcel 2 Owner or its Permittees.

(f) Utilities. The Parcel 1 Owner shall use all reasonable efforts not to interfere with the service of any utility, telecommunications services or systems or storm management systems that benefits Parcel 2 and, in all events, shall comply with the provisions of Article IV if any such interference is unavoidable.

(g) Correction or Mitigation of Adverse Effects. The Parcel 1 Owner at no cost or expense to the Parcel 2 Owner, shall use commercially reasonable efforts to mitigate to the extent possible and commercially reasonable any and all potentially material adverse effects on Parcel 2, the Parcel 2 Owner or its Permittees arising from or connected with construction activities on Parcel 1 and shall promptly remedy any material adverse effects on Parcel 2, the Parcel 2 Owner or its Permittees, as applicable, resulting from or in connection with such activities.

Section 2.2 Delivery of Plan Prior to Construction. On or before sixty (60) days prior to the commencement of any construction activities on its Parcel, the Parcel 1 Owner shall submit to the Parcel 2 Owner for its review and approval a detailed construction plan identifying how such Owner intends to comply with the restrictions set forth in Section 2.1 during such construction activities ("Plan"). The Parcel 2 Owner shall approve or disapprove such Plan within ten (10) business days after receipt thereof. In the event that the Parcel 2 Owner disapproves the Plan, which disapproval shall set forth in reasonable detail the reasons therefor, the other Owner shall revise the same within ten (10) days after receipt of the Parcel 2 Owner's disapproval of the Plan. Within ten (10) business days after receipt of the revised Plan, the Parcel 2 Owner shall approve or disapprove the same. In addition to its obligations under Section 2.1, the Parcel 1 Owner shall comply with the Plan as approved by the Parcel 2 Owner when conducting its construction activities on Parcel 1 and shall not commence such construction until the Parcel 2 Owner has approved the Plan. Prior to making any material change to the Plan, the Parcel 1 Owner shall submit such proposed changes to Parcel 2 Owner for its review and approval. If the Parcel 1 Owner constructs any Improvements in phases, it shall submit its Plan for each phase to the Parcel 2 Owner for its review and approval, unless such Plan has been previously approved by the Parcel 2 Owner.

Section 2.3 Delivery of Initial Development Plan Prior to Construction. Prior to execution of this Declaration, Parcel 1 Owner submitted to Parcel 2 Owner, and Parcel 2



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Owner has approved, the Conceptual/Final Development Plan dated March 11, 2004 (the "Initial Development Plan"). Prior to making any material change to the Initial Development Plan, the Parcel 1 Owner shall submit such proposed changes to the Parcel 2 Owner for its review and approval. The Parcel 2 Owner shall approve or disapprove any material changes to the Initial Development Plan within ten (10) days after receipt thereof. In the event that the Parcel 2 Owner disapproves any material changes to the Initial Development Plan, which disapproval shall set forth in reasonable detail the reasons therefor, the Parcel 1 Owner shall revise the same within ten (10) business days after receipt of the Parcel 2 Owner's disapproval of the Initial Development Plan. Within ten (10) business days after receipt of the revised Initial Development Plan, the Parcel 2 Owner shall approve or disapprove the same. In addition to its obligations under Section 2.1, the Parcel 1 Owner shall construct the Initial Development in accordance with the Initial Development Plan as approved by the Parcel 2 Owner.

### ARTICLE III

#### ACCESS EASEMENT

Section 3.1 (a) Declaration of Access Easement. Subject to the provisions of this Declaration, Declarant hereby establishes and creates for the benefit of the Parcel 1 Owner and the Parcel 2 Owner and as an appurtenance to Parcel 1 and Parcel 2 a non-exclusive, perpetual easement over, upon, across and through the Access Easement Area (the "Access Easement") (i) for the purposes of pedestrian and vehicular ingress and egress between Gallows Road and the applicable Parcel, and (ii) for the purpose of constructing, operating, repairing, maintaining and (to the extent permitted herein) altering the Access Improvements.

(b) Declaration of Temporary Access. Until the Parcel 1 Owner has completed and opened the Initial Access Improvements for vehicular and pedestrian use in accordance herewith, the Declarant hereby establishes and creates for the benefit of the Parcel 1 Owner and the Parcel 2 Owner, and as an appurtenance to each of their Parcels, a non-exclusive easement over, upon, across and through the Current Access Area for the purpose of pedestrian and vehicular ingress and egress between the applicable Parcel and Gallows Road. Upon the termination of said temporary easement in accordance herewith, the temporary access easement established by that certain plat recorded at Deed Book 4800, Page 549 also shall be automatically terminated. If necessary, the Owners of the applicable Parcels shall record such documents as are reasonably necessary to confirm the termination or vacation of said temporary easement. The Parcel 1 Owner shall repair and maintain the Current Access Improvements until the Access Improvements are completed but shall not modify the Current Access Improvements or install new improvements within the Current Access Area without the prior consent of the Parcel 2 Owner, provided that such consent shall not be required to the extent any such modification of the Current Access Improvements or the installation of any new Improvements in the Current Access Area is contemplated in the Initial Development Plan.

Section 3.2 Construction, Operation, Maintenance and Alteration of Access Improvements.

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(a) Construction of the Initial Access Improvements will result in a loss of parking spaces on Parcel 2. Therefore, in connection with the construction of the Initial Access Improvements, the Parcel 1 Owner shall, at its sole cost and expense, and in a good and workmanlike manner and in accordance with Sections 2.1, construct for the benefit of the Parcel 2 Owner a sufficient number of parking spaces in the locations identified on Exhibit D-1 ("Relocated Parking") hereto to cause the number of parking spaces available on Parcel 2 to be the same following construction of the Initial Access Improvements as existed on Parcel 2 on the date hereof ("Existing Parking"). The Parcel 1 Owner shall construct the Relocated Parking in accordance with plans and specifications to be reasonably approved by the Parcel 2 Owner which plans and specification shall, at a minimum, conform with the Fairfax County Public Facility Manual except that the Relocated Parking shall be constructed with a 1 1/4 inch surface course, 3 inch base course and 8 inch compacted 21A subbase stone. In the event that the Parcel 1 Owner does not complete construction of the Relocated Parking before any of the Existing Parking becomes unuseable, the Parcel 1 Owner shall provide the Parcel 2 Owner with temporary parking spaces so that at all times the Parcel 2 Owner shall have access to and use of the same number of parking spaces it has as of the date hereof. Such temporary spaces shall be in the locations identified on Exhibit D-2 hereto, or in such other locations mutually acceptable to the Parcel 2 Owner and Parcel 1 Owner.

(b) In connection with the construction of the Initial Development, the Parcel 1 Owner shall, at its sole cost and expense, in a good and workmanlike manner (i) construct the Initial Access Improvements in accordance with (x) the requirements of Virginia Department of Transportation and the Fairfax County Public Facilities Manual as if such road was a public road provided that if there are any inconsistencies between the two, the more stringent standard shall apply and (y) plans and specifications approved by the Parcel 2 Owner in accordance with this Section 3.2(b) and (ii) install landscaping on the Access Easement Area and in that portion of Current Access Area that is not part of the Access Easement Area, based on plans and specifications reasonably acceptable to the Parcel 2 Owner which landscaping shall be deemed an Access Improvement. Prior to undertaking the construction of the Initial Access Improvements in accordance with the previous sentence, the Parcel 1 Owner shall submit to the Parcel 2 Owner, for its approval, the plans and specifications for such work and shall not commence such work until the Parcel 2 Owner has approved the same in accordance with the schedule set forth in Section 2.2. The Parcel 1 Owner shall Substantially Complete the installation of the Initial Access Improvements within eight (8) months after the commencement of construction of such improvements; provided, however, the Parcel 1 Owner shall not be obligated to lay the topcoat until twenty-four (24) months after commencement of construction of said improvements; and provided further that both time periods set forth in this sentence shall be extended day for day for each day of delay resulting from *force majeure*. If, at any time after construction activities related to the Initial Development commence, such construction activities cease for a period of more than ninety (90) days, including, without limitation, as a result of the completion of any phase of the Initial Development and a delay in the commencement of the next phase, the Parcel 1 Owner shall repair and restore, at the Parcel 1 Owner's sole cost and expense, the Access Easement Area, including, without limitation, any Access Improvements thereon, within thirty (30) days thereafter and otherwise in accordance with this Section 3.2. Thereafter when construction of the Initial Development resumes, upon Substantial Completion of any such work or any further interruption for more than ninety (90) days, the Parcel 1 Owner,

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at its sole cost and expense, shall again repave the Access Easement Area and, to the extent necessary, replace or repair the landscaping thereon, all subject to the provisions of this Section 3.2(b).

(c) The Parcel 1 Owner shall be obligated, for so long as the easement created pursuant to Section 3.1 exists, to repair and maintain the Current Access Easement and/or Access Easement Area, as applicable, in safe, clean, attractive and well-maintained condition and in accordance with First Class Standards, such maintenance to be done promptly and regularly and to include, but not be limited to, the following:

(i) Maintenance, repair and replacement of all paved surfaces, in a level, smooth, evenly covered and visually consistent condition;

(ii) Maintenance, repair and replacement of all curbs, curb cuts, gutters, walkways and retaining walls;

(iii) Maintenance, repair and replacement of all directional signs, markers (including, without limitation, any Access Monument Signs) and artificial lighting facilities (including, without limitation, the replacement of fixtures and bulbs);

(iv) Regular removal of all litter, trash, debris, waste, filth and refuse, including, without limitation, thorough sweeping of the Access Easement Area in order to keep the same in a clean and orderly condition at all times;

(v) Maintenance of all landscaping in a healthy, well-watered, well-pruned, mowed and attractive condition; and

(vi) Compliance with all Legal Requirements, including, without limitation, those related to health and safety, and all requests by Governmental Authorities made in accordance with Legal Requirements, including, without limitation, the Virginia Department of Transportation, provided that the Parcel 1 Owner shall notify the Parcel 2 Owner of any request by a Governmental Authority prior to undertaking such compliance (except in emergencies).

(d) The Parcel 1 Owner shall have the right, from time to time, to make changes in the Access Improvements and in the design (but not the location) thereof, subject to the prior written consent of the Parcel 2 Owner in accordance with the time periods set forth in Section 2.2, provided, however, (i) no such consent shall be required for any changes required by Legal Requirements or a Governmental Authority (unless various options are available, and then only as to which option is selected), (ii) any such changes must comply with Legal Requirements and be consistent with First Class Standards, and (iii) the Parcel 1 Owner shall use commercially reasonable efforts to ensure that throughout the time such changes are being made all parties entitled to use the Access Easement Area shall have continuous and reasonably unfettered access to the Access Easement Area and that such construction shall be completed in accordance with the provisions of Section 2.1.

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(e) Notwithstanding anything to the contrary contained herein, each Owner shall have the right to construct, at its sole cost and expense, access points and curb cuts on the Access Easement Area and/or to connect driveways, sidewalks, parking areas and other Improvements on such Owner's Parcel to the Access Easement Area without the other Owners' consent but with prior notice, so long as the orderly flow of vehicular and pedestrian traffic is not materially and adversely affected thereby, all work is done in accordance with all Legal Requirements and the Owners continue to have continuous and reasonably unfettered access to the Access Easement while such work is being conducted.

(f) The cost of the activities in subsection (c) shall be an Access Expense subject to Sections 3.5 and 3.6 below; provided, however, the cost of any capital improvements (other than costs incurred pursuant to Section 3.2(c)(ii) to the extent any such costs are deemed to be capital improvements), shall be solely the responsibility of the Parcel 1 Owner and not an Access Expense unless (x) (i) such cost is required to comply with a Legal Requirement or the request of a Governmental Authority and (ii) is not incurred as a result of or in connection with construction or any other activity on Parcel 1 or (y) such cost is pre-approved by the Parcel 2 Owner and the Parcel 2 Owner agrees when it provides such pre-approval to share the cost of such work. In all events and notwithstanding the foregoing, the Parcel 1 Owner shall be solely responsible for the costs and expenses of the Initial Access Improvements, including the Relocated Parking.

### Section 3.3 No Walls, Fences or Barriers and Temporary Closure.

(a) No buildings, walls, fences or barriers of any sort or kind shall be constructed or erected on any Parcel by any Owner which would prohibit or materially impair the use or exercise of the Access Easement or, until the opening of the Initial Access Improvements for vehicular and pedestrian ingress and egress, of the Current Access Area.

(b) The Access Easement or a portion thereof may be dedicated to the public, provided that the Parcel 1 Owner and/or Parcel 2 Owner, as applicable, shall obtain the prior written consent of the other Owner prior to permitting any such dedication and further provided that the Parcel 2 Owner shall not bear any costs or expenses associated with such dedication. To the extent that all or any portion of the Access Easement is so dedicated, then the Parcel 1 Owner shall be relieved of its obligations to maintain the portion of the Access Easement that has been dedicated.

(c) The Parcel 1 and/or Parcel 2 Owner shall have the right to temporarily close a portion of the Access Easement Area or the Current Access Area for such reasonable periods of time as may be reasonably necessary for cleaning, repair, alteration, improvement or maintenance or as required for emergencies. Notwithstanding the foregoing, (i) before closing off any part of the Access Easement Area or Current Access Area as provided above (except for emergencies), the applicable Owner shall give at least ten (10) days' prior written notice to the other Owner of its intention to do so and shall coordinate its closing with the activities of the other Owner so that no unreasonable interference with the operation of the applicable easement occurs, (ii) any such closure shall be limited to the minimum period and minimum amount of

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closure reasonably necessary to achieve the applicable purpose and, to the extent reasonably feasible (except during emergencies), one drive lane shall be kept open for vehicular traffic, (iii) a safety guard or guards shall be placed on the Access Easement Area or Current Access Area, as applicable in order to facilitate the safe flow of traffic during any such closure and (iv) to the extent reasonably feasible (except for emergencies) any such closure shall not occur during Normal Business Hours.

**Section 3.4 Hours of Operation.** Subject to Section 3.3(c), the Current Access Area and, once constructed, the Access Improvements shall be open twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, provided, that Parcel 2 Owner or Parcel 1 Owner, as applicable, shall temporarily close off the Access Easement Area or Current Access Area, as applicable, or a portion thereof for such reasonable periods of time as may be legally necessary to prevent the acquisition or creation of any prescriptive right by any Person or the public. Notwithstanding the foregoing, (i) before closing off any part of the Access Easement Area as provided above, the applicable Owner shall give at least ten (10) days' prior written notice to the other Owner of its intention to do so and shall coordinate its closing with the activities of the other Owner so that no unreasonable interference with the operation of the Access Easement occurs, (ii) any such closure shall be limited to the minimum period and minimum amount of closure reasonably necessary to prevent the acquisition or creation of any prescriptive right by any Person and, to the extent reasonably feasible, one drive lane shall be kept open for vehicular traffic, and (iii) to the extent reasonably feasible any such closure shall not occur during Normal Business Hours.

**Section 3.5 Sharing of Access Expenses.** Each Owner shall share in the Access Expenses based on the following: the Parcel 1 Owner shall pay 58.4% and the Parcel 2 Owner shall pay 41.6% of such Access Expenses.

**Section 3.6 Calculation and Payment of Access Expenses.**

(a) The Parcel 1 Owner shall keep accurate and complete books and records of all receipts and disbursements related to the operation, improvement, repair and maintenance of the Access Easement Area. Such books and records shall be available for inspection and copying by the other Owners during Normal Business Hours, and upon not less than five (5) days' prior written notice to the Parcel 1 Owner and shall be subject to any third party audit and/or inspection required by the other Owner, provided that no more than one (1) such audit and/or inspection shall be conducted during any calendar year. The Parcel 2 Owner shall continue to be obligated to make payments of its proportionate share of the Access Expenses required hereunder without offset or deduction notwithstanding the ongoing conduct of any such audit or inspection. The cost of any such third party audit or inspection shall be paid by the Owner requesting said audit; provided that if such audit reveals that the aggregate Access Expenses in a calendar year have been overstated by more than three percent (3%), the Parcel 1 Owner shall pay the cost of such audit.

(b) The Parcel 2 Owner shall reimburse the Parcel 1 Owner for its share of any Access Expenses pursuant to Section 3.5, within thirty (30) days after receipt of an invoice for the subject expense, provided that the Parcel 1 Owner shall provide sufficient documentation

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regarding any such expense to allow confirmation that such expense is an Access Expense and was incurred in accordance with the provisions of the Declaration. Any invoice not paid when due shall bear interest at the Interest Rate from the due date until paid.

Section 3.7 Name of Access Easement Area. Until such time as neither Science Applications International Corporation nor any of its Affiliates owns any of the Parcels or a portion thereof, the name of the street located on the Current Access Area or Access Easement Area, as applicable, shall be "Science Applications Court." Declarant expressly states that it is not assigning to the Parcel 1 Owner or any other party any legal rights that Declarant or its Affiliates may have to the use of the trade name "SAIC" or "Science Applications" or any terms or phrases incorporating the foregoing except to use the term Science Applications Court as part of its address. Notwithstanding anything to the contrary herein, in the event that the Parcel 2 Owner desires that the name of the street change from "Science Applications Court", the Parcel 1 Owner shall cooperate in such name change at no cost or expense to the Parcel 1 Owner.

#### ARTICLE IV

##### NON-INTERFERENCE WITH UTILITIES

Each Owner shall use all reasonable efforts not to interfere in any way with the service of any utility, telecommunication service or system (telephone, computer or other) or storm water drainage or detention system (including, without limitation, the telephone and data cables identified on Exhibit G hereto) that benefits any other Parcel without the prior written consent of the Owner of the affected Parcel. If such interference cannot be avoided, (i) the Owner who is responsible for such interference shall deliver prior written notice to the other Owner of the likelihood of such interference as long in advance as possible and, in all events, at least thirty (30) days prior to such work (except during emergencies), and shall coordinate such interference with the activities of the Owner of the affected Parcel so that no unreasonable interference occurs, (ii) any interference shall be limited to the minimum period and minimum extent reasonably possible, and (iii) to the extent reasonably feasible, any such interference shall not occur during Normal Business Hours (except during emergencies). At the request of any Owner, each Owner shall execute and record easements to allow the use of the telephone, data and other telecommunication cables referenced in this Article IV all in accordance with this Article IV.

#### ARTICLE V

##### STORM WATER EASEMENT; NEW STORM WATER FACILITIES

Section 5.1 Storm Water Easement For the Benefit of Parcel 2. There is hereby reserved in, over and across Parcel 1 for the benefit of Parcel 2:

(a) A non-exclusive, perpetual easement for storm water detention and drainage across that portion of Parcel 1 described in Exhibit C-1 attached hereto and made a part



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hereof ("Storm Water Easement Area"), including, without limitation, the right to install and repair underground pipes and tie into and utilize the sanitary and storm water sewers in or on the Storm Water Easement Area and downstream thereof, in accordance with Legal Requirements, provided that the Parcel 2 Owner shall promptly repair and restore the landscaping and any other Improvements on the Storm Water Easement Area or elsewhere on Parcel 1 that are damaged in connection with the Parcel 2 Owner's use of the easement granted herein. The Parcel 1 Owner shall be obligated to maintain the Storm Water Easement Area and any improvements for storm water detention and drainage located on Parcel 1 in compliance with all Legal Requirements. The Parcel 1 Owner shall have the right, at its sole cost and expense, to relocate the Storm Water Easement Area if such relocation is desirable in connection with any changes in the development of Parcel 1 so long as such relocation does not materially adversely affect storm drainage from Parcel 2.

(b) A non-exclusive, perpetual easement to compensatory storm water management capacity and Best Management Practices (BMPs) applicable in Fairfax County, Virginia as of the Effective Date sufficient to support Parcel 2 with (i) the Improvements located on Parcel 2 as of the Effective Date, (ii) any additional parking constructed thereon necessary to accommodate the parking requirements imposed by Legal Requirements for the Improvements located on Parcel 2 as of the Effective Date, and (iii) the Initial Access Improvements, on, over, across and under Parcel 1 and to the detention pond identified on Exhibit C-2 hereto, at no expense to the Parcel 2 Owner, provided that Parcel 2 Owner shall promptly repair and restore the landscaping and any other Improvements in such area or elsewhere on Parcel 1 that are damaged in connection with the Parcel 2 Owner's use of the easement granted herein, except to the extent resulting from the Initial Access Improvements which shall be shared by the parties as an Access Expense.

(c) The Parcel 1 Owner shall maintain the storm water detention and drainage systems provided for in subsections (a) and (b), provided that the Parcel 1 and 2 Owners shall share any cost or expense for such maintenance, including any cost and expense connected with compliance with a Legal Requirement, in proportion to the drainage flow into such detention system from each Parcel (excluding the flow from the Access Easement Area, if any) as determined by VTKA or another engineer mutually agreed upon by the Parcel 1 and Parcel 2 Owners, except that (i) the Parcel 2 Owner shall not be required to share in any fee, fine or levy resulting from the Parcel 1 Owner's failure to timely comply with any Legal Requirement or any costs resulting from or arising in connection with the development of Parcel 1, and (ii) the Parcel 1 Owner shall not be responsible for, or required to share in, any cost, expense, fee, fine or levy resulting from or arising in connection with the development of Parcel 2 (or any subsequent changes thereto) or any changes in Legal Requirements affecting Parcel 2 and not similarly affecting Parcel 1 (except to the extent relating to the Access Easement Area).

#### Section 5.2 Expansion or Installation of Storm Water Facilities.

In connection with the Initial Development or any subsequent development on Parcel 1, the Parcel 1 Owner, at its sole cost and expense and in accordance with Legal Requirements, shall (i) expand the existing detention pond in the Storm Water Easement Area and/ or (ii) install a new storm water management facility such that the then-existing facilities

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will continue to be sufficient to support Parcel 2 as required pursuant to Section 5.1. However, if any changes to Parcel 2 or the Improvements located thereon require the installation of additional facilities or the modification of then-existing facilities, then the Parcel 2 Owner shall be responsible for the cost and expense therefor; provided, however, that in no event shall the Parcel 1 Owner be obligated to expand or otherwise modify the Storm Water Easement Area in a manner that would reduce the amount of Parcel 1 that can be developed in accordance with the Initial Development Plan.

#### ARTICLE VI

##### MONUMENT SIGNAGE

Each Owner shall have the right, but not the obligation, to install one (1) monument sign ("Access Monument Sign"), at such Owner's sole cost and expense, in the area identified in Exhibit B in a specific location selected by such Owner in its reasonable discretion, provided that the Owners shall agree in advance on the size of any Access Monument Sign and the nature and size of the lettering and graphics thereon. Notwithstanding the previous sentence, the Parcel 2 Owner's sign may include the "SAIC" logo with blue lettering.

#### ARTICLE VII

##### MAINTENANCE AND OPERATION OF PARCELS

Subject to the Parcel 1 and Parcel 2 Owner's obligations pursuant to Section 3.2 and in addition to all other requirements set forth herein, each of the Parcel 1 and Parcel 2 Owners shall use reasonable efforts to maintain its Parcel at all times, including without limitation during construction activities thereon, in accordance with First Class Standards, including without limitation by keeping its Parcel clean and as free of debris as is reasonably possible.

#### ARTICLE VIII

##### REMEDIES

Section 8.1 Legal and Equitable Relief. The covenants, conditions, restrictions, reservations, easements and rights herein contained shall run with the land and shall be binding upon and inure to the benefit of each Owner, its respective successors and assigns, and all other persons, parties or entities claiming by, through or under any of the foregoing. In the event any Owner ("Defaulting Party") defaults in any of its obligations hereunder or in the event of any violation or threatened violation of this Declaration by a Defaulting Party or such Defaulting Party's Permittees and such Defaulting Party fails to cure such default or stop such



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violation or threatened violation within thirty (30) days after written notice from another Owner (the "Affected Party"), or if such default is not capable of being cured within such thirty (30)-day period, such Defaulting Party has not commenced the cure within such thirty (30)-day period and diligently pursued the completion of such cure, the Affected Party shall have the right to (i) institute legal action against the Defaulting Party for specific performance, injunctive relief, declaratory relief, damages, or any other remedy provided by law; provided, however, neither party shall be liable for consequential or punitive damages; (ii) recover damages for any such violation or default, and/or (iii) take self-help action to the extent and only to the extent permitted under Section 8.2 below. All remedies under this Declaration or at law shall be cumulative and not inclusive. As used herein, any reference to rights or remedies "at law" or "under applicable law" shall also include any rights or remedies "in equity".

Section 8.2 Right to Cure. In the event any Owner defaults under the provisions of this Declaration and such Owner fails to cure such default within the time period provided in Section 8.1 above, the Affected Party which sent the default notice shall have the right, but not the obligation, upon the expiration of such period, to cure such default for the account of and at the expense of the Defaulting Party. Prior to taking any such action, such Affected Party shall deliver thirty (30) days' prior written notice (which notice shall be in addition to the notice required under Section 8.1 hereof) to the Defaulting Party specifying with details the nature of the actions that such Affected Party giving such notice proposes to take in order to cure the claimed default. The Defaulting Party shall reimburse the Affected Party for expenses incurred by the Affected Party in connection with its exercise of its rights pursuant to this Section 8.2 within ten (10) days after an invoice therefor accompanied by appropriate supporting documentation for such costs.

Section 8.3 Interest. If any Affected Party so performs any of the Defaulting Party's obligations hereunder or if a Defaulting Party fails to make a payment under this Declaration to an Affected Party, the full amount of the cost and expense incurred by the Affected Party or the damage so sustained or the payment not made by the Defaulting Party to the Affected Party, as the case may be, shall immediately be due and owing by the Defaulting Party to the Affected Party and the Defaulting Party shall pay to the Affected Party upon demand the full amount thereof with interest at the Interest Rate from the date of payment (or in the case of a monetary default, the date such sum was due) until such payment is actually received by the Affected Party.

Section 8.4 Lien. The Affected Party is hereby granted a lien upon the Parcel of the Defaulting Party in the amount of any such payment made by the Affected Party or amount not paid by the Defaulting Party, pursuant to Sections 8.1, 8.2 or 8.3, together with interest at the Interest Rate thereon, which amount is not paid within thirty (30) days after demand is made, and said lien may be enforced by judicial foreclosure proceedings against the Defaulting Party's Parcel in accordance with then applicable Virginia law. The Affected Party shall have the right to file with the appropriate governmental office or offices a memorandum of lien, lis pendens or other notice or notices as may be required by law to give notice of such lien and the amount thereof, said notice or notices to be filed after the expiration of said thirty (30)-day period. The lien herein granted shall be prior to and superior to any other liens or encumbrances on the Defaulting Party's Parcel, including any liens arising or attaching before,

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on and/or after the date on which notice of such lien and the amount thereof is filed with the appropriate governmental office or offices, but excluding the lien held by a third party holder of a bona fide first lien Mortgage affecting the Defaulting Party's Parcel recorded prior to the date on which notice of such lien and the amount thereof is filed with the appropriate governmental office or offices (however, notwithstanding the foregoing, such lien created by this Article VIII shall expressly survive any foreclosure or other enforcement action taken under any such first lien Mortgage). Additionally, notwithstanding the foregoing, in no event shall the foreclosure or any other enforcement of such lien created by this Article VIII result in a termination of any lease of any portion of a Parcel or any Improvements thereon.

The holder of a Mortgage on all or any portion of a Parcel shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article VIII affecting the property secured by its Mortgage upon payment of the amount secured by such lien.

Section 8.5 No Termination. A breach of this Declaration shall not entitle any party or person to cancel, rescind or otherwise terminate its obligations hereunder.

## ARTICLE IX

### MORTGAGEE PROTECTION

Each Affected Party giving a notice of default under this Declaration shall send, in accordance with Section 12.7 hereof, a copy of such notice to the Mortgagee under any Mortgage on the Parcel and/or Improvements of the Defaulting Party, provided such Mortgagee or Defaulting Party shall have previously sent such Affected Party a notice informing it of the existence of such Mortgage and the name of the person or officer and the address to which copies of the notices of defaults are to be sent, and such Mortgagee as recipient of notice pursuant to Section 12.7 below shall be permitted to cure any such default not later than sixty (60) days after a copy of the notice of default shall have been sent to such Mortgagee, provided that in the case of a default which cannot with diligence be remedied within such sixty (60)-day period, if such Mortgagee has commenced within such sixty (60)-day period and is proceeding with diligence to remedy such default, then such Mortgagee shall have such additional period as may be reasonably necessary to remedy such default with diligence and continuity, and during any such cure period the Affected Party shall forbear from exercising its remedy to enforce its lien against the Parcel of the Defaulting Party and/or Improvements thereon. Initiation of foreclosure proceedings against a Defaulting Party shall constitute "diligence" by a Mortgagee hereunder so long as such foreclosure proceedings are continuously pursued (provided that a stay issued during any bankruptcy, insolvency, or reorganization proceeding shall not be deemed to defeat continuous pursuance of such foreclosure proceedings). The foregoing requirements to give notice of default to a Mortgagee and allow such Mortgagee an opportunity to cure such default shall not preclude the exercise of any remedies by an Affected Party provided pursuant to Sections 8.2, 8.3 and 8.4 (except to the extent such Affected Party is required to forbear from exercising its lien pursuant to this Article IX). If a condominium association, a homeowners' association or another similar association has been established with respect to a Parcel or Parcels, then for purposes of this Article IX, an Affected Party giving a notice of default shall send such

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notice to the applicable association (or the declarant under the applicable operating documents if such association has not yet been established) in lieu of sending such notice to the Mortgagees (a "Unit Mortgagee") of the members (a "Unit Owner") of the applicable association. The association receiving such default notice shall have the right to cure any such default and/or send a copy of such default notice to the applicable Unit Mortgagee who shall have the right to cure such default.

## ARTICLE X

### ASSIGNMENT, TRANSFER AND MORTGAGE, LIMITATION OF LIABILITY

#### Section 10.1 Owner Not Released Except as Provided Herein

(a) If an Owner shall sell, transfer or assign all or any portion of its Parcel it shall (except as provided in this subsection (a) and, in the case of a ground lease, except as modified by Section 10.4), be released from its obligations hereunder with respect to such Parcel or portion thereof accruing from and after the date of such sale, transfer or assignment. It shall be a condition precedent to the release and discharge of any grantor or assignor Owner that the following conditions are satisfied: (a) such grantor or assignor shall give notice to the other Owners of any such sale, transfer, conveyance or assignment concurrently with the filing for record of the instrument effectuating the same (or in the case of a ground lease termination, within thirty (30) days after the termination thereof), and (b) the transferee shall execute and deliver to the other Owners a written statement in which (i) the name and address of the transferee shall be disclosed; and (ii) the transferee shall acknowledge its obligation hereunder and agreement to be bound by this Declaration and perform all such obligations applicable to it in accordance with the provisions of this Declaration. Failure to deliver any such written statement shall not affect the running of any covenants herein with the Parcels, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Declaration, but such failure shall constitute a default by the transferee hereunder. Notwithstanding anything to the contrary in this Section 10.1(a), the entity or entities to whom Declarant conveys Parcel 1 shall not have the right to sell, transfer or assign all or any portion of the Parcel without the prior written approval of Declarant until the earlier of (x) Substantial Completion of the Initial Development and (y) ten (10) years after the Effective Date; provided however, that nothing herein is intended to limit the Parcel 1 Owner's ability to transfer (I) all or any portion of the Parcel to an Affiliate, (II) if the Initial Development is completed in phases, any portion of the Parcel for which a phase has been finally completed to a third party; (III) all or any portion of the Parcel to an experienced, financially sound apartment, townhome, and/or condominium developer, having the reasonable ability to construct the improvements for its Parcel in accordance with this Declaration and applicable zoning approvals, subject to the Parcel 2 Owner's reasonable approval; or (IV) all or any portion of the Parcel to a Mortgagee (or otherwise prohibit said Mortgagee from exercising its remedies under a Mortgage including, without limitation, obtaining the Parcel through foreclosure or a deed-in-lieu). Any request submitted to the Parcel 2 Owner for approval shall be submitted with detailed information regarding the proposed purchaser or assignee and its plans for the Initial Development.

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(b) If any Parcel is sold or otherwise transferred (including via a ground lease), such transfers shall be subject to this Declaration and the transferees (including the lessee under any new ground lease and the lessor under a ground lease reacquiring possession upon termination of such ground lease) shall be bound by its transferor's obligations hereunder as fully as if such transferees were originally parties hereto, and such obligations shall run with and be binding upon the Parcels and be binding upon all subsequent Owners thereof, including any claims or liens arising under this Declaration against a prior Owner of a Parcel which shall continue as to any transferee of such Parcel. Notwithstanding anything to the contrary herein, in the event that all or any portion of Parcel 1 or Parcel 2 is subject to one or more condominium regimes, any and all such condominium regimes shall be subject and subordinate to this Declaration.

(c) In the event that a Parcel is divided into one or more separate legal lots, or condominiums, each of such separate legal lots shall thereafter be considered to be a "Parcel" as defined in this Declaration and the owners of each such legal lot shall be an "Owner"; provided, however, that, with respect to a condominium, the declarant under the condominium regime and, thereafter as appropriate under the applicable condominium operating documents, the condominium association, as opposed to the individual condominium unit owners, shall be considered the "Owner" hereunder, except as otherwise provided herein. Further, in the event that the multiple owners of a Parcel are members of a homeowner's association, the declarant under the operating documents of the homeowner's association and, thereafter, as appropriate under the applicable documents, the homeowner's association itself, as opposed to the individual members, shall be considered the "Owner" hereunder, except as otherwise provided herein and provided further that the association has the right and authority pursuant to the association's governing documents to undertake such obligations and to assess its members therefor without the approval of the members. In the event that a portion (but not all) of Parcel 1 or an interest therein is conveyed or otherwise transferred such that there is more than one Owner of the land that constituted Parcel 1 as of the Effective Date, then the Owners of such Parcel shall designate one of them who shall have authority to act on behalf of such Owners vis-à-vis the Owner of Parcel 2 and they shall notify the Parcel 2 Owner of said designee. Notwithstanding the foregoing, nothing herein shall affect any of the remedies available to the Parcel 2 Owner pursuant to Article VIII, including, without limitation, the right of self-help and the right to place a lien on the property of any Owner, including any owner of a condominium unit or member of a homeowner's association, pursuant to Section 8.4. No Owner of a legal lot(s) shall be obligated or liable for the acts or omissions of an Owner of another legal lot(s), and the obligations and liabilities of each Owner shall not be joint and several. Each Owner agrees that any claim or right (including lien rights) it may have against another Owner pursuant to this Declaration shall be made or asserted against the applicable Owner(s) and the applicable Parcel(s) whose actions or omissions are at issue. Notwithstanding anything to the contrary contained herein, in the event that the Parcel 1 Owner creates a master owner's association for Parcel 1 and such association has the obligation and authority pursuant to the association's governing documents to undertake the Initial Construction and Maintenance Obligations and has the ability to assess its members therefor without the approval of the members ("Master Association"), the Parcel 2 Owner shall assert any claims or right that the Parcel 2 Owner may have arising from or relating to the Initial Construction and Maintenance Obligations against the Master Association. Until a Master Association satisfying the requirements of the previous sentence is created, the Owners of

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Parcel 1 shall be jointly and severally liable for the Initial Construction and Maintenance Obligations. As used herein, "Initial Construction and Maintenance Obligations" shall mean only the obligations of the Parcel 1 Owner pursuant to Article 3, the expansion of the existing storm water detention pond pursuant to Section 5.2, and the obligation of the Parcel 1 Owner to maintain the Current Access Area, Access Easement Area and Storm Water Easement Area as set forth in this Declaration.

Section 10.2 Possessory Party Remains Responsible. Notwithstanding anything to the contrary herein contained, if any Owner shall (i) convey all or any portion of its Parcel in connection with a sale and leaseback or lease and sublease back, and it shall simultaneously become vested with a leasehold estate or similar possessory interest in its Parcel by virtue of a lease made by the grantee or lessee, as the case may be, or (ii) shall convey all or any portion of its Parcel or its interest therein by way of a Mortgage and retain its possessory interest in its Parcel, then, in neither of such events shall the assignee of this Declaration under such sale and leaseback or lease and sublease back, or the Mortgagee or beneficiary under any such Mortgage, be deemed to be an Owner with respect to such Parcel or portion thereof or to have assumed or be bound by any of such Owner's obligations hereunder for so long as such Owner shall retain such possessory interest, and such obligations and the status as an Owner hereunder with respect to such Parcel or portion thereof shall continue to remain solely those of such Owner so long as such Owner retains such possessory interest, and performance by such Owner of any act required to be performed under this Declaration by it or fulfillment of any condition of this Declaration by such Owner shall be deemed the performance of such act or the fulfillment of such condition and shall be acceptable to the Owners with the same force and effect as if performed or fulfilled by such assignee, lessor, subsequent Owner or Mortgagee or beneficiary.

Section 10.3 Rights of Parties. Notwithstanding anything to the contrary contained in this Declaration, each Owner may mortgage its Parcel or its interest therein and/or sell and leaseback or lease and sublease back its Parcel or its interest therein, and, in connection with any such transaction, assign its interest in this Declaration. If any such Mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if any Owner shall have entered into a sale and leaseback or a lease and sublease back transaction involving its Parcel and any such Owner is the lessee or sublessee thereunder and such lessee or sublessee shall be deprived of possession of such Parcel by reason of its failure to comply with the terms of such leaseback or sublease back, any person or entity who has acquired, or shall thereafter acquire, title to such Parcel or a leasehold estate therein shall hold the same subject to all other terms, provisions, covenants, conditions and restrictions contained in this Declaration.

Section 10.4 Ground Leases. If any Owner of fee simple title to a Parcel has entered into, or shall enter into, a ground lease of its entire Parcel, then the lessee under such ground lease shall be deemed to be the Owner of such Parcel and to have assumed or be bound by any and all of such Owner's obligations (including, if applicable, the obligation to serve as the Parcel 1 Owner) hereunder for so long as such lessee shall be the lessee under such ground lease, and such obligations and the status as an Owner hereunder shall continue to remain solely those of such lessee so long as such lessee shall be the lessee under such ground lease. The lessor under any such ground lease shall not be the Owner of the Parcel, and shall not have any of the rights or obligations of an Owner hereunder until such time as the ground lease terminates or



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expires, provided, that such lessor shall, at no cost or expense to such lessor, cooperate in good faith with the lessee if the involvement of the lessor is reasonably necessary under the circumstances. Upon such termination or expiration of such ground lease, the lessor thereunder shall become the Owner of the Parcel subject to and bound by the terms of this Declaration.

Section 10.5 Limitation of Liability. No Owner or its partners, venturers, employees, shareholders, affiliates, officers, directors, agents, representatives, advisors, or consultants shall have any personal liability for its or their failure to perform any covenant, term or condition of this Declaration, it being expressly declared that any money judgment recovered against any Owner shall be satisfied only out of, and the sole and exclusive recourse of any Owner in the Parcel involved and the Improvements thereon, including the proceeds of sale received upon execution of such judgment thereon, against the right, title and interest of such Owner in the Parcel involved and the Improvements thereon and the rents or other income or revenue from such property receivable by such Owner or the consideration received by such Owner from the sale or other disposition (including a condemnation) of all or any part of such Owner's right, title and interest in the Parcel involved and Improvements thereon or the insurance proceeds received by such Owner respecting any casualty affecting the Improvements.

Section 10.6 Priority of Declaration. This Declaration and the rights, interests, liens (subject to the provisions of Section 8.4 above), and easements created hereunder shall be prior and superior to any Mortgage or other lien upon or against any Owner's Parcel other than such liens as by law have priority over the lien and operation of this Declaration.

## ARTICLE XI

### GENERAL INSURANCE AND CONDEMNATION PROVISION

Section 11.1 Waiver of Subrogation. EACH OWNER HEREBY WAIVES ANY AND ALL CLAIMS WHICH ARISE, OR MAY ARISE, IN ITS FAVOR AGAINST ANY OTHER OWNER, FOR ANY AND ALL LOSS OF, OR DAMAGE TO, ANY OF ITS PROPERTY, INSURABLE UNDER ALL RISK POLICIES OF INSURANCE CUSTOMARILY AVAILABLE AT THE APPLICABLE TIME.

#### Section 11.2 Insurance.

(a) Each Owner shall continuously maintain separate policies of commercial general liability insurance issued by and binding upon insurance companies authorized to transact business in Virginia and of good financial standing and has a Best's Rating of A or better and a Financial Size Category of X or larger, such insurance to afford minimum protection of not less than \$10,000,000 in respect of bodily injury or death and/or property damage in respect of any one occurrence.

(b) Each Owner shall, on the request of another Owner, promptly furnish the requesting Owner a certificate evidencing the former Owner's compliance with the insurance

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coverage requirements of this Article XI. No Owner shall be required during any given 365-day period to honor more than one such request from each other Owner, unless an Owner states its reason for believing that a policy may have been cancelled. Upon request, any Owner shall permit any other Owner or its representative at such requesting Owner's cost and expense to inspect and copy any insurance policy required under this Article XI. Such inspection shall be at the place of business of the Owner requested to produce such policy or policies during Normal Business Hours.

(c) The limits of coverage required hereunder shall be adjusted from time to time throughout the term of this Declaration by agreement of all Owners, each acting reasonably, to limits then applicable for comparable projects.

(d) Each Owner (but not the declarant or association, as applicable, under a condominium regime) shall have the right, at its option, to comply with and satisfy its obligations under this Article XI by means of any so-called blanket policy or policies of insurance covering this and other locations of such Owner, provided that such policy or policies by the terms thereof shall allocate to the liabilities to be insured hereunder an amount not less than the amount of insurance required to be carried pursuant to this Article XI and shall not diminish the obligations of the particular Owner to carry insurance, so that the proceeds from such insurance shall be an amount not less than the amount of proceeds that would be available if the Owner were insured under a policy applicable only to the applicable Parcel.

(e) If a condominium association, a homeowners' association or another similar association has been established with respect to a Parcel or Parcels, then for purposes of maintaining the insurance required under this Section 11.2, the term "Owner" shall mean the applicable association (or the declarant under the applicable operating documents if such association has not yet been established) instead of the individual members of the applicable association provided that the association has the right and authority pursuant to the association's governing documents to undertake such obligations and to assess its members therefor without the approval of the members.

Section 11.3 Indemnification by Owners. Subject to Section 11.1 hereof, each Owner shall defend, indemnify and save the other Owners harmless against and from all claims, loss, damages, costs and expenses (including, without limitation, reasonable attorney's fees) because of bodily injury or death of persons or destruction of property resulting from or arising out of such Owner's construction on and/or use, occupancy or possession of its Parcel, the Access Easement Area, the Access Easement, the Current Access Area, the Overflow Parking and/or any other Owner's Parcel, except to the extent caused by the acts or omissions of another Owner.

Section 11.4 Taking. If a Taking affecting any Parcel occurs, the following shall apply:

(a) any award of compensation or damages for a Taking of a Parcel, or any portion thereof, or the Improvements thereon, shall belong and be payable solely to the Owner

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that owns the Parcel taken and no other Owner shall share in such award, except as expressly provided below;

(b) any proceeds attributable to the Access Easement Area, any Access Improvement or any Access Monument Sign shall be paid to the Parcel 1 Owner and the Parcel 1 Owner shall use such proceeds to restore the Access Improvements or Access Monument Sign as nearly as possible to its condition immediately prior to such Taking to permit the continued use thereof. To the extent the cost of restoring such Access Improvements or Access Monument Sign exceeds the amount of proceeds available therefor, (i) as to the Access Improvements, each Owner shall be responsible for such excess in the same proportion as each such Owner is obligated to pay the Access Expenses pursuant to Section 3.5 and (ii) the Owner whose Access Monument Sign was taken as to any Access Monument Sign shall be responsible for such excess; and

(c) if, as a result of a Taking, the Access Easement is extinguished or materially impaired or the Access Monument Sign may no longer be maintained, then changes shall be made to provide an access easement and/or appropriate monument signage rights comparable to the extent commercially practicable under the circumstances to the Access Easement and monument signage rights created or reserved under this Declaration.

Section 11.5 Tax Payments and Contests. Each Owner shall pay all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excess levies, license and sales and permit fees and taxes, and other charges by public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall be assessed, levied, charged, confirmed, imposed or applicable to a Parcel owned by such Owner or Improvements thereon. Each of the Owners may, at its expense, by appropriate proceedings, and after thirty (30) days' written notice to the other Owners, contest the validity, applicability, or amount of any such taxes and assessments applicable to its Parcel or Improvements thereon. Such contest must be made in good faith and must not allow the affected Parcel to be forfeited or placed in jeopardy of being forfeited.

## ARTICLE XII

### MISCELLANEOUS

Section 12.1 Covenants Run with the Land. All of the provisions, rights, powers, easements, covenants, conditions and obligations contained in this Declaration shall be binding upon and inure to the benefit of the Owners, their respective successors and assigns. Each covenant to do or refrain from doing some act on each Parcel hereunder (a) is for the benefit of the other Parcels, (b) runs with each Parcel, and (c) shall benefit or be binding upon each successive Owner during its period of ownership of each Parcel.

Section 12.2 Recordation. This Declaration shall become effective and binding upon the Owners and their respective successors in interest upon the Effective Date and shall be promptly recorded in the real property records of Fairfax County, Virginia.



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### Section 12.3 Termination and Amendment.

(a) Except as otherwise specified in this Declaration (including, without limitation Section 12.17 which may be terminated by the Parcel 1 Owner alone), this Declaration may be canceled, changed, modified or amended in whole or in part only by written and recorded instrument executed by all Owners (and their respective Mortgagees); provided, however, that with respect to any Parcel for which a condominium association, a homeowners' association or another similar association has been established, the consent of a majority of the Unit Owners of each such association (and their respective Mortgagees) shall satisfy the requirements of this Section 12.3(a).

(b) The Owners shall use reasonable efforts to cooperate to consider reasonable modifications to this Declaration at the request of another Owner, and it shall not be reasonable for an Owner to withhold its cooperation or consent to any modification that neither adversely affects in a material manner such Owner's development or use of its respective Parcel as permitted in this Declaration nor increases such owner's obligations and/or liabilities hereunder.

Section 12.4 Approvals. Whenever approval or consent is required of any Owner, unless provision is made for a specific time period, approval or consent shall be required within twenty (20) Business Days after such Owner's receipt of the written request for approval or consent and such Owner shall be deemed to have consented if such Owner does not reply within said twenty (20)-Business Day period (provided such notice conspicuously states in bold letters that failure to respond within such twenty (20)-Business Day period shall be deemed consent). Whenever time periods are specified for approval herein (other than in the previous sentence) and the applicable Owner does not respond within the stated time period, the Owner requesting a response shall, at the end of the stated time period, deliver a second request for response in which event the responding Owner shall have ten (10) Business Days from receipt of the requesting Owner's second notice to respond. The responding Owner shall be deemed to have consented if such Owner does not reply within said ten (10)-Business Day period (provided such request or notice conspicuously states in bold letters that failure to respond within such ten (10)-Business Day period shall be deemed consent). If an Owner shall disapprove any matter as to which its consent is requested hereunder, the reasons therefor shall be stated in reasonable detail in writing. The consent or approval by an Owner to or of any act or request by any Owner shall not be deemed to waive or render unnecessary consent or approval to or of any similar or subsequent acts or requests. Except as otherwise expressly provided herein, any consent or approval rights granted to an Owner pursuant to this Declaration as it relates to another Owner shall be exercised in such Owner's reasonable discretion, without undue delay or conditions.

Section 12.5 Excusable Delays. Whenever performance is required of any Owner hereunder, that Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of an Owner (financial inability,

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imprudent management or negligence excepted), the inability to obtain necessary governmental approvals, the discovery of hazardous materials or a failure of an Owner to timely act in a manner required herein, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. As used in this Declaration, an Owner's obligation to use or act with "due diligence," "diligent efforts" or words of similar meaning or import, or take any action required to "diligently complete," "diligently pursue" or words of similar meaning or import, shall be deemed satisfied if such Owner acts with or uses commercially reasonable efforts under the circumstances.

Section 12.6 Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect, unless enforcement of this Declaration as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Declaration.

Section 12.7 Notice. Any notice to any Owner shall be in writing and given by delivering the same to such Owner in person, by expedited, private carrier service (such as Federal Express), or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the Owner's mailing address. Copies of certain notices are required to be sent to Mortgagees pursuant to Article IX of this Declaration. Notices shall be sent to the Declarant and the Parcel 2 Owner as follows:

Declarant/Parcel 2 Owner: Campus Point Realty Corporation  
10260 Campus Point Drive  
San Diego, California 92121  
Attn: SAIC Corporate Real Estate

and with a copy to: Gary E. Humes  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, DC 20004-1206

Any Owner may change its mailing address at any time by giving written notice of such change to the other Owners in the manner provided herein at least ten (10) days' prior to the date such change is to be effective. Additionally, each Owner may designate up to two (2) additional addresses to which copies of all notices shall be sent. All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed, on the delivery date or attempted delivery date shown on the return receipt, provided that any such notice set forth above is tendered prior to 6:00 P.M. in the time zone where the recipient of such notice is located on any Business Day (failing which such notice shall be deemed given, received, made or communicated on the next Business Day).

Section 12.8 Litigation Expenses. If any party shall bring a legal or equitable proceeding against any other party to this Declaration by reason of the breach or alleged violation of any covenant, condition, restriction, easement, term or obligation hereof, or for the

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enforcement of any provision hereof or otherwise arising out of this Declaration, the prevailing party in such proceeding shall be entitled to recover from the non-prevailing party the reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by such prevailing party in connection with such proceeding, which shall be payable whether or not such action is prosecuted to judgment.

Section 12.9 Governing Law; Place of Performance. This Declaration and all rights and obligations created hereby shall be governed by the laws of the Commonwealth of Virginia, without reference to the choice of laws principles thereof.

Section 12.10 Non-Merger. The ownership, at any time during the term of this Declaration, of more than one Parcel by the same Owner shall not create a merger of title or estate, or other merger, including any merger of the dominant and servient estate with respect to easements created in this Declaration, and shall therefore not terminate any of the easements, restrictive covenants, or other terms or provisions of this Declaration.

Section 12.11 Term; Termination. The terms, covenants, provisions and conditions of this Declaration shall be effective as of the Effective Date and shall continue to be binding upon and inure to the benefit of any Owner from time to time and all persons, parties and entities claiming by, through or under any of them in perpetuity unless all persons or entities having an interest therein shall agree to terminate or otherwise modify the same.

Section 12.12 Time. Time is of the essence of this Declaration and each and every provision hereof.

Section 12.13 Estoppel Certificate. Any Owner may, at any time and from time to time, deliver written notice to any other Owner requesting such other Owner to certify in writing (a) that to the best knowledge of the certifying Owner, the requesting Owner is not in default in the performance of its obligations under this Declaration, or, if in default, to describe therein the nature and amount of any and all defaults, and (b) to such other reasonable matters as the requesting Owner may request. Each Owner receiving such request shall execute and return such certificate within ten (10) Business Days following the receipt thereof. Such certificate may be relied upon by actual or prospective purchasers, investors, tenants, transferees, lenders, mortgagees, deed of trust beneficiaries and leaseback lessors.

Section 12.14 No Partnership, Joint Venture or Principal-Agent Relationship. Neither anything in this Declaration nor any acts of an Owner shall be deemed by the Owners, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Owners (except as expressly set forth herein), and no provisions of this Declaration are intended to create or constitute any person or entity a third party beneficiary hereof.

Section 12.15 Headings; Exhibits; Gender. Captions in this Declaration are for convenience of reference only, and shall not be considered in the interpretation of this Declaration. All exhibits referenced in this Declaration are incorporated in this Declaration by this reference as if fully set forth herein. Whenever required by the context, the singular shall

BK 16927 2221

include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

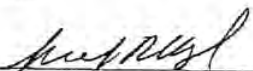
Section 12.16 Separate Parcel 1 Covenants. The initial owner of Parcel 1, after Declarant, shall have the right, from time to time and without the consent of the Parcel 2 Owner, to record separate covenants benefiting and/or burdening Parcel 1 and the owners thereof provided such covenants are and remain subordinate to this Declaration and do not impact the liabilities or obligations set forth herein.

Section 12.17 Overflow Parking Spaces. The Parcel 2 Owner shall provide to the Parcel 1 Owner, for the benefit of the residents of Parcel 1, the right to use a minimum of 150 parking spaces on Parcel 2 during non-business hours on weekdays (i.e. after 6:00 p.m.) and on weekends ("Overflow Parking"). Prior to the sale or rental of the first housing units on Parcel 1, the Parcel 1 Owner or the Master Association shall establish, subject to the reasonable approval of the Parcel 2 Owner, reasonable rules and regulations for the use of the Overflow Parking. The Master Association (or, before there is a Master Association, the Parcel 1 Owner) shall enforce such rules and regulations. If the Parcel 1 Owner or the Master Association, as applicable, fails to establish and/or enforce such rules and regulations, in addition to any other remedies that may be available to it, the Parcel 2 Owner shall have the right to terminate the Parcel 1 Owner's right to use the Overflow Parking by sending a notice to the Parcel 1 Owner and, if the Parcel 2 Owner so elects, recording the same in the land records.

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IN WITNESS WHEREOF, the undersigned has executed and acknowledged this Declaration to be effective as of the Effective Date.

CAMPUS POINT REALTY CORPORATION,  
a California corporation

By:   
Name: FREDERICK HARMAN  
Title: PRESIDENT

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ACKNOWLEDGMENT

State of California }

County of San Diego }

On January 25, 2005, before me, Mary E. Hyder, Notary Public, personally appeared Frederick R. Hazard, personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Mary E. Hyder  
Signature of Notary



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EXHIBITS:

Exhibit A-1	Description of Parcel 1
Exhibit A-2	Description of Parcel 2
Exhibit B	Access Easement Area (and Access Monument Sign Area)
Exhibit C-1	Storm Water Easement Area
Exhibit C-2	Storm Water Detention Ponds
Exhibit D-1	Relocated Parking
Exhibit D-2	Temporary Parking
Exhibit E	Current Access Area
Exhibit F	Outlot Parcels
Exhibit G	Telephone and Data Cables

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REVISED JANUARY 25, 2005  
JANUARY 20, 2005

EXHIBIT A-1A  
DESCRIPTION OF  
PARCEL 1A  
THE RESERVE AT TYSONS CORNER  
BEING  
A PORTION OF  
THE PROPERTY OF  
CAMPUS POINT REALTY CORPORATION,  
as successor in interest to  
CAMPUS POINT REALTY CORPORATION, II  
DEED BOOK 11073 PAGE 890  
PROVIDENCE DISTRICT  
FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point on the southwesterly corner of Tysons Executive Village as recorded in Deed Book 9777 at Page 1353 among the aforementioned Land Records, said point also being on the northerly line of Lot 9, Courthouse Station (Deed Book 7195 Page 438); thence running with a portion of Courthouse Station

1. North 79°10'45" West, 417.85 feet to a point being the southeasterly corner of Courts of Tyson (Deed Book 6020 Page 699); thence leaving Courthouse Station and running with Courts of Tyson and continuing so as to cross and include a portion of the aforesaid property of Campus Point Realty Corp II the following eleven (11) courses and distances:
2. North 10°50'42" East, 515.46 feet to a point; thence
3. North 11°48'13" West, 264.60 feet to a point; thence
4. North 79°09'07" West, 449.29 feet to a point; thence
5. 58.12 feet along the arc of the curve to the right having a radius of 37.00 feet and a chord bearing and distance of North 34°09'07" West, 52.33 feet to a point; thence

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6. North 10°50'53" East, 128.62 feet to a point; thence
7. North 79°09'07" West, 192.48 feet to a point; thence
8. South 64°49'49" West, 21.66 feet to a point; thence
9. South 10°50'53" West, 57.89 feet to a point; thence
10. North 79°09'07" West, 58.98 feet to a point; thence
11. South 10°50'53" West, 102.68 feet to a point; thence
12. North 79°09'07" West, 27.40 feet to a point lying on the easterly right of way line of Gallows Road – Route 650 (width varies); thence running with a portion of said easterly right of way line
13. 52.71 feet along the arc of the curve to the left having a radius of 416.60 feet and a chord bearing and distance of North 06°56'31" West, 52.68 feet to a point; thence
14. 46.73 feet along the arc of a curve to the right having a radius of 35.54 feet and a chord bearing and distance of North 27°08'36" East, 43.43 feet to a point; thence departing Gallows Road and running so as to cross and include a portion of the subject property (Deed Book 11073 Page 890) the following nine (9) courses and distances
15. South 21°00'02" West, 19.05 feet to a point; thence
16. South 62°49'39" East, 13.72 feet to a point; thence
17. North 27°10'21" East, 46.73 feet to a point; thence
18. North 64°49'49" East, 240.41 feet to a point; thence
19. 125.73 feet along the arc of a curve to the right having a radius of 200.00 feet and a chord bearing and distance of North 82°50'21" East, 123.67 feet to a point; thence
20. South 79°09'07" East, 424.76 feet to a point; thence
14. 175.26 feet along the arc of a curve to the right having a radius of 168.00 feet and a chord bearing and distance of South 48°15'58" East, 167.42 feet to a point; thence
15. South 19°22'46" East, 121.31 feet to a point; thence
16. North 73°33'08" East, 169.34 feet to a point on the westerly right-of-way line of Interstate Route 495 (variable width right-of-way); thence running with Interstate Route 495 the following three (3) courses and distances

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17. South 16°26'52" East, 64.26 feet to a point of curvature; thence
18. 423.65 feet along the arc of a curve to the right having a radius of 11,809.16 feet and a chord bearing and distance of South 11°28'32" East, 423.63 feet to a point; thence leaving said Interstate Route 495 and running with the westerly line of the aforementioned Tysons Executive Village the following course and distance
19. South 10°54'22" West, 485.88 to the point of beginning containing 540,309 square feet or 12.40379 acres of land.

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ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ GPS SERVICES



REVISED JANUARY 25, 2005  
JANUARY 20, 2005

EXHIBIT A-1B  
DESCRIPTION OF  
PARCEL 1B  
THE RESERVE AT TYSONS CORNER  
BEING  
A PORTION OF  
THE PROPERTY OF  
CAMPUS POINT REALTY CORPORATION,  
as successor in interest to  
CAMPUS POINT REALTY CORPORATION, II  
DEED BOOK 11073 PAGE 890  
PROVIDENCE DISTRICT  
FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point lying on the easterly right of way line of Gallows Road – Route 850 (width varies), said point also marking the northwesterly corner of the Courts of Tysons (D.B. 6020, Pg. 699); thence leaving said northwesterly corner and running with said easterly right of way line of Gallows Road the following three (3) courses and distances

1. North  $11^{\circ}10'53''$  East, 142.86 feet to a point of curvature (non-tangent); thence
2. 43.43 feet along the arc of a curve to the left having a radius of 209.00 feet and a chord bearing and distance of North  $17^{\circ}08'03''$  East, 43.36 feet to a point of compound curvature; thence
3. 105.42 feet along the arc of a curve to the left having a radius of 416.60 feet and a chord bearing and distance of North  $03^{\circ}55'54''$  East, 105.13 feet to a point; thence leaving the aforesaid right of way line of Gallows Road and running so as to cross and include a portion of the aforesaid property of Campus Point Realty Corp II, the following eleven (11) courses and distances;
4. South  $79^{\circ}09'07''$  East, 27.40 feet to a point; thence

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McLean, VA Germantown, MD

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5. North  $10^{\circ}50'53''$  East, 102.68 feet to a point; thence
6. South  $79^{\circ}09'07''$  East, 58.98 feet to a point; thence
7. North  $10^{\circ}50'53''$  East, 57.89 feet to a point; thence
8. North  $64^{\circ}49'49''$  East, 21.66 feet to a point; thence
9. South  $79^{\circ}09'07''$  East, 192.48 feet to a point; thence
10. South  $10^{\circ}50'53''$  West, 128.62 feet to a point; thence
11. 58.12 feet along the arc of the curve to the left having a radius of 37.00 feet and a chord bearing and distance of South  $34^{\circ}09'07''$  East, 52.33 feet to a point; thence
12. South  $79^{\circ}09'07''$  East, 449.29 feet to a point; thence
13. South  $11^{\circ}48'13''$  East, 264.60 feet to a point; thence
14. South  $10^{\circ}50'42''$  West, 53.81 feet to a point marking the northeasterly corner of the aforesaid Courts of Tysons (D.B. 6020, Pg. 699); thence running with the northerly line of said Courts of Tysons
15. North  $79^{\circ}09'07''$  West, 877.50 feet to the point of beginning containing 289,077 square feet or 6.63629 acres of land.

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REVISED JANUARY 26, 2005  
 REVISED JANUARY 25, 2005  
 JANUARY 20, 2005

EXHIBIT A-2  
 DESCRIPTION OF  
 PARCEL 2  
 RESERVE AT TYSONS CORNER  
 BEING  
 A PORTION OF  
 THE PROPERTY OF  
 CAMPUS POINT REALTY CORPORATION,  
 as successor in interest to  
 CAMPUS POINT REALTY CORPORATION, II  
 DEED BOOK 11073 PAGE 890  
 PROVIDENCE DISTRICT  
 FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among in the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point on the southeasterly corner of 1951 Kidwell LP as recorded in Deed Book 9093 at Page 755 among the aforementioned Land Records, said point also being on the southerly right-of-way line of Interstate Route 495 (variable width right-of-way); thence running with Interstate Route 495 the following four (4) courses and distances

1. South 15°00'02" East, 152.09 feet to a point; thence
2. South 45°45'10" East, 458.38 feet to a point; thence
3. South 24°08'10" East, 256.84 feet to a point; thence
4. South 16°26'52" East, 344.89 feet to a point; thence leaving the aforementioned southerly right-of-way line of Interstate Route 495 and running so as to cross and include a portion of the aforementioned property of Campus Point Realty Corp. II the following nine (9) courses and distances
5. South 73°33'08" West, 169.34 feet to a point; thence
6. North 19°22'46" West, 121.31 feet to a point; thence

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 McLean, VA ■ Germantown, MD ■ Leesburg, VA

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7. 175.26 feet along the arc of a curve to the left having a radius of 168.00 feet and a chord bearing and distance of North 49°15'58" West, 167.42 feet to a point; thence
8. North 79°09'07" West, 424.76 feet to a point; thence
9. 125.73 feet along the arc of a curve to the left having a radius of 200.00 feet and a chord bearing and distance of South 82°50'21" West, 123.67 feet to a point; thence
10. South 64°49'49" West, 240.41 feet to a point; thence
11. South 27°10'21" West, 46.73 feet to a point; thence
12. North 62°49'39" West, 13.72 feet to a point; thence
13. North 21°00'02" East, 19.05 feet to a point; thence running with Gallows Road, State Route 650 (width varies) and continuing with Kidwell Drive, State Route 736 (width varies) the following seven (7) courses and distances
14. North 51°51'56" East, 20.02 feet to a point; thence
15. South 64°51'20" West, 19.51 feet to a point; thence
16. North 32°24'41" West, 19.61 feet to a point; thence
17. North 11°10'32" East, 133.61 feet to a point of curvature (non-tangent); thence
18. 153.62 feet along the arc of a curve to the left having a radius of 50.00 feet and a chord bearing and distance of North 20°45'35" East, 99.94 feet to a point of reverse curvature; thence
19. 21.16 feet along the arc of a curve to the right having a radius of 25.00 feet and a chord bearing and distance of North 42°56'44" West, 20.54 feet to a point; thence
20. North 11°10'32" East, 636.22 feet to a point; thence leaving Kidwell Drive – Route 736 and running with southerly line of the aforementioned 1951 Kidwell LP the following three (3) courses and distances
21. South 78°19'06" East, 102.25 feet to a point; thence
22. North 73°31'20" East, 167.84 feet to a point; thence
23. South 89°58'51" East, 123.97 to the point of beginning containing 640,580 square feet or 14.70570 acres of land.

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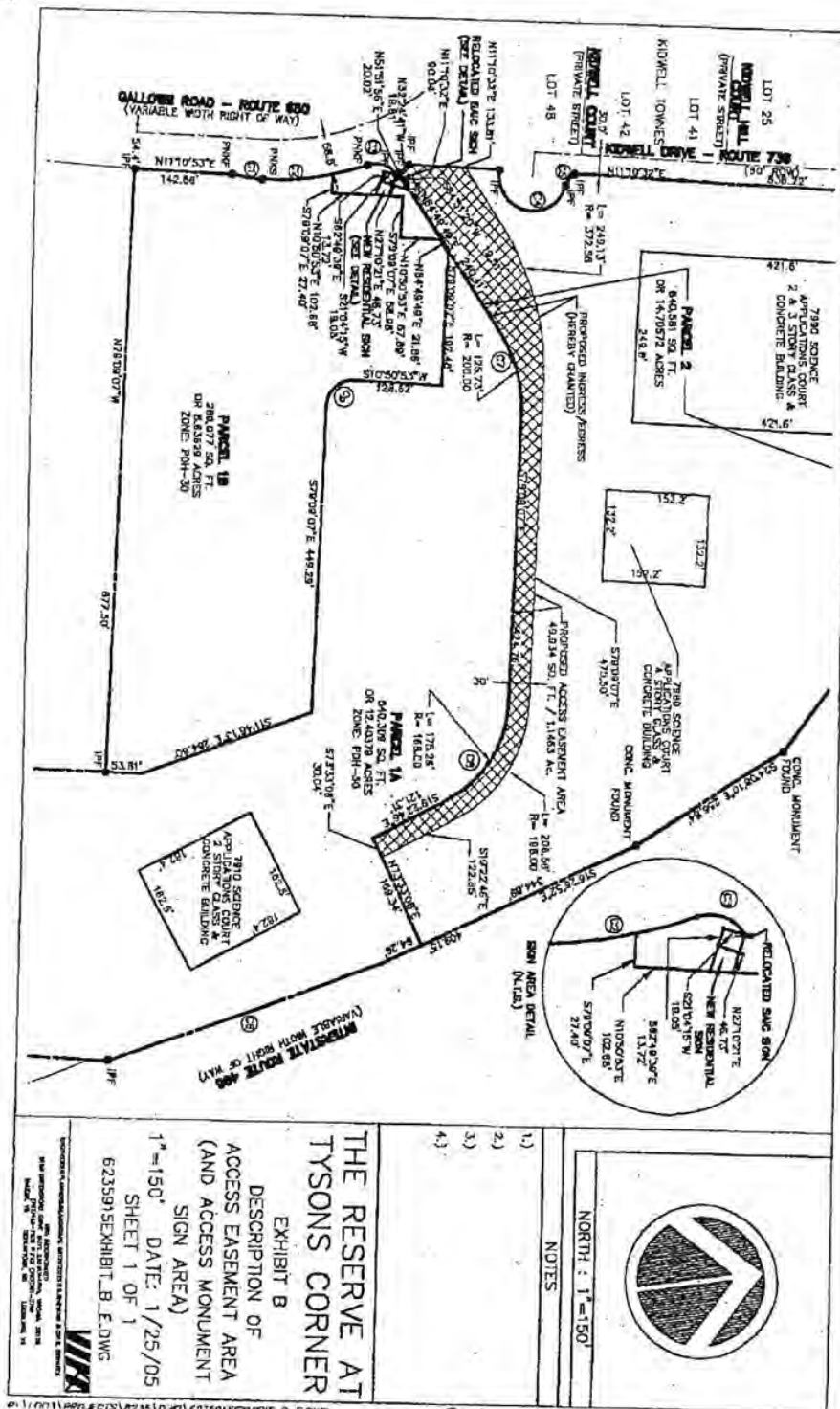
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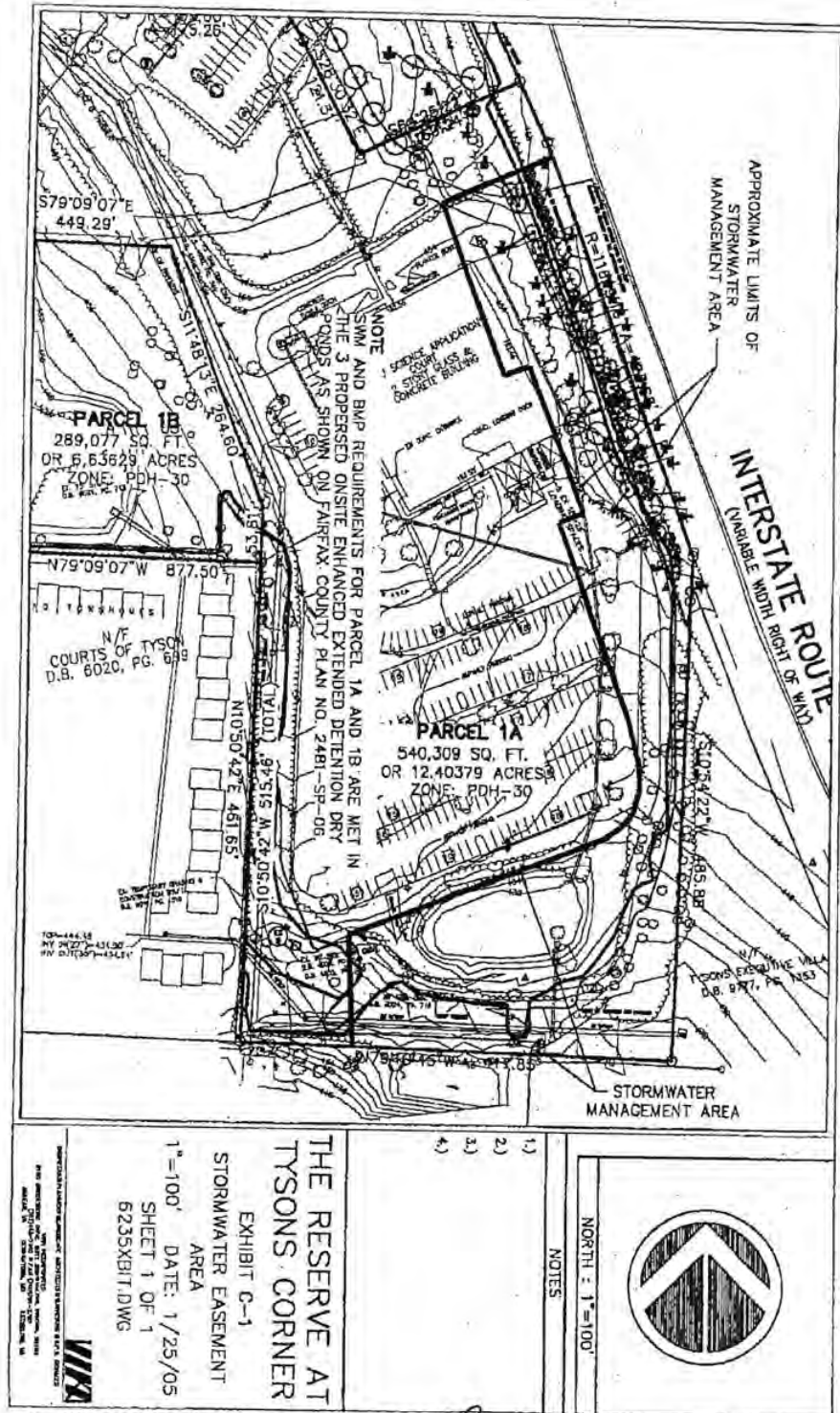
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01/28/2005  
 RECORDED IN PUBLIC BOOK  
 BOOK 1 PAGE 3  
 CLARK

BK 16927 2232

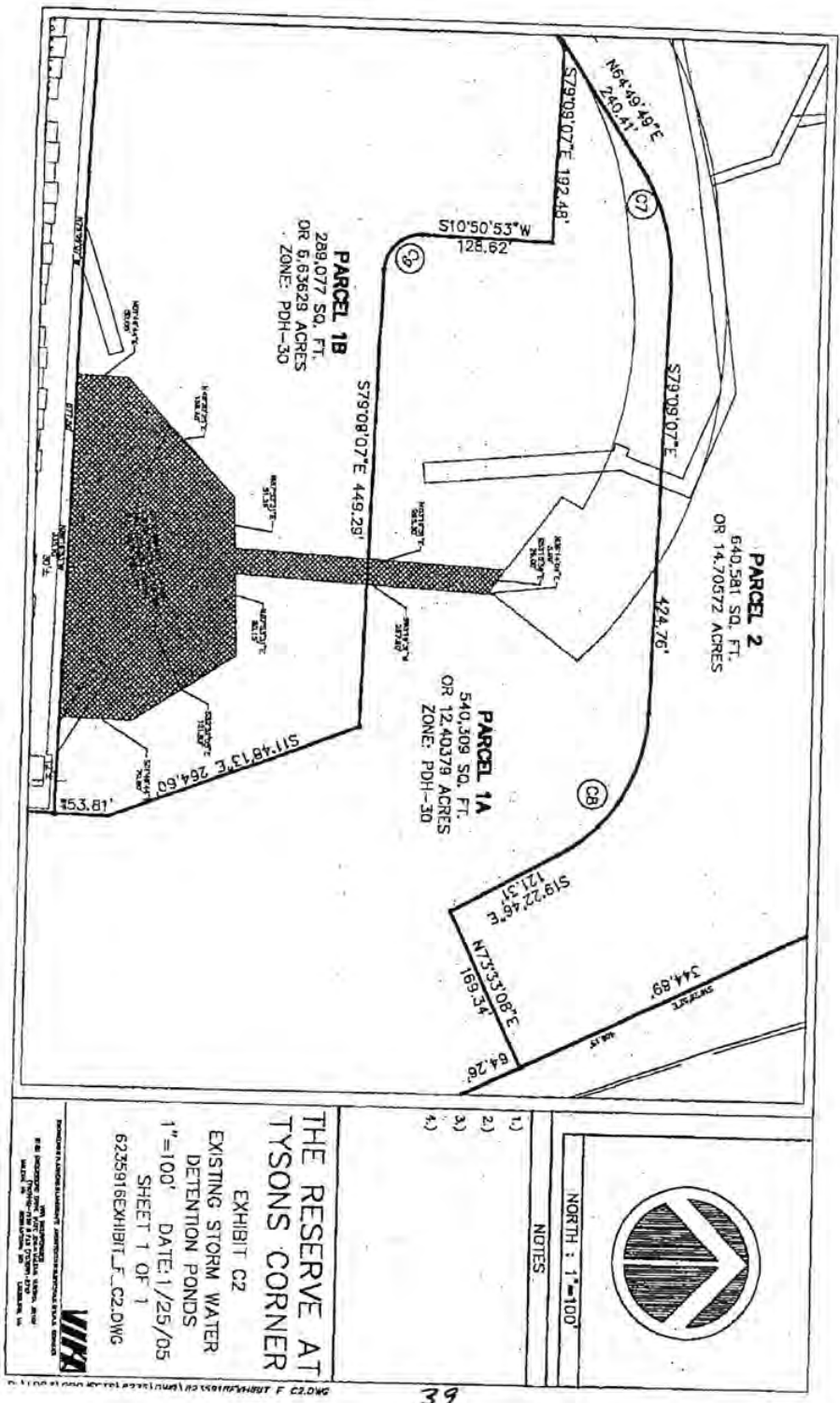


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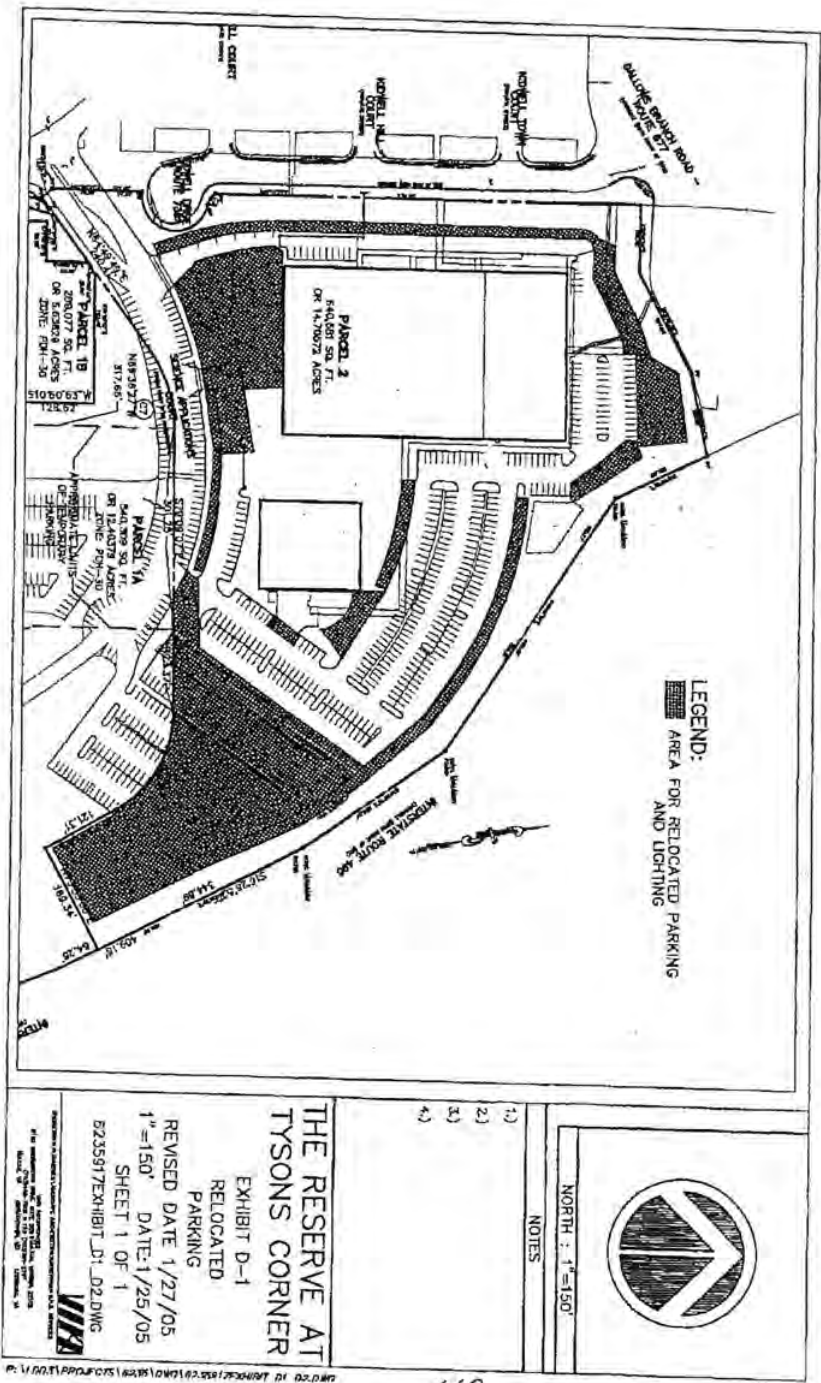




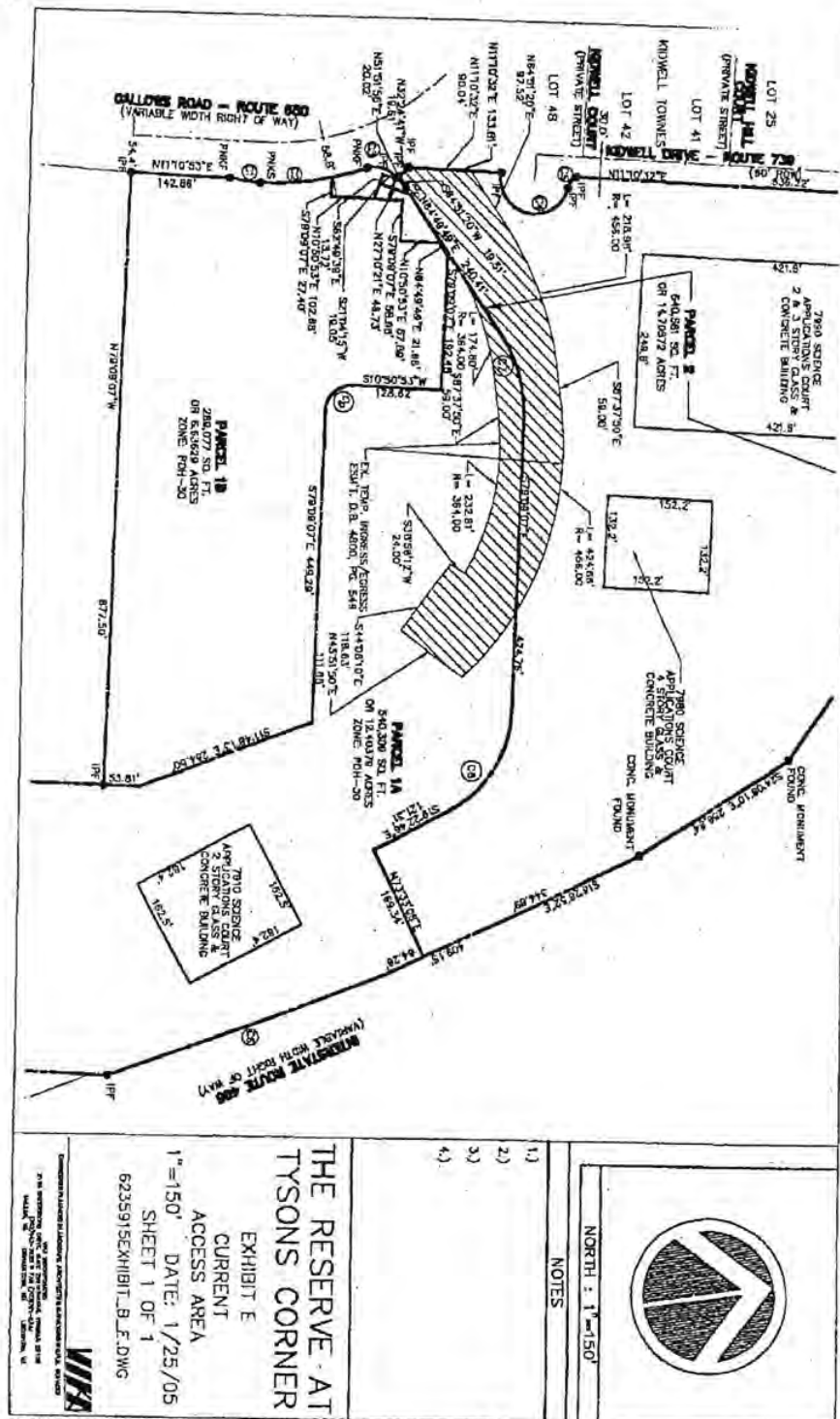
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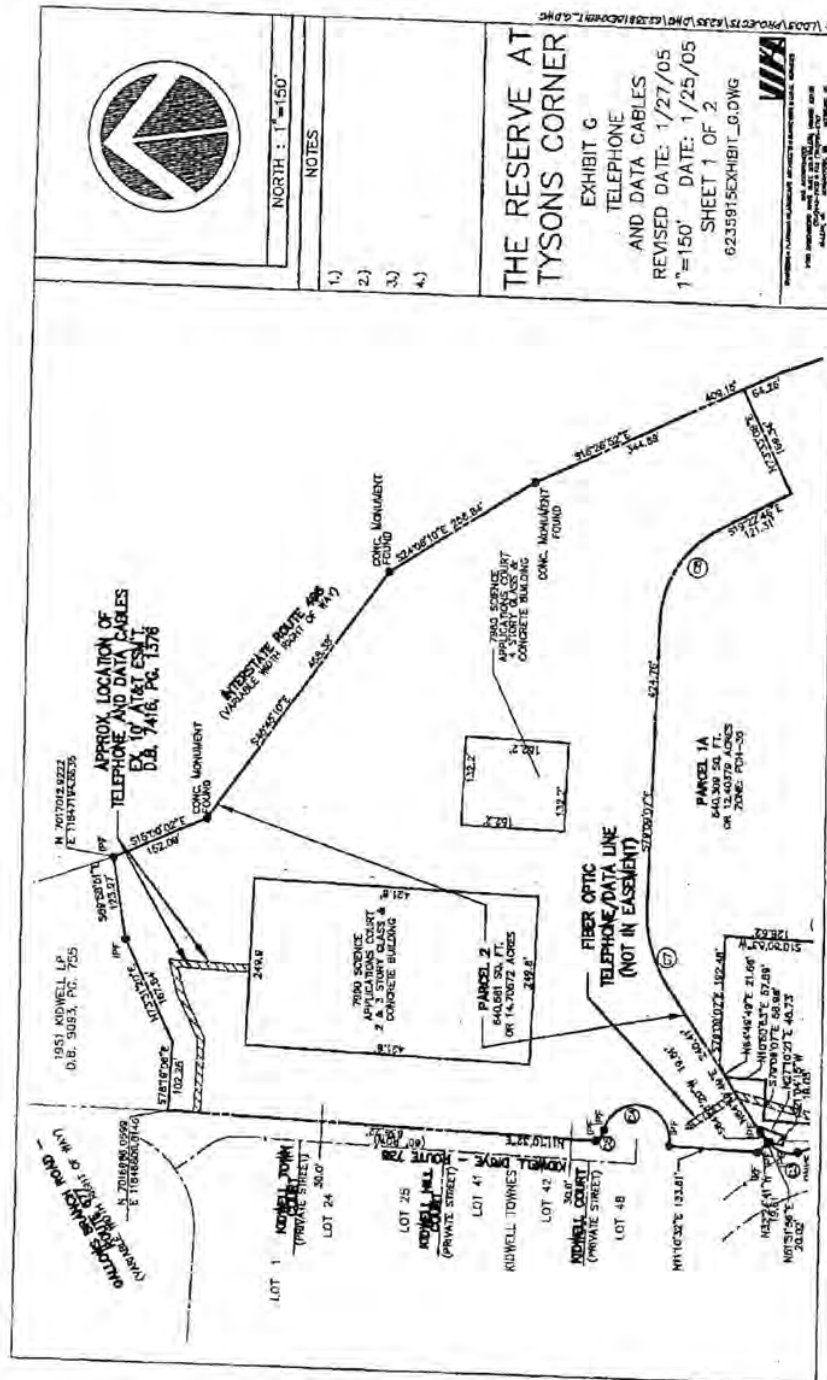
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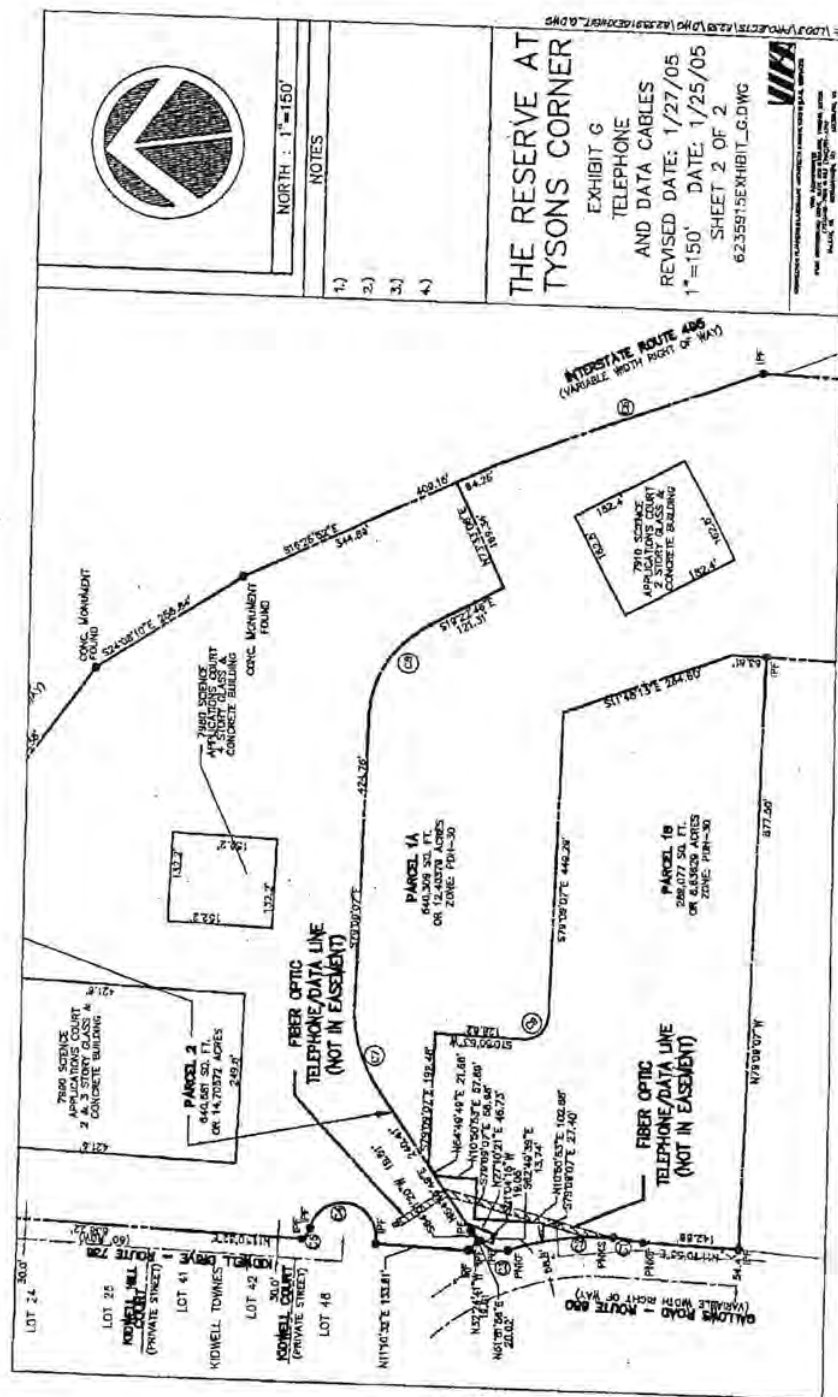
















# County of Fairfax, Virginia

Attachment 1

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Lucia Anna Trigiani, Esq.  
MercerTrigiani  
112 South Alfred Street  
Alexandria, VA 22314



May 30, 2017

Re: Interpretation for RZ/FDP 2003-PR-008; The Reserve at Tysons Corner; Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6: Parking Obligation

Dear Ms. Trigiani:

This determination is in response to your letter of December 22, 2016, requesting an interpretation of the proffers, as well as the approved development conditions and Conceptual/Final Development Plan (C/FDP), accepted and approved in conjunction with the above-referenced application. As I understand it, you are requesting an interpretation of proffer language relating to parking on an adjacent offsite parcel. Specifically, your request concerns whether the proffers accepted in RZ/FDP 2003-PR-008 create a continuing obligation to provide offsite parking on an adjacent property (aka the "Meridian Property"). This determination is based upon your letter dated December 22, 2016, and Exhibit 1, entitled "Proffers RZ 2003-PR-008" dated March 14, 2004. Copies of this letter and exhibits are attached.

The subject property is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. The property is zoned PDH-30 pursuant to the approval of RZ 2003-PR-008 by the Board of Supervisors on March 15, 2004, with the Planning Commission approving FDP 2003-PR-008 on April 7, 2004, subject to proffers and development conditions. These applications permitted development of the property with 92 single-family attached and 478 multi-family dwelling units.

Prior to the approval of RZ/FDP 2003-PR-008, the subject property was part of a larger 33.74-acre property identified as Tax Map Number 39-2 ((1)) Parcel 13. This larger property was originally zoned to the I-P District (now I-3) pursuant to the approval of RZ 75-7-004 by the Board of Supervisors on October 29, 1975, subject to proffers. In 2003, two concurrent applications were submitted by Lincoln Property Company Southwest, Inc., in order to develop a portion of this overall property with the residential development described above. PCA 75-7-004-02 was submitted and approved on the entire 33.74 acres in order to delete 19.04 acres from RZ 75-7-004. RZ/FDP 2003-PR-008 was then approved, subject to proffers, to rezone that same 19.04 acres of land to the PDH-30 District. As the property included in all these applications was under single ownership, the proffers for both applications were signed by the same owner, Campus Point Realty Corporation II. The proffer at issue, however, was approved only in connection with the rezoning

Department of Planning and Zoning  
Zoning Evaluation Division  
12055 Government Center Parkway, Suite 801  
Fairfax, VA 22035-5000



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Lucia Anna Trigiani  
Page 2

of the 19.04-acre parcel. Subsequent to the approval of RZ/FDP 2003-PR-008, the property subject to RZ/FDP 2003-PR-008 was subdivided from the larger property via approved site plans and record plats.

The proffer at issue with your current request is Proffer 49 of RZ 2003-PR-008, which envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

*Prior to the approval of the final site plan on the Application Property<sup>1</sup>, the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

It appears, through submitted plans for the subject property, that compliance with Proffer 49 was demonstrated to Fairfax County through the recordation of a parking agreement in the land records of Fairfax County. You state that you believe the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195 in the Fairfax County land records is the document meant to satisfy Proffer 49—specifically, Section 12.17 of the Declaration of Covenants, Restrictions and Easements as it relates to Overflow Parking Spaces.

The 150 overflow parking spaces were to be located offsite from the 19.04 acres zoned PDH-30, on the portion which retained its I-3 zoning - the Meridian Property (Tax Map Numbers 39-2 ((1)) 13D and 13E), which is currently owned by Tysons Enterprise West LLC and Tyson Enterprise East LLC, and is developed with two existing office/data center buildings and surface parking. In accordance with PCA 75-7-003-3 and SE 2015-PR-021, the Meridian Property will be redeveloped, in part, with a full-size athletic field and parking garage. You now state that the Reserve at Tysons Corner Association Board has been notified that the prior owner of the Meridian Property seeks to terminate the parking agreement with the Association.

In accordance with Section 18-201 of the Zoning Ordinance (“Ordinance”), Board of Supervisors approval of a rezoning application constitutes a permanent (unless further amended) amendment to the Zoning Map. Further, per Section 18-204, any proffered conditions submitted as part of the rezoning application and accepted by the Board of Supervisors become “part of the zoning regulations applicable to the subject property in question, unless subsequently changed by an amendment to the Zoning Map.” Therefore, an approved rezoning and accepted proffers become a part of the Zoning map only for the subject property included in the application, in this case the 19.04 acres described in the application for RZ/FDP 2003-PR-008. Proffer 49 was a commitment

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<sup>1</sup> Proffer #1 associated with RZ 2003-PR-008 states that “Development of the Application Property shall be in substantial conformance with the Conceptual/Final Development Plan (CDP/FDP) prepared by VIKI Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004...” As shown on Sheet 2 of the CDP/FDP, the portion of the property rezoned to the PDH-30 District per RZ 2003-PR-008 contains 19.04 acres, which is the Application Property referenced in Proffer 49. Please refer to Appendix 1 depicting the 19.04 acres subject to RZ 2003-PR-008, which is from the Staff Report published as part of this rezoning application.

Lucia Anna Trigliani  
Page 3

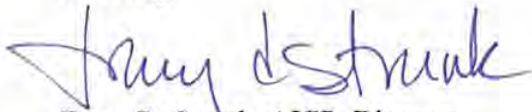
that required the demonstration of the provision of at least 150 overflow parking spaces on the offsite Meridian Property, which was to be secured via a parking agreement to be recorded in the land records. As noted above, this agreement was recorded in Deed Book 16927 at Page 2195 prior to the approval of the site plan, as required.

Proffer 49 specifically required that the overflow parking spaces on an offsite parcel were to be implemented by a private agreement. As noted above, accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. By referring to the Meridian Property as the "adjacent I-3 parcel," the proffer language makes clear that that property was not part of the Application property subject to the proffer.

Based on the foregoing, it is my determination that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008. Although Proffer 49 remains in effect, a proffer violation cannot be enforced on Meridian because the proffer does not apply to them. The proffer can be removed only through a Proffered Condition Amendment (PCA) application approved by the Board of Supervisors. Information on how to apply for a PCA can be found on our website at: <http://www.fairfaxcounty.gov/dpz/zoning/applications/>.

The determination has been made in my capacity as duly authorized agent of the Zoning Administrator and address only those issues discussed herein and not any separately recorded private agreements. If you have any questions regarding this interpretation, please feel free to contact Kelly M. Atkinson at (703) 324-1290.

Sincerely,



Tracy D. Strunk, AICP, Director  
Zoning Evaluation Division, DPZ

N:\Interpretations\Reserve At Tysons Corner RZ 2003-PR-008\2017-02-22 Proffer Interpretation Response - Reserve At Tysons Corner RZ 2003-PR-008.Doc

Attachments: A/S

Cc: Linda Smyth, Supervisor, Providence District  
Phillip Niedzielski-Eichner, Planning Commissioner, Providence District  
Laura Gori, Esq., Assistant County Attorney, Office of the County Attorney  
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ  
Ellie Coddington, Acting Director, Code Development and Compliance Division, LDS  
Ken Williams, Manager, Site and Technical Services, LDS  
Michael Davis, Section Chief for Site Analysis, DOT  
Suzanne Wright, Chief, Special Projects/Applications Management Branch, ZED, DPZ  
Tysons Enterprise West, LLC, Owner, Tax Map 39-2 ((1)) 13D  
Tyson Enterprise East, LLC, Owner, Tax Map 39-2 ((1)) 13E  
File: RZ 2003-PR-008, PCA 75-7-004-03 and SE 2015-PR-021, PI 17 01 001, Imaging

# MERCERTRIGIANI

Attachment 1

Lucia Anna Trigiani  
Pla.Trigiani@MercerTrigiani.com

Direct Dial: 703-837-5008  
Direct Fax: 703-837-5018

February 17, 2017

## VIA OVERNIGHT MAIL

Suzanne Wright, Branch Chief  
Zoning Evaluation Division, Fairfax County  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035-55055

Re: Proffer RZ 2003-PR-008 dated March 14, 2004--  
Zoning Interpretation Request – Response Letter

Dear Ms. Wright:

This firm represents The Reserve at Tysons Corner Association, Inc. (“Association”), the entity responsible for the operation and administration of The Reserve at Tysons residential community located in Fairfax County, Virginia (“The Reserve Property”).

As you are aware, we submitted a Zoning Interpretation Request to Barbara Berlin on December 22, 2016 on behalf of the Association relating to overflow parking requirements contemplated in Proffer RZ 2003-PR-008 dated March 14, 2004 (“Conditions”). A copy of that letter is enclosed. *Capitalized terms in this letter which are not defined have the meanings contained in our December 22<sup>nd</sup> letter.*

Since that time, we understand that Brian Winterhalter at Cooley, counsel for Tysons Enterprise East, LLC and Tysons Enterprise West, LLC (“Tysons Enterprise”) – the owner of the adjacent Meridian Property, and David Gill at McGuire Woods, counsel for The Boro I Developer, L.P. and The Boro I-C Developer L.L.C. (“Boro Developer”) – the developer of the Meridian Property, have submitted letters to you addressing the Association’s request for a proffer interpretation.

In their letters, Mr. Winterhalter and Mr. Gill assert, among other things, that Fairfax County lacks authority to issue a proffer interpretation binding the Meridian Property because the Conditions were associated with the redevelopment of The Reserve Property and only bind the property which is part of The Reserve. Messrs. Winterhalter and Gill also maintain that the Meridian Property is subject to its own set of proffers, which supersede any and all prior proffers to which the Meridian Property may have been previously subject.

In response to the arguments presented by Messrs. Winterhalter and Gill, we offer the following:

- **Authority.** The Director of the Zoning Evaluation (“Division”) has absolute statutory authority pursuant to the Zoning Ordinance to provide interpretations of the Zoning Ordinance, which includes Fairfax County accepted conditions for a property. In this instance, the

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EXHIBIT

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Ms. Suzanne Wright, Branch Chief  
February 17, 2017  
Page 2

Association has the right to request an interpretation of the Conditions and the Division has authority to interpret the Conditions, *without reservation*.

- **Standard of Review.** In interpreting the Conditions, the Division must rely on the *precise* wording of the pertinent proffer – in this case, Proffer 49, and *must consider the record of the application*. In other words, the purpose of the proffer must be considered, taking into account *all relevant details related to the application* and the basis underlying the proffer with those details in mind.

- **Record of the Application.** Lincoln Property Company Southwest, Inc. (“Lincoln Property”) applied for rezoning of The Reserve Property – as contract purchaser of The Reserve Property, and in conjunction with the rezoning, the Conditions were established. **Both** Lincoln Property and Campus Point Realty Corporation II (“Campus Point”) - the owner of both the Reserve Property *and the Meridian Property* at that time, executed the Conditions.

Also, while the Conditions were established in conjunction with Lincoln Property’s application for the rezoning of The Reserve property – the contract purchaser at the time (“Applicant”), a concurrent application was submitted to amend the development plan which encompassed *both* The Reserve Property and the Meridian Property. As a result of that concurrent application, it appears that the Meridian Property acquired additional FAR to accommodate future expansion. In other words, the Meridian Property benefitted in the rezoning of The Reserve Property. The zoning and rezoning of the two properties was and continues to be intertwined.

- **SAIC Declaration.** Purportedly, to satisfy Proffer 49, the predecessor-in-title to *both The Reserve Property and Meridian Property* – Campus Point, recorded the SAIC Declaration among the Land Records encumbering The Reserve Property and the Meridian Property. Section 12.17 of the SAIC Declaration recites the language in Proffer 49, with one exception – Section 12.17 incorporates a right for the owner of the Meridian Property to terminate the overflow parking rights unilaterally.

While Mr. Gill maintains that the SAIC Declaration cannot be considered by the Division because it is a private contract between the parties, the SAIC Declaration is purportedly the *very instrument which was intended to satisfy the Proffer 49*, and is, consequently, pertinent to the proffer inquiry. The termination language is unquestionably in direct contravention to Proffer 49, and therefore, is null and void. The remainder of the SAIC Declaration – *including the remainder of Section 12.17 which requires overflow parking in accordance with Proffer 49*, survives pursuant to the severability clause in Section 12.6 of the SAIC Declaration, and encumbers both The Reserve Property and the Meridian Property.

- **Adverse Impact on Zoning Compliance.** The improper *unilateral* termination by Tysons Enterprise of the unqualified proffered right for The Reserve residents to utilize overflow parking on the Meridian Property would render the Meridian Property to be in noncompliance with Proffer 49, through no fault of, action by or omission of the Association or its members.

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Ms. Suzanne Wright, Branch Chief  
February 17, 2017  
Page 3

We believe it is worth noting the Association has consistently been told and has been receptive to working with all shareholders to address parking. Even after submitting the interpretation request, we sent a letter to William Rothschild, also counsel for Tysons Enterprise (perhaps in conjunction with the purchase of the Meridian Property), advising that our client is willing to engage in a dialogue regarding these matters and to accommodate Tysons Enterprise to the extent possible and permissible. While Mr. Rothschild did telephone us acknowledging receipt of our letter in mid-January, we have had no one representing Tysons Enterprise reach out to us since then in an effort to develop a working plan. We find this regrettable.

For the foregoing reasons, we respectfully request that the Division proceed with its determination, and interpret the matter in favor of the Association and the many individuals who reside in The Reserve Community, permitting them to continue to utilize at least 150 parking overflow spaces on the Meridian Property as Proffer 49 contemplates and the SAIC Declaration mandates.

To issue an unfavorable determination to our client - especially in light of the proposed construction of a ballfield, the operation of which will undoubtedly result in increased competition for street parking, will profoundly and negatively impact hundreds of residents in The Reserve, many of whom have been supportive of the ballfield, divesting them of their property rights and potentially impacting their property values.

If you have any questions, please contact Janie Rhoads or me directly. Your consideration of this matter is greatly appreciated.

Very truly yours,



Lucia Anna Trigiani

LAT/jlr  
Enclosure

cc: Supervisor Linda Smyth  
Barbara C. Berlin, Director Evaluation Division Department of Planning and Zoning  
Members, Board of Directors, The Reserve at Tysons Corner Association, Inc.  
Janie L. Rhoads, Attorney at Law

#133278

## Attachment 2

Mr. Marshall had filed the necessary notices showing that at least 25 adjacent and/or interested parties had been notified of the date and hour of this public hearing and he proceeded to present his case.

Following the public hearing, Kristen Abrahamson, Branch Chief, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff and Planning Commission recommendations.

Chairman Connolly relinquished the Chair to Vice-Chairman Bulova and moved:

- Amendment of the Zoning Ordinance, as it applies to the property which is the subject of Rezoning Application RZ 2003-SP-044, from the R-1 District to the R-3 District, subject to the proffers dated February 10, 2004.
- Modification of the requirement for a sidewalk along Silverbrook Road to permit an eight-foot wide asphalt trail.

Vice-Chairman Bulova seconded the motion and it carried by a vote of seven, Supervisor DuBois, Supervisor Gross, Supervisor Hudgins, Supervisor Kauffman, Supervisor Smyth, Chairman Connolly, and Vice-Chairman Bulova voting "AYE," Supervisor Frey and Supervisor Hyland being out of the room, Supervisor McConnell being absent.

Vice-Chairman Bulova returned the gavel to Chairman Connolly.

#### **ADDITIONAL BOARD MATTER**

62. **DISCLOSURE BY CHAIRMAN CONNOLLY REGARDING REZONING APPLICATION RZ 2003-PR-008 AND PROFFERED CONDITION AMENDMENT APPLICATION PCA 75-7-004-2 (PROVIDENCE DISTRICT)** (4:33 p.m.)

Chairman Connolly relinquished the Chair to Vice-Chairman Bulova and said that the next two applications on the agenda involve property owned by Campus Point Realty Corporation II, a closely related business affiliate of his employer, Science Applications International Corporation. He said that because consideration of the applications will constitute a transaction having application solely to a property or business in which he has a personal interest, he will disqualify himself and shall not vote or in any manner act on behalf of the Board in this transaction, including participation in these hearings.

(NOTE: Later in the meeting, the Board held this public hearing. See Clerk's Summary Item CL#63.)

#### **AGENDA ITEMS**

63. **4 P.M. – PH ON REZONING APPLICATION RZ 2003-PR-008 AND PROFFERED CONDITION AMENDMENT APPLICATION PCA 75-7-004-2 (LINCOLN PROPERTY COMPANY, INCORPORATED) (PROVIDENCE DISTRICT)** (4:34 p.m.)

- (O) (NOTE: Earlier in the meeting, Chairman Connolly recused himself from this case. See Clerk's Summary Item CL#62.)

The applications are located on the east side of Gallows Road and on the north and south sides of Science Applications Court, Tax Map 39-2 ((1)) 13 pt.

Ms. Elizabeth Baker reaffirmed the validity of the affidavit for the record.

## Attachment 2

Ms. Baker had filed the necessary notices showing that at least 25 adjacent and/or interested parties had been notified of the date and hour of this public hearing and she proceeded to present her case.

Following the public hearing, which included testimony by seven speakers, Cathy Belgin, Senior Staff Coordinator, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff and Planning Commission recommendations.

Discussion ensued with input from Barbara A. Byron, Director, Zoning Evaluation Division, Department of Planning and Zoning.

Supervisor Smyth moved approval of Proffered Condition Amendment Application PCA 75-7-004-2, subject to the proffers dated March 11, 2004. Supervisor Kauffman seconded the motion and it carried by a vote of seven, Supervisor Hyland and Chairman Connolly being out of the room, Supervisor McConnell being absent.

Supervisor Smyth further moved:

- Amendment of the Zoning Ordinance, as it applies to the property which is the subject of Rezoning Application RZ 2003-PR-008, from the I-3 and HC Districts to the PDH-30 and HC Districts, subject to the proffers dated March 14, 2004.
- Modification of the transitional screening requirement along the southeastern and southern boundaries where the multi-family units abuts the Courts of Tysons and Tysons Executive Village communities in favor of that shown on the CDP/FDP.
- Waiver of the barrier requirement along the southeastern and southern boundaries where the multi-family housing abuts the Courts of Tysons and Tysons Executive Village communities in favor of that shown on the CDP/FDP.
- Modification of the non-core streetscape design along Gallows Road for the Tysons Urban Center in favor of that shown on the CDP/FDP.
- Waiver of the 200 square foot privacy yard requirement for single family attached homes.
- Modification of the loading space requirement for multi-family dwellings in favor of one loading space provided for each of the buildings (two total spaces).
- Waiver of the 600-foot maximum private street length requirement.

Supervisor Kauffman seconded the motion and it carried by a vote of seven, Supervisor DuBois, Supervisor Frey, Supervisor Gross, Supervisor Hudgins, Supervisor Kauffman, Supervisor Smyth, and Vice-Chairman Bulova voting "AYE," Supervisor Hyland and Chairman Connolly being out of the room, Supervisor McConnell being absent.

#### **ADDITIONAL BOARD MATTER**

#### 64. **AGENDA FOR BUDGET WORKSHOP** (5:42 p.m.)

Vice-Chairman Bulova distributed the agenda for the Budget Workshop scheduled for March 22, 2004.

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June 28, 2017

## VIA HAND DELIVERY

Clerk, Board of Zoning Appeals  
Zoning Evaluation Division  
Department of Planning and Zoning  
12055 Government Center Parkway, 801  
Fairfax, Virginia 22035

Re: The Reserve at Tysons Corner Association, Inc. --  
Notice of Appeal – Zoning Determination for RZ/FDP 2003-PR-008  
The Reserve at Tysons Corner  
Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6

Dear Clerk of the Board of Zoning Appeals:

This firm represents The Reserve at Tysons Corner Association, Inc. (“Association”), the Virginia nonstock corporation entity which is responsible for the operation and administration of The Reserve at Tysons community in Fairfax, Virginia.

The Reserve at Tysons community consists of 570 homes – 478 apartments owned by Simpson Property Group, LP and 92 townhomes which are owned individually and are governed by the Townhouse at the Reserve Homeowners Association, Inc. (“Townhouse Association”).

Pursuant to Section 18-300 et seq. of the Fairfax County Zoning Ordinance (“Ordinance”), this letter serves as our Notice of Appeal to the Zoning Determination rendered in response to our Zoning Interpretation request submitted on December 22, 2016 (“Interpretation Request”). A copy of the Interpretation Request is enclosed as **Exhibit 1**. *Capitalized terms used in this letter have the meanings set forth in in the Interpretation Request.*

The Interpretation Request requested an interpretation of Proffer 49 of the Conditions. A copy of the Conditions is enclosed as **Exhibit 2**. A copy of the SAIC Declaration is enclosed as **Exhibit 3**. In summary, on behalf of the Association, we requested whether the owner of the Meridian Property is entitled to *unilaterally* terminate the rights of individuals residing on the Reserve Property to the minimum of 150 overflow parking spaces required to be located on the Meridian Property for the use of Reserve Property residents pursuant to Proffer 49 of the Conditions, which is *unqualified* in light of its permanency.

On May 30, 2017 – *six months after the Zoning Interpretation was submitted*, Tracy D. Strunk, AICP, Director of the Zoning Evaluation Division of the Department of Planning and Zoning for Fairfax County, Virginia issued a Zoning Determination on behalf of the Zoning Administrator and in response to our Interpretation Request. A copy of the Zoning Determination is enclosed as **Exhibit 4**. In short, the Zoning Determination holds that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008 – which comprises The Reserve Property, but is not enforceable against Meridian.

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Clerk, Board of Zoning Appeals

June 28, 2017

Page 2

Pursuant to Section 18-301 of the Ordinance, any person aggrieved by any decision of the Zoning Administrator relating to a proffered condition may appeal to the Board of Supervisors as provided in Paragraph 10 of Section 18-204 of the Ordinance. Paragraph 10 of Section 18-204 of the Ordinance provides that such appeal shall specify the grounds on which the party is aggrieved and the basis for the appeal.

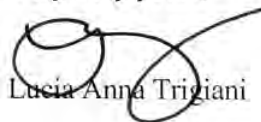
The Association is aggrieved by the Zoning Determination because, *among other things*:

- The Zoning Determination renders the Reserve Property in non-compliance with Proffer 49 of the Conditions – through no fault of the Association or any of the members or residents who reside at the Reserve Property, *and with no means of recourse or redress*.
- Members of the Association and residents in the community bear significant hardship without access to the overflow parking spaces which are clearly contemplated in and unequivocally required by the Conditions to be located on the Meridian Property.
- The resulting zoning non-compliance and lack of adequate parking have a negative impact on property values and the ability to sell property located in the Reserve at Tysons community.

This forced non-compliance and the significant hardships imposed on Association members and Reserve Property residents are the direct result of the Zoning Determination which holds that the proffers remain in effect, but are unenforceable. ***This determination is irreconcilable and inconsistent.*** The Zoning Interpretation has a negative impact on property values and the sale of property in The Reserve at Tysons community. The foregoing matters serve as the primary basis of this Notice of Appeal, as do the arguments raised in our Interpretation Request and letter to Suzanne Wright dated February 17, 2017 (“Response Letter”), a copy of which is enclosed as **Exhibit 5**.

Pursuant to Section 18-106 of the Ordinance, we have provided a copy of this Notice of Appeal and enclosures and a check in the amount of \$600.00 to the Zoning Administrator. Please contact my colleague, Janie Rhoads, or me with questions or if additional information is needed. We look forward to hearing from you.

Very truly yours,



Lucia Anna Trigiani

LAT/mch

cc: Zoning Administrator  
Members, Board of Directors  
Janie L. Rhoads, Attorney at Law

Enclosures: Interpretation Request (**Exhibit 1**); Conditions (**Exhibit 2**); SAIC Declaration (**Exhibit 3**);  
Zoning Determination (**Exhibit 4**); Response Letter (**Exhibit 5**)

#138498

Board Agenda Item  
February 6, 2018

10:30 a.m.

Matters Presented by Board Members

11:20 a.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
- (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
- (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
  - 1. *Vincent Dennis Randazzo, Administrator of the Estate of Michael Vincent Randazzo, Deceased v. Sandra Mauldin*, Case No. CL-2016-0009634 (Fx. Co. Cir. Ct.)
  - 2. *Glen M. Sylvester v. Brian C. Geschke*, Case No. CL-2017-0006382 (Fx. Co. Cir. Ct.)
  - 3. *David Park and Susan Park v. Constance Morris*, Case No. CL-2017-0011280 (Fx. Co. Cir. Ct.)
  - 4. *Yeily Sandoval Rios v. Fairfax County Department of Family Services*, Record No. 0385-16-4 (Va. Ct. App.)
  - 5. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Kha Nguyen and Quilan Tran*, Case No. CL-2018-0000561 (Fx. Co. Cir. Ct.) (Braddock District)
  - 6. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Harvey Ray Williams, Jr., and Jason Williams*, Case No. CL-2017-0013586 (Fx. Co. Cir. Ct.) (Braddock District)
  - 7. *Board of Supervisors of Fairfax County and James W. Patteson, Director of the Fairfax County Department of Public Works and Environmental Services v. Nirmaladevi Jayanthan and Jayanthan Balasubram, a/k/a Balasubram Jayanthan, Jayanthan Bala, Bala Jayanthan, and Jay Bala*, Case No. CL-2015-0008179 (Fx. Co. Cir. Ct.) (Dranesville District)
  - 8. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Lucy W. Berkebile*, Case No. CL-2018-0000961 (Fx. Co. Cir. Ct.) (Dranesville District)

9. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Hsing-Cheng Chen and Marina L. Chen*, Case No. CL-2016-0014720 (Fx. Co. Cir. Ct.) (Dranesville District)
10. *Elizabeth Perry, Property Maintenance Code Official v. C. Shannon Roberts*, Case No. GV17-025110 (Fx. Co. General Dist. Ct.) (Dranesville District)
11. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Steve O. Akinbileje*, Case No. GV17-000779 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Thomas V. Lefler*, Case No. CL-2015-0015223 (Fx. Co. Cir. Ct.) (Lee District)
13. *Eileen M. McLane, Fairfax County Zoning Administrator v. Robert Lord*, Case No. CL-2009-0006752 (Fx. Co. Cir. Ct.) (Lee District)
14. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Darul Huda Corp.*, Case No. GV18-000428 (Fx. Co. Gen. Dist. Ct.) (Lee District)
15. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Michael Woolfrey*, Case Nos. GV17-018110 and GV17-018111 (Fx. Co. Gen. Dist. Ct.) (Lee District).
16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ernestina P. Urquieta*, Case No. GV17-026318 (Fx. Co. Gen. Dist. Ct.) (Lee District)
17. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Oscar Maravilla*, Case No. CL-2018-000825 (Fx. Co. Cir. Ct.) (Mason District)
18. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Daniel Minchew*, Case No. CL-2017-0004962 (Fx. Co. Cir. Ct.) (Mount Vernon District)
19. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Rex Coker Winter*, Case No. CL-2017-0014915 (Fx. Co. Cir. Ct.) (Providence District)
20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Duane S. Whitney, Edward N. Whitney, Arthur M. Whitney, Pamela V. Whitney, Rhonda L. Whitney, Candace Alexander, and Jeanette Alexander*, Case No. CL-2007-0005644 (Fx. Co. Cir. Ct.) (Providence District)

21. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Raj K. Chaudhry*, Case No. GV18-000508 (Fx. Co. Gen. Dist. Ct.) (Providence District)
22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. 8621 Properties LLC*, Case No. GV18-001138 (Fx. Co. Gen. Dist. Ct.) (Providence District)
23. *Leslie B. Johnson, Fairfax County Zoning Administrator and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Lloyd G. Strickland*, Case No. CL-2018-0000410 (Fx. Co. Cir. Ct.) (Springfield District)
24. *Eileen M. McLane, Fairfax County Zoning Administrator v. Roberta Couver*, Case No. CL-2011-0007717 (Fx. Co. Cir. Ct.) (Sully District)
25. *Leslie B. Johnson, Fairfax County Zoning Administrator v. HCA Model Fund 2015-8 Northeast, LLC*, Case No. CL-2018-0000842 (Fx. Co. Cir. Ct.) (Sully District)

Board Agenda Item  
February 6, 2018

5:30 p.m.

Decision Only on PRC-C-378 (Kensington Senior Development, LLC) to Approve the PRC Plan Associated with RZ-C-378 to Permit a Medical Care Facility, Located on Approximately 1.8 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with SE 2016-HM-024)

and

Decision Only on SE 2016-HM-024 (Kensington Senior Development, LLC) to Permit a Medical Care Facility, Located on Approximately 1.8 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with PRC-C-378)

This property is located at 11501 Sunrise Valley Drive, Reston, 20191. Tax Map 17-4 ((17)) 1C

The Board of Supervisors deferred Decision Only on this public hearing at the January 23, 2018 meeting until February 6, 2018 at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On December 7, 2017, the Planning Commission voted 9-0-1 (Commissioner Cortina abstained from the vote and Commissioner Flanagan was absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of PRC C-378, subject to the development conditions dated December 6, 2017;
- Approval of SE 2016-HM-024, subject to the development conditions dated December 6, 2017;
- Approval of a waiver of Paragraph 3 of Section 9-308 of the Zoning Ordinance which requires that service vehicles have access to the building on the side or rear entrance;
- Approval of a modification of Paragraph 5 of Section 9-308 of the Zoning Ordinance which requires that no building be located closer than 45 feet to any street line to permit the building to be located 25 feet from the right-of-way;
- Approval of a modification of Paragraph 13 of Section 11-203 of the Zoning Ordinance to reduce the loading spaces from two to one;

Board Agenda Item  
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- Approval of a modification of Section 13-303 of the Zoning Ordinance which requires transitional screening to permit the landscaping shown on the SE/PRC Plat and waiver of the barrier requirements of Section 13-304 of the Zoning Ordinance;
- Approval of a waiver of Paragraph 3 of Section 17-201 of the Zoning Ordinance which requires a service drive along Sunrise Valley Drive; and
- Approval of a modification of Paragraph 2 of Section 17-201 of the Zoning Ordinance for the countywide Trails Plan to provide a sidewalk along Sunrise Valley Drive as shown on the SE/PRC plat.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Harold Ellis, Planner, DPZ

<b>To Be Deferred to March 20, 2018 at 3:30 p.m.</b>
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Board Agenda Item  
February 6, 2018

3:30 p.m.

Public Hearing on SE 2017-MA-001 (BYCJJ, LLC) to Permit an Adult Daycare Center and Banquet Hall; Provisions for Modifications, Waivers, Increases and Uses in a Commercial Revitalization District, Located on Approximately 3.79 Acres of Land Zoned C-8, CRD, SC and HC (Mason District)

This property is located at 4311 Ravensworth Road and 7233 and 7243 Little River Turnpike, Annandale, 22003. Tax Map 71-1 ((1)) 83, 84 and 85.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing was held on January 25, 2018. The Commissions' decision was deferred to March 1, 2018. The Planning Commission recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:

Staff Report available online at:

<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Kelly Atkinson, Planner, DPZ



Board Agenda Item  
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3:30 p.m.

Public Hearing on AR 91-D-004-03 (Tarry A. Faries) to Permit Renewal of a Previously Approved Agricultural and Forestal District, Located on Approximately 33.74 Acres of Land Zoned R-E (Dranesville District)

This property is located on the South side of Georgetown Pike and North side of Old Dominion Drive, West of Bellview Road. Tax Map 20-1 ((1)) 33Z, 34Z, 35Z, 36Z, 58Z and 77Z.

PLANNING COMMISSION RECOMMENDATION:

On January 18, 2018, the Planning Commission voted 11-0 to recommend to the Board of Supervisors approval of AR 91-D-004-03 and amendment of Appendix F of the County Code to renew the Orchid Spring Nursery Local Agricultural and Forestal District for an additional eight-year term, subject to ordinance provisions dated December 11, 2017.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Kris Abrahamson, Planner, DPZ

Board Agenda Item  
February 6, 2018

3:30 p.m.

Public Hearing on SEA 82-M-093-02 (7231 Arlington Boulevard, LLC) to Amend SE 82-M-093 Previously Approved for a Service Station with Waivers of Minimum Lot Size Requirements and Open Space Requirements, to Permit Site Modifications and Reaffirm Previous Waivers of Minimum Lot Size Requirements and Open Space Requirements and Associated Modifications to Development Conditions, Located on Approximately 26,557 Square Feet of Land Zoned C-5 (Mason District)

This property is located at 7231 Arlington Boulevard, Falls Church, 22042. Tax Map 50-3 ((4)) 260A.

PLANNING COMMISSION RECOMMENDATION:

On January 25, 2018, the Planning Commission voted 11-0 (Commissioner Ulfelder was absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of SEA 82-M-093-2 and approval of a waiver of the open space requirement, subject to the development conditions dated January 12, 2018; and
- Approval of a waiver of the loading space requirement per Section 11-200 of the Zoning Ordinance.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Zach Fountain, Planner, DPZ

<b>To Be Deferred to March 6, 2018 at 3:30 p.m.</b>
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Board Agenda Item  
February 6, 2018

3:30 p.m.

Public Hearing on RZ 2017-MA-013 (Vulcan Materials Company, LLC) to Rezone from R-2 and C-8 to I-6 to Permit Heavy Industrial Use with an Overall Floor Area Ratio of 0.02, Located on Approximately 41,151 Square Feet of Land (Mason District) (Concurrent with SE 2017-MA-009)

and

Public Hearing on SE 2017-MA-009 (Vulcan Materials Company, LLC) to Permit Heavy Industrial Use and Increase in Building Height from 75 Feet up to a Maximum of 135 Feet and Vacation and/or Abandonment of Right-of-Way, Located on Approximately 93.73 Acres of Land Zoned I-6 (Mason District) (Concurrent with RZ 2017-MA-013)

This property is located on the East side of Industrial Drive at the ramp to enter Interstate 395, Springfield, 22151. Tax Map 80-2 ((1)) 38 (pt.).

This property is located at 5650 Industrial Drive, Springfield, 22151. Tax Map 80-2 ((1)) 38 (pt.).

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing was deferred on January 24, 2018 to March 1, 2018. The Commissions' recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:

Staff Report available online at:

<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Jay Rodenbeck, Planner, DPZ

Board Agenda Item  
February 6, 2018

3:30 p.m.

Public Hearing on SEA 96-L-034-05 (Greenspring Village, Inc.) to Amend SE 96-L-034 Previously Approved for Elderly Housing with Nursing Facilities and Telecommunications Facility to Permit Associated Modifications to Site Design and Development Conditions, Located on Approximately 64.68 Acres of Land Zoned R-3 (Lee District)

This property is located at 7470 Spring Village Drive, Springfield, 22150. Tax Map 90-1 ((1)) 63G and 64

The Board of Supervisors deferred this public hearing at the January 23, 2018 meeting until February 6, 2018 at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On January 18, 2018, the Planning Commission voted 11-0 to defer the decision only for SEA 96-L-034-05 to a date certain of January 24, 2018 with the record remaining open. The Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Katelyn Antonucci, Planner, DPZ