

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
October 16, 2018**

AGENDA

- | | |
|-------|--|
| 8:30 | Reception for Disability Employment Awareness Month (DEAM)
Proclamation, Government Center, Forum |
| 9:30 | Presentations |
| 10:00 | Items Presented by the County Executive |

**ADMINISTRATIVE
ITEMS**

- | | |
|---|---|
| 1 | Designation of Plans Examiner Status under the Expedited Land Development Review Program |
| 2 | Approval of a Portion of a Street Name Change from Colshire Meadow Drive to Chain Bridge Road (Providence District) |
| 3 | Authorization to Advertise a Public Hearing to Convey Board-Owned Property on South Van Dorn Street (Oakwood Property) to the Redevelopment and Housing Authority (Lee District) |
| 4 | Authorization to Advertise Public Hearings on a Proposed Zoning Ordinance Amendment Re: Articles 2 and 20 - Commonly Accepted Pets |
| 5 | Authorization to Advertise a Public Hearing to Consider Proposed Amendments to the Ordinances for the Fairfax County Employees', Uniformed and Police Officers Retirement Systems |

ACTION ITEMS

- | | |
|---|--|
| 1 | Approval of a Standard Project Agreement with the Northern Virginia Transportation Authority for the Richmond Highway Bus Rapid Transit Project (Lee and Mount Vernon Districts) |
| 2 | Approval of the Reduction of the Category 1 Special Exception Application Filing Fee for Mobile and Land Based Telecommunication Facilities from \$16,375 to \$6,200 |

**CONSIDERATION
ITEMS**

- | | |
|---|---|
| 1 | Approval of the Proposed Amended Bylaws for the Fairfax County Police Civilian Review Panel |
|---|---|

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
October 16, 2018**

**INFORMATION
ITEMS**

- | | |
|-------|--|
| 1 | County Holiday Schedule – Calendar Year 2019 |
| 10:10 | Matters Presented by Board Members |
| 11:00 | Closed Session |

**ACTION ITEMS
(Continued)**

- | | |
|------------------|--|
| 3:00
Action 3 | Minor Variation Request for RZ 2016-MV-030, WashREIT Riverside Apartments, LLC, to Increase the Height of Two Buildings by 7.4% Above What is Shown on the Conceptual Development Plan and Final Development Plan that was Proffered under Proffer No. 2 (Mount Vernon District) |
| 3:00
Action 4 | Minor Variation Request for RZ 1996-LE-047, Springfield Commons LLC, to Add Health Clubs to the List of Uses Permitted in Proffer 5 (Lee District) |

**PUBLIC
HEARINGS**

- | | |
|------|---|
| 3:30 | Decision Only to Consider Amending Fairfax County Code Chapter 82 (Motor Vehicles and Traffic), Article 5 (Stopping, Standing, and Parking), Section 19 |
| 3:30 | Public Hearing on AR 84-D-004-04 (Charles Nichols and Laura Nichols) (Dranesville District) |
| 3:30 | Public Hearing on AR 93-S-003-03 (The Farm at Clifton Station, LLC) (Springfield District) |
| 3:30 | Public Hearing on RZ 2018-MV-012 (Fairfax County DPWES CAP BDGD) (Mount Vernon District) |
| 3:30 | Public Hearing on PCA-A-502-03/DPA-A-502-09 (New Lake Anne House, LP) (Hunter Mill District) |

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
October 16, 2018**

**PUBLIC
HEARINGS
(Continued)**

3:30	Public Hearing on PCA-A-502 (New Lake Anne House, LP) (Hunter Mill District)
3:30	Public Hearing on RZ 2018-LE-014 (The Board of Supervisors of Fairfax County) (Lee District)
4:00	Public Hearing on RZ 2018-SU-008 (K. Hovnanian Homes at Pender Oaks, LLC) (Sully District)
4:00	Public Hearing on PCA 2009-SU-020-03 (K. Hovnanian Homes at Pender Oaks, LLC) (Sully District)
4:00	Public Hearing on Proposed Plan Amendment 2018-III-BR1, Located at the Southeast Corner of the Westfields Boulevard and Stonecroft Boulevard Intersection, Bordered to the South by Sequoia Farms Drive (Sully District)
4:00	Public Hearing on RZ 2018-MV-007 (Lafayette Building, LLC) (Mount Vernon District)
4:00	Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Braddock Road Walkway – Carlbern Drive to Clubside Lane (Sully District)
4:00	Public Hearing on SE 2018-MA-003 (Northpoint Realty Partners, LLC) (Mason District)
4:00	Public Hearing on PCA 86-L-056-05 (Northpoint Realty Partners, LLC) (Mason District)
4:00	Public Hearing on RZ 2017-DR-026 (Benchmark Associates, LP) (Dranesville District)
4:30	Public Hearing on RZ 2016-HM-031 (Pulte Home Company, LLC) (Hunter Mill District)
4:30	Public Hearing on PCA 80-C-086-02 (Pulte Home Company, LLC) (Hunter Mill District)
4:30	Public Hearing on PCA 83-C-069-02 (Pulte Home Company, LLC) (Hunter Mill District)

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
October 16, 2018**

**PUBLIC
HEARINGS
(Continued)**

- | | |
|------|---|
| 4:30 | Public Hearing to Lease County-Owned Property at 12011 Government Center Parkway to New Cingular Wireless PCS, LLC (Braddock District) |
| 4:30 | Public Hearing to Lease County-Owned Property at 4110 Chain Bridge Road to New Cingular Wireless PCS, LLC (Providence District) |
| 4:30 | Public Hearing to Lease County-Owned Property at the I-95 Landfill to Washington Metropolitan Area Transit Authority (Mount Vernon District) |
| 5:00 | Public Hearing to Sublease Property at 10609 Georgetown Pike (Turner Farm House) in Connection with the Resident Curator Program (Dranesville District) |



Fairfax County, Virginia

BOARD OF SUPERVISORS

AGENDA

**Tuesday
October 16, 2018**

9:30 a.m.

PRESENTATIONS

DESIGNATIONS

- PROCLAMATION — To designate October 2018 as Disability Employment Month in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION — To designate October 27, 2018, as VolunteerFest Day in Fairfax County. Requested by Supervisor Smyth.
- PROCLAMATION — To designate October 2018 as Cyber Security Month in Fairfax County. Requested by Supervisor Foust.

STAFF:

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

Board Agenda Item
October 16, 2018

10:00 a.m.

Items Presented by the County Executive

ADMINISTRATIVE – 1

Designation of Plans Examiner Status under the Expedited Land Development Review Program

ISSUE:

Board of Supervisors' action to designate four individuals as Plans Examiners to participate in the Expedited Land Development Review Program.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (the Board) take the following action:

- Designate the following individuals identified with their registration number, as Plans Examiners:

Alan Christoe	326
Kinnari Radadiya	327
Bin Zhang	328
Jennifer Sorenson	329

TIMING:

Routine.

BACKGROUND:

On August 7, 1989, the Board adopted Chapter 117 (Expedited Land Development Review) of The Code of the County of Fairfax, Virginia (the Code), establishing a Plans Examiner Program under the auspices of an Advisory Plans Examiner Board (APEB). The purpose of the Plans Examiner Program is to expedite the review of site and subdivision plans submitted by certain specially qualified applicants, i.e., Plans Examiners, to the Land Development Services, Department of Public Works and Environmental Services.

Board Agenda Item
October 16, 2018

The Code requires that the Board designate an individual's status under the Expedited Land Development Review Program.

Plans Examiner Status: Candidates for status as Plans Examiners must meet the education and experience requirements contained in Chapter 117. After review of their applications and credentials, the APEB has found that the candidates listed above satisfy these requirements. This finding was documented in a letter dated August 9, 2018, from the Chairman of the APEB, James H. Scanlon, P.E., L.S., to Chairman Bulova.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I – Letter dated August 9, 2018, from the Chairman of the APEB to the Chairman of the Board of Supervisors.

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services



Engineers & Surveyors Institute

"a public/private partnership"

4795 Meadow Wood Lane
Suite 115 East
Chantilly, VA 20151
703-263-2232

Board of Directors
Chairman
John Cummings, P.E.
Rinker Design & Associates, P.C.

Vice Chairman
Kevin E. Murray, P.E.
Tri-Tek Engineering

Treasurer
Angela Rassas, P.E.
ESE Consultants, Inc.

Secretary
Bruce McGranahan, P.E.
Fairfax County-DPW&ES

Directors
William R. Ackman, Jr. P.E.
Town of Leesburg

Phillip DeLeon, P.E.
VA Dept. Rail & Public
Transportation

Kayvan Jaboori, P.E.
KJ & Associates

Paul B. Johnson, P.E.
Charles P. Johnson & Associates
Inc.

Lee Ann Hall, P.E.
Virginia Department of
Transportation

David Logan, P.E.
Buhler Engineering, P.C.

J. Keith Sinclair, Jr., P.E.
A. Morton Thomas & Associates
Inc.

William J. Skrabak
City of Alexandria, T&ES

Blake A. Smith, P.E.
Smith Engineering

Ross Stilling
Fairfax Water

Dennis M. Thomas, P.E.
Burgess & Niple, Inc.

Anita M. Tierney
Loudoun County, B&D

Javier L. Vega, P.E.
Dewberry

Aaron Vinson, P.E.
Walter L. Phillips, Inc.

Robert W. Walker, P.E., CLA
Gordon

Susan S. Wolford, CLA, AICP
Pennoni Associates

Current Past Chairman
R. J. Keller, L.S.
RC Fields & Associates, P.C.

EXECUTIVE DIRECTOR
Jeffrey L. Blackford, P.E.

August 9, 2018

Hon. Sharon Bulova, Chairman
Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, VA 22035

Dear Chairman, Bulova:

The following named individuals have been approved by the Advisory Plans Examiner Board for recommendation as Designated Plans Examiners:

Name	Reg. No
Alan Christoe	326
Kinnari Radadiya	327
Bin Zhang	328
Jennifer Sorenson	329

They have been found to meet the qualifications outlined in Chapter 117-1-2 of the Code of Fairfax County and is in accordance with the criteria adopted by the Fairfax County Board of Supervisors on February 11, 1991.

Sincerely,

James H. Scanlon, PE, LS

Chairman

Fairfax County Advisory Plans Examiner Board

Received

AUG 28 2018

Land Development Services
Directors Office

Board Agenda Item
October 16, 2018

ADMINISTRATIVE - 2

Approval of a Portion of a Street Name Change from Colshire Meadow Drive to Chain Bridge Road (Providence District)

ISSUE:

Board of Supervisors approval of a street name change in the Official County Digital Property Map and the Master Addressing Repository from Colshire Meadow Drive to Chain Bridge Road, Tax Map #29-4 and 030-3.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the street name change from Colshire Meadow Drive to Chain Bridge Road effective 30 days following Board approval, in accordance with Section 102-1-9 of The Code of the County of Fairfax, Virginia.

TIMING:

Routine.

BACKGROUND:

The Facilitation and Addressing Center has received a request from the property owners to change the existing portion of Colshire Meadow Drive to Chain Bridge Road. Currently, Colshire Meadow Drive does not connect to Chain Bridge Road. There are two approved public improvement plans proposing to connect the existing portion of Colshire Meadow Drive to Chain Bridge Road. There are six properties located on the existing portion of Colshire Meadow Drive. None of them are currently assigned addresses off Colshire Meadow Drive, however there is a site plan under review that will have an address off this portion of road. The County owns two of the six properties. One is owned by Fairfax County Park Authority for Scotts Run and the other by the Board of Supervisors that serves as a parking lot for the metro. The other four property owners have agreed to this change, and their signatures and operating agreements are attached.

FISCAL IMPACT:

None.

Board Agenda Item
October 16, 2018

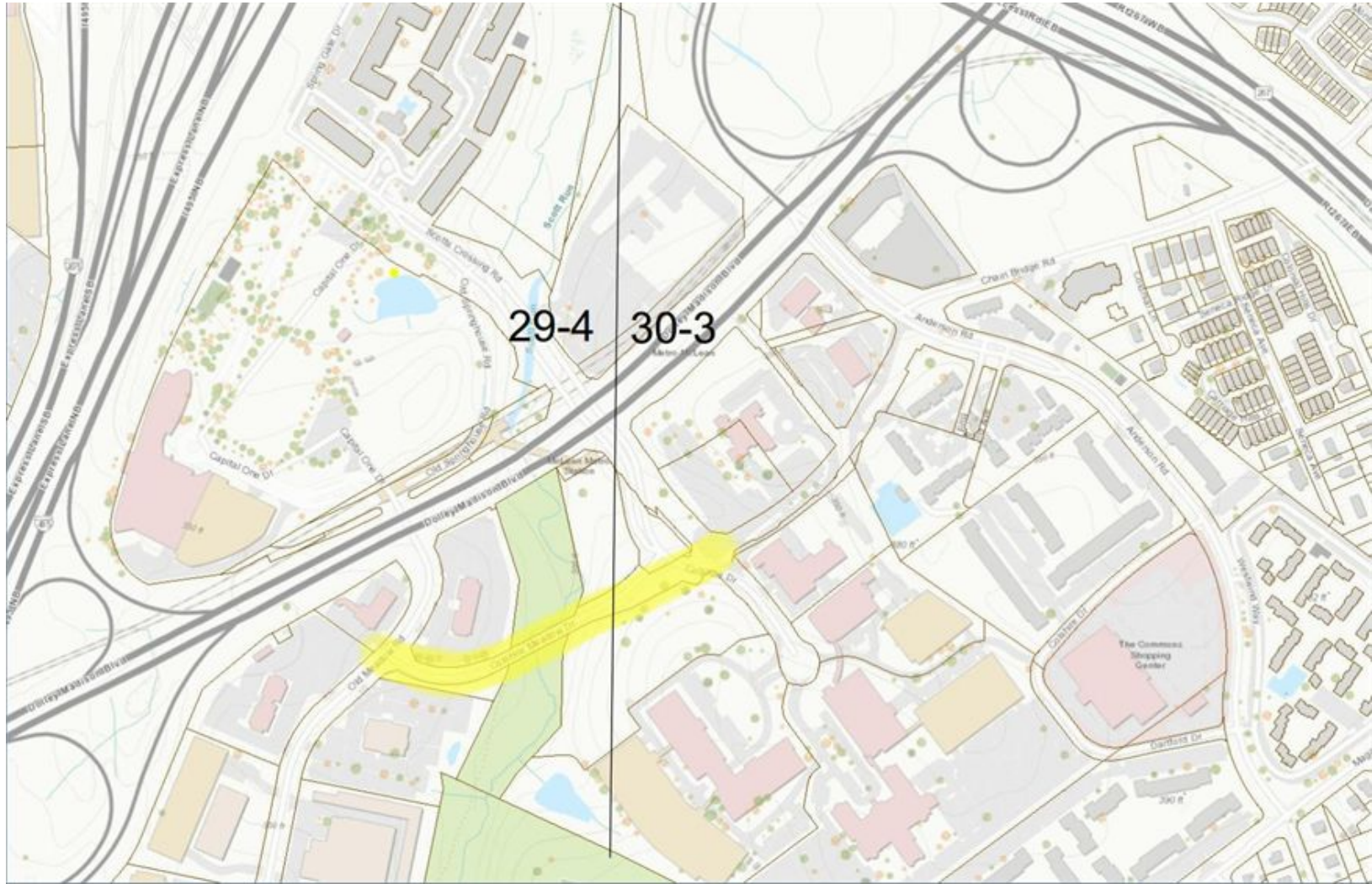
ENCLOSED DOCUMENTS:

Attachment I – Vicinity Map
Attachment II – Name Change Request with Signatures
Attachment III – Operating Agreement for Colshire Block K LLC
Attachment IV – Operating Agreement for Taylor Colshire Meadow LLC
Attachment V – Operating Agreement for Grant 1651 Old Meadow Road LLC
Attachment VI – Tax Assessment Records

STAFF:

Robert A. Stalzer, Deputy County Executive
William D Hicks, P.E., Director, Land Development Services, DPWES

Attachment I



Attachment I



Attachment II

ENGINEERING * PLANNING * LANDSCAPE ARCHITECTURE * SURVEYING/GEOMATICS



August 21, 2018

Danielle George
Facilitation & Addressing Center
Land Development Services
12055 Government Center Parkway, Ste 230
Fairfax, VA 22035

Name Change Request for "Colshire Meadow Drive"

Dear Ms. George,

On behalf of our clients, Colshire Block K LLC, Taylor Colshire Meadow LLC and Grant 1651 Old Meadow Road LLC, we are providing this letter to request the name of the road currently identified as "Colshire Meadow Drive" be changed to Chain Bridge Road. Colshire Block K LLC, Taylor Colshire Meadow LLC and Grant 1651 Old Meadow Road LLC constitute 67% of the property owners along Colshire Meadows Drive. Further, it is our belief that these owners represent 100% of the parcels that would ever have a building permit requiring assignment of a new address, since the other owners along this stretch of Colshire Meadow Drive are Scott's Run Stream Valley Park (Fairfax County Park Authority) and the Kiss & Ride lot (Board of Supervisors).

The undersigned property owners hereby confirm their request to change the name of the road from Colshire Meadow Drive to Chain Bridge Road. The undersigned further agree and understand:

- The Owners/developers are responsible for paying for and installing all new street signs.
- An approved name change does not, in any way, hold Fairfax County responsible for maintaining the street.
- Any properties utilizing the road in their address will need to be updated.
- Fairfax County is not responsible for any of the financial responsibilities that come with changing a street name.

Colshire Block K LLC
C/O Cityline Partners, LLC
1651 Old Meadow Rd, Suite 650, McLean VA 22102
Owner of Tax Maps #0303 28 D2 and #0303 46 A1

By: 

Name: Michael Redulla

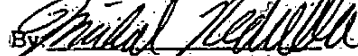
Title: Executive Vice President

VIKA Virginia, LLC

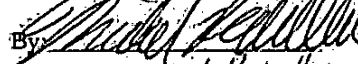
8180 Greensboro Drive, Suite 200 * Tysons, Virginia 22102 * 703.442.7800 Fax 703.761.2787
Tysons, VA * Germantown, MD * Washington, DC
www.vika.com

Danielle George
Facilitation and Addressing Center
RE: Name Change Request for Colshire Meadows Drive
Fairfax County
VITA Project # VV7695A
August 21, 2018
Page 2 of 3

Taylor Colshire Meadow LLC
C/O Cityline Partners, LLC
1651 Old Meadow Rd, Suite 650, McLean VA 22102
Owner of Tax Map #0303 28 63

By: 
Name: Michael Pedulla
Title: Executive Vice President

Grant 1651 Old Meadow Road LLC
C/O Cityline Partners, LLC
1651 Old Meadow Rd, Suite 650, McLean VA 22102
Owner of Tax Map #0294 06 0102

By: 
Name: Michael Pedulla
Title: Executive Vice President

Please let me know if you have any questions regarding this request. Thank you for your attention to this matter.

Sincerely,

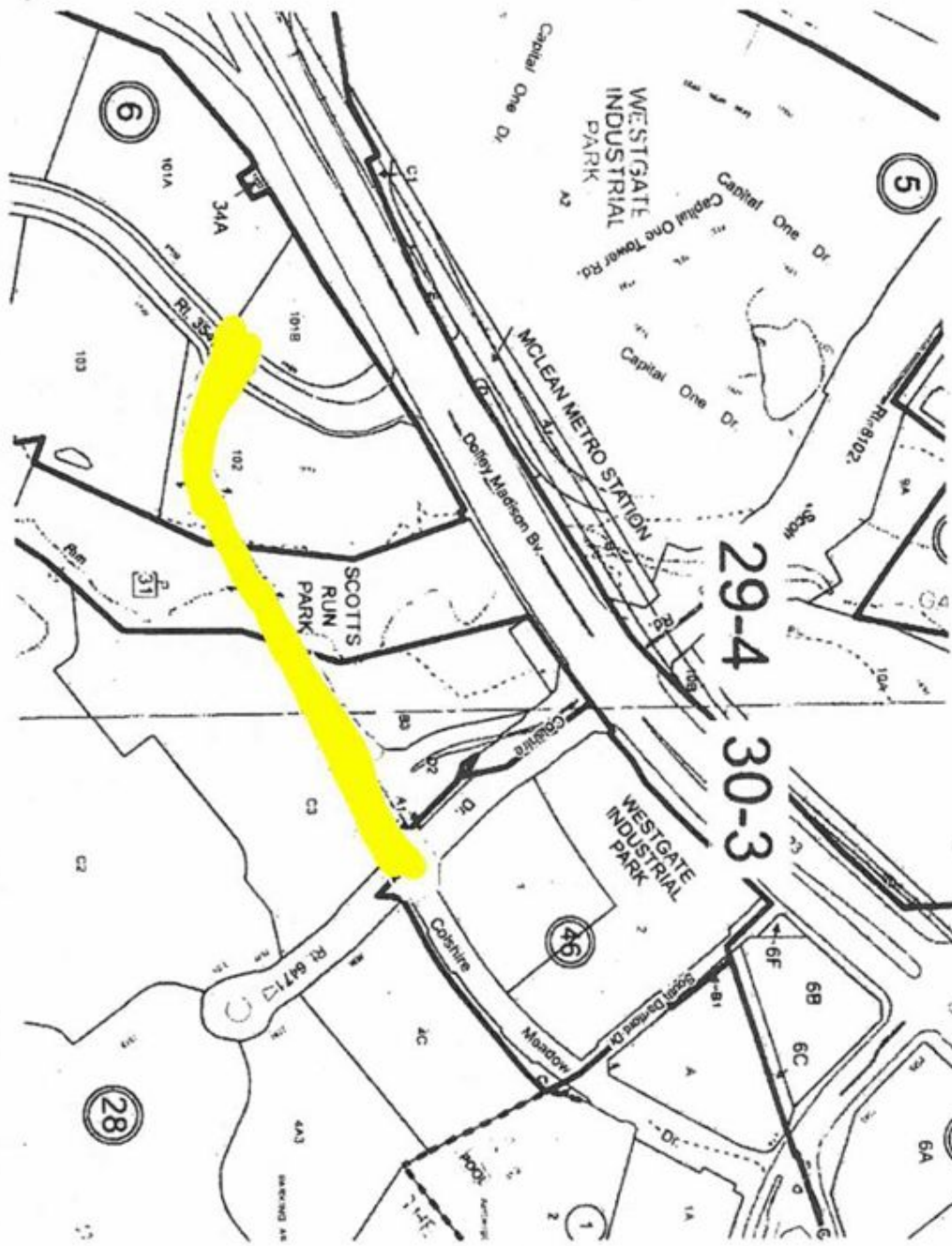
Steve Crowell, PE
Senior Associate

Encl: Exhibit A

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Danielle George
Facilitation and Addressing Center
RE: Name Change Request for Colshire Meadows Drive
Fairfax County
VIKA Project # VV7695A
August 21, 2018
Page 3 of 3



Attachment III

THE INTERESTS ISSUED UNDER THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR REGISTERED OR QUALIFIED UNDER THE APPLICABLE STATE SECURITIES LAWS, IN RELIANCE UPON EXEMPTIONS FROM REGISTRATION AND QUALIFICATION PROVIDED IN THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND QUALIFICATION OR REGISTRATION UNDER THE APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED.

IN ADDITION, THE INTERESTS ISSUED UNDER THIS AGREEMENT MAY BE SOLD OR TRANSFERRED ONLY IN COMPLIANCE WITH THE RESTRICTIONS ON TRANSFER SET FORTH HEREIN.

LIMITED LIABILITY COMPANY AGREEMENT

OF

COLSHIRE BLOCK K, LLC

This LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of COLSHIRE BLOCK K, LLC (the "Company") is entered into as of July 25, 2017 and effective as of January 1, 2017 (the "Effective Date") by and among RECP IV WG LAND INVESTORS LLC, a Delaware limited liability company ("DLJ"), RECP IV WG LAND CO-INVESTOR A LLC, a Delaware limited liability company, f.k.a. RECP IV ULLICO Gallery Place Co-Investor A LLC ("RECP Co-Investor"), and CITYLINE EXECUTIVE INVESTORS LLC, a Delaware limited liability company, f.k.a. WG Co-Investor B LLC ("Executive Investor"), each as Members (hereinafter defined).

WHEREAS, a Certificate of Formation of the Company was filed with the office of the Secretary of State of the State of Delaware on June 25, 2015, thereby forming the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time (the "Act");

WHEREAS, the Members are the sole members of Johnson I 7600 Colshire LLC, a Delaware limited liability company ("Johnson"), which owns certain real property located in McLean, Fairfax County, Virginia (the "Johnson Property"), and operate Johnson pursuant to the terms of a first amended and restated operating agreement of Johnson, dated as of July 15, 2011 (the "Johnson Agreement");

WHEREAS, the Members are the sole members of Taylor Colshire Meadow LLC, a Delaware limited liability company ("Taylor"), which owns certain real property located

(xviii) observe all other Delaware limited liability company formalities; and

(xix) not acquire any obligation or securities of any Member or of any affiliate of the Company.

4. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. Such registered office of the Company may be changed from time to time by DLJ in accordance with the Act.

5. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. Such registered agent of the Company may be changed from time to time by DLJ in accordance with the Act.

6. Members. The name, present mailing address, tax identification number and Percentage Interest of each Member as of the date hereof are set forth in Exhibit A.

7. Powers. The Company and its business, assets, property and affairs shall be managed and directed exclusively by DLJ. All decisions, determinations and designations to be made or given by or in the name of the Company (including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity) shall be made or given exclusively by DLJ, in its sole and absolute discretion. DLJ shall be a "manager" within the meaning of the Act and shall have the power and authority to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein and all other powers, statutory or otherwise, possessed by members, managers or managing members under the Act. Without limiting the generality of the foregoing, DLJ is authorized to execute and deliver any instrument or document on behalf of the Company, including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity. In connection with the foregoing, DLJ hereby is authorized and empowered to act through its officers and employees, the officers and employees of the Company and other persons designated by DLJ in carrying out any of and all of its powers and authorities that DLJ possesses under this Agreement. All rights of DLJ to approve or disapprove, consent or withhold consent, determine if any arrangement or term is satisfactory or unsatisfactory to it, make any decision, determination or designation or take or elect not to take any action under the terms of this Agreement shall be exercisable by DLJ in its sole and absolute discretion, and DLJ may make, take, grant, withhold, condition or delay any such approval, consent, satisfaction, decision, determination, designation or action in its sole and absolute discretion. The rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided in this Agreement.

8. No Authority of Other Members. Neither RECP Co-Investor nor Executive Investor shall have any rights to participate in, or cast any vote with respect to, the management or affairs of the Company in any respect, and neither RECP Co-Investor's nor

(a) *Appointment of Officers.* In addition to all other powers and authority provided under the Act, DLJ may select natural persons to be designated as officers and authorized signatories of the Company (collectively, the "Officers"), with such titles as DLJ shall determine. Any number of offices may be held by the same person. The Officers shall hold office until their successors are selected and qualified by DLJ or until their earlier resignation or removal. Any Officer may resign at any time upon written notice to the Company. Any Officer selected or appointed by DLJ may be removed at any time, with or without cause, by DLJ. Any vacancy occurring in any office of the Company may be filled by DLJ. The Officers shall have such powers and duties in the management of the Company as may be delegated to them in this Agreement or by DLJ, except that in any event each Officer shall exercise such powers and perform such duties as may be required by law. DLJ may require any Officer or agent to give security for the faithful performance of his or her duties. Each person selected or appointed as an Officer shall be deemed to have been designated as a "manager" by the Members for purposes of the Act. Any Officer also may serve as an officer, employee or agent of DLJ or any of its affiliates.

(b) *Executive Vice Presidents.* One or more Executive Vice Presidents shall have the authority to sign, in the name and on behalf of the Company, checks, orders, contracts, leases, notes, drafts and other documents and instruments. As of the date of this Agreement, DLJ hereby appoints William C. Helm and Michael R. Pedulla as Executive Vice Presidents. The Executive Vice Presidents shall perform such other duties and have such other powers as DLJ may from time to time prescribe.

(d) *Secretary.* The Secretary shall duly record all minutes for the Members in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the Members, and shall perform such other duties as may be prescribed by DLJ or any Executive Vice President. As of the date of this Agreement, DLJ hereby appoints Thomas J. Scott as the Secretary. The Secretary shall properly maintain and file all books, reports, statements, certificates and all other documents and records required by law, by the Certificate or by this Agreement.

11. Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or by the decision of DLJ, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

12. Reliance by Third Parties. Any Person dealing with the Company or any Officer may rely upon a certificate signed by any Executive Vice President or the Secretary as to:

(a) the identity of any Member or any Executive Vice President or any other Officer;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by any Executive Vice President or any other Officer or in any other manner germane to the affairs of the Company;

(c) the Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Company; or

(d) any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

13. Dissolution. The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (a) the written determination of DLJ or (b) the entry of a decree of judicial dissolution under section 18-802 of the Act.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first above written.

MEMBERS:

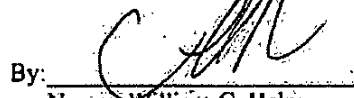
RECP IV WG LAND INVESTORS LLC

By: 
Name: Michael R. Pedulla
Title: Executive Vice President

RECP IV WG LAND CO-INVESTOR A LLC

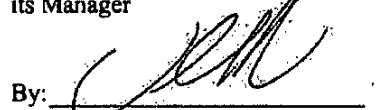
By: RECP IV Co-Investors A, L.P.,
its sole member

By: DLJ Real Estate Capital IV, LLC,
under Limited Power of Attorney,
dated as of September 15, 2010

By: 
Name: William C. Helm
Title: Vice President

CITYLINE EXECUTIVE INVESTORS LLC

By: RECP IV WG Land Investors LLC,
its Manager

By: 
Name: William C. Helm
Title: Executive Vice President

Attachment IV

SEARCHABLE

THE INTERESTS ISSUED UNDER THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR REGISTERED OR QUALIFIED UNDER THE APPLICABLE STATE SECURITIES LAWS, IN RELIANCE UPON EXEMPTIONS FROM REGISTRATION AND QUALIFICATION PROVIDED IN THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND QUALIFICATION OR REGISTRATION UNDER THE APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED.

IN ADDITION, THE, INTERESTS ISSUED UNDER THIS AGREEMENT MAY BE SOLD OR TRANSFERRED ONLY IN COMPLIANCE WITH THE RESTRICTIONS ON TRANSFER SET FORTH HEREIN.

FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

OF

TAYLOR COLSHIRE MEADOW LLC

This FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of TAYLOR COLSHIRE MEADOW LLC (the "Company") is entered into as of July 15, 2011 by and among RECP IV WG LAND INVESTORS LLC, a Delaware limited liability company ("DLJ"), RECP IV WG LAND CO-INVESTOR A LLC, a Delaware limited liability company, f.k.a. RECP IV ULLICO Gallery Place Co-Investor A LLC ("RECP Co-Investor"), and CITYLINE EXECUTIVE INVESTORS LLC, a Delaware limited liability company, f.k.a. WG Co-Investor B LLC ("Executive Investor"), each as Members (hereinafter defined).

WHEREAS, a Certificate of Formation of the Company was filed with the office of the Secretary of State of the State of Delaware on July 13, 2010, thereby forming the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time (the "Act");

WHEREAS, DLJ was the initial sole member of the Company and executed a limited liability company agreement of the Company dated as of July 13, 2010 (the "Initial Agreement");

WHEREAS, as of the date hereof, (a) DLJ has assigned to RECP Co-Investor 1.0% of the membership interests in the Company, (b) DLJ and RECP Co-Investor have assigned

(xviii) observe all other Delaware limited liability company formalities; and

(xix) not acquire any obligation or securities of any Member or of any affiliate of the Company.

4. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. Such registered office of the Company may be changed from time to time by DLJ in accordance with the Act.

5. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. Such registered agent of the Company may be changed from time to time by DLJ in accordance with the Act.

6. Members. The name, present mailing address, tax identification number and Percentage Interest of each Member as of the date hereof are set forth in Exhibit A.

7. Powers. The Company and its business, assets, property and affairs shall be managed and directed exclusively by DLJ. All decisions, determinations and designations to be made or given by or in the name of the Company (including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity) shall be made or given exclusively by DLJ, in its sole and absolute discretion. DLJ shall be a "manager" within the meaning of the Act and shall have the power and authority to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein and all other powers, statutory or otherwise, possessed by members, managers or managing members under the Act. Without limiting the generality of the foregoing, DLJ is authorized to execute and deliver any instrument or document on behalf of the Company, including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity. In connection with the foregoing, DLJ hereby is authorized and empowered to act through its officers and employees, the officers and employees of the Company and other persons designated by DLJ in carrying out any of and all of its powers and authorities that DLJ possesses under this Agreement. All rights of DLJ to approve or disapprove, consent or withhold consent, determine if any arrangement or term is satisfactory or unsatisfactory to it, make any decision, determination or designation or take or elect not to take any action under the terms of this Agreement shall be exercisable by DLJ in its sole and absolute discretion, and DLJ may make, take, grant, withhold, condition or delay any such approval, consent, satisfaction, decision, determination, designation or action in its sole and absolute discretion. The rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided in this Agreement.

8. No Authority of Other Members. Neither RECP Co-Investor nor Executive Investor shall have any rights to participate in, or cast any vote with respect to, the management or affairs of the Company in any respect, and neither RECP Co-Investor's nor

Executive Investor's approval or consent shall be required with respect to any action taken or decision made in connection with the business, assets, property or affairs of the Company (including, but not limited to, decisions relating to the disposition or encumbrance of the assets of the Company) or under this Agreement by DLJ. Neither RECP Co-Investor nor Executive Investor is or shall be an agent of the Company's business, and neither RECP Co-Investor nor Executive Investor is or shall be empowered or authorized to execute or deliver any instrument or document on behalf of the Company or otherwise bind the Company, including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity. Neither RECP Co-Investor nor Executive Investor shall (a) hold itself out as having any power or authority to execute or deliver any instrument or document on behalf of the Company or otherwise bind the Company, including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity, or (b) take any action described in clause (a) of this sentence or otherwise in contravention of the terms of this Section 8.

9. Filing of Certificate of Formation and Amendments. The Company was formed as a limited liability company under and pursuant to the provisions of the Act upon the filing of the Certificate of Formation of the Company with the Office of the Secretary of State of the State of Delaware. The individual who signed the Certificate of Formation shall be deemed an "authorized person" of the Company within the meaning of the Act for such purpose only. DLJ and/or any Officer of the Company is hereby designated as an authorized person, within the meaning of the Act, to execute, deliver and file any amendments and/or restatements of the Certificate of Formation of the Company and any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

10. Officers.

(a) *Appointment of Officers.* In addition to all other powers and authority provided under the Act, DLJ may select natural persons to be designated as officers and authorized signatories of the Company (collectively, the "Officers"), with such titles as DLJ shall determine. Any number of offices may be held by the same person. The Officers shall hold office until their successors are selected and qualified by DLJ or until their earlier resignation or removal. Any Officer may resign at any time upon written notice to the Company. Any Officer selected or appointed by DLJ may be removed at any time, with or without cause, by DLJ. Any vacancy occurring in any office of the Company may be filled by DLJ. The Officers shall have such powers and duties in the management of the Company as may be delegated to them in this Agreement or by DLJ, except that in any event each Officer shall exercise such powers and perform such duties as may be required by law. DLJ may require any Officer or agent to give security for the faithful performance of his or her duties. Each person selected or appointed as an Officer shall be deemed to have been designated as a "manager" by the Members for purposes of the Act. Any Officer also may serve as an officer, employee or agent of DLJ or any of its affiliates.

(b) *Executive Vice Presidents.* One or more Executive Vice Presidents shall have the authority to sign, in the name and on behalf of the Company, checks, orders,

contracts, leases, notes, drafts and other documents and instruments. As of the date of this Agreement, DLJ hereby appoints William C. Helm and Michael R. Pedulla as Executive Vice Presidents. The Executive Vice Presidents shall perform such other duties and have such other powers as DLJ may from time to time prescribe.

(d) *Secretary.* The Secretary shall duly record all minutes for the Members in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the Members, and shall perform such other duties as may be prescribed by DLJ or any Executive Vice President. As of the date of this Agreement, DLJ hereby appoints Thomas J. Scott as the Secretary. The Secretary shall properly maintain and file all books, reports, statements, certificates and all other documents and records required by law, by the Certificate or by this Agreement.

11. Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or by the decision of DLJ, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

12. Reliance by Third Parties. Any Person dealing with the Company or any Officer may rely upon a certificate signed by any Executive Vice President or the Secretary as to:

- (a) the identity of any Member or any Executive Vice President or any other Officer;
- (b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by any Executive Vice President or any other Officer or in any other manner germane to the affairs of the Company;
- (c) the Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Company; or
- (d) any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

13. Dissolution. The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (a) the written determination of DLJ or (b) the entry of a decree of judicial dissolution under section 18-802 of the Act.

14. Capital Contributions.


(a) *Initial Capital Contributions.* The Members have previously contributed to the Company cash in the amounts respectively set forth on Exhibit A as initial contributions.

(b) *General.* Except as specifically provided in this Agreement, no Member may or shall be obligated or required to contribute capital to, or withdraw capital from, the Company. To the extent any monies which any Member is entitled to receive pursuant to

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first above written.

MEMBERS:

RECP IV WG LAND INVESTORS LLC

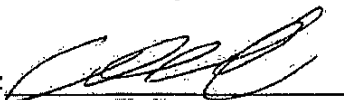
By: 

Name: Michael R. Pedulla
Title: Executive Vice President

RECP IV WG LAND CO-INVESTOR A LLC

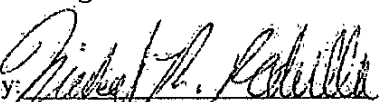
By: RECP IV Co-Investors A, L.P.,
its sole member

By: DLJ Real Estate Capital IV, LLC,
under Limited Power of Attorney,
dated as of September 15, 2010

By: 
Name: William C. Helm
Title: Vice President

CITYLINE EXECUTIVE INVESTORS LLC

By: RECP IV WG Land Investors LLC,
its Manager

By: 
Name: Michael R. Pedulla
Title: Executive Vice President

Attachment V

SEARCHABLE

THE INTERESTS ISSUED UNDER THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR REGISTERED OR QUALIFIED UNDER THE APPLICABLE STATE SECURITIES LAWS, IN RELIANCE UPON EXEMPTIONS FROM REGISTRATION AND QUALIFICATION PROVIDED IN THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND QUALIFICATION OR REGISTRATION UNDER THE APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED.

IN ADDITION, THE, INTERESTS ISSUED UNDER THIS AGREEMENT MAY BE SOLD OR TRANSFERRED ONLY IN COMPLIANCE WITH THE RESTRICTIONS ON TRANSFER SET FORTH HEREIN.

FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

OF

GRANT-1651-OLD MEADOW ROAD LLC

This FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of GRANT 1651 OLD MEADOW ROAD LLC (the "Company") is entered into as of July 15, 2011 by and among RECP IV WG LAND INVESTORS LLC, a Delaware limited liability company ("DLJ"), RECP IV WG LAND CO-INVESTOR A LLC, a Delaware limited liability company, f.k.a. RECP IV ULLICO Gallery Place Co-Investor A LLC ("RECP Co-Investor"), and CITYLINE EXECUTIVE INVESTORS LLC, a Delaware limited liability company, f.k.a. WG Co-Investor B LLC ("Executive Investor"), each as Members (hereinafter defined).

WHEREAS, a Certificate of Formation of the Company was filed with the office of the Secretary of State of the State of Delaware on July 13, 2010, thereby forming the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time (the "Act");

WHEREAS, DLJ was the initial sole member of the Company and executed a limited liability company agreement of the Company dated as of July 13, 2010 (the "Initial Agreement");

WHEREAS, as of the date hereof, (a) DLJ has assigned to RECP Co-Investor 1.0% of the membership interests in the Company, (b) DLJ and RECP Co-Investor have assigned

(xviii) observe all other Delaware limited liability company formalities; and

(xix) not acquire any obligation or securities of any Member or of any affiliate of the Company.

4. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. Such registered office of the Company may be changed from time to time by DLJ in accordance with the Act.

5. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. Such registered agent of the Company may be changed from time to time by DLJ in accordance with the Act.

6. Members. The name, present mailing address, tax identification number and Percentage Interest of each Member as of the date hereof are set forth in Exhibit A.

7. Powers. The Company and its business, assets, property and affairs shall be managed and directed exclusively by DLJ. All decisions, determinations and designations to be made or given by or in the name of the Company (including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity) shall be made or given exclusively by DLJ, in its sole and absolute discretion. DLJ shall be a "manager" within the meaning of the Act and shall have the power and authority to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein and all other powers, statutory or otherwise, possessed by members, managers or managing members under the Act. Without limiting the generality of the foregoing, DLJ is authorized to execute and deliver any instrument or document on behalf of the Company, including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity. In connection with the foregoing, DLJ hereby is authorized and empowered to act through its officers and employees, the officers and employees of the Company and other persons designated by DLJ in carrying out any of and all of its powers and authorities that DLJ possesses under this Agreement. All rights of DLJ to approve or disapprove, consent or withhold consent, determine if any arrangement or term is satisfactory or unsatisfactory to it, make any decision, determination or designation or take or elect not to take any action under the terms of this Agreement shall be exercisable by DLJ in its sole and absolute discretion, and DLJ may make, take, grant, withhold, condition or delay any such approval, consent, satisfaction, decision, determination, designation or action in its sole and absolute discretion. The rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided in this Agreement.

8. No Authority of Other Members. Neither RECP Co-Investor nor Executive Investor shall have any rights to participate in, or cast any vote with respect to, the management or affairs of the Company in any respect, and neither RECP Co-Investor's nor

Executive Investor's approval or consent shall be required with respect to any action taken or decision made in connection with the business, assets, property or affairs of the Company (including, but not limited to, decisions relating to the disposition or encumbrance of the assets of the Company) or under this Agreement by DLJ. Neither RECP Co-Investor nor Executive Investor is or shall be an agent of the Company's business, and neither RECP Co-Investor nor Executive Investor is or shall be empowered or authorized to execute or deliver any instrument or document on behalf of the Company or otherwise bind the Company, including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity. Neither RECP Co-Investor nor Executive Investor shall (a) hold itself out as having any power or authority to execute or deliver any instrument or document on behalf of the Company or otherwise bind the Company, including, without limitation, in the Company's capacity as a member, manager, partner (limited or general), shareholder, stockholder, authorized person or signatory or trustee of any other entity, or (b) take any action described in clause (a) of this sentence or otherwise in contravention of the terms of this Section 8.

9. Filing of Certificate of Formation and Amendments. The Company was formed as a limited liability company under and pursuant to the provisions of the Act upon the filing of the Certificate of Formation of the Company with the Office of the Secretary of State of the State of Delaware. The individual who signed the Certificate of Formation shall be deemed an "authorized person" of the Company within the meaning of the Act for such purpose only. DLJ and/or any Officer of the Company is hereby designated as an authorized person, within the meaning of the Act, to execute, deliver and file any amendments and/or restatements of the Certificate of Formation of the Company and any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

10. Officers.

(a) *Appointment of Officers.* In addition to all other powers and authority provided under the Act, DLJ may select natural persons to be designated as officers and authorized signatories of the Company (collectively, the "Officers"), with such titles as DLJ shall determine. Any number of offices may be held by the same person. The Officers shall hold office until their successors are selected and qualified by DLJ or until their earlier resignation or removal. Any Officer may resign at any time upon written notice to the Company. Any Officer selected or appointed by DLJ may be removed at any time, with or without cause, by DLJ. Any vacancy occurring in any office of the Company may be filled by DLJ. The Officers shall have such powers and duties in the management of the Company as may be delegated to them in this Agreement or by DLJ, except that in any event each Officer shall exercise such powers and perform such duties as may be required by law. DLJ may require any Officer or agent to give security for the faithful performance of his or her duties. Each person selected or appointed as an Officer shall be deemed to have been designated as a "manager" by the Members for purposes of the Act. Any Officer also may serve as an officer, employee or agent of DLJ or any of its affiliates.

(b) *Executive Vice Presidents.* One or more Executive Vice Presidents shall have the authority to sign, in the name and on behalf of the Company, checks, orders,

contracts, leases, notes, drafts and other documents and instruments. As of the date of this Agreement, DLJ hereby appoints William C. Helm and Michael R. Pedulla as Executive Vice Presidents. The Executive Vice Presidents shall perform such other duties and have such other powers as DLJ may from time to time prescribe.

(d) *Secretary.* The Secretary shall duly record all minutes for the Members in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the Members, and shall perform such other duties as may be prescribed by DLJ or any Executive Vice President. As of the date of this Agreement, DLJ hereby appoints Thomas J. Scott as the Secretary. The Secretary shall properly maintain and file all books, reports, statements, certificates and all other documents and records required by law, by the Certificate or by this Agreement.

11. Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or by the decision of DLJ, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

12. Reliance by Third Parties. Any Person dealing with the Company or any Officer may rely upon a certificate signed by any Executive Vice President or the Secretary as to:

(a) the identity of any Member or any Executive Vice President or any other Officer;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by any Executive Vice President or any other Officer or in any other manner germane to the affairs of the Company;

(c) the Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Company; or

(d) any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

13. Dissolution. The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (a) the written determination of DLJ or (b) the entry of a decree of judicial dissolution under section 18-802 of the Act.

14. Capital Contributions.

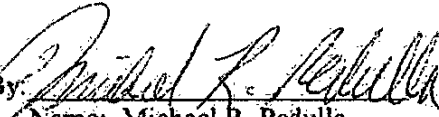
(a) *Initial Capital Contributions.* The Members have previously contributed to the Company cash in the amounts respectively set forth on Exhibit A as initial contributions.

(b) *General.* Except as specifically provided in this Agreement, no Member may or shall be obligated or required to contribute capital to, or withdraw capital from, the Company. To the extent any monies which any Member is entitled to receive pursuant to

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first above written.

MEMBERS:


RECP IV WG LAND INVESTORS LLC

By: 
Name: Michael R. Pedulla
Title: Executive Vice President

RECP IV WG LAND CO-INVESTOR A LLC

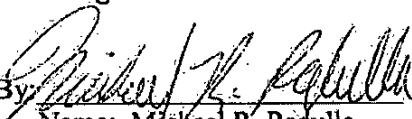
By: RECP IV Co-Investors A, L.P.,
its sole member

By: DLJ Real Estate Capital IV, LLC,
under Limited Power of Attorney,
dated as of September 15, 2010

By: 
Name: William C. Helm
Title: Vice President

CITYLINE EXECUTIVE INVESTORS LLC

By: RECP IV WG Land Investors LLC,
its Manager

By: 
Name: Michael R. Pedulla
Title: Executive Vice President

Attachment VI



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[Tax Details](#)
[Residential](#)
[Commercial](#)
[Map](#)
[Structure Size](#)

MAP #: 0303 28 D2
COLSHIRE BLOCK K LLC

N/A

1 of 1

Owner

Name	COLSHIRE BLOCK K LLC,
Mailing Address	1651 OLD MEADOW RD SUITE 650 CITYLINE PARTNERS LLC SANDY FLANAGAN MCLEAN VA 22102
Book	25474
Page	1715

Parcel

Property Location	MCLEAN VA 22102
Map #	0303 28 D2
Tax District	7TADE
District Name	PROVIDENCE DULLES EAST TRANS TYSONS
Land Use Code	Vacant Land
Land Area (acreage)	
Land Area (SQFT)	32,098
Zoning Description	PTC(Planned Tysons Corner)
Utilities	

County Historic Overlay District	NO For further information about Historic Overlay Districts, CLICK HERE
---	--

Street/Road
Site Description

Legal Description

Legal Description	WESTGATE INDUSTRIAL PARK PCL D2
--------------------------	------------------------------------

Last Refresh

Date
 Data last refreshed: 07/Sep/2018 DB:PORA34CUR

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If you believe any data provided is inaccurate or if you have any comments about this site, we would like to hear from you. Owner names will be withheld from the Internet record upon request. Comments or requests may be made via e-mail to the Real Estate Division at Real Estate Division or by phone at (703) 222-8234.

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Profile

MAP #: 0303 28 B3

Sales

BOARD OF SUPERVISORS FAIRFAX COUNTY

COLSHIRE DR

1 of 1

Values

Owner

Tax Details

Name BOARD OF SUPERVISORS FAIRFAX COUNTY,
Mailing Address 12000 GOVERNMENT CENTER PW STE 533 FAIRFAX VA
22035

Residential

Book 11577
Page 0770

Commercial

Map

Parcel

Structure Size

Property Location COLSHIRE DR MCLEAN VA 22102
Map # 0303 28 B3
Tax District JTADE
District Name PROVIDENCE DULLES EAST TRANS TYSONS
Land Use Code Vacant Land
Land Area (acreage)
Land Area (SQFT) 80,527
Zoning Description C-3(Office)
Utilities

County Historic Overlay District NO
For further information about Historic Overlay Districts, [CLICK HERE](#)

Street/Road
Site Description

Legal Description

Legal Description WESTGATE
INDUSTRIAL PARK
PCL B-1-B

Last Refresh

Date
Data last refreshed: 07/Sep/2018 DB:PORA34CUR

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Profile

Sales

Values

Tax Details

Residential

Commercial

Map

Structure Size

MAP #: 0294 01 0031

PARK AUTHORITY FAIRFAX COUNTY

COLSHIRE MEADOW DR

1 of 1

Owner

Name

 PARK AUTHORITY FAIRFAX COUNTY,
 12055 GOVERNMENT CENTER PW SUITE 927 FAIRFAX VA
 22035

Mailing Address

Book

02685

Page

0035

Parcel

Property Location

COLSHIRE MEADOW DR MCLEAN VA 22102

Map

0294 01 0031

Tax District

7TADE

District Name

PROVIDENCE DULLES EAST TRANS TYSONS

Land Use Code

Recreation Fac,Parks(govt) - outdoor

Land Area (acreage)

4.7453

Land Area (SQFT)

Zoning Description

R-30(Residential 30 DU/AC)

Utilities

County Historic Overlay District

NO

 For further information about Historic Overlay Districts, [CLICK HERE](#)

Street/Road

Site Description

COMMERCIAL RANK #1

Legal Description

Legal Description

 MC LEAN
 SCOTT RUN PARK

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Date

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Profile

MAP #: 0294 06 0102

Sales

GRANT 1651 OLD MEADOW ROAD LLC

1651 OLD MEADOW RD

1 of 1

Values

Owner

Tax Details

Name

GRANT 1651 OLD MEADOW ROAD LLC,

Residential

Mailing Address

1651 OLD MEADOW RD SUITE 650 CITYLINE PARTNERS LLC
MCLEAN VA 22102

Commercial

Book

25000

Page

0650

Map

Parcel

Structure Size

Property Location

1651 OLD MEADOW RD MCLEAN VA 22102

Map

0294 06 0102

Tax District

7TADE

District Name

PROVIDENCE DULLES EAST TRANS TYSONS

Land Use Code

General med/hi rise off (>= > 5 stories)

Land Area (acreage)

Land Area (SQFT)

145,557

Zoning Description

PTC(Planned Tysons Corner)

Utilities

WATER CONNECTED

SEWER CONNECTED

County Historic Overlay District

NO

For further information about Historic Overlay Districts, [CLICK HERE](#)

Street/Road

PAVED

Site Description

Legal Description

Legal Description

WESTGATE RESEARCH PARK
LT 102 SEC 2

Last Refresh

Date

Data last refreshed: 07/Sep/2018 DB:PORA34CUR

General Information

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Profile**Sales****Values****Tax Details****Residential****Commercial****Map****Structure Size**

MAP #: 0303 28 C3
TAYLOR COLSHIRE MEADOW LLC

N/A

1 of 1

Owner

Name TAYLOR COLSHIRE MEADOW LLC,
Mailing Address 1651 OLD MEADOW RD SUITE 650 CITYLINE PARTNERS LLC
SANDY FLANAGAN MCLEAN VA 22102
Book 25122
Page 0366

Parcel

Property Location MCLEAN VA 22102
Map # 0303 28 C3
Tax District 7TADE
District Name PROVIDENCE DULLES EAST TRANS TYSONS
Land Use Code Vacant Land
Land Area (acreage)
Land Area (SQFT) 218,331
Zoning Description PTC(Planned Tysons Corner)
Utilities

County Historic Overlay District NO
For further information about Historic Overlay Districts, [CLICK HERE](#)

Street/Road
Site Description

Legal Description

Legal Description WESTGATE INDUSTRIAL PARK
PCL B-1-A2

Last Refresh

Date
Data last refreshed: 07/Sep/2018 DB:PORA34CUR

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[Address](#) [Map Number](#) [Map Search](#)

Profile

 MAP #: 0303 46 A1
 COLSHIRE BLOCK K LLC

N/A

Sales

Owner

Values

Tax Details

Residential

Commercial

Map

Structure Size

 Name COLSHIRE BLOCK K LLC
 Mailing Address 1651 OLD MEADOW RD SUITE 650 CITYLINE PARTNERS LLC
 SANDY FLANAGAN MCLEAN, VA 22102
 Book 25474
 Page 1715

Parcel

 Property Location MCLEAN VA 22102
 Map # 0303 46 A1
 Tax District 7TADE
 District Name PROVIDENCE DULLES EAST TRANS TYSONS
 Land Use Code Vacant Land
 Land Area (acreage)
 Land Area (SQFT) 3,342
 Zoning Description PTC(Planned Tysons Corner)
 Utilities

 County Historic Overlay District NO
 For further information about Historic Overlay Districts, [CLICK HERE](#)

 Street/Road
 Site Description COMMERCIAL RANK #1

Legal Description

 Legal Description WESTGATE INDUSTRIAL PARK
 OUTLOT A1

Last Refresh

 Date
 Data last refreshed: 07/Sep/2018 DB:PORA34CUR

General Information

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1 of 1

Actions

[Neighborhood Sales](#)
[Printable Summary](#)
[Printable Version](#)

Links

[Definition Of Terms](#)

Board Agenda Item
October 16, 2018

ADMINISTRATIVE - 3

Authorization to Advertise a Public Hearing to Convey Board-Owned Property on South Van Dorn Street (Oakwood Property) to the Redevelopment and Housing Authority (Lee District)

ISSUE:

Board of Supervisors authorization to advertise a public hearing regarding the conveyance of Board-owned property located along South Van Dorn Street to the Fairfax County Redevelopment and Housing Authority (FCRHA).

RECOMMENDATION:

The County Executive recommends that the Board authorize a public hearing regarding the proposed conveyance of Board-owned property to the FCRHA.

TIMING:

Board action is requested on October 16, 2018 to provide sufficient time to advertise the proposed public hearing on November 20, 2018 at 4:00 PM.

BACKGROUND:

The Board of Supervisors is the owner of four parcels located near the intersection of South Van Dorn Street and Oakwood Road and identified by Tax Map Nos. 0812 01 Parcel 0017C and 0814 01 Parcels 0032, 0033 and 0034 (Oakwood Property). These parcels were originally acquired by the County in an eminent domain action and transferred to the Virginia Department of Transportation (VDOT) for the South Van Dorn Street widening project. VDOT returned the approximately 6.2 acres of surplus land to the County in 1988. The property is currently vacant except for a fenced regional stormwater pond maintained by the Department of Public Works and Environmental Services.

FCRHA has received an unsolicited proposal from a developer to construct 150 affordable senior housing units on the Oakwood Property. Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) requirements, FCRHA has issued a request for competing proposals to the unsolicited offer. Several of these development proposals were received on August 1, 2018 and are currently being evaluated by FCRHA.

To allow the developer selected through the PPEA process to initiate the entitlement process for the affordable senior housing project (Project), it is necessary for the Board to transfer fee simple ownership of the Oakwood Property to FCRHA which would in

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turn grant agency to the selected developer for the limited purpose of rezoning and obtaining other necessary governmental approvals for the site. The rezoning process would include applications for a Comprehensive Plan Amendment and Special Exception that must be approved by both the Planning Commission and the Board. The public will be afforded several opportunities to comment on the design of the Project and its possible impacts on the surrounding communities. Initial public outreach efforts are expected to begin as soon as the PPEA selection process is completed.

Staff recommends that the conveyance of the Oakwood Property to FCRHA be subject to the condition that the parcels must be used in connection with the Project. In the event the FCHRA no longer pursues the Project, the Authority will transfer ownership of the property back to the Board. Staff further recommends that the conveyances be made subject to the County's reservation of the right to assign to public entities, public utilities, or telecommunications or cable television providers the right to construct improvements on the property for the purpose of providing utilities and other public services. Staff also recommends that any public utilities located on the property that are owned and maintained by County agencies, such as sanitary sewers and stormwater management facilities and structures, continue to be owned and maintained by the County.

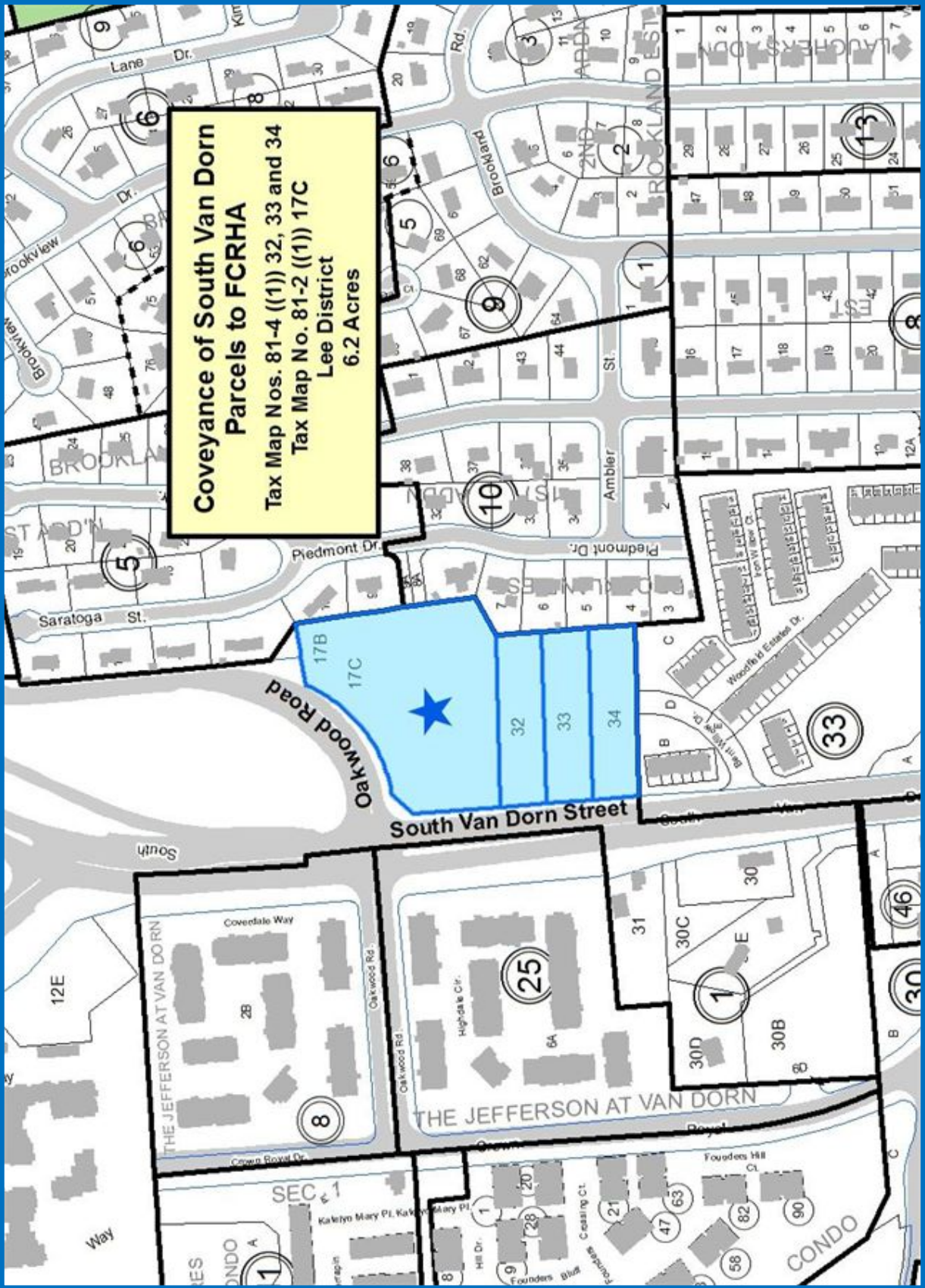
Virginia Code Ann. § 15.2-1800 requires a locality to hold a public hearing before it may dispose of any real property. Staff recommends that the Board authorize staff to advertise a public hearing to convey the Oakwood Property to the FCRHA.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Location Map

STAFF:
Joseph M. Mondoro, Chief Financial Officer
Tisha Deeghan, Deputy County Executive
Thomas E. Fleetwood, Director, Housing and Community Development
José A. Comayagua, Director, Facilities Management Department
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:
Alan Weiss, Assistant County Attorney



ADMINISTRATIVE - 4

Authorization to Advertise Public Hearings on a Proposed Zoning Ordinance
Amendment Re: Articles 2 and 20 - Commonly Accepted Pets

ISSUE:

The proposed amendment to the Zoning Ordinance will 1) allow hedgehogs, chinchillas, and hermit crabs to be considered commonly accepted pets in Fairfax County, and 2) will make minor edits to the Limitations on the Keeping of Animals in Section 2-512 of the Zoning Ordinance as it pertains to the age of fowl and the maximum number that can be kept on a lot. In conjunction with planned amendments to Chapter 41.1 that will permit hedgehogs in the County, this Zoning Ordinance amendment will allow chinchillas, hermit crabs and hedgehogs to be kept without a Special Permit.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of the proposed Zoning Ordinance amendment by adopting the Resolution set forth in Attachment 1.

TIMING:

Board action is requested on October 16, 2018, to advertise the proposed Planning Commission public hearing on the Zoning Ordinance amendment on November 29, 2018, at 7:30 p.m., and a public hearing before the Board on January 22, 2019, at 4:00 p.m.

BACKGROUND:

The proposed amendment is on the 2018 Priority 1 Zoning Ordinance Amendment Work Program and proposes changes to the definition of commonly accepted pets. These proposed changes are in response to a Board request directing County staff to review and update existing zoning regulations, as well as regulations regarding wild and exotic animals found in Chapter 41.1 of the Code. Specifically, the amendment includes the following revisions to the definition of "commonly accepted pets" found in Part 3 of Article 20 of the Zoning Ordinance:

- Add hedgehogs, chinchillas, and hermit crabs to the list of commonly accepted pets; and
- Replace the term "non-poisonous" with "not venomous to people" in reference to spiders and snakes.

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The amendment also includes a revision to Section 2-512 of the Zoning Ordinance, as follows:

- Revise the age of domestic chickens, ducks, and geese that are included in the maximum number of fowl permitted to be kept on a lot from six months old to two months old.

A more detailed discussion of the proposed changes is presented in the Staff Report enclosed as Attachment 2.

Staff from the Animal Services Division, the Department of Animal Sheltering, and the Health Department are preparing proposed amendments to Chapter 41.1, Animal Control and Care, including changes to the wild and exotic animal provisions that will allow hedgehogs in the County. Board authorization to advertise a public hearing on these amendments to Chapter 41.1 is proposed for December 4, 2018, with a Board public hearing date of January 22, 2019.

REGULATORY IMPACT:

The proposed amendment to Part 3 of Article 20 will specifically allow residents of Fairfax County to keep hedgehogs, chinchillas, and hermit crabs as commonly accepted pets.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution

Attachment 2 – Staff Report on Proposed Zoning Ordinance Amendment

STAFF:

Robert A. Stalzer, Deputy County Executive

Fred Selden, Director, Department of Planning and Zoning (DPZ)

Leslie B. Johnson, Zoning Administrator (DPZ)

Casey V. Judge, Senior Assistant to the Zoning Administrator (DPZ)

ASSIGNED COUNSEL:

John Burton, Assistant County Attorney

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center Building, Fairfax, Virginia, on October 16, 2018, at which meeting a quorum was present and the following resolution was adopted:

WHEREAS, the Zoning Ordinance definition of “commonly accepted pets” has not been revised since 1985; and

WHEREAS, there is a desire to ensure the humane treatment of animals; and

WHEREAS, the pet trade and cultural norms have changed in the intervening 30 years, such that hedgehogs, chinchillas, and hermit crabs, animals once considered exotic, are now considered commonplace as pets; and

WHEREAS, the public necessity, convenience, general welfare, and good zoning practice require consideration of the proposed revisions of the Zoning Ordinance.

NOW THEREFORE BE IT RESOLVED, for the foregoing reasons and as further set forth in the Staff Report, the Board of Supervisors authorizes the advertisement of the proposed Zoning Ordinance amendment as recommended by staff.

A Copy Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors



**FAIRFAX
COUNTY
VIRGINIA**

ATTACHMENT 2

STAFF REPORT

PROPOSED ZONING ORDINANCE AMENDMENT

Article 20 — Commonly Accepted Pets

PUBLIC HEARING DATES

Planning Commission

November 29, 2018 at 7:30 p.m.

Board of Supervisors

January 22, 2019 at 4:00 p.m.

**PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314**

October 16, 2018

CVJ



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

STAFF COMMENT

The proposed amendment is on the 2018 Priority 1 Zoning Ordinance Amendment Work Program. The purpose of this amendment is to make modifications to the definition of “commonly accepted pets” found in Section 20-300 of the Fairfax County Zoning Ordinance. The modifications include the addition of several animals that have become more common as pets in recent years, as well as other changes intended to improve the clarity of the definition. This amendment to the Zoning Ordinance is concurrent with proposed changes to Chapter 41.1 of the Code of Fairfax County (the Code), Animal Control and Care, which seeks to revise and update the definition of “wild or exotic animal.”

Background

The proposed amendment is in response to a request by the Board of Supervisors, directing staff to update both Chapter 41.1 of the Code and Article 20 of the Zoning Ordinance, to allow certain animals that have become increasingly commonplace in recent years within the pet trade as “commonly accepted pets.” The current definition of commonly accepted pets was adopted by the Board of Supervisors on February 25, 1985 with the adoption of Zoning Ordinance Amendment ZO-85-117. As part of that amendment, a new definition for “commonly accepted pets” was established, which includes domesticated rabbits; hamsters, ferrets, gerbils; guinea pigs; pet mice and pet rats; turtles; fish; dogs; cats; domestic chickens, ducks and geese under two months old; birds such as canaries, parakeets, doves and parrots; worm/ant farms; non-poisonous spiders; chameleons and similar lizards; and non-poisonous snakes.

Under the existing provisions for the keeping of animals set forth in Section 2-512 of the Zoning Ordinance, commonly accepted pets are allowed as an accessory use on any lot, provided such pets are used for personal use and enjoyment and not for any commercial purpose. Except for dogs, there is no limitation on the number of commonly accepted pets which are permitted on a lot, provided that the keeping of such pets continues to be an accessory use to the principal use on the lot. The Board of Zoning Appeals (BZA) may approve a special permit to modify certain provisions relating to the keeping of animals, which includes allowing the ownership of an animal not identified as a commonly accepted pet, provided such animal is not considered wild or exotic as defined in Chapter 41.1 of the Code. Approval of a special permit is subject to those standards set forth in Section 8-917 of the Ordinance. In reviewing an application, the BZA considers the types and number of animals proposed to be kept, the characteristics thereof, the proposed management techniques, and the location at which such animals will be kept on the lot. The BZA may impose development conditions, including screening and additional setback requirements for associated structures, to ensure that there will be no adverse impact on adjacent property and no emission of odor or noise detrimental to other property in the area.

Staff has seen an increase in inquiries related to the keeping of animals such as hedgehogs, chinchillas, and hermit crabs, as these animals are popular and routinely sold as part of the retail pet trade. In discussions with local veterinarians, the care of chinchillas was said to be most similar to the care of domestic rabbits, and the care of hedgehogs most similar to the care of domestic ferrets. Hedgehogs in particular are known to be desirable for owners with allergies, who may otherwise be unable to own other fur-bearing commonly accepted pets. Given their relatively

low-maintenance care (as opposed to other pets such as dogs or cats), hedgehogs and chinchillas have risen in popularity among pet owners.

In addition to the rising interest observed by staff, the Board of Supervisors has also received public testimony from community members regarding the inclusion of hedgehogs, in particular, as commonly accepted pets. However, since none of these particular animals are included in the definition of commonly accepted pets, special permit approval is currently required. However, while the keeping of chinchillas and hermit crabs require Special Permit approval, hedgehogs are prohibited to be kept within the County, as they have been determined to be wild or exotic per Chapter 41.1 of the Code.



Figure 1: African Pygmy Hedgehog

In 2001, the Board considered proposed amendments to the Zoning Ordinance and Chapter 41 of the Code to permit domestically bred African pygmy hedgehogs and hermit crabs as “commonly accepted pets.” While the Planning Commission unanimously recommended the adoption of this amendment, the Board voted to not adopt the proposed amendment based on concerns raised by what was then called the Fairfax County Animal Care and Control Advisory Committee. The Committee opined that both hedgehogs and hermit crabs were “wild animals,” and, as such, their use as pets would be potentially inhumane. In addition, in 2015, research was conducted and a second draft amendment to the commonly accepted pets definition was prepared by staff. At that time, the now-called Animal Services Advisory Commission’s voted to endorse the proposed amendment. However, the request for authorization to advertise a public hearing on the proposed amendment was removed from the Board’s agenda.

Over the past ten years, the BZA has reviewed approximately 45 special permit applications for the modification to the limitations on the keeping of animals. Of these applications, only one application involved the keeping of a chinchilla, and no applications were processed for the keeping of hermit crabs. All but six of the special permit requests involved the keeping of dogs in excess of the number permitted on-site, or the keeping of chickens on lots less than two acres in size. In the case of animals such as hedgehogs, chinchillas, and hermit crabs, it is likely that most county residents are unaware of zoning and other county regulations concerning these pets.



Figure 2: Chinchilla

Proposed Amendment

The proposed Zoning Ordinance Amendment seeks to add certain animals to the definition of “commonly accepted pets,” and make other minor editorial changes to existing regulations.

As proposed, hedgehogs, chinchillas, and hermit crabs would be added to the definition of commonly accepted pets and would therefore be permitted in Fairfax County without special permit approval by the BZA. This revised definition is in keeping with the proposed changes to Chapter 41.1 of the Code, which will explicitly exclude “hedgehogs” from the definition of a “wild or exotic animal.” It has been a longstanding interpretation of animal control services that hermit crabs, as an invertebrate species, are not considered to be “animals” for the purposes of these regulations, and therefore are not specifically prohibited by Chapter 41.1. A copy of the proposed revisions to Chapter 41.1 of the Code will be provided in connection with a request to authorize advertisement of a public hearing on the amendments, which is expected on December 4, 2018.



Figure 3: Hermit crab

The amendment also seeks to replace the term “non-poisonous” with “not venomous to people” in regards to spiders and snakes. This proposed change is made in consultation with animal experts and is consistent with the technical definitions of “poisonous” and “venomous.” Venomous organisms deliver or inject venom into other organisms, using a specialized apparatus of some kind (usually fangs or a stinger), while poisonous organisms do not deliver their toxins directly. The entire body, or large parts of it, may contain the poisonous substance and may be harmful when eaten or touched.¹

Finally, the amendment also proposes to revise Section 2-512 of the Ordinance as it pertains to the age of fowl counted towards the maximum number permitted on a lot. Currently, only domestic fowl six months in age or older are counted towards the bird unit calculation. However, the current definition of “commonly accepted pet” permits domestic fowl under two months old. This change from six months or older to two months or older would ensure that the limitations in Section 2-512 are consistent with the age limitations in the commonly accepted pets definition. As a result, all domestic fowl two months in age or older would need to be kept on lots of two acres or more, or a special permit would be required.

Outreach

Staff has worked with multiple agencies and individual staff during the review of this amendment, including the Animal Services Division, representatives from the Animal Shelter, the County’s wildlife biologist, and the Health Department. While there are no health concerns with the keeping of chinchillas or hermit crabs, staff representing these agencies raised concerns about hedgehogs and the potential spread of zoonotic diseases, which are infections shared between animals and people. An example of a zoonotic disease is salmonella, which is the primary concern related to

¹ Source: <http://insects.about.com/od/insects101/f/venomous-or-poisonous.htm>

hedgehogs and other pets deemed to be exotic. However, according to the Center for Disease Control and local exotic animal veterinarians, pet owners are equally likely to contract salmonella from any commonly accepted pet that consumes a plant-based diet. While approximately 30 people in the United States were reported to have contracted salmonella from 2011-2013 from the contact with hedgehogs, these numbers are significantly lower than the reported contraction rates from turtles, lizards, and chickens. Thorough hand-washing following contact with any animals and their habitats can prevent salmonella infection. From a communicable disease standpoint, the Health Department has no objections to the proposed amendment.

Representatives from the Animal Services Division, Animal Shelter, and the County's wildlife biologist also raised the concern of the increase in animal abandonment of hedgehogs and chinchillas, which would have an impact on the Fairfax County Animal Shelter and its resources. By allowing these animals, Animal Shelter and Animal Services staff worry that people will adopt them without knowing the time and monetary commitments needed to properly care for these animals, therefore resulting in the surrendering of the animals. However, this concern can be applied to any of the pets included in the "commonly accepted pet" definition. While staff cannot predict the potential abandonment statistics, staff did conduct outreach with other local jurisdictions within Northern Virginia to gain insight on their policies and experiences with the animals being proposed in this amendment. The following table summarizes where hedgehogs, chinchillas, and hermit crabs are and are not permitted:

Jurisdiction	Animal	Permitted?
Arlington	Hedgehog	Yes
	Chinchilla	Yes
	Hermit Crab	No specific language in Ordinance
Fairfax City	Hedgehog	No
	Chinchilla	No
	Hermit Crab	Unclear
Falls Church	Hedgehog	No
	Chinchilla	No
	Hermit Crab	No
Loudoun	Hedgehog	Yes
	Chinchilla	Yes
	Hermit Crab	Yes
Prince William	Hedgehog	No
	Chinchilla	Yes
	Hermit Crab	Yes

Arlington County most recently adopted a Wild and Exotic Animal Ordinance in September 2017. While Arlington County shelters periodically receives hedgehogs and chinchillas as surrenders, they have never received complaints for these animals "at large" or as strays. The chinchillas surrendered to the shelter are adopted out, and the hedgehogs are placed through a specialized

rescue group. Since the adoption of the Wild and Exotic Animal Ordinance, they have not seen an increase in surrendered hedgehogs or chinchillas. Since 2013, the shelter has received two surrendered hedgehogs. Loudoun County, which also permits hedgehogs and chinchillas, receives relatively few hedgehogs and chinchillas in their shelters, and those that are received are quickly adopted.

Staff also has been in contact with local exotic veterinarians to gain insight on the long-term care of hedgehogs and chinchillas. While care for these animals typically involves a recommended annual examination, some veterinarians are concerned that if these animals remain illegal to own, owners may be less likely to bring their animal into the veterinarian when care is needed, which leads to poor animal welfare. Many Fairfax County residents already own hedgehogs, and while many bring their animals into the veterinarians for care, other residents have been hesitant to bring them in or to provide contact information in fear of being reported to the County for owning an illegal animal. Because of these reasons, the veterinarians staff has been in contact with support this amendment.

On September 13, 2018, the amendment was presented to the Animal Services Advisory Commission. The Commission did not endorse the amendment. Commission members questioned whether enough data was available to fully evaluate the amendment, including whether there is enough public interest to justify it. Commission members also expressed concerns that the amendment could foster an exotic pet fad resulting in irresponsible care for these animals.

Conclusion

The changes proposed as a part of the Commonly Accepted Pets amendment would bring the definition of commonly accepted pets into accord with the proposed definition of wild or exotic animals found in Chapter. 41.1 of the Code, and it would permit county residents to keep these pets without the need of a special permit. Therefore, staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of October 16, 2018, and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, as other amendments may be adopted prior to action on this amendment. In the case of such an event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, by revising the definitions as follows:

PETS, COMMONLY ACCEPTED: Any of the following animals that have been bred or raised to live in the habitation of humans, and are dependent upon the same for food and shelter: Domesticated rabbits; hedgehogs; chinchillas; hermit crabs; hamsters; ferrets; gerbils; guinea pigs; pet mice; and pet rats; turtles; fish; dogs; cats; domestic chickens, ducks and geese under two (2) months old; birds such as canaries, parakeets, doves and parrots; worm/ant farms; non-poisonous spiders; chameleons and similar lizards; and non-poisonous spiders and snakes not venomous to people. The BZA may allow other ~~pets~~ animals to be kept as commonly accepted pets in accordance with the provisions of Part 9 of Article 8.

Amend Sect. 2-512, Limitations on the Keeping of Animals, Par. 3 as follows:

B. The number of domestic fowl kept on a given lot shall not exceed the ratio of one (1) bird unit per one (1) acre, with a bird unit identified as follows:

32 chickens = 1 bird unit
16 ducks = 1 bird unit
8 turkeys = 1 bird unit
8 geese = 1 bird unit

In determining the number of domestic fowl permitted, only fowl ~~six (6)~~ two months or older in age shall be counted.

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ADMINISTRATIVE - 5

Authorization to Advertise a Public Hearing to Consider Proposed Amendments to the Ordinances for the Fairfax County Employees', Uniformed and Police Officers Retirement Systems

ISSUE:

Authorization to advertise a public hearing on proposed amendments to Articles 2, 3, and 7 of Chapter 3 of the Code of the County of Fairfax, which set forth the ordinances for the Fairfax County Employees', Uniformed and Police Officers Retirement Systems, respectively. These proposed amendments revise certain benefit provisions only with respect to employees hired on or after July 1, 2019.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing regarding the proposed amendments to the Fairfax County Employees', Uniformed and Police Officers Retirement Systems for the purpose of changing certain benefit provisions with respect to employees hired on or after July 1, 2019. The Boards of Trustees for the three Retirement Systems have reviewed the actuary's assessment of impact of these proposed amendments, if approved, and agree with it.

TIMING:

Board action is requested on October 16, 2018, to provide sufficient time to advertise the public hearing for November 20, 2018, at 4:30 p.m.

BACKGROUND:

The Board requested a thorough reexamination of the County's retirement benefits and consideration of changes to the benefits provided to new hires to improve the systems' long-term sustainability. In response to this request, staff returned to the Board with detailed information on hiring and retirement trends, the VRS mandate, and benefit levels. The Board discussed potential changes to benefit provisions for new employees at several meetings of its Personnel Committee and established a working group of Board members, employees, and retirees to discuss proposed changes.

At the June 22, 2018, meeting of the Personnel Committee, the Board narrowed the range of potential changes to be considered and directed staff to advertise a public hearing on these options in order to solicit community input and determine which changes should be implemented for employees hired on or after July 1, 2019. It is important to note that the

proposed amendments would apply only to new employees hired on or after July 1, 2019, and would not impact current employees and retirees.

PROPOSED AMENDMENTS:

The proposed amendments to the Employees' Retirement System ordinance, effective for new employees hired on or after July 1, 2019, will:

- increase the minimum retirement age from 55 to 60;
- require age and years of service to total 90 to be eligible for normal retirement;
- increase the period used to calculate average final compensation from 3 to 5 years;
- eliminate the pre-social security supplement; and
- repeal the provision that increases the calculated retirement annuity by 3%.

The proposed amendments to the Uniformed Retirement System ordinance, effective for new employees hired on or after July 1, 2019, will:

- increase the period used to calculate average final compensation from 3 to 5 years;
- eliminate the pre-social security supplement; and
- repeal the provision that increases the calculated retirement annuity by 3%.

The proposed amendments to the Police Officers Retirement System ordinance, effective for new employees hired on or after July 1, 2019, will:

- increase the period used to calculate average final compensation from 3 to 5 years; and
- repeal the provision that increases the calculated retirement annuity by 3%.

FISCAL IMPACT:

If all of the proposed amendments detailed above are enacted, the actuary has estimated that the employer normal cost for employees hired on or after July 1, 2019, would be reduced from 7.70% to 6.35% (a 1.35% decrease) for the Employees' Retirement System, from 16.12% to 13.82% (a 2.30% decrease) for the Uniformed Retirement System, and from 17.98% to 16.56% (a 1.42% decrease) for the Police Officers Retirement System. These estimates are presented as Option A in the letters prepared by Cheiron for the Systems (Attachment 4). Per the Personnel Committee's request, the actuarial impact for other combinations of amendments are also included for each System in the letters.

The Board has committed to not reduce the County's contribution to each System until it is fully funded. Therefore, there will be no budgetary savings from any of the proposed amendments until the Systems are fully funded. The actuary currently estimates that the three Systems will reach 100% funding by FY 2033 based on a set of assumptions including a projected rate of return of 7.25%.

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ENCLOSED DOCUMENTS:

Attachment 1: Amendments to Chapter 3, Article 2
Attachment 2: Amendments to Chapter 3, Article 3
Attachment 3: Amendments to Chapter 3, Article 7
Attachment 4: Actuarial Impact Letters from Cheiron

STAFF:

Joseph Mondoro, Chief Financial Officer
Jeffrey Weiler, Executive Director, Fairfax County Retirement Systems
Christina Jackson, Deputy Director, Department of Management and Budget
Philip Hagen, Budget Services Coordinator, Department of Management and Budget

ASSIGNED COUNSEL:

Benjamin R. Jacewicz, Assistant County Attorney

ARTICLE 2. - Fairfax County Employees' Retirement System.

Footnotes:

--- () ---

7. Editor's note— Ord. No. 20-81-3 amended Art. 2 to read as set forth in §§ 3-2-1—3-2-50. Formerly, Art. 2 consisted of §§ 3-2-1—3-2-47, and was derived from the following legislation:

Ord. Nos. 6-15-55, §§ 1—20, 22—40; 5-8-63; 6-23-65; and 10-21-70; 1961 code, §§ 9-22—9-68; and Ord. No. 10-74-9.

Division 1. - Generally.

Section 3-2-1. - Fairfax County Employees' Retirement System established.

Under the authority of Section 51.1-801 of the *Virginia Code*, there is hereby established a retirement system for employees, formerly known as the Fairfax County Supplemental Retirement System, to be known henceforth as the "Fairfax County Employees' Retirement System," by and in which name it shall, pursuant to the provisions of this Article, transact all of the System's business. The Fairfax County Employees' Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (20-81-3; 10-01-3; 50-13-3; 2-16-3.)

Section 3-2-2. - Definitions.

Unless provided otherwise in another Section, the following definitions shall apply to this Article:

(a) *Accrued sick leave credit* shall mean:

- (1) ~~(1)~~— For employees ~~whose County or School Board employment commenced by reporting for work before January 1, 2013 (who are~~ members of Plans A or B), the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) ~~(2)~~— For employees ~~whose County or School Board employment commenced by reporting for work on or after January 1, 2013 (who are~~ members of Plans C ~~or~~ D), ~~or E~~, the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose County or School Board employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement allowances and benefits shall be the employee's accrued sick leave balance or 2,080 hours, whichever is less.

(b) *Accumulated contributions* shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his or her individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-2-24.1, together with interest credited on such amounts and any other amounts he or she shall have contributed, or transferred thereto, as provided in Section 3-2-28(c).

(c) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.

(d) *Average final compensation* shall mean the average annual creditable compensation of a member during the 36 consecutive months (78 consecutive pay periods for members who are paid on a biweekly basis) ~~for a member of Plan A, B, C or D, or 60 consecutive months (130 consecutive pay periods for members who are paid on a biweekly basis) for a member of Plan E,~~ in which the member received his or her highest creditable compensation.

- (1) In the event that a ~~member's~~ member's creditable service is less than 36 months (78 pay periods), ~~for a member of Plan A, B, C or D, or less than 60 months (130 pay periods) for a member of Plan E,~~ his or her average final compensation shall be his or her average monthly

creditable compensation received during the entire period of creditable service multiplied by 12 (average biweekly creditable compensation multiplied by 26 for biweekly paid members).

- (2) In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, that in determining the average final compensation for members who became members of the System on or after January 1, 2013 (members of Plans C, D or D), E), no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose.
- (3) For purposes of computing a service-connected disability retirement allowance under Section 3-2-36, a member's average final compensation shall be computed as if a member had received compensation (including salary increases which the Board determines would have been awarded to the member) for any period prior to retirement during which the member ceased employment on account of a disability for which he or she received compensation benefits under the Virginia Workers' Compensation Act.
- (4) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, respectively, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the Human Resources Director's review of the member's County personnel and payroll records, the Board shall calculate the member's average final compensation in a manner which approximates the average final compensation the member would have if the member had received the merit increment at the time he or she would have been entitled to receive such merit increment but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. In performing such calculation, the Board shall utilize the following assumptions:
 - (A) If the employee was scheduled to receive a merit increment in fiscal years 1992 and/or 1993, then it was delayed.
 - (B) The employee received no promotions, demotions, reclassifications or regrades from the date of the delayed merit increment(s).
 - (C) The employee moved through the steps of the pay grade as quickly as possible according to his or her respective pay plan.
 - (D) The delayed merit increments and all future merit increments occurred on the day and the month which is the same day and month when the employee retires.
 - (E) The employee is in full employment each year if in full employment at the time of the delayed merit increment and also at the time of retirement.

A factor shall be derived utilizing these assumptions, and then used to calculate the increase, if any, in the member's final average compensation. If at the time of retirement, the employee has service credit for three years or more at the longevity step of the pay grade in which his or her position falls, then there shall be no adjustment to the member's average final compensation. This rule shall apply to all applications for allowances and benefits filed with the Board on or after July 13, 1991. The Board shall make any necessary retroactive adjustments to allowances and benefits.

- (5) Notwithstanding the foregoing, in the case of any SESRP member, creditable compensation for each year after the effective date of the agreement referenced in Subsection (~~eedd~~) shall equal 1.05634 times the SESRP member's unadjusted compensation.

- (6) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or pay periods in calculating average final compensation.
- (e) *Beneficiary* shall mean any person, other than a member, entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as provided for in this Article.
- (g) *Creditable compensation* shall mean the full compensation, including pick-up contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and civilian roll call hours paid, but excluding all overtime pay except roll call hours paid, earned on or after July 1, 1993, and excluding performance bonuses, and amounts paid upon separation from employment which represent the unused portion of the employee's accrued annual leave. In cases where the compensation includes maintenance and other prerequisites, the Board shall fix the value of that portion of the compensation not paid in money. Effective for plan years after December 31, 1988, compensation in excess of \$200,000.00, as indexed under Section 415(d) of the Internal Revenue Code, shall be disregarded. Notwithstanding the foregoing, effective for members whose County or School Board employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001, an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.
- (h) *Creditable service* shall mean the sum of membership service credit, plus prior service credit, plus portability service credit purchased pursuant to Section 3-2-24.1, plus accrued sick leave credit.
- (i) *DROP* shall mean the Deferred Retirement Option Program, as provided for by Section 3-2-56.
- (j) *Employee* shall mean any person regularly employed in rendering service to the County whose compensation is fully or partially paid directly or indirectly by the County. It shall also include all officers and other persons regularly employed by the School Board who are not eligible for membership in the Virginia Retirement System (VRS).
- (k) *Employer* shall mean the School Board or an authority in the general County having the power to appoint an employee to office or employment paid directly or indirectly by the County and/or the Board of Trustees of the System.
- (l) *Executive Director* shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (m) *Internal Revenue Code* shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.
- (n) *Medical Examining Board* shall mean the physician or physicians provided for by Section 3-2-9.
- (o) *Member* shall mean any person included in the membership of the System as provided for by Section 3-2-19.
- (p) *Membership service credit* shall mean credit for service rendered while a member of the System, or as otherwise provided in Section 3-2-23. Service rendered while a member of SESRP shall be treated without duplication as service rendered while a member of the System.
- (q) *Normal retirement date* shall mean:
 - (1) For employees whose County or School Board employment commenced by reporting for work before January 1, 2013 (members of Plans A and B),

- (A) The date on which a member in service attains the age of 50 years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of 80 years; or
 - (B) The date on which a member attains the age of 65 years.
- (2) For employees whose County or School Board employment commenced by reporting for work on or after January 1, 2013 and before July 1, 2019 (members of Plans C and D),
 - (A) The date on which a member in service attains the age of 55 years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of 85 years; or
 - (B) The date on which a member attains the age of 65 years.
- (3) For employees whose County or School Board employment commenced by reporting for work on or after July 1, 2019 (members of Plan E),
 - (A) The date on which a member in service attains the age of 60 years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of 90 years; or
 - (B) The date on which a member attains the age of 65 years.
- (r) *Pick-up contributions* shall mean a member's regular contributions which is picked up, through a salary reduction by the County from the member's compensation for service rendered on or after December 22, 1984.
- (s) *Plan A* shall mean the option effective July 1, 1981, available to employees whose County or School Board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:
 - (1) Contribute four percent of compensation up to the taxable wage base and five and one-third percent of compensation in excess of the taxable wage base; and
 - (2) Receive normal (and early) service retirement benefits based on one and eight-tenths percent of average final compensation up to the social security breakpoint plus two percent of average final compensation in excess of the social security breakpoint times years of service.
- (t) *Plan B* shall mean the option effective July 1, 1981, available to employees whose County or School Board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:
 - (1) Contribute five and one-third percent of all compensation; and
 - (2) Receive normal (and early) service retirement benefits based on two percent of the average final compensation times years of service.
- (u) *Plan C* shall mean the option effective ~~beginning on~~ January 1, 2013, available to employees whose County or School Board employment commenced by reporting for work on or after January 1, 2013, and before July 1, 2019, providing for current and new members to:
 - (1) Contribute four percent of compensation up to the taxable wage base and five and one-third percent of compensation in excess of the taxable wage base; and
 - (2) Receive normal (and early) service retirement benefits based on one and eight-tenths percent of average final compensation up to the social security breakpoint plus two percent of average final compensation in excess of the social security breakpoint times years of service; subject to the definitions, terms and conditions applicable to Plan C set forth herein.
- (v) *Plan D* shall mean the option effective ~~beginning on~~ January 1, 2013, available to employees whose County or School Board employment commenced by reporting for work on or after January 1, 2013, and before July 1, 2019, providing for current and new members to:

- (1) Contribute five and one-third percent of all compensation; and
- (2) Receive normal (and early) retirement benefits based on two percent of the average final compensation times years of service; subject to the definitions, terms and conditions applicable to Plan D set forth herein.

~~(w)(w)~~ Plan E shall mean the plan effective July 1, 2019, available to employees whose County or School Board employment commenced by reporting for work on or after July 1, 2019, providing for current and new members to:

- (1) Contribute five and one-third percent of all compensation; and
- (2) Receive normal (and early) retirement benefits based on two percent of the average final compensation times years of service; subject to the definitions, terms and conditions applicable to Plan E set forth herein.

~~(x)~~ Primary social security benefit shall mean the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his or her date of retirement, under the provisions of this Chapter, except as otherwise specifically provided.

~~(xy)~~ Prior service credit shall mean credit for service rendered prior to the establishment of the Fairfax County Supplemental Retirement System (the predecessor of this System) on July 1, 1955, as provided in Section 3-2-24.

~~(yz)~~ Retirement allowance shall mean the retirement payments to which a member is entitled as provided in this Article.

~~(zaa)~~ School Board shall mean the Fairfax County School Board, a political subdivision of the Commonwealth of Virginia.

~~(aabb)~~ Service shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.

~~(bbcc)~~ SESRP shall mean the former Fairfax County Senior Executive Service Retirement Plan.

~~(eedd)~~ SESRP member shall mean an individual who entered into an agreement with the County to participate in SESRP in lieu of further participation in the System and who was either still an active participant in SESRP or still receiving benefits under SESRP on January 1, 1996.

~~(edee)~~ Social security shall mean the federal Social Security Act and its programs for old age, survivors and disability insurance and benefits, as applicable.

~~(eeff)~~ Social security breakpoint shall mean the average of the taxable wage base for the 35 calendar years ending with the year in which the member attains social security normal retirement age. In determining a member's social security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year shall remain the same for all future years.

~~(#ggg)~~ System shall mean the Fairfax County Employees' Retirement System. When any part of this Article refers to multiple retirement systems, the Employees' Retirement System shall be referred to as "this System," rather than "the System."

~~(gghh)~~ Taxable wage base shall mean the maximum amount of wages received during the calendar year on which social security taxes are payable by a member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code. (20-81-3; 5-85-3; 28-89-3; 27-90-3, § 1; 15-93-3; 22-93-3; 37-94-3; 25-95-3; 27-97-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 26-12-3; 2-16-3.)

Section 3-2-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein.(2-16-3.)

Section 3-2-3. - Duties of the employer.

The employer shall keep all necessary records relating to the hiring and employment of members and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the employer shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (20-81-3; 2-16-3.)

Section 3-2-4. - Consent to provisions of Article required for employment.

By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (20-81-3; 5-85-3; 2-16-3.)

Section 3-2-5. - Protection against fraud.

- (a) In addition to any other provisions of law, any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly.
- (b) Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in an attempt to defraud the System shall forfeit all rights to the retirement allowance or benefit obtained by such misrepresentation. Making a false statement or falsifying or permitting to be falsified any record of the System, in an attempt to defraud the System shall constitute grounds for dismissal from service.
- (c) Whenever the Board shall find, after notice and hearing, that a person has obtained a retirement allowance or benefit from the System by false statement or falsification of record, it shall immediately terminate the allowance or benefit if the entire allowance or benefit was obtained by such misrepresentation or the additional amount of the allowance or benefit so obtained by such misrepresentation. Any allowance or benefit or additional amount of an allowance or benefit obtained by false statement or falsification of a record shall be deemed to be an overpayment, and the Board shall take all necessary legal and administrative steps to recover the overpayment.
- (d) The Board shall adopt rules and regulations pursuant to Section 3-2-15 to implement the provisions of this Section; provided, that the failure of the Board to do so shall not prevent the implementation of the sanctions called for by this Section. A final judgment of conviction by a court of competent jurisdiction in a prosecution under Subsection (a) of this Section shall be prima facie evidence of fraud under Subsections (b) and (c) of this Section; provided, that a conviction under Subsection (a) of this Section shall not be a prerequisite for action by the Board under Subsections (b) or (c) of this Section. The remedies provided the System under this Section are in addition and supplemental to any other remedies it may have under law. (20-81-3; 27-90-3, §1; 2-16-3.)

Section 3-2-6. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, to the return of accumulated contributions or any other right accrued or accruing to any person under this Article and the money covered by this Article shall not be subject to execution, garnishment or attachment, and to the extent permitted by law, the operation of bankruptcy or insolvency law or any other process of law whatsoever except for administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code* or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code*. (20-81-3; 5-85-3; 13-92-3; 1-93-3; 2-16-3.)

Section 3-2-7. - Errors resulting in over or under-payment.

- (a) Should any change or error in the records or in the computation of a member's or beneficiary's benefit or refund result in any member or beneficiary receiving from the System an amount more (overpayment) or less than he or she would have been entitled to receive had the records or computation error been correct, the Board shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

- (b) An overpayment shall constitute a debt owed by the recipient to the System and the Board is authorized to use any and all legal action to collect the overpayment and any accrued interest.
- (c) The Board is authorized to enter into written agreements with recipients of overpayments to provide for installment payments to recover the overpayment, the amount of accrued interest, and interest on any unpaid balance.
- (d) The Board is authorized to compromise any disputed overpayment.
- (e) Interest shall accrue on overpayments at the rate or rates established by the Board; provided, that no interest shall accrue if the Board has exercised its adjustment authority under Subsection (a) of this Section or under any other circumstances in which the Board, in its discretion, determines that interest shall not accrue. (20-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-8. - Amendment of article.

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the System and no amendment shall be adopted which shall reduce the then accrued benefits of members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. At least 30 days prior to the public hearing before the Board of Supervisors on any proposed amendment, the Board of Trustees of the System shall be provided with the text of the proposed amendment to provide it the opportunity to submit its comments on the proposed amendment to the Board of Supervisors; provided, this limitation shall not prevent the Board of Supervisors from adopting an emergency amendment under Section 15.2-504 of the *Virginia Code*. (20-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-9. - Medical examining board.

The Medical Examining Board shall consist of the Director of the Health Department (or his or her designee) and, in the discretion of the Board, one or two other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall report in writing to the Board their conclusions and recommendations upon all matters referred to it. (20-81-3; 27-97-3; 2-16-3.)

Division 2. - Board of Trustees.

Section 3-2-10. - Administration of system vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board. The Board in its discretion, may, by rule or regulation adopted under Section 3-2-15(a), delegate authority to the Executive Director to perform certain duties and administrative responsibilities. (20-81-3; 27-90-3, § 12-16-3.)

Section 3-2-11. - Membership; term of office.

(a) The Board of Trustees of the System shall consist of the following members:

- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her permanent designee, sitting ex officio;
- Director of the Department of Human Resources, or his or her permanent designee, sitting ex officio;
- Assistant Superintendent for Human Resources for the Fairfax County Public Schools, or his or her permanent designee, sitting ex officio;
- Four persons appointed by the Board of Supervisors;
- One School Board employee elected by the members of the System;
- One County employee elected by members of the System who are County employees; and

- One retired member elected by retired members of the System.

Responsibility for the conduct of said elections shall rest with the County Executive.

- (b) With the exception of the Director of the Department of Finance, the Director of the Department of Human Resources, and the Assistant Superintendent for Human Resources the term of office of the trustees shall be four years. The only persons eligible to be elected by County or School Board employees to the Board are County or School Board employees who are members of the System, respectively. The office of such trustees shall be vacated should such trustees separate from County or School Board service prior to completion of their term. (20-81-3; 27-90-3, § 1; 9-91-3; 2-93-3; 2-16-3.)

Section 3-2-12. - Vacancies in office.

If a vacancy occurs in the office of a trustee of the System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3; 2-16-3.)

Section 3-2-13. - Compensation of trustees.

Those trustees eligible for compensation under County policy may receive compensation at a rate set by the Board of Supervisors. (20-81-3; 2-16-3.)

Section 3-2-14. - Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3; 2-16-3.)

Section 3-2-15. - Functions of the Board.

- (a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the System and for the transaction of its business, copies of which shall be made available to interested parties.
- (b) The Board may employ and pay out of the System funds for all services as shall be required.
- (c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the System and for checking the experience of the System.
- (d) The Board shall keep minutes of all its proceedings. These minutes shall be open to the public for inspection, unless applicable law provides otherwise.
- (e) The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (f) Beginning on July 1, 1990, the Board shall cause an actuarial valuation to be made of the System annually.
- (g) The Board shall review adverse decisions as provided by Section 3-2-48. (20-81-3; 27-90-3, § 1; 2-16-3.)

Division 3. - Management of Funds.

Section 3-2-16. - Board trustee of funds; investment of same.

- (a) The Board shall be the trustees of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.
- (b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (20-81-3; 2-16-3.)

Section 3-2-17. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He or she shall give bond as a condition for the faithful performance of his or her duties and the proper accounting of all funds and securities coming into his or her hands. He or she shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (20-81-3; 2-16-3.)

Section 3-2-18. - Prohibited interest of member or employee of Board.

- (a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq., of the *Virginia Code*, shall apply to members and employees of the Board.
- (b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the System, except to make such current and necessary payments as are authorized by the Board. (20-81-3; 2-16-3.)

Division 4. - Membership in System.

Section 3-2-19. - Membership composition.

- (a) Membership shall be composed of the following:

- (1) All persons who were members of the System on the effective date of this Article and all SESRP members; provided, that benefits under the System in the case of SESRP members shall be in lieu of, and not in addition to, benefits under SESRP.
- (2) Future employees as hereinafter identified, except those listed in Subparagraphs (A) and (B) of this Subsection.
 - (A) Employees who are members of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System and employees who are eligible to become members of those systems, are not eligible for membership in this System; provided, that an employee who is a member of such a system shall be eligible for membership in this System if he or she elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he or she was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee shall be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23.

If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee shall be permitted but not required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23. Exempt benefits eligible and exempt temporary employees are not eligible for membership in this System; provided, that any such employee who became a member of this System under the provisions of this Article in effect at the time he or she commenced his or her service with the County shall continue to be a member.

The following employees who elect, in writing at the time of their initial eligibility not to become members of the System, shall be exempted from the System: elected officials, including constitutional officers and persons appointed to fill vacancies in elective offices, and their appointed deputies or assistants.

- (B) School Board employees who are members of the Virginia Retirement System (VRS) are not eligible for membership in this System. Substitute employees, food service employees whose assigned employment is less than three hours per day, and temporary employees are not eligible for membership in this System.
- (3) Any employee, otherwise qualified, who elected not to or was unable to become a member of the System pursuant to any ordinance then in effect; provided, he or she pays into this System all contributions which would have been due from him or her had he or she been a member of the System during the period of his or her employment, plus interest on such contributions at the

rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit under this Subsection through the payment of contributions for a prior period of employment shall be made within one year after the employee is first eligible to make such an election or by six months from the effective date of this amendment [September 17, 1990], whichever is later.

- (b) Uniformed employees of the Department of Animal Control transferring to the Fairfax County Uniformed Retirement System.
 - (1) Members of this System who were uniformed employees of the Department of Animal Control, including the Director, on or after October 1, 1985, except those eligible to remain in this System pursuant to Subsection (db)(2) of this Section, are hereby transferred to membership in the Fairfax County Uniformed Retirement System effective the latter of October 1, 1985, or the date of their appointment.
 - (2) Those members subject to transfer to the Uniformed Retirement System pursuant to Subsection (db)(1) of this Section who as of the date of adoption of this Subsection [December 16, 1985] have attained normal retirement age under this System shall continue as members of this System unless within 30 days after the adoption of this Subsection they make an irrevocable election in writing to transfer into the Uniformed Retirement System pursuant to this Subsection.
 - (3) Members of this System being transferred to the Uniformed Retirement System pursuant to this Subsection shall, within 30 days of the adoption of this Subsection [December 16, 1985], make an irrevocable election in writing to either waive membership service credit in the Uniformed Retirement System based upon their service in this System or to purchase membership service credit in the Uniformed Retirement System based on their service in this System pursuant to the provisions of Section 3-3-24. Members who fail to make an election shall be deemed to have elected to waive membership service credit.
 - (4) Members with five or more creditable years of service with this System who elected to waive membership service credit in the Uniformed Retirement System pursuant to Subsection (db)(3) of this Section shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions (with interest), reduced by the amount of any retirement allowances previously received by them under this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under Section 3-2-38(b). Members who fail to make an election shall be deemed to have elected a refund. Members with less than five years of creditable service with this System who elect to waive membership service credit in the Uniformed Retirement System pursuant to Subsection (db)(3) of this Section shall be refunded their accumulated contributions (with interest) reduced by the amount of any retirement allowances previously received by them under this Article.
 - (5) With respect to each member electing to purchase membership service credit in the Uniformed Retirement System pursuant to Subsection (db)(3) of this Section, the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed Retirement System, who shall credit such funds to the appropriate accounts of the Uniformed Retirement System.
 - (6) The Board shall transfer to the Board of Trustees of the Uniformed Retirement System any employee or employer contributions received by it attributable to members transferring to the Uniformed Retirement System pursuant to Subsection (db)(1) or (2) of this Section for service rendered after the effective date of the members' transfer. The Board of Trustees of the Uniformed Retirement System shall credit such funds to the appropriate accounts of the Uniformed Retirement System.
- (c) Certain employees of the Department of Public Safety Communications-~~Center~~ in the job classes of Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II, or Public Safety Communicator I transferring to the Fairfax County Uniformed Retirement System.

- (1) Members of this System who are in one of the job classes identified in this Subsection, on or before June 30, 2005, shall have the opportunity to transfer to membership in the Fairfax County Uniformed Retirement System, effective the start of the first pay period beginning on or about October 1, 2005.
- (2) Members of this System who are eligible for transfer to the Uniformed Retirement System pursuant to Subsection (ec)(1) of this Section may elect to maintain their membership in this System and not transfer to the Uniformed Retirement System.
- (3) Members of this System who are eligible for transfer to the Uniformed Retirement System pursuant to Subsection (ec)(1) of this Section and elect to do so, shall, after the adoption of Subsection (ec) of this Section, on or before September 1, 2005, make an irrevocable election in writing to transfer to the Uniformed Retirement System. Members electing to transfer to the Uniformed Retirement System may elect to transfer to the Uniformed Retirement System but not purchase membership service credit in the Uniformed Retirement System based upon their service in this System, or may elect to purchase membership service credit in the Uniformed Retirement System based on their service in this System pursuant to the provisions of Section 3-3-24. Transferring members who fail to make an election shall be deemed to have elected to waive the opportunity to purchase membership service credit in the Uniformed Retirement System.
- (4) Members with five or more creditable years of service with this System who elect to waive membership service credit in the Uniformed Retirement System shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions with interest reduced by the amount of any retirement allowance previously received by them under this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under the provisions of Section 3-2-38(b). Members who fail to make an election shall be deemed to have elected not to receive a deferred vested benefit. Members with less than five years of creditable service with this System who elect to waive membership service credit in the Uniformed Retirement System ~~pursuant to Subsection (ec)(3) of this Section~~ shall be refunded their accumulated contributions (with interest) reduced by the amount of any retirement allowances previously received by them under this Article.
- (5) With respect to each member electing to purchase membership service credit in the Uniformed Retirement System pursuant to Subsection (ec)(3) of this Section, the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed Retirement System, who shall credit such funds to the appropriate accounts of the Uniformed Retirement System. Members electing to purchase membership service credit in the Uniformed Retirement System shall have the option of paying to the Board of Trustees of the Uniformed Retirement System the difference between the employee contributions that would have been required under the Uniformed Retirement System plus interest, and their employee contributions plus interest to this System for the period for which membership service credit is sought. Members who elect to pay the difference between the employee contributions plus interest that would have been required under the Uniformed Retirement System and their employee contributions plus interest to this System, shall not be eligible to enter the DROP under the Uniformed Retirement System until the entire amount of the difference in employee contributions plus interest has been paid to the Uniformed Retirement System and the member otherwise meets the eligibility requirements to enter the DROP under the Uniformed Retirement System. In lieu of paying the difference between the employee contributions that would have been required under the Uniformed Retirement System plus interest and their employee contributions plus interest to this System, a member may elect to have the amount of membership service credit transferred to the Uniformed Retirement System actuarially reduced based on the amount that would have been required.
- (6) The Board shall transfer to the Board of Trustees of the Uniformed Retirement System any employee or employer contributions received by it attributable to member's transfer to the Uniformed Retirement System pursuant to Subsection (ec)(1) or (2) of this Section for service rendered after the effective date of the member's transfer. The Board of Trustees of the Uniformed

Retirement System shall credit such funds to the appropriate accounts of the Uniformed Retirement System.

- (7) Members of this System in one of the job classes identified in this Subsection who elect to enter the DROP on or before September 1, 2005, are not eligible for transfer to the Uniformed Retirement System.
- (d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of either the Fairfax County Uniformed Retirement System or the Fairfax County Police Officers Retirement System who has more than five years of creditable service in such system and who is appointed to serve as a Deputy County Executive shall remain a member of the system to which he or she belonged, whether the Uniformed Retirement System or the Police Officers Retirement System, prior to his or her appointment as a Deputy County Executive, and shall not become a member of this System as a result of such appointment.
- (e) Persons receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or Fairfax County Police Officers Retirement System are eligible for membership only under the terms and conditions set forth in Section 3-2-43. (20-81-3; 34-81-3; 23-85-3; 36-86-3; 14-87-3; 27-90-3, § 1; 45-93-3; 23-05-3; 26-12-3; 2-16-3.)

Section 3-2-19.1. - Interest rates for purchases for membership service credit.

The Board may at any time and from time to time, establish a new interest rate or rates which shall be applicable to purchases of membership service credit under Subsection ~~(ae)~~(3) of Section 3-2-19. (2-16-3.)

Section 3-2-20. - Cessation of membership.

The membership of any person in the System shall cease:

- (a) If he or she ceases to be an employee for a period of five years, having had less than five years of creditable service on his or her date of separation from the County or School Board; or
- (b) Upon separation and withdrawal of his or her accumulated contributions; or
- (c) If a member, as defined in Section 3-2-19(b)(1), gives the Board written notice of his or her withdrawal from the System; or
- (d) Upon death. (20-81-3; 4-81-3; 2-16-3.)

Division 5. - Service Credit.

Section 3-2-21. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service rendered as an employee and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (20-81-3; 2-16-3.)

Section 3-2-22. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one year of service for all service rendered in any period of 12 consecutive months. (20-81-3; 2-16-3.)

Section 3-2-23. - Membership service credit.

~~(a)~~ ~~(a)~~ Each member shall receive membership service credit for periods in which he or she received compensation and was a member of the System, provided that any former member of the System who ceased his or her County or School Board employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions that would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service.

- (1) In the event that a member of either Plan A or Plan B who ceased his or her County or School Board employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, and before July 1, 2019, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in, either Plan C or Plan D, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; ~~however, notwithstanding,~~
- (2) In the event that a member of Plan A, Plan B, Plan C, Plan D, or Plan E, who ceased his or her County or School Board employment and withdrew his or her accumulated member contributions from the System seeks, on or after July 1, 2019, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in Plan E, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought.
- (4)(3) Notwithstanding the foregoing, a member of any of the ~~four~~five Plans (A, B, C, D or DE) that are part of the System who ceased his or her County or School Board employment, but who left his or her accumulated member contributions in the System, shall, upon his or her return to County or School Board employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if the entire amount in that account is attributable to a rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code.
- (b) Members in service shall also receive membership service credit for periods of service-connected disability retirement from the System.
- (c) Members whose service is terminated to enter into the armed forces of the United States and who subsequently return to service shall be granted membership service credit for the period of their service in the armed forces of the United States to the extent required under federal and state law.
- (d) A member who transfers from a position in the service of the Fairfax County Public Schools (FCPS) in which he or she was a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC) to a position in the County service shall receive membership service credit for periods that he or she had been employed by FCPS and was a member of VRS and ERFC, if such service shall not be considered in the calculation of any retirement allowance or benefit from VRS or ERFC, and if such member pays into this System all contributions that would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates established by the Board, for each of the years for which membership service credit is sought.
- (e) The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable to Subsections (a) and (d) of this Section. Any election to purchase membership service credit under Subsections (a) or (d) of this Section may be made at any time by a member of the System while in service. The Board may enter into agreements with members purchasing membership service credit under the provisions of Subsections (a) and (d) of this Section to pay the member contributions due from them in installments, provided that such members shall not be entitled to such membership service credit until all payments under such agreements have been made.
- (f) (1) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental

Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System, and who withdraws therefrom and becomes a member of this System, may purchase membership service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him or her had he or she been a member of this System for each of the years for which membership service credit is sought. (A member may purchase membership service credit for prior service while a member of VRS only for service due to employment by the Fairfax County Public Schools (FCPS).)

- (2) The amount due from a member for such purchase of membership service credit shall be satisfied, to the extent possible, (a) by directing the trustees of the system from which he or she is withdrawing to transfer his or her accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he or she is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from such system, or (iii) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code. To the extent that a rollover or direct transfer permitted under this Subsection is insufficient to purchase the necessary membership service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such membership service credit. (20-81-3; 5-85-3; 27-90-3, § 1; 45-93-3; 36-94-3; 7-00-3; 10-01-3; 8-03-3; 26-12-3; 2-16-3.)

Section 3-2-24. - Prior service credit.

- (a) Prior service credit may be granted to persons who were members of the Fairfax County Supplemental Retirement System on July 1, 1955, or who were employees who previously left service to enter directly into the armed forces of the United States and who were still in the armed forces on or after that date as provided in Subsection (b) of this Section.
- (b) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. This Subsection shall be applied retroactively to January 1, 2003. (20-81-3; 27-90-3, § 1; 30-09-3; 2-16-3.)

Section 3-2-24.1. - Portability service credit.

- (a) Definitions.
 - (1) *Accepting plan* shall mean the retirement plan or system which is receiving membership assets from another retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
 - (2) *Portability service credit* shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
 - (3) *Transferring plan* shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (b) The Board of Supervisors may enter into agreements with the Virginia Retirement System (VRS) or with any political subdivision of the Commonwealth of Virginia to permit any vested member of VRS or any vested member of a retirement plan or system of a political subdivision of the Commonwealth of Virginia to purchase portability service credit in this System; provided, that the Board of Supervisors may only enter into such agreements with political subdivisions of the Commonwealth of Virginia whose retirement plans or systems constitute defined benefit plans, or eligible deferred compensation plans described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A).

- (c) The purchase of portability service credit in the System pursuant to this Section may only be made within 18 months of the date when a member commences employment in a position covered by the System, or, for employees who are members of the System on March 24, 2003, within 18 months of this date.
- (d) In order to purchase portability service credit in the System, the member shall be a vested member of the transferring plan and the transferring plan shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board shall determine the amount of portability service credit that would be actuarially equivalent to the amount of the assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have 30 days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.
- (e) In the event that the assets transferred are not sufficient to purchase portability service credit in the System equivalent to five years of service, the member shall not become vested in the System until his or her creditable service equals five years.
- (f) The purchase of portability service credit in the System shall be accomplished upon the transfer of assets from the transferring plan to the System. Upon the completion of such transfer, the member shall lose all rights to any allowances and benefits from the transferring plan, and shall only be entitled to receive allowances and benefits from the System.
- (g) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may purchase portability service credit in VRS or the retirement system of the political subdivision of the Commonwealth for whom he or she shall then work. In order to purchase such portability service credit, the member must make application in writing to this System, requesting that his or her membership assets be transferred to the accepting plan. The amount of assets subject to transfer shall be an amount equal to the greater of (i) the member's accumulated member contributions with interest thereon, or (ii) an amount representing the present value of the member's accrued benefits with this System. Upon the transfer of membership assets from this System to the accepting plan, the member shall lose all rights to any allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3; 2-16-3.)

Division 6. - Contributions.

Section 3-2-25. - Member contributions.

- (a) There shall be picked up from the compensation of each member for each and every payroll period ending subsequent to December 22, 1984, the contribution payable by such member as provided in this Section; provided, that no contributions shall be required or permitted of any SESRP member. The Board of Supervisors may, from time to time, revise the rates of member contributions to the System.
- (b) Except as provided in Subsection (a) of this Section, ~~allevery~~ present and future ~~membersmember,~~ otherwise qualified, who, on or before December 31, 1981, and upon approval of the Board, or within 30 days of appointment as ~~employeesan employee~~:
 - (1) ~~(1) — DeDoes~~ not agree in writing to the terms set forth in Subsection (b)(2) of this Section and Section 3-2-32(a)(2) shall be considered ~~participantea participant~~ in Plan A or Plan C, as

applicable, and contributions a contribution shall be made for each pay period for which he or she received compensation equal to four percent of his or her creditable compensation until his or her annual creditable compensation during the calendar year exceeds the taxable wage base. When such a member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to five and one-third percent of his or her creditable compensation.

~~(2) (2)~~ AgreeAgrees in writing to the terms set forth in this Subsection and Section 3-2-32(a)(2) shall be considered ~~participantsa participant~~ in Plan B or Plan D, as applicable, and ~~contributionsa contribution~~ shall be made for each pay period for which he or she receives compensation subsequent to the election of Plan B or Plan D equal to five and one-third percent of his or her creditable compensation.

~~(2)(3)~~ Shall, for employees whose County or School Board employment commenced by reporting for work on or after July 1, 2019, be a participant in Plan E and a contribution shall be made for each pay period for which he or she receives compensation equal to five and one-third percent of his or her creditable compensation.

- (c) Notwithstanding any other provision of this Section, no pick-up shall be made from any member's compensation if the employer's contribution required hereunder is in default.
- (d) The Board may modify the method of collecting the pick-up contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board as provided in Subsection (b) of this Section may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.
- (e) The Board may approve written requests to change the offered optional plan selected under Subsection (b) of this Section when such requests are made not later than December 31, 1981.
- (f) All contributions required to be made under Subsections (b) and (c) of this Section with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County, and shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the Internal Revenue Code. For all other purposes under this Chapter and otherwise, such pick-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked-up amounts shall be included in compensation for purposes of calculating member benefits under Division 8. The County shall pay such picked-up amounts from the same source of funds which is used in paying earnings to the employee. (20-81-3; 34-81-3; 36-83-3; 5-85-3; 2-16-3.)

Section 3-2-26. - Employer contributions.

- (a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.
- (b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of the System's assets divided by actuarial accrued liability of the System) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is 120 percent. The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.
 - To the extent that the System's funding ratio exceeds 120 percent, a credit shall be established equal to the amount of assets in excess of 120 percent of the actuarial accrued liability.
 - To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a 15 year amortization of the credit or charge described in this Subsection, to be paid until the funding ratio re-enters the corridor, at which time it shall cease.

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

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120 percent shall be excluded from this component. (20-81-3; 27-90-3; 16-02-3; 28-15-3, § 1; 2-16-3.)

Division 7. - Assets of System.

Section 3-2-27. - Assets to be credited to one of two accounts.

All of the assets of the System shall be credited, according to the purpose for which they are held, to one of two accounts, namely, the members' contribution account, and the retirement allowance account. (20-81-3; 2-16-3.)

Section 3-2-28. - Members' contribution account.

- (a) The members' contribution account shall be the account to which all members' contributions, pick-up contributions and interest allowances as provided in this Article shall be credited. In the case of any SESRP member, the member's contribution account shall consist of the amount in the Severance Account as defined in the provisions of SESRP effective on January 1, 1996, and the member's accumulated contributions to the System in existence at the time the member elected to participate in the SESRP. After January 1, 1996, the member's contribution account of any SESRP member shall annually be credited with the difference between the SESRP member's creditable compensation and the member's unadjusted compensation. From this account shall be paid the accumulated contributions of a member required to be returned to him or her upon withdrawal or paid in the event of his or her death before retirement.
- (b) Each member's contribution and pick-up contributions provided for in Section 3-2-25 shall be credited to the individual account of that member.
- (c) Each individual account of the members' contribution account shall be credited annually with interest at a rate or rates established by the Board; provided, that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five years. The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable under this Section.
- (d) Upon the retirement of a member, his or her accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.
- (e) Upon receipt of a completed application, the Board shall refund the individual accounts of members who have ceased to be employees after completing fewer than five years of creditable service. The completed application shall include an election by the member directing the System to refund the individual account directly to the member or to directly transfer the account to another plan as permitted under the Internal Revenue Code. (20-81-3; 5-85-3; 27-90-3; 40-08-3; 2-16-3.)

Section 3-2-29. - Retirement allowance account.

- (a) The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the System after all expenses for required services shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the System.

- (b) The amount of interest allowances provided for in Section 3-2-28 shall be transferred each year from the retirement allowance account to the members' contribution account. (20-81-3; 2-16-3.)

Section 3-2-30. - Deposits.

For the purpose of meeting disbursements the Board shall maintain sufficient cash equivalents. (20-81-3; 2-16-3.)

Division 8. - Benefits.

Section 3-2-31. - Service retirement.

- (a) Normal service retirement. Any member, in service at his or her normal retirement date or within 90 days prior thereto, and who has completed five years of creditable service, may retire at his or her normal retirement date or thereafter upon written notice to the Board, made by the member or his or her duly appointed agent, and stating the time the retirement is to become effective. However, such effective date shall be subsequent to the filing of such notice.
- (b) Early service retirement. Any member who has completed 25 years of creditable service and attained the age of 50 years, or any member who has completed at least ten years of creditable service and whose age, when combined with the years of his or her creditable service equals at least the sum of 75 years, may retire pursuant to the procedures set forth in Subsection (a) of this Section. (20-81-3; 14-87-3; 2-16-3.)

Section 3-2-32. - Service retirement allowance and other benefits.

(a) Normal service retirement.

- (1) ~~(1)~~ Upon normal service retirement after July 1, 1981, a member participating in either Plan A or Plan C shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to one and eight-tenths percent of his or her average final compensation not in excess of his or her social security breakpoint plus two percent of the average final compensation in excess of his or her social security breakpoint, said sum multiplied by the number of years of creditable service.
- (2) ~~(2)~~ Upon normal service retirement after July 1, 1981, and after undergoing the additional cost deductions through December 31, 1981, a member participating in either Plan B, Plan D or Plan ~~DE~~ shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to two percent of his or her average final compensation, said amount multiplied by the number of years of creditable service. In the event a participant in Plan B retires before December 31, 1981, the accumulated additional deductions in excess of four percent of pay not in excess of the taxable wage base shall be refunded and the member's retirement allowance shall be determined in accordance with Subsection (a)(1) of this Section.
- (3) ~~(3)~~ Pre-62 compensating benefit. In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member who had retired prior to the age of 62 years and before July 1, 2000, shall receive, except as provided in Subsection (a)(4) or (a)(5) of this Section, an additional monthly benefit equal to one percent of the average final compensation not in excess of his or her social security breakpoint times years of service until such member attains the age of 62 years.
- (4) ~~(4)~~ Pre-social security benefit. In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member in Plan A, Plan B, Plan C or Plan D who retires on or after July 1, 2000, or any member who had retired prior to the age of 62 years, before July 1, 2000 and who had not attained the age of 62 years as of July 1, 2000, shall receive an additional monthly benefit equal to one percent of the average final compensation not in excess of his or her social security breakpoint times years of service until the first month after such member is entitled to an unreduced social security benefit. Any member who retired on or after July 1, 2000, and before February 26, 2001, and was at least 62 years of age but not yet entitled to an unreduced social security benefit as of the date of his or her retirement, shall receive the pre-social security benefit, without interest, retroactive to the effective date of his or her retirement. However, the pre-social security benefit provided herein shall not be credited to the DROP accounts of members of Plans C or D who elect to participate in the DROP; however, upon the completion of the member's DROP

period, the member shall be entitled to receive the pre-social security benefit provided herein if he or she is not then entitled to an unreduced social security benefit until the first month after such member is entitled to an unreduced social security benefit. The term *unreduced social security benefit* shall mean a social security benefit not reduced as a result its receipt before the normal retirement age for receiving social security benefits, as defined by applicable federal statute and regulation.

(5) Early Age Option. Any member in Plan E who retires prior to his or her full retirement age under social security, shall be eligible to receive an additional monthly benefit equal to 0.5 percent of his or her average final compensation, not to exceed his or her social security breakpoint times years of service, until the first month after such member becomes entitled to an unreduced social security benefit. Upon reaching the full retirement age under social security, the member's monthly benefit shall be reduced for life by an amount determined to result in a lifetime benefit under this option that is actuarially equivalent to the lifetime benefit that would be received without this option.

- (b) Early service retirement. Upon early service retirement, a member shall receive an amount which shall be determined in the same manner as for retirement at his or her normal retirement date under Subsections (a)(1) and (a)(2) of this Section, with years of creditable service and average final compensation being determined as of the date of his or her actual retirement and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the date the member shall attain the age of 65 years.
- (c) Joint and last survivor option. A member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance, or a specified fraction thereof, continue after his or her death to his or her spouse, for his or her spouse's lifetime. Such election may be made or changed at any time up to the member's actual retirement date. After the member's actual retirement date, such election may not be changed except as permitted in Subdivisions (1) and (2) of this Subsection. The amount of any retirement allowance for a spouse provided by this Subsection shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 1.
 - (1) In the event a retired member has elected a reduced retirement allowance in consideration of a continued allowance to his or her spouse after the member's death, and the member and such spouse are divorced after the retirement date, the member may discontinue the allowance to the spouse, and the member's retirement allowance may be increased to that amount to which the member would have been entitled had no election been made, if the spouse's right to the allowance has been extinguished pursuant to a final decree of divorce or a final property order entered in connection with a divorce case. The increase in the member's retirement allowance shall take effect as of the date of the final decree of divorce or final property order or July 1, 1988, whichever is later.
 - (2) In the event a retired member has elected a reduced retirement allowance in consideration of a continued allowance to his or her spouse after the member's death, and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. The increase in the member's retirement allowance shall take effect as of the day following the date of the spouse's death.

TABLE 1

FAIRFAX COUNTY EMPLOYEES' RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Members with a
Normal or Early Service Retirement Allowance Determined Under Section 3-2-32
Who Elect a Joint and Last Survivor Option.

Percent of Allowance Continued to Spouse Upon Member's Death	Factor for Equal Ages	Increase/Decrease For Each Full Year Beneficiary is Older (Younger) Than Employee	Maximum Factor
100%	85%	0.7%	96%
75%	89%	0.6%	97%
66.67%	90%	0.5%	98%
50%	92%	0.4%	99%

(d) Minimum benefit.

- (1) In no event shall the annual retirement allowances for a member retiring after December 31, 1970, be less than that determined under the System as in effect prior to such date nor shall any member's annual retirement allowance be less than \$300.00.
- (2) If the retirement allowance of any member who retires during a calendar year beginning on or after January 1, 1979, to December 31, 1981, inclusive, would have been larger if computed as of December 31 of the calendar year preceding the member's retirement, the member shall be entitled to the larger retirement allowance. A member who elects to receive such an allowance shall also be eligible for a refund of his or her contributions accumulated from January 1 of the year of his or her retirement through the date of his or her actual retirement. (20-81-3; 34-81-3; 36-88-3; 11-00-3; 10-01-3; 26-12-3; 50-13-3; 2-16-3.)

Section 3-2-33. - Ordinary disability retirement.

- (a) Any member who is in service or who is within one year of the date that he or she ceased being in service and who has five or more years of creditable service may retire on account of disability, not compensable under the provisions of Section 3-2-35, upon written application to the Board, made by the member or his or her employer, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than 90 days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of the application, mentally or physically incapacitated for further employment by the employer, that such incapacity is likely to continue into the indefinite future, and that such member should be retired.
- (b) Any member who has not been in service for more than a year at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if:
 - (1) Written application is made containing a justification for the failure to apply within one year of ceasing service; and
 - (2) The Board finds:
 - (A) The disability arose in the course of the member's service;
 - (B) The disability was the proximate cause of the member's ceasing to be in service; and
 - (C) There was good cause for the member not to have filed an application while in service or within one year after the date that he or she ceased to be in service.
- (c) In the event that a member is granted an ordinary disability retirement pursuant to Subsection (b) of this Section, the Board shall establish an effective date which considering all the circumstances of the individual case is just; provided, such date shall be no more than 90 days prior to the execution and filing of his or her application. (20-81-3; 34-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-34. - Ordinary disability retirement allowance.

Upon ordinary disability retirement, as provided for in Section 3-2-33, a member shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to two percent of his or her average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than 60 percent of the member's average final compensation or less than \$300.00 per annum. (20-81-3; 2-16-3.)

Section 3-2-35. - Service-connected disability retirement.

- (a) Any member who is in service, or within one year of the date that he or she ceased to be in service may retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service; provided, that the Medical Examining Board, after a medical examination of such member shall certify that such member is, and has been continuously since the date such retirement is to be effective, mentally or physically incapacitated for further employment by the employer as a result of such injury by accident and/or disease(s), that such incapacity is likely to continue into the indefinite future, and that such member should be retired. The Board shall determine whether a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which have applied or construed similar language under the Virginia Workers' Compensation Act.
- (b) The member or his or her employer shall submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than 90 days prior to the date of such application. Prior to submitting such application, the member shall report his or her injury by accident and/or disease(s) and make a claim for workers' compensation benefits to his or her employer in accordance with the policies and procedures established by the County or the School Board and other authority. He or she shall cooperate in the investigation of his or her workers' compensation claim by the employer or its agent. The member shall submit copies of the dispositions as made of his or her workers' compensation claim and any subsequent awards or other documents reflecting any modification or termination of such benefits. In making its determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date that such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-2-33, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-2-33.
- (d) Any member who has not been in service for over one year at the time of his or her application who is otherwise eligible for service-connected disability retirement under this Section may be granted a service-connected disability retirement under this Section if:
 - (1) Written application is made containing a justification for the failure to apply within one year of ceasing to be in service; and
 - (2) The Board finds:
 - (A) The disability arose in the course of the member's service;
 - (B) The disability was the proximate cause of the member's ceasing to be in service; and
 - (C) There was good cause for the member not to have filed an application while in service or within one year after the date that he or she ceased to be in service. (20-81-3; 24-85-3; 14-87-3; 27-90-3, §1; 2-16-3.)

Section 3-2-36. - Service-connected disability retirement allowance.

- (a) Upon service-connected disability retirement under Section 3-2-35, a member shall receive an annual retirement allowance, payable monthly and during his or her lifetime and continued disability, consisting of an amount equal to 66 ⅔ percent of his or her average final compensation. However, the

allowance shall be reduced by the amount of any compensation paid to the member under the Virginia Workers' Compensation Act for temporary total or partial incapacity.

- (b) The amount of the reduction shall be increased by an award of a cost-of-living increase to a member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.
- (c) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act, nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-2-35, shall be offset against the member's allowance under this Section; and provided further, that in the event that a member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (20-81-3; 4-83-3; 1-93-3; 23-07-3; 47-08-3; 23-11-3; 66-13-3, § 1.; 2-16-3; 36-17-3.)

Section 3-2-37. - Service-connected accidental death benefit.

If death of a member is caused by an accident occurring prior to retirement, and such death is compensable under the Virginia Workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

- (a) For a member whose death occurs before retirement:
 - (1) The member's accumulated contributions as provided in Section 3-2-28(ea) to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-2-38 or under Section 3-2-42; and
 - (2) The sum of \$10,000.00 to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.
- (b) For a member whose death occurs after retirement:
 - (1) The member's accumulated contributions as provided in Section 3-2-28(ea) less the amount of any retirement allowances previously received by the member, such sum to be paid to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-2-32(c) or under Section 3-2-38; and
 - (2) The sum of \$10,000.00 to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate. (20-81-3; 34-81-3; 5-85-3; 2-16-3.)

Section 3-2-38. - Refund of contributions upon withdrawal or death; deferred vested benefit.

- (a) Refund of contributions.
 - (1) If a member has ceased to be an employee, otherwise than by death or by retirement under this Article, and has fewer than five years of creditable service on his or her date of separation, he or she shall be eligible for a refund of the total of his or her accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him or her under this Article. The member shall file a written application with the Board for such refund,

and the application shall include an election by the member directing the System to have the refund paid directly to the member or to transfer the refund amount to another plan identified by the member as permitted under the Internal Revenue Code.

- (2) Should death occur to a member in service who has completed less than 15 years of creditable service or to a member on retirement, the amount of his or her accumulated contributions, reduced by the amount of any retirement allowances previously received by him or her under any of the provisions of this Article, shall then be payable in a lump sum to a designated beneficiary on file with the System, or in the absence of a designated beneficiary, to his or her estate; provided, no benefit is payable under Section 3-2-32(c).
 - (3) Should death occur to a member in service who has completed 15 years of creditable service and if the member's designated beneficiary on file with the System, is not the member's spouse, a lump sum payment equaling the amount of the member's accumulated contributions, as provided in Section 3-2-28(ea), shall be paid to the designated beneficiary.
 - (4) Should death occur to a member in service who has completed 15 years of creditable service and has no designated beneficiary, a lump sum payment equaling the member's contributions shall be paid to the member's estate; provided, that if such member's spouse is the sole person entitled under the laws of the Commonwealth of Virginia to the benefits provided hereunder then said spouse shall have the same right to elect benefits as is provided to spouses in Section 3-2-42.
 - (5) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six months shall become the property of the System.
 - (6) A member who becomes eligible for membership in either the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System prior to receipt of any refund amount to which he or she is entitled may elect in writing to transfer the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership, under such rules and regulations as are adopted by the Board and by the board of the system for which he or she has become eligible for membership. In the alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Section 402(f)(2)(A) of the Internal Revenue Code, such a member may (a) pursuant to the rules and regulations of the system of which he or she is eligible to become a member, elect in writing to roll over the portion of his or her refund which represents such an eligible rollover distribution directly from this System to the system for which he or she has become eligible for membership or (b) elect in writing to roll over the portion of his or her refund which is such an eligible rollover distribution directly to an individual retirement account.
 - (7) Effective on and after January 1, 2007, if a member dies while performing "qualified military service," as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. This provision shall also apply to Section 3-2-42 regarding spouse retirement allowances.
 - (8) In lieu of electing deferred vested benefit pursuant to Subsection (b) of this Section, a member with five or more years of creditable service may elect to receive a refund of his or her accumulated contributions made to the System (with interest) reduced by the amount of any retirement allowances previously received under this Article. The member shall file a written application with the Board on separation, or at any time thereafter, so long as he or she has not yet begun to receive a deferred vested benefit. The application shall include an election by the member directing the System to pay the refund paid directly to the member or to transfer the refund to another plan identified by the member as permitted under the Internal Revenue Code. The refund shall be made not later than 90 days after the receipt of the application.
- (b) Deferred vested benefit. If a member has five or more years of creditable service on his or her date of separation, the member may leave his or her accumulated contributions in the System and receive

a deferred vested benefit payable beginning on the date the member attains 65 years of age, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 34-81-3; 5-85-3; 27-90-3; 45-93-3; 10-01-3; 40-08-3; 01-11-3; 2-16-3.)

Section 3-2-39. - Medical reevaluation of disabled members; penalty for unjustified refusal to accept medical attention, vocational rehabilitation or selective employment, or to submit to medical examination.

- (a) At least once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board shall require any such member prior to his or her normal retirement date to undergo a medical examination by the Medical Examining Board; provided, that said medical examination requirement shall not be applicable to a member on a disability retirement allowance during the period such member is receiving benefits under the Virginia Workers' Compensation Act. On recommendation of the Medical Examining Board, the Board may waive the medical examination requirement as to any such member. Should such a member refuse to submit to any such medical examination, his or her disability retirement allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further disability retirement allowance shall cease.
- (b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-2-35, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act (Act) which are required to be offset against the allowances pursuant to Section 3-2-36, shall cooperate with and accept medical examinations, vocational rehabilitation, and selective employment provided by the employer pursuant to the Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) for unjustified refusal to accept medical examinations, vocational rehabilitation, and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-2-36 shall be computed as if the member received the suspended payments; and should such member's unjustified refusal continue for one year, all his or her rights to any future disability retirement allowance shall cease. The Board shall make appropriate adjustment to the member's allowance if the suspension by the Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this Subsection, an order of the Commission suspending compensation for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical examinations, vocational rehabilitation, and/or selective employment. (20-81-3; 36-88-3; 11-98-3; 2-16-3.)

Section 3-2-40. - Reduction of service-connected disability retirement allowance.

- (a) Whenever the Board ascertains that any member receiving a service-connected disability retirement allowance is, prior to his or her normal retirement date, engaged in work paying more than the difference between his or her allowance and the current salary of the position from which he or she retired, the Board shall reduce such allowance to an amount which, together with the amount earned by him or her, equals the amount of the current salary of the position from which he or she retired. A member receiving a service-connected disability retirement allowance shall submit a copy of that portion of his or her federal income tax return showing the amount of his or her earned income, and he or she shall also be required to submit copies of all W-2 forms (wage statements) provided him or her by his or her employer(s) to the Board by May 30 of each year. Should such member refuse to submit copies of his or her federal income tax return or W-2 forms to the Board, his or her allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further service-connected disability retirement allowance shall cease. The Board shall have the power to reduce the member's service-connected disability allowance to an amount less than that provided in the first sentence of this Subsection, but not less than \$25.00 a month, to recoup the amount of any overpayment from the System to the member on account of the member's earnings in excess of the maximum amount allowed under this Section.
- (b) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown.

- (c) Should the Medical Examining Board report and certify to the Board at any time that any member receiving a service-connected disability retirement allowance is able to engage in gainful occupation or work paying more than the difference between his or her retirement allowance and the current salary of the position from which he or she retired, and should the Board find that such member shall have refused an offer of employment considered by the Board suitable to his or her capacity, he or she shall not be entitled to any such allowance during the continuance of such refusal, unless in the opinion of the Board such refusal was justified. (20-81-3; 36-88-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-41. - Cessation of disability retirement allowance.

- (a) Should a member receiving a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease, and he or she shall again become a contributing member. Upon his or her return to service, he or she shall be given membership service credit for all creditable service that he or she had accumulated as of the effective date of his or her disability retirement. In addition, any member returning to service after a period of service-connected disability retirement shall be given membership service credit for the period of his or her service-connected disability retirement.
- (b) When a member returns to service under the circumstances described in Subsection (a) of this Section, any excess accumulated contributions of such member over the disability retirement allowances received by him or her shall be transferred from the retirement allowance account to the member's contribution account.
- (c) Should the Board at any time determine that a member who is receiving an ordinary disability retirement allowance is no longer incapacitated, the Board shall promptly terminate his or her allowance and notify the member in writing at his or her address as shown in the System's records.
 - (1) Such member may appeal the action of the Board under Section 3-2-48.
 - (2) Within 30 days of receipt of such notice, or within 30 days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her ordinary disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early service retirement allowance. Such members shall be deemed to be in service during this 30 day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this 30 day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their ordinary disability retirement. The effective date of such member's normal or early service retirement pursuant to this Subsection shall be the effective date of termination of his or her ordinary disability retirement allowance.
- (d) Should the Board at any time determine that a member who is receiving a service-connected disability retirement allowance is (i) no longer incapacitated or (ii) no longer incapacitated due to an injury by accident and/or disease(s) which arose out of and in the course of his or her service, the Board shall promptly terminate his or her service-connected disability retirement allowance and notify the member in writing at his or her address as shown in the System's records.
 - (1) If at that time such member has five or more years of creditable service and the Board determines that such member is presently incapacitated from further employment with his or her employer due to injury by an accident and/or disease(s) which did not arise out of and in the course of his or her service and such incapacity is likely to continue indefinitely, the Board shall grant such member an ordinary disability retirement allowance effective as of the date of termination of his or her service-connected disability retirement allowance. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement and shall receive membership service credit for the period of their service-connected disability retirement.
 - (2) Any member whose service-connected disability retirement allowance has been terminated by the Board under this Section may appeal the action of the Board under Section 3-2-48.

- (3) Within 30 days of receipt of such notice, or within 30 days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her service-connected disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early service retirement allowance. Members whose service-connected disability retirement had been changed by the Board to ordinary disability pursuant to Subsection (d)(1) of this Section may apply for a normal or early service retirement allowance in lieu of the ordinary disability retirement allowance. Members shall be deemed to be in service during this 30 day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this 30 day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement. The effective date of such member's normal or early service retirement pursuant to this Subsection shall be the effective date of termination of his or her service-connected disability retirement allowance. (20-81-3; 27-90-3, § 1; 6-95-3; 14-98-3; 2-16-3.)

Section 3-2-42. - Spouse retirement allowance.

Should death occur to a member in service who has completed five years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the member's designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance payable monthly for life shall be 50 percent of the annual retirement allowance provided in Sections 3-2-32(a)(1) or 3-2-32(a)(2), with creditable service and average final compensation being determined as of the date of the member's death. Said spouse shall elect in writing within 180 days of the member's death, or within 90 days of receiving notice from the Board, whichever comes first, to receive the benefits outlined above in this Section or a lump sum payment of the member's contributions, plus interest as provided in Section 3-2-28(c); in the event no election is made, said spouse shall receive benefits in the form of a lump sum. If a death is due to a service-connected accident as defined in Section 3-2-37 and the designated beneficiary under Section 3-2-37(a)(1) and (a)(2) is the member's spouse, the spouse shall elect in writing within 180 days of the member's death, or within 90 days of receiving notice from the Board, whichever comes first, to receive either the benefits contained in this Section or those contained in Section 3-2-37(a)(4). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's contributions to the System, plus interest, said sum, reduced by the amount of any retirement allowances previously paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the spouse's estate. (20-81-3; 5-85-3; 20-87-3; 29-09-3; 2-16-3.)

Section 3-2-43. - Cessation of normal or early service retirement allowance.

- (a) Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Uniformed Retirement System, or the Police Officers Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986. Personnel Regulation Section 9-2-4 shall apply to persons covered by either Subsection (b) or (c) of this Section.
- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) return to regular service in a permanent position in any office or employment paid directly or indirectly by the County, he or she shall elect to receive such retirement allowance under one of the following two options:
 - (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Uniformed Retirement System or Police Officers Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-2-44 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree who elects in

writing at the time of reappointment to a position covered by this Article not to become a member shall be exempted from this System. A retiree who elects in writing at the time of reappointment to a position covered by this Article to become a member shall be eligible:

- (A) For recomputation of his or her allowance to take into account compensation and creditable service attributable to the period of reemployment resulting in a deferral or cessation of his or her allowance under this Subsection;
- (B) To make a new election for any optional benefit to which he or she is entitled; and
- (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment.

A retiree of the Uniformed Retirement System or Police Officers Retirement System who is appointed to a position covered by this Article and elects in writing within 30 days of such appointment may be excluded from membership in this System.

- (2) Such allowance shall commence or shall not cease while the retiree is so employed. A retiree electing this option shall be excluded from membership in this System or any system covering the position, service in which results in the application of this Subsection.
- (c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may return to employment for which compensation is paid directly or indirectly by the County, subject to the following conditions:
 - (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than 115 percent of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint and last survivor option which results in an actuarially reduced allowance. Employers under all three systems shall report salaries paid to retirees to the retiree's Board of Trustees.
 - (2) A retiree who is employed in a position service in which would otherwise make him or her eligible for membership in this System, the Uniformed Retirement System, or the Police Officers Retirement System, shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions:
 - (1) If the retiree is a member of this System and service in the position to which he or she is to be re-appointed ordinarily would result in membership in this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ordinary or service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that

he or she received during both his or her initial and new employment as if there had been no break in service.

- (2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Fairfax County Uniformed Retirement System or the Fairfax County Police Officers Retirement System but for his or her membership in this System, shall be subject to the provisions of either Subsection (a) or (b) of this Section, whichever is applicable.
- (3) If the retiree is a member of either the Uniformed Retirement System or Police Officers Retirement System and service in the position to which he or she is to be appointed would result in membership in this System but for his or her membership in the other system, the retiree shall be subject to the provisions of either Subsection (b) or (c) of this Section, whichever is applicable.
- (4) This Subsection shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Uniformed Retirement System, or the Police Officers Retirement System. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 1; 10-01-3; 11-05-3; 2-16-3.)

Section 3-2-44. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of the benefit commencement; provided, that such adjustments shall not affect the amount of the ~~social security~~-benefit ~~allowance~~ payable pursuant to Section 3-2-32(a)(3), Section 3-2-32(a)(4) or Section 3-2-32(a)(5); and, provided further, that allowances for service-connected disability retirement shall be subject to Subsection (d) of this Section. The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section and the supplemental cost-of-living increase, if any, provided for in Subsection (b) of this Section with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than 12 months.

- (a) The basic cost-of-living increase shall be the lesser of four percent and the percentage corresponding to the percentage increase in the Consumer Price Index during the 12 calendar month period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, Consumer Price Index shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes the County.
- (b) As part of each annual actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent that can be provided on the following July 1 based upon the available actuarial surplus). The Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each July 1 by such actuarially determined percentage. For the purpose of this Section, available actuarial surplus shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the annual actuarial valuation of the System.
- (c) In the event a member has not been in pay status for 12 full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) of this Section as follows:

Number of Complete Months Member Has Been in Pay Status	Percentage of Full Increase
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• Less than 3 0%

• 3, 4 or 5 25%

- 6, 7 or 8 50%
- 9, 10 or 11 75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-2-36 have been made. The member's allowance after the adjustments of cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-2-36.
- (e) The Board of Supervisors reserves the right to amend, terminate or modify the post-retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to benefits shall be due or payable to any member or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of benefits then being paid to any member or beneficiary who received benefits payments as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the plan in effect on June 30, 1981. (20-81-3; 27-90-3, § 1; 1-93-3; 11-00-3; 26-10-3; 2-16-3.)

Section 3-2-45. - Retention rights.

Participation in the System does not convey the right to be retained in service or any right or claim to any assets of, or benefit from, the System unless such right has specifically accrued under this Article. (20-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-46. - Vesting on termination of System; non-reversion of funds.

Upon termination of the System or upon complete discontinuance of contributions to the System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the System shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (20-81-3; 2-16-3.)

Section 3-2-47. - Non-retroactivity to employees retired or terminated prior to July 1, 1981.

With the exception of the benefit adjustment provided under Section 3-2-32(d)(2), the benefits provided by this Article, and Section 3-2-43, shall not apply to members retired or terminated prior to July 1, 1981. Benefits for such members shall be in accordance with the ordinance in effect prior to July 1, 1981. However, retirement allowances determined thereunder shall be subject to the cost-of-living adjustments provided in Section 3-2-44. (20-81-3; 2-16-3.)

Section 3-2-48 - Review of adverse decisions.

- (a) Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within 30 days of receipt of said notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board.
- (b) Notwithstanding Subsection (a) of this Section, upon written application of a member adversely affected by a decision of the Board and for good cause shown, the Board may reconsider such previous decision. This Subsection is to apply retroactively. (20-81-3; 36-83-3; 2-16-3.)

Section 3-2-49. - Transfer to Senior Executive Service Plan.

Repealed by 01-96-3.

Section 3-2-50. - Masculine usage includes the feminine.

Repealed by 2-16-3.

Section 3-2-51. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military

service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Notwithstanding any provision of the Internal Revenue Code to the contrary, the limitations imposed by this Section apply only to retirement allowances granted under this Article, and not to any retirement allowance provided to any employee under any other Article of this Chapter. Such limits shall be applied annually for the 12-month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Revenue Ruling 2001-62 (superseding and modifying Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 2; 10-91-3; 21-96-3; 8-03-3; 01-11-3; 2-16-3.)

Section 3-2-52. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *required beginning date* shall mean April 1 of the calendar year following the later of the calendar year in which the member attains 70½ years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions shall begin not later than one year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained 70½ years of age and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this Section shall be applied as if the surviving spouse were the member. Distributions from the System shall be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 2; 26-12-3; 50-13-3; 2-16-3.)

Section 3-2-53. - Direct rollovers to other plans.

(a) General. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.

(b) Definitions.

- (1) *Eligible rollover distribution* shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.

- (2) *Eligible retirement plan* shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401 (a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan shall be an individual retirement account or individual retirement annuity.
- (3) *Distributee* shall mean a member or former member. In addition, the member's or former member's surviving spouse, and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee also shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
- (4) *Direct rollover* shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3; 2-16-3)

Section 3-2-54. - Additional retirement allowance.

(a) Definitions.

- (1) *Active member* shall mean a member of the System who is an employee on July 1, 1995, or who becomes an employee thereafter, and whose membership in the System has not ceased at any time from either July 1, 1995, or from when he or she became an employee (whichever is later) until the effective date of his or her subsequent retirement.
- (2) *Retired member* shall mean a member of the System who is receiving a retirement allowance on July 1, 1995, or whose effective date of retirement is on or before July 1, 1995. A member of the System who is receiving a retirement allowance shall include any member whose effective date of retirement is on or before July 1, 1995.
- (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an ordinary disability retirement allowance, a deferred vested benefit, or a spouse retirement allowance.
- (4) *Base annual retirement allowance* shall mean the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-2-7. For a member taking normal service retirement under Section 3-2-31(a), this is the allowance calculated under Section 3-2-32(a)(1) for a member in Plan A or **Plan C, or** under Section 3-2-32(a)(2) for a member in Plan B, **Plan D or Plan E**; for a member taking early service retirement under Section 3-2-32(b), this is the allowance calculated under Section 3-2-32(b); for a member retired on account of ordinary disability under Section 3-2-33, this is the allowance calculated under Section 3-2-~~33(b); 34;~~ and for a spouse receiving a spouse retirement allowance, this is the allowance calculated under Section 3-2-42.
- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance under Section 3-2-42, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement or election of the spouse retirement allowance through July 1, 1995.
- (6) *Member in service* shall mean a member of the System.

- (b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent, effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.
- (c) When an active member retires, or the eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the applicable Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (initial base annual retirement allowance). Adjustments to the member's or spouse's retirement allowance under this Article after July 1, 1995, shall be computed on the basis of the initial base annual retirement allowance.
- (d) If a member is entitled to the three percent increase provided for by either Subsection (b) or (c) of this Section, and if at the time he or she is entitled to such increase, he or she is also eligible to receive the pre-62 compensating benefit under Section 3-2-32(a)(3) or the pre-social security benefit under Section 3-2-32(a)(4), his or her pre-62 compensating benefit or pre-social security benefit shall also be increased by three percent.
- (e) Separation from service.
 - (1) A member who:
 - (A) Separated from service other than by death or retirement with five or more years of creditable service in the System prior to July 1, 1995, and
 - (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
 - (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit after July 1, 1995, shall have his or her or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
 - (2) A member in service on or after July 1, 1995, who:
 - (A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and
 - (B) Does not withdraw his or her or her accumulated contributions, and
 - (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
 - (3) A member in service on or after July 1, 1995, who,
 - (A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and
 - (B) Does not withdraw his or her accumulated contributions, and
 - (C) Thereafter, returns to service and again becomes a member of the System, and
 - (D) Subsequently applies for and is determined to be eligible for a normal service, early service or ordinary disability retirement allowance, or a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
 - (4) A member in service on or after July 1, 1995, who
 - (A) Thereafter separates from service, and
 - (B) Withdraws his or her accumulated members' contributions, and
 - (C) Subsequently returns to service and again becomes a member of the System, and

- (D) At that time makes arrangements to purchase credit for all of his or her previous service in the System under this Article, and
- (E) Thereafter applies for and is determined to be eligible for a normal service, early service or ordinary disability retirement, or for a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
- (f) A member's spouse who is receiving an allowance under the joint and last survivor option provided by Section 3-2-32(c), on July 1, 1995, shall have such allowance increased by three percent, effective July 1, 1995. Adjustments to such allowance under this Article after July 1, 1995, shall be computed on the basis of this increased allowance.
- (g) Notwithstanding the 60 percent of average final compensation limit contained in Section 3-2-34, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by Subsection (c) of this Section, may exceed 60 percent, but shall not exceed 61.8 percent of his or her average final compensation.
- (h) Notwithstanding any provision of this Section to the contrary, no adjustment under this Section shall be made which would violate the limitations provided by Section 3-2-51 concerning the limitations imposed by Section 415 of the Internal Revenue Code and any U.S. Treasury regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations. (12-95-3; 11-00-3; 2-16-3.)
- (i) This Section shall not be applicable to members of Plan E.

Section 3-2-55. - Spousal acknowledgment.

Any application for service or disability retirement allowance under this Article shall include a statement made by the spouse of the member, if any, acknowledging, in the presence of a notary public, that the spouse has read and understands the provisions of this Article concerning allowance and payment options and the allowance and payment options, if any, the member has elected to receive. (12-98-3; 2-16-3.)

Section 3-2-56. - Deferred retirement option program.

Effective July 1, 2005, there is hereby established a Deferred Retirement Option Program (DROP) for eligible members of the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

- (a) Definitions.
 - (1) *DROP period* shall mean the three-year period immediately following the commencement of the member's participation in the DROP.
 - (2) *Eligible member* shall mean any member who has reached, or will reach within 60 days, his or her normal retirement date as defined in Section 3-2-~~4~~2(g).
- (b) Election to participate.
 - (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP shall file an application with the Fairfax County Retirement Administration Agency not less than 60 days prior to the date of the commencement of the member's participation in the DROP.
 - (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.
 - (3) At the time of an eligible member's election to participate in the DROP, he or she shall make an election in writing pursuant to Section 3-2-32(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.
 - (4) An eligible member who elects to participate in the DROP shall agree to do so for a period of three years.

- (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-2-~~12~~ (a)~~(2)~~, an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.
- (c) Continued employment.
- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County or School Board in the position he or she held before the effective date of his or her election to participate in the DROP. Thereafter, the participating DROP member shall perform the services of that position or any other position to which he or she is promoted or transferred.
 - (2) A participating DROP member shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
 - (3) A participating DROP member shall continue to remain eligible for health and life insurance benefits provided by the County or the School Board to its employees and shall remain eligible to participate in the County's or School Board's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefits shall be the same deductions that would have been taken had the participating DROP member been an active County or School Board employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
 - (4) All County or School Board personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period shall not be included in the computation of the member's average final compensation. A participating DROP member shall also be subject to the County's disciplinary policies and regulations.
 - (5) If a participating DROP member's continued employment with the County or the School Board is interrupted by military service, there shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance shall be paid to the member whether or not he or she has returned to his or her former County or School Board position, and the member shall begin to receive his or her normal retirement benefits.
 - (6) Except as otherwise set forth herein, a participating DROP member's continued service shall be deemed to be normal service retirement and shall not count as creditable service with the System.
 - (7) Upon commencement of a participating DROP member's DROP period, the County or the School Board shall cease to withhold contributions to the System from the participating DROP member's salary.
 - (8) The salary received by a participating DROP member during his or her DROP period shall not be included by the County or the School Board in the base that is used to determine the amount of the County's or the School Board's employer contributions to the System.
- (d) DROP account.
- (1) Upon commencement of the participation of a member of either Plan A or Plan B, ~~whose County or School Board employment commenced by reporting for work before January 1, 2013,~~ in the DROP, the member's service retirement allowance pursuant to Section 3-2-32(a)(1) or (2) and the additional retirement allowance pursuant to Section 3-2-32(a)(3) or (4) shall be paid into the member's DROP account.
- ____ Upon commencement of the participation of a member of either Plan C, Plan D or Plan ~~D~~, ~~whose County or School Board employment commenced by reporting for work on or after January 1, 2013,~~ E in the DROP, the member's service retirement allowance pursuant to Section 3-2-32(a)(1) or (2) shall be paid into the member's DROP account; the additional retirement benefits provided for in Section 3-2-32(a)(3), ~~(4)~~ (4) and (5) shall not be credited to the DROP accounts of members of Plans C, D and ~~DE~~, although members of those Plans shall remain eligible to receive the additional retirement benefits provided for in Section 3-2-32(a) upon

the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in Section 3-2-32(a)(~~3-and~~), (~~4-~~) or (5), as applicable. The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

- (2) The initial monthly amount shall be increased each July 1 based upon the annual cost-of-living adjustment provided to retirees pursuant to Section 3-2-44. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement allowances and benefits if he or she were retired shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
 - (3) The participating DROP member's DROP account shall be credited with interest at an annual rate of five percent, compounded monthly. Interest shall not be pro-rated for any period less than a full month.
 - (4) Contributions by the County or the School Board and the participating DROP member into the System for the participating DROP member shall cease.
 - (5) Amounts credited to a participating DROP member's DROP account shall not constitute annual additions under Section 415 of the Internal Revenue Code.
 - (6) A participating DROP member's DROP account shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance shall remain part of the assets of the System.
- (e) Cessation of County or School Board employment.
- (1) At the conclusion of a participating DROP member's three-year DROP period, the member's County or School Board employment shall automatically cease. The participating DROP member shall then begin to receive normal service retirement allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost-of-living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member shall make one of the following elections concerning payment of his or her DROP account balance:
 - (A) The member may receive payment of his or her DROP account balance as a lump sum.
 - (B) The member may elect to roll over his or her DROP account balance into a qualified retirement plan, such as an IRA.
 - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
 - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement allowances and benefits. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.
 - (E) The member may divide his or her DROP account balance in half, and may then elect to use 50 percent of his or her DROP account balance to increase his or her monthly retirement allowances and benefits, and to receive the remainder in any manner listed in Subparagraphs (A), (B) and (C) above. In the event that the participating DROP member does not make the election required by this Subsection, the DROP account balance shall be used to increase his or her monthly retirement allowances and benefits. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.
 - (2) A participating DROP member may terminate his or her County or School Board employment at any time, in which case the effective date of the member's termination of his or her County or School Board employment shall be treated as the end of the DROP period for all purposes of this Section.
 - (3) In the event that the employment of a participating DROP member is terminated by the County or the School Board during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.

- (1) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of Section 3-2-32(c), the participating DROP member's surviving spouse shall receive payment of the participating DROP member's DROP account balance and shall begin to receive retirement allowances and benefits pursuant to the joint and last survivor option election of the participating DROP member.
- (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member shall receive:
 - (A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in Sections 3-2-33 and ~~3-2-35~~, the effective date of the member's disability shall be treated as the end of the participating DROP member's DROP period.
 - (B) In the case that a participating DROP member suffers a service-connected disability as set forth in Section 3-2-~~36~~35, the participating DROP member may elect either (i) to receive the service-connected disability retirement allowances and benefits to which he or she would otherwise be entitled or (ii) to receive the normal service retirement allowances and benefits to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement allowances and benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (20-05-3; 40-08-3; 41-08-3; 27-10-3; 26-12-3; 2-16-3.)

Division 9. - Benefit Restoration Plan.

Section 3-2-57. - Benefit restoration plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
 - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by Section 415(m) of the Internal Revenue Code, and as is permitted by Section 51.1-1302 of the *Virginia Code*. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to participants, including the benefits established by the System.
 - (2) This Section shall be construed to ensure compliance with federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code, and Sections 51.1-1302, 51.1-1303, and 51.1-1304 of the *Virginia Code*, as in effect at the time of the adoption of this Section and as subsequently amended.
- (c) Definitions.
 - (1) *Administrator* or *Plan Administrator* shall mean the Board, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board, the Executive Director shall be responsible for the day-to-day operation and administration of the Benefit Restoration Plan.
 - (2) *Beneficiary* shall mean the person or persons entitled under this Article to receive any benefits payable after the participant's death.
 - (3) *Benefit Restoration Plan* or *Plan* shall mean the Benefit Restoration Plan for the System established by this Section.
 - (4) *Effective date* shall mean the date of this Section's adoption [June 5, 2006].

- (5) *Eligible member* shall mean a retired member of the System whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans.
 - (6) *Enabling statute* shall mean Chapter 13 of Title 51.1 of the *Virginia Code*, as amended.
 - (7) *Grantor trust* shall mean the trust fund described in Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
 - (8) *Participant* shall mean an eligible member qualified to participate in the Benefit Restoration Plan.
 - (9) *Plan sponsor* shall mean the Board of Supervisors.
 - (10) *Plan year* shall mean the 12-month period beginning on July 1.
 - (11) *Restoration death benefit* shall mean the benefit due the beneficiary of a participant under the Benefit Restoration Plan as determined under this Section.
 - (12) *Restoration retirement benefit* shall mean the benefit due a participant or his or her beneficiary under the Benefit Restoration Plan determined under this Section.
- (d) Eligibility and participation.
- (1) Eligibility and date of participation. Each eligible member shall be a participant in the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an eligible member.
 - (2) Length of participation. Each eligible member who becomes a participant shall be or remain a participant for so long as he or she is entitled to future benefits under the terms of the Benefit Restoration Plan.
- (e) Restoration retirement benefit. Subject to the terms and conditions set forth in this Section, a participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:
- (1) The amount of the participant's retirement allowance under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (2) The amount of the participant's retirement allowance under the System.
- To the extent that the participant's retirement allowance payable under the System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration retirement benefit shall be reduced correspondingly.
- (f) Death benefit.
- (1) Death after benefit commencement. If a participant dies after his or her restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.
 - (2) Death before benefit commencement. If a participant dies before his or her restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the restoration death benefit, if any, provided in Subsection (f)(3) of this Section.
 - (3) Restoration death benefit. Subject to the terms and conditions set forth herein, if a participant dies on or after the effective date and before his or her restoration retirement benefit commences to be paid, his or her beneficiary shall be entitled to a restoration death benefit as follows:

- (A) If his or her beneficiary is entitled to receive any death benefit under the System, such beneficiary shall be entitled to receive as a restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
 - (i) The amount of such death benefit under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (ii) The actual amount of such death benefit under the System.

To the extent that the participant's accrued benefit or any death benefit payable under the System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration death benefit shall be reduced correspondingly.

- (g) Vesting. A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the System or death, but only to the extent, and determined in the manner, that such participant has a vested and non-forfeitable right to his or her retirement allowance under the System.
- (h) Payment of benefits.
 - (1) Timing and manner for payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the System, whether as elected by the participant or otherwise payable. For a member who is receiving a retirement allowance under the System on the effective date, and who would immediately be an eligible member upon the effective date, such member shall immediately commence receiving a restoration retirement benefit on a prospective basis.
 - (2) Discretionary use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
 - (3) Benefit determination and payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the participant (or the participant's beneficiary in the event of the death of the participant). The Administrator shall promptly notify the employer and, where payments are to be made from a grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the employer or trustee such other information necessary to allow the employer or trustee to carry out said determination, whereupon the employer or trustee shall pay such benefits in accordance with the Administrator's determination.
 - (4) Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.
 - (5) Distribution of benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a participant or his or her beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the employer's or the Administrator's records. If the Administrator is unable to locate such person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

- (i) Funding.
 - (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the employer and subject to the claims of the employer's creditors.
 - (2) Except as provided in a grantor trust established as permitted under Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the employer and the participant or his or her beneficiary or any other person or to give any participant or beneficiary any right, title, or interest in any specific asset or assets of the employer. To the extent that any person acquires a right to receive payments from the employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the employer.
 - (3) Use of grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.
- (j) Plan administrator.
 - (1) The Plan Administrator shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the enabling statute. The Administrator shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.
 - (2) The Plan Administrator shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the enabling statute.
 - (3) To enable the Plan Administrator to perform its responsibilities, employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the employer, and shall have no duty or responsibility to verify this information.
 - (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator shall make such contracts in compliance with all applicable state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan shall be subject to the supervision and direction of the Plan Administrator and shall not have the authority to control the operation of the Plan.
- (k) Termination and amendment of Benefit Restoration Plan.
 - (1) Termination. The Board of Supervisors hereby reserves the right to terminate this Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such termination.
 - (2) Amendment. The Board of Supervisors hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such amendment.
- (l) Non-assignability. The interests of each participant hereunder in the Benefit Restoration Plan are not subject to the claims of the participant's creditors; and neither the participant nor his or her beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Notwithstanding the foregoing, the

Plan Administrator shall honor any process for a debt to the employer who has employed the participant and any administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code*, or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-2-6 mutatis mutandi. Restoration retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code*. Under no circumstances shall a payment under this Subsection take place before the participant's benefit under the System is actually paid. (12-06-3; 2-16-3.)

ARTICLE 3. - Fairfax County Uniformed Retirement System.

Division 1. - Generally.

Section 3-3-1. - Fairfax County Uniformed Retirement System established.

Under the authority of Section 51.1-801 of the *Virginia Code*, there is hereby established a retirement system for employees, to be known as the "Fairfax County Uniformed Retirement System," by and in which name it shall, pursuant to the provisions of this Article, transact all of its business. The Fairfax County Uniformed Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (1961 Code, § 9-73; 11-74-9; 28-77-3; 51-13-3; 3-16-3.)

Section 3-3-2. - Definitions.

Unless provided otherwise in another Section, the following definitions shall apply to this Article:

(a) *Accrued sick leave credit* shall mean:

- (1) For employees ~~whose County employment commenced by reporting for work before January 1, 2013~~ who are (members of Plans A, B, C, or D); the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) For employees ~~whose County employment commenced by reporting for work on or after January 1, 2013 (who are members of Plans E or F) and for employees whose County employment commenced by reporting for work on or after July 1, 2019 (Plan F)~~, the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose County employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement allowances and benefits shall be the employee's accrued sick leave balance or 2,080 hours, whichever is less.

(b) *Accumulated contributions* shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his or her individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-3-25.1, together with interest credited on such amounts and any other amounts he or she shall have contributed or transferred thereto as provided in Section 3-3-29(c).(c) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.(d) *Average final compensation* shall mean the average annual creditable compensation of a member during the three consecutive years (78 consecutive pay periods) of creditable service in which such compensation was at its greatest amount, or during the entire period of his or her creditable service if less than three years, for a member of Plan A, B, C, ~~or D, or E,~~ or 60 consecutive months (130 consecutive pay periods for members who are paid on a biweekly basis) for a member of Plan F, or during the entire period of his or her creditable service if less than five years. In determining creditable compensation, premium payments such as overtime pay shall not be included.

- (1) In determining average final compensation for members who retire on or after January 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the

member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, that in determining the average final compensation for members who became members of the System on or after January 1, 2013 (members of Plans E and F,) ~~and for members who became members of the System on or after July 1, 2013 (members of Plan F),~~ no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose.

- (2) If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his or her consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-3-25(b) and he or she otherwise would have no creditable compensation attributable to some portion or all of such period of service, his or her average final compensation shall be calculated as if he or she had continued to receive the creditable compensation as defined in this Article and approved and established for his or her position by the County Compensation Plan, including pick-up contributions, during the period of military service for which he or she is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four years of military service commencing on or after August 2, 1990. The Board shall make any and all necessary retroactive adjustments to members' allowances as a result of this rule.
- (3) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the Human Resources Director's review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. This rule shall apply to all applications for allowances and benefits filed with the Board on or after July 13, 1991. The Board shall make any necessary retroactive adjustments to allowances and benefits.
- (4) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or pay periods in calculating average final compensation.
- (e) *Beneficiary* shall mean any person entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as provided for in this Article.
- (g) *Creditable compensation* shall mean the full compensation, including pick-up contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and regularly scheduled hours paid, credited at the base rate of pay but excluding premium pay such as all overtime, including Fair Labor Standards Act (FLSA) overtime and excluding performance bonuses. Effective for plan years after December 31, 1988, compensation in excess of \$200,000.00, as indexed under Section 415(d) of the Internal Revenue Code, shall be disregarded. Notwithstanding the foregoing, effective for members whose County employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.

- (h) *Creditable service* shall mean the sum of membership service credit, plus prior service credit, plus portability service credit purchased pursuant to Section 3-3-25.1, plus accrued sick leave credit.
- (i) *DROP* shall mean the Deferred Retirement Option Program, as provided in Section 3-3-573-3-56.
- (j) *Early retirement* shall mean the retirement upon completion of 20 years of service with an actuarial reduction of the normal retirement allowance accrued.
- (k) *Employee* shall mean any person regularly employed within the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical personnel in these departments, or as a park police officer or helicopter pilot, rendering service to the County, and any person regularly employed within the Department of Public Safety Communications who transferred into the System pursuant to Section 3-2-19(e) or who was appointed to a position in the classes identified in Section 3-3-20(a)(4) on or after July 1, 2005, whose compensation is fully or partially paid directly or indirectly by the County.
- (l) *Employer* shall mean an authority in the general County having the power to appoint an employee to office or employment paid directly or indirectly by the County and the Board of Trustees of the System.
- (m) *Executive Director* shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (n) *Internal Revenue Code* shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.
- (p) *Medical Examining Board* shall mean the physician or physicians provided for by Section 3-3-10.
- (q) *Member* shall mean any person included in the membership of the System as provided in Section 3-3-20.
- (r) *Membership service credit* shall mean credit for service rendered while a member of the System, or as otherwise provided in Section 3-3-24.
- (s) *Normal retirement date* shall mean either (1) the member's 55th birthday, provided, said member shall have completed six years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, helicopter pilot, or sheriff, or (2) the date the member completes 25 years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, helicopter pilot, or sheriff. The normal retirement date for members who are former park police officers who elected to remain in the System pursuant to Section 3-3-20(b)(2) shall be computed in the same manner. Creditable service for these members shall include service both as a park police officer and as a police officer.
- (t) *Pick-up contributions* shall mean a member's regular contribution which is picked up, through a salary reduction, by the County from the member's compensation for service rendered on or after December 22, 1984.
- (u) *Plan A* shall mean the option effective July 1, 1981, available to employees whose County employment commenced by reporting for work on or before March 31, 1997, providing for current members of Plan A to:
 - (1) Contribute four percent of compensation up to the taxable wage base and five and three-fourths percent of compensation in excess of the taxable wage base; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A) and (B) or as provided for in Section 3-3-33(a)(2)(A). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age 55 years, at which time the full benefits prescribed in Section 3-3-33 and Section 3-3-45 shall become payable.

- (v) *Plan B* shall mean the provision effective July 1, 1981, allowing current members the option and requiring new members whose County employment commenced by reporting for work on or before March 31, 1997, to:
 - (1) Contribute seven and eight-one-hundredths percent of compensation up to the taxable wage base and eight and eighty-three-one-hundredths percent of compensation in excess of the taxable wage base; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A), (B), and (C) or as provided for in Section 3-3-33(a)(2)(A) and (B). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement. Additionally, 50 percent of the retirement allowance provided in Section 3-3-33(a)(1)(B) shall be payable from the date of retirement. Upon attainment of age 55 years, benefits shall be based on the provisions of Section 3-3-33(a)(1)(A) and (B).
- (w) *Plan C* shall mean the provision effective April 1, 1997, allowing then-existing members of Plan A who elect to transfer to Plan C prior to April 1, 1997, to:
 - (1) Contribute four percent of compensation; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(C). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age 55 years, at which time the full benefits prescribed in Sections 3-3-33 and 3-3-45 shall become payable.
- (x) *Plan D* shall mean the provision effective April 1, 1997, allowing then-existing members of Plan B, and requiring new members whose County employment commenced by reporting for work on or after April 1, 1997, but on or before December 31, 2012, to:
 - (1) Contribute seven and eight-one-hundredths percent of compensation; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement.
- (y) *Plan E* shall mean the option effective ~~beginning on~~ January 1, 2013, requiring new members whose County employment commenced by reporting for work on or after January 1, 2013, and before July 1, 2019, to:
 - (1) Contribute seven and eight-one-hundredths percent of compensation; and
 - (2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement.
- ~~(-Zz)~~— *Plan F* shall mean the option effective July 1, 2019, requiring new members whose County employment commenced by reporting for work on or after July 1, 2019, to-
 - (A) Contribute seven and eight-one-hundredths percent of compensation; and
 - (B) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(d) and as provided for Section 3-3-33(3)(C). Cost of living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement.
- ~~(aa)z~~ *Primary social security benefit* shall mean the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his or her date of retirement, under the provisions of this Chapter, except as otherwise specifically provided.

- (~~bb~~aa) *Prior service credit* shall mean credit for service rendered prior to the effective date of this Article [May 6, 1974], or as otherwise provided in Section 3-3-25.
- (~~cc~~bb) *Qualifying employment* shall mean employment that qualifies an employee for participation in the System, and defined specifically to mean regular employment by the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical employment in these departments, or as a park police officer or helicopter pilot rendering service to the County, whose compensation is fully or partially paid directly or indirectly by the County.
- (~~dd~~ee) *Retirement allowance* shall mean the retirement payments to which a member is entitled as provided in this Article.
- (~~ee~~dd) *Salary* shall mean the compensation, including pick-up contributions, established for each position as approved in the County Compensation Plan.
- (~~ff~~ee) *Service* shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.
- (~~gg~~ff) *Social security* shall mean the federal Social Security Act and its programs for old age, survivors and disability insurance and benefits, as applicable.
- (~~hh~~gg) *Social security breakpoint* shall mean the average of the taxable wage base for the 35 calendar years ending with the year in which the member attains social security normal retirement age. In determining a member's social security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year shall remain the same for all future years.
- (~~ii~~hh) *System* shall mean the Fairfax County Uniformed Retirement System. When any part of this Article refers to multiple retirement systems, the Uniformed Retirement System shall be referred to as "this System," rather than "the System."
- (~~iii~~i) *Taxable wage base* shall mean the maximum amount of wages received during the calendar year on which social security taxes are payable by the member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code.

(1961 Code, § 9-72; 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 23-85-3; 36-88-3; 29-89-3; 27-90-3, § 3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 36-10-3; 27-12-3; 3-16-3.)

Section 3-3-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein. (3-16-3.)

Section 3-3-3. - Social Security Breakpoint.

Repealed by 3-16-3.

Section 3-3-4. - Duties of appointing authorities.

The authority having the power to hire the services of a member shall keep such records and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the authority shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (1961 Code, § 9-74; 11-74-9; 3-16-3.)

Section 3-3-5. - Consent to provisions of Article required for employment.

By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (1961 Code, § 9-75; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-6. - Protection against fraud.

In addition to any other provisions of law, any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly. (1961 Code, § 9-76; 11-74-9; 3-16-3.)

Section 3-3-7. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, the return of accumulated contributions or any other right accrued or accruing to any person under this Article and the money created by this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws or any other process of law whatsoever except for administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code*, or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code*, may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code*. (1961 Code, § 9-77; 11-74-9; 3-80-3; 5-85-3; 13-92-3; 1-93-3; 3-16-3.)

Section 3-3-8. - Errors resulting in over- or under-payment.

Should any change or error in the records result in any member or beneficiary receiving from the System more (overpayment) or less than he or she would have been entitled to receive had the records or computation been correct, the Board shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1961 Code, § 9-78; 11-74-9; 3-16-3.)

Section 3-3-9. - Amendment of Article.

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the System and no amendment shall be adopted which shall reduce the then accrued benefits of members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. (1961 Code, § 9-79; 11-74-9; 3-16-3.)

Section 3-3-10. - Medical Examining Board.

The Medical Examining Board shall consist of the Director of the Health Department (or his or her designee) and, in the discretion of the Board, one or two other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall report in writing to the Board their conclusions and recommendations upon all matters referred to it. (1961 Code, § 9-80; 11-74-9; 27-97-3; 3-16-3.)

Section 3-3-10.1. - Post-employment physical examinations.

- (a) Any member or person eligible to participate in the System who applies for service-connected disability retirement or severe service-connected disability retirement on or after July 1, 2004, shall disclose to the Board any and all medical records and information, including, but not limited to any pre-employment or post-employment physical examination, any examination made relating to any claim under the Virginia Workers' Compensation Act and any and all other further tests or examinations required by the Board to assist it in its determination of whether the disability for which the member seeks retirement is service-connected or if it is the result of a preexisting condition.
- (b) Failure to disclose to the Board any medical record or information required hereunder or to undergo any further required tests or examinations shall preclude a member who does not disclose such medical records and information or such other further tests or examinations from receiving service-connected disability retirement as provided for in Section 3-3-36 and from receiving severe service-connected disability retirement as provided for in Section 3-3-37.2. (34-04-3; 3-16-3.)

Division 2. - Board of Trustees.

Section 3-3-11. - Administration of System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board. (1961 Code, § 9-81; 11-74-9; 3-16-3.)

Section 3-3-12. - Membership; term of office.

(a) The Board of Trustees of the System shall consist of the following members:

- Four persons appointed by the Board of Supervisors;
- Two persons elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications;
- One person elected by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System;
- One person elected by the retirees of the System;
- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her permanent designee, sitting ex officio; and
- Director of the Department of Human Resources, or his or her permanent designee, sitting ex officio.

(b) With the exception of the Director of the Department of Finance and Director of the Department of Human Resources, the terms of office of the trustees shall be four years.

(c) The only persons eligible to be elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications as trustees are uniformed employees of the Fire and Rescue Department and employees of the Department of Public Safety Communications. The only persons eligible to be elected as a trustee by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System are uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System. The offices of such trustees shall be vacated should such trustees separate from service prior to the completion of their term.

(d) The only persons eligible to be elected as a trustee by the retirees of the System are retirees of the System. (1961 Code, § 9-82; 11-74-9; 20-81-3; 13-92-3; 40-93-3; 36-10-3; 59-13-3; 3-16-3.)

Section 3-3-13. - Vacancies in office.

If a vacancy occurs in the office of a trustee of the System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (1961 Code, § 9-83; 11-74-9; 3-16-3.)

Section 3-3-14. - Compensation of trustees.

The trustees of the System may receive compensation at the rate set by the Board of Supervisors. (1961 Code, § 9-84; 11-74-9; 3-16-3.)

Section 3-3-15. - Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (1961 Code, § 9-85; 11-74-9; 3-16-3.)

Section 3-3-16. - Functions of the Board.

- (a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the System and for the transaction of its business, copies of which shall be made available to interested parties.
- (b) The Board may employ and pay out of the System funds for all services as shall be required.
- (c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the System and for checking the experience of the System.
- (d) The Board shall keep minutes of all its proceedings, which shall be open to public inspection unless applicable law provides otherwise.

- (e) The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (f) At least once in each two-year period, beginning July 1, 1969, the Board shall cause an actuarial evaluation to be made of the System.
- (g) The Board shall review adverse decisions as provided by Section 3-3-49. (1961 Code, § 9-86; 11-74-9; 3-16-3.)

Division 3. - Management of Funds.

Section 3-3-17. - Board trustee of funds; investment of same.

- (a) The Board shall be the trustee of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer, or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.
- (b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (1961 Code, § 9-87; 11-74-9; 3-16-3.)

Section 3-3-18. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He or she shall give bond, conditioned upon the faithful performance of his or her duties and the proper accounting of all funds and securities coming into his or her hands. He or she shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (1961 Code, § 9-88; 11-74-9; 3-16-3.)

Section 3-3-19. - Prohibited interest of member or employee of Board.

- (a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq. of the *Virginia Code*, shall apply to members and employees of the Board.
- (b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the System, except to make such current and necessary payments as are authorized by the Board. (1961 Code, § 9-89; 11-74-9; 3-16-3.)

Division 4. - Membership in System.

Section 3-3-20. - Membership composition.

- (a) Membership shall be composed of the following:
 - (1) Present employees, as hereinafter identified, except those listed in Subsection (2)(B) of this Section:
 - (A) All persons who were employees on the effective date of this Article or who were on leave from service on such date; or
 - (B) Any employee, otherwise qualified, who has been a member of another Fairfax County retirement system, and who has withdrawn therefrom, provided he or she pays into this System all contributions which would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought.
 - (2) Future employees, as hereinafter identified, except those listed in Subparagraph (B) of this Subsection:
 - (A) All persons who hereafter shall become employees, persons receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement

System, or Fairfax County Police Officers Retirement System eligible for membership only under the terms and conditions set forth in Section 3-3-43.

- (B) Employees who are members of the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Employees' Retirement System, or the Police Officers Retirement System, and future employees who are eligible to become members of those systems are not eligible for membership in this System; provided, that an employee who is a member of such a system shall be eligible for membership in this System if he or she elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he or she was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee shall be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-3-24. If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee shall be permitted but not required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-3-24. Elected officials, who elect in writing at the time of their employment not to become members, shall be exempted from this System.
- (3) The membership in this System of uniformed employees of the Department of Animal Control transferred from the Employees' Retirement System to this System pursuant to Section 3-2-19(d) shall commence on October 1, 1985, or date of appointment, whichever is later. For purposes of this Article, such members shall be deemed to have been appointed on or after January 1, 1984, regardless of being granted any membership service credit pursuant to Section 3-3-24. Uniformed employees of the Department of Animal Control, including the Director, appointed on or after October 1, 1985, shall become members of this System upon appointment.
- (4) The membership in this System of certain employees of the Public Safety Communications Center transferred from the Employees' Retirement System to this System pursuant to Section 3-2-19(e), shall commence on October 1, 2005, or date of appointment, ~~which ever~~ whichever is later. Employees of the Public Safety Communications Center appointed on or after July 1, 2005, in the class specification Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II or Public Safety Communicator I, or any successor class specification(s) to these class specifications, shall become members of this System upon appointment.
- (b) Park police transferring to the Fairfax County Police Officers Retirement System.
 - (1) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, shall, within 30 days of the adoption of this Subsection [June 20, 1983], make an irrevocable election, in writing, whether to remain members of this System or to transfer to the Fairfax County Police Officers Retirement System.
 - (2) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to remain as members of this System shall continue as members of this System.
 - (3) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to transfer to the Police Officers Retirement System shall cease to be members of this System and shall be members of the Police Officers Retirement System as of January 22, 1983.
 - (4) Members who elect to transfer to the Police Officers Retirement System pursuant to Subsection (b)(3) of this Section shall make a further election among the following options at the time of their election under Subsection (b)(1) of this Section:
 - (A) Withdraw the total of his or her accumulated member contributions (with interest) as of January 22, 1983, which shall be reduced by the amount of any retirement allowances

previously received by him or her under this Article. Any member contributions to this System after January 22, 1983, shall be transferred to the transferee's member account in the Police Officers Retirement System. Said refund shall be paid to the member not later than 90 days from the date of receipt of the member's election by the Board; or

- (B) If the member has five or more years of creditable service in this System on January 22, 1983, the member may leave his or her accumulated contributions as of January 22, 1983, in this System and receive a deferred vested benefit commencing on the first of the month coinciding with or following the date the member attains age 55 years, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article; and any member contribution made to this System after January 22, 1983, shall be transferred to the transferred member's account in the Police Officers Retirement System; or
 - (C) The member may transfer his or her accumulated contributions to the Police Officers Retirement System to obtain prior service credit in that system pursuant to Section 3-7-20(b). In this case, the Board shall transfer the member's accumulated contributions (plus interest) as well as that portion of the retirement allowance account representing employer contributions to this System attributable to the member's service in this System to the Police Officers Retirement System.
- (5) Members who are required by Subsection (b)(1) of this Section to make an election whether to transfer to the Police Officers Retirement System who fail to do so within the 30 day period provided therein shall be deemed to have elected to continue in this System pursuant to Subsection (b)(1) of this Section.
- (6) Participation in this System of former members who return to qualifying employment ~~shall be determined in accordance with the following terms and conditions: and~~
- ~~(A) Former members~~ who have not withdrawn their accumulated contributions from this System as provided in Section 3-3-39 shall return to membership in the plan to which they were contributing at the time their former employment ceased.
- ~~(B) Former members who withdrew their accumulated contributions from this System as provided in Section 3-3-39 subsequent to the cessation of their former employment shall become members of Plan D upon their return to qualifying employment. A former member may purchase membership service credit for the period of his or her prior employment, provided that he or she pays into this System all contributions that would have been due from him or her had he or she been a member of this System during the period of his or her prior employment, plus interest on such contributions at the rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit for periods of prior employment under this Subsection must be made within one year after the former member returns to qualifying employment.~~
- (c) Members of the System who were deputy sheriffs and who as deputy sheriffs had been performing nursing and/or paramedical duties in the Sheriff's Department and who when reassigned to civilian positions in the Sheriff's Department allocated to one of the classes in the Correctional Health Nurse class series, shall, notwithstanding any other provision in this Chapter to the contrary, remain as members of the System so long as they remain in such positions and for so long as they remain so continuously employed in a position allocated to such classes in the Sheriff's Department or in other positions covered by this Article.
- (d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five years of creditable service in this System and who is appointed to serve as a Deputy County Executive shall remain a member of this System, and shall not become a member of the Fairfax County Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is so employed or subsequently resumes working in a position that is covered under this System. (1961 Code, § 9-90; 11-74-9; 35-81-3; 22-83-3; 23-85-3; 36-86-3; 45-93-3, 10-01-3; 32-02-3; 23-05-3; 27-12-3; 3-16-3.)

Section 3-3-21. - Cessation of membership.

The membership of any person in the System shall cease:

- (a) If he or she ceases to be an employee for a period of five years; or
- (b) Upon separation and withdrawal of his or her accumulated contributions; or
- (c) Upon death. (1961 Code, § 9-91; 11-74-9; 20-81-3; 3-16-3.)

Division 5. - Service Credit.

Section 3-3-22. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service rendered as an employee, and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (1961 Code, § 9-92; 11-74-9; 3-16-3.)

Section 3-3-23. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one year of service for all service rendered in any period of 12 consecutive months. (1961 Code, § 9-93; 11-74-9; 3-16-3.)

Section 3-3-24. - Membership service credit.

- (a) Each member shall receive membership service credit for periods for which he or she received compensation and was a member of the System or after he or she last became a member in the event of a break in his or her membership, provided that any former member of the System who ceased his or her County employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions which were collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service.

(1) In the event that a member of Plan A, Plan B, Plan C, Plan D, or Plan E ~~s-A, B, C, D or E~~, who ceased his or her County employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, and before July 1, 2019, January 1, 2013, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in, Plan E by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought.

(2) In the event that a member of Plan A, Plan B, Plan C, Plan D, Plan E, or Plan F who ceased his or her County employment and withdrew his or her accumulated member contributions from the System seeks, on or after July 1, 2019, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in Plan F, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought.

(3) ~~;~~ however, nNotwithstanding the foregoing, a member of any of the ~~six five~~ Plans (A, B, C, D, E or F) that are part of the System who ceased his or her County employment, but who left his or her accumulated member contributions in the System, shall, upon his or her return to County employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if the entire amount in that account is attributable to a

rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code.

- (1b) Members who are former park police officers who elected to remain in the System under Section 3-3-20(b)(2) shall receive membership service credit for service rendered as a park police officer and for their service as a police officer, including time served as a police officer prior to their election pursuant to Section 3-3-20(b)(2).
- (2c) Uniformed employees of the Department of Animal Control who transferred into this System pursuant to Section 3-2-19(d) may purchase membership service credit in this System for service as a uniformed employee of the Department of Animal Control rendered prior to October 1, 1985, by making an election in writing pursuant to Section 3-2-19(d)(3) and paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Fairfax County Employees' Retirement System for the period for which membership service credit is sought. The Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within one year of the adoption of Section 3-2-19(d) [December 16, 1985].
- (3d) With respect to employees of the Public Safety Communications Center who transferred into this System pursuant to Section 3-2-19(e) and who purchase membership service credit in this System pursuant to Section 3-2-19(e)(3) and (5) by paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Employees' Retirement System, the Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, to be applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within three years of October 1, 2005.
- (4e) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Employees' Retirement System, or the Fairfax County Police Officers Retirement System, and who withdraws therefrom may purchase service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought. (A member may purchase membership service credit for prior service while a member of VRS only for service due to employment by the Fairfax County Public Schools (FCPS).)
- (5f) The amount due from a member for such purchase of service credit shall be satisfied, to the extent possible, (a) by directing the trustees of the system from which he or she is withdrawing to transfer his or her accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he or she is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from a system, (iii) a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code, or (iv) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A). To the extent that a rollover or direct transfer permitted under this Subsection is insufficient to purchase the necessary service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such service credit.
- (6g) Members in service shall also receive membership service credit for periods of service-connected disability retirement from the System.

(eh) A member shall also receive membership service credit for any period during which the member is taking leave without pay from the County service and is receiving compensation from the County for temporary total or temporary partial disability under the Virginia Workers' Compensation Act.

(di) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. (1961 Code, § 9-94; 11-74-9; 22-83-3; 23-85-3; 45-93-3; 36-94-3; 22-96-3; 10-01-3; 8-03-3; 23-05-3; 27-12-3; 3-16-3.)

Section 3-3-25. - Prior service credit.

The Board shall determine, as soon as practicable after the filing of statements of service, the credit that the member is entitled to receive for prior service. Credit for prior service need not have been continuous provided no break in service exceeded five years. When an employee again becomes a member after his or her prior membership has ceased, he or she shall enter the System as an employee not entitled to prior service credit. Members who have had a break in service shall receive full credit for all past County service; provided, that no credit shall be given for a period of employment prior to a break in service in excess of five years. (1961 Code, § 9-95; 11-74-9; 45-93-3; 30-09-3; 3-16-3.)

Section 3-3-25.1. - Portability service credit.

(a) Definitions.

- (1) *Accepting plan* shall mean the retirement plan or system which is receiving membership assets from another defined benefit retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
 - (2) *Portability service credit* shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
 - (3) *Transferring plan* shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase service in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (b) The Board of Supervisors may enter into agreements with the Virginia Retirement System (VRS) or with any other political subdivision of the Commonwealth of Virginia, provided that the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), to permit any vested member of any such plan to purchase portability credit in this System.
- (c) The purchase of portability service credit in the System pursuant to this Section may only be made within 18 months of the date when an employee commences employment in a position covered by the System, or within 18 months of March 23, 2003, for County employees who are members of the System on March 23, 2003.
- (d) In order to purchase portability service credit in the System, the member shall be a vested member of the transferring plan and the transferring plan shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board shall determine the amount of portability service credit that would be actuarially equivalent to the amount of the assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have 30 days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to

proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.

- (e) In the event that the assets transferred are not sufficient to purchase portability service credit in the System equivalent to five years of service, the member shall not become vested in the System until his or her creditable service equals five years.
- (f) The purchase of portability service credit in the Virginia Retirement System (VRS) or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this Section shall be accomplished upon the transfer of assets from the transferring plan to this System. Upon the completion of such transfer, the member shall lose all rights to any allowances and benefits from the transferring plan, and shall only be entitled to receive allowances and benefits from this System.
- (g) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may transfer an amount equal to the greater of (i) his or her accumulated member contributions with interest thereon, or (ii) an amount representing the present value of his or her accrued benefits with this System. In order to accomplish the transfer of assets from this System to an accepting plan, the member must make application in writing to this System. Upon the transfer of membership assets from this to the accepting plan, the member shall lose all rights to any allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3; 3-16-3.)

Division 6. - Contributions.

Section 3-3-26. - Member contributions.

- (a) Each member shall contribute for each pay period for which he or she received compensation the amounts prescribed in this Section. Subsequent to December 22, 1984, the County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. The Board of Supervisors may, from time to time, revise the rates of member contributions.
- (b) All members of Plan A, who, before April 1, 1997, do not elect in writing to accept the provisions set forth in Subsection (d) of this Section and Section 3-3-33(a)(2)(C) shall be considered as participants in Plan A. Contributions shall be made equal to four percent of such member's creditable compensation per pay period until his or her creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to five and three-quarters percent of said member's creditable compensation per pay period.
- (c) All members of Plan B, who before April 1, 1997, do not elect in writing to accept the provisions set forth in Subsection (e) of this Section and Section 3-3-33(a)(2)(D) shall be considered participants in Plan B. Contributions shall be made equal to seven and eight-one-hundredths percent of such member's creditable compensation per pay period until his or her creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to eight and eighty-three-one-hundredths percent of said member's creditable compensation per pay period.
- (d) All members of Plan A, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(C), shall be considered participants in Plan C. Contributions shall be made equal to four percent of the member's creditable compensation per pay period.
- (e) All members of Plan B, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(D), and all new members who begin employment that qualifies them for participation in the System on or after April 1, 1997, and before January 1, 2013~~July 1, 2019~~.

shall be considered participants in Plan D. Contributions shall be made equal to seven and eight-one-hundredths percent of the member's creditable compensation per pay period.

(f) All members of Plan E and Plan F shall have contributions made equal to seven and eight-one-hundredths percent of the member's creditable compensation per pay period.

(fg) Notwithstanding any other provision of this Section, no pick-up shall be made from any member's compensation if the employer's contribution required hereunder is in default.

(gh) The Board may modify the method of collecting the pick-up contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.

(hi) All contributions required to be made under Subsections (b), (c), (d), ~~and (e)~~, and (f) of this Section with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County and shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the Internal Revenue Code. For all other purposes under this Chapter and otherwise, such pick-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked-up amounts shall be included in compensation for the purpose of calculating benefits under Division 8. The County shall pay such picked-up amounts from the same source of funds which is used in paying earnings to the employee.

(ij) With the exception of the transfers between retirement plans specifically allowed as set forth above, no transfers between any of the Plans of the System shall be permitted. (1961 Code, § 9-96; 11-74-9; 20-81-3; 34-81; 5-85-3; 48-96-3; 3-16-3.)

Section 3-3-27. - Employer contributions.

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

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

- To the extent that the System's funding ratio exceeds 120 percent, a credit shall be established equal to the amount of assets in excess of 120 percent of the actuarial accrued liability.
- To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a 15 year amortization of the credit or charge described in this Subsection, to be paid until the funding ratio re-enters the corridor at which time it shall cease.

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

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120 percent shall be excluded from this component. (1961 Code, § 9-97; 11-74-9; 23-85-3; 28-89-3; 48-96-3; 10-01-3; 16-02-3; 28-15-3, § 2; 3-16-3.)

Division 7. - Assets of System.

Section 3-3-28. - Assets to be credited to one of two accounts.

All of the assets of the System shall be credited, according to the purpose for which they are held, to one of two accounts, namely, the members' contribution account, and the retirement allowance account. (1961 Code, § 9-98; 11-74-9; 3-16-3.)

Section 3-3-29. - Members' contribution account.

- (a) The members' contribution account shall be the account to which all members' contributions, pick-up contributions and interest allowances as provided in this Article shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him or her upon withdrawal or paid in the event of his or her death before retirement.
- (b) Each member's contribution and pick-up contributions provided for in Sections 3-3-26 and 3-3-27 shall be credited to the individual account of that member.
- (c) Each individual account of the members' contribution account shall be credited annually with interest at a rate of not less than two percent per annum on the accumulated contributions of the member; provided, that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five years.
- (d) Upon the retirement of a member, his or her accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account. (1961 Code, § 9-99; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-30. - Retirement allowance account.

- (a) The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the System after all expenses for required services shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the System.
- (b) The amount of interest allowances provided for in Section 3-3-29 shall be transferred each year from the retirement allowance account to the members' contribution account. (1961 Code, § 9-100; 11-74-9; 3-16-3.)

Section 3-3-31. - Deposits.

For the purpose of meeting disbursements for retirement allowances and other payments, there may be kept available cash, not exceeding ten percent of the total amount in the accounts of the System, on deposit in one or more banks or trust companies that are approved as depositories for County funds. (1961 Code, § 9-101; 11-74-9; 3-16-3.)

Division 8. - Benefits.

Section 3-3-32. - Service retirement.

- (a) Normal service retirement. Any member in service who has attained the age of 55 years and has completed six years of creditable service, or has completed 25 years of creditable service may retire at his or her normal retirement date or thereafter upon written notice to the Board made by the member, or his or her duly appointed agent, stating the time the retirement is to become effective. However, such effective date shall be subsequent to his or her last day of service, but not more than 90 days subsequent to the filing of such notice.

- (b) Early service retirement. Any member in service who has completed 20 years of creditable service may retire pursuant to the procedures set forth in Subsection (a) of this Section.
- (c) Compulsory retirement. Repealed; provided, any member in service who previously had reached compulsory retirement age but who had continued in service pursuant to the exemptions previously provided by this Subsection may continue in service without regard to the limitations set forth in this Subsection. (1961 Code, § 9-102, 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 14-87-3; 3-16-3.)

Section 3-3-33. - Service retirement allowance and other benefits.

- (a) Normal service retirement. Upon service retirement after July 1, 1988, a member shall receive an annual retirement allowance, payable monthly as provided below:
 - (1) Effective the first of any month following the member's attainment of age 55 years the annual retirement allowance payable for life shall consist of:
 - (A) For members of Plans A and B, an amount equal to two percent of the average final compensation, multiplied by the number of years of creditable service.
 - (B) In addition to the amount of retirement allowance provided in Subparagraph (A) of this Subsection, members of Plans A and B shall receive an additional amount payable monthly, equal to the primary social security benefit to which such member would be entitled under the provisions of the Social Security Act in effect on the date of the member's retirement if such member were then 65 years of age. Further, such additional retirement allowance shall be reduced by the amount of any social security benefits such member may become eligible to receive, at the earliest date of such eligibility. For purposes of this reduction the amount of social security benefits of a member shall be the amount he or she would have been eligible to receive, without regard to any disqualification resulting from the earned income of the member. The social security benefits, for all employees whose County employment commenced by reporting for work after July 1, 1976, shall be determined on a pro rata basis as ratio of the number of years of creditable service in the County (numerator) and 25 years (denominator). This number is never larger than one.
 - (C) For the members of Plan B, the amount prescribed in Subparagraph (A) of this Subsection shall include cost-of-living adjustments provided for under Section 3-3-45 during the period between the member's retirement and his or her attainment of age 55 years.
 - (D) For members of Plans C, D, ~~and E, E and F~~ an amount equal to two and five-tenths percent of the member's average final compensation multiplied by the number of years of creditable service. For members of these plans the amount shall include cost-of-living adjustments provided for under Section 3-3-45.
 - ~~(E) For members of Plans D and E, the amount prescribed in Subparagraph (D) of this Subsection shall include cost-of-living adjustments provided for under Section 3-3-45.~~
 - (2) For members who retire before attaining the age of 55 years, the annual retirement allowance, payable during the period between retirement and the first of the month following such member's 55th birthday, shall be determined as follows:
 - (A) Members of Plan A shall receive the amount provided for in Subsection (a)(1)(A) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's 55th birthday. Further, the additional allowance prescribed in Subsection (a)(1)(B) of this Section shall not be included.
 - (B) After undergoing the additional deductions through December 31, 1981, members of Plan B shall receive the amount provided for in Subsection (a)(1)(A) of this Section subject to cost-of-living adjustments under Section 3-3-45 plus 50% of the additional allowance provided for under Subsection (a)(1)(B) of this Section.

- (C) Members of Plan C shall receive the amount provided for in Subsection (a)(1)(D) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's 55th birthday.
 - (D) Members of Plans D and E shall receive the amount provided for in Subsection (a)(1)(D) of this Section subject to cost-of-living adjustments under Section 3-3-45 as provided in Subsection (a)(1)(E) of this Section.
 - (E) Members of Plan F shall receive the amount provided for in Subsection (a)(1)(D) of this Section subject to cost-of-living adjustments under Section 3-3-45 as provided in Subsection (a)(1)(E) of this Section.
- (3) In addition to the allowances provided in Subsections (a)(1) and (a)(2) of this Section, for participants in Plans A, B, C, D or E retiring after March 18, 2002, the allowances in Subparagraphs (A) and (B) below, referred to as the pre-social security benefit, shall be payable until the first month after the member attains the age of eligibility for an unreduced social security retirement benefit. The pre-social security benefit shall not be subject to cost-of-living adjustments provided for under Section 3-3-45.
- (A) For members of Plans A and B, an additional amount equal to two-tenths of one percent of average final compensation times years of service.
 - (B) For members of Plan C, D, and E, an additional amount equal to three-tenths of one percent of average final compensation times years of service.
 - (C) The pre-social security benefit provided herein shall not be credited to the DROP accounts of members of Plan E who elect to participate in the DROP; however, upon the completion of the member's DROP period, the member shall be entitled to receive the pre-social security benefit provided herein if he or she is not then entitled to an unreduced social security benefit until the first month after such member is entitled to an unreduced social security benefit. Members in Plan F are not entitled to the Pre-social security benefit; however, those members are given an Early Age Option to receive a higher retirement allowance amount before they are entitled to receive an unreduced social security benefit as defined in Subsection (a)(1) (B) of this Section.
 - (D) Early Age Option. Any members in Plan F who retires prior to his or her full retirement age under social security shall be eligible to receive an additional monthly benefit equal to 0.3 percent of his or her average final compensation, not to exceed his or her social security breakpoint times years of service until the first month after such member is entitled to an unreduced social security benefit. Upon reaching the full retirement age under social security, the member's monthly benefit is reduced for life by an amount determined to result in a lifetime benefit under this option that is actuarially equivalent to the lifetime benefit that would be received without this option.
- (b) Early service retirement. An amount which shall be determined in the same manner as for retirement at the member's normal retirement date with years of creditable service and average final compensation being determined as of the date of his or her actual retirement, and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date; provided, that for members who retire after July 1, 1988, the amount provided for in Subsection (a)(1)(B) of this Section shall not be reduced on the actuarial equivalent basis.
- (1) The allowance for members of Plans A and C except those exempted under Subsection (b)(2) of this Section shall be reduced in accordance with the factors prescribed in Table 1.
 - (2) The allowance for members of Plans B, D, ~~and E~~, and F and members of Plans A and C whose age plus creditable service equal 75 shall be reduced in accordance with the factors prescribed in Table 2.
- (c) Joint and last survivor option. Before the normal retirement date, a member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance or a

specified fraction thereof, continued after his or her death to the spouse, for his or her lifetime. The amount of such retirement allowance shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 3. In the event a retired member has elected a reduced retirement allowance in consideration of continued allowance to his or her spouse after the member's death and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. In the event a retired member who has elected the joint and last survivor option shall be divorced from his or her spouse, and such former spouse waives his or her rights to the benefits of the election of the joint and last survivor option, the retired member may revoke his or her joint and last survivor election; such revocation must be accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election. Upon the provision of the request to revoke the election and the certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election, the Executive Director shall revoke the election and increase the member's retirement allowance to the amount it would have been had no joint and last survivor election ever been made. The effective date of the increase in the member's retirement allowance shall be the first of the month next following the submission of the request to revoke the election accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election.

TABLE 1
FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM

Actuarial Reduction Factors That Would Apply to Members
With a Normal Retirement Age Requirement of 25 Years of Service
(or, Attainment of Age 55, if Earlier) if They Are Permitted To
Retire Early With a Reduced Retirement Allowance After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE
AT AGE 55 WITHOUT CATCH-UP PROVISION)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	65.83	71.56	77.79	84.57	91.94	100.00
39	65.83	71.57	77.80	84.58	91.95	100.00
40	65.85	71.58	77.81	84.59	91.96	100.00
41	65.88	71.60	77.82	84.60	91.97	100.00
42	65.93	71.63	77.84	84.61	91.98	100.00
43	65.99	71.67	77.87	84.63	91.99	100.00
44	66.07	71.73	77.91	84.66	92.00	100.00
45	66.17	71.81	77.97	84.69	92.02	100.00
46	66.29	71.91	78.04	84.73	92.04	100.00
47	66.45	72.03	78.13	84.79	92.07	100.00
48	66.64	72.18	78.24	84.86	92.10	100.00
49	66.86	72.36	78.37	84.95	92.14	100.00
50	67.13	72.57	78.53	85.05	92.19	100.00
51	72.81	72.81	78.71	85.18	93.11	100.00

52	78.92	78.92	78.92	86.29	92.97	100.00
53	85.48	85.48	85.48	85.48	92.41	100.00
54	92.50	92.66	92.66	92.66	92.66	100.00
55	100.00	100.00	100.00	100.00	100.00	100.00

TABLE 2
FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM
Actuarial Reduction Factors That Would Apply to Members
With a Normal Retirement Age Requirement of 25 Years of Service
(or, Attainment of Age 55, if Earlier) if They Are Permitted To
Retire Early With a Reduced Retirement Allowance After 20 Years of Service
(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS
ARE EFFECTIVE AT RETIREMENT)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00
55						

TABLE 3

FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Members With a Normal or Early Service Retirement Allowance Determined Under Section 3-3-33 Who Elect a Joint and Last Survivor Option

Percent of Retirement Allowance Continued to Spouse Upon Member's Death	Factor for Equal Ages	Increase/Decrease For Each Full Year Beneficiary is Older (Younger) Than Employee	Maximum Factor
100%	87%	0.7%	96%
75%	90%	0.6%	97%
66.67%	91%	0.5%	98%
50%	93%	0.4%	99%

(1961 Code, § 9-103; 11-74-9; 28-7-3; 20-81-3; 34-81-3; 36-83-3; 36-88-3; 29-89-3; 27-90-3, § 3; 48-96-3; 28-97-3; 13-98-3; 5-00-3; 17-02-3; 27-12-3; 51-13-3; 3-16-3.)

Section 3-3-34. - Ordinary disability retirement.

- (a) Any member in service who has five or more years of creditable service may, at any time before his or her normal retirement date, retire on account of disability, not compensable under the Virginia Workers' Compensation Act, upon written application to the Board, made by the member or his or her appointing authority, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than 90 days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such application, mentally or physically incapacitated for the further performance of duty, and that such incapacity is likely to be permanent and that such member should be retired.
- (b) Any member not in service at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if:
 - (1) Written application is made within one year of the date he or she ceased to be in service; and
 - (2) The Board finds:
 - (A) The disability arose in the course of the member's service;
 - (B) The disability was the proximate cause of the member's ceasing to be in service; and
 - (C) There was good cause for the employee not to have filed an application while in service.
- (c) In the event a member is granted an ordinary disability retirement pursuant to Subsection (b) of this Section, the Board shall establish an effective date which, considering all the circumstances of the individual case is just; provided, such date shall be no more than 90 days prior to the execution and filing of his or her application. (1961 Code, § 9-104; 11-74-9; 20-81-3; 48-96-3; 3-16-3.)

Section 3-3-35. - Ordinary disability retirement allowance.

Upon ordinary disability retirement, as provided for in Section 3-3-34, a member shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to two percent of his or her average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than 60 percent of the member's average final compensation. (1961 Code, § 9-105; 11-74-9; 28-77-3; 20-81-3; 48-96-3; 3-16-3.)

Section 3-3-36. - Service-connected disability retirement.

- (a) Any member in service may, at any time before his or her normal retirement date, retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service. The Board shall determine a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers' Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.
- (b) The member or his or her employer shall be required to submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than 90 days prior to the date of such application. Prior to submitting such application, the member shall be required to apply for workers' compensation to which he or she may be entitled. The member shall be required to submit to the Board copies of the dispositions as made of his or her workers' compensation claim and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-34.
- (d) Any member who applied for service-connected disability retirement on or before (effective date of amendment [December 16, 1985]) shall have his or her eligibility for such retirement governed by the provisions of this Section in effect on that date. Members applying thereafter shall have their eligibility determined by the provisions of this Section.
- (e) When an application for service-connected disability retirement has been submitted by a member or on his or her behalf by his or her employer, the appointing authority for the agency in which the member is employed shall certify whether or not there exist any vacant positions within the agency the essential physical job functions of which the member could perform, with or without reasonable accommodation; this certification shall be provided to the member and to the Board. The appointing authority shall have a continuing obligation to notify the member and the Board if any such position becomes vacant between the time of the appointing authority's initial certification and the Board's action on the member's retirement application. A member who has applied for service-connected disability retirement who meets the physical requirements for such position, with or without reasonable accommodation, and who can be retrained to fulfill the other requirements for any such position shall be given the option to accept such position and withdraw his or her application for service-connected disability retirement or to decline such position and proceed with his or her application for service-connected disability retirement. A member shall have seven days from the date of the appointing authority's certification that a position is available to make his or her election as to whether he or she shall accept the position or proceed with his or her retirement application; the failure of the member to make such election shall constitute an election to proceed with his or her application for retirement. In the event that the member elects not to accept a position for which he or she has received notification, the appointing authority shall have no further duty to notify the member and the Board of any further positions that may subsequently become available. In the event that no such positions are vacant or the member elects not to accept a vacant position, the application for service-connected disability retirement shall proceed to a determination by the Board. The certification by an appointing authority that no such positions exist within the member's agency constitutes an application of specific County personnel policies, procedures, rules and regulations. (1961 Code, § 9-106; 11-74-9; 20-81-3; 24-85-3; 48-96-3; 34-04-3; 3-16-3.)

Section 3-3-37. - Service-connected disability retirement allowance.

- (a) Any member who is receiving, or has been approved by the Board to receive, service-connected disability retirement, or who has applied for service-connected disability retirement, or whose employer has submitted as application for service-connected disability retirement for such employee as of December 9, 1996, under Section 3-3-36, shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to 66 $\frac{2}{3}$ percent of the salary the member received at the time of retirement. This allowance shall be reduced by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity.
- (b) Any member who submits an application for service-connected disability retirement, or for whom his or her employer submits such application under Section 3-3-36 on or after December 9, 1996, shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to 40 percent of the salary the member received at the time of retirement. However, this allowance shall be reduced by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity.
- (c) The amount of the reduction shall be increased by an award of a cost-of-living increase to the member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.
- (d) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-3-36 shall be offset against the member's allowance under this Section; and provided further, that in the event the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (1961 Code, § 9-107; 11-74-9; 28-77-3; 20-81-3; 34-81-3; 4-83-3; 36-88-3; 29-89-3; 1-93-3; 48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 67-13-3, § 1; 3-16-3; 37-17-3.)

Section 3-3-37.1. - Joint and last survivor option for disability beneficiaries.

A member of the System who applied for an ordinary or service-connected disability retirement allowance, including those members who are determined to be eligible for severe service-connected disability retirement by the Board, on or after July 1, 1988, may, before his or her actual retirement date, elect the joint and last survivor option provided by Section 3-3-33(c). (36-88-3; 48-96-3; 3-16-3.)

Section 3-3-37.2. - Severe service-connected disability retirement.

- (a) Any member in service may, at any time before his or her normal retirement date, be retired on account of a severe disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service. The Board shall determine whether a member has suffered a severe disability as defined herein due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers'

Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.

- (b) When a member or his or her employer submits a written application for service-connected disability retirement as set forth in Section 3-3-36, the Board shall determine whether the member meets the requirements for qualification to receive severe service-connected disability as set forth in this Section. Prior to submitting such application, the member shall be required to apply for workers' compensation to which he or she may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his or her workers' compensation claim and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date such decision becomes final.
- (c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-34. Any member otherwise eligible for service-connected disability retirement under Section 3-3-36 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-36.
- (d) *Severe disability* shall mean an impairment from the list below that permanently incapacitates the member from performing the necessary duties of the position in which he or she had been employed prior to sustaining the impairment.
 - (1) Schedule of impairments:
 - (A) Loss of both hands or both feet;
 - (B) Loss of one hand and one foot;
 - (C) Loss of one hand and the sight of one eye;
 - (D) Loss of one foot and the sight of one eye;
 - (E) Loss of the sight of both eyes;
 - (F) Paralysis, either paraplegia or quadriplegia;
 - (G) Cancers determined to be compensable by the Virginia Workers' Compensation Commission which were caused by documented contact with a toxic substance, pursuant to Section 65.2-402(c) of the *Virginia Code* ;
 - (H) Loss of speech;
 - (I) Loss of hearing;
 - (J) A mental incapacity that meets the criteria for disability benefits under the Federal Old-Age Survivors' and Disability Insurance Act; or
 - (K) Hepatitis C.
 - (2) *Loss* shall mean:
 - (A) With respect to a hand or foot, the dismemberment by severance through or above the wrist or ankle joint, or the partial dismemberment resulting in the loss of functional use of the partially dismembered hand or foot.
 - (B) With respect to sight, central acuity of 20/200 or less with the use of correcting lenses or visual acuity greater than 20/200 if accompanied by a limitation in the field of vision that the widest diameter of the visual field subtends an angle no greater than 20 degrees. These

standards apply to the affected eye if sight loss is claimed for one eye in combination with loss of a hand or foot, or to the better eye if sight loss is claimed for both eyes.

- (C) With respect to hearing, a severe and irreversible bilateral loss of hearing that is not correctable with either the use of hearing aids or with corrective surgery.
- (e) For the purpose of this Section only, *member in service* shall include a member who has not reached his or her normal retirement date and who has been retired on account of a service-connected disability pursuant to the terms of Section 3-3-36.
- (f) A member for whom an application for severe service-connected disability is approved by the Board shall not be required to submit to medical re-evaluations as required by Section 3-3-40. (48-96-3; 19-01-3; 7-03-3; 34-04-3; 3-16-3.)

Section 3-3-37.3. - Severe service-connected disability retirement allowance.

- (a) Any member who retires pursuant to Section 3-3-37.2 shall receive an annual retirement allowance, payable monthly during his or her lifetime, consisting of an amount equal to 90 percent of the salary the member was entitled to receive at the time of his or her retirement. This allowance shall be reduced by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity.
- (b) The amount of the reduction shall be increased by an award of a cost-of-living increase to the member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.
- (c) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, however, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-3-37.2 shall be offset against the member's allowance under this Section; and provided further, that in the event the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 68-13-3, § 1; 3-16-3; 38-17-3.)

Section 3-3-38. - Service-connected accidental death benefit.

If death of a member is caused by an accident occurring prior to retirement and such death is compensable under the Virginia Workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

- (a) For a member whose death occurs before retirement:
 - (1) The member's accumulated contributions as provided in Section 3-3-29(c) to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-3-43; and
 - (2) The sum of \$10,000.00 to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.
- (b) For a member whose death occurs after retirement:

- (1) The member's accumulated contributions as provided in Section 3-3-29(c) less the amount of any retirement allowances previously received by the member, such sum to be paid to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-3-33; and
- (2) The sum of \$10,000.00 to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate. (1961 Code, § 9-108; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-39. - Refund of contributions upon withdrawal or death; deferred vested benefit.

(a) Refund of contributions.

- (1) If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this Article, and has fewer than five years of creditable service on his or her date of separation, he or she shall be eligible for a refund of the total of his or her accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him or her under this Article. The member shall file a written application with the Board for such refund and he or she shall be paid the amount to which he or she is entitled not later than 90 days after receipt of his or her application by the Board. Should a member or a person in retirement die, the amount of his or her accumulated contributions reduced by the amount of any retirement allowances previously received by him or her under this Article shall then be payable in a lump sum to a designated beneficiary or in the absence of a designated beneficiary to his or her estates; provided, no benefit is payable under Section 3-3-33(c).
 - (2) A member who becomes eligible for membership in either the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System prior to receipt of a refund amount may, under such rules and regulations as are adopted by the Board and by the board of the system of which he or she is eligible to become a member, elect in writing to transfer the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership. In the alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Section 402(f)(2)(A) of the Internal Revenue Code, such a member may (a) under rules and regulations of the system of which he or she is eligible to become a member, elect in writing to roll over the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership or (b) elect in writing to roll over the portion of his or her refund which is such an eligible rollover distribution directly to an individual retirement account.
 - (3) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six months shall become the property of the System.
- (b) Deferred vested benefit. If a member has five or more years of creditable service on his or her date of separation from the County, the member may leave his or her accumulated contributions in the System and receive a deferred vested benefit payable beginning the date the member attains 55 years of age. Members who choose a deferred vested benefit are not eligible to receive the pre-social security benefit. (1961 Code, § 9-109; 11 -74-9; 20-81-3; 34-81-3; 5-85-3; 36-88-3; 45-93-3; 10-01-3; 01-11-3; 3-16-3.)

Section 3-3-40. - Medical reevaluation of disabled members; penalty for unjustified refusal to accept medical attention, vocational rehabilitation or selective employment, or to submit to medical examination.

- (a) Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board shall require any such beneficiary prior to his or her normal retirement date to undergo a medical examination by the Medical Examining Board. Should such a beneficiary refuse to submit to any such medical examination or unreasonably and without just cause or excuse refuse medical attention recommended by the Medical Examining Board, his or her disability retirement allowance shall be

discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further disability retirement allowance shall cease.

- (b) Members who are beneficiaries of service-connected disability retirement allowances pursuant to Section 3-3-36, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act (Act) which are required to be offset against the allowances pursuant to Section 3-3-37, shall cooperate with and accept medical services or vocational rehabilitation and/or selective employment provided by the employer pursuant to the Act. In the event a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) for unjustified refusal to accept medical services, vocational rehabilitation and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-3-37 shall be computed as if the member received the suspended payments. The Board shall make appropriate adjustment to the member's allowance if the suspension by the Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection, for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation training, and/or selective employment.
- (c) The requirement for medical examinations of disability retirees established in this Section is not applicable to retirees who are receiving severe service-connected disability retirement benefits pursuant to Section 3-3-37.2. (1961 Code, § 9-110; 11-74-9; 28-77-3; 36-88-3; 3-16-3.)

Section 3-3-41. - Reduction of service-connected disability retirement allowance.

Repealed by 11-94-3.

Section 3-3-42. - Cessation of disability retirement allowance.

- (a) Should a beneficiary of a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease, and he or she shall become a member of the System and contributions, in accordance with Section 3-3-26, shall resume. Any service on the basis of which his or her disability retirement allowance was computed shall thereafter be counted as creditable service; and, in addition, the period of disability retirement shall be counted as creditable service for those on service-connected disability retirement.
- (b) Any excess accumulated contributions of such beneficiary over the disability retirement allowances received by him or her shall be transferred from the retirement allowance account to the member's contribution account. (1961 Code, § 9-112; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-43. - Cessation of normal or early service retirement allowance.

- (a) Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Employees' Retirement System, or the Police Officers Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986.
- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System (retiree) return to regular service in a permanent position in any office or employment paid directly or indirectly by the County, he or she shall elect to receive such retirement allowance under one of the following two options.
 - (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Employees' Retirement System or Police Officers Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-3-54 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree of this

System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member during the period of his or her reemployment shall be exempted from the requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member again during the period of his reemployment shall be eligible:

- (A) For a recomputation of his or her allowance to take into account compensation and creditable service attributable to the period of reemployment during which his or her allowance was suspended under this Subsection;
- (B) To make new election for any optional benefit to which he or she is entitled; and
- (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment (in lieu of his or her service retirement allowance).

A retiree of the Employees' Retirement System or Police Officers Retirement System who is appointed to a position covered by this Article and elects in writing within 30 days of such appointment may be excluded from membership in this System.

- (2) The retiree may elect to continue to receive his or her service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' Retirement System or Police Officers Retirement System if either covers the position in which he or she is reemployed. If he or she is a retiree of this System and the position in which he or she is reemployed is covered by this System, he or she shall not be required to contribute to this System during his or her period of reemployment.
- (c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police ~~officers~~ Officers Retirement System (retiree) may return to employment for which compensation is paid directly or indirectly by the County subject to the following conditions:
 - (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than 115 percent of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint or last survivor option which results in an actuarially reduced allowance. Employers under all three systems shall report salaries paid to retirees to the retiree's Board.
 - (2) A retiree who is employed in a position service in which would otherwise make him or her eligible for membership in this System, the Employees' Retirement System, or the Police Officers Retirement System, shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions.
 - (1) If the retiree is a member of this System and service in the position to which he or she is to be appointed ordinarily would result in membership this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ordinary or service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her

service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment, as if there had been no break in service.

- (2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Employees' Retirement System or Police Officers Retirement Systems but for his or her membership in this System, shall be subject to Subsection (b) or (c) of this Section, whichever is applicable.
- (3) If the retiree is a member of either the Employees' Retirement or Police Officers Retirement Systems and service in the position to which he or she is to be appointed would result in membership in this System but for this membership in the other system, the retiree shall be subject to Subsection (b) or (c) of this Section, whichever is applicable.
- (4) This Subsection shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Employees' Retirement System, or Police Officers Retirement Systems. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 3; 10-01-3; 11-05-3; 3-16-3.)

Section 3-3-44. - Spouse retirement allowance.

- (a) Should death occur to a member in service who has completed five years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance, payable monthly for life shall be 50 percent of the annual retirement allowance provided in the first sentence of Section 3-3-33(a), with creditable service and final compensation being determined as of the date of the member's death. Said spouse shall elect within 90 days after notice by the Board of the option of receiving the benefits outlined in this Subsection or a lump sum payment of the member's accumulated contributions as provided in Section 3-3-39, or within 180 days of the death of the member, whichever first occurs. If death is due to a service-connected accident as defined in Section 3-3-38, and the designated beneficiary under Section 3-3-38(1)(A) is the member's spouse, the spouse shall elect in writing within 90 days after the notice by the Board, or within 180 days of the death of the member, whichever first occurs, to receive either the benefits contained in this Subsection or those contained in Section 3-3-38(1)(A). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's accumulated contribution, said sum, reduced by the amount of any retirement allowances previously paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise the spouse's estate.
- (b) Should death occur to a member in service who has completed five years of creditable service and if the member's designated beneficiary, duly approved, acknowledged and filed with the Board, is not the member's spouse, a lump sum payment equaling the member's accumulated contribution as provided in Section 3-3-29(c), shall be paid to the designated beneficiary.
- (c) Should death occur to a member in service who has completed five years of creditable service and the member has no designated beneficiary, a lump sum payment equaling the member's accumulated contribution shall be paid to the member's estate; provided, that if such member's spouse is the sole person entitled under the laws of the Commonwealth of Virginia to the benefits provided hereunder, then said spouse shall have the same right to elect benefits as is provided to spouses in Subsection (a) of this Section.
- (d) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated

beneficiary or, if applicable, estate. (1961 Code, § 9-113; 11-74-9; 28-77-3; 20-81-3; 5-85-3; 29-09-3; 01-11-3; 3-16-3.)

Section 3-3-45. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, that such adjustments shall not affect the amount of the social security benefit allowance payable pursuant to Section 3-3-33(a)(1)(B) or Section 3-3-33(a)(2)(B); and provided further, that allowances for service-connected disability retirement shall be subject to Subsection (d) of this Section. The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section and the supplemental cost-of-living increase if any, provided for in Subsection (b) of this Section with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than 12 months.

- (a) The basic cost-of-living increase shall be the lesser of four percent and the percentage corresponding to the percentage increase in the Consumer Price Index during the 12-month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, *Consumer Price Index* shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes the County.
- (b) As part of each biennial actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent that can be provided on the following two July first's based upon the available actuarial surplus). The Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each of such July first by such actuarially determined percentage. For the purpose of this Section, *available actuarial surplus* shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the biennial actuarial valuation of the System.
- (c) In the event a member receiving a retirement allowance has not been in pay status for 12 full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) of this Section as follows:

Number of Complete Months Benefit Has Been in Pay Status	Percentage of Full Increase
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Less than 3 0%

3, 4 or 5 25%

6, 7 or 8 50%

9, 10 or 11 75%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-3-37 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-3-37.

- (e) The Board of Supervisors reserves the right to amend, terminate or modify the post-retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to allowances shall be due or payable to any member or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of the allowance then being paid to any member or beneficiary who has received allowances as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the plan in effect on June 30, 1981. (1961 Code, § 9-114; 11-74-9; 20-81-3; 1-93-3; 26-10-3; 3-16-3.)

Section 3-3-46. - Retention rights.

Participation in the System does not convey the right to be retained in service, or any right or claim to any assets of the System unless such right has specifically accrued under this Article. (1961 Code, § 9-116; 11-74-9; 20-81-3; 36-88-3; 3-16-3.)

Section 3-3-47. - Vesting on termination of System; nonreversion of funds.

Upon termination of the System or upon complete discontinuance of contributions to the System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the System shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (1961 Code, § 9-117; 11-74-9; 20-81-3; 36-88-3; 3-16-3.)

Section 3-3-48. - Nonretroactivity to members retired or terminated prior to July 1, 1974.

The benefits provided by this Article shall not apply to members retired or terminated prior to July 1, 1974, and their rights and benefits shall be determined under the ordinance in effect prior thereto. However, retirement allowances determined thereunder shall be subject to post-1974 cost-of-living adjustments. (1961 Code, § 9-118; 11-74-9; 20-81-3; 3-16-3.)

Section 3-3-49. - Review of adverse decisions.

Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within 30 days of receipt of such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3; 3-16-3.)

Section 3-3-50. - Transfer to Senior Executive Retirement Plan.

Repealed by 97-26-3.

Section 3-3-51. - Masculine usage includes feminine.

Repealed by 3-16-3.

Section 3-3-52. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415 of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Such limits shall be applied annually for the 12-month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Revenue Ruling 2001-62 (superseding and modifying Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 4; 21-96-3; 8-03-3; 01-11-3; 3-16-3.)

Section 3-3-53. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the

required beginning date specified below, or shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *required beginning date* shall mean April 1 of the calendar year following the later of the calendar year in which the member attains 70½ years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions shall begin not later than one year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained 70½ years of age and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this Section shall be applied as if the surviving spouse were the member. Distributions from the System shall be made in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 4; 51-13-3; 3-16-3.)

Section 3-3-54. - Direct rollovers to other plans.

- (a) General. This Section applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.
- (b) Definitions.
 - (1) *Eligible rollover distribution* shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.
 - (2) *Eligible retirement plan* shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- (3) *Distributee* shall mean a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
- (4) *Direct rollover* shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3; 3-16-3.)

Section 3-3-55. - Additional retirement allowance.

(a) Definitions.

- (1) *Active member* shall mean a member of the System who is an employee on July 1, 1995, or who became an employee thereafter, and whose membership in the System has not ceased at any time from July 1, 1995, or from when he or she became an employee (whichever is later), until the effective date of his or her subsequent retirement.
 - (2) *Retired member* shall mean a member of the System who is receiving a retirement allowance on July 1, 1995. A member of the System who is receiving a retirement allowance shall include any member whose effective date of retirement is on or before July 1, 1995.
 - (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an ordinary disability retirement allowance, a deferred vested benefit, or a spouse retirement allowance.
 - (4) *Base annual retirement allowance* shall mean the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-3-8. For a member taking normal service retirement under Section 3-3-32(a), this is the allowance calculated under Section 3-3-33(a)(1) (post-age 55 years) or Section 3-3-33 (a)(2) (pre-age 55 years) less any additional allowance under Section 3-3-33(a)(1)(B); for a member taking early retirement under Section 3-3-32(b), this is the allowance calculated under Section 3-3-33(b), less any additional allowance under Section 3-3-33(a)(1)(B); for a member retired on account of ordinary disability under Section 3-3-34, this is the allowance calculated under Section 3-3-35; for a member receiving a deferred benefit, this is the allowance calculated under Section 3-3-39(b); and for a spouse receiving a spouse retirement allowance, this is the allowance calculated under Section 3-3-44.
 - (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance provided under Section 3-3-44, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement or election of the spouse retirement allowance through July, 1, 1995.
 - (6) *Member in service* shall mean a member of the System.
- (b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent, effective July 1, 1995, (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under the provisions of this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.
 - (c) When an active member retires, or an eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the applicable Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (initial base annual retirement allowance). Adjustments to the member's or spouse's retirement allowance under this Article shall be computed on the basis of the initial base annual retirement allowance.

- (d) If a member is entitled to the three percent increase in the base retirement allowance provided by either Subsection (b) or (c) of this Section and if at the time he or she is entitled to such increase, he or she is also eligible to receive in whole or in part the additional allowance provided by Section 3-3-33(a)(1)(B) under any provision of this Article, such additional allowance shall be also increased by three percent.
- (e) Separation from service.
- (1) A member who:
- (A) Separated from service other than by death or retirement with five or more years of creditable service in the System prior to July 1, 1995, and
- (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
- (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit after July 1, 1995, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
- (2) A member in service on or after July 1, 1995, who:
- (A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and
- (B) Does not withdraw his or her accumulated contributions, and
- (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
- (3) A member in service on or after July 1, 1995, who,
- (A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and
- (B) Does not withdraw his or her accumulated contributions, and
- (C) Thereafter, returns to service and again becomes a member of the System, and
- (D) Subsequently applies for and is determined to be eligible for a normal service, early service, or ordinary disability retirement allowance, or for a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
- (4) A member in service on or after July 1, 1995, who:
- (A) Thereafter separates from service, and
- (B) Withdraws his or her accumulated member's contributions, and
- (C) Subsequently returns to service and again becomes a member of the System, and
- (D) At that time makes arrangements to purchase credit for all of his or her previous service in the System under this Article, and
- (E) Thereafter applies for and is determined to be eligible for a normal service, early service, or ordinary disability retirement or for a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (ced) of this Section.
- (f) The spouse of a member who retired on a normal service, early service or ordinary disability retirement who is receiving an allowance under the joint and last survivor option provided by Section 3-3-33(c), on July 1, 1995, shall have such allowance increased by three percent, effective July 1, 1995. Adjustments to such allowance under this Article after July 1, 1995, shall be computed on the basis of this increased allowance.

- (g) Notwithstanding the 60 percent of average final compensation limit contained in Section 3-3-35, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by Subsection (c) of this Section shall not exceed 61.8 percent of his or her average final compensation.
- (h) Notwithstanding any provision of this Section to the contrary, no adjustment under this Section shall be made which would violate the limitations provided by Section 3-3-52 concerning the limitations imposed by Section 415 of the Internal Revenue Code and U.S. Treasury regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations.

(i) This Section shall not be applicable to members of Plan F.

(12-95-3; 3-16-3.)

Section 3-3-56. - Deferred retirement option program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program (DROP) for eligible members of the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a) Definitions.

- (1) *DROP period* shall mean the three-year period immediately following the commencement of the member's participation in the DROP.
- (2) *Eligible member* shall mean any member who is, or shall become within 60 days, eligible for normal service retirement benefits as those are defined in Section 3-3-32(a).

(b) Election to participate.

- (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Fairfax County Retirement Administration Agency not less than 60 days prior to the date of the commencement of the member's participation in the DROP.
- (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.
- (3) At the time of an eligible member's election to participate in the DROP, he or she must make an election in writing pursuant to Section 3-3-33(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.
- (4) An eligible member who elects to participate in the DROP shall agree to do so for a period of three years.
- (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-3-24(a)(24), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP. Thereafter, the participating DROP member

shall perform the services of that position or any other position to which he or she is promoted or transferred.

- (2) A participating DROP member shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
 - (3) A participating DROP member shall continue to remain eligible for health and life insurance benefits provided by the County to its employees and shall remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefits shall be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement allowances and benefits of a retiree.
 - (4) All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period shall not be included in the computation of the member's average final compensation. A participating DROP member is also subject to the County's disciplinary policies and regulations.
 - (5) If a participating DROP member's continued employment with the County is interrupted by military service, there shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement allowances and benefits shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance shall be paid to the member whether or not he or she has returned to his or her former County position, and the member shall begin to receive his or her normal retirement benefits.
 - (6) Except as otherwise set forth herein, a participating DROP member's continued service shall be deemed to be normal service retirement and shall not count as creditable service with the System.
 - (7) Upon commencement of a participating DROP member's DROP period, the County shall cease to withhold contributions to the System from the participating DROP member's salary.
 - (8) The salary received by a participating DROP member during his or her DROP period shall not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.
- (d) DROP account.
- (1) Upon commencement of the participation of a member of ~~the four plans that existed before January 1, 2013 (Plans A, B, C, and D), whose County employment commenced by reporting for work before January 1, 2013,~~ in the DROP, the member's service retirement allowance pursuant to Section 3-3-33(a) and the additional retirement allowance pursuant to Section 3-3-55 shall be paid into the member's DROP account.

Upon commencement of the participation of a member of Plan E, ~~whose County employment commenced by reporting for work on or after January 1, 2013,~~ in the DROP, the member's service retirement allowance pursuant to Section 3-3-33(a) shall be paid into the member's DROP account; the additional retirement benefits provided for in Section 3-3-33(a)(3) shall not be credited to the DROP accounts of members of Plan E, although members of Plan E shall

remain eligible to receive the additional retirement benefits provided for in Section 3-3-33(a)(3) upon the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in Section 3-3-33(a)(3). ~~The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.~~ Upon commencement of the participation of a member of Plan F, in the DROP, the member's service retirement allowance pursuant Section 3-3-33(a) shall be paid into the member's DROP account, the additional retirement benefits provided for in Section 3-3-33(d) and Section 3-3-55(d) shall not be credited to the DROP accounts of members of Plan F. The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

- (2) The initial monthly amount shall be increased each July 1 based upon the annual cost-of-living adjustment provided to retirees pursuant to Section 3-3-45. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement allowances and benefits if he or she were retired shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
 - (3) The participating DROP member's DROP account shall be credited with interest at an annual rate of five percent, compounded monthly. Interest shall not be pro-rated for any period less than a full month.
 - (4) Contributions by the County and the participating DROP member into the System for the participating DROP member shall cease.
 - (5) Amounts credited to a participating DROP member's DROP account shall not constitute annual additions under Section 415 of the Internal Revenue Code.
 - (6) A participating DROP member's DROP account shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance shall remain part of the assets of the System.
- (e) Cessation of County employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County employment shall automatically cease. The participating DROP member shall then begin to receive normal service retirement allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost-of-living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member shall make one of the following elections concerning payment of his or her DROP account balance:
 - (A) The member may receive payment of his or her DROP account balance as a lump sum.
 - (B) The member may elect to roll over his or her DROP account balance into an "eligible retirement plan," as defined in Section 3-3-54(b)(2).
 - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
 - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement benefits and allowances. The amount of the increase shall be

determined based on the actuarial equivalent of the member's DROP account balance.

- (E) The member may divide his or her DROP account balance in half, and may then elect to use 50 percent of his or her DROP account balance to increase his or her monthly retirement allowances and benefits, and to receive the remainder in any manner listed in Subparagraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this Subsection, the member shall receive payment of his or her DROP account balance as a lump sum.

- (2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County employment shall be treated as the end of the DROP period for all purposes of this Section.
 - (3) In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.
- (1)
 - (A) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of Section 3-3-33(c), the participating DROP member's surviving spouse shall receive payment of the participating DROP member's DROP account balance and shall begin to receive allowances and benefits pursuant to the joint and last survivor option election of the participating DROP member.
 - (B) If a participating DROP member dies during the DROP period, and the participating DROP member's death is a service-connected accidental death as set forth in Section 3-3-38, the member's beneficiary shall receive the benefits provided for in Section 3-3-38(a)(1); if there is no designated beneficiary on record with the System, payment of these amounts shall be to the member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of Section 3-3-33(c), the participating DROP member's surviving spouse shall receive the benefits provided for in Section 3-3-38(a)(1)(B) and the participating DROP member's DROP account balance, and shall begin to receive allowances and benefits pursuant to the joint and last survivor election of the participating DROP member.
 - (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member shall receive:
 - (A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in Section 3-3-35, the effective date of the member's disability shall be treated as the end of the participating DROP member's DROP period.
 - (B) In the case that a participating DROP member suffers a service-connected disability as set forth in Section 3-3-36 or a severe service-connected disability as set forth in Section 3-3-37.2, the participating DROP member may elect either (i) to receive the

service-connected disability retirement allowances and benefits or the severe service-connected disability retirement allowances and benefits to which he or she would otherwise be entitled or (ii) to receive the normal service retirement benefits and allowances to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement allowances and benefits or severe service-connected disability retirement benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.

- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board of Trustees is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 27-12-3; 3-16-3.)

Section 3-3-57. - Increased retirement allowance for certain retired members.

(a) For the purposes of this Section only, the following words and phrases shall be defined as follows:

- (1) *Retired member* shall mean a member of the System whose effective date of retirement was on or before March 18, 2002.
- (2) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an allowance to a surviving spouse pursuant to the joint and last survivor option, or a spouse retirement allowance.
- (3) *Spouse receiving a spouse allowance* shall mean a member's surviving spouse who was, on or before March 18, 2002, entitled to receive a spouse retirement allowance.
- (4) *Base annual retirement allowance* shall mean the initial calculation of a member's retirement allowance, a surviving spouse's allowance pursuant to the joint and last survivor option, or a spouse's annual retirement allowance, without regard to any deductions for withholding or other benefit elections or adjustments under Section 3-3-8.
 - (A) For Plan A members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Sections 3-3-33(a)(1)(A) and (B) as in effect on the effective date of their retirement;
 - (B) For Plan B members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(A), (B) and (C) as in effect on the effective date of their retirement;
 - (C) For Plan C members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(D) as in effect on the effective date of their retirement;
 - (D) For Plan D members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(D) and (E) (Plan D members) as in effect on the effective date of their retirement;
 - (E) For Plan A and C members taking early service retirement pursuant to Section 3-3-32(b) whose age plus creditable service as of the effective date of their retirement was less than 75 years, this is the allowance calculated pursuant to Section 3-3-33(b)(1) as in effect on the effective date of their retirement;
 - (F) For Plan B and D members and for Plan A and C members taking early service retirement pursuant to Section 3-3-32(b) whose age plus creditable service was greater than or equal to 75 years as of the effective date of their retirement, this is the allowance calculated pursuant Section 3-3-33(b)(2) as in effect on the effective date of their retirement; or

- (G) For a surviving spouse receiving an allowance pursuant to the joint and last survivor option, this is the allowance calculated pursuant to Section 3-3-33(c) as in effect on the effective date of the member's retirement; or
- (H) For a spouse receiving a spouse allowance, this is the allowance calculated pursuant to Section 3-3-44(a) as in effect on the date of the commencement of payment of the spouse allowance.
- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance as set forth in Subparagraph 4 of this Subsection as increased by any cost-of-living adjustments applied to the base annual retirement allowance from the effective date of the retired member's retirement or of the commencement of the receipt of a spouse allowance through December 31, 2003.
- (b) Effective January 1, 2004, the adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance shall be increased as follows:
 - (1) For Plan A members, by 23 percent;
 - (2) For Plan B members, by 15 percent;
 - (3) For Plan C members, by five percent;
 - (4) For Plan D members, by five percent;
 - (5) For spouses receiving spouse allowances pursuant to Section 3-3-44(a), by ten percent; or
 - (6) For surviving spouses receiving allowances pursuant to the joint and last survivor option set forth in Section 3-3-33(c), by ten percent.
- (c) No increased retirement allowance calculated pursuant to this Section shall violate the limitations on annual retirement allowances set forth in Section 3-3-52.
- (d) For those persons eligible to receive the increased retirement allowance pursuant to this Section, cost of-living adjustments pursuant to Section 3-3-45 and made after January 1, 2004, shall be calculated based upon the increased retirement allowance set forth in this Section. (43-03-3; 3-16-3.)

Division 9. - Benefit Restoration Plan.

Section 3-3-58. - Benefit restoration plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
 - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by the Section 415(m) of the Internal Revenue Code, as is permitted by Section 51.1-1302 of the *Virginia Code*. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to participants, including the benefits established by the System.
 - (2) This Section shall be construed to ensure compliance with federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code and Sections 51.1-1302, 51.1-1303, and 51.1-1304 of the *Virginia Code*, as in effect at the time of the adoption of this Section and as subsequently amended.
- (c) Definitions.
 - (1) *Administrator* or *Plan Administrator* shall mean the Board, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board, the Executive Director shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.

- (2) *Beneficiary* shall mean the person or persons entitled under this Article to receive any benefits payable after the participant's death.
 - (3) *Benefit Restoration Plan* or *Plan* shall mean the Benefit Restoration Plan for the System established by this Section.
 - (4) *Effective date* shall mean the date of this Section's adoption [June 5, 2006].
 - (5) *Eligible member* shall mean a retired member of the System whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans.
 - (6) *Enabling statute* shall mean Chapter 13 of Title 51.1 of the *Virginia Code*, as amended.
 - (7) *Grantor trust* shall mean the trust fund described in Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
 - (8) *Participant* shall mean an eligible member qualified to participate in the Benefit Restoration Plan.
 - (9) *Plan Sponsor* shall mean the Board of Supervisors.
 - (10) *Plan Year* shall mean the 12-month period beginning on July 1.
 - (11) *Restoration death benefit* shall mean the benefit due the beneficiary of a participant under the Plan as determined under this Section.
 - (12) *Restoration retirement benefit* shall mean the benefit due a participant or his or her beneficiary under the Benefit Restoration Plan determined under this Section.
- (d) Eligibility and Participation.
- (1) Eligibility and date of participation. Each eligible member shall be a participant in the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an eligible member.
 - (2) Length of participation. Each eligible member who becomes a participant shall be or remain a participant for so long as he or she is entitled to future benefits under the terms of the Benefit Restoration Plan.
- (e) Restoration retirement benefit. Subject to the terms and conditions set forth in this Section, a participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:
- (1) The amount of the participant's retirement allowance under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (2) The amount of the participant's retirement allowance under the System.
- To the extent that the participant's retirement allowance payable under the System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U. S. Treasury Secretary or his or her delegate or otherwise, the participant's restoration retirement benefit shall be reduced correspondingly.
- (f) Death Benefit.
- (1) Death after benefit commencement. If a participant dies after his or her restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.

- (2) Death before benefit commencement. If a participant dies before his or her restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the restoration death benefit, if any, provided in Subsection (f)(3) of this Section.
- (3) Restoration death benefit. Subject to the terms and conditions set forth herein, if a participant dies on or after the effective date and before his or her restoration retirement benefit commences to be paid, his or her beneficiary shall be entitled to a restoration death benefit as follows:
 - (A) If his or her beneficiary is entitled to receive any death benefit under the System, such beneficiary shall be entitled to receive as a restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
 - (i) The amount of such death benefit under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (ii) The actual amount of such death benefit under the System.

To the extent that the participant's accrued benefit or any death benefit payable under the System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration death benefit shall be reduced correspondingly.
- (g) Vesting. A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the System or death, but only to the extent, and determined in the manner, that such participant has a vested and non-forfeitable right to his or her retirement allowance under the System.
- (h) Payment of Benefits.
 - (1) Time and manner for payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the System, whether as elected by the participant or otherwise payable. For a member who is receiving a retirement allowance under the System on the effective date, and who would immediately be an eligible member upon the effective date, such Member shall immediately commence receiving a restoration retirement benefit on a prospective basis.
 - (2) Discretionary use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
 - (3) Benefit determination and payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the participant (or the participant's beneficiary in the event of the death of the participant). The Administrator shall promptly notify the employer and, where payments are to be made from a grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the employer or trustee such other information necessary to allow the employer or trustee to carry out said determination, whereupon the employer or trustee shall pay such benefits in accordance with the Administrator's determination.
 - (4) Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such

participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.

- (5) Distribution of benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a participant or his or her beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

(i) Funding.

- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the employer and subject to the claims of the employer's creditors.
- (2) Except as provided in a grantor trust established as permitted in Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the employer and the participant or his or her beneficiary or any other person or to give any participant or beneficiary any right, title, or interest in any specific asset or assets of the employer. To the extent that any person acquires a right to receive payments from the employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the employer.
- (3) Use of grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.

(j) Plan Administrator.

- (1) The Plan Administrator shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the enabling statute. The Administrator shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.
- (2) The Plan Administrator shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the enabling statute.
- (3) To enable the Plan Administrator to perform its responsibilities, employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the employer, and shall have no duty or responsibility to verify this information.
- (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator shall make such contracts in compliance with all applicable state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan is subject to the supervision and direction of the Plan Administrator, and does not have the authority to control the operation of the Plan.

(k) Termination and amendment of Benefit Restoration Plan.

- (1) Termination. The Board of Supervisors hereby reserves the right to terminate the Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such termination.
- (2) Amendment. The Board of Supervisors hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such amendment.

(l) Non-assignability.

The interests of each participant hereunder the Benefit Restoration Plan are not subject to the claims of the participant's creditors; and neither the participant nor his or her beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Notwithstanding the foregoing, the Plan Administrator shall honor any process for a debt to the employer who has employed the participant and any administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code*, or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-3-7 mutatis mutandi. Restoration retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code*. Under no circumstances may a payment under this Subsection take place before the participant's benefit under the System is actually paid. (12-06-3; 3-16-3.)

ARTICLE 7. - Fairfax County Police Officers Retirement System.

Division 1. - Generally.

Section 3-7-1. - Fairfax County Police Officers Retirement System established.

- (a) Under the authority granted by Chapter 303, 1944 Acts of the Assembly, as amended, the Police Pension and Retirement System, established previously under the authority of Chapter 303, 1944 Acts of the Assembly, is hereby continued and is adopted and enacted by ordinance, as hereinafter set forth, and is to be known henceforth as the "Fairfax County Police Officers Retirement System."
- (b) The previously established Policemen's Pension and Retirement Board is hereby continued and shall be referred to as the "Board of Trustees of the Fairfax County Police Officers Retirement System." Members of the Board of Trustees in office on the effective date of this Article (June 22, 1981) shall continue in office as trustees until the expiration of their present terms and may be reappointed in accordance with the provisions of this Article.
- (c) The Fairfax County Police Officers Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (20-81-3; 52-13-3.)

Section 3-7-2. - Definitions.

Unless provided otherwise in another Section, the following definitions shall apply to this Article:

(a) *Accrued sick leave credit* shall mean:

- (1) For employees who ~~are so County employment commenced by reporting for work before January 1, 2013~~ (members of Plan A), the credit allowed a member at a rate of one (1) month for each one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.
- (2) For employees ~~whose County employment commenced by reporting for work on or after January 1, 2013~~ (who are members of Plans B or C), the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one (1) month for every one-hundred-seventy-two (172) hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose County employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement allowances and benefits shall be the employee's accrued sick leave balance or two-thousand-eighty (2,080) hours, whichever is less.

(b) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.

(c) *Average final compensation* shall mean the average annual creditable compensation of a member during the thirty-six (36) consecutive months (seventy-eight (78) consecutive pay periods) ~~in which the member received his or her highest creditable compensation~~ for a member of Plans A or B, or 60 consecutive months (130 consecutive pay periods) for a member of Plan C, in which the member received his or her highest creditable compensation. In the event a member's creditable service is less than 36 months (78 pay periods) for a member of Plan A or B, or less than 60 months (130 pay periods) for a member of Plan C, his or her average final compensation shall be his or her average monthly creditable compensation received during the entire period of creditable service multiplied by 12 (average biweekly creditable compensation multiplied by 26 for biweekly paid members).

- (1) In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, that in determining the average final compensation for members who became members of the System on or after January 1, 2013 (members of Plans B or C), no more than two-thousand-eighty (2,080) hours of the member's accrued unused sick leave may be used for this purpose.
- (2) If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his or her consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-7-23(d) and he or she otherwise would have no creditable compensation attributable to some portion or all of such period of service, his or her average final compensation shall be calculated as if he or she had continued to receive the salary, including pick-up contributions, approved and established for his or her position by the County Compensation Plan during the period of military service for which he or she is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four (4) years of military service commencing on or after August 2, 1990. The Board shall make any and all necessary retroactive adjustments to members' allowances as a result of this rule.
- (3) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the Human Resources Director's review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. This Subparagraph shall apply to all applications for allowances and benefits filed with the Board on or after July 13, 1991. The Board shall make any necessary retroactive adjustments to allowances and benefits.
- (4) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or pay periods in calculating average final compensation.
- (d) *Average salary*, as used in Section 3-7-34, shall mean the current salary of the position the member was in at the time he or she was disabled.
- (e) *Beneficiary* shall mean any person, other than a member, entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.
- (f) *Board* shall mean the Board of Trustees of the System, as provided in this Article.
- (g) *Creditable compensation* shall mean payment of salary including pick-up contributions, roll call and holiday pay but excluding performance bonuses. Effective for plan years after December 31, 1988, compensation in excess of \$200,000.00, as indexed under Section 415(d) of the Internal Revenue Code, shall be disregarded. Notwithstanding the foregoing, effective for members hired on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.

- (h) *Creditable service* shall mean the total of membership service credit, plus portability service credit purchased pursuant to Section 3-7-23.1.
- (i) *DROP* shall mean the Deferred Retirement Option Program, as provided in Section 3-7-52.
- (j) *Employee* shall mean any law enforcement officer within the Fairfax County Police Department, whose compensation is fully paid by the County, and excluding any person as defined by Section 3-3-1(a)(9) of the *Code of the County of Fairfax*.
- (k) *Employer* shall mean the Chief of Police for the Fairfax County Police Department or an authority in the County having power to appoint police officers paid directly or indirectly by the County and/or the Board of Trustees of the System.
- (l) *Executive Director* shall mean the Executive Director of the Fairfax County Retirement Administration Agency.
- (m) *Handicapped child* shall mean natural or legally adopted member's progeny who has demonstrated to the Board by medical evidence acceptable to the Board, in its sole discretion, to be permanently mentally incompetent or permanently physically handicapped, unless and until a determination has been made by the Board that such progeny no longer is permanently mentally incompetent or permanently physically handicapped in accordance with Section 3-7-41.
- (n) *Internal Revenue Code* shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.
- (o) *Member* shall mean a full-time employee, or a part-time employee, provided the Board first determines that it desires to receive a part-time employee into the System, or a former employee entitled to benefits under the System.
- (p) *Membership service credit* shall mean credit for service while a member of the System.
- (q) *Partial disability* shall mean the inability of the member to perform some part of the duties of a police officer, such as in administrative or desk assignments.
- (r) *Pick-up contributions* shall mean a member's regular contribution to the System which is picked up, through a salary reduction, by the County from the member's compensation for service rendered on or after December 22, 1984.
- (s) *Plan A* shall mean the provisions of this Article as applicable to all employees whose County employment commenced by reporting for work before January 1, 2013.
- (t) *Plan B* shall mean the provisions of this Article as applicable to all employees whose County employment commenced by reporting for work on or after January 1, 2013, and before July 1, 2019.
- ~~(u)~~ (u) *Plan C* shall mean the provisions of this Article as applicable to all employees whose County employment commenced by reporting for work on or after July 1, 2019.
- ~~((v))~~ (v) *Retirement allowance* shall mean the retirement payments to which a member is entitled as provided in this Article.
- ~~(w)~~ (w) *Salary* shall mean the compensation, including pick-up contributions, established for each position as approved in the County Compensation Plan.
- ~~(x)~~ (x) *Service* shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.
- ~~(y)~~ (y) *System* shall mean the Fairfax County Police Officers Retirement System. When any part of this Article refers to multiple retirement systems, the Police Officers Retirement System shall be referred to as "this System," rather than "the System."
- ~~(z)~~ (z) *Total disability* shall mean the inability of a member to reasonably perform his or her duties as a police officer. (20-81-3; 5-85-3; 36-88-3; 27-90-3, § 5; 13-92-3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 18-01-3; 8-03-3; 8-04-3; 28-12-3.)

Section 3-2-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the *Code of the County of Fairfax*, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein.

Section 3-7-3. - Duties of the employer.

The employer shall keep all necessary records relating to the hiring and employment of members, and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the employer shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (20-81-3.)

Section 3-7-4. - Consent to provisions of Article required for employment.

By and upon acceptance of employment with the employer, every member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (20-81-3; 5-85-3.)

Section 3-7-5. – Protection against fraud.

In addition to any other provisions of law, any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly. (20-81-3.)

Section 3-7-6. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, to the return of contributions, including picked-up amounts, or any other right accrued or accruing to any person under this Article, and the funds created by this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, bankruptcy, insolvency, or any other process of law whatsoever except for administrative actions pursuant to Section 63.2-1900 *et seq.* of the *Code of Virginia* or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Section 20-89.1 *et seq.* of the *Code of Virginia* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Code of Virginia*. (5-85-3; 13-92-3; 1-93-3)

Section 3-7-7. – Errors resulting in over- or under-payment.

- (a) Should any change or error in the records or in the computation of a member's benefits result in any member or beneficiary receiving from the System more (overpayment) or less than he or she would have been entitled to had the records or computation been correct, the Board shall have the authority to correct such error and, as far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit, to which such member or beneficiary was correctly entitled, shall be paid.
- (b) The Board is authorized to negotiate and compromise with a member with respect to any amounts which the Board determines have been paid to the member in excess of amounts to which the member is entitled. (20-81-3; 13-92-3.)

Section 3-7-8. – Amendment of Article.

- (a) The Board of Supervisors shall have the continuing right and power to amend, ~~suspend, or revoke or supplement~~ this Article at any time, which right and power is hereby expressly reserved, so long as the benefits payable are consistent with Va. Code Ann. 51.1-800. But no amendment shall be made inconsistent with the provisions of Section 51.1-821 of the Code of Virginia, as amended, and Chapter 303, 1944 Acts of Assembly, as amended.

- (b) No amendment, suspension or revocation, including termination or partial termination of the System, shall have the effect of diverting the trust fund of the System to purposes other than the exclusive benefit of the participating employees or their beneficiaries, until all liabilities for accrued benefits payable under the terms of the System shall have been fully satisfied. Upon termination of the System or a discontinuance of contributions to the System, each member's benefit accrued as of such date will be nonforfeitable. (20-81-3; 21-96-3; 52-13-3)

Division 2. - Board of Trustees.

Section 3-7-9. - Administration of System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board. (20-81-3.)

Section 3-7-10. – Membership; term of office; election of officers.

- (a) The Board of Trustees of the System shall consist of the following members:
- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her permanent designee, sitting ex officio;
 - Three (3) persons appointed by the Board of Supervisors;
 - Two (2) persons currently employed by the Fairfax County Police Department as sworn police officers elected by the members of the System currently employed by the Fairfax County Police Department as sworn police officers; and
 - One (1) person who is retired from employment as a sworn police officer of Fairfax County elected by the retired members of the System.
- (b) With the exception of the Director of the Department of Finance, the term of office of trustees shall be four (4) years. (20-81-3; 10-01-3.)

Section 3-7-11. - Vacancies in office.

Vacancies which occur in the office of trustee of the System shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3.)

Section 3-7-12. - Compensation of trustees.

The three (3) trustees appointed by the Board of Supervisors may receive compensation at the rate set by the Board of Supervisors. (20-81-3.)

Section 3-7-13. – Election of officers.

The Board shall elect one (1) member as president, one (1) as secretary, and may elect one (1) as vice-president. Such election shall occur at the first meeting of the Board in each calendar year. (20-81-3.)

Section 3-7-14. – Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3.)

Section 3-7-15. - Functions of the Board.

The general powers and authorized duties of the Board, subject to the limitations of this Article, are as follows:

- (a) To adopt bylaws, rules and regulations, lawful and necessary for the proper conduct of its affairs.
- (b) To conduct hearings, make investigations, and determine the amount of awards or pensions to be paid any police officer or his or her beneficiaries.

- (c) To provide for the expense of such clerical, legal, medical, investment counsel, and other services as it deems necessary or proper.
- (d) To provide for, and require deductions from, the salaries of active and paid members of the Police Department, and to cause the amounts deducted to be paid into its treasury, for its use in the administration of the System.
- (e) To draw warrants, signed in its name and countersigned by its president, and its treasurer, for the payments of pensions and benefits hereunder, and of costs and expenses of administration.
- (f) To determine who shall be members of the System.
- (g) To submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.
- (h) To cause an actuarial evaluation to be made of the System as of July 1, 1982, and at least once in each succeeding two-year period. The Board shall keep in convenient form such data as shall be necessary for an actuarial evaluation of the System and for checking the experience of the System.
- (i) To review adverse decisions as provided by Section 3-7-45. (20-81-3; 8-82-3.)

Division 3. – Management of Funds.

Section 3-7-16. - Board trustee of funds; investment of same.

- (a) The Board shall be the trustee of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia, as such laws apply to fiduciaries investing such funds. The Board may upon the exercise of bona fide discretion employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have the full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.
- (b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (20-81-3.)

Section 3-7-17. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities, and may designate a fiduciary agent, upon the direction and approval of the Board. He or she shall give bond, in such amount, and with such surety, as the Board requires, as a condition for the faithful performance of his or her duties and the proper accounting for all funds and securities coming into his or her hands. He or she shall disburse the funds on warrants drawn by the Board, signed and countersigned as provided herein. (20-81-3.)

Section 3-2-18. - Prohibited interest of member or employee of Board.

- (a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 *et seq.*, of the *Code of Virginia*, shall apply to members and employees of the Board.
- (b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the System, except to make such current and necessary payments as are authorized by the Board. (20-81-3.)

Division 4. - Membership in System.

Section 3-7-19. – Membership composition.

- (a) Membership shall be composed of the following:
 - (1) Present employees.

- (2) All persons who were employees on June 22, 1981, or who were on authorized leave from service on such date.
- (3) Future employees.
- (4) Former park police officers who elected to transfer to this System from the Fairfax County Uniformed Retirement System pursuant to the provisions of Section 3-3-20(b)(3). Membership in this System shall commence on January 22, 1983. For purposes of this Article, such members shall be deemed to have been appointed on or after July 1, 1981, regardless of being granted any prior service credit pursuant to Section 3-7-20(b). Such members may receive service credit for prior service as a park police officer if the member pays into this System the difference between the amount he or she contributed to the Uniformed Retirement System and the amount he or she would have contributed to this System had he or she been a member during the period for which he or she is seeking prior service credit plus an amount equal to the total return of this System's assets in each year for which prior service credit is applied to those contributions that have been in this System had he or she been a member at the time. At the Board's discretion, such a member may pay in installments over a period not to exceed one year. However, prior service credit shall not be granted until payment has been received in full. This offer to purchase service shall be effective for a period of one year from the approval date of this change [February 26, 2001].
- (b) Employees of the County who are members of the Virginia Retirement System (VRS) or the Fairfax County Uniformed Retirement System, and future employees who are eligible to become members of those systems, are not eligible for membership in this System.
- (c) Persons receiving a normal service or early service retirement allowance from this System, the Fairfax County Employees' Retirement System or the Fairfax County Uniformed Retirement System are eligible for membership only under the terms and conditions set forth in Section 3-7-40.
- (d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five (5) years of creditable service in this System and who is appointed to serve as a Deputy County Executive shall remain a member of this System, and shall not become a member of the Fairfax County Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is so employed or subsequently resumes working in a position that is covered under this System. (20-81-3; 35-81-3; 22-83-3; 36-86-3; 27-90-3, § 5; 8-91-3; 56-93-3; 10-01-3; 28-12-3.)

Division 5. Service Credit.

Section 3-7-20. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board, in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service as an employee, and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (20-81-3.)

Section 3-7-21. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months. (20-81-3.)

Section 3-7-22. - Membership service credit.

- (a) Each member shall receive membership service credit for service rendered while a member of the System, or after he or she last became a member in the event of a break in his or her membership.

- (b) Each member shall receive membership service credit for any period he or she is on service-connected total disability retirement. All members who have been retired before, and all members who are retired on or after, July 7, 2003, on account of service-connected partial disability pursuant to Section 3-7-29 shall receive membership service credit for any period they are on service-connected partial disability retirement.
- (c) Each member shall be allowed membership service credit for accrued unused sick leave upon making application for retirement, at the rate of one (1) month of credit for each one-hundred-seventy-two (172) hours of accrued unused sick leave; and pro rata credit shall be allowed for each fraction thereof. In determining average final compensation, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave.
- (d) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within ninety (90) days of discharge and such discharge is other than dishonorable. (20-81-3; 36-88-3; 8-03-3; 33-03-3.)

Section 3-7-23. – Prior service credit.

- (a) A member shall receive membership service credit for prior employment as a police officer with the County, provided he or she shall return his or her contributions, including picked-up amounts, previously paid, in addition to interest received at the yearly rates earned by the System during the period the member's contributions, including picked-up amounts, had been withdrawn. The Board may, in its discretion, accept a return of a member's contributions, including picked-up amounts on an installment basis, as determined by the Board. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if the entire amount in that account is attributable to a rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code.
- (b) Former park police officers who elected to transfer to this System pursuant to Section 3-3-20(b)(3) and to transfer their contributions from the Fairfax County Uniformed Retirement System pursuant to Section 3-3-20(b)(4)(C) shall be granted membership service credit for their service as park police officers. Any deficits created by this action shall be funded by increasing the rate of employer contributions as determined by the required actuarial evaluation of this System as of June 30, 1983.
- (c) Any former Fairfax County park police officer who transferred to this System from the Fairfax County Uniformed Retirement System between August 1, 1974, and October 31, 1982, and who has remained in continuous service in this System since such transfer, may receive membership service credit in this System for his or her prior service as a park police officer if such member pays into this System:
 - (1) The difference between the amount that he or she had contributed to the Uniformed Retirement System and the amount that he or she would have been required to contribute to this System had he or she been a member during the period for which he or she is seeking prior service credit; and
 - (2) An additional sum representing the amount that this System would have earned on the contributions that he or she would have been required to make to this System had he or she been a member during the period for which service credit is sought under this Subsection.

In determining the amount required under condition (2), the Board shall use the historical rate(s) of return on this System's assets during the period for which service credit is sought. At the Board's discretion, such a member may pay in installments over a period not to exceed one (1) year. However, prior service credit shall not be granted until payment has been received in full. This option to purchase service shall be effective for a period of one (1) year from the date of enactment of this Subsection [February 26, 2001]. The purchase of service credit for prior service as a park police officer under this Subsection by a member

shall not alter the minimum amount of creditable service that the member is required to have to be eligible for normal service retirement under this Article. Where a member elects to purchase service credit for prior service as a park police officer under this Subsection, the Board of Trustees of the Uniformed Retirement System shall transfer from its funds the employer contributions attributable to the member's service for which prior service credit is being purchased under this Subsection to this System.

- (d) Members who are former park police officers who transferred their member contributions from the Fairfax County Uniformed Retirement System, including member's contributions from service in a position covered by the Fairfax County Employees' Retirement System prior to their service as a park police officer, may elect to either (i) receive a refund of their Employees' Retirement System member contributions from this System or (ii) purchase membership service credit in this System based upon their prior service in the Employees' Retirement System on the terms and conditions set forth in this Subsection.
 - (1) Such members must elect in writing to purchase such service credit within one (1) year of the effective date of this Subsection [December 6, 1993]. Members who do not elect to purchase such credit within one (1) year of the effective date of this Subsection shall have such contributions refunded to them and shall be deemed to have waived any right to purchase such service credit.
 - (2) Members electing to purchase such credit may do so by paying into this System (A) the difference between the amount which they had contributed to the Employees' Retirement System and the amount they would have been required to contribute to this System had they been members during the period for which they are seeking prior service credit and (B) an additional sum representing the amount that this System would have earned on the contributions they would have been required to make to this System had they been a member during the period for which service credit is sought, as determined by using the historical rate(s) of return of this System.
 - (3) At the discretion of the Board, such members may pay the required amounts in installments over a period not to exceed one (1) year. However, such service credit shall not be granted until payment has been made in full.
 - (4) The purchase of such service credit shall not alter the minimum amount of creditable service that the member is required to have to be eligible for normal or early service retirement under this Article. (20-81-3; 36-88-3; 8-03-3; 33-03-3) (20-81-3; 22-88-3; 5-85-3; 56-93-3; 36-94-3; 10-01-3; 8-03-3.)

Sec. 3-7-23.1. - Portability service credit.

- (a) Definitions.
 - (1) *Accepting plan* shall mean the retirement plan or system which is receiving membership assets from another retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.
 - (2) *Portability service credit* shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.
 - (3) *Transferring plan* shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan or system to purchase service in the accepting plan through the use of his or her membership contributions in the transferring plan.
- (b) The Board of Supervisors may enter into agreements with the Virginia Retirement System (VRS) or with any other political subdivision of the Commonwealth of Virginia, provided that the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), to permit any vested member of such plan to purchase portability service credit in this System.

- (c) The purchase of portability service credit in the System pursuant to this Section may only be made within eighteen (18) months of the date when an employee commences employment in a position covered by the System, or, for employees who are members of the System on March 24, 2003, within eighteen (18) months thereafter.
- (d) In order to purchase portability service credit in the System, the member shall have served as a sworn law enforcement officer and shall be a vested member of the transferring plan. The transferring plan shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board shall determine the amount of portability service credit that would be actuarially equivalent to the amount of assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have thirty (30) days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.
- (e) In the event that the assets transferred are not sufficient to purchase portability service credit in the System equivalent to five (5) years of service, the member shall not become vested in the System until his or her creditable service equals five (5) years.
- (f) The purchase of portability service credit in the Virginia Retirement System (VRS) or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this Section shall be accomplished upon the transfer of assets from the transferring plan to this System. Upon the completion of such transfer, the member shall lose all rights to any allowances and benefits from the transferring plan, and shall only be entitled to receive allowances and benefits from this System.
- (g) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may transfer an amount equal to the greater of (i) his or her accumulated member contributions, or (ii) an amount representing the present value of his or her accrued benefits with this System. In order to accomplish the transfer of assets from this System to the accepting plan, the member shall lose all rights to any allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3.)

Division 5. – Contributions.

Section 3-7-24. - Member contributions.

- (a) Contributions shall be made by each employee equal to eight-and-sixty-five-one-hundredths percent (8.65%) of his or her creditable compensation per payroll period.
- (b) There shall be deducted or picked up from the compensation of each member for each and every payroll period subsequent to the date of the establishment of the System to contribution payable by such member as provided in this Section.
- (c) Notwithstanding any other provisions of this Article, no deduction shall be made nor shall amounts be picked up from any member's compensation if the employer's contribution as required is in default.

- (d) The Board of Supervisors may, from time to time, revise the rates of member contributions to the System.
- (e) Subsequent to December 22, 1984, the County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. All amounts picked up by the County shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the Internal Revenue Code. For all other purposes, under this Chapter and otherwise, such picked-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked-up amounts shall be included in compensation for purpose of calculating benefits under Division 6. The County shall pay such picked-up amounts from the same source of funds which is used in paying earnings to the employee. (20-81-3; 5-85-3; 22-07-3; 46-08-3; 25-14-3.)

Section 3-7-25. - Employer contributions.

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

- To the extent that the System's funding ratio exceeds one-hundred-twenty percent (120%), a credit shall be established equal to the amount of assets in excess of one-hundred-twenty percent (120%) of the actuarial accrued liability.
- To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a fifteen (15) year amortization of the credit or charge described in this Section, to be paid until the funding ratio re-enters the corridor, at which time it shall cease.

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

In the event of an ordinance change that affects member benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below one-hundred-twenty percent (120%) shall be excluded from this component.

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

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

- (b) To the extent that a federal income tax deduction is disallowed in whole or in part for any employer contribution; and
- (c) If a contribution is made in whole or in part by reason of a mistake of fact, the employer contribution attributable to the mistake of fact shall be returned to the employer. (20-81-3; 16-02-3; 52-13-3; 28-15-3, § 3.)

Division 6. – Benefits.

Section 3-7-26. – Service retirement.

- (a) Normal service retirement.
 - (1) Any member employed on active duty on or before June 30, 1981, who has attained twenty (20) years of creditable service or age fifty-five (55) years shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.
 - (2) Any member employed on active duty following July 1, 1981, who has attained twenty-five (25) years of creditable service or age fifty-five (55) years shall be eligible for retirement on that date when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.
- (b) Early service retirement. Any member appointed subsequent to July 1, 1981, who has attained twenty (20) years of creditable service, shall be eligible for early service retirement, when written notification is provided to the Board by the member setting forth at that time when the retirement is to become effective.
- (c) Ineligibility. Any member who applies for service-connected disability pursuant to Section 3-7-28, or who applies for partial service-connected disability pursuant to Section 3-7-29, and who receives the allowance and benefits prescribed by Section 3-7-28 as a result thereof, on or after the effective date of Subsection 3-7-28(d) [July 1, 1988], shall not be eligible for retirement under this Section while receiving allowances and benefits for disability. (20-81-3; 14-87-3; 36-88-3.)

Section 3-7-27. – Service retirement allowance.

- (a) Normal service retirement. Any member who retires on or after July 1, 2000, pursuant to Section 3-7-26(a) shall receive an annual retirement allowance, payable monthly for life, consisting of two-and-eight-tenths percent (2.8%) of his or her average final compensation for each year of creditable service, as computed on the basis provided in Section 3-7-2; but in no event shall his or her total retirement allowance exceed eighty-four percent (84%) of his or her average final compensation. The annual retirement allowance of a member who retires or who has retired on or before June 30, 2000, or of a surviving spouse or surviving handicapped child of such a member receiving an allowance under an election made by the member under Section 3-7-39, shall be increased, effective July 1, 2000, by twelve percent (12%).
- (b) Early service retirement. Upon retirement, with twenty (20) years of creditable service pursuant to Section 3-7-26(b), any member appointed subsequent to July 1, 1981, shall receive the annual retirement allowance computed on the basis provided in Subsection (a) of this Section reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date as projected on Table 1.

TABLE 1

FAIRFAX COUNTY POLICE OFFICERS RETIREMENT SYSTEM

Actuarial Reduction Factors That Would Apply to Members With a Normal Retirement Age Requirement of 25 years of Service (or, Attainment of Age 55, if Earlier) if They Are Permitted To Retire Early With a Reduced Retirement Allowance After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE AT RETIREMENT)						
Age at	Years of Service					
Retirement	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00
54	92.66	92.66	92.66	92.66	92.66	100.00

55	100.00	100.00	100.00	100.00	100.00	100.00
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- (c) Joint and contingent spouse and handicapped child options. Any member who qualifies for normal or early service retirement under this Section is eligible to elect a joint and contingent spouse and handicapped child option under Section 3-7-39. (20-81-3; 6-00-3, § 1; 36-83-3; 28-89-3; 27-90-3, § 5; 13-92-3; 34-94-3.)

Section 3-7-28. - Service-connected disability retirement.

- (a) Any member who in the discharge of his or her official duties has become totally disabled as a result of an accident or personal injury on or before June 30, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six-and-two-thirds percent (66 2/3%) of the salary that would have been received had no injury occurred and the performance of duty had continued. Such allowance and benefits shall continue during the existence of such total disability, or until such time as eligibility is reached for normal service retirement pursuant to Section 3-7-26(a)(1).
- (b) Any member who in the discharge of his or her official duties has become totally disabled as a result of an accident or personal injury on or after July 1, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six-and-two-thirds percent (66 2/3%) of the salary the member received on the date of the accident or personal injury subject to the provisions of Section 3-7-37. Such allowance shall continue during the existence of such total disability, or until such time as eligibility is reached for normal service retirement pursuant to Section 3-7-26(a)(2).
- (c) The amount of compensation awarded under the Virginia Workers' Compensation Act (Act) to such members for temporary total or partial incapacity, including any awards of cost-of-living increases under the Act, shall be deducted from such retirement allowance. Whenever the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, such payments shall no longer be used to reduce the monthly retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without reduction for such payments.
- (d) Any member who applies for a service-connected disability retirement allowance pursuant to Subsection (a) or (b) of this Section, or who applies pursuant to Section 3-7-29, and who receives the allowance prescribed by this Section as a result thereof, on or after the effective date of this Subsection [July 1, 1988], shall receive the allowance so provided during the existence of such disability, until the total membership service credit period equals twenty-five (25) years, whereafter said allowance shall be reduced to sixty percent (60%) of the salary that would have been received had no injury occurred and the performance of duty continued.
- (e) With respect to all retirements after the effective date of this Subsection (January 11, 1993) pursuant to this Section or as a result of an application pursuant to Section 3-7-29 as a result of which the member receives the allowance provided by this Section, if a member receives some or all of his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, neither a lump sum payment or any portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or a portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under this Section shall be offset against the member's allowance under this Section; and provided further, that in the event that the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its

judgment represents compensation for such benefits. (20-81-3; 8-82-3; 4-83-3; 36-88-3; 13-92-3; 1-93-3.)

Section 3-7-29. - Partial service-connected disability retirement.

- (a) Members granted a retirement allowance and benefits for partial disability shall be subject to recall to active service by the Board when police officer positions are available in the Police Department that they are capable of performing, as determined by the Chief of Police. If so recalled, all retirement allowances and benefits for partial disability shall terminate from and after the date of such recall.
- (b) Any member becoming partially disabled in the manner provided in this Section, who shall remain in the Police Department in a police officer position which he or she is capable of performing, shall not receive retirement allowances and benefits until such service credit is acquired as would otherwise be required for service retirement.
- (c) If the Chief of Police determines that there is no suitable police officer position available for a partially disabled member, such member shall then be treated as totally disabled under the provisions of this Article from and after the date of his or her separation from employment with the Police Department.
- (d) The surviving spouses and dependents of all members who have been retired before and of those who are retired on or after July 7, 2003, on account of partial service-connected disability shall be entitled to benefits under Section 3-7-41. (20-81-3; 33-03-3).

Section 3-7-30. – Processing disabilities.

- (a) Upon receiving a member's or the employer's written request for disability benefits, the Board shall require the member to submit, from a physician of the member's choice, a written report of findings and recommendations. The Board shall then select a physician of its choice and require the member to submit to a medical examination. In the event there is not a clear preponderance of medical evidence from the above two (2) physicians, a third physician shall be selected by the original two (2) physicians, who shall also examine the member and submit a written report of findings and recommendations.
- (b) A waiver of examinations, as required by this Section, may be made by either the Board or member for justifiable causes; but in no event shall any member be granted disability benefits without submitting to at least one (1) medical examination.
- (c) Failure of any member to submit to medical examination as required by this Section may result in the denial, loss or reduction of the member's disability benefits.
- (d) Any member submitting a written request for disability benefits on or after the effective date [of Ord. No. 24-85-3] shall, prior to or simultaneously with submitting such request, apply for all workers' compensation benefits to which he or she may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his or her workers' compensation claims and any subsequent awards or other documents reflecting any modification or termination of any awarded workers' compensation benefits. With respect to the determination of a member's eligibility for disability benefits, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act, and the Board may modify its prior determination of his or her eligibility under this Section in light of any such decision within ninety (90) days after the date such decision becomes final. (20-81-3; 24-85-3; 13-92-3.)

Section 3-7-31. - Non-service-connected disability retirement.

- (a) Any member who becomes totally disabled, but not as a result of activities in the discharge of his or her official duties, may receive a non-service-connected disability benefit equal to the same benefit pursuant to Section 3-7-27, provided the service credit requirements exist thereof.
- (b) Members who do not have the service credit required in Section 3-7-26 shall receive a disability benefit in an amount equivalent to the greater of (1) ten percent (10%) of his or her average final compensation, or (2) an amount determined under Section 3-7-27(a).

- (c) Members granted benefits under this Section shall not receive service credit while on non-service-connected disability, nor shall their surviving spouses or dependents be eligible for benefits under this Article. (20-81-3.)

Section 3-7-32. - Rehabilitation of disabled members.

- (a) The Board may determine, upon receiving supporting medical data from any two (2) physicians, as referred to in Section 3-7-30, that a disabled member has sufficiently recovered to perform a part or all the duties of a police officer, or to engage in other gainful employment in which he or she might reasonably be expected to be engaged, in light of education, training, or experience. To the extent that such member has sufficiently recovered but is unable to be certified to full-time active duty as a police officer, the Board may determine the degree of partial disability then still existing and reduce the disability benefits accordingly. The determination of partial disability shall be based upon the medical record and the ability of the member to seek gainful employment in light of education, training, experience, retraining, and rehabilitation.
- (b) The Board is authorized to enter into contracts or agreements for the rehabilitation of disabled members and to pay reasonable costs thereof. (20-81-3; 33-03-3).

Section 3-7-33. - Medical reevaluation of disabled members; penalty for unjustified refusal of medical attention, vocational rehabilitation or selective employment, or to submit to medical reevaluation.

- (a) Once each year during the first five (5) years following disability, and once every three (3) year period thereafter, the Board shall require such members to undergo medical examinations by the same physicians as specified in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30. Each physician shall independently examine such member and submit a written report of findings and recommendations to the Board. In the event that such member fails to submit to these medical examinations, benefits shall be discontinued until the member submits to the examinations; and should the refusal continue for one (1) year, all rights to disability benefits under this Article shall terminate. In lieu of the examinations specified in this Subsection, the Board, in its discretion, may accept the reports of physicians who are treating or examining the member for purposes of the Virginia Workers' Compensation Act.
- (b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-7-28, and who are receiving periodic payments pursuant to the Virginia Workers' Compensation Act (Act) which payments are required to be offset against such allowances pursuant to Section 3-7-28 shall cooperate with and accept medical services, vocational rehabilitation, and/or selective employment provided pursuant to the Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) then the allowance pursuant to Section 3-7-28 shall be computed as if the member had received the suspended payments unless the Board, in its discretion determines not to accept the decision of the Commission. Should such member's refusal to accept medical services, vocational rehabilitation and/or selective employment continue for three-hundred-sixty-five (365) days whether or not consecutive, all his or her rights to any future disability allowance shall cease. The Board shall make appropriate adjustments to the member's allowance if the suspension by the Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this Subsection, an order of the Commission suspending compensation for refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation, and/or selective employment. (20-81-3; 41-93-3; 29-97-3.)

Section 3-7-34. - Reduction of disability allowance.

- (a) Whenever the Board concludes that any member receiving a disability retirement allowance pursuant to either Section 3-7-28 or 3-7-29 is, prior to his or her normal service retirement date, engaged in a gainful occupation or work paying more than the difference between his or her service-connected disability allowance and his or her average salary, the Board shall reduce such retirement allowance

to an amount which, together with the amount earned by the member, equals the amount of his or her average salary.

- (b) Members receiving a disability retirement allowance pursuant to either Section 3-7-28 or 3-7-29 shall submit by May 30 of each year a copy of that portion of their federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of the allowance until the documentation is provided; and should a member's refusal continue for one (1) year, all his or her rights to any further disability retirement allowances shall cease.
- (c) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown. (20-81-3; 36-88-3.)

Section 3-7-35. - Presumption; hypertension or heart disease.

Any condition or impairment of health of any such member caused by hypertension or heart disease resulting in total disability shall be presumed to have been suffered in the discharge of his or her official duties unless the contrary be shown by competent evidence; provided, that prior to making any claim based upon such presumption for retirement allowances and benefits under this Section on account of such total or partial disability, such member shall have been found free from cardiovascular disease by a physical examination which shall include such appropriate laboratory and other diagnostic studies as the Board may prescribe, and which shall have been conducted by physicians whose qualifications shall have been prescribed by the Board; and provided further, that any such member claiming that his or her disability was suffered in the discharge of his or her official duties shall, if requested by the Board, submit to physical examination by any physician designated by the Board, which examination may include such tests or studies as may reasonably be prescribed by the physician so designated. Such member shall have the right to have present at such examination, at his or her own expense, any qualified physician he or she may be designate. (20-81-3.)

Section 3-7-36. - Disability as a result of negligence.

Should an accident or personal injury causing total disability be the result of the member's own gross and willful negligence, wanton neglect of duties and responsibilities, drunkenness, or illicit use of narcotics, such disability shall be deemed to be a non-service-connected disability and the benefits shall be fixed pursuant to provisions of Section 3-7-31. (20-81-3.)

Section 3-7-37. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, that allowances for service-connected disability retirement shall be subject to the provisions of Subsection (d) of this Section. The monthly allowance to be effective July 1 of any such year shall be the allowance in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section, with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than twelve (12) months.

- (a) The basic cost-of-living increase shall be the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve (12) month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, *Consumer Price Index* shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes the County.
- (b) As part of each biennial actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent (1%) that can be provided on the following two (2) July firsts (1sts) based upon the available actuarial surplus). The Board then may, but shall not be

required to, increase all retirement allowances in pay status on each of such July first (1st) by such actuarially determined percentage. For the purpose of this Section, *available actuarial surplus* shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the biennial actuarial valuation of the System.

- (c) In the event a retired member has not been receiving his or her retirement allowance for twelve (12) full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) of this Section as follows:

Number of Complete Months Member Has Been in Pay Status	Percentage of Full Increase
--	--------------------------------

Less than 30%

3, 4 or 525%

6, 7 or 850%

9, 10 or 1175%

- (d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-7-28 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-7-28. (20-81-3; 1-93-3; 26-10-3.)

Section 3-7-38. - Refund of contributions upon withdrawal or death; deferred vested benefit.

- (a) Refund of contributions.

- (1) In the event of the death of any member, active or retired, the difference between the total contributions made hereunder by such member, including picked-up amounts, and any benefit payments received by him or her, his or her surviving spouse or dependents, shall be payable to his or her estate or designated beneficiary; provided, that such payment shall be made only after the cessation of benefits under Section 3-7-41 or Section 3-7-43.
 - (2) Any member who shall have been separated from the service and whose employment shall have been terminated otherwise than by death or retirement shall, on application made within two (2) years from the date of such separation, be refunded all of his or her accumulated contributions, including picked-up amounts; provided, that if such member has received payments or benefits under the System, the amount of such payments or benefits shall be deducted from the amount to be refunded; and provided further, that should any retired member be receiving benefits hereunder at the time of his or her death then, and in that event, his or her dependents, or beneficiaries if any, who are not eligible to receive benefits under this Article shall receive the difference between the total contributions made hereunder by such member, including picked-up amounts, and any payments received, and at the same rate which such retired member was receiving benefits.
- (b) Deferred vested benefit. If a member has five (5) or more years of creditable service on his or her date of separation from the County, the member may leave his or her accumulated contributions, including picked-up amounts, in the System and receive a deferred vested benefit payable beginning the date the member attains age fifty-five (55) years, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 5-85-3; 28-89-3; 10-01-3.)

Section 3-7-39. - Joint and contingent spouse and handicapped child options.

Any member who qualifies for normal or early service retirement under Section 3-7-26, and with the exception of any member converting from disability retirement to normal service retirement at twenty-five (25) years of creditable service, may elect at the time of retirement to have his or her retirement compensation continue to be paid to either (1) his or her spouse in the event such spouse survives the member, or (2) his or her surviving handicapped child, if at the time of election the member has no spouse; in either event, the retirement allowance provided for in Section 3-7-27 shall be recomputed for a joint and survivor annuity in accordance with Table 2. Such reduced amount shall be paid the member during his or her lifetime, with the indicated percentage of the reduced amount paid to his or her surviving spouse for such spouse's lifetime, or to his or her surviving handicapped child for such child's lifetime, as the case may be. Such election shall become irrevocable upon commencement of such payments except in the case that such spouse or surviving handicapped child, as the case may be, predeceases the member or if the handicapped child is determined by the Board to no longer be permanently mentally incompetent or permanently physically handicapped, then such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made.

TABLE 2
FAIRFAX COUNTY POLICE RETIREMENT OFFCERS RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Members With a Normal or Early Service Retirement Allowance Determined Under Section 3-7-27 Who Elect a Joint and Contingent Spouse and Handicapped Child Options

Percent of Allowance Continued to Spouse Upon Member's Death	Factor for Equal Ages ¹	Increase/Decrease For Each Full Year Beneficiary Is Older (Younger) Than Employee	Maximum Factor
100%	89.2%	0.6%	96%
66 2/3%	92.1%	0.4%	98%
50%	93.1%	0.3%	99%

1. Factor applied to adjust member's allowance, as determined under Section 3-7-27, for joint and contingent spouse and handicapped child option for a member and spouse of equal age.

Section 3-7-40. - Cessation of normal or early retirement allowance.

- (a) Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Employees' Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Uniformed Retirement System, or the Employees' Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986.
- (b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Uniformed Retirement System (retiree) return to regular service in a permanent position in any office or employment paid directly or indirectly

by the County, he or she shall elect to receive such retirement allowance under one (1) of the following two (2) options.

- (1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Employees' Retirement System or Uniformed Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-7-27 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member during his or her period of reemployment shall be exempted from the requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member during his or her period of reemployment shall be eligible:
 - (A) For a recomputation of his or her allowance to take into account creditable compensation and creditable service attributable to the period of reemployment during which his or her allowance was suspended under this Subsection.
 - (B) To make a new election for any optional benefit to which he or she is entitled; and
 - (C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment (in lieu of his or her service retirement allowance).

A retiree of the Employees' Retirement System or Uniformed Retirement System who is appointed to a position covered by this Article and elects in writing within thirty (30) days of such appointment may be excluded from membership in this System.

- (2) The retiree may elect to continue to receive his or her service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' Retirement System or Uniformed Retirement System if either covers the position in which he or she is reemployed. If he or she is a retiree of this System and the position in which he or she is reemployed is covered by this System, he or she shall not be required to contribute to this System during his or her period of reemployment.
- (c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Uniformed Retirement System (retiree) may return to employment for which compensation is paid directly or indirectly by the County subject to the following conditions:
- (1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than one-hundred-fifteen percent (115%) of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's retirement allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint and contingent spouse or handicapped child option which results in an actuarially reduced allowance. Employers under all three (3) systems shall report salaries paid to retirees to the retiree's Board.
 - (2) A retiree who is employed in a position of service which would otherwise make him or her eligible for membership in this System, the Uniformed Retirement System, or the Employees' Retirement System shall not be eligible for membership in that system.
- (d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Uniformed Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions.

- (1) If the retiree is a member of this System and service in the position to which he or she is to be re-appointed ordinarily would result in membership in this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for service-connected or non-service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment, as if there had been no break in service.
- (2) A retiree who is a member of this System and who is to be re-appointed to a position of service which would result in membership in either the Employees' Retirement System or Uniformed Retirement System but for his or her membership in this System, shall be subject to the provisions of Subsection (b) or (c) of this Section, whichever is applicable.
- (3) If the retiree is a member of either the Employees' Retirement System or Uniformed Retirement System and service in the position to which he or she is to be appointed would result in membership in this System but for his or her membership in the other system, the retiree shall be subject to the provisions of Subsection (b) or (c) of this Section, whichever is applicable.
- (4) This Subsection shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Employees' Retirement System, or the Uniformed Retirement System. (20-81-3; 35-81-3; 27-90-3, § 5; 10-01-3; 11-05-3.)

Section 3-7-41. - Benefits to surviving spouse and children of members deceased before or during service retirement.

- (a) The surviving spouse of a member who dies before retirement or while receiving a service retirement allowance shall be entitled to receive relief from the System in an amount equal to \$1,000.00 per month. Any surviving children of such member under eighteen (18) years of age shall be entitled to receive relief in an amount equal to \$400.00 per month; and any child under the age of twenty-three (23) years who is a full-time student in an accredited college or secondary school shall also receive such relief; and any handicapped child shall receive such relief during the child's lifetime. Upon death of the surviving spouse, a surviving handicapped child, if any, shall be entitled to receive continued relief from the System as if that child were a surviving spouse, in addition to any other relief he or she is entitled to as a surviving child. Relief granted any child, not handicapped, shall cease upon said child's marriage or said child's becoming self-supporting, whichever shall occur first. Relief granted to a handicapped child shall cease if said child becomes self-supporting or if said child is determined by the Board no longer to be permanently mentally incompetent or permanently physically handicapped based on evidence available to the Board in accordance with Section 3-7-41(b). No combination of the relief previously granted shall be paid to the spouse or handicapped child, as the case may be, and children of any one member in an amount exceeding \$2,000.00 per month. Benefit amounts as listed above shall be adjusted on July 1 of each year after enactment by the lesser of four percent (4%) and the percentage corresponding to the percentage increase in the Consumer Price Index during the twelve (12) month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, *Consumer Price Index* shall mean the Washington, DC-MD-VA index of the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor. Benefits conferred upon a

surviving spouse pursuant to this Section shall extend to the surviving spouses of service retirees who died prior to the enactment of this Article.

- (b) Once each year during the first five (5) years following the Board's commencement of payments to the handicapped child, and once every three (3) year period thereafter, the Board shall require such handicapped child to undergo medical examinations by the same physicians as specified in the selection process set forth in Section 3-7-30, if available. Should any such physician be unavailable, a successor shall be designated, as previously determined in Section 3-7-30.

Each physician shall independently examine such handicapped child and submit a written report of findings and recommendations to the Board. In the event that such handicapped child fails to submit to these medical examinations, benefits shall be discontinued until the handicapped child submits to the examinations; and should the failure continue for one (1) year, all rights to benefits under this Article shall terminate. The Board is authorized to determine that the handicapped child no longer qualifies as such, based on such written report and other evidence acceptable to the Board in its sole discretion.

- (c) Handicapped children receiving an allowance pursuant to Section 3-7-39 shall submit by May 30 of each year a copy of that portion of their federal income tax returns showing the amount of their earned income and copies of W-2 forms (wage statements) provided by their employers to the Board for the previous calendar year. Failure to submit such documentation on request shall result in the loss of allowance until the documentation is provided; and should a handicapped child's failure continue for one (1) year, all rights to benefits shall cease.
- (d) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any benefits under this Section that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. (20-81-3; 8-82-3; 28-89-3; 13-92-3; 29-09-3; 01-11-3.)

Section 3-7-42. - Benefits to surviving spouses and children of members receiving service-connected disability.

The entitlements and conditions of surviving spouses and children of members receiving service-connected disability compensation shall be as provided in Section 3-7-41. (20-81-3.)

Section 3-7-43. - Benefits to surviving spouses and children of members killed while in performance of official duties.

The surviving spouse or, if no surviving spouse, the surviving handicapped child, of any member killed while in performance of official duties may elect to receive relief from the System in the amount of sixty-six-and-two-thirds percent (66 2/3%) of the member's current salary in lieu of any benefits provided in Section 3-7-41. The surviving spouse shall make such election in writing filed with the Board within ninety (90) days of receiving notice in writing from the Board of his or her right to make such election, or within one-hundred-eighty (180) days of the death of the member, whichever first occurs. In the event that the surviving spouse does not make a timely election, benefits shall be paid as provided under Section 3-7-41. Such election, if approved by the Board, shall become irrevocable upon commencement of payments and shall cease if such handicapped child shall become self-supporting, as determined by the Board based on standards established by the Board, or if said child is determined by the Board no longer to be permanently mentally incompetent or permanently physically handicapped based on evidence available to the Board in accordance with Section 3-7-41(b), as the case may be. Upon death of the surviving spouse, a surviving handicapped child, if any, shall be entitled to receive continued relief from the System as if that child were a surviving spouse. (20-81-3; 13-92-3; 29-09-3.)

Section 3-7-44. - Medical insurance benefits.

Repealed by 35-94-3.

Section 3-7-45. - Review of adverse decisions.

Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within thirty (30) days of receipt of such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3.)

Section 3-7-46. – Transfer to Senior Executive Retirement Plan.

Repealed by 97-26-3.

Section 3-7-47. – Masculine usage includes the feminine.

Repealed by 16-__-3.

Section 3-7-48. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Notwithstanding any provision of the Internal Revenue Code to the contrary, the limitations imposed by this Section apply only to retirement allowances granted under this Article, and not to any retirement allowance provided to any employee under any other Article of this Chapter. Such limits shall be applied annually for the twelve (12) month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Revenue Ruling 2001-62 (superseding and modifying Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 6; 21-96-3; 8-03-3; 01-11-3.)

Section 3-7-49. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *required beginning date* means April 1 of the calendar year following the later of the calendar year in which the member attains seventy-and-a-half (70½) years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five (5) years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions shall begin not later than one (1) year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one (1) year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained seventy-and-a-half (70½) years of age and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this Section shall be applied as if the surviving spouse were the member. Distributions from the System shall be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 6; 52-13-3.)

Section 3-7-50. - Direct rollovers to other plans.

- (a) General. This Section applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of this Article to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.
- (b) Definitions.
 - (1) *Eligible rollover distribution* shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.
 - (2) *Eligible retirement plan* shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a defined contribution plan described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; a qualified trust described in Section 401(a) of the Internal Revenue Code; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan shall be an individual retirement account or individual retirement annuity.
 - (3) *Distributee* shall mean a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee also shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.
 - (4) *Direct rollover* shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3)

Section 3-7-51. - Additional retirement allowance.

- (a) Definitions.
 - (1) *Active member* shall mean a member of the System who is an employee on July 1, 1995, or who became an employee thereafter, and whose membership in the System has not ceased at any time from July 1, 1995, forward or from when he or she became an employee (whichever is later) until the effective date of his or her subsequent retirement.
 - (2) *Retired member* shall mean a member of the System who is receiving a retirement allowance on July 1, 1995. A member of the System who is receiving a retirement allowance shall include any member whose effective date of retirement is on or before July 1, 1995.

- (3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, a nonservice-connected disability retirement allowance, a deferred vested benefit, or a surviving spouse and children's benefit.
- (4) *Base annual retirement allowance* shall mean the initial calculation of a member's, spouse's or children's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-7-7. For a member taking normal service retirement under Section 3-7-26(a), this is the allowance calculated under Section 3-7-27(a); for a member taking early service retirement under Section 3-7-26(b), this is the allowance calculated under Section 3-7-27(b); for a member retired on account of non-service-connected disability under Section 3-7-31, this is the allowance calculated under Section 3-7-31; for a member receiving a deferred vested benefit, this is the allowance calculated under Section 3-7-38(b); and for a surviving spouse and children receiving a spouse and children's benefit, this is the allowance calculated under the provisions of Section 3-7-41, 3-7-42 or 3-7-43.
- (5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse and children of a member receiving the base surviving spouse and children annual retirement allowance provided under Section 3-7-41, 3-7-42 or 3-7-43 as increased by any cost-of-living adjustments applied to the member's retirement from the effective date of his or her retirement or election of the spouse and children retirement allowance through July 1, 1995.
- (6) *Member in service* shall mean a member of the System.
- (b) The adjusted base annual retirement allowance of each retired member or spouse and children receiving a retirement allowance on July 1, 1995, shall be increased by three percent (3%), effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse and children's retirement allowance made under this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base retirement allowance.
- (c) When an active member retires or an eligible spouse and children elect to receive the spouse and children's retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the applicable Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (3%) (initial base annual retirement allowance). Adjustments to the member's or spouse and children's retirement allowance under this Article shall be computed on the basis of the initial base annual retirement allowance.
- (d) Separation from service.
 - (1) A member who:
 - (A) Separated from service other than by death or retirement with five (5) or more years of creditable service in the System prior to July 1, 1995, and
 - (B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and
 - (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit after July 1, 1995, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.
 - (2) A member in service on July 1, 1995, who:
 - (A) Subsequently separates from service other than by death or retirement with five (5) or more years of creditable service in the System, and
 - (B) Does not withdraw his or her accumulated contributions, and
 - (C) Subsequently applies for and is determined to be eligible for a deferred vested benefit, shall have his or her deferred vested benefit determined under Subsection (c) of this Section.
 - (3) A member in service on July 1, 1995, who:

- (A) Subsequently separates from service and withdraws his or her accumulated members' contributions, and
- (B) Thereafter returns to service and again becomes a member of the System and thereafter retires, shall have his or her retirement allowance calculated under Subsection (c) of this Section as if he or she were an active member as defined in this Section if at the time he or she subsequently returns to service, he or she has made arrangements to purchase credit for all of his or her previous service in the System under this Article.
- (e) Notwithstanding the eighty-four percent (84%) of average final compensation limit contained in Section 3-7-27(a), the initial base annual retirement allowance of an active member who is entitled to the increase provided by Subsection (c) of this Section shall not exceed eighty-six-and-fifty-two-one-hundredths percent (86.52%) of his or her average final compensation.
- (f) Notwithstanding any provision of this Section to the contrary, no adjustment under this Section shall be made which would violate the limitations provided by Section 3-7-48 concerning the limitations imposed by Section 415 of the Internal Revenue Code and any U.S. Treasury Regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations. (12-95-3; 6-00-3, § 2.)

(g) This Section shall not be applicable to members of Plan C.

Section 3-7-52. - Deferred Retirement Option Program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program (DROP) for eligible members of the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

- (a) Definitions.
 - (1) *DROP period* shall mean the three (3) year period immediately following the commencement of the member's participation in the DROP.
 - (2) *Eligible member* shall mean any member who is, or will become within sixty (60) days, eligible for normal service retirement benefits as those are defined in Section 3-7-26(a).
- (b) Election to participate.
 - (1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Fairfax County Retirement Administration Agency not less than sixty (60) days prior to the date of the commencement of the member's participation in the DROP.
 - (2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least twelve (12) months from the date of his or her revocation.
 - (3) At the time of an eligible member's election to participate in the DROP, he or she shall make an election in writing pursuant to Section 3-7-39 as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse and/or handicapped child after the member's death.
 - (4) An eligible member who elects to participate in the DROP shall agree to do so for a period of three (3) years.
 - (5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-7-2(a)(2), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but forty (40) hours of his or her accrued sick leave to

creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

- (1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP. Thereafter, the participating DROP member shall perform the services of that position or any other position to which he or she is promoted or transferred.
- (2) A participating DROP member shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.
- (3) A participating DROP member shall continue to remain eligible for health and life insurance benefits provided by the County to its employees and shall remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefits shall be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.
- (4) All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period shall not be included in the computation of the member's average final compensation. A participating DROP member shall also be subject to the County's disciplinary policies and regulations.
- (5) If a participating DROP member's continued employment with the County is interrupted by military service, there shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance shall be paid to the member whether or not he or she has returned to his or her former County position, and the member shall begin to receive his or her normal retirement benefits.
- (6) Except as otherwise set forth herein, a participating DROP member's continued service shall be deemed to be normal service retirement and shall not count as creditable service with the System.
- (7) Upon commencement of a participating DROP member's DROP period, the County shall cease to withhold contributions to the System from the participating DROP member's salary.
- (8) The salary received by a participating DROP member during his or her DROP period shall not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.

(d) DROP account.

- (1) Upon commencement of the ~~member's~~ participation of a member in either Plan A or Plan B in the DROP, the member's service retirement allowance pursuant to Section 3-7-27 and the additional retirement allowance pursuant to Section 3-7-51 shall be paid into the member's DROP account. ~~The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.~~ Upon commencement of participation ~~the~~ of a member in Plan C in the DROP, the member's service retirement allowance shall be determined pursuant to Section 3-7-27. The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

- (2) The initial monthly amount shall be increased each July 1 based upon the annual cost-of- living adjustment provided to retirees pursuant to Section 3-7-37. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement allowances and benefits if he or she were retired shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.
 - (3) The participating DROP member's DROP account shall be credited with interest at an annual rate of five percent (5%), compounded monthly. Interest shall not be pro-rated for any period less than a full month.
 - (4) Contributions by the County and the participating DROP member into the System for the participating DROP member shall cease.
 - (5) Amounts credited to a participating DROP member's DROP account shall not constitute annual additions under Section 415 of the Internal Revenue Code.
 - (6) A participating DROP member's DROP account shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance shall remain part of the assets of the System.
- (e) Cessation of County employment.
- (1) At the conclusion of a participating DROP member's DROP period, the member's County employment shall automatically cease. The participating DROP member shall then begin to receive normal service retirement allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost-of-living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least sixty (60) days prior to the conclusion of a participating DROP member's DROP period, the member shall make one of the following elections concerning payment of his or her DROP account balance:
 - (A) The member may receive payment of his or her DROP account balance as a lump sum.
 - (B) The member may elect to roll over his or her DROP account balance into an "eligible retirement plan", as defined in Section 3-7-50(b)(2).
 - (C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.
 - (D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement allowances and benefits. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.
 - (E) The member may divide his or her DROP account balance in half, and may then elect to use fifty percent (50%) of his or her DROP account balance to increase his or her monthly retirement allowances and benefits, and to receive the remainder in any manner listed in Subparagraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this Subsection, the member shall receive payment of his or her DROP account balance as a lump sum.
 - (2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County employment shall be treated as the end of the DROP period for all purposes of this Section.

- (3) In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.
- (f) Death or disability during DROP period.
 - (1) (A) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and contingent spouse and handicapped child option pursuant to the terms of Section 3-7-39, the participating DROP member's surviving spouse or handicapped child shall receive payment of the participating DROP member's DROP account balance and shall begin to receive allowances and benefits pursuant to the joint and contingent spouse and handicapped child option election of the participating DROP member in addition to the benefits to which they may be entitled under Section 3-7-41.
 - (B) If a participating DROP member is killed while in performance of his or her official duties during the DROP period, as set forth in Section 3-7-43, the member's spouse, or, if there is no surviving spouse, the member's handicapped child, may elect to receive the benefits set forth in Section 3-7-43, pursuant to the terms and conditions set forth in that Section. Such an election shall constitute a waiver of the right to receive the participating DROP member's DROP account balance.
 - (C) If a participating DROP member is killed while in performance of his or her official duties and there is no surviving spouse or handicapped child, the member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate.
- (2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member shall receive:
 - (A) In the case that a participating DROP member suffers a disability that would be considered a non-service-connected disability as defined in Section 3-7-31 or a disability as a result of negligence as defined in Section 3-7-36, the effective date of the member's disability shall be treated as the end of the participating DROP member's DROP period.
 - (B) In the case that a participating DROP member suffers a service-connected disability as defined in Section 3-7-28, the participating DROP member may elect either (i) to receive the service-connected disability retirement allowances and benefits to which he or she would otherwise be entitled or (ii) to receive the normal service retirement allowances and benefits to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement allowances and benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.
- (g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 28-12-3.)

Division 7. - Benefit Restoration Plan.

Section 3-7-53. - Benefit Restoration Plan.

- (a) There is hereby established a Benefit Restoration Plan for the System.
- (b) Purpose and intent; rule of construction.
 - (1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by Section 415(m) of the Internal Revenue Code, as is permitted by Section 51.1-1302 of the *Code of Virginia*. The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to participants, including the benefits established by the System.
 - (2) This Section shall be construed to ensure compliance with federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code and Sections 51.1-1302, 51.1-1303, and 51.1-1304 of the *Code of Virginia*, as in effect at the time of the adoption of this Section and as subsequently amended.
- (c) Definitions.
 - (1) *Administrator* or *Plan Administrator* shall mean the Board, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board, the Executive Director shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.
 - (2) *Beneficiary* shall mean the person or persons entitled under this Article to receive any benefits payable after the participant's death.
 - (3) *Benefit Restoration Plan* or *Plan* shall mean the Benefit Restoration Plan for the System established by this Section.
 - (4) *Effective date* shall mean the date of this Section's adoption [June 5, 2006].
 - (5) *Eligible member* shall mean a retired member of the System whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans.
 - (6) *Enabling statute* shall mean Chapter 13 of Title 51.1 of the *Code of Virginia*, as amended.
 - (7) *Grantor trust* shall mean the trust fund described in Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.
 - (8) *Participant* shall mean an eligible member qualified to participate in the Benefit Restoration Plan.
 - (9) *Plan sponsor* shall mean the Board of Supervisors.
 - (10) *Plan year* shall mean the twelve (12) month period beginning on July 1.
 - (11) *Restoration death benefit* shall mean the benefit due the beneficiary of a participant under the Benefit Restoration Plan as determined under this Section.
 - (12) *Restoration retirement benefit* shall mean the benefit due a participant or his or her beneficiary under the Benefit Restoration Plan determined under this Section.
- (d) Eligibility and participation
 - (1) Eligibility and date of participation. Each eligible member shall be a participant in the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an eligible member.
 - (2) Length of participation. Each eligible member who becomes a participant shall be or remain a participant for so long as he or she is entitled to future benefits under the terms of the Benefit Restoration Plan.

(e) Restoration retirement benefit. Subject to the terms and conditions set forth in this Section, a participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:

- (1) The amount of the participant's retirement allowance under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
- (2) The amount of the participant's retirement allowance under the System.

To the extent that the participant's retirement allowance payable under the System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the Secretary of the U. S. Treasury or his or her delegate or otherwise, the participant's restoration retirement benefit shall be reduced correspondingly.

(f) Death Benefit.

- (1) Death after benefit commencement. If a participant dies after his or her restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.
- (2) Death before benefit commencement. If a participant dies before his or her restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the restoration death benefit, if any, provided in Subsection (f)(3) of this Section.
- (3) Restoration death benefit. Subject to the terms and conditions set forth herein, if a participant dies on or after the effective date and before his or her restoration retirement benefit commences to be paid, his or her beneficiary shall be entitled to a restoration death benefit as follows:
 - (A) If his or her beneficiary is entitled to receive any death benefit under the System, such beneficiary shall be entitled to receive as a restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:
 - (i) The amount of such death benefit under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over
 - (ii) The actual amount of such death benefit under the System.

To the extent that the participant's accrued benefit or any death benefit payable under the System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration death benefit shall be reduced correspondingly.

(g) Vesting. A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the System or death, but only to the extent, and determined in the manner, that such participant has a vested and non-forfeitable right to his or her retirement allowance under the System.

(h) Payment of benefits.

- (1) Time and manner for payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the System, whether as elected by the participant or otherwise payable. For a member who is receiving a retirement allowance

under the System on the effective date, and who would immediately be an eligible member upon the effective date, such member shall immediately commence receiving a restoration retirement benefit on a prospective basis.

- (2) Discretionary use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than \$100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.
 - (3) Benefit determination and payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the participant (or the participant's beneficiary in the event of the death of the participant). The Administrator shall promptly notify the employer and, where payments are to be made from a grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the employer or trustee such other information necessary to allow the employer or trustee to carry out said determination, whereupon the employer or trustee shall pay such benefits in accordance with the Administrator's determination.
 - (4) Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.
 - (5) Distribution of benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a participant or his or her beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.
- (i) Funding.
- (1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the employer and subject to the claims of the employer's creditors.
 - (2) Except as provided in a grantor trust established as permitted in Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the employer and the participant or his or her beneficiary or any other person or to give any participant or beneficiary any right, title, or interest in any specific asset or assets of the employer. To the extent that any person acquires a right to receive payments from the employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the employer.
 - (3) Use of grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.
- (j) Plan Administrator.
- (1) The Plan Administrator shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the enabling statute. The Administrator shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.

- (2) The Plan Administrator shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the enabling statute.
 - (3) To enable the Plan Administrator to perform its responsibilities, employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the employer, and shall have no duty or responsibility to verify this information.
 - (4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator shall make such contracts in compliance with all applicable state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan shall be subject to the supervision and direction of the Plan Administrator and shall not have the authority to control the operation of the Plan.
- (k) Termination and amendment of Benefit Restoration Plan.
- (1) Termination. The Board of Supervisors hereby reserves the right to terminate this Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such termination.
 - (2) Amendment. The Board of Supervisors hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such amendment.
- (l) Non-assignability.
- The interests of each participant hereunder the Benefit Restoration Plan are not subject to the claims of the participant's creditors; and neither the participant nor his or her beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Notwithstanding the foregoing, the Plan Administrator shall honor any process for a debt to the employer who has employed the participant and any administrative actions pursuant to Sections 63.2-1900 *et seq.* of the *Code of Virginia* or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-7-6 *mutatis mutandi*. Restoration retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to Sections 20-89.1 *et seq.* of the *Code of Virginia*, may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Code of Virginia*. Under no circumstances may a payment under this Subsection take place before the participant's benefit under the System is actually paid. (12-06-3.)

***Via Electronic Mail***

September 13, 2018

Board of Trustees
 Fairfax County Employees' Retirement System
 12015 Lee Jackson Memorial Highway, Suite 350
 Fairfax, Virginia 22033

Re: Follow-up Information to June 26 Meeting on Personnel Committee Meeting

Dear Members of the Board:

At the Personnel Committee meeting on June 26, 2018, the Board of Supervisors narrowed down a list of potential offerings for a new tier of benefits. We are writing to provide information on possible combinations of these potential offerings and the impact on the Fairfax County Employees' Retirement System (ERS).

The potential changes that are being considered to benefits for all new hires after the effective date of the ordinance under the current Plan D include:

- Raise the minimum retirement age from 55 to 60
- Raise the Rule of 85 to the Rule of 90
- Change the average final compensation from high three years to high five years average
- Eliminate Pre-Social Security (pre-SS) Supplements
- Eliminate the 3% increase in the benefit formula

While the actual cost impact of a new hire plan will be unknown until the members have actually been hired, we are able to estimate the impact using the Plan D active population and the normal cost reduction for each possible combination being considered. The impact of any of these changes will be felt slowly over a number of years as new members are hired. If the contribution rate were recalculated each year to reflect the valuation results, we anticipate that the normal cost rate would begin to change immediately, albeit slowly. However, the County has decided not to let the ERS contribution rate decline until the Plan reaches 100% funding. Consequently, it is more likely that no savings would emerge until the Plan reaches 100% funding, at which time the contribution would drop enough to recoup the savings that had been suppressed in the interim.

Normal cost is an actuarial measure of the value of each year's accrual of benefits and will be lower for new hires under the proposed changes. The table on the following page lists the combinations that are being considered as well as the impact on normal cost. Note that combining changes in a certain order will change the potential savings since the changes are interdependent. For example, if you were to eliminate the pre-Social Security supplements as the first step in making a change, the change of increasing the minimum retirement age to 60 would be less of a savings since part of the savings was due to the pre-SS supplement piece of the benefit. This is why it is important to view the changes in packages rather than looking at each change on an individual basis.

ERS Normal Cost Impact of Prospective Changes to New Hires								
	A	B	C	D	E	F	G	H
1a. Minimum retirement age of 60	-0.22%	-0.22%	N/A	-0.22%	-0.22%	N/A	N/A	N/A
2. Rule of 90 retirement	-0.04%	N/A	-0.08%	-0.04%	N/A	-0.08%	N/A	N/A
3a. 5-year average final compensation	-0.35%	-0.35%	-0.35%	-0.35%	-0.35%	-0.35%	N/A	-0.36%
4. Eliminate pre-SS supplement	-0.42%	-0.44%	-0.49%	-0.42%	-0.44%	-0.49%	-0.58%	-0.58%
9. Eliminate 3% formula increase	-0.32%	-0.32%	-0.33%	N/A	N/A	N/A	-0.33%	-0.32%
Total Change	-1.35%	-1.33%	-1.25%	-1.03%	-1.01%	-0.92%	-0.91%	-1.26%

Assumptions and Statement of Reliance

These cost estimates were prepared using the same actuarial assumptions and methods as described in our June 30, 2016 actuarial valuation reports. The data used in this analysis was the active data provided for the 2016 valuation for members participating in Plan D. We note that the average age at hire for active members of Plan D has not significantly changed in the last three years of valuation data that we have collected and so we feel the 2016 active group is an appropriate proxy for future hires who may accrue benefits under this provision.

I hereby certify that, to the best of my knowledge, this letter and its contents are complete and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as a credentialed actuary, I meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. I am not an attorney, and my firm does not provide any legal services or advice.

Please call if you have any questions or comments.

Sincerely,
Cheiron



Fiona E. Liston, FSA, EA
Principal Consulting Actuary

Via Electronic Mail

August 3, 2018

Board of Trustees
Fairfax County Uniformed Retirement System
12015 Lee Jackson Memorial Highway, Suite 350
Fairfax, Virginia 22033

Re: Follow-up Information to June 26 Meeting on Personnel Committee Meeting

Dear Members of the Board:

At the Personnel Committee meeting on June 26, 2018, the Board of Supervisors narrowed down a list of potential offerings for a new tier of benefits. We are writing to provide information on possible combinations of these potential offerings and the impact on the Fairfax County Uniformed Retirement System (URS).

The potential changes that are being considered to benefits for all new hires after the effective date of the ordinance under the current Plan E include:

- Change the average final compensation from high three years to high five years average
- Eliminate Pre-Social Security (pre-SS) Supplements
- Eliminate the 3% increase in the benefit formula

While the actual cost impact of a new hire plan will be unknown until the members have actually been hired, we are able to estimate the impact using the Plan E active population and the normal cost reduction for each possible combination being considered. The impact of any of these changes will be felt slowly over a number of years as new members are hired. If the contribution rate were recalculated each year to reflect the valuation results, we anticipate that the normal cost rate would begin to change immediately, albeit slowly. However, the County has decided not to let the URS contribution rate decline until the Plan reaches 100% funding. Consequently, it is more likely that no savings would emerge until the Plan reaches 100% funding, at which time the contribution would drop enough to recoup the savings that had been suppressed in the interim.

Normal cost is an actuarial measure of the value of each year's accrual of benefits and will be lower for new hires under the proposed changes. The table on the following page lists the combinations that are being considered as well as the impact on normal cost. Note that combining changes in a certain order will change the potential savings since the changes are interdependent. For example, if you were to eliminate the pre-Social Security supplements as the first step in making a change, the change of increasing the average final compensation years from three to five would be less of a savings since part of the savings was due to the pre-SS supplement piece of the benefit. This is why it is important to view the changes in packages rather than looking at each change on an individual basis.

URS Normal Cost Impact of Prospective Changes to New Hires			
	A	B	C
3a. 5-year average final compensation	-0.84%	-0.84%	N/A
4. Eliminate pre-SS supplement	-0.89%	-0.89%	-0.92%
9. Eliminate 3% formula increase	-0.57%	N/A	0.59%
Total Change	-2.30%	-1.73%	-1.51%


Assumptions and Statement of Reliance

These cost estimates were prepared using the same actuarial assumptions and methods as described in our June 30, 2016 actuarial valuation reports. The data used in this analysis was the active data provided for the 2016 valuation for members participating in Plan E. We note that the average age at hire for active members of Plan E has not significantly changed in the last three years of valuation data that we have collected and so we feel the 2016 active group is an appropriate proxy for future hires who may accrue benefits under this provision.

I hereby certify that, to the best of my knowledge, this letter and its contents are complete and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as a credentialed actuary, I meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. I am not an attorney, and my firm does not provide any legal services or advice.

Please call if you have any questions or comments.

Sincerely,
Cheiron



Fiona E. Liston, FSA, EA
Principal Consulting Actuary



Via Electronic Mail

August 3, 2018

Board of Trustees
Fairfax County Police Officers Retirement System
12015 Lee Jackson Memorial Highway, Suite 350
Fairfax, Virginia 22033

Re: Follow-up Information to June 26 Meeting on Personnel Committee Meeting

Dear Members of the Board:

At the Personnel Committee meeting on June 26, 2018, the Board of Supervisors narrowed down a list of potential offerings for a new tier of benefits. We are writing to provide information on possible combinations of these potential offerings and the impact on the Fairfax County Police Officers Retirement System (PORS).

The potential changes that are being considered to benefits for all new hires after the effective date of the ordinance under the current Plan B include:

- Change the average final compensation from high three years to high five years average
- Eliminate the 3% increase in the benefit formula

While the actual cost impact of a new hire plan will be unknown until the members have actually been hired, we are able to estimate the impact using the Plan B active population and the normal cost reduction for each possible combination being considered. The impact of any of these changes will be felt slowly over a number of years as new members are hired. If the contribution rate were recalculated each year to reflect the valuation results, we anticipate that the normal cost rate would begin to change immediately, albeit slowly. However, the County has decided not to let the PORS contribution rate decline until the Plan reaches 100% funding. Consequently, it is more likely that no savings would emerge until the Plan reaches 100% funding, at which time the contribution would drop enough to recoup the savings that had been suppressed in the interim.

Normal cost is an actuarial measure of the value of each year's accrual of benefits and will be lower for new hires under the proposed changes. The table below lists the combinations that are being considered as well as the impact on normal cost.

PORS Normal Cost Impact of Prospective Changes to New Hires			
	A	B	C
3a. 5-year average final compensation	-0.79%	-0.79%	N/A
9. Eliminate 3% formula increase	-0.63%	N/A	-0.65%
Total Change	-1.42%	-0.79%	-0.65%

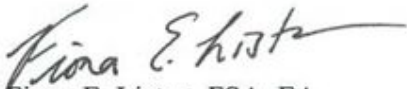
Assumptions and Statement of Reliance

These cost estimates were prepared using the same actuarial assumptions and methods as described in our June 30, 2016 actuarial valuation reports. The data used in this analysis was the active data provided for the 2016 valuation for members participating in Plan B. We note that the average age at hire for active members of Plan B has not significantly changed in the last three years of valuation data that we have collected and so we feel the 2016 active group is an appropriate proxy for future hires who may accrue benefits under this provision.

I hereby certify that, to the best of my knowledge, this letter and its contents are complete and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as a credentialed actuary, I meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. I am not an attorney, and my firm does not provide any legal services or advice.

Please call if you have any questions or comments.

Sincerely,
Cheiron



Fiona E. Liston, FSA, EA
Principal Consulting Actuary

Board Agenda Item
October 16, 2018

ACTION - 1

Approval of a Standard Project Agreement with the Northern Virginia Transportation Authority for the Richmond Highway Bus Rapid Transit Project (Lee and Mount Vernon Districts)

ISSUE:

Board of Supervisors' authorization for the Director of the Fairfax County Department of Transportation (FCDOT) to sign a Standard Project Agreement (SPA) with the Northern Virginia Transportation Authority (NVTA), substantially in the form of Attachment 2, to secure NVTA FY 2018-2023 Six-Year Program (SYP) funding for the implementation of the Richmond Highway Bus Rapid Transit (BRT) Phases I and II from the Huntington Metrorail Station area to Fort Belvoir (Project).

RECOMMENDATION:

The County Executive recommends that the Board approve a resolution, substantially in the form of Attachment 1, authorizing the Director of FCDOT to execute an SPA with NVTA for \$250 million in NVTA FY 2018-2023 SYP funding to support the Project.

TIMING:

The Board of Supervisors should act on this item on October 16, 2018, so that NVTA can begin to release FY 2018-2023 funding to the County for the implementation of the Project.

BACKGROUND:

In 2015, the Virginia Department of Rail and Public Transportation (DRPT) led a transportation study for Richmond Highway called the Route 1 Multimodal Alternatives Analysis (MMAA), which evaluated the benefits, costs, and impacts of implementing multimodal improvements along a 15-mile stretch of Richmond Highway, from the I-95/I-495 Beltway area, through Fairfax County, to the Woodbridge Virginia Railway Express (VRE) Station in Prince William County. Through stakeholder participation and technical analysis, the study recommended transportation improvements for adoption by Fairfax County and Prince William County. This recommendation from the study included a phased approach, which was to implement median running BRT in the near-term between Huntington Metrorail Station in Fairfax County to Woodbridge in Prince William County and expanding Metrorail from Huntington to Hybla Valley in the longer term.

Board Agenda Item
October 16, 2018

In May 2015, the Fairfax County Board of Supervisors endorsed phases I and II of the preferred transit alternative, which would implement median running BRT from Huntington to Accotink Village/Fort Belvoir. The Board action also included language for staff to amend the Comprehensive Plan to include elements along the corridor that would be supportive of BRT and other necessary actions for BRT implementation. In response, FCDOT has assembled a team of staff responsible for delivering BRT service.

The BRT Team continues to work on the environmental study, roadway design (including coordination with the Virginia Department of Transportation (VDOT) on the Richmond Highway widening project), station configurations, and the public involvement process. An existing traffic conditions report is complete, and a safety report for the project corridor is being finalized. The BRT Team is in process of setting up community advisory group meetings and an executive committee meeting for fall 2018 and public meetings for the first quarter of 2019.

On June 14, 2018, NVTA approved its 2018-2023 SYP, which included \$250 million in regional funding for the Richmond Highway BRT project. These regional funds will partially support both phases of the Project.

To facilitate the implementation of the regionally funded projects, NVTA and jurisdictional staff developed an SPA to govern the terms and conditions associated with the funding that NVTA approves for these regional projects. The SPA is based on the requirements of HB 2313, but the SPA also includes practical provisions associated with the implementation of the law and standard contract language. A specific project agreement must be executed for each project approved by NVTA. County staff was extensively involved in drafting this SPA, and in tailoring it for the Richmond Highway BRT project.

The SPA provides that the County will:

- Perform work in accordance with all applicable federal, state, and local laws and regulations, the SPA and the Project Description Sheet;
- Perform or have performed all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisition as required by the SPA and necessary to complete the project;
- Update project cash flow requirements periodically;
- Provide requests for payment consistent with the approved cash flow for a project on standard requisition forms;
- Notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances. NVTA will decide whether to fund these additional costs, but only in accordance with NVTA's project selection process;

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October 16, 2018

- Release or return any unexpended funds to NVTA no later than 90 days following final payment to contractors;
- Certify that any matching funds required for the project have been secured;
- Reimburse NVTA (with interest) for any funds misapplied or not used in accordance with the statutes governing NVTA's revenues;
- Certify that the County will use the project for its intended purpose for the duration of its useful life or reimburse NVTA for the residual value of the asset based on its depreciated value;
- Acknowledge that NVTA will not be responsible for operating or maintaining the project upon completion;
- Obtain all necessary permits or permissions necessary for constructing and/or operating the project;
- Comply with all applicable federal and state funding requirements, if such other sources are used to fund the project;
- Certify that it has adhered to all applicable laws and regulations, as well as the requirements of the agreement.

The SPA provides that NVTA will:

- Provide funding for the project on a reimbursement basis, as outlined in the project agreement, project budget and cash flow as originally or subsequently approved;
- Assign a project coordinator to monitor the project to ensure compliance with the agreement and review payment requisitions;
- Make project payments within 20 days, if the payment requisition is sufficient;
- Notify the County of reasons a payment requisition is declined;
- Consider additional payment requests recommended by the Executive Director and the Finance Committee;
- Conduct periodic reviews of the project to ensure that it remains in compliance with the agreed-upon project scope;
- Advise the County in writing of any misused or misapplied funding and make recommendations to NVTA's Finance Committee, if the issue(s) is not resolved, and withhold additional funding for the project until final resolution of the matter.
- Secure reimbursement from the County (with interest) of any misused or misapplied funding;
- Make guidelines available to assist with complying with the terms of the agreement.

FISCAL IMPACT:

The County will oversee receipt of \$250 million directly from NVTA on a reimbursement basis to support the Project. Expenditures and reimbursement from NVTA will be budgeted in project 2G40-162, Fund 40010, County and Regional Transportation

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Projects. FCDOT will make appropriation requests for this project annually, and \$15 million was included as part of the FY 2018 Carryover Review. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1 - Resolution to Execute Agreement with the Northern Virginia Transportation Authority

Attachment 2 - Standard Project Agreement for the Richmond Highway Bus Rapid Transit Project, including Related Appendices, with the Northern Virginia Transportation Authority

STAFF:

Robert A. Stalzer, Deputy County Executive

Joe LaHait, Debt Coordinator, Department of Management and Budget

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division (CPTED), FCDOT

Vanessa Aguayo-Thomas, Transportation Planner, CPTED, FCDOT

Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), FCDOT

Noelle Dominguez, Transportation Planner, CFD, FCDOT

Brent Riddle, Transportation Planner, CFD, FCDOT

ASSIGNED COUNSEL:

Joanna L. Faust, Assistant County Attorney

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, October 16, 2018, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, a Standard Project Agreement with the Northern Virginia Transportation Authority for the funding of the Richmond Highway Bus Rapid Transit project from Huntington Metrorail Station area to Fort Belvoir.

Adopted this 16th day of October 2018, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

**Standard Project Agreement for Funding and Administration
between
Northern Virginia Transportation Authority
and
Fairfax County

(Recipient Entity)**

Project Name: Richmond Highway Bus Rapid Transit Phases I & II

NVTA Project Number: _____

This Standard Project Agreement for Funding and Administration ("this Agreement") is made and executed in duplicate on this _____ day of _____, 20__, as between the Northern Virginia Transportation Authority ("NVTA") and _____ Fairfax County _____ ("Recipient Entity").

WITNESSETH

WHEREAS, NVTA is a political subdivision of the Commonwealth of Virginia created by the Northern Virginia Transportation Authority Act ("the NVTA Act"), Chapter 25 of Title 33.2 of the Code of Virginia, as amended;

WHEREAS, Section 33.2-2500(4) of the Code of Virginia authorizes NVTA to enter into project agreements with certain statutorily designated entities for the provision of transportation facilities and services to the area embraced by NVTA;

WHEREAS, Section 33.2-2509 of the Code of Virginia authorizes NVTA to use funds from a fund established pursuant to that Code section (the "NVTA Fund") in order to assist in the financing, in whole or in part, of certain regional transportation projects in accordance with Code Section 33.2-2510;

WHEREAS, the NVTA Fund provides for the deposit therein of certain dedicated revenues and other funds appropriated by the Virginia General Assembly;

WHEREAS, Section 33.2-2510 of the Code of Virginia authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA debt issuances ("NVTA Bond Proceeds") to be used by NVTA solely for transportation purposes benefitting those counties and cities embraced by NVTA;

WHEREAS, the Project set forth and described on Appendix A to this Agreement ("the Project") satisfies the requirements of Virginia Code Section 33.2-2510;

Revised: July 28, 2015

WHEREAS, the Project is to be financed, as described in Appendix B, in whole or in part, by funds from the NVTAFund and/or from NVTABond Proceeds, is located within a locality embraced by NVTAs geographical borders, or is located in an adjacent locality, but only to the extent that any such extension is an insubstantial part of the Project and is essential to the viability of the Project within the localities embraced by NVTAFund;

WHEREAS, Fairfax County formally requested that NVTAFund provide funding to the Project by timely submitting an application for NVTAFund funding in response to NVTAs call for projects;

WHEREAS, NVTAFund has reviewed Fairfax County 's application for funding and has approved Fairfax County 's administration and performance of the Project's described scope of work;

WHEREAS, based on the information provided by Fairfax County, NVTAFund has determined that the Project complies with all requirements of the NVTAFund Act related to the use of moneys identified in Virginia Code Sections 33.2-2510(A),(C)1 and all other applicable legal requirements;

WHEREAS, the funds to be provided by NVTAFund described in Appendix B have been duly authorized and directed by Fairfax County to finance the Project;

WHEREAS, NVTAFund agrees that Fairfax County will design and/or construct the Project or perform such other specific work for the Project and Fairfax County agrees that it will perform such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

WHEREAS, both parties have concurred in the Fairfax County 's administration, performance, and completion of the Project on the terms and conditions set forth in this Agreement and its Appendices and in accordance with all applicable federal, state, and local laws and regulations; and

WHEREAS, NVTAs governing body and Fairfax County 's governing body have each authorized that their respective designee(s) execute this agreement on their respective behalf(s) as evinced by copies of each such entity's clerk's minutes which are appended hereto as Appendix E;

NOW THEREFORE, in consideration of the promises made mutual covenants, and agreements contained herein, the parties hereto agree as follows:

A. Recipient Entity's Obligations

Fairfax County shall:

1. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement.
2. Ensure that all work performed or to be performed under this Agreement is in accordance with the Project Description Sheets attached to Appendix A and complies with Va. Code Ann. Sections 33.2-2510(A), (C)1.
3. Perform or have performed, and remit all payment requisitions and other requests for funding for design and engineering, including all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions for the Project, as is required by this Agreement and that may be necessary for completion of the Project.
4. Not use the NVTAFunds specified on Appendix B to pay any Project cost if the NVTAFunds Act does not permit such Project cost to be paid with NVTAFunds.
5. Recognize that, if the Project contains "multiple phases" (as such "multiple phases" are defined for the Project on Appendix A), for which NVTAFunds will provide funding for such multiple phases (as set forth on Appendix B), NVTAFunds may not provide funding to Fairfax County to advance the Project to the next phase until the current phase is completed. In any circumstance where Fairfax County seeks to advance a Project to the next phase using NVTAFunds, Fairfax County shall submit a written request to NVTAFunds's Executive Director explaining the need for NVTAFunds's funding of an advanced phase. NVTAFunds's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTAFunds's current and projected cash flow position and make a recommendation to NVTAFunds whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit Fairfax County from providing its own funds to

advance a future phase of the Project and from requesting reimbursement from NVTa for having advance funded a future phase of the Project. However, Fairfax County further recognizes that NVTa's reimbursement to Fairfax County for having advance funded a Project phase will be dependent upon NVTa's cash flow position at the time such a request for reimbursement is submitted and to the extent that any such advanced funding is consistent with Appendix B.

6. Acknowledge that NVTa's Executive Director will periodically update NVTa's project cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. Fairfax County shall provide all information required by NVTa so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.
7. Provide to NVTa requests for payment consistent with Appendix B and the most recently approved NVTa cash flow estimates that include NVTa's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by NVTa and that certify all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by NVTa, Fairfax County can expect to receive payment within twenty (20) days upon receipt by NVTa. Approved payments may be made by means of electronic transfer of funds from NVTa to or for the account of Fairfax County.
8. Promptly notify NVTa's Executive Director of any additional project costs resulting from unanticipated circumstances and provide to NVTa detailed estimates of additional costs associated with those circumstances. Fairfax County understands that it will be within NVTa's sole discretion whether to provide any additional funding to the Project in such circumstances and that NVTa will do so only in accordance with NVTa's approved Project Selection Process and upon formal action and approval by NVTa. Fairfax County shall timely provide to NVTa a

complete and accurate update to Appendix B, if NVTA approves funding of any additional Project costs for the Project under this Paragraph.

9. Release or return any unexpended funds to NVTA no later than 90 days after final payment has been made to the contractors.
10. Review and acknowledge the requirements of NVTA Resolution No. 14-08 adopted January 23, 2014; to wit that, if applicable to Fairfax County's Project: a) Prior to any NVTA funds being released for a project that may be part of a larger project, projects, or system undertaken with an extra-territorial funding partner, all such extra-territorial funding partners must commit to pay their appropriate, respective proportionate share or shares of the larger project or system cost commensurate with the benefits to each on a basis agreed upon by the NVTA member localities; b) any such funds released by NVTA for such project will be in addition to the funds that the NVTA member locality is to receive from or be credited with by the extra-territorial funding partner for the project or system; and c) there shall be no funding made available by NVTA until such time as all extra-territorial funding partners for such project or system pay or officially commit to fund their appropriate, respective proportionate shares of such large project or system commensurate with the benefits to each on a basis agreed upon with NVTA.
11. Should Fairfax County be required to provide matching funds in order to proceed or complete the funding necessary for the Project, Fairfax County shall certify to NVTA that all such matching funds have been either authorized and/or appropriated by Fairfax County's governing body or have been obtained through another, independent funding source;
12. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations, unless superseded by the laws that govern Fairfax County and provide copies of any such financial records to NVTA, free of charge, upon request.

13. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations, unless superseded by the laws that govern Fairfax County; and provide to NVTA copies of all such drawings and plans free of charge, upon request.
14. Reimburse NVTA for all NVTA funds (with interest earned at the rate earned by NVTA) that Fairfax County misapplied or used in contravention of Sections 33.2-2500 *et. seq.* of the Virginia Code ("the NVTA Act") Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766"), or any term or condition of this Agreement.
15. Name NVTA and its Bond Trustee or require that all Fairfax County's contractors name NVTA or its Bond Trustee as an additional insured on any insurance policy issued for the work to be performed by or on behalf of Fairfax County for the Project and present NVTA with satisfactory evidence thereof before any work on the Project commences or continues.
16. Give notice to NVTA that Fairfax County may use NVTA funds to pay outside legal counsel services (as opposed to utilizing the services of its own in-house counsel or NVTA's in-house legal counsel) in connection with the work performed under this Agreement Fairfax County so as to ensure that no conflict of interest may arise from any such representation.
17. Provide certification to NVTA, that upon final payment to all contractors for the Project, Fairfax County will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTA be considered responsible or obligated to operate and/or maintain the Project after its completion.
18. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, or local ordinances which govern the letting of public contracts, unless superseded by the laws that govern Fairfax County.

19. Acknowledge that if the Project is being funded in whole or in part by NVTB Bond Proceeds, comply with the tax covenants attached as Appendix D.
20. Acknowledge that if Fairfax County expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that Fairfax County agrees to comply with the Virginia Department of Transportation's ("VDOT's") "Standards, Requirements and Guidance."
21. Recognize that Fairfax County is solely responsible for obtaining all permits and permissions necessary to construct and/or operate the Project, including but not limited to, obtaining all required VDOT and local land use permits, applications for zoning approvals, and regulatory approvals.
22. Recognize that if Fairfax County is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTB funds and/or NVTB Bond Proceeds that Fairfax County will need to comply with all federal and Commonwealth funding requirements, including but not limited to, the completion and execution of VDOT's Standard Project Administration Agreement and acknowledges that NVTB will not be a party or signatory to that Agreement; nor will NVTB have any obligation to comply with the requirements of that Agreement.
23. Provide a certification to NVTB no later than 90 days after final payment to the contractors that Fairfax County adhered to all applicable laws and regulations and all requirements of this Agreement.

B. NVTB's Obligations

NVTB shall:

- I. Provide to Fairfax County the funding authorized by NVTB for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s) on a reimbursement basis as set forth in this Agreement and as specified in the Project Budget and Cash Flow contained in

Appendix B to this Agreement or the most updated amendment thereto, as approved by NVTa.

2. Assign a Program Coordinator for the Project. NVTa's Program Coordinator will be responsible for monitoring the Project on behalf of NVTa so as to ensure compliance with this Agreement and all NVTa's requirements and with overseeing, managing, reviewing, and processing, in consultation with NVTa's Executive Director and its Chief Financial Officer ("CFO") , all payment requisitions submitted by _____ Fairfax County _____ for the Project. NVTa's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the Project Scope of Work as set forth on Appendix A or to the Project Budget and Cash Flow as set forth on Appendix B.
3. Route to NVTa's assigned Program Coordinator all _____ Fairfax County _____'s payment requisitions, containing detailed summaries of actual Project costs incurred which are in substantially the same form as shown on Appendix C submitted to NVTa for the Project. After submission to NVTa, NVTa's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. NVTa's Program Coordinator will then make a recommendation to the NVTa's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from _____ Fairfax County _____. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is deemed insufficient, within twenty (20) days from receipt, NVTa's Program Coordinator will notify _____ Fairfax County _____ in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed for processing the payment request. Payment will be withheld until all deficiencies identified by NVTa have been corrected. Under no circumstances will NVTa authorize payment for any work performed by or on behalf of _____ Fairfax County _____ that is not in conformity with the requirements of the NVTa Act, Chapter 766, or this Agreement.

4. Route all Fairfax County's supplemental requests for funding from NVTa under Paragraphs A.5 and A.8 of this Agreement to NVTa's Executive Director. NVTa's Executive Director will initially review those requests and all supporting documentation with NVTa's CFO. After such initial review, NVTa's Executive Director will make a recommendation to NVTa's Finance Committee for its independent consideration and review. NVTa's Finance Committee will thereafter make a recommendation on any such request to NVTa for final determination by NVTa.
5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the NVTa Act, Chapter 766, and other applicable law. Such compliance reviews may entail review of Fairfax County's financial records for the Project and on -site inspections.
6. Acknowledge that if, as a result of NVTa's review of any payment requisition or of any NVTa compliance review, NVTa staff determines that Fairfax County has misused or misapplied any NVTa funds in derogation of this Agreement or in contravention of the NVTa Act, Chapter 766 or applicable law, NVTa staff will promptly advise NVTa's Executive Director and will advise Fairfax County's designated representative in writing. Fairfax County will thereafter have thirty (30) days to respond in writing to NVTa's initial findings. NVTa's staff will review Fairfax County's response and make a recommendation to NVTa's Finance Committee. NVTa's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to NVTa. Pending final resolution of the matter, NVTa will withhold further funding on the Project. If NVTa makes a final determination that Fairfax County has misused or misapplied funds in contravention of this Agreement, the NVTa Act, Chapter 766, or other applicable law, NVTa will cease further funding for the Project and will seek reimbursement from Fairfax County of all funds previously remitted by NVTa (with interest earned at the rate earned by NVTa) which were misapplied or misused by Fairfax County. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.

7. Make guidelines available to Fairfax County to assist the parties in carrying out the terms of this Agreement in accordance with applicable law.
8. Upon recipient's final payment to all contractors, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans for the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.
9. Be the sole determinant of the amount and source of NVTAs funds to be provided and allocated to the Project and the amounts of any NVTAs funds to be provided in excess of the amounts specified in Appendix B.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.
2. Fairfax County may terminate this Agreement, for cause, in the event of a material breach by NVTAs of this Agreement. If so terminated, NVTAs shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by Fairfax County to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds to NVTAs as described in paragraph F of this Agreement or repeal of the legislation establishing the NVTAs fund created pursuant to Chapter 766 shall not be considered material breaches of this Agreement by NVTAs. Before initiating any proceedings to terminate under this Paragraph, Fairfax County shall give NVTAs sixty (60) days written notice of any claimed material breach of this Agreement; thereby allowing NVTAs an opportunity to investigate and cure any such alleged breach.
3. NVTAs may terminate this Agreement, for cause, resulting from Fairfax County's material breach of this Agreement. If so terminated, Fairfax County shall refund to NVTAs all funds NVTAs provided to Fairfax County for the Project (including interest earned at the rate earned by NVTAs). NVTAs will provide Fairfax County with sixty (60) days written notice that NVTAs is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, Fairfax County may

request that NVTa excuse _____ Fairfax County _____ from refunding all funds NVTa provided to _____ Fairfax County _____ for the Project based upon _____ Fairfax County _____'s substantial completion of the Project or severable portions thereof; and NVTa may, in its sole discretion, excuse _____ Fairfax County _____ from refunding all or a portion of the funds NVTa provided to _____ Fairfax County _____ for the Project. No such request to be excused from refunding will be allowed where _____ Fairfax County _____ has either misused or misapplied NVTa funds in contravention of applicable law.

4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, _____ Fairfax County _____ will release or return to NVTa all unexpended NVTa funds with interest earned at the rate earned by NVTa no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. NVTa's Executive Director and _____ Fairfax County _____'s Chief Executive Officer or Chief Administrative Officer shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to NVTa and to _____ Fairfax County _____'s governing body for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law, including all judicial remedies.

E. NVTa's Financial Interest in Project Assets

_____ Fairfax County _____ agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by NVTa under this Agreement ("Project Assets") for the designated transportation purposes of the Project under this Agreement and in accordance with applicable law throughout the useful life of each Project Asset. NVTa shall retain a financial interest in the value of each of the of the Project Assets, whether any such Project Asset may have depreciated or appreciated, throughout its respective useful life proportionate to the amount of the cost of the Project Asset funded by NVTa under this

Agreement. In the event that _____ Fairfax County _____ fails to use any of the Project Assets funded under this Agreement for the transportation purposes as authorized by this Agreement or applicable law throughout its respective useful life, _____ Fairfax County _____ shall refund to NVTA with interest at the rate earned by NVTA the amount attributable to NVTA's proportionate financial interest in the value of said Project Asset. If _____ Fairfax County _____ refuses or fails to refund said monies to NVTA, NVTA may recover its proportionate financial interest from _____ Fairfax County _____ by pursuit of any remedies available to NVTA, including but not limited to NVTA's withholding of commensurate amounts from future distributions of NVTA funds to _____ Fairfax County _____.

F. Appropriations Requirements

1. Nothing herein shall require or obligate any party to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by their respective governing bodies.
2. The parties acknowledge that all funding provided by NVTA pursuant to Chapter 766 is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the NVTA Fund pursuant to Va. Code Ann. Sections 58.1-638, 58.1-802.2, and 58.1-1742 and any other moneys that the General Assembly appropriates for deposit into the NVTA Fund are subject to appropriation by the General Assembly and (ii) NVTA's obligations under this Agreement are subject to such moneys being appropriated for deposit in the NVTA Fund by the General Assembly.

G. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

- 1) to: NVTA, to the attention of its Executive Director;
3040 Williams Drive, Suite 200
Fairfax, VA 22031
- 2) to _____ Fairfax County _____, to the attention of _____ Tom Biesiadny _____
4050 Legato Road, Suite 400
Fairfax, VA 22033 _____ (address)

H. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

I. Modification or Amendment

This Agreement may be modified, in writing, upon mutual agreement of both parties.

J. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

K. No Agency

Fairfax County _____ represents that it is not acting as a partner or agent of NVTa; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

M. Incorporation of Recitals

The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that such recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Northern Virginia Transportation Authority

By: _____

Date: _____

_____ Fairfax County _____ (Name of Recipient Entity)

By: _____

Date: _____

Appendix A – Narrative Description of Project (Attach Project Description Form)

NVTA Project Title: Richmond Highway Bus Rapid Transit Phases I & II

NVTA SPA Number: 2018-007-1 Internal NVTA Project Number (leave blank): _____

Recipient Entity: Fairfax County

Project Manager Name: Vanessa Aguayo-Thomas

Phone: (703) 877-5764 email: Vanessa.Aguayo@FairfaxCounty.gov

Table A-1 Project Scope/Schedule Changes

Fill any Differences from the Approved NVTA Project Description Form Attached or Previously Submitted Appendix A. Describe and provide rationale for changes in scope and/or schedule.

Table A-2 Project Milestone by Phase Changes

Fill any Differences from the Approved NVTA Project Description Form Attached or Previously Submitted Appendix B. Provide Date of Revision. Any update to Appendix A, Table A-2 requires an update to Appendix B reflecting the changes.

	Project description form		Rev. 1: MM/DD/YYYY		Rev. 2: MM/DD/YYYY	
	Start Date	End Date	Start Date	End Date	Start Date	End Date
Study						
Preliminary Engineering						
Right of Way						
Construction						
Capital Asset Acquisition						
Other						

	Rev. 3: MM/DD/YYYY		Rev. 4: MM/DD/YYYY		Rev. 5: MM/DD/YYYY	
	Start Date	End Date	Start Date	End Date	Start Date	End Date
Study						
Preliminary Engineering						
Right of Way						
Construction						
Capital Asset Acquisition						
Other						

RECIPIENT ENTITY

NVTA

Submitted by (Person authorized in the resolution or Transportation Director):

Accepted by:

Signature: _____

Name: _____

Title: _____

Date: _____

Revised: 8/27/2018



DRAFT

NVTA FY2018-23 PROGRAM
Updated April 13, 2018

Richmond Highway Bus Rapid Transit Phases I & II

Project Description

The Richmond Highway (Route 1) Bus Rapid Transit (BRT) project includes median running BRT from Huntington Metro Area to Fort Belvoir. The project will include new transit stations, facilities for bicycle, pedestrian, and vehicle travel modes.

In 2015, the Department of Rail and Public Transportation (DRPT) led a transportation study for Richmond Highway called the Route 1 Multimodal Alternatives Analysis, which evaluated the benefits, costs, and impacts of implementing multimodal improvements along a 15-mile stretch of Richmond Highway, from the I-95/I-495 Beltway area, through Fairfax County, to the VRE Station at Woodbridge in Prince William County. Through stakeholder participation and technical analysis, the study recommended transportation improvements for adoption by Fairfax County and Prince William County. This recommendation from the study included a phased approach, which was to implement median running BRT in the near-term between Huntington in Fairfax County to Woodbridge in Prince William County and expanding Metrorail to Hybla Valley, Fairfax County in the long-term.

In May 2015, the Fairfax County Board of Supervisors endorsed phases I and II of the preferred transit alternative, which was to implement median running BRT from Huntington to Accotink Village, Fort Belvoir. The Board action also included language for staff to work on updating the comprehensive plan to include elements along the corridor that would be supportive of BRT and other necessary actions for BRT implementation.



Reference Number: 2018-007-0

TransAction ID: 39

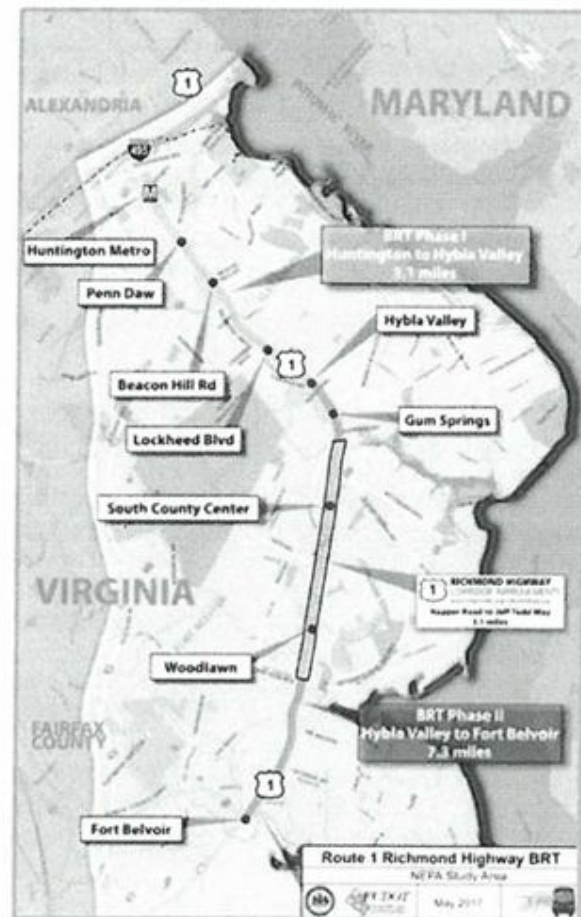
Submitting Jurisdiction/Agency: Fairfax County

Location: Between Fort Belvoir and Huntington Metrorail Station

Requested NVTA Funds: \$250,000,000

Total Cost to Complete Project: \$544,800,000

Project Location



Project Milestones

	Before FY2018	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	After FY2023
Design, Engineering, Environmental Work	X	X	X	X	X	X	X	X
Right of Way Acquisition				X	X	X	X	X
Construction							X	X
Capital Asset Acquisitions							X	X

Project Funding

	Requested NVTA Funds	Other Funding Sources	Total Cost by Phase
Design, Engineering, Environmental Work	\$74,000,000	\$4,000,000 (VDRPT) \$6,000,000 (C&I Tax Revenues) \$6,000,000 (NVTA 30%)	\$88,800,000
Right of Way Acquisition	\$67,100,000	\$21,465,000 (CMAQ) \$14,505,000 (RSTP)	\$103,400,000
Construction	\$108,900,000		\$329,900,000
Capital Asset Acquisitions			\$22,700,000
TOTAL:	\$250,000,000	\$51,970,000	\$544,800,000

Note: There is a funding gap of \$242,830,000. Fairfax County plans to request additional funds through the state's Smart Scale program, the NVTA's next Call for Projects, federal New Starts Program or other local, federal and/or private sources.

Project Analysis Highlights

Congestion Reduction Relative to Cost Ratio (Total Cost in \$1000's):	28.58
Congestion Reduction Relative to Cost Ratio Rank (Total Cost in \$1000's):	23
TransAction Project Rating:	85.86
TransAction Project Rating Rank:	2

Note: The project analysis above was completed by NVTA staff using data and information from the project application and analyses of the region's transportation network.

Regional Impacts

- Enhance quality of life and economic strength
- Implement a multimodal transportation system, including BRT, bicycle, and pedestrian facilities
- Improve connectivity to Fort Belvoir and the Fort Belvoir Community Hospital, two very large employment centers in south eastern Fairfax County.
- Enable optimal use of the transportation network and leverage the existing network
- Reduce negative impacts of transportation on communities and the environment

Note: The regional impacts listed above are a summary of what was submitted in the project application NVTA staff received from the jurisdiction or agency that has applied for funding.

APPENDIX B-PROJECT BUDGET & REIMBURSEMENT CASH FLOW SCHEDULE

NVT SPA Number: 2018-007-1
 NVT Project Title: Richmond Highway Bus Rapid Transit
 Date Prepared: 8/27/2018
 Project Sponsor: Fairfax County \$ 275,000,000
 Contact Name & Email: Vanessa Aguayo, (703) 877-5764
 Vanessa.Aguayo@FairfaxCounty.gov

NOTE 1:

Use this box when updating Appendix B for existing projects:

Revision Number	Date of Revision	Revision Number	Date of Revision
Original		4	
1		5	
2			
3			

Any update to Appendix B, Table B-2 and B-3 require an update to Appendix A Table A-2 reflecting the changes

Column A Column B Column C Column D Column E Column F Column G Column H Column I

TABLE B-1 PROJECT COSTS & FUNDING SOURCE

Project Cost Category	Total Project Costs	Approved NVT Project Funds	Amount of Project Sponsor Funds	Amount of Other Sources of Funds	List of Other Sources of Funds (For each cost category include all other funding sources; list each source of funds on a separate line for each cost category)
Study	\$ -	\$ -	\$ -		
Preliminary Engineering	\$ 51,000,000	\$ 47,000,000		\$ 4,000,000	-\$4M state DRPT grant (includes LCM).
Right-of-Way Acquisition	\$ 255,000,000	\$ 100,000,000	\$ -	\$ 155,000,000	-\$17.9M federal CMAQ; -\$22.9M federal RSTP; -\$114.2M FTA New Starts (Proposed).
Construction	\$ 378,000,000	\$ 103,000,000		\$ 275,000,000	-\$275M FTA New Starts (Proposed), and/or requested through state Smart Scale program, future NVT call for projects, or other local, federal, and/or private sources.
Capital Asset Acquisitions	\$ 46,000,000	\$ -		\$ 46,000,000	-\$46M FTA New Starts (Proposed).
Other		\$ -			
Total Estimated Cost	\$ 730,000,000	\$ 250,000,000	\$ -	\$ 480,000,000	

TABLE B-2 PROJECT REIMBURSEMENT CASH FLOW PER FISCAL YEAR AND COST CATEGORY FOR NVT FUNDS ONLY

Project Cost Category	NVT Previously Reimbursed	Total FY2019 Project Funds	Total FY2020 Project Funds	Total FY2021 Project Funds	Total FY2022 Project Funds	Total FY2023 Project Funds	FY2024 & Future Project Funds	Cumulative Est Cost Crosscheck
Study								
Preliminary Engineering		\$ 7,500,000	\$ 7,900,000	\$ 7,900,000	\$ 7,900,000	\$ 7,900,000	\$ 7,900,000	
Right-of-Way Acquisition			\$ 14,285,714	\$ 14,285,714	\$ 14,285,714	\$ 14,285,714	\$ 42,857,143	
Construction						\$ 25,750,000	\$ 77,250,000	
Capital Asset Acquisitions								
Other								
Total Estimated Cost	\$ -	\$ 7,500,000	\$ 22,185,714	\$ 22,185,714	\$ 22,185,714	\$ 47,935,714	\$ 128,007,143	\$ 250,000,000

Table B-2 Cumulative Estimated Cost- Column I MUST Match Table B-1 Column C - Total Estimated Cost Approved NVT Project Funds

TABLE B-3 QUARTERLY PROJECT REIMBURSEMENT CASH FLOW FOR NVT FUNDS ONLY

Quarter	NVT Previously Reimbursed	Total FY2019 Cash Flow	Total FY2020 Cash Flow	Total FY2021 Cash Flow	Total FY2022 Cash Flow	Total FY2023 Cash Flow	FY2024 & Future Cash Flow	Cumulative Est Cost Crosscheck
September			\$ 5,546,428.57	\$ 5,546,428.57	\$ 5,546,428.57	\$ 11,983,928.57	\$ 32,001,785.71	
December		\$ 2,500,000	\$ 5,546,429	\$ 5,546,429	\$ 5,546,429	\$ 11,983,929	\$ 32,001,786	
March		\$ 2,500,000	\$ 5,546,429	\$ 5,546,429	\$ 5,546,429	\$ 11,983,929	\$ 32,001,786	
June		\$ 2,500,000	\$ 5,546,429	\$ 5,546,429	\$ 5,546,429	\$ 11,983,929	\$ 32,001,786	
Total Estimated Cost	\$ -	\$ 7,500,000	\$ 22,185,714	\$ 22,185,714	\$ 22,185,714	\$ 47,935,714	\$ 128,007,143	\$ 250,000,000

TABLE B-3 Total Estimated Cost per Fiscal Year MUST Match Table B-2 Total Estimated Cost per Fiscal Year

Variance \$ -

This Appendix B form is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

Project Sponsor (Person Authorized to sign SPA / Director of Transportation)

Northern Virginia Transportation Authority

Northern Virginia Transportation Authority

Signature

Signature

Signature

Title

NVT Executive Director

NVT Chief Financial Officer

Date

Date

Date

Please Print name of person signing

APPENDIX D-Tax Covenants

TAX COVENANTS (For Bond Funded Projects Only)

The Recipient Entity will not permit more than five percent of the total amount of NVTB Bond Proceeds or the Financed Property to be used directly or indirectly (i) for a Private Business Use or (ii) to make or finance loans to Nongovernmental Persons. Any transaction that is generally characterized as a loan for federal income tax purposes is a "loan" for purposes of this paragraph. In addition, a loan may arise from the direct lending of NVTB Bond Proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed, including any contractual arrangement which in substance transfers tax ownership and/or significant burdens and benefits of ownership.

The Recipient Entity agrees not to requisition or spend NVTB Bond Proceeds for any Project Cost not constituting a Capital Expenditure.

Except as may be described in Appendix B, the Recipient Entity neither has on the date of this Agreement nor expects to have after this date any funds that are restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, for the purposes for which the Recipient Entity is receiving NVTB Bond Proceeds.

The Recipient Entity acknowledges that it may have to provide detailed information about the investment of the amount of any requisition unless (i) payments are remitted directly by NVTB to the contractors/vendors or (ii) the Recipient Entity remits payment to the contractors/vendors within five banking days after the date on which NVTB advances the amount of the requisition. NVTB may request the detailed information in order to compute the rebate liability to the U.S. Treasury on NVTB's bonds or other debt financing pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

"Capital Expenditure" means any cost of a type that is properly chargeable to capital account (or would be so chargeable with (or but for) a proper election or the application of the definition of "placed in service" under Treas. Reg. § 1.150-2(c)) under general federal income tax principles, determined at the time the expenditure is paid.

"Federal Government" means the government of the United States and its agencies or instrumentalities.

"Financed Property" means the property financed by the NVTB Bond Proceeds.

"General Public Use" means use of Financed Property by a Nongovernmental Person as a member of the general public. Use of Financed Property by a Nongovernmental Person in a Trade or Business is treated as General Public Use only if the Financed Property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not

engaged in a Trade or Business. Use under arrangements that convey priority rights or other preferential benefits is not use on the same basis as the general public.

"Governmental Person" means any Person that is a state or local governmental unit within the meaning of Section 141 of the Code (or any instrumentality thereof).

"NVTB Bond Proceeds" means, as used herein, the sale proceeds of any NVTB bonds or other debt instrument and the investment earnings on such proceeds, collectively.

"Nongovernmental Person" mean any Person other than a Governmental Person. For the purposes hereof, the Federal Government is a Nongovernmental Person.

"Person" means any natural person, firm, joint venture, association, partnership, business trust, corporation, limited liability company, corporation or partnership or any other entity (including the Federal Government and a Governmental Person).

"Private Business Use" means a use of the NVTB Bond Proceeds directly or indirectly in a Trade or Business carried on by a Nongovernmental Person other than General Public Use. For all purposes hereof, a Private Business Use of any Financed Property is treated as a Private Business Use of NVTB Bond Proceeds. Both actual and beneficial use by a Nongovernmental Person may be treated as Private Business Use under Section 141 of the Code. In most cases, however, Private Business Use results from a Nongovernmental Person having special legal entitlements to use the Financed Property under an arrangement with the Recipient Entity. Examples of the types of special legal entitlements resulting in Private Business Use of Proceeds include (i) ownership for federal tax purposes of Financed Property by a Nongovernmental Person and (ii) actual or beneficial use of Financed Property by a Nongovernmental Person pursuant to a lease, a Service Contract, an incentive payment contract or certain other arrangements such as a take-or-pay or other output-type contract. Private Business Use of the Financed Property may also be established on the basis of a special economic benefit to one or more Nongovernmental Persons even if such Nongovernmental Persons do not have a special legal entitlement to the use of the Financed Property. Any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease for purposes of the Private Business Use analysis. An arrangement that is referred to as a management or Service Contract may nevertheless be treated as a lease, and in determining whether a management or service contract is properly characterized as a lease, it is necessary to consider all of the facts and circumstances, including (i) the degree of control over the property that is exercised by a Nongovernmental Person, and (ii) whether a Nongovernmental Person bears risk of loss of the Financed Property. Private Business Use of Financed Property that is not available for General Public Use may also be established on the basis of a special economic benefit to one or more Nongovernmental Persons even if such Nongovernmental Persons do not have a special legal entitlement to the use of the Financed Property. In determining whether special economic benefit gives rise to Private Business Use, it is necessary to consider all of the facts and circumstances, including one or more of the following factors: (i) whether the Financed Property is functionally related or physically proximate to property used in the Trade or Business of a Nongovernmental Person, (ii) whether only a small number of Nongovernmental Persons receive the economic benefit, and

(iii) whether the cost of the Financed Property is treated as depreciable by the Nongovernmental Person.

"Service Contract" means a contract under which a Nongovernmental Person will provide services involving all, a portion or any function of any Financed Property. For example, a Service Contract includes a contract for the provision of management services for all or any portion of Financed Property. Contracts for services that are solely incidental to the primary governmental function or functions of Financed Property (for example, contracts for janitorial, office equipment repair, billing, or similar services) are not included in this definition. Additional contracts not included in this definition are (i) a contract to provide for services by a Nongovernmental Person in compliance with Revenue Procedure 97-13, 1997-1 C.B. 632, as modified by Revenue Procedure 2001-39, I.R.B. 2001-28, (ii) a contract to provide for services by a Nongovernmental Person if the only compensation is the reimbursement of the Nongovernmental Person for actual and direct expenses paid by the Nongovernmental Person to unrelated parties and (iii) a contract to provide for the operations by a Nongovernmental Person of a facility or system of facilities that consists predominately of public utility property (within the meaning of Section 168(i)(10) of the Code), if the only compensation is the reimbursement of actual and direct expenses of the Nongovernmental Person and reasonable administrative overhead expenses of the Nongovernmental Person.

"Trade or Business" has the meaning set forth in Section 141(b)(6)(B) of the Code, and includes, with respect to any Nongovernmental Person other than a natural person, any activity carried on by such Nongovernmental Person. "Trade or Business" for a natural person means any activity carried on by such natural person that constitutes a "trade or business" within the meaning of Section 162 of the Code.

RECIPIENT ENTITY

By: _____
Name: _____
Title: _____
Date: _____

Appendix E -Authorization of designee(s)

Attach this page to the recipient governing body's authorization for their respective designee(s) to execute the Standard Project Agreement and Tax Covenant (if applicable) on their behalf(s) as evinced by entity's clerk's minutes.

Submission of the original signed or certified copy of the governing body's authorization is required

Revised: 2/17/2016

ACTION – 2

Approval of the Reduction of the Category 1 Special Exception Application Filing Fee for Mobile and Land Based Telecommunication Facilities from \$16,375 to \$6,200

ISSUE:

To be consistent with Virginia Code § 15.2-2316.4:1, adopted by the 2018 Virginia General Assembly, consider modifying the Category 1 Special Exception application fee for mobile and land based telecommunication facilities from \$16,375 to \$6,200.

RECOMMENDATION:

The County Executive recommends that the Board approve a modification of the Category 1 Special Exception application fee for mobile and land based telecommunication facilities from \$16,375 to \$6,200.

TIMING:

Board of Supervisors' action is requested on October 16, 2018.

BACKGROUND:

On July 1, 2018, new wireless telecommunications legislation took effect after the 2018 Virginia General Assembly adopted House Bill 1258 and Senate Bill 405. Virginia Code § 15.2-2316.3 now defines the term “administrative review-eligible project” (AREP) to include two types of projects: (1) the installation or construction of a new structure that is not more than 50 feet in height (and meets all other applicable criteria); and (2) the co-location on an existing structure of a wireless facility that is not a small cell facility. Virginia Code § 15.2-2316.4:1 prohibits localities from requiring a special exception for AREPs, but it allows localities to require administrative review for the issuance of a zoning permit for those projects. The legislation allows localities to continue requiring a special exception for projects that do not qualify as AREPs or small cell facilities (“standard process projects”), subject to limits on localities’ ability to require certain information or to disapprove applications for certain reasons.

Until the legislation took effect on July 1, all new monopoles and towers, regardless of height, and co-locations that did not meet the Sect. 2-514 standards (or the criteria of Sect. 6409 of the Spectrum Act), were subject to special exception approval by the Board, with a \$16,375 application fee, and a 2232 Review by the Planning Commission. The special exception and 2232 Review were processed simultaneously and there was no separate 2232 review application fee.

On July 31, the Board authorized the advertisement of public hearings for the Zoning for Wireless Telecommunications Infrastructure Zoning Ordinance Amendment. The proposed amendment would implement the new wireless telecommunications legislation and it included a proposal to reduce the special exception fee for standard process projects down to \$6,200.

Public hearings before the Planning Commission and the Board of Supervisors were originally scheduled for September 20 and September 25, respectively. Those hearings were deferred to October 18 and 30, however, due to the Federal Communication Commission's (FCC's) then-anticipated action on September 26. On that date, the FCC met and adopted a Declaratory Ruling and Report and Order that was intended to "streamline state and local requirements on wireless infrastructure deployment." Staff is working through the impacts of that Declaratory Ruling and Report and Order to identify amendments that might be needed to the current Zoning Ordinance and potential revisions to the pending Zoning for Wireless Telecommunications Infrastructure Zoning Ordinance Amendment. In the meantime, wireless telecommunication facility providers would like the County to continuing processing their special exception applications, but the current special exception filing fee of \$16,375 is inconsistent with the state code requirement. Sect. 18-106 of the Zoning Ordinance allows the Board to waive or otherwise modify a filing fee for good cause shown. In order to be consistent with the Virginia Code and the County to continue to process special exception applications pending Board action on the proposed amendment, staff recommends that the Board modify the filing fee for such applications to \$6,200. This new application fee would be applied administratively by staff until the Board acts on the pending Zoning Ordinance amendment.

Staff has reviewed the actual cost of processing a wireless facility special exception application, including staff review time, inspections, advertising, and production costs, and has estimated that the actual costs are at least \$6,200. That cost estimate is based on a total of 165 hours of staff time to accept and review the application, site visits to the property, prepare staff report, attend public hearings, and close out the file. The assumed hourly rate for staff time is based on a pay rate of 25% above the base level of the pay scale, as the majority of staff are at the midpoint of the pay scale. In addition, the cost estimate includes actual advertising and production costs. Therefore, staff recommended a wireless facility application fee of \$6,200, which is lower than actual costs.

FISCAL IMPACT:

The modification of the special exception fee from \$16,375 to \$6,200 could result in a potential revenue loss of \$40,700. This is based on four special exception applications filed each year. There may be more significant revenue impacts if behavior regarding special exception applications changes as a result of the 2018 legislation. Department of Planning and Zoning staff will work with staff from the Department of Management

Board Action Item
October 16, 2018

and Budget to monitor these fees and notify the Board if budgetary adjustments are needed to revenues.

ENCLOSED DOCUMENTS:

None

STAFF:

Robert A. Stalzer, Deputy County Executive
Fred Selden, Director, Department of Planning and Zoning (DPZ)
Leslie B. Johnson, Zoning Administrator, DPZ
Lorrie Kirst, Senior Deputy Zoning Administrator, DPZ

Assigned Counsel:

Laura S. Gori, Senior Assistant County Attorney, Office of the County Attorney

CONSIDERATION – 1

Approval of the Proposed Amended Bylaws for the Fairfax County Police Civilian Review Panel

ISSUE:

Approval of amendments to the Bylaws for the Fairfax County Police Civilian Review Panel (PCRP).

TIMING:

Board consideration is requested on October 16, 2018, so the Bylaws can become effective, as amended.

BACKGROUND:

The PCRP approved the proposed amendments to the PCRP Bylaws at its August 2, 2018 meeting. The PCRP revised their Bylaws to codify and clarify Panel practices.

The amendments to the Bylaws include:

- Chair appointment of Review Liaisons to manage the disposition of a Complaint (Section VI.C.2.a)
- Convening a Review Meeting (Section VI.E.1.a)
- Hearing from a Complainant at a Panel Review Meeting (Section VI.E.1.f)

The PCRP Bylaws were originally approved by the Board of Supervisors on July 11, 2017 and accepted by the PCRP on August 3, 2017.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 - Bylaws of the Fairfax County Police Civilian Review Panel (with Track Changes)

STAFF:

Richard Schott, Independent Police Auditor, Office of the Independent Police Auditor

ASSIGNED COUNSEL:

Julia Judkins, Panel Counsel

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Accepted on XXX 2018

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review**

Panel. ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies and practices as they pertain to case reviews to assist the FCPD Chief of Police ("Chief") and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

A. Composition and Qualifications.

- 1. The Board of Supervisors shall appoint each Panel Member.
- 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel's responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.

¹ Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.

2. Panel Member terms shall be staggered.

3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.

4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three- year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.

2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendaryear (unless the absence is for good reason as determined by the Chair).

3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.

4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve more than one, one year term as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and
 - (f) Delegate any of these duties to other Panel Members.
2. The Vice-Chair shall:

- a. Preside over Panel meetings in the absence of the Chair; and
 - b. Perform any other responsibilities delegated by the Chair or requested by the Panel.
3. Panel Committees.
- a. The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

1. The Panel shall meet as often as necessary to conduct Panel business.
2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.
4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and

- (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
 6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
 7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
 8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
 9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
 10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of "abuse of authority" or "serious misconduct" by a FCPD officer, and (2) a Review Request is filed. The Panel shall not review:

- (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the notice sent to the complainant by the FCPD informing the complainant of the Investigation's completion (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
 3. Where a Complaint alleges misconduct within both the Panel's scope of authority and the Auditor's scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
 4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of "abuse of authority" or "serious misconduct".

For purposes of determining the Panel's authority to review an Investigation, "abuse of authority" or "serious misconduct" by an FCPD police officer includes, but is not limited to:

- (i) the use of abusive racial, ethnic or sexual language or gestures;
- (ii) harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
- (iii) acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
- (iv) reckless endangerment of detainee or person in custody;

- (v) violation of laws or ordinances; or
- (vi) other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

2. Initial Disposition Notice.

- (a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.
- (b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.
- (c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or

- (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.
- (e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.
- (f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) ~~The Panel may~~ If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.
- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
- (e) The Panel shall not take testimony or receive evidence.
- (f) ~~At a Panel Review Meeting,~~ At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
- (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
- (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
- (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.

2. Closed Sessions, and Confidential Matters During Panel Review Meetings.

- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
- (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of Garrity v. New Jersey, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
- (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
- (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that the file and case record is a personnel record that shall not be disclosed to anyone or copied.
- (e) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

(a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:

- (i) Concur with the findings and determination detailed in the Investigation Report;
- (ii) Advise the Board of Supervisors that the findings are not supported by the

- information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
- (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

1. Based on the Panel's review of Investigations, the Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies and practices that the Panel concludes are needed.
2. The Panel may conduct Public Meetings to assist the Panel in making recommendations for policy and practice changes to the Chief and the Board of Supervisors.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, *et seq.* A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting

year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.

2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

1. The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of law and policy.

1. These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

1. Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND THE AUDITOR; BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Auditor.

The staff of the Office of the Auditor shall provide administrative support for the Panel.

C. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution,

or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.

INFORMATION – 1

County Holiday Schedule – Calendar Year 2019

A proposed calendar year 2019 Holiday Schedule for Fairfax County Government has been prepared. County employees are authorized 11 ½ holidays in each calendar year (12 ½ every fourth year when Inauguration Day falls on a business day, Monday through Friday.)

The proposed holiday schedule for 2019 lists the Federal Government holidays as well as those of the Fairfax County Public Schools. State employees and the Courts observe the Commonwealth of Virginia designated holidays.

Unless otherwise directed by the Board of Supervisors, the enclosed will be adopted as the holiday schedule for calendar year 2019.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Holiday Schedule – 2019

STAFF:

Bryan J. Hill, County Executive
Catherine M. Spage, Human Resources Director

Proposed Holiday Schedule – Calendar Year 2019

HOLIDAY	OBSERVED DAY - DATE	FAIRFAX COUNTY GOVERNMENT	FAIRFAX COUNTY PUBLIC SCHOOLS *	COMMONWEALTH OF VIRGINIA	FEDERAL GOVERNMENT
New Year's Day	Tuesday Jan 1, 2019	X	X	X	X
Lee Jackson Day	Friday Jan 18	regular work day	regular work day	X	regular work day
Martin Luther King, Jr.'s Day	Monday Jan 21	X	X	X	X
George Washington's Day	Monday Feb 18	X	X	X	X
Memorial Day	Monday May 27	X	X	X	X
Independence Day	Thursday July 4	X	X	X	X
Labor Day	Monday Sept 2	X	X	X	X
Columbus Day	Monday Oct 14	X	regular work day	X	X
Veterans Day	Monday Nov 11	X	regular work day	X	X
Additional Time Off	Wednesday Nov 27	regular work day	regular work day	4.0 hours additional time off	regular work day
Thanksgiving Day	Thursday Nov 28	X	X	X	X
Day After Thanksgiving	Friday Nov 29	X	X	X	regular work day
Christmas Eve Day	Tuesday Dec 24	X (half day)	X	8.0 hours additional time off	regular work day
Christmas Day	Wednesday Dec 25	X	X	X	X
Total Holidays		11.5	10	13.5	10

*The actual dates of some holidays may change to accommodate the student calendar.

Board Agenda Item
October 16, 2018

10:10 a.m.

Matters Presented by Board Members

11:00 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*, Record No. 180533 (Va. S. Ct.)
 - 2. *Jonathan L. Kaminski v. Fairfax County, Virginia and William E. Hauda, II, MD*, CL-2018-0013581 (Fx. Co. Cir. Ct.)
 - 3. *Viola Laird v. County of Fairfax, Virginia*, Case No. 1:17cv1408 (E.D. Va.)
 - 4. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Benjamin K. Canty and Judith M. Canty*, Case No. CL-2017-0012652 (Fx. Co. Cir. Ct.) (Braddock District)
 - 5. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Guiti Gheybi*, Case No. GV18-020294 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
 - 6. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Laxmi Chand, Trustee of the Laxmi Chand Revocable Trust, and Usha Chand, Trustee of the Usha Chand Revocable Trust*, Case No. CL-2018-0011445 (Fx. Co. Cir. Ct.) (Dranesville District)
 - 7. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Orhan Atmaca and Birgul Atmaca*, Case No. GV18-020850 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
 - 8. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Andre J. Gudger*, Case No. GV18-018192 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)

9. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Bruce A. Blackerby*, Case Nos. GV18-005577 and GV18-021645 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
10. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Harry Marshall Studds*, Case No. CL-2018-0007593 (Fx. Co. Cir. Ct.) (Lee District)
11. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia and Leslie B. Johnson, Fairfax County Zoning Administrator v. Robert Dunn and Phyllis Dunn*, Case No. CL-2018-0013755 (Fx. Co. Cir. Ct.) (Lee District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator v. PNT Enterprises LLC*, Case No. CL-2018-0013736 (Fx. Co. Cir. Ct.) (Lee District)
13. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Susan M. Frazier*, Case No. CL-2018-0001304 (Fx. Co. Cir. Ct.) (Lee District)
14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Eliodoro Guzman*, Case No. CL-2018-0013267 (Fx. Co. Cir. Ct.) (Mason District)
15. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Build America, LLC, and Bella Café and Lounge*, Case No. CL-2017-0007126 (Fx. Co. Cir. Ct.) (Mason District)
16. *Board of Supervisors of Fairfax County and William Hicks, Director of the Fairfax County Department of Land Development Services v. AAAACO LLP, Northern Virginia Auto Recycling LLC, and Northern Virginia Auto Real Estate Holdings LLC*, Case No. CL-2018-0013191 (Fx. Co. Cir. Ct.) (Mount Vernon District)
17. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Patrick McAlee and Barbara McAlee*, Case No. CL-2012-0010063 (Fx. Co. Cir. Ct.) (Mount Vernon District)
18. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Irongate Properties, Inc.*, Case No. CL-2018-0011874 (Fx. Co. Cir. Ct.) (Providence District)
19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Good-Spradlin Joint Venture No. 1 and U-Haul Fairfax Store No. 21318*, Case No. CL-2017-0018177 (Fx. Co. Cir. Ct.) (Providence District)
20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Mazen Baroudi and Monique Baroudi*, Case No. GV18-020849 (Fx. Co. Gen. Dist. Ct.) (Providence District)

21. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Ronald G. Coe and Ann M. Coe, Case No. CL-2017-0013584 (Fx. Co. Cir. Ct.) (Sully District)*
22. *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
October 16, 2018



3:00 p.m.
ACTION - 3

Minor Variation Request for RZ 2016-MV-030, WashREIT Riverside Apartments, LLC, to Increase the Height of Two Buildings by 7.4% Above What is Shown on the Conceptual Development Plan and Final Development Plan that was Proffered under Proffer No. 2 (Mount Vernon District)

ISSUE:

Board consideration of a minor variation request to increase the height of two buildings by 7.4% above what is shown on the Conceptual Development Plan and Final Development Plan that was proffered under Proffer No. 2 for RZ 2016-MV-030, under the provisions of Sect. 18-204 of the Zoning Ordinance.

RECOMMENDATION:

In accordance with Zoning Ordinance Sect. 18-204(5) and Virginia Code § 15.2-2302, the County Executive recommends that the Board waive the requirement of a public hearing and approve an increase in the height of two buildings by 7.4% above what is shown on the Conceptual Development Plan and Final Development Plan that was proffered under Proffer No. 2 for RZ 2016-MV-030.

TIMING:

Routine.

BACKGROUND:

Under Par. 5 of Sect. 18-204 of the Zoning Ordinance, the Board may approve certain requests for minor variations to proffered conditions when such requests do not materially affect proffered conditions of use, density, or intensity. Specifically, Par. 5(A)(2) permits an applicant to request an increase in permitted building height provided that the resultant height does not (1) exceed 15 feet or 15% of the approved building height, whichever is less; (2) cause the building to exceed the maximum height of the zoning district; or (3) have a materially adverse impact on adjacent properties.

On October 24, 2017, the Board of Supervisors approved RZ 2016-MV-030, subject to proffers, to rezone the subject property to the PRM Zoning District and the CRD and HC Overlay Districts. The Planning Commission approved FDP 2016-MV-030, subject to development conditions, on October 19, 2017. The property is located in the northwest

Board Agenda Item
October 16, 2018

quadrant of the intersection of Huntington Avenue and Old Richmond Highway, on approximately 28.17 acres of land, Tax Map 83-3 ((1)) 101. (See Locator Map in Attachment 1). On Sheet A.07 of the Conceptual Development Plan and Final Development Plan (CDP/FDP), the maximum height of Buildings B and D is shown in Site Section DD as 92 feet. This specific height is also depicted on Sheets C-10, C-11, C-12, C-15, C-16, and C-17 in graphical representation of the buildings. During the site plan process, the requestor refined the grading associated with Buildings B and D and refined the clubhouse rooftop amenity on both buildings and then determined that the final grade to peak measurement would be 98.8 feet instead of 92 feet. The requestor has verified that the height has been measured in accordance with the Zoning Ordinance. Official files for the Rezoning application are maintained by the Department of Planning and Zoning. A courtesy link to the approved proffers and CDP/FDP for RZ 2016-MV-030 is available at: <http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMMain.aspx?cde=RZ&seq=4225622>.

On September 6, 2018, the Department of Planning and Zoning (DPZ) received a revised letter dated September 6, 2018, from Lori Greenlief, Senior Land Use Planner for McGuireWoods LLP, agent for the Applicant, requesting a minor variation to increase the maximum building height. (See Attachment 4). The letter included approved and proposed elevation drawings for Building B and D depicting the approved and revised height. (See Attachment 3). The elevations for both Buildings B and D show that each respective clubhouse rooftop amenity on each building resulted in the increase in building height for these buildings. The increase in height of Buildings B and D will have minimal impact on the overall site as the maximum height of the existing buildings to remain on-site is 160 feet, which exceeds the proposed height of 98.8 feet for Buildings B and D. Proffer 2, states that “the elements that are components of the CDP are limited to the perimeter points of access, the location of the buildings and amount and location of open space, uses, the maximum number of dwelling units, building heights, the development phasing pursuant also to Proffer 8, and setbacks from the peripheral lot lines and a modification to such elements shall require a subsequent Conceptual Development Plan Amendment (CDPA) or Proffered Condition Amendment (PCA).” The applicant has also provided a Minor Variation Statement agreeing that the subject property will be developed otherwise in substantial conformance with the governing proffers. (See Attachment 2).

Staff has reviewed RZ 2016-MV-030 and the request to increase the building height of Buildings B and D and has determined that the requested height increase of each building by 6.8 feet does not exceed 15 feet or 15% of the approved building height, nor the maximum building height for the PRM District, and that the change will not have a materially adverse impact on adjacent properties. Staff believes that approval of this minor variation request to increase the building height to 98.8 feet for Buildings B and D meets the requirements of the Zoning Ordinance and recommends its approval.

Board Agenda Item
October 16, 2018

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map
Attachment 2: Minor Variation Statement
Attachment 3: Proposed Elevations for Buildings B & D
Attachment 4: Letter dated September 6, 2018, from Lori Greenlief to Tracy Strunk
Attachment 5: Affidavit available at:
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4636573.PDF>

STAFF:

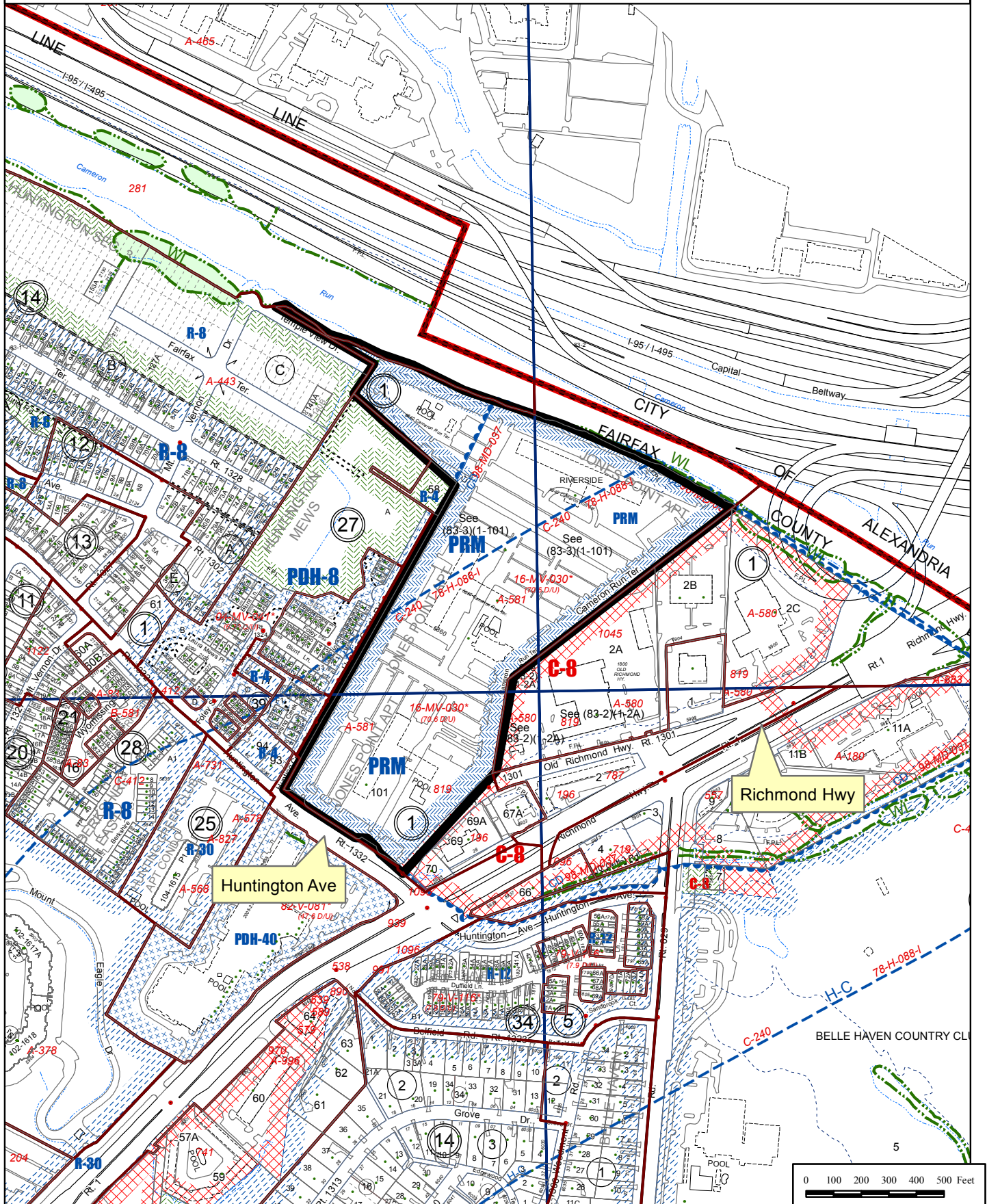
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPZ
Suzanne Wright, Chief, Special Projects/Applications/Management Branch, ZED, DPZ
Laura O'Leary, Staff Coordinator, ZED, DPZ

ASSIGNED COUNSEL:

Laura Gori, Senior Assistant County Attorney, Office of County Attorney

Request for Minor Variation

ATTACHMENT 1



MINOR VARIATION STATEMENT

WashREIT Riverside Apartments, LLC

RZ 2016-MV-030

Tax Map No. 83-3((1))101 (the "Property")


**August 7, 2018
September 25, 2018
September 26, 2018**

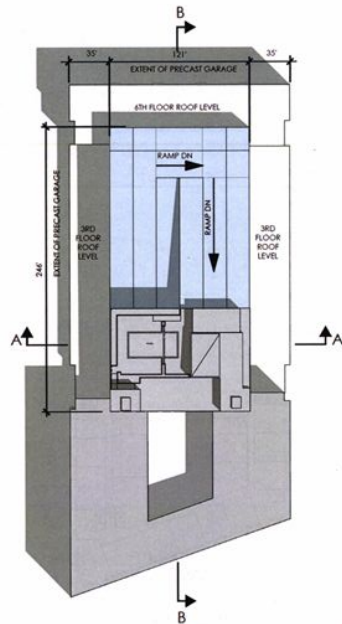
Pursuant to Section 18-204 of the Zoning Ordinance, the property owner, WashREIT Riverside Apartments, LLC, hereby requests approval of a Minor Variation to the proffers governing Tax Map 83-3((1))101 to permit an increase in the height of Buildings B and D from 92.0 feet to 98.8 feet, an increase of 7.4%, as shown on the Conceptual Development Plan/Final Development Plan which was proffered under Proffer 2 of RZ 2016-MV-030 and commits that the Property will be developed otherwise in substantial conformance with the governing proffers, dated October 24, 2017.

TITLE OWNER OF TAX MAP 83-3((1))101:

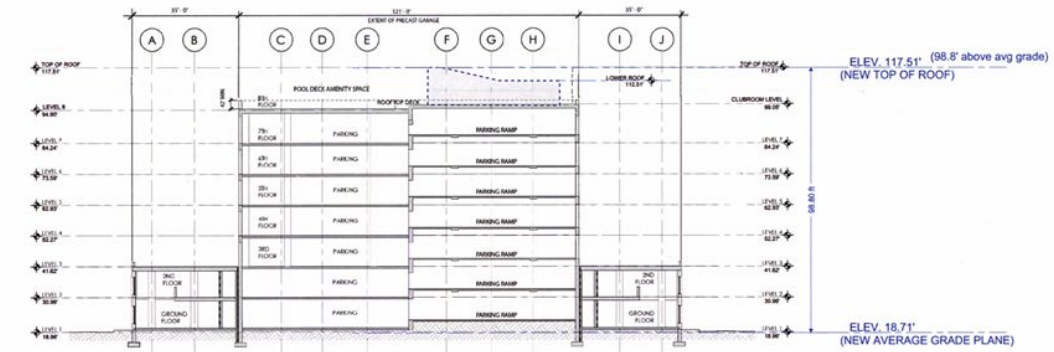
WashREIT Riverside Apartments, LLC
A Delaware limited liability company

BY: WashREIT Riverside LLC,
A Delaware limited liability company
Its sole member

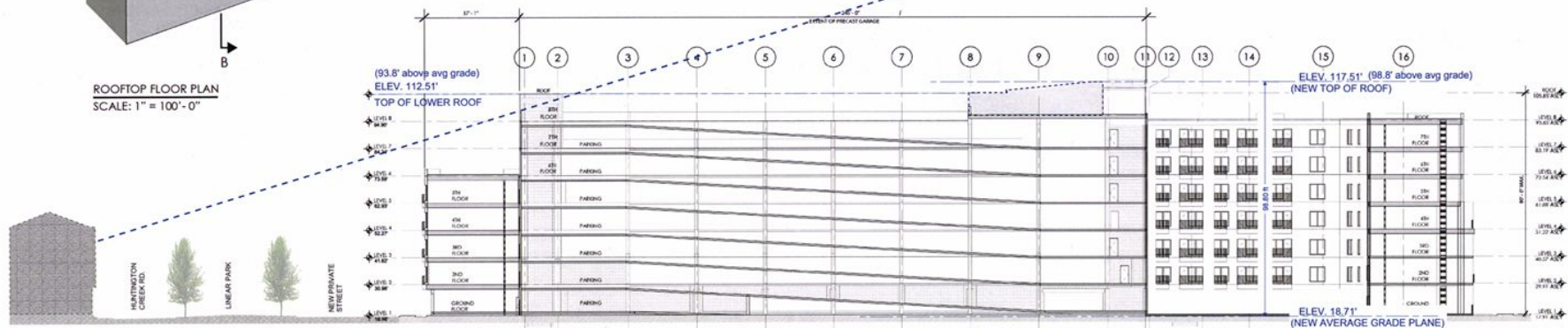
BY: 
Name: Edward J. Murn
Title: Vice President



ROOFTOP FLOOR PLAN
SCALE: 1" = 100'-0"



SECTION A-A
SCALE: 1" = 40'-0"

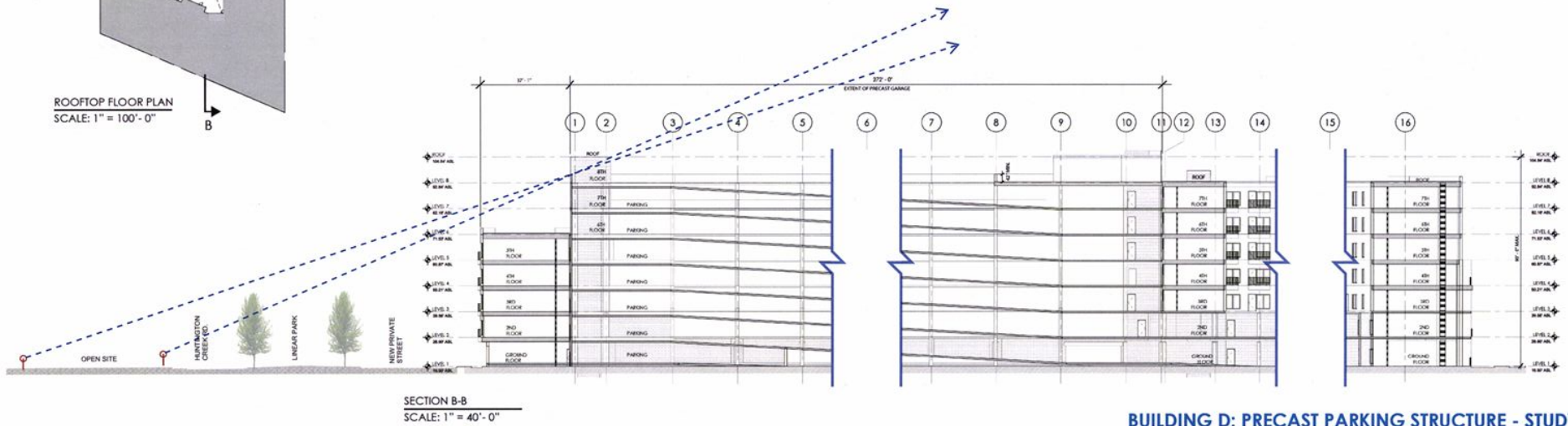
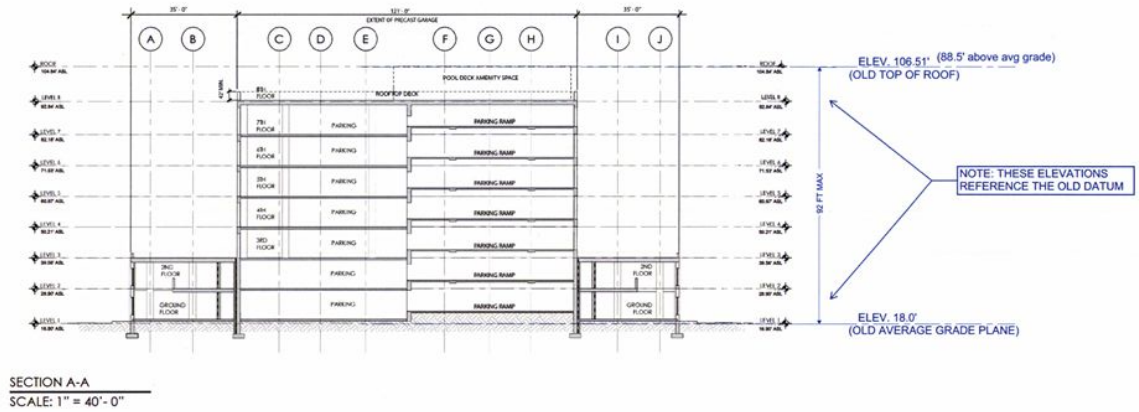
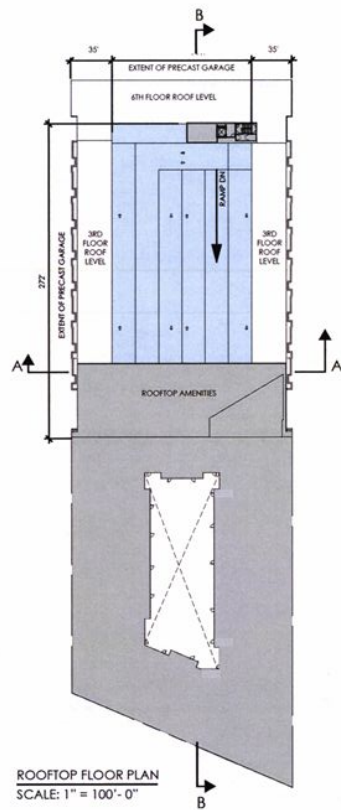


SECTION B-B
SCALE: 1" = 40'-0"

WDG

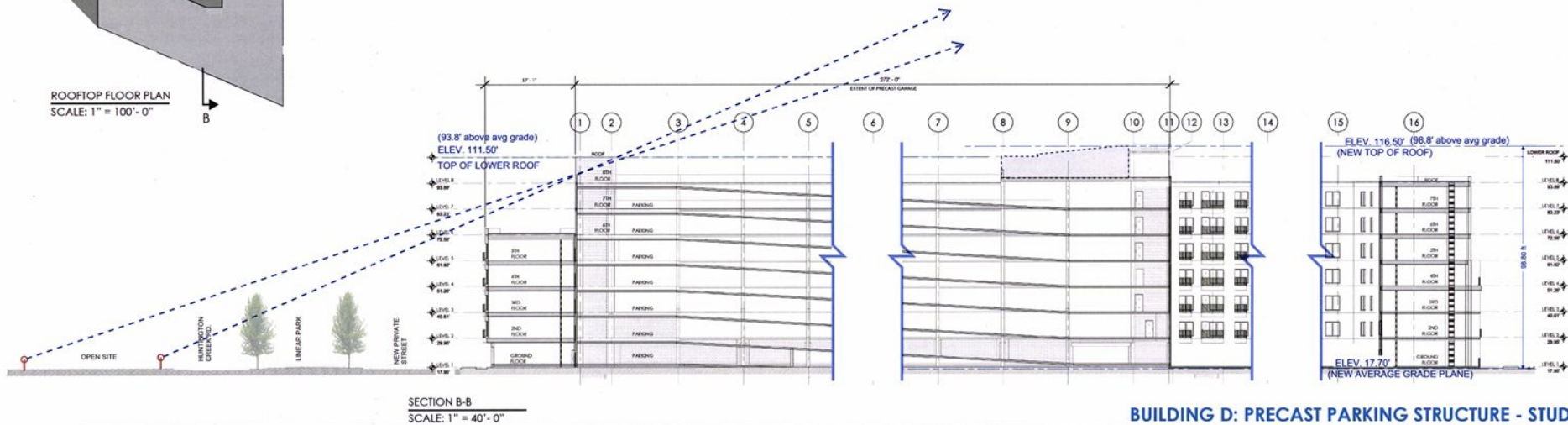
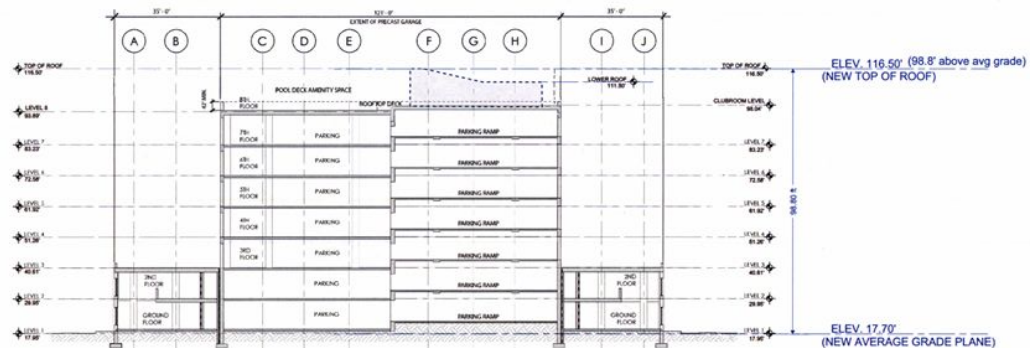
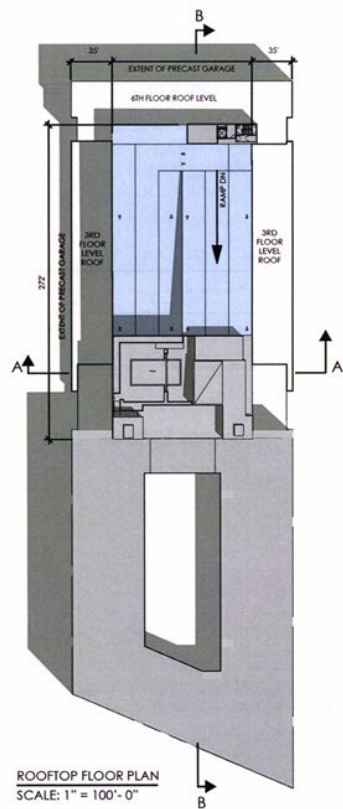
07.10.2018

BUILDING B: PRECAST PARKING STRUCTURE - STUDY
ASK - 07



BUILDING D: PRECAST PARKING STRUCTURE - STUDY
ASK - 08

07.07.2017



BUILDING D: PRECAST PARKING STRUCTURE - STUDY
ASK - 09

07.07.2017

August 8, 2018
Revised August 27, 2018
Revised September 6, 2018

Ms. Tracy Strunk, Director
Zoning Evaluation Division
Fairfax County Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035

Re: Minor Variation Request
Washington Real Estate Investment Trust
RZ 2016-MV-030
Tax Map No. 83-3((1))101

Dear Ms. Strunk,

On behalf of our client, WashREIT Riverside Apartments, LLC, the property owner, we formally request a minor variation to permit an increase in the height for the rooftop amenity building on the parking garage for Buildings B and D. Proffer 2 indicates that building height is a component of the CDP and any modification to the same would require an amendment. The proffer reads:

Elements of CDP. Notwithstanding the fact that the CDP and FDP are presented on the same plan, the elements that are components of the CDP are limited to the perimeter points of access, the location of the buildings and amount and location of open space, uses, the maximum number of dwelling units, building heights, the development phasing pursuant also to Proffer 8, and setbacks from the peripheral lot lines and a modification to such elements shall require a subsequent Conceptual Development Plan Amendment (CDPA) or Proffered Condition Amendment (PCA). The Applicant reserves the right to request a Final Development Plan Amendment (FDPA) for elements other than Conceptual Development Plan (CDP) elements from the Planning Commission for all or a portion of the FDP in accordance with Section 16-402 of the Zoning Ordinance if such an amendment is in accordance with these Proffers as determined by the Zoning Administrator.

A. BACKGROUND

The Board of Supervisors approved the above-mentioned rezoning application on October 24, 2017. The Board's actions rezoned 28.17 acres of land to the PRM District to permit residential development. The property is subject to the proffers dated October 24, 2017.

B. REQUEST FOR MINOR VARIATION – Increase in Height

Subsequent to the approval of the rezoning and as part of the site plan process, the Applicant refined the grading associated with the two buildings, the goal of which was to create a better grade for the townhouse units which ring the garage(s) as well as improve the other pedestrian entrances to the buildings. Also, the design of the clubhouse which is part of the rooftop amenity area on both buildings, was refined to create more of a sloped roof allowing more glass to be utilized and more light into the area. Together, this resulted in a height increase of 6.8 feet.

Pursuant to Section 18-204(5) of the Zoning Ordinance, minor variations to proffered conditions and the associated Concept Development Plan/Final Development Plan (CDP/FDP) may be approved by the Board of Supervisors without a public hearing provided that "such requests cannot materially affect proffered conditions of use, density or intensity, and are permissible only in one or more of the following circumstances", including:

Section 18-204(5)(A)(2)(a-c) To increase permitted building height provided that the resultant height increase does not:

- (a) exceed 15 feet or 15% of the approved building height, whichever is less;
- (b) cause the building to exceed the maximum height of the zoning district;
- (c) have a materially adverse impact on adjacent properties

The Applicant is requesting a minor variation related to height which does not affect use, density or intensity. The requested increase of 6.8 feet represents a percentage increase of 7.4% which does not exceed 15% of the approved building height of 92 feet, nor does it exceed the maximum building height for the PRM district which, as stated on Page 22 of the staff report for RZ 2016-MV-030 is 150 feet. Additionally, a graphic has been included with this submission which depicts the angle of view and shows that the proposed clubhouse on Building B cannot be seen from the nearest single family attached units in the Huntington Mews subdivision and the proposed clubhouse on Building D cannot be seen from the adjacent parkland.

C. CONCLUSION

Approval of this Minor Variation request will not substantially change or alter what was originally approved. The project will continue to meet the general standards and the design standards for the PRM District.

Ms. Tracy Strunk, Director
Zoning Evaluation Division
Fairfax County Department of Planning and Zoning
August 8, 2018, Revised August 27, 2018, Revised September 6, 2018
Page 3 of 3

For the reasons set forth herein, the Applicant respectfully requests approval of this Minor Variation request.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Greenlief", written over the printed name.

Lori Greenlief
Senior Land Use Planner

cc: Ed Murn, Washington REIT
Nicole Morrill, Washington REIT

Board Action Item
October 16, 2018



3:00 p.m.
ACTION - 4

Minor Variation Request for RZ 1996-LE-047, Springfield Commons LLC, to Add Health Clubs to the List of Uses Permitted in Proffer 5 (Lee District)

ISSUE:

Board consideration of a minor variation request to add Health Clubs to the list of uses permitted by Proffer 5 for RZ 1996-LE-047, under the provisions of Sect. 18-204 of the Zoning Ordinance.

RECOMMENDATION:

In accordance with Zoning Ordinance Sect. 18-204(5) and Virginia Code Sect. 15.2-2302, the County Executive recommends that the Board waive the requirement of a public hearing and approve the addition of Health Clubs to the list of uses permitted by Proffer 5 for RZ 1996-LE-047.

TIMING:

Routine.

BACKGROUND:

Under Par. 5 of Sect. 18-204 of the Zoning Ordinance, the Board may approve certain minor variations to proffered conditions and the associated conceptual development plan and final development plan when such requests do not materially affect proffered conditions of use, density, or intensity. Specifically, Par. (5)(A)(1) permits the addition or modification of a use, if the existing proffered conditions do not specifically preclude the use and the new use would have no materially greater land use impacts than the approved uses, based on factors such as parking, trip generation, vehicular circulation, or hours of operation.

On December 8, 1997, the Board of Supervisors approved Rezoning RZ 1996-LE-047, subject to proffers, to rezone approximately 20.27 acres from R-1 (Residential District, One Dwelling Unit/Acre) to the PDC (Planned Development Commercial District). The Planning Commission approved Final Development Plan FDP 1996-LE-047, subject to development conditions, on December 3, 1997. The property is located within the PDC District, in the northwest quadrant of the intersection of the Franconia-Springfield Parkway and Frontier Drive, Tax Map 90-2 ((1)) 101A1 (see Locator Map in Attachment

Board Action Item
October 16, 2018

1). The approved proffers, CDP/FDP, and development conditions for RZ 1996-LE-047, and CDP/FDP 1996-LE-047 are available respectively at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMMain.aspx?cde=RZ&seq=4000310>

<http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMMain.aspx?cde=FDP&seq=4000757>

On August 10, 2018, the Department of Planning and Zoning (DPZ) received a letter dated August 10, 2018, later revised on September 17, 2018, from Elizabeth D. Baker, agent for Springfield Commons, LLC, the applicant and property owner, requesting a minor variation to add health clubs to the list of uses permitted in Proffer 5 for RZ 1996-LE-047 (see Attachments 2 and 4). The existing Modell's Sporting Goods store in the subject shopping center will be closing and the applicant would like to replace it with a health club. The Applicant is proposing to demolish the Modell's store and construct a new building in the same footprint to house the health club. Proffer 5 states:

As long as there is sufficient parking to meet the requirements under the applicable zoning ordinance, the following uses shall be permitted on the Property: business service and supply service establishments, eating establishments, fast food restaurants, financial institutions, offices, personal service establishments, retail sales establishments, and parking and signs accessory thereto, excluding, however, any drive-through facilities.

The following uses shall not be permitted in "Springfield Commons": dance halls, amusement arcades, bars not part of a restaurant or eating establishment, adult video stores or adult book store, as said terms are defined in Section 20-300 of the Zoning Ordinance.

A health club use is permitted as a secondary use in the PDC District by the Zoning Ordinance; however, it was not listed specifically in the approved proffers. Health clubs are common tenants within shopping centers in Fairfax, and this proposed health club would not have materially greater land use impacts than the uses permitted by the proffer. Additional parking would not be required as the parking is already accounted for in the shopping center parking rate. The applicant has submitted a signed Minor Variation Statement stating that the new building housing the health club will be in substantial conformance with the approved CDP/FDP and the remainder of the approved proffers.

Staff has reviewed RZ 1996-LE-047 and the request to add this secondary use and has determined that the health club use would have no materially greater land use impacts than the approved uses, based on factors such as parking, trip generation, vehicular circulation, or hours of operation. Given that conclusion, staff believes that approval of this minor variation request meets the requirements of the Zoning Ordinance and recommends its approval.

Board Action Item
October 16, 2018

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Excerpt of Approved Proffers for RZ 1996-LE-047

Attachment 3: Minor Variation Statement

Attachment 4: Letter dated September 17, 2018, to Zoning Evaluation Division

Attachment 5: Affidavit available online at:

(<https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/zoning/minorvariations/2018minorvariations.pdf>)

STAFF:

Robert A. Stalzer, Deputy County Executive

Fred R. Selden, Director, Department of Planning and Zoning (DPZ)

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPZ

Suzanne Wright, Chief, Special Projects/Applications/Management Branch, ZED, DPZ

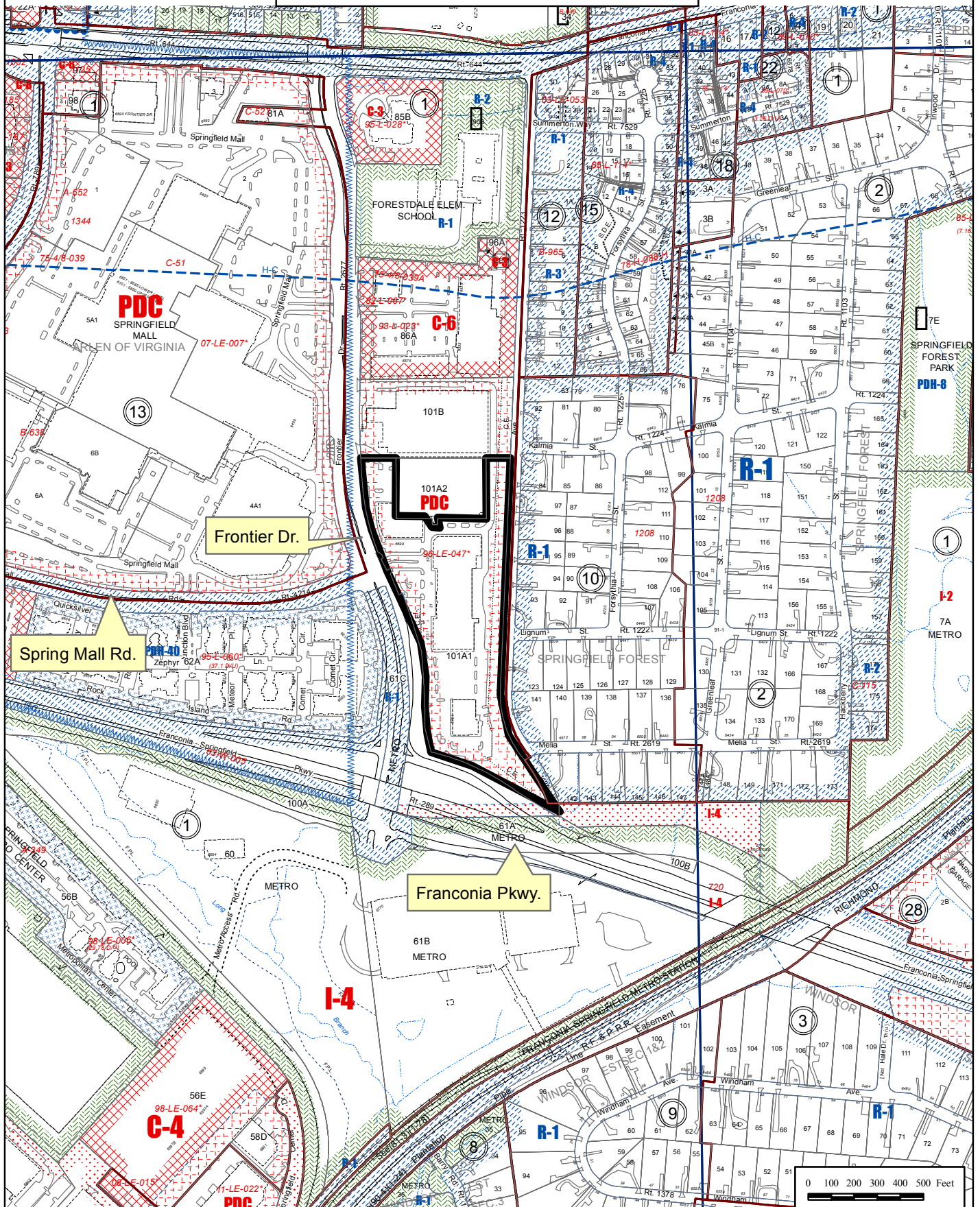
Jerrell Timberlake, Staff Coordinator, ZED, DPZ

ASSIGNED COUNSEL:

Laura Gori, Senior Assistant County Attorney, Office of the County Attorney

Request for Minor Variation

Attachment 1



4. *The Applicant will not construct or authorize a sidewalk or curb and gutter on the Property's frontage which abuts the western side of Elder Avenue.*
5. *As long as there is sufficient parking to meet the requirements under the applicable zoning ordinance, the following uses shall be permitted on the Property: business service and supply service establishments, eating establishments, fast-food restaurants, financial institutions, offices, personal service establishments, quick-service food stores, repair service establishments, retail sales establishments, and parking and signs accessory thereto, excluding, however, any drive-through facilities.*

The following uses shall not be permitted in "Springfield Commons": dance halls, amusement arcades, bars not part of a restaurant or eating establishment, adult video stores or adult book store, as said terms are defined in Section 20-300 of the Zoning Ordinance.

6. *There shall be an eight foot (8') wide asphalt trail constructed along the Property's frontage on Frontier Drive, in place of the existing four foot (4') sidewalk.*
7. *No deliveries shall be scheduled to occur earlier than 7:00 a.m. or later than 9:00 p.m. except in the case of emergencies or severe inclement weather. This delivery policy shall be included in the operations manual (or equivalent) with cooperation expected from store personnel. Delivery schedules will be posted in each store, and store personnel shall be advised of the delivery schedule restrictions by each tenant.*

ELDER AVENUE BUFFER

8. *There shall be a minimum fifty foot (50') wide buffer composed of existing vegetation and supplemental plantings located along the eastern boundary of the site as shown on the submitted CDP/FDP, together with a seven foot (7') high screen wall (as described below) and additional buffering along the western side of the fifty foot (50') buffer area as shown on the planting plan of the CDP/FDP, collectively called "the Buffer".*
9. *As shown on the CDP/FDP, a seven foot (7') high (measured from grade on either side) brick visual screening wall will be constructed along the western boundary of the fifty foot (50') wide buffer in the Buffer area extending from*

RECEIVED
Department of Planning & Zoning

AUG 10 2018

Zoning Evaluation Division

MINOR VARIATION STATEMENT

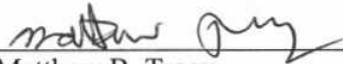
Springfield Commons, LLC

RZ 1996-LE-047

September 11, 2018

Pursuant to Section 18-204 of the Zoning Ordinance, the property owner, Springfield Commons, LLC, hereby requests approval of a Minor Variation to the proffers governing Tax Map 90-2 ((1)) 101A1 to modify the approved proffers to add health clubs as a permitted use in Proffer 5 of RZ 1996-LE-047, and commits that any such use will be located within the approved building footprints shown on the CDP/FDP, will meet the use limitations contained in the Zoning Ordinance, and will be developed in substantial conformance with the governing proffers.

SPRINGFIELD COMMONS, LLC

By: 
Name: Matthew B. Tracy
Its: Authorized Signatory

RECEIVED
Department of Planning & Zoning
SEP 14 2018
Zoning Evaluation Division



**WALSH COLUCCI
LUBELEY & WALSH PC**

Elizabeth D. Baker
Senior Land Use Planner
(703) 528-4700 Ext. 5414
ebaker@thelandlawyers.com

September 17, 2018

Tracy D. Strunk, Director
Zoning Evaluation Division
Fairfax County Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: Application for Minor Variation associated with RZ 1996-LE-047
Springfield Commons, LLC (the "Applicant")
Tax Map 90-2 ((1)) 101A1 (the "Application Property")

Dear Ms. Strunk:

This letter serves as a statement of justification for a proposed minor variation of the approved proffers associated with the above referenced Application Property. The Application Property, is part of the Springfield Commons shopping center located in the northwest quadrant of the intersection of the Franconia-Springfield Parkway and Frontier Drive.

The Application Property is zoned to the Planned Development Commercial (PDC) District, which permits a variety of uses. The Application Property, along with adjacent properties, together totaling 20.27 acres, was rezoned to the PDC District on December 8, 1997 with the Fairfax County Board of Supervisors' (the "Board") approval of application RZ 1996-LE-047. The approval was subject to proffers dated December 2, 1997. The Planning Commission approved a Final Development Plan for Springfield Commons (FDP 1996-LE-047) on December 3, 1997, subject to Development Conditions dated December 3, 1997.

A partial Proffered Condition Amendment application PCA 1996-LE-047 filed by HD Development of Maryland, Inc., was approved by the Board on July 10, 2017. However that application did not include the Application Property. Thus, the Application Property remains governed by proffers and development conditions associated with RZ/FDP 1996-LE-047, which are provided as Exhibit 1.

The Modell's Sporting Goods store in the shopping center will be closing and the property owner intends to replace it with a health club. Proffer 5 includes a list of permitted uses as well as a list of uses not permitted. Health club is not included in the list of permitted uses nor is it included in the list of uses not permitted. The Applicant requests a minor variation to the approved proffers to add health clubs as a permitted use. Health clubs are a permitted secondary use in the PDC District and are common tenants within shopping centers in Fairfax County.

ATTORNEYS AT LAW

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LOUDOUN 703 737 3633 ■ **WOODBIDGE** 703 680 4664

Specifically, it is proposed that Proffer 5 be revised to state (with changes underlined):

As long as there is sufficient parking to meet the requirements under the applicable zoning ordinance, the following uses shall be permitted on the Property: business service and supply service establishments, eating establishments, fast food restaurants, financial institutions, health clubs, offices, personal services establishments, quick-service food stores, repair service establishments, retail sales establishments, and parking and signs accessory thereto, excluding, however, any drive-through facilities.

The following uses shall not be permitted in “Springfield Commons”: dance halls, amusement arcades, bars not part of a restaurant or eating establishment, adult video stores or adult bookstore, as said terms are defined in Section 20-300 of the Zoning Ordinance.

The Applicant intends to demolish the Modell’s store and to construct a new building to house the health club. The new building will be in substantial conformance with the approved CDP/FDP and the approved proffers.

The Application Property is located within Land Unit M of the Franconia –Springfield TSA in the Springfield Planning District. The Comprehensive Plan envisions continued office and retail use for Land Unit M. The requested proffer change to include health club as a permitted use is in conformance with the Comprehensive Plan recommendations and will help ensure the continued success of Springfield Commons.

Section 18-205 ((5)) of the Zoning Ordinance permits a minor variation “to add or modify a use, provided that the proffered conditions do not specifically preclude such use and that the applicant demonstrates that the new use would have no materially greater land use impacts than the approved uses would, based on factors such as parking, trip generation, vehicular circulation, or hours of operation.” These standards are met with this request as detailed below:

- The proffered conditions do not specifically preclude a health club.
- The health club use does not have materially greater land use impacts with regard to parking than the variety of retail uses currently permitted on the Application Property. The Zoning Ordinance off-street parking requirements for a shopping center applies to all uses in the shopping center, except the area occupied by offices, any restaurant or restaurant with drive-through establishment that exceeds 5,000 square feet of gross floor area, and is parked in accordance with the applicable standards for such uses. Thus, health clubs are accounted for in the shopping center parking rate.
- The health club use does not have materially greater land use impacts with regard to trip generation than the variety of retail uses currently permitted on the Application Property.

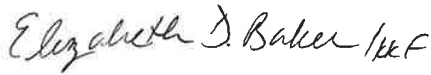
The Institute of Traffic Engineers (ITE) trip generation rate for shopping centers (Land Use Code 820) includes a wide variety of uses including health clubs/fitness centers. Thus there will be no difference in trip generation with the proposed health club from that expected today.

- The health club use does not have materially greater land use impacts with regard to vehicular circulation than the variety of retail uses currently permitted on the Application Property. The health club use will not change the vehicular circulation of the shopping center.
- The health club use does not have materially greater land use impacts with regard to hours of operation than the variety of retail uses currently permitted on the Application Property. There are no restrictions on the hours of operation for the existing uses in the shopping center.

As always, I appreciate your consideration of this application.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

A handwritten signature in cursive script, reading "Elizabeth D. Baker /k F".

Elizabeth D. Baker
Senior Land Use Planner

Exhibit 1: Approved Proffers and Development Conditions

Board Agenda Item
October 16, 2018

3:30 p.m.

Decision Only to Consider Amending Fairfax County Code Chapter 82 (Motor Vehicles and Traffic), Article 5 (Stopping, Standing, and Parking), Section 19

ISSUE:

Decision only to consider amending Chapter 82, Article 5, Section 19 of *The Code of the County of Fairfax, Virginia* (Fairfax County Code). Proposed amendments include code revisions to prohibit certain fleet vehicle parking, as defined.

RECOMMENDATION:

The County Executive recommends adoption of proposed amendments to Chapter 82, Article 5, Section 19 (Attachment I) of the Fairfax County Code. Proposed amendments include code revisions to prohibit certain fleet vehicle parking, as defined.

TIMING:

On July 31, 2018, the Board authorized advertisement of a public hearing on September 25, 2018, at 4:00 p.m., at which time the public hearing was held, and the decision only was deferred to October 16, 2018, at 3:30 p.m.

BACKGROUND:

Based upon direction from the Board, Department of Transportation staff worked with the Office of the County Attorney and Fairfax County Police Department to develop a series of amendments to Chapter 82 (Motor Vehicles and Traffic), Article 5 (Stopping, Standing, and Parking) of the Fairfax County Code.

Six proposed ordinance revisions to Chapter 82, Article 5 were presented to the Board Transportation Committee in February 2017. Four of those revisions advanced, and were approved by the Board on January 23, 2018. Two of the proposed code revisions, regarding fleet vehicles and unattended vehicles, were withheld for further consideration and discussion (Code Sections 82-5-19 and 82-5-29, respectively). Proposed revisions of those ordinance sections were heard by the Board at public hearing on September 25, 2018. The Board approved the amendment to Section 82-5-29, related to unattended vehicles, and deferred decision on Section 82-5-19, related to fleet vehicle parking. The Board asked staff to further revise the language in Section 82-5-19 to allow the parking of company vehicles on public roads when the vehicle is assigned to an employee of the company as a “take home” vehicle. Staff has considered the Board’s comments, and has inserted clarifying language responsive to the Board’s guidance (Attachment I). This language was reviewed with the Board Transportation Committee on October 2, 2018. The proposed amendment includes the following:

Board Agenda Item
October 16, 2018

Section 82-5-19 (Attachment I): Inserted language to allow employees to park a vehicle that is owned, leased, or controlled by a company in the public right-of-way, provided that the vehicle is assigned to the employee as a “take home” vehicle, and provided that parking of such vehicle is otherwise lawful.

The advertised language for the amendment also included several text clarifications to Section 82-5-19 that are not directly related to the fleet vehicle issue.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I: Proposed Amendment to the Fairfax County Code, § 82-5-19; Parking for certain purposes prohibited.

STAFF:
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT

ASSIGNED COUNSEL:
F. Hayden Codding, Assistant County Attorney

**AN ORDINANCE AMENDING
CHAPTER 82, ARTICLE 5 OF THE FAIRFAX COUNTY CODE, RELATING TO
VEHICLES AND TRAFFIC, STOPPING STANDING AND PARKING**

AN ORDINANCE to amend the Fairfax County Code by amending and readopting Chapter 82, Article 5 relating to stopping, standing, and parking.

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

1. That Chapter 82, Article 5 is amended and readopted as follows:

Section 82-5-19. Parking for certain purposes prohibited.

For purposes of this Section, the following words and phrases shall have the meanings ascribed to them in this Section, except in those instances where the context clearly indicates a different meaning:

Fleet Vehicles shall be defined as any vehicles and/or trailers, greater than one, that are controlled, owned or leased by a single company and are used in the normal business operations of that company. Fleet vehicles also include vehicles intended to be rented or leased to individuals or organizations. This includes fleets of revolving inventory. Vehicles which are used in the normal business operations of a company, but are owned or leased by company employees are not fleet vehicles.

Company means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession.

Storage means vehicles parked on public right-of-way, when not in use.

(a) It shall be unlawful for any person:

- (1) To park or place any automobile, truck, trailer or other vehicle upon or in ~~any street, alley or parkway~~ the public right-of-way for the purpose of selling or offering the same for sale or rent;
- (2) ~~To attach or place any sign or lettering upon any automobile, truck, trailer or other vehicle parked in or upon any public street, alley or parkway indicating that such vehicle is offered for sale or for rent;~~

- ~~(3)-(2)~~ To park any vehicle from which any merchandise is being sold upon any ~~street~~ public right-of-way in a ~~business~~ commercial district;
- ~~(4)-(3)~~ To park or stop a vehicle at any time ~~upon the highway~~ in the public right-of-way for the purpose of advertising any article of any kind, or to display thereupon advertisements of any article or advertisement for the sale or rental of the vehicle itself.

(b) It shall be unlawful for employees and/or representatives of any company to park or allow to be parked, for the purpose of storage, any fleet vehicles, as defined in this section, within the public right-of-way.

- (1) Such restrictions do not apply to a single, company vehicle assigned to an individual employee for take home use provided, however, that the parking of such vehicle is otherwise permitted by law.
- (2) Such restrictions do not apply to any commercial vehicle when picking up or discharging passengers, when making a pickup or delivery of merchandise, or when temporarily parked pursuant to the performance of work or service at a particular location, provided that such vehicle does not thereby obstruct traffic.
- (3) At such time as a single vehicle is rented or leased by an individual or organization, it is no longer considered a fleet vehicle.

(c) Penalty.

Penalties as defined in Section 82-1-32.

- 2. That the provisions of this ordinance are severable, and if any provision of this ordinance or any application thereof is held invalid, that invalidity shall not affect the other provisions or applications of this ordinance that can be given effect without the invalid provision or application.**
- 3. That the provisions of this ordinance shall take effect on October 16, 2018.**

GIVEN under my hand this _____ day of _____, 2018.

Clerk to the Board of Supervisors

Board Agenda Item
October 16, 2018

3:30 p.m.

Public Hearing on AR 84-D-004-04 (Charles Nichols and Laura Nichols) to Permit Renewal of AF 84-D-004 Previously Approved Agricultural and Forestal District, Located on Approximately 33.87 Acres of Land Zoned R-E (Dranesville District)

This property is located at 438 River Bend Road, Great Falls, 22066, Tax Map 8-3 ((9)) 13Z; 8-4 ((1)) 33Z and 34Z; 8-4 ((9)) 10Z and 14Z

PLANNING COMMISSION RECOMMENDATION:

On September 27, 2018, the Planning Commission voted 10-0 (Commissioners Migliaccio and Clarke were absent from the public hearing) to recommend that the Board of Supervisors approve AR 84-D-004-04 and amend Appendix F of the County Code, to renew Hidden Springs Farm Local Agricultural and Forestal District for an additional eight-year term, subject to ordinance provisions dated October 16, 2018.

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)
Harvey Clark, Planner, DPZ

Board Agenda Item
October 16, 2018

3:30 p.m.

Public Hearing on AR 93-S-003-03 (The Farm at Clifton Station, LLC) to Permit Renewal of AF 93-S-003 Previously Approved Agricultural and Forestal District, Located on Approximately 28 Acres of Land Zoned R-C and WS (Springfield District)

This property is located at 13442 Compton Road, Clifton, 20124, Tax Map 75-1 ((1)) 8Z

PLANNING COMMISSION RECOMMENDATION:

On September 27, 2018, the Planning Commission voted 10-0 (Commissioners Migliaccio and Clarke were absent from the public hearing) to recommend to the Board of Supervisors that it approve AR 93-S-003-03 and amend Appendix F of the Fairfax County Code to renew the Farm at Clifton Station Local Agricultural and Forestal District, subject to the proposed ordinance provisions contained in Appendix 1 of the staff report.

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)
Harvey Clark, Planner, DPZ

Board Agenda Item
October 16, 2018

3:30 p.m.

Public Hearing on RZ 2018-MV-012 (Fairfax County DPWES CAP BDCD) to Rezone from R-2, R-20 and HC to R-20 and HC to Permit Public Use with an Overall Floor Area Ratio of 0.39, Located on Approximately 1.5 Acres of Land (Mount Vernon District)

This property is located on the East side of Lukens Lane approximately 600 feet South of its intersection with Richmond Highway. Tax Map 75-1 ((1)) 8Z.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing will be held on October 11, 2018. 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)
Jay Rodenbeck, Planner, DPZ

Board Agenda Item
October 16, 2018

3:30 p.m.

Public Hearing on PCA-A-502-03/DPA-A-502-09 (New Lake Anne House, LP) to Amend Proffers, Conceptual and Development Plans for RZ-A-502 Previously Approved for Senior Housing to Permit an Independent Living Facility and Single Family Attached Units and Associated Modifications to Proffers and Site Design at a Density of 46.3 Dwelling Units per Acre, Located on Approximately 5.96 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with PRC-A-502-05)

and

Public Hearing on PCA-A-502 (New Lake Anne House, LP) to Approve the PRC Plan Associated with RZ-A-502 to Permit Residential Development, Located on Approximately 5.96 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with PCA-A-502-03 and DPA-A-502-09)

This property is located in the Southwest quadrant of the intersection of Baron Cameron Avenue and Village Road. Tax Map 17-2 ((1)) 2 and 3.

This property is located in the Southwest quadrant of the intersection of Baron Cameron Avenue and Village Road. Tax Map 17-2 ((1)) 2 and 3.

PLANNING COMMISSION RECOMMENDATION:

On October 4, 2018, the Planning Commission voted 10-0 (Commissioners Murphy and Tanner were absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of PCA A-502-03 and DPA-A-502-09, subject to the execution of proffered conditions consistent with those dated September 17, 2018;
- Approval of PRC A-502-05, subject to the proposed PRC development conditions dated September 20, 2018;
- Approval of a waiver of Additional Standard 6 of Section 9-306 of the Zoning Ordinance for an independent living facility;
- Approval of a modification of Section 11-203 of the Zoning Ordinance for the loading space requirements to provide two spaces in lieu of three spaces;

Board Agenda Item
October 16, 2018

- Approval of a waiver of Paragraph 2 of Section 11-302 of the Zoning Ordinance for private streets in a residential development to exceed 600 feet in length; and
- Approval of a waiver of Sections 13-303 and 13-304 of the Zoning Ordinance for the transitional screening and barrier requirements for the independent living facility.

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)

Mary Ann Tsai, Planner, DPZ

Board Agenda Item
October 16, 2018

3:30 p.m.

Public Hearing on RZ 2018-LE-014 (The Board of Supervisors of Fairfax County) to Rezone from R-1, C-5 and HC to C-5 and HC to Permit Office Use and a Waiver of Minimum Lot Size Requirements, Located on Approximately 43,554 Square Feet of Land (Lee District)

This property is located on the South side of Grovedale Drive approximately 500 feet from its intersection with Beulah Street. Tax Map 81-3 ((5)) 10A.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing will be held on October 11, 2018. 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)
Daniel Creed, Planner, DPZ

Board Agenda Item
October 16, 2018

4:00 p.m.

Public Hearing on RZ 2018-SU-008 (K. Hovnanian Homes at Pender Oaks, LLC) to Rezone from PDC, WS and HC to PDH-12, WS, and HC to Permit Residential Development with an Overall Density of 12.12 Dwelling Units Per Acre and Approval of the Conceptual Development Plan, Located on Approximately 18.07 Acres of Land (Sully District) (Concurrent with PCA 2009-SU-020-03)

and

Public Hearing on PCA 2009-SU-020-03 (K. Hovnanian Homes at Pender Oaks, LLC) to Amend the Proffers for RZ 2009-SU-020 to Delete Land Area, Located on Approximately 18.07 Acres of Land Zoned PDC, WS and HC (Sully District) (Concurrent with RZ/FDP 2018-SU-008)

This property is located North of Lee Jackson Memorial Highway approximately 315 feet Northwest of Fair Ridge Drive. Tax Map 46-3 ((1)) 15A1 and 15C.

This property is located North of Lee Jackson Memorial Highway approximately 315 feet Northwest of Fair Ridge Drive. Tax Map 46-3 ((1)) 15A1 and 15C.

PLANNING COMMISSION RECOMMENDATION:

On September 27, 2018, the Planning Commission voted 10-0 (Commissioners Migliaccio and Clarke were absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 2009-SU-020-03;
- Approval of RZ 2018-SU-008, subject to the execution of proffered conditions consistent with those dated September 24, 2018;
- Approval of a modification of Section 13-203.3(A) of the Zoning Ordinance to permit the modification of the peripheral parking lot landscaping in favor of that shown on the CDP/FDP;
- Approval of a waiver of Section 11-302 of the Zoning Ordinance to allow private streets to be in excess of 600 feet;

Board Agenda Item
October 16, 2018

- Approval of a modification of Section 13-305(3) of the Zoning Ordinance to permit the modification of transitional screening and barrier requirements within the property and to adjacent uses in favor of that shown on the CDP/FDP;
- Approval of a modification of Section 6-107.2 to modify the minimum 200 square foot privacy yard for each single-family attached dwelling as shown on the CDP/FDP;
- Approval of a modification of Section 11-203.4 of the Zoning Ordinance to reduce the loading space requirements on site to permit designated short-term drop-off spaces as depicted on the CDP/FDP;
- Approval of a modification of Paragraph 10 of Section 11-102 of the Zoning Ordinance to permit driveway parking in front of garage parking (i.e., tandem parking) for multifamily stacked units as shown on the CDP/FDP; and
- Approval of a waiver of Section 10-0306 of the Fairfax County Public Facilities Manual to allow trash and recycling collection to be picked up curbside for the multifamily stacked units in lieu of an on-site dumpster pad.

In a related action, on September 27, 2018, the Planning Commission voted 10-0 (Commissioners Migliaccio and Clarke were absent from the public hearing) to approve FDP 2018-SU-008, subject to the development conditions dated September 6, 2018, and subject to the Board of Supervisors' approval of RZ 2018-SU-008.

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)
Sharon Williams, Planner, DPZ

Board Agenda Item
October 16, 2018

4:00 p.m.

Public Hearing on Proposed Plan Amendment 2018-III-BR1, Located at the Southeast Corner of the Westfields Boulevard and Stonecroft Boulevard Intersection, Bordered to the South by Sequoia Farms Drive (Sully District)

ISSUE:

Plan Amendment (PA) 2018-III-BR1 proposes to amend the Comprehensive Plan guidance for Tax Maps Parcels 44-3 ((7)) B2 and B3, an approximately 17.43-acre area located adjacent to the southern boundary of Land Unit J of the Dulles Suburban Center. The subject area's Comprehensive Plan recommendation is for retail use at an intensity up to .25 FAR. The amendment considers an extension to the boundary of the Dulles Suburban Center to create a new land unit that includes the Sully Station Shopping Center. The Plan Amendment does not consider any other changes to the Comprehensive Plan.

PLANNING COMMISSION RECOMMENDATION:

On September 13, 2018, the Planning Commission voted 12-0 to recommend a Planning Commission alternative to the staff recommendation for Plan Amendment 2018-III-BR1, as shown on the handout dated September 13, 2018.

RECOMMENDATION:

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

TIMING:

Planning Commission public hearing – September 13, 2018
Board of Supervisors' public hearing – October 16, 2018

BACKGROUND:

On May 15, 2018, the Fairfax County Board of Supervisors (Board) authorized PA 2018-III-BR1 for the Sully Station Shopping Center (Tax Maps Parcels 44-3 ((7)) B2 and B3), in the BR3-Flatlick Community Planning Sector of the Bull Run Planning District in Planning Area III. The Board requested that staff consider extending the boundary of the Dulles Suburban Center to create a new land unit that includes the Sully Station Shopping Center. The Board motion noted that a Site-Specific Plan Amendment (SSPA)

Board Agenda Item
October 16, 2018

nomination was received for the Sully Station Shopping Center (PC17-SU-001) and that review will proceed through the usual SSPA process to consider the proposed new uses in the land unit.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:

The Planning Commission Verbatim and Recommendation is available at:
<https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2018%20verbatims/verbatim91318pa2018-iii-br1comprehensiveplanamendment-sullyshoppingcenter.pdf>.

The Staff Report for PA 2018-III-BR1 is available online at:
<https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/compplanamend/dscsullystation/2018-iii-br1-staff-report.pdf>

STAFF:

Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Marianne R. Gardner, Director, Planning Division (PD), DPZ
Leanna H. O'Donnell, Branch Chief, Policy and Plan Development Branch, PD, DPZ
Roger Dindyal, Planner II, Policy and Plan Development Branch, PD, DPZ

Board Agenda Item
October 16, 2018

4:00 p.m.

Public Hearing on RZ 2018-MV-007 (Lafayette Building, LLC) to Rezone from C-2 to C-5 to to Permit Commercial Uses, Waiver of Minimum Lot Size, Width, Setback and Increase in Office Percentage in Accordance with Sections 9-515 and 9-610 of the Zoning Ordinance with an Overall Floor Area Ratio of 0.27, Located on Approximately 20,322 Square Feet of Land (Mount Vernon District)

This property is located on the Northwest corner of the intersection of Lafayette Drive and Fort Hunt Road. Tax Map 102-2 ((2)) (1) 605 and 606.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing will be held on October 11, 2018. 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)
Jay Rodenbeck, Planner, DPZ

Board Agenda Item
October 16, 2018

4:00 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Braddock Road Walkway – Carlbern Drive to Clubside Lane (Sully District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project 5G25-060-000, Pedestrian Improvements – 2014, Braddock Road Walkway – Carlbern Drive to Clubside Lane, Fund 30050, Transportation Improvements.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:

On September 25, 2018, the Board authorized advertisement of a public hearing to be held on October 16, 2018, at 4:00 p.m.

BACKGROUND:

The County is planning to construct approximately 1,150 linear feet of 5-foot concrete sidewalk along the south side of Braddock Road between Carlbern Drive and Clubside Lane.

Land rights for these improvements are required on one property. The construction of this project requires the acquisition of a Deed of Dedication and Grading Agreement and Temporary Construction Easement.

Negotiations are in progress with the affected property owner; however, because resolution of this acquisition is not imminent, it may become necessary for the Board to utilize quick-take eminent domain powers to commence construction of this project on schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1903 through 15.2-1905 (as amended). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

Board Agenda Item
October 16, 2018

FISCAL IMPACT:

Funding is available in Project 5G25-060-000, Pedestrian Improvements - 2014, Braddock Road Walkway – Carlbern Drive to Clubside Lane, Fund 30050, Transportation Improvements. This project is part of the Board of Supervisors Transportation Project Priorities (TPP) and is included in the FY 2019 – FY 2023 Adopted Capital Improvement Program (with future Fiscal Years to FY 2028). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

Attachment A – Project Location Map

Attachment B – Resolution with Fact Sheets on the affected parcels with plats showing interests to be acquired (Attachments 1 through 1-A).

STAFF:

James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)

Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:

Pamela K. Peltó, Assistant County Attorney, Office of the County Attorney

ATTACHMENT A



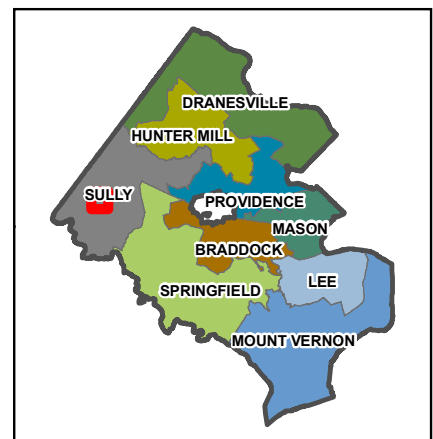
Braddock Road Walkway

Tax Map: 43-4 Sully District Project: 5G25-060-022

Affected Properties:

Proposed Improvements:

0 0.1 0.2 0.4
Miles



ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, October 16, 2018, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, certain Project 5G25-060-022, Braddock Road Walkway – Carlbern Drive to Clubside Lane had been approved; and

WHEREAS, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

WHEREAS, the property interests that are necessary have been identified; and

WHEREAS, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than November 30, 2018.

NOW THEREFORE BE IT RESOLVED, that the Director, Land Acquisition Division, in cooperation with the County Attorney, is directed to acquire the property interests listed in Attachments 1 through 1-A by gift, purchase, exchange, or eminent domain; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of construction of approximately 1,150 linear feet of 5-foot concrete sidewalk along the south side of Braddock Road between Carlbern Drive and Clubside Lane as shown and described in the plans of Project 5G25-060-022, Braddock Road Walkway – Carlbern Drive to Clubside Lane on file in the Land Acquisition Division of the Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

RESOLVED, that this Board does hereby exercise those powers granted to it by the Code of Virginia and does hereby authorize and direct the Director, Land Acquisition Division, on or subsequent to November 15, 2018, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the Code of Virginia as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

RESOLVED, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES

Project 5G25-060-022, Braddock Road Walkway – Carlbern Drive to Clubside Lane (Sully District)

PROPERTY OWNER(S)

Chantilly, Inc. (Owner)
ClubCorp, Inc. (Lessee)

Address:
14901 Braddock Road
Centreville, VA

TAX MAP NUMBER

043-4-01-0004

A Copy – Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

AFFECTED PROPERTY

Tax Map Number: 043-1-01-0004

Street Address: 14901 Braddock Road
Centreville, VA

OWNER: Chantilly, Inc.

LESSEE: ClubCorp, Inc.

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

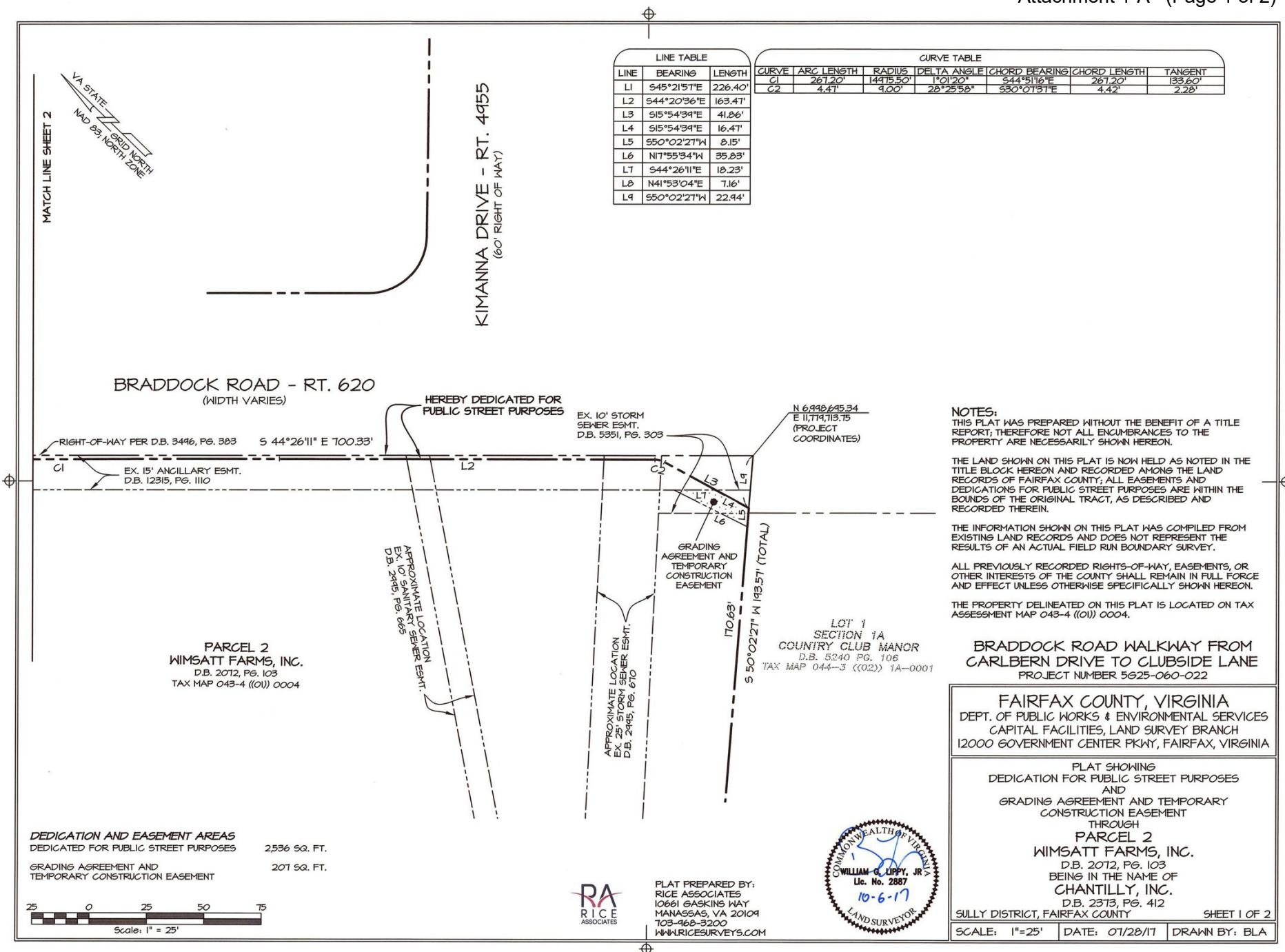
Deed of Dedication – 2,536 sq. ft.

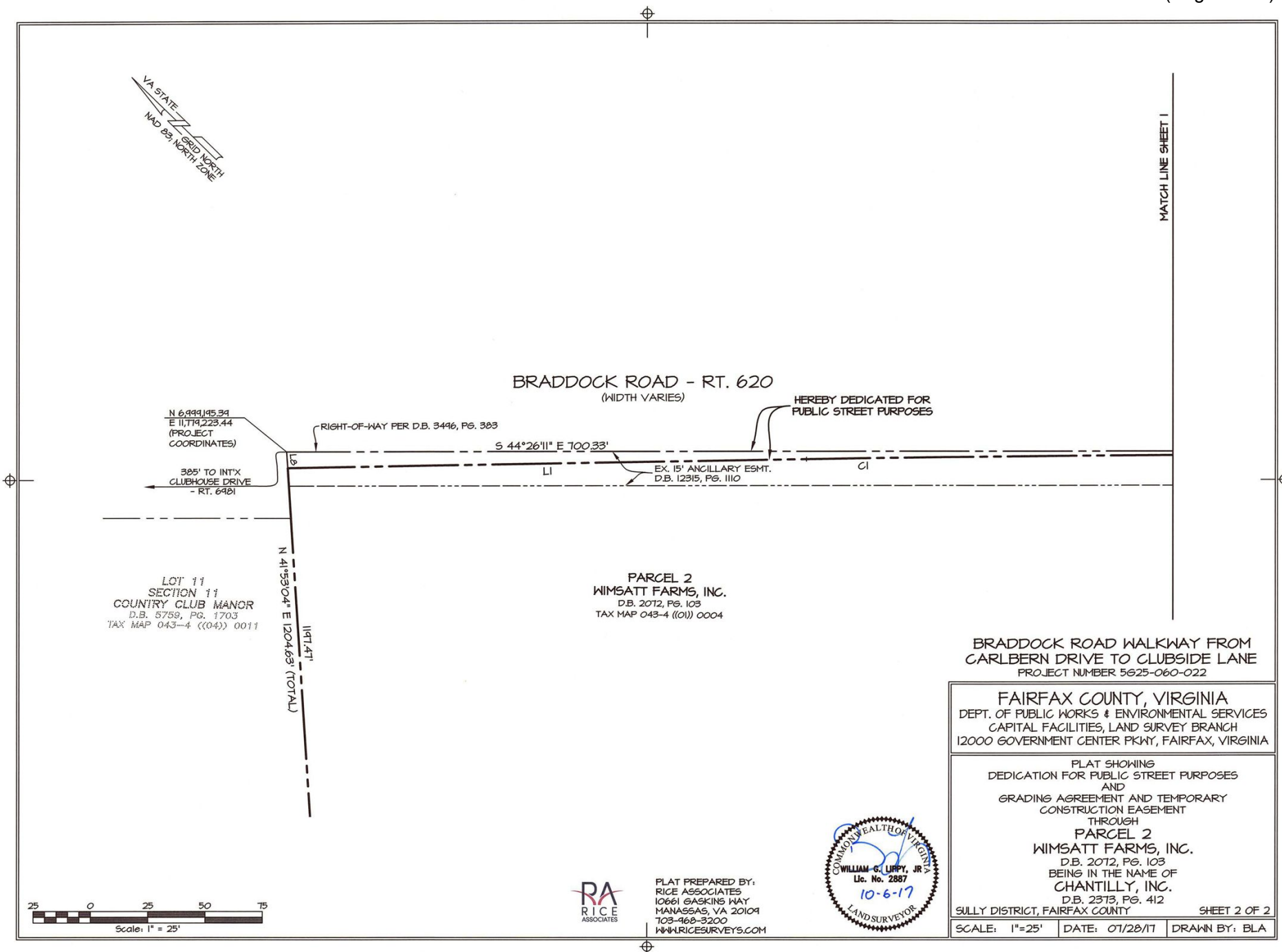
Grading Agreement and Temporary Construction Easement – 207 sq. ft.

VALUE

Estimated value of interests and damages:

NINE THOUSAND AND FOUR HUNDRED DOLLARS (\$9,400.00)





Board Agenda Item
October 16, 2018

4:00 p.m.

Public Hearing on SE 2018-MA-003 (Northpoint Realty Partners, LLC) to Permit and Increase in Floor Area Ratio from 0.5 to 0.7, Located on Approximately 6.04 Acres of Land Zoned I-4 (Mason District) (Concurrent with PCA 86-L-056-05)

and

Public Hearing on PCA 86-L-056-05 (Northpoint Realty Partners, LLC) to Amend the Proffers for RZ 86-L-056 Previously Approved for Office Uses to Permit a Self-Storage Facility and Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.70, Located on Approximately 6.04 Acres of Land Zoned I-4 (Mason District) (Concurrent with SE 2018-MA-003)

This property is located at 6375 Bren Mar Drive, Alexandria, 22312. Tax Map 81-1 ((1)) 8A.

This property is located on the South side of Bren Mar Drive approximately 2,100 feet East of its intersection with General Washington Drive. Tax Map 81-1 ((1)) 8A.

PLANNING COMMISSION RECOMMENDATION:

On September 27, 2018, The Planning Commission voted 10-0 (Commissioners Migliaccio and Clarke were absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 86-L-056-05, subject to the execution of proffered conditions consistent with those dated September 11, 2018, updated to reflect the use of the word “must” in replacement of “shall” as per Fairfax County policy;
- Approval of SE 2018-MA-003, subject to the development conditions dated September 17, 2018; and
- Approval of a modification of the transitional screening and barrier requirements, pursuant to Section 13-305 of the Zoning Ordinance in favor of that shown on the GDP/SE Plat.

Board Agenda Item
October 16, 2018

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)
Sharon Williams, Planner, DPZ

4:00 p.m.

Public Hearing on RZ 2017-DR-026 (Benchmark Associates, LP) to Rezone from C-8, CRD, SC and HC to PRM, CRD, SC and HC to Permit Mixed-Use Development with an Overall Floor Area Ratio of 1.99 Waiver of Minimum District Size Requirement and Approval of the Conceptual Development Plan, Located on Approximately 1.43 Acres of Land (Dranesville District)

This property is located in the West quadrant of Old Dominion Drive and Lowell Avenue. Tax 30-2 ((9)) 73.

PLANNING COMMISSION RECOMMENDATION:

On October 4, 2018, the Planning Commission voted 8-0 (Commissioners Murphy and Tanner were absent from the public hearing and Commissioners Sargeant and Cortina were not present for the vote) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2017-DR-026, subject to the execution of proffered conditions consistent with those dated October 3, 2018, with the following revisions:
 - Added language to Proffer 29, “Each WDU unit will be allotted one parking space that will be included in the sales price of the unit.”
 - Grammatical corrections to Proffer 17
- Approval of a waiver of Paragraph 1 of Section 6-407 of the Zoning Ordinance (ZO) to allow a district size of less than two acres in the PRM district;
- Approval of a modification of Section 11-201 and 11-203 of the ZO to permit a reduction in the required number of loading spaces to that shown on the CDP/FDP; and
- Approval of a modification Section 17-201 of the ZO to permit the walkways shown on the CDP and FDP in place of any trails shown for the subject property on the Comprehensive Plan.

In a related action, on October 4, 2018, the Planning Commission voted 8-0 (Commissioners Murphy and Tanner were absent from the public hearing and

Board Agenda Item
October 16, 2018

Commissioners Sargeant and Cortina were not present for the vote) to approve FDP 2017-DR-026, subject to the development conditions dated September 19, 2018, as provided in Appendix 2 of the staff report and subject to the approval of RZ 2017-DR-026 by the Board of supervisors.

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)
Bob Katai, Planner, DPZ

Board Agenda Item
October 16, 2018

4:30 p.m.

Public Hearing on RZ 2016-HM-031 (Pulte Home Company, LLC) to Rezone from I-4 and I-5 to PDC to Permit Office and Residential Development with an Overall Floor Area Ratio of 0.88 and Approval of the Conceptual Development Plan, Located on Approximately 5.29 Acres of Land (Hunter Mill District) (Concurrent with PCA 80-C-086-02 and PCA 83-C-069-02)

and

Public Hearing on PCA 80-C-086-02 (Pulte Home Company, LLC) to Amend the Proffers for RZ 80-C-086 to Permit Deletion of Land Area, Located on Approximately 0.94 Acres of Land Zoned I-5 (Hunter Mill District) (Concurrent with RZ 2016-HM-031 and PCA 83-C-069-02)

and

Public Hearing on PCA 83-C-069-02 (Pulte Home Company, LLC) to Amend the Proffers for RZ 83-C-069 to Permit Deletion of Land Area, Located on Approximately 4.35 Acres of Land Zoned I-4 (Hunter Mill District) (Concurrent with RZ 2016-HM-031 and PCA 80-C-086-02)

This property is located at 12700 Sunrise Valley Drive, Reston, 20191. Tax 16-4 ((1)) 16B and 16-4 ((26)) 1 and 2.

This property is located at 12700 Sunrise Valley Drive, Reston, 20191. Tax Map 16-4 ((1)) 16B (pt.) and 16-4 ((26)) 2 (pt.).

This property is located at 12700 Sunrise Valley Drive, Reston, 20191. Tax Map 16-4 ((1)) 16B (pt.) and 16-4 ((26)) 1 and 2 (pt.).

PLANNING COMMISSION RECOMMENDATION:

On September 13, 2018, the Planning Commission voted 11-0-1 (Commissioner Strandlie abstained from the vote) to recommend the following actions to the Board of Supervisors:

Approval of PCA 80-C-086-02, PCA 83-C-069-02 and RZ 2016-HM-031 and the associated Conceptual Development Plan, subject to the execution of proffered conditions consistent with those dated August 23, 2018 and contained in Appendix 1 of the staff report.

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- Approval of a modification of Paragraph 5 of Section 6-206 of the Zoning Ordinance (ZO) to permit secondary residential uses to exceed 50 percent of the principal use to permit the residential uses as shown on the CDP/FDP;
- Approval of a waiver of Paragraph 2 of Section 6-207 of the ZO requiring a 200-square foot privacy yard for single family attached dwelling units;
- Approval of a modification of Paragraph 13 of Section 11-203 of the ZO to reduce the loading space requirement for the office building from five to four spaces;
- Approval of a waiver of Section 13-303 of the ZO for the barrier requirement;
- Approval of a modification of Section 13-304 of the ZO for the transitional screening requirement to permit the landscaping as shown on the CDP/FDP; and
- Approval of the Parking Reduction Request for Reston Arboretum (#4890-PKS-002-1) for a reduction of up to 13% (up to 14 fewer spaces) for the single-family attached component of the subject development, pursuant to Paragraph 4B of Section 11-102 of the ZO, based on the sum of the hourly parking demand and subject to the conditions recommended by staff in the memorandum from Land Development Services dated August 10, 2018, contained in Appendix 18 of the staff report.

In a related action, on September 13, 2018, the Planning Commission voted 11-0-1 (Commissioner Strandlie abstained from the vote) to approve FDP 2016-HM-031, subject to the proposed Final Development Plan conditions dated August 28, 2018 and contained in Appendix 2 of the staff report and including a note on the Plan about the amenities space adjacent to the office building.

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)
Bill Mayland, Planner, DPZ

Board Agenda Item
October 16, 2018

4:30 p.m.

Public Hearing to Lease County-Owned Property at 12011 Government Center Parkway to New Cingular Wireless PCS, LLC (Braddock District)

ISSUE:

Public hearing to lease County-owned property to New Cingular Wireless PCS, LLC (AT&T) for the provision of telecommunications services for public use at the Pennino Building located at 12011 Government Center Parkway.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to lease County-owned property at 12011 Government Center Parkway to AT&T.

TIMING:

On September 25, 2018, the Board authorized the advertisement of a public hearing on October 16, 2018 at 4:30 p.m. to lease County-owned property at 12011 Government Center Parkway to AT&T.

BACKGROUND:

The Board of Supervisors is the owner of a 10-story building located at 12011 Government Center Parkway, commonly called the Pennino Building, on a County-owned parcel identified as Tax Map Number 0561 15 0008. The property is one of four buildings on the Government Center campus and houses various County human services agencies.

Telecommunications provider AT&T has approached the County about installing equipment on the roof of the Pennino Building to address the coverage gaps in its 4G network. The proposed equipment will consist of two (2) antennas coupled to steel platforms on three (3) different sectors of the building, for a total of six (6) antennas. To ensure that the telecommunication facility blends in with the existing Building, AT&T's antennas will be hidden behind a concealment screen painted the same color as the Building while the equipment cabinets will not be visible from the street.

AT&T has negotiated a lease with the County that has an initial term of five (5) years, with four 5-year options to extend the lease, for a total possible term of twenty-five (25) years. The annual rental fee for the first year will be \$30,000, and will increase by a fixed 2.5 percent per year. Various restrictions regarding access and security have been inserted in the lease to ensure that human services operations in the Building will not be disturbed by the operation or maintenance of the rooftop equipment.

AT&T has filed a 2232 application with the Department of Planning and Zoning to obtain a determination on whether the placement of telecommunications equipment on the roof

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of the Pennino Building is in substantial conformance with the recommendations of the Comprehensive Plan.

FISCAL IMPACT:

The proposed monopoly license will generate approximately \$30,000 in revenue the first year with a 2.5 percent increase each subsequent year. An administrative fee of \$2,000 will be paid within thirty (30) days of execution of the lease. All revenue will be deposited into the General Fund.

ENCLOSED DOCUMENTS:

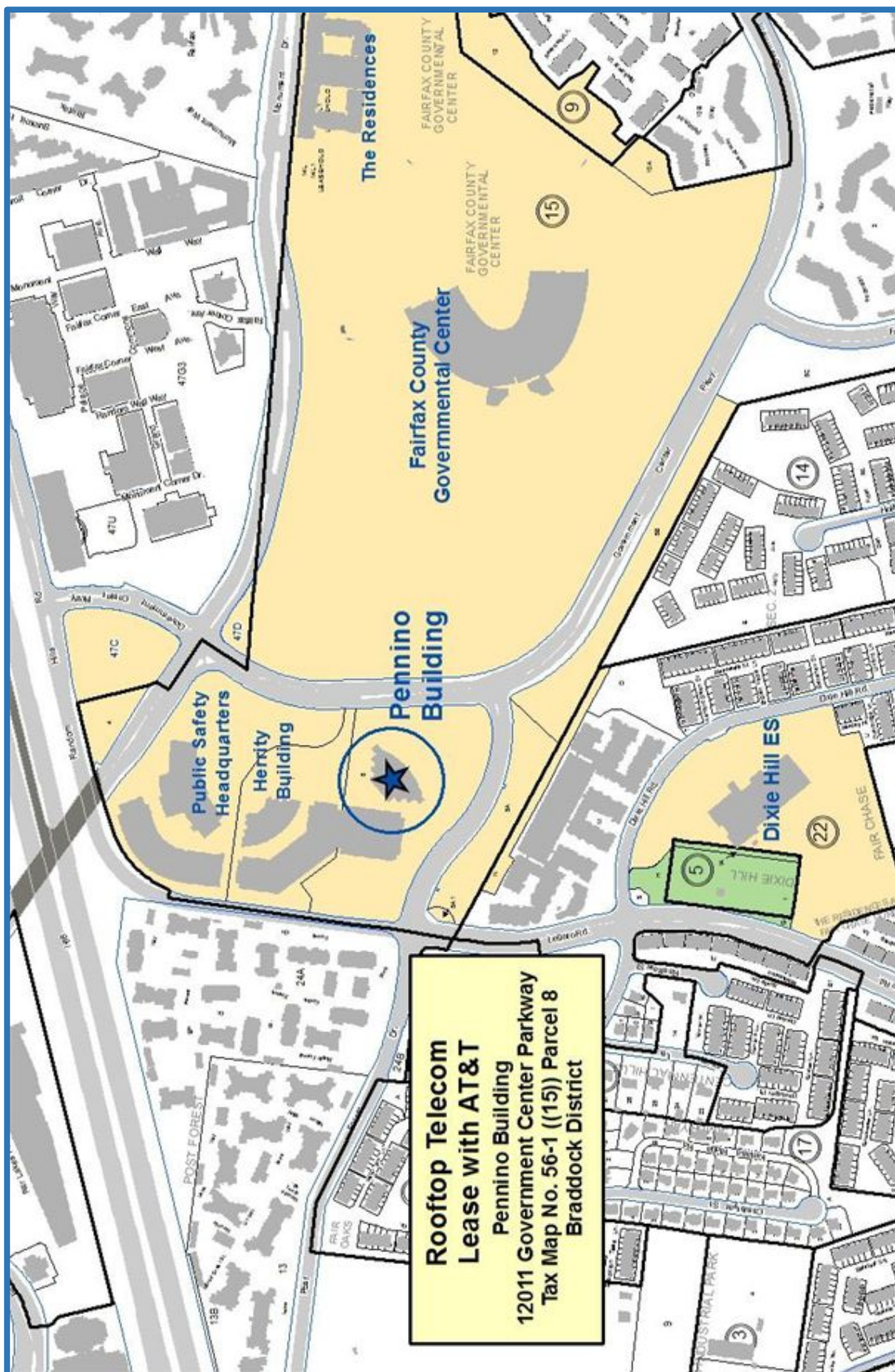
Attachment 1 – Location Map 0561 15 0008
Attachment 2 – Draft Lease Agreement

STAFF:

Joseph M. Mondoro, Chief Financial Officer
José A. Comayagua, Jr., Director, Facilities Management Department
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

Robert M. Falconi, Assistant County Attorney



**LEASE AGREEMENT FOR PENNINO BUILDING
AT 12011 GOVERNMENT CENTER PARKWAY
BETWEEN BOARD OF SUPERVISORS OF FAIRFAX COUNTY AND
NEW CINGULAR WIRELESS PCS (AT&T)**

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	Exhibit B	Major Components of Lessee's Equipment

THIS REAL PROPERTY DEED OF LEASE AGREEMENT (“Lease” and/or “Agreement”), is entered into this (the **“Effective Date”**), between the **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY**, with an address of 12000 Government Center Parkway, Fairfax, Virginia 22035 (**“Lessor”**), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having an address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (**“Lessee”**), and the parties mutually agree as follows:

1. Leased Premises.

Lessor is the owner of the certain parcel of land and building ("**Building**") being and situated in the County of Fairfax, Virginia, located at 12011 Government Center Parkway, commonly known as the Pennino Building, which is identified for reference purposes only as Tax Map No. 56-1 ((15)) Parcel 8 (the **“Parcel”**). Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, in consideration of the payment of rentals and performance of the covenants and agreements herein mentioned, approximately 400 square feet of roof space on the Building for the installation and operation of a wireless telecommunications facility, with the location as shown on **Exhibit A** attached hereto and incorporated herein by reference (the **“Premises”**). Lessee intends to install on the Premises an equipment pad, power and telephone utility pedestals, and cabinets and related cables and utility lines and a location based system, including, without limitation, coaxial cables, base units and other associated equipment and radio transmitting and receiving equipment as listed in **Exhibit B** attached hereto and incorporated herein by reference (the **“Facilities”**).

2. Use of Premises.

(a) Lessor leases to Lessee the Premises for the purpose of operating the Facilities upon the Premises as described in **Exhibit A** in the configuration shown on **Exhibit A**, together with the non-exclusive use of that area between the Premises and the Lessee’s sector antennas for Lessee’s ice bridge, cables, conduits and pipes, in the location as shown on **Exhibit A**. Subject to compliance with all applicable laws, Lessee may at its own cost and expense, use the portion of the Premises shown on **Exhibit A** to install, operate, maintain, repair, replace, upgrade, protect and secure the Facilities, as set forth herein, or as subject to the written approval of Lessor, which will not be unreasonably withheld, conditioned or denied at no additional cost to the Lessee. With Lessor’s written consent, which will not be unreasonably withheld, conditioned, or denied, Lessor may grant, to the extent practicable and on a space available basis, the Lessee the right to enlarge the Premises so that Lessee may implement any necessary modifications, supplements, replacements, refurbishments, or expansions to the Facilities or to any equipment related thereto, or for any other reasons permitted by Lessor’s written consent, which will not be unreasonably withheld, conditioned, or denied. Should Lessee exercise the right to expand the Premises and Lessor provides written consent, which will not be unreasonably withheld, conditioned, or denied, Lessee will pay and Lessor will accept as

additional Rent under the Lease an amount equal to the then current Rent calculated on a per square foot basis as multiplied by each additional square foot added to the Premises. Upon notice to Lessor, and with Lessor's written consent, which will not be unreasonably withheld, conditioned, or denied, a written description and/or depiction of the modified Premises ground will become part of the Lease without any additional action on the part of Lessee and Lessor. Without limiting Lessor's right to reasonably withhold, condition or deny such consent on other grounds, it shall be deemed reasonable for Lessor to withhold, condition or deny consent to a proposal to enlarge the Premises that would impact Building systems, create a security risk to the Building or its users, or result in additional roof penetrations.

(b) All portions of the Facilities brought onto the Premises by Lessee shall remain the Lessee's personal property and, at Lessee's option, may be removed by Lessee at any time during the term, so as long as Lessee is not in default beyond all applicable notice, cure, and grace periods. Upon the termination of the Lease, the Facilities shall be removed entirely from the Premise by the Lessee no later than ninety (90) days after the date of the termination of the Lease, unless Lessee and/or Lessor are in negotiations to extend or renew the Lease and Lessor has agreed in writing to extend the time period for removal. All Facilities shall be vacated at the Lessee's expense.

(c) Lessor grants Lessee a non-exclusive license for ingress and egress to the Premises; and a non-exclusive license to the extent of the Lessor's interest therein to any existing access roads, easements or rights of way serving the Premises for access to the Facilities for the purposes of installing, maintaining, operating, repairing, and removing the Facilities. Lessor and Lessee agree that only Lessor's agents and contractors and Lessee's agents, contractors, subcontractors, Federal Communications Commission inspectors and persons under their direct supervision will be permitted to enter the Premises.

- (i) During all installation, modification and construction-related activities involving the Facilities or the Building, or for maintenance and repairs requiring a power outage, the Lessor's property manager for the Building ("Building Manager") must be present onsite at all times.
- (ii) Subject to the County security procedures set forth below, Lessee shall have access to the facilities:
 - a. During normal business hours (Monday through Friday 8:00 a.m. – 5:00 p.m.) for routine maintenance, provided that Lessee shall give the Building Manager at least twenty-four (24) hours' prior notice of the need for access for routine maintenance.
 - b. Outside normal business hours (between 7:00 p.m. and 6:00 a.m. Monday through Friday, or on Saturdays, Sundays and County holidays) for any construction that involves demolition, drilling, or other noisy activities, provided that Lessee provides notice of such proposed work at least two (2) weeks in advance to the Building Manager for either approval or rejection. All other construction work

shall be completed between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday.

- c. In the case of an emergency, Lessee shall contact the the Building Manager who will provide access to the Building and Premises.
 - d. Any requested utility outages must be scheduled to occur on Sundays. Requests for outages shall be submitted to the Building Manager a minimum of two (2) weeks in advance of the requested date for the outage for either approval or rejection.
- (iii) All contractors must park their vehicles in designated parking stalls in either the surface parking lot or the covered garage and must not park at the loading dock for the Building.
 - (iv) Lessee's employees, representatives, contractors and subcontractors must pass, to the satisfaction of the Lessor, a criminal history check overseen by security staff for Lessor and must display County-issued contractor identification badges while in the Building or otherwise on the Parcel.
 - a. All identification badges are required to be displayed above the beltline of each individual. Lessee's employees, representatives, contractors and subcontractors who arrive at the job site without appropriate identification badges will immediately be dismissed from the job site.
 - b. Lessee shall assume all costs directly and indirectly associated with obtaining the criminal history checks and the identification badges.
 - (v) All supplies, materials and equipment are subject to security inspection.
 - (vi) Security access procedures are subject to change in accordance with changes to County security operating procedures.

(e) Lessee shall have a competent construction manager, satisfactory to the Building Manager ("**Contractor**"), at the Building at all times during the progress of the work. The Lessee shall ensure that the Contractor shall be familiar with and be able to read and understand plans and specifications, and be capable of communicating orally and in writing (in English) with Lessor, inspectors, and Lessee's other employees and contractors. The Lessee shall further ensure that Contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures for coordinating all portions of the work under the contract between Lessee and Contractor, except where otherwise specified herein, and for all safety and worker health programs and practices. The Lessee shall notify the Building Manager, in writing, of any proposed change in superintendence, including the reason therefor, prior to making such change. The Lessee shall ensure that Contractor must use qualified, licensed and experienced employees. The Lessee must provide the Building Manager with the

contact information and resume for the proposed superintendent a minimum of two weeks in advance of the proposed construction start date.

(f) All equipment, materials, and installation shall conform to the requirements of national, state, and local codes, laws, ordinances, rules, and regulations. When there is a conflict between the applicable code provision and items listed in this scope, the code shall control. The Lessee shall give all necessary notices, obtain all trade permits, secure all building permits (to be issued by Fairfax County in its administrative capacity) and pay all government taxes, fees, and other costs, including costs for electricity, water, gas connections, and meters. The Lessee will prepare all necessary documents, prepare and/or procure and file any necessary engineered plans, and obtain required certificates of inspection for work and deliver same to owner before request for acceptance and final payment for work. A hot work welding permit is required when any welding, soldering, or brazing with an open flame is performed onsite. All permits including but not limited to trade permits must be posted on-site and copies provided to the Building Manager prior to the commencement of work. The cost of all required inspections will be the responsibility of the Lessee.

- (i) The Lessee shall protect at all times the Lessor's property from injury or losses in connection with their contract with Lessee at all times. The Lessee shall ensure that Contractor's own work area and that of adjacent property (as provided by law and the contract documents) shall be protected from damage and use.
- (ii) The Lessee shall be required to pay for any damage to the extent caused by his/her duly authorized representatives. The Lessee is responsible for repairing or replacing any work damaged by his/her operations within thirty (30) days after notification by the Lessor's representative. If the damage causes an emergency situation or public safety hazard in the Building, as reasonably determined by Lessor, Lessor may take such actions as may be necessary to remedy the emergency and/or hazard, and Lessee shall immediately reimburse Lessor for all reasonable costs and expenses actually incurred thereby.
- (iii) It is the responsibility of the Lessee to report in writing, to the Building Manager any damages found prior to commencing any additional work at the site.

(g) The Lessee shall confine the apparatus, storage of materials, and activities of personnel on or about the premises and adjacent areas, in accordance with the law, ordinances, permits and the directions of the Building Manager.

- (i) The Lessee shall not encumber adjacent areas with construction materials or apparatuses. The work sites shall be kept in such orderly fashion as will not interfere with the progress of the work. Stored materials shall be located so as to facilitate proper inspection.

- (ii) Any stored materials shall preserve their quality and fitness for the work. When considered necessary, the materials shall be placed on wooden platforms or other hard clean surfaces and shall be placed under cover when directed by the Building Manager.

(h) Lessee must use a roofing contractor approved by the Building Manager for all temporary and permanent roof work, which approval shall not be unreasonably withheld, conditioned, or delayed.

(i) Lessor has approved all existing plans, specifications, drawings, renderings, permits, applications and descriptions provided in **Exhibit A** and no additional approval of same is necessary with the exception of (i) a crane lift plan to detail how the Facilities will be transported to the roof of the Building (“**Crane Lift Plan**”), (ii) radio frequency report and (iii) structural report which shall be certified by a structural engineer and shows approval of the proposed equipment to be affixed to the Building. The Crane Lift Plan must be submitted by Lessee or the Contractor a minimum of three (3) weeks prior to any lift, and shall address the following:

- (i) By using site photos, show what the crane will look like in the environment. Illustrate swing angles, tip heights, capacities, and ground bearing pressures.
- (ii) Provide employee training and certifications.
- (iii) Lifts exceeding 75% of the cranes stability/structural capacity chart, requiring movement of a crane carriage with the load, personnel platforms, sensitive loads (long lead time, cost), loads requiring two (or more) hooks or work over occupied facilities or work involving encroachment on public rights of way are considered “critical”. These critical lifts must be authorized in advance. Critical Crane Lift Plans, if authorized, may have to be reviewed by a professional engineer (the contractor shall budget the costs of the engineer’s review within the project budget). Additionally, a critical lift Job Hazard Analysis (“**JHA**”) shall be submitted with the Crane Lift Plan.
- (iv) Crane Lift Plans must be based on “worst case” combination of load weight with chart deductions and lift radius for a specific crane configuration in a specific location.
- (v) The Crane Lift Plan may be valid for more than one day, as long as the configuration, location, maximum expected load, and maximum expected radius do not change. Use multiple lift plans for multiple locations.
- (vi) Work that is not anticipated in the Crane Lift Plan, but may arise due to site conditions (moving equipment, loading materials onto floors, etc.) must be reviewed with the Building Manager prior to hoisting. Changes affecting

crane configuration and/or location may require the Crane Lift Plan to be amended. The Contractor must provide the following information along with the Crane Lift Plan:

- Competent / Qualified Person Designation Forms for A/D Director, Operator, Rigger, Signal Person
- Load Chart (complete with notes)
- Range Chart
- Dimension Illustration and Specifications for Crane
- Lightning and Wind Restrictions (from operators manual)
- Area (Quadrant) of Operation Diagram
- Operators License, Operators Training Information, USDOT Medical Certification, OSHA 10/30 Hour Course Completion Cards, as may be required by the project
- Jurisdictional Registration, if required
- JHA for Assembly/Disassembly of Crane, Severe Weather, Truck Load/Unload, etc.
- JHA for Power Line Encroachment
- 3rd Party Inspection Certification and Report – see Crane Lift Plan for requirements (Note: The inspector shall be certified with the Crane Certification Association of America)
- Weights of Materials
- Rigging Plan
- Logistics Plan

(vii) The following information must be provided to the Building Manager along with the Crane Lift Plan, or in connection with the proposal for other work as set forth in the previous subparagraph:

- Current certification of Crane Operator.
- Name and certification of the Lift Director. The Lift Director will be in charge of all lift operations and should be someone who is experienced and understands the tasks to be performed.
- Type of crane to be used (rubber tire, track, etc.)
- Provide a to-scale plot plan showing crane location, adjacent buildings, pipe racks, and other significant obstructions within load swing radius. Indicate direction and span of swing.
- Provide a to-scale elevation depicting crane, adjacent structures, and load.
- What is the horizontal distance from the crane center pin to the nearest structure?
- What is the minimum clearance from boom to highest point of structure during a pick?
- What is the minimum clearance from load to highest point of structure during a pick?
- What is the minimum distance from boom to load during a pick?

- Will the load or any part of the crane be over any active piping, tanks, or equipment during a pick?
- Have underground site utilities been identified and located?
- What protective measures be undertaken if outriggers are located over underground utilities?
- Describe signaling procedure – who will be responsible for signaling? Will hand or radio signals be used?

(viii) No warranty or certification of the suitability of this plan is accepted by the Lessor. It is the responsibility of the Contractor, subcontractors and the Crane Operator to ensure that they and their employees are qualified, competent, properly equipped and properly trained to perform the activities outlined in this plan.

(j) Lessor reserves the right to continue all existing uses of the Building and the Parcel. Lessor further reserves the right to make or permit any such future additional use and to make or permit any use of the Building or Parcel as Lessor deems appropriate, provided that Lessee's use of the Premises and the operation of the Facilities are not unreasonably interfered with by such future additional use.

- (i) In the event that Lessor must undertake repairs or maintenance on the roof of the Building, and Lessor estimates that work shall take more than thirty (30) minutes to complete, Lessor shall provide Lessee (unless emergency repairs are necessary, as determined by Lessor in its reasonable discretion) with at least thirty (30) business days' written notice to Lessee that its specified equipment must be made inoperative to allow Lessor's employees to access the roof and complete the repairs. In the event of repairs which will necessitate an extended outage, Lessor shall provide Lessee at least sixty (60) days notice. Lessor may allow for temporary equipment including a COW (Cell on Wheels) to be deployed at an agreed upon location to stay on air until the Facilities are operational again, provided that, in Lessor's sole discretion, such a deployment is possible without adversely impacting Lessor's maintenance, repairs or use of the Building or Parcel. If Lessor must address damage to the roof that requires emergency repairs, Lessee shall immediately de-activate its Facilities upon notice from Lessor via email or telephone of the need for such emergency repairs.
- (ii) The costs of relocating Lessee's equipment and the installation and activation of any CoW during the roof repair or renovation shall be borne by Lessee.
- (iii) The Facilities and/or specified equipment shall not be re-activated until Lessor notifies Lessee that Lessor's employees have completed the work on the roof of the Building; provided that Lessor shall use its best efforts to ensure that its employees expeditiously complete the work. Lessor shall not be responsible to Lessee for any consequential damages (including lost

profits or revenue) that occur as a result of Lessor's work and/or the de-activation of the Facilities during this period. Upon completion of all of Lessor's work, the Facilities and/or specified equipment may be reactivated and if any temporary equipment was deployed it shall then be removed.

(k) Lessee shall not (i) violate any applicable environmental laws (now or hereafter enacted), in connection with Lessee's use or occupancy of the Premises; or (ii) use, generate, release, manufacture, refine, produce, process, store, or dispose of any hazardous wastes on, under, or about the Premises, or transport to or from the Premises any Hazardous Material (as defined in Paragraph 10); except as allowed by applicable law for the use of sealed batteries for emergency back-up, any fire suppression system, small quantities of cleaning products ordinarily used by commercial businesses and fuel in Lessee's backup generator(s), if any. Lessee will be responsible for all obligations of compliance with any and all applicable environmental laws, including any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental conditions or concerns as may now or hereafter be in effect with respect to the Facilities being installed on the Premises by the Lessee. Lessee shall cure, remedy and be responsible to cure or remedy any environmental condition which is created on the Premises by Lessee. Lessee shall provide and maintain any necessary exposure notice signs. Lessor represents that it has no knowledge of any substance, chemical, waste or Hazardous Material in the Premises that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Additionally, Lessor agrees that it will not use, generate, store or dispose of any Hazardous Material on, or within the Premises in violation of any law or regulation. This paragraph shall survive the termination of this Agreement.

(l) Any modifications of the Facilities or the addition of new Facilities shall be accomplished without interfering with the use or development of the Parcel, existing as of the date of this Agreement, by Lessor or any other party and/or the necessary day to day operations of the Lessor. Promptly upon completion of the forgoing modifications or maintenance, Lessee shall, at its own cost and expense, repair any damage to the Parcel resulting from such construction, installation or maintenance.

3. Term.

(a) Subject to the terms and conditions of this Agreement, the initial term of the Lease hereby granted ("**Term**") shall be five (5) years, beginning XXXXX ("**Commencement Date**") and ending at 11:59 P.M. on XXXXX. Upon thirty (30) days written notice given by Lessee to Lessor, Lessee may terminate this Agreement if Lessee determines the Premises has become unsuitable for Lessee because (i) Lessee is unable to obtain or maintain in force all necessary governmental approvals; (ii) a material change in government regulations makes it impractical or uneconomic for Lessee to continue to operate the Facilities; (iii) interference by or to Lessee's operation cannot be resolved; or (iv) the Premises are destroyed or damaged or taken in whole or in part (by condemnation or otherwise) sufficient in Lessee's reasonable judgment to affect adversely Lessee's use of the Facilities. Notwithstanding the foregoing,

Lessee shall give written notice to Lessor to terminate this Lease within thirty (30) days after the occurrence of any of the foregoing described events which is the basis of termination.

(b) Provided that the Lessee is not then in default beyond all applicable notice, cure, and grace periods, this Lease shall automatically renew subject to the provisions of this Paragraph 3(b) for four (4) additional period of five (5) years (the “**Renewal Term**”) upon the same terms and conditions contained herein; provided, however, that the annual lease fee provided for in Paragraph 4 shall be adjusted at the commencement of each Renewal Term as provided in Paragraph 4. The Lease hereby granted shall automatically renew for each Renewal Term unless, at least ninety (90) days prior to expiration of the then-existing period, Lessee provides written notification to the other party of its intention not to permit the Lease to renew. If the Lessee provides the Lessor with such notice, the option(s) remaining shall be rendered null and void and the Lease shall terminate at the end of the then current period. Each Renewal Term shall commence upon the expiration of the immediately preceding Term or applicable Renewal Term. All references in this Agreement to the Term hereof shall include, where appropriate, all Renewal Terms so effected.

4. License Fee and Security Deposit.

- (a) Commencing upon the Commencement Date, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule:

1, 201 to 31, 201	\$30,000.00
1, 201 to 31, 201	\$30,750.00
1, 201 to 31, 201	\$31,518.75
1, 201 to 31, 202	\$32,306.72
1, 202 to 31, 202	\$33,114.39

- (b) If the License is renewed for the first (1st) Renewal Term, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule, beginning on the fifth (5th) anniversary of the Commencement Date:

1, 202 to 31, 202	\$33,942.25
1, 202 to 31, 202	\$34,790.80
1, 202 to 31, 202	\$35,660.57
1, 202 to 31, 202	\$36,552.09
1, 202 to 31, 202	\$37,465.89

- (c) If the License is renewed for the second (2nd) Renewal Term, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule, beginning on the tenth (10th) anniversary of the Commencement Date:

1, 2026 to 31, 202	\$38,402.54
1, 2027 to 31, 202	\$39,362.60
1, 2028 to 31, 202	\$40,346.66
1, 2029 to 31, 203	\$41,355.33

1, 2030 to 31, 203	\$42,389.21
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- (d) If the License is renewed for the third (3rd) Renewal Term, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule, beginning on the fifteenth (15th) anniversary of the Commencement Date:

1, 203 to 31, 203	\$43,448.94
1, 203 to 31, 203	\$44,535.17
1, 203 to 31, 203	\$45,648.55
1, 203 to 31, 203	\$46,789.76
1, 203 to 31, 20	\$47,959.51

- (e) If the License is renewed for the fourth (4th) Renewal Term, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule, beginning on the twentieth (20th) anniversary of the Commencement Date:

1, 203 to 31, 203	\$49,158.49
1, 203 to 31, 203	\$50,387.46
1, 203 to 31, 203	\$51,647.14
1, 203 to 31, 204	\$52,938.32
1, 204 to 31, 204	\$54,261.78

- (f) The first annual license fee shall be due and payable in one full payment within forty-five (45) days of the Commencement Date without notice, demand, deduction or setoff. The annual payment hereinafter shall be due on or before the anniversary of the Commencement Date. If Lessee fails to pay any installment of license fees by the fifth (5th) day of the month in which it is due, Lessee shall also pay to Lessor a late fee equal to five percent (5%) of the late payment. If any amount remains unpaid more than thirty (30) days after its due date, Lessee shall pay Lessor interest on such unpaid amount at an annual rate of ten percent (10%) from the date such amount was due until the date such amount is paid to Lessor. If at the time of assessing any late fee, the applicable interest rate exceeds that which Lessor may lawfully assess, the interest rate for that late fee shall be the maximum that the Lessor may lawfully assess.
- (g) Lessee and Lessor agree that Lessee shall not permit any other carriers on the Premises nor shall it transmit any other carrier's signal from the Premises.
- (h) Lessee agrees to pay a security deposit to the Lessor in the amount of thirty thousand and 00/100 Dollars (\$30,000.00) by the Commencement Date of this Agreement ("**Security Deposit**"). This Security Deposit shall be held in a non-interest bearing account by the Lessor and shall be returned to Lessee at the termination of the Lease, provided the Lessee has performed all obligations under this Agreement. In the event that Lessee does not remove all of the Facilities from the Premises as set forth in

Paragraph 2(d) of this Agreement, Lessor may apply all or any portion of the Security Deposit to the costs incurred by Lessor in removing the Facilities.

5. Administrative Fee.

Lessee shall pay Lessor's reasonable administrative fees for preparing, reviewing and negotiating this Agreement in the sum of Two Thousand and 00/100ths Dollars (\$2,000.00), which one-time fee shall be due and payable on the date of execution of this Agreement.

6. Modification of the Premises.

(a) Lessee shall have full responsibility and shall pay all costs for plan preparation and procurement of all necessary permits and other approvals from the appropriate governmental agencies.

(b) Before pursuing new or modified penetrations of the roof of the Building, whether or not such penetrations occur within the Leased Area or on other portions of the roof, Lessee is required to consult with and obtain the express written consent of Lessor to any new or modified penetrations. Lessee shall provide Lessor with a schedule for Lessee's construction and Lessor's inspections.

(c) From the Effective Date of this Agreement and before commencement of any modifications of the Facilities, Lessee shall submit to Lessor for Lessor's written approval, which shall not be unreasonably withheld, conditioned, delayed or denied, the following items:

- (i) a set of modification construction plans certified by a professional engineer satisfactory to Lessor which states that the modifications will be in compliance with all applicable laws, rules and regulations.
- (ii) a structural analysis report signed and stamped by a certified structural engineer affirming that the Building will sustain the loads required by the new equipment to be installed upon it.
- (iii) copies of all approved permits and governmental approvals.
- (iv) approved Department of Planning and Zoning 2232 and 6409 Application (or status letter) or administrative review.
- (v) AutoCAD plans showing the configuration of all equipment and conduit after completion of the modifications.

All of the preceding documents required to receive Lessor's approval shall be referred to as the "**Modification Documents**".

(d) After Lessee's submission of the Modification Documents, Lessor shall notify Lessee within thirty (30) days whether it deems the Modification Documents to be satisfactory.

Should the Lessor determine the Modification Documents are unsatisfactory, Lessee shall revise the Modification Documents to remedy the defects noted by Lessor and re-submit the Modification Documents for Lessor's review pursuant to this paragraph.

(e) The Modification Documents will not be considered approved until Lessor signs a consent to equipment modification letter. Lessee agrees that no modification to the Facilities will be performed until Lessor provides a signed consent to equipment modifications letter.

(f) All modifications will comply with the terms set forth in this Agreement and with all applicable laws, codes, ordinances (including the Fairfax County Zoning Ordinance as it applies to telecommunication facilities) and regulations.

(g) No damage will be done or interference committed with any equipment or structures located within the Parcel with respect to the modifications. If damage to the Parcel and/or equipment occurs then, Lessee shall within thirty (30) days repair the damage and return the Parcel to the condition existing before the damage occurred. If the modification causes damage that creates an emergency situation or public safety hazard in the Building, as reasonably determined by Lessor, Lessor may take such actions as may be necessary to remedy the emergency and/or hazard, and Lessee shall immediately reimburse Lessor for all reasonable costs and expenses actually incurred thereby.

(h) If the modification of the Facilities should require the relocation of any facilities or equipment presently located at the Premises owned by the Lessor, such facilities or equipment may be relocated by Lessee only with Lessor's prior written consent, not to be unreasonably withheld, conditioned, or delayed, and at Lessee's sole cost and expense.

(i) Notwithstanding the prior terms of this Paragraph 6, Lessee shall be permitted to make operational, maintenance, and emergency repairs without Lessor's consent so long as said maintenance and repairs do not change the size or number of antennas, or overall appearance of the structure.

7. Interference.

(a) Lessee agrees not to permit any use of the Facilities after the Commencement Date that will interfere with Lessor's operations or use of the Parcel.

(b) Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with Lessor's "Public Safety Grade" (Manufacturers High Tier) radio frequency communications equipment used by Lessor. In the event the Facilities cause such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon notification to Lessee's Authorized Representative of the interference. Lessee shall be obligated to respond to the problem of interference within four (4) hours of receipt of notification from the Lessor and if the interference is not corrected within one (1) day of receipt of notification, the Lessee shall immediately turn off the Facilities causing such interference until the Facilities can be repaired or replaced.

Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with other forms of radio frequency communications equipment existing, or previously approved on the Parcel as of the execution date of this Agreement, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. In the event the Facilities cause such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon receipt of written notification of the interference. Lessee shall be obligated to respond to the problem of interference within forty-eight (48) hours of receipt of written notice from Lessor, and if the interference is not corrected within ten (10) days of receipt of written notification (or such time as may reasonably be required with exercise of the due diligence provided such repairs are begun within said ten (10) days), the Facilities causing such interference shall be immediately removed from the Premises.

All notices under this Paragraph 7(b) shall be made to Lessee's emergency contact number at its Network Operations Center: 1-800-638-2822.

(c) Lessor will not, nor will Lessor permit its employees, tenants, lessees, invitees, agents, or independent contractors, to interfere in any way with the Facilities. The foregoing restriction shall not apply to Lessor's actions taken to ensure public safety. In the event the Lessor causes interference to the Lessee's equipment, then the Lessor will have ten (10) days to cure or such time as may reasonably be required with exercise of the due diligence provided such repairs are begun within said ten (10) days).

8. Condition of the Premises.

Lessee and Lessor acknowledge and agree that Lessee has accepted the Premises "as is" and Lessor shall have no obligation to improve or modify the Premises in any manner whatsoever.

9. Maintenance and Repairs of Facilities.

Lessee shall be responsible for all maintenance and repair of the Facilities and any appurtenant equipment or facilities of Lessee during the term of this Lease. Lessee shall promptly and diligently respond to any request by Lessor for any such maintenance or repair. Lessor will use it reasonable efforts to maintain and repair the Parcel and access thereto, and all areas of the Premises where Lessee does not have exclusive control, in good order, provided that the need for repair was not caused by Lessee or the Facilities and subject to reasonable wear and tear and damage from the elements. Lessee shall also have the affirmative duty to provide notice to Lessor of any known condition where repair or maintenance may be necessary for Lessee's operation of the Facilities.

10. Indemnification.

(a) Lessee indemnifies and holds Lessor and its agents, employees, volunteers, officers and directors harmless from and against all claims, demands, costs, losses, liabilities, fines and penalties, including but not limited to reasonable attorney's fees and costs of defense, to the extent arising from (i) the condition of the Facilities; (ii) any activities undertaken on, in, under or near the Premises by, for or at the direction of Lessee or the Lessee's agents, contractors, employees or invitees; (iii) any default or Event of Default (as defined below) by Lessee under this Agreement; and (iv) the presence, storage, use, placement, treatment, generation, transport, release or disposal on, in, under or near the Premises by Lessee or any of Lessee's Agents of (1) oil, petroleum or other hydrocarbon derivatives, additives or products, (2) hazardous wastes, (3) hazardous or toxic substances or chemicals, (4) fungicides, rodenticide or insecticides, (5) asbestos or (6) urea formaldehyde, in each case as defined by any applicable state, federal or local law, rule or regulation (collectively, "**Hazardous Material**").

(b) Lessee hereby agrees to indemnify and hold harmless Lessor, its officers, directors, agents, and all employees and volunteers from any and all claims for bodily injury, death, personal injury, theft, and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney's fees, and the cost of appeals to the extent arising out of any claims or suits that result from the errors, omissions, or negligent or willful acts of the Lessee and its subcontractors and each of their agents and employees or invitees.

11. Insurance.

(a) Lessee shall acquire, maintain and pay for commercial general liability insurance with a limit of Three Million Dollars (\$3,000,000) per occurrence for bodily injury and property damage and Six Million Dollars (\$6,000,000) general aggregate insuring against claims occurring upon the Premises and/or arising from Lessee's use thereof. Such insurance must be issued by an insurance company licensed, authorized or permitted to conduct business in the Commonwealth of Virginia and shall have a general policyholder's rating of at least A- and a Financial rating of at least VIII in the current edition of Best's Insurance Reports. Lessee shall provide Lessor an original certificate evidencing such insurance upon (i) the Commencement Date of the term of this Lease, (ii) and at any other time during the term of this Lease upon the request of the Lessor.

(b) Notwithstanding the forgoing, Lessee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. Self-Insurance or self-insured retentions must be declared to and approved by Lessor's Risk Management Division. Lessor may require the Lessee to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Lessee. In the event Lessee elects to self-insure its obligation under this Agreement to include Lessor as an additional insured, the following conditions apply: (i) Lessor shall promptly and no later than thirty (30) days after notice thereof provide Lessee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Lessee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Lessor shall not settle any such claim, demand, lawsuit, or the like without the

prior written consent of Lessee; (iii) Lessor shall fully cooperate with Lessee, at Lessee's expense in the defense of the claim, demand, lawsuit, or the like, and (iv) Lessee shall send Lessor an original certificate evidencing such insurance upon the Effective Date of the term of this Lease, upon the anniversary of the Effective Date and at any other time during the term of this Lease upon the request of the Lessor.

(c) Lessee shall carry hazard insurance or self-insurance to cover damage to or destruction of the Lessee's equipment and other property. If the Premises or Facilities are destroyed or damaged and rendered unsuitable for normal use, Lessee may terminate this Lease upon providing thirty (30) days written notice to Lessor. In such event, with the exception of liabilities that arise prior to such termination and liabilities that survive termination of the Lease as provided in Paragraph 15 herein, all rights and obligations of the parties shall cease as of the date of the damage or destruction, without further liability hereunder. Notwithstanding the foregoing, Lessee shall remain responsible for removal of its equipment and other property and for restoration of the Parcel and this provision shall not limit Lessee's obligation to restore the site to its original condition.

12. Liens.

Lessee shall promptly pay for all work, labor, services or material supplied by or on behalf of Lessee at the Premises or in connection with the Facilities. If any mechanics' or materialmen's liens shall be filed affecting the Parcel, Lessee shall cause the same to be released of record by payment, bond, court order or otherwise, within thirty (30) days after notice of filing thereof.

13. Compliance with Laws.

Lessee shall, at its expense, throughout the term of this Agreement, obtain all building permits and other governmental or quasi-governmental licenses, permits, consents and approvals required for the construction, installation, operation and use of the Facilities in compliance with all applicable laws, rules, orders, ordinances and requirements, including but not limited to, all laws, rules, orders, ordinances and requirements which relate to the Federal Aviation Administration, Federal Communications Commission, health, safety, environment or land use. In the event of Lessee's failure to comply with this paragraph, Lessor may, but is not obligated to, take such actions as may be necessary to comply with any such laws, rules, regulations, order, ordinances or requirements, and Lessee shall immediately reimburse Lessor for all reasonable costs and expenses actually incurred thereby.

14. Representations and Warranties.

Lessee represents and warrants to Lessor that (i) it is a limited liability company duly organized and validly existing under the laws of the State of Delaware, (ii) it has all corporate power and authority necessary to own its properties and conduct its business, as presently conducted, and to enter into and perform its obligations under this Agreement, (iii) the person executing this Agreement on its behalf has been duly authorized to do so, and (iv) that it has not dealt with, nor is any brokerage commission due to, any broker in connection with this Agreement.

15. Termination.

(a) Upon the expiration or earlier termination of this Agreement unless Lessee and/or Lessor are in negotiations to extend or renew the Lease and Lessor has agreed in writing to extend the time period for removal, Lessee shall remove the Facilities and any foundation from the Premises as provided in Paragraph 2(c) of this Agreement, and shall repair any damage to the Premises and associated public utility areas caused by the installation, operation or removal of the Facilities. If Lessee remains on the Premises more than sixty (60) days after the expiration or termination of this Agreement, Lessee shall pay to Lessor for such holding over a license fee per month equal to 50% of the annual installment of the license fee which accrued during the immediately preceding term. The license fee for such holding over shall remain in effect until Lessee removes the Facilities. If the Facilities are not removed within one hundred twenty (120) days after expiration or earlier termination of this Agreement, Lessor shall at its option complete the removal and restoration at the Lessee's expense. Acceptance of the license fees upon termination shall not be a waiver by Lessor of any of its other remedies at law or in equity. Paragraphs 2, 6, 10, 12 and 15 of this Agreement shall survive termination of this Agreement.

(b) Lessee may terminate upon ninety (90) days prior written notice to Lessor for any reason or no reason, at any time after the Commencement Date by Lessee, so long as Lessee pays Lessor a termination fee equal to three (3) months' License Fee at the then current rate (i.e. (Annual License Fee/12) x 3).

16. Default.

(a) If Lessee shall fail to pay when due any of the installments of the license fee provided for herein or any other sum accruing pursuant to the terms of this Agreement, and such failure shall continue for thirty (30) days after written notice from Lessor, or if Lessee shall be in default or fail to perform in a timely manner any other obligation herein provided, other than the payment of license fee installments, and such failure shall continue for forty-five (45) days after written notice from Lessor, or if a petition in bankruptcy shall be filed by or against Lessee, in bankruptcy shall be filed by or against Lessee and not dismissed within one hundred twenty (120) days, or if Lessee shall be adjudicated insolvent, or if Lessee shall make a general assignment for the benefit of its creditors, or if a receiver or trustee shall be appointed to take charge of and wind up Lessee's business, or if the Lessee abandons or vacates the Facilities for more than four (4) consecutive months prior to the termination of this Agreement, or if Lessee fails to comply with the Facility modification process as outlined in Paragraph 6, then Lessee shall be considered to have caused an event of default ("**Event of Default**"). If Lessee remains in default beyond any applicable cure period, Lessor may elect to terminate this Lease at its sole discretion and pursue its remedies hereunder, at law or in equity. All time periods set forth in this paragraph for a cure period may be extended by a mutual written agreement. In the event Lessor is in default, then Lessor has forty-five (45) days to cure default after written notice by the Tenant. If Lessor remains in default beyond any applicable cure period, Lessee may elect to terminate this Lease at its sole discretion and pursue its remedies hereunder, at law or in equity.

17. Authorized Representative

(a) Lessee and Lessor shall provide the names, titles, email addresses and direct telephone numbers of their qualified individuals employed by Lessor and Lessee (“**Authorized Representatives**”) who can, from time-to-time, and as needed, answer questions and assist in any accounting discrepancies. The Authorized Representative is:

LESSOR:

Name:	Jose Comayagua
Title:	Director, Facilities Management Department
Email Address:	Jose.Comayagua@fairfaxcounty.gov
Direct Phone Line:	703-324-2886

LESSEE:

Name:	_____
Email Address:	_____
Direct Phone Line:	_____

18. Notices.

All notices required hereunder or in respect hereof shall be in writing and shall be transmitted by postage prepaid certified mail, return receipt requested, or transmitted by overnight courier to the following addresses:

Lessor: Facilities Management Department
Attn: Assistant Director, Real Estate Services
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035

and

Office of County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035

Lessee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:1152; Cell Site Name: Chancery (VA)
Fixed Asset No: 10134945
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

and

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:1152; Cell Site Name: Chancery (VA)
Fixed Asset No: 10134945
15 East Midland Ave.
Paramus, NJ 07652

Notices shall be deemed given upon delivery or mailing by certified mail with return receipt requested thereof to the address specified above. Either party may change its address or any address for copies by giving thirty (30) days prior notice of such change in the manner described above.

19. Assignment.

(a) Lessee may, upon notice to Lessor, assign this License to any corporation, partnership or other entity which (i) is controlled by, controlling or under common control with the Lessee, (ii) shall merge or consolidate with or into Lessee, or (iii) shall succeed to all or substantially all the assets, property and business of Lessee. In all other instances, Lessee may only assign or transfer its rights and obligations upon Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Lessee shall submit any requests for any requested consents of Lessor at least sixty (60) days before any assignment of this Agreement. Upon assignment, Lessee shall furnish to the Lessor six (6) 8 ½" x 11" colored photographs of the existing conditions and six (6) 8 ½"x 11" colored photographs of the assignee's telecommunications Facilities. Photographs will show all Facilities (i.e. co-locations, antennas, equipment cabinets, fenced compounds, and/or any other related appurtenances).

(b) This Lease shall not be interpreted to create anything other than a lease and, except as otherwise provided herein, shall not create any other right, title or interest in the Parcel or Premises, nor shall it create an easement. In the event of any assignment which requires Lessor's consent, Lessee agrees that it shall remain liable for all obligations hereunder. For all other assignments, the entity to which the Lease is assigned shall be liable for all obligations of the Lessee under this Lease, regardless of whether such obligation arose before or after such assignment. Lessee may not sublease all or any portion of the Premises. No other parties are permitted use of the Premises without written permission of Lessor. Furthermore, no other party's equipment shall be permitted at the Premises without written permission of Lessor.

20. Miscellaneous.

This Lease contains the entire agreement between the parties with respect to the subject matter hereof and may not be amended except by a writing signed by the parties hereto. The invalidation of any of the provisions hereof shall not affect any of the other provisions hereof,

which shall remain in full force. This Lease shall be binding on the parties hereto and their respective successors and assigns.

21. Sale of Parcel

(a) If Lessor, at any time during the Term of the Lease, decides to sell or otherwise transfer all or any part of the Premises, or all or any part of the Parcel, to a purchaser other than Lessee, Lessor shall notify Lessee in writing. In the event of a change in ownership, transfer or sale of the Parcel, Lessor shall notify Lessee within ten (10) days of such transfer. In the event of a change in ownership, transfer or sale of the Parcel, (i) the current Lessor (assignor) shall remain legally responsible for any and all of its obligations arising under this Lease prior to such change, transfer or sale and (ii) the new Lessor (assignee) shall be responsible for any and all of its obligations arising under this Lease after such change, transfer or sale. In no case shall such change, transfer or sale relieve any Lessor of its obligations prior to the transfer but the assignor will not longer be responsible for any obligations under the Lease following said transfer to assignee as described hereunder.

(b) Lessor agrees that any future lease or license it executes with other parties for use of the Parcel will include a clause that prohibits the lessee or licensee from installing such equipment that is of the type and frequency which causes harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Lessee.

The provisions of this Paragraph shall in no way limit or impair the obligations of Lessor under the Lease, including interference and access obligations.

22. Applicable Law.

This Agreement shall be executed, constructed and enforced in accordance with the laws of the Commonwealth of Virginia, disregarding those laws pertaining to conflicts of law. The only proper jurisdiction and venue for any lawsuit arising out of or relating to this Agreement shall be the Circuit Court of Fairfax County or the United States District Court for the Eastern District of Virginia.

23. Quiet Enjoyment.

Lessor covenants that Lessee, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises, subject to the terms and conditions herein contained.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Lease Agreement for Telecommunications to be executed on the day and year first written above.

LESSOR:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY

By: _____

Name: Joseph M. Mondoro

Title: Chief Financial Officer

LESSEE:

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation

Its: Manager

By: _____

Name: _____

Its: _____

Board Agenda Item
October 16, 2018

4:30 p.m.

Public Hearing to Lease County-Owned Property at 4110 Chain Bridge Road to New Cingular Wireless PCS, LLC (Providence District)

ISSUE:

Public hearing to lease County-owned property to New Cingular Wireless PCS, LLC (AT&T) for the provision of telecommunications services for public use at the Courthouse located at 4110 Chain Bridge Road.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to lease County-owned property at 4110 Chain Bridge Road to AT&T.

TIMING:

On September 25, 2018, the Board authorized the advertisement of a public hearing on October 16, 2018 at 4:30 p.m. to lease County-owned property at 4110 Chain Bridge Road to AT&T.

BACKGROUND:

The Board of Supervisors is the owner of the Fairfax County Courthouse, also called the Jennings Judicial Center, a five-story building located at 4110 Chain Bridge Road on a County-owned parcel identified as Tax Map Number 0574 01 0014 (Courthouse). The Courthouse accommodates the Circuit, General District and Juvenile and Domestic Relations District Courts.

Telecommunications provider AT&T currently has equipment on the roof of the former public safety headquarters, commonly called the Massey Building. With the demolition of the Massey Building scheduled for 2019, AT&T approached the County about installing equipment on the roof of the Courthouse since other potential sites surrounding the Courthouse campus did not have the same topographic advantages. Since AT&T is one of the primary suppliers of teleconnectivity to public safety personnel, the continuation of AT&T's services in the area is vital to the functions of the Sheriff's Office and Fairfax County Police Department.

AT&T is proposing to install a 4-sector telecommunications facility on the roof of the Courthouse with a total of six (6) antennas. The antenna arrays will be enclosed by stealth screening that will be painted to match the color of the building's penthouse. All

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equipment cabinets will be located within an existing penthouse structure. Consequently, the total visual impact of the equipment on the community will be minimized.

The County has negotiated a lease with AT&T that has an initial term of five (5) years, with four 5-year options to extend the lease, for a total possible term of twenty-five (25) years. The rental fee for the first year will be \$30,000 and will increase annually by a fixed 2.5 percent per year. Various restrictions regarding access and security have been inserted in the lease, including a provision that all construction work must be scheduled for non-business hours, to ensure that Courthouse operations will not be disturbed by the operation and maintenance of the rooftop equipment.

Since AT&T amended the design previously approved by the Planning Commission and the Board for the Courthouse rooftop facility, § 15.2-6409 of the Code mandates that the Department of Planning and Zoning (DPZ) must review whether the revised design is in substantial conformance with the recommendations of the Comprehensive Plan. DPZ issued an administrative determination that the equipment was a “feature shown” on June 14, 2018.

FISCAL IMPACT:

The proposed monopole license will generate approximately \$30,000 in revenue the first year with a 2.5 percent increase each subsequent year. An administrative fee of \$2,000 will be paid within thirty (30) days of execution of the lease. All revenue will be deposited into the General Fund.

ENCLOSED DOCUMENTS:

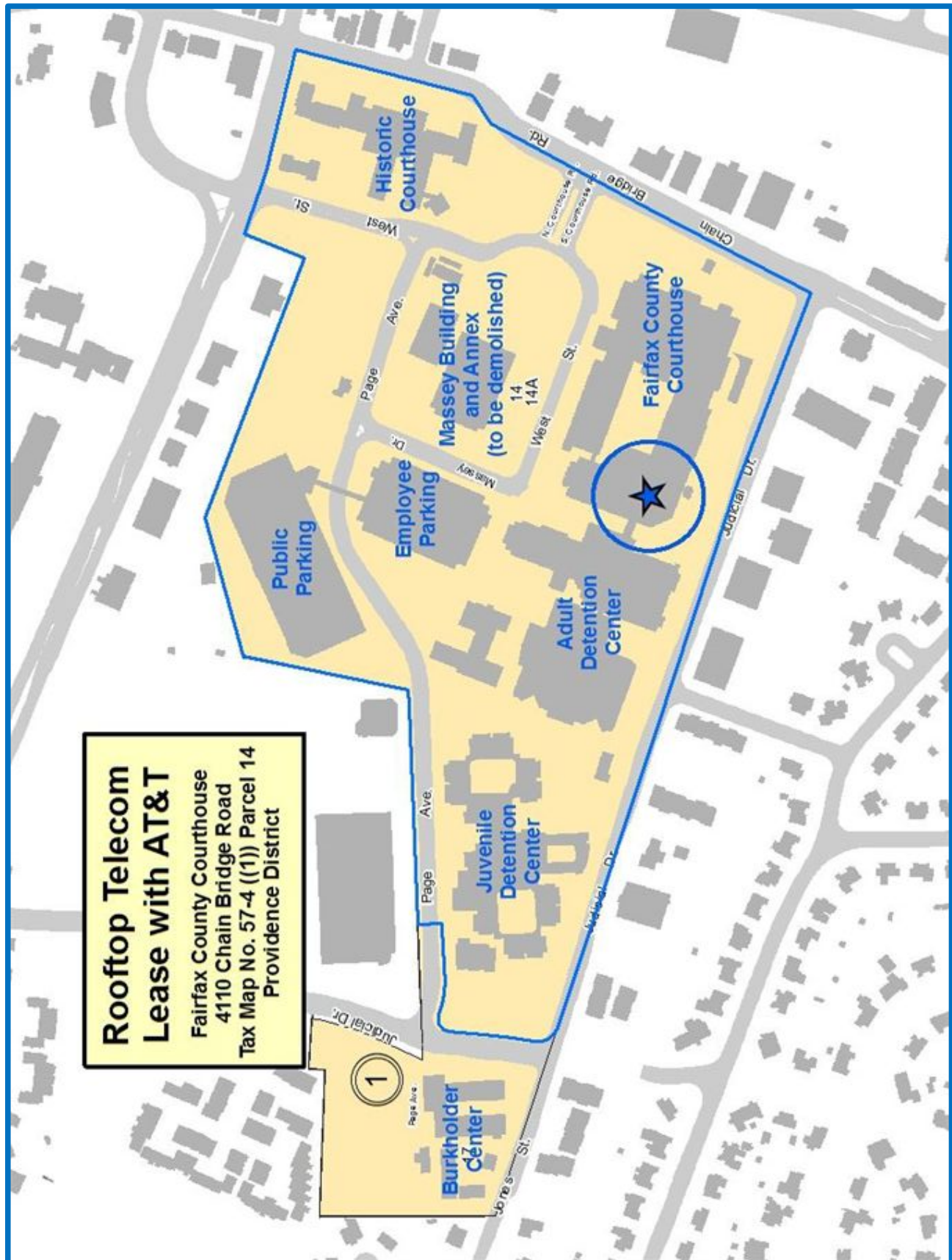
Attachment 1 – Location Map 0574 01 0014
Attachment 2 – Draft Lease Agreement

STAFF:

Joseph M. Mondoro, Chief Financial Officer
José A. Comayagua, Jr., Director, Facilities Management Department
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

Robert M. Falconi, Assistant County Attorney



ATTACHMENT 2

LEASE AGREEMENT FOR 4110 CHAIN BRIDGE ROAD BETWEEN BOARD OF SUPERVISORS OF FAIRFAX COUNTY AND NEW CINGULAR WIRELESS PCS (AT&T)

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THIS REAL PROPERTY DEED OF LEASE AGREEMENT (“Lease” and/or “Agreement”), is entered into this (the “Effective Date”), between the THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, with an address of 12000 Government Center Parkway, Fairfax, Virginia 22035 (“Lessor”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having an address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (“Lessee”), and the parties mutually agree as follows:

1. Leased Premises.

Lessor is the owner of the certain parcel of land and building ("**Building**") being and situated in the County of Fairfax, Virginia, located at 4110 Chain Bridge Road, commonly known as the Fairfax County Courthouse or Jennings Judicial Center, which is identified for reference purposes only as Tax Map No. 57-4 ((1)) Parcel 14 (the "**Parcel**"). Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, in consideration of the payment of rentals and performance of the covenants and agreements herein mentioned, approximately 88 square feet of roof space on the Building for the installation and operation of a wireless telecommunications facility, with the location as shown on **Exhibit A** attached hereto and incorporated herein by reference (the "**Premises**"). Lessee intends to install on the Premises an equipment pad, power and telephone utility pedestals, and cabinets and related cables and utility lines and a location based system, including, without limitation, coaxial cables, base units and other associated equipment and radio transmitting and receiving equipment as listed in **Exhibit B** attached hereto and incorporated herein by reference (the "**Facilities**").

2. Use of Premises.

(a) Lessor leases to Lessee the Premises for the purpose of operating the Facilities upon the Premises as described in **Exhibit A** in the configuration shown on **Exhibit A**, together with the non-exclusive use of that area between the Premises and the Lessee's sector antennas for Lessee's ice bridge, cables, conduits and pipes, in the location as shown on **Exhibit A**. Subject to compliance with all applicable laws, Lessee may at its own cost and expense, use the portion of the Premises shown on **Exhibit A** to install, operate, maintain, repair, replace, upgrade, protect and secure the Facilities, as set forth herein, or as subject to the written approval of Lessor, which will not be unreasonably withheld, conditioned, or denied at no additional cost to the Lessee. With Lessor's written consent, which will not be unreasonably withheld, conditioned, or denied, Lessor may grant, to the extent practicable and on a space available basis, the Lessee the right to enlarge the Premises so that Lessee may implement any necessary modifications, supplements, replacements, refurbishments, or expansions to the Facilities or to any equipment related thereto, or for any other reasons permitted by Lessor's written consent, which will not be unreasonably withheld, conditioned, or denied. Should Lessee exercise the right to expand the Premises and Lessor provides written consent, which will not be unreasonably withheld, conditioned, or denied, Lessee will pay and Lessor will accept as additional Rent under the Lease an amount equal to the then current Rent calculated on a per

square foot basis as multiplied by each additional square foot added to the Premises. Upon notice to Lessor, and with Lessor's written consent, which will not be unreasonably withheld, conditioned, or denied, a written description and/or depiction of the modified Premises ground will become part of the Lease without any additional action on the part of Lessee and Lessor. Without limiting Lessor's right to reasonably withhold, condition or deny such consent on other grounds, it shall be deemed reasonable for Lessor to withhold, condition or deny consent to a proposal to enlarge the Premises that would impact Building systems, create a security risk to the Building or its users, or result in additional roof penetrations.

(b) All portions of the Facilities brought onto the Premises by Lessee shall remain the Lessee's personal property and, at Lessee's option, may be removed by Lessee at any time during the term, so as long as Lessee is not in default beyond all applicable notice, cure, and grace periods. Upon the termination of the Lease, the Facilities shall be removed entirely from the Premise by the Lessee no later than ninety (90) days after the date of the termination of the Lease, unless Lessee and/or Lessor are in negotiations to extend or renew the Lease and Lessor has agreed in writing to extend the time period for removal. All Facilities shall be vacated at the Lessee's expense.

(c) Lessor grants Lessee a non-exclusive license for ingress and egress to the Premises; and a non-exclusive license to the extent of the Lessor's interest therein to any existing access roads, easements or rights of way serving the Premises for access to the Facilities for the purposes of installing, maintaining, operating, repairing, and removing the Facilities. Lessor and Lessee agree that only Lessor's agents and contractors and Lessee's agents, contractors, subcontractors, Federal Communications Commission inspectors and persons under their direct supervision will be permitted to enter the Premises.

3. Construction and Access.

(a) During all installation, modification and construction-related activities involving the Facilities or the Building, or for maintenance and repairs requiring a power outage, the Lessor's property manager for the Building ("**Building Manager**") must be present onsite at all times.

(b) Lessor has approved all existing plans, specifications, drawings, renderings, permits, applications and descriptions provided in **Exhibit A** and no additional approval of same is necessary with the exception of (i) a crane lift plan to detail how the Facilities will be transported to the roof of the Building ("**Crane Lift Plan**"), (ii) radio frequency report and (iii) structural report which shall be certified by a structural engineer and shows approval of the proposed equipment to be affixed to the Building. The Crane Lift Plan must be submitted by Lessee or the Contractor a minimum of three (3) weeks prior to any lift, and shall address the following:

- (i) By using site photos, show what the crane will look like in the environment. Illustrate swing angles, tip heights, capacities, and ground bearing pressures.
- (ii) Provide employee training and certifications.

- (iii) Lifts exceeding 75% of the cranes stability/structural capacity chart, requiring movement of a crane carriage with the load, personnel platforms, sensitive loads (long lead time, cost), loads requiring two (or more) hooks or work over occupied facilities or work involving encroachment on public rights of way are considered “critical”. These critical lifts must be authorized in advance. Critical Crane Lift Plans, if authorized, may have to be reviewed by a professional engineer (the contractor shall budget the costs of the engineer’s review within the project budget). Additionally, a critical lift Job Hazard Analysis (“JHA”) shall be submitted with the Crane Lift Plan.
- (iv) Crane Lift Plans must be based on “worst case” combination of load weight with chart deductions and lift radius for a specific crane configuration in a specific location.
- (v) The Crane Lift Plan may be valid for more than one day, as long as the configuration, location, maximum expected load, and maximum expected radius do not change, Use multiple lift plans for multiple locations.
- (vi) Work that is not anticipated in the Crane Lift Plan, but may arise due to site conditions (moving equipment, loading materials onto floors, etc.) must be reviewed with the Building Manager prior to hoisting. Changes affecting crane configuration and/or location may require the Crane Lift Plan to be amended. The Contractor must provide the following information along with the Crane Lift Plan:
 - Competent / Qualified Person Designation Forms for A/D Director, Operator, Rigger, Signal Person
 - Load Chart (complete with notes)
 - Range Chart
 - Dimension Illustration and Specifications for Crane
 - Lightning and Wind Restrictions (from operators manual)
 - Area (Quadrant) of Operation Diagram
 - Operators License, Operators Training Information, USDOT Medical Certification, OSHA 10/30 Hour Course Completion Cards, as may be required by the project
 - Jurisdictional Registration, if required
 - JHA for Assembly/Disassembly of Crane, Severe Weather, Truck Load/Unload, etc.
 - JHA for Power Line Encroachment
 - 3rd Party Inspection Certification and Report – see Crane Lift Plan for requirements (Note: The inspector shall be certified with the Crane Certification Association of America)
 - Weights of Materials
 - Rigging Plan
 - Logistics Plan

(vii) The following information must be provided to the Building Manager along with the Crane Lift Plan, or in connection with the proposal for other work as set forth in the previous subparagraph:

- Current certification of Crane Operator.
- Name and certification of the Lift Director. The Lift Director will be in charge of all lift operations and should be someone who is experienced and understands the tasks to be performed.
- Type of crane to be used (rubber tire, track, etc.)
- Provide a to-scale plot plan showing crane location, adjacent buildings, pipe racks, and other significant obstructions within load swing radius. Indicate direction and span of swing.
- Provide a to-scale elevation depicting crane, adjacent structures, and load.
- What is the horizontal distance from the crane center pin to the nearest structure?
- What is the minimum clearance from boom to highest point of structure during a pick?
- What is the minimum clearance from load to highest point of structure during a pick?
- What is the minimum distance from boom to load during a pick?
- Will the load or any part of the crane be over any active piping, tanks, or equipment during a pick?
- Have underground site utilities been identified and located?
- What protective measures be undertaken if outriggers are located over underground utilities?
- Describe signaling procedure – who will be responsible for signaling? Will hand or radio signals be used?

(viii) No warranty or certification of the suitability of this plan is accepted by the Lessor. It is the responsibility of the Contractor, subcontractors and the Crane Operator to ensure that they and their employees are qualified, competent, properly equipped and properly trained to perform the activities outlined in this plan.

(c) Subject to the County security procedures set forth below, Lessee shall have access to the Facilities under the following conditions:

- (i) Lessor's agents and contractors must use the front entrance of the Building to obtain access to the Premises.
- (ii) Lessor's agents and contractors must be accompanied by personnel from either Lessor's Facilities Management Department or the Sheriff's Office to obtain access to the Premises; however, Lessor's agents and contractors must be

accompanied by personnel from the Sheriff's Office if passage through a secured area of the Building is necessary.

- (iii) During normal business hours (Monday through Friday 8:00 a.m. – 5:00 p.m.) for routine maintenance, provided that Lessee shall give the Building Manager at least twenty-four (24) hours' prior notice of the need for access for routine maintenance.
 - (iv) Outside normal business hours (between 5:00 p.m. and 8:00 a.m. Monday through Friday, or on Saturdays, Sundays and County holidays) for any construction that involves demolition, drilling, or other noisy activities, provided that Lessee provides notice of such proposed work at least two (2) weeks in advance to the Building Manager for either approval or rejection. All other construction work shall be completed between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday.
 - (v) In the case of an emergency, Lessee shall contact the Building Manager who will provide access to the Building and Premises.
 - (vi) Any requested utility outages must be scheduled to occur on Sundays. Requests for outages shall be submitted to the Building Manager a minimum of two (2) weeks in advance of the requested date for the outage for either approval or rejection.
 - (vii) If the Sheriff's Office places the Building under lockdown as a result of a security threat, Lessor's agents and contractors shall not have access to the Building or Premises and any of Lessor's agents and contractors within the Building and/or Premises may be asked to immediately leave without gathering any equipment or personal belongings.
- (d) All contractors must park their vehicles in designated parking stalls in either the surface parking lot or the covered visitor parking garage. Contractors may not park at the loading dock for the Building.
- (e) Lessee's employees, representatives, contractors and subcontractors must pass, to the satisfaction of the Lessor and the Fairfax County Sheriff's Office, two separate criminal history checks (one overseen by security staff for Lessor and one overseen by the Fairfax County Sheriff's Office) and must display County-issued contractor identification badges while in the Building or otherwise on the Parcel.
- (i) All identification badges are required to be displayed above the beltline of each individual. Lessee's employees, representatives, contractors and subcontractors who arrive at the job site without appropriate identification badges will immediately be dismissed from the job site.
 - (ii) Lessee shall assume all costs directly and indirectly associated with obtaining the criminal history checks and the identification badges.

- (iii) All supplies, materials and equipment are subject to security inspection.
- (iv) Security access procedures are subject to change in accordance with changes to County security operating procedures.

(f) Lessee shall have a competent construction manager, satisfactory to the Building Manager (“**Contractor**”), at the Building at all times during the progress of the work. The Lessee shall ensure that the Contractor shall be familiar with and be able to read and understand plans and specifications, and be capable of communicating orally and in writing (in English) with Lessor, inspectors, and Lessee’s other employees and contractors. The Lessee shall further ensure that Contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures for coordinating all portions of the work under the contract between Lessee and Contractor, except where otherwise specified herein, and for all safety and worker health programs and practices. The Lessee shall notify the Building Manager, in writing, of any proposed change in superintendence, including the reason therefor, prior to making such change. The Lessee shall ensure that Contractor must use qualified, licensed and experienced employees. The Lessee must provide the Building Manager with the contact information and resume for the proposed superintendent a minimum of two (2) weeks in advance of the proposed construction start date.

(g) All equipment, materials, and installation shall conform to the requirements of national, state, and local codes, laws, ordinances, rules, and regulations. When there is a conflict between the code and items listed in this scope, the applicable code provision shall control. The Lessee shall give all necessary notices, obtain all trade permits, secure all building permits (to be issued by Fairfax County in its administrative capacity) and pay all government taxes, fees, and other costs, including costs for electricity, water, gas connections, and meters. The Lessee will prepare all necessary documents, prepare and/or procure and file any necessary engineered plans, and obtain required certificates of inspection for work and deliver same to owner before request for acceptance and final payment for work. A hot work welding permit is required when any welding, soldering, or brazing with an open flame is performed onsite. All permits including but not limited to trade permits must be posted on-site and copies provided to the Building Manager prior to the commencement of work. The cost of all required inspections will be the responsibility of the Lessee.

- (i) The Lessee shall protect at all times the Lessor's property from injury or losses in connection with their contract with Lessee. The Lessee shall ensure that Contractor’s own work area and that of adjacent property (as provided by law and the contract documents) shall be protected from damage and use.
- (ii) The Lessee shall be required to pay for any damage to the extent caused by his/her duly authorized representatives. The Lessee is responsible for repairing or replacing any work damaged by his/her operations within thirty (30) days after notification by the Lessor's representative. If the damage causes an emergency situation or public safety hazard in the Building, as reasonably determined by Lessor, Lessor may take such actions as may be necessary to remedy the

emergency and/or hazard, and Lessee shall immediately reimburse Lessor for all reasonable costs and expenses actually incurred thereby.

- (iii) It is the responsibility of the Lessee to report in writing to the Building Manager any damages found prior to commencing any additional work at the site.

(h) The Lessee shall confine the apparatus, storage of materials, and activities of personnel on or about the premises and adjacent areas, in accordance with the law, ordinances, permits and the directions of the Building Manager.

- (i) The Lessee shall not encumber adjacent areas with construction materials or apparatuses. The work sites shall be kept in such orderly fashion as will not interfere with the progress of the work. Stored materials shall be located so as to facilitate proper inspection.

- (ii) Any stored materials shall preserve their quality and fitness for the work. When considered necessary, the materials shall be placed on wooden platforms or other hard clean surfaces and shall be placed under cover when directed by the Building Manager.

(i) Lessee must use a roofing contractor approved by the Building Manager for all temporary and permanent roof work, which approval shall not be unreasonably withheld, conditioned, or delayed.

(j) Lessor reserves the right to continue all existing uses of the Building and the Parcel. Lessor further reserves the right to make or permit any such future additional use and to make or permit any use of the Building or Parcel as Lessor deems appropriate, provided that Lessee's use of the Premises and the operation of the Facilities are not unreasonably interfered with by such future additional use.

- (i) In the event that Lessor must undertake repairs or maintenance on the roof of the Building, and Lessor estimates that work shall take more than thirty (30) minutes to complete, Lessor shall provide Lessee (unless emergency repairs are necessary, as determined by Lessor in its reasonable discretion) with at least thirty (30) business days' written notice to Lessee that its specified equipment must be made inoperative to allow Lessor's employees to access the roof and complete the repairs. In the event of repairs which will necessitate an extended outage, Lessor shall provide Lessee at least sixty (60) days' notice when possible. Lessor may allow for temporary equipment including a CoW (Cell on Wheels) to be deployed at an agreed upon location to stay on air until the Facilities are operational again, provided that, in Lessor's sole discretion, such a deployment is possible without adversely impacting Lessor's maintenance, repairs or use of the Building or Parcel. If Lessor must address damage to the roof that requires emergency repairs, Lessee shall immediately de-activate its Facilities upon notice from Lessor via email or telephone of the need for such emergency repairs.

- (ii) The costs of relocating Lessee's equipment and the installation and activation of any CoW during the roof repair or renovation shall be borne by Lessee.
- (iii) The Facilities and/or specified equipment shall not be re-activated until Lessor notifies Lessee that Lessor's employees have completed the work on the roof of the Building; provided that Lessor shall use its best efforts to ensure that its employees expeditiously complete the work. Lessor shall not be responsible to Lessee for any consequential damages (including lost profits or revenue) that occur as a result of Lessor's work and/or the de-activation of the Facilities during this period. Upon completion of all of Lessor's work, the Facilities and/or specified equipment may be reactivated and if any temporary equipment was deployed it shall then be removed.

(k) Lessee shall not connect the Facilities or any other equipment to the generators and/or emergency systems of the Building. Lessee shall seek approval from Lessor and the Sheriff's Office for (i) the placement of portable generator(s) at the Property and (ii) the surface location(s) of these generator(s), and Lessor and the Sheriff's Office may each decide to grant or withhold such approval in its sole discretion.

(l) Lessee shall not (i) violate any applicable environmental laws (now or hereafter enacted), in connection with Lessee's use or occupancy of the Premises; or (ii) use, generate, release, manufacture, refine, produce, process, store, or dispose of any hazardous wastes on, under, or about the Premises, or transport to or from the Premises any Hazardous Material (as defined in Paragraph 11); except as allowed by applicable law for the use of sealed batteries for emergency back-up, any fire suppression system, small quantities of cleaning products ordinarily used by commercial businesses and fuel in Lessee's backup generator(s), if any. Lessee will be responsible for all obligations of compliance with any and all applicable environmental laws, including any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental conditions or concerns as may now or hereafter be in effect with respect to the Facilities being installed on the Premises by the Lessee. Lessee shall cure, remedy and be responsible to cure or remedy any environmental condition which is created on the Premises by Lessee. Lessee shall provide and maintain any necessary exposure notice signs. Lessor represents that it has no knowledge of any substance, chemical, waste or Hazardous Material in the Premises that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Additionally, Lessor agrees that it will not use, generate, store or dispose of any Hazardous Material on, or within the Premises in violation of any law or regulation. This paragraph shall survive the termination of this Agreement.

(m) Any modifications of the Facilities or the addition of new Facilities shall be accomplished without interfering with the use or development of the Parcel, existing as of the date of this Agreement, by Lessor or any other party and/or the necessary day to day operations of the Lessor. Promptly upon completion of the forgoing modifications or maintenance by Lessee, Lessee shall, at its own cost and expense, repair any damage to the Parcel resulting from such construction, installation or maintenance.

4. Term.

(a) Subject to the terms and conditions of this Agreement, the initial term of the Lease hereby granted (“**Term**”) shall be five (5) years, beginning XXXXX (“**Commencement Date**”) and ending at 11:59 P.M. on XXXXX. Upon thirty (30) days written notice given by Lessee to Lessor, Lessee may terminate this Agreement if Lessee determines the Premises has become unsuitable for Lessee because (i) Lessee is unable to obtain or maintain in force all necessary governmental approvals; (ii) a material change in government regulations makes it impractical or uneconomic for Lessee to continue to operate the Facilities; (iii) interference by or to Lessee’s operation cannot be resolved; or (iv) the Premises are destroyed or damaged or taken in whole or in part (by condemnation or otherwise) sufficient in Lessee’s reasonable judgment to affect adversely Lessee’s use of the Facilities. Notwithstanding the foregoing, Lessee shall give written notice to Lessor to terminate this Lease within thirty (30) days after the occurrence of any of the foregoing described events which is the basis of termination.

(b) Provided that the Lessee is not then in default beyond all applicable notice, cure, and grace periods, this Lease shall automatically renew subject to the provisions of this Paragraph 4(b) for four (4) additional period of five (5) years (the “**Renewal Term**”) upon the same terms and conditions contained herein; provided, however, that the annual lease fee provided for in Paragraph 5 shall be adjusted at the commencement of each Renewal Term as provided in Paragraph 5. The Lease hereby granted shall automatically renew for each Renewal Term unless, at least ninety (90) days prior to expiration of the then-existing period, Lessee provides written notification to the other party of its intention not to permit the Lease to renew. If the Lessee provides the Lessor with such notice, the option(s) remaining shall be rendered null and void and the Lease shall terminate at the end of the then current period. Each Renewal Term shall commence upon the expiration of the immediately preceding Term or applicable Renewal Term. All references in this Agreement to the Term hereof shall include, where appropriate, all Renewal Terms so effected.

5. License Fee and Security Deposit.

(a) Commencing upon the Commencement Date, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule:

1, 201 to 31, 201	\$30,000.00
1, 201 to 31, 201	\$30,750.00
1, 201 to 31, 201	\$31,518.75
1, 201 to 31, 202	\$32,306.72
1, 202 to 31, 202	\$33,114.39

(b) If the License is renewed for the first (1st) Renewal Term, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule, beginning on the fifth (5th) anniversary of the Commencement Date:

1, 202 to 31, 202	\$33,942.25
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1, 202 to 31, 202	\$34,790.80
1, 202 to 31, 202	\$35,660.57
1, 202 to 31, 202	\$36,552.09
1, 202 to 31, 202	\$37,465.89

- (c) If the License is renewed for the second (2nd) Renewal Term, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule, beginning on the tenth (10th) anniversary of the Commencement Date:

1, 2026 to 31, 202	\$38,402.54
1, 2027 to 31, 202	\$39,362.60
1, 2028 to 31, 202	\$40,346.66
1, 2029 to 31, 203	\$41,355.33
1, 2030 to 31, 203	\$42,389.21

- (d) If the License is renewed for the third (3rd) Renewal Term, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule, beginning on the fifteenth (15th) anniversary of the Commencement Date:

1, 203 to 31, 203	\$43,448.94
1, 203 to 31, 203	\$44,535.17
1, 203 to 31, 203	\$45,648.55
1, 203 to 31, 203	\$46,789.76
1, 203 to 31, 20	\$47,959.51

- (e) If the License is renewed for the fourth (4th) Renewal Term, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with the following schedule, beginning on the twentieth (20th) anniversary of the Commencement Date:

1, 203 to 31, 203	\$49,158.49
1, 203 to 31, 203	\$50,387.46
1, 203 to 31, 203	\$51,647.14
1, 203 to 31, 204	\$52,938.32
1, 204 to 31, 204	\$54,261.78

- (f) The first annual license fee shall be due and payable in one full payment within forty-five (45) days of the Commencement Date without notice, demand, deduction or setoff. The annual payment hereinafter shall be due on or before the anniversary of the Commencement Date. If Lessee fails to pay any installment of license fees by the fifth (5th) day of the month in which it is due, Lessee shall also pay to Lessor a late fee equal to five percent (5%) of the late payment. If any amount remains unpaid more than thirty (30) days after its due date, Lessee shall pay Lessor interest on such unpaid amount at an annual rate of ten percent (10%) from the date such amount was due until the date such amount is paid to Lessor. If at the time of assessing any late fee, the

applicable interest rate exceeds that which Lessor may lawfully assess, the interest rate for that late fee shall be the maximum that the Lessor may lawfully assess.

- (g) Lessee and Lessor agree that Lessee shall not permit any other carriers on the Premises nor shall it transmit any other carrier's signal from the Premises.
- (h) Lessee agrees to pay a security deposit to the Lessor in the amount of thirty thousand and 00/100 Dollars (\$30,000.00) by the Commencement Date of this Agreement ("**Security Deposit**"). This Security Deposit shall be held in a non-interest bearing account by the Lessor and shall be returned to Lessee at the termination of the Lease, provided the Lessee has performed all obligations under this Agreement. In the event that Lessee does not remove all of the Facilities from the Premises as set forth in Paragraph 2(d) of this Agreement, Lessor may apply all or any portion of the Security Deposit to the costs incurred by Lessor in removing the Facilities.

6. Administrative Fee.

Lessee shall pay Lessor's reasonable administrative fees for preparing, reviewing and negotiating this Agreement in the sum of Two Thousand and 00/100ths Dollars (\$2,000.00), which one-time fee shall be due and payable on the date of execution of this Agreement.

7. Modification of the Premises.

(a) Lessee shall have full responsibility and shall pay all costs for plan preparation and procurement of all necessary permits and other approvals from the appropriate governmental agencies.

(b) Before pursuing new or modified penetrations of the roof of the Building, whether or not such penetrations occur within the Leased Area or on other portions of the roof, Lessee is required to consult with and obtain the express written consent of Lessor to any new or modified penetrations. Lessee shall provide Lessor with a schedule for Lessee's construction and Lessor's inspections.

(c) From the Effective Date of this Agreement and before commencement of any modifications of the Facilities, Lessee shall submit to Lessor for Lessor's written approval, which shall not be unreasonably withheld, conditioned, delayed or denied, the following items:

- (i) a set of modification construction plans certified by a professional engineer satisfactory to Lessor which states that the modifications will be in compliance with all applicable laws, rules and regulations.
- (ii) a structural analysis report signed and stamped by a certified structural engineer affirming that the Building will sustain the loads required by the new equipment to be installed upon it.
- (iii) copies of all approved permits and governmental approvals.

- (iv) approved Department of Planning and Zoning 2232 and 6409 Application (or status letter) or administrative review.
- (v) AutoCAD plans showing the configuration of all equipment and conduit after completion of the modifications.

All of the preceding documents required to receive Lessor's approval shall be referred to as the "**Modification Documents**".

(d) After Lessee's submission of the Modification Documents, Lessor shall notify Lessee within thirty (30) days whether it deems the Modification Documents to be satisfactory. Should the Lessor determine the Modification Documents are unsatisfactory, Lessee shall revise the Modification Documents to remedy the defects noted by Lessor and re-submit the Modification Documents for Lessor's review pursuant to this paragraph.

(e) The Modification Documents will not be considered approved until Lessor signs a consent to equipment modification letter. Lessee agrees that no modification to the Facilities will be performed until Lessor provides a signed consent to equipment modifications letter.

(f) All modifications will comply with the terms set forth in this Agreement and with all applicable laws, codes, ordinances (including the Fairfax County Zoning Ordinance as it applies to telecommunication facilities) and regulations.

(g) No damage will be done or interference committed with any equipment or structures located within the Parcel with respect to the modifications. If damage to the Parcel and/or equipment occurs then, Lessee shall within thirty (30) days repair the damage and return the Parcel to the condition existing before the damage occurred. If the modification causes damage that creates an emergency situation or public safety hazard in the Building, as reasonably determined by Lessor, Lessor may take such actions as may be necessary to remedy the emergency and/or hazard, and Lessee shall immediately reimburse Lessor for all reasonable costs and expenses actually incurred thereby.

(h) If the modification of the Facilities should require the relocation of any facilities or equipment presently located at the Premises owned by the Lessor, such facilities or equipment may be relocated by Lessee only with Lessor's prior written consent, not to be unreasonably withheld, conditioned, or delayed, and at Lessee's sole cost and expense.

(i) Notwithstanding the prior terms of this Paragraph 7, Lessee shall be permitted to make operational, maintenance, and emergency repairs without Lessor's consent so long as said maintenance and repairs do not change the size or number of antennas, or overall appearance of the structure.

8. Interference.

(a) Lessee agrees not to permit any use of the Facilities after the Commencement Date that will interfere with Lessor's operations or use of the Parcel.

(b) Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with Lessor's "Public Safety Grade" (Manufacturers High Tier) radio frequency communications equipment used by Lessor. In the event the Facilities cause such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon notification to Lessee's Authorized Representative of the interference. Lessee shall be obligated to respond to the problem of interference within four (4) hours of receipt of notification from the Lessor and if the interference is not corrected within one (1) day of receipt of notification, the Lessee shall immediately turn off the Facilities causing such interference until the Facilities can be repaired or replaced.

Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with other forms of radio frequency communications equipment existing, or previously approved on the Parcel as of the execution date of this Agreement, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. In the event the Facilities cause such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon receipt of written notification of the interference. Lessee shall be obligated to respond to the problem of interference within forty-eight (48) hours of receipt of written notice from Lessor, and if the interference is not corrected within ten (10) days of receipt of written notification (or such time as may reasonably be required with exercise of the due diligence provided such repairs are begun within said ten (10) days), the Facilities causing such interference shall be immediately removed from the Premises.

All notices under this Paragraph 8(b) shall be made to Lessee's emergency contact number at its Network Operations Center: 1-800-638-2822.

(c) Lessor will not, nor will Lessor permit its employees, tenants, lessees, invitees, agents, or independent contractors, to interfere in any way with the Facilities. The foregoing restriction shall not apply to Lessor's actions taken to ensure public safety. In the event the Lessor causes interference to the Lessee's equipment, then the Lessor will have ten (10) days to cure or such time as may reasonably be required with exercise of the due diligence provided such repairs are begun within said ten (10) days).

9. Condition of the Premises.

Lessee and Lessor acknowledge and agree that Lessee has accepted the Premises "as is" and Lessor shall have no obligation to improve or modify the Premises in any manner whatsoever.

10. Maintenance and Repairs of Facilities.

Lessee shall be responsible for all maintenance and repair of the Facilities and any appurtenant equipment or facilities of Lessee during the term of this Lease. Lessee shall

promptly and diligently respond to any request by Lessor for any such maintenance or repair. Lessor will use it reasonable efforts to maintain and repair the Parcel and access thereto, and all areas of the Premises where Lessee does not have exclusive control, in good order, provided that the need for repair was not caused by Lessee or the Facilities and subject to reasonable wear and tear and damage from the elements. Lessee shall also have the affirmative duty to provide notice to Lessor of any known condition where repair or maintenance may be necessary for Lessee's operation of the Facilities.

11. Indemnification.

(a) Lessee indemnifies and holds Lessor and its agents, employees, volunteers, officers and directors harmless from and against all claims, demands, costs, losses, liabilities, fines and penalties, including but not limited to reasonable attorney's fees and costs of defense, to the extent arising from (i) the condition of the Facilities; (ii) any activities undertaken on, in, under or near the Premises by, for or at the direction of Lessee or the Lessee's agents, contractors, employees or invitees; (iii) any default or Event of Default (as defined below) by Lessee under this Agreement; and (iv) the presence, storage, use, placement, treatment, generation, transport, release or disposal on, in, under or near the Premises by Lessee or any of Lessee's Agents of (1) oil, petroleum or other hydrocarbon derivatives, additives or products, (2) hazardous wastes, (3) hazardous or toxic substances or chemicals, (4) fungicides, rodenticide or insecticides, (5) asbestos or (6) urea formaldehyde, in each case as defined by any applicable state, federal or local law, rule or regulation (collectively, "**Hazardous Material**").

(b) Lessee hereby agrees to indemnify and hold harmless Lessor, its officers, directors, agents, and all employees and volunteers from any and all claims for bodily injury, death, personal injury, theft, and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney's fees, and the cost of appeals to the extent arising out of any claims or suits that result from the errors, omissions, or negligent or willful acts of the Lessee and its subcontractors and each of their agents and employees or invitees.

12. Insurance.

(a) Lessee shall acquire, maintain and pay for commercial general liability insurance with a limit of Three Million Dollars (\$3,000,000) per occurrence for bodily injury and property damage and Six Million Dollars (\$6,000,000) general aggregate insuring against claims occurring upon the Premises and/or arising from Lessee's use thereof. Such insurance must be issued by an insurance company licensed, authorized or permitted to conduct business in the Commonwealth of Virginia and shall have a general policyholder's rating of at least A- and a Financial rating of at least VIII in the current edition of Best's Insurance Reports. Lessee shall provide Lessor an original certificate evidencing such insurance upon (i) the Commencement Date of the term of this Lease, (ii) and at any other time during the term of this Lease upon the request of the Lessor.

(b) Notwithstanding the forgoing, Lessee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. Self-Insurance or self-insured retentions must be declared to and approved by Lessor's Risk Management Division.

Lessor may require the Lessee to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Lessee. In the event Lessee elects to self-insure its obligation under this Agreement to include Lessor as an additional insured, the following conditions apply: (i) Lessor shall promptly and no later than thirty (30) days after notice thereof provide Lessee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Lessee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Lessor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Lessee; (iii) Lessor shall fully cooperate with Lessee, at Lessee's expense in the defense of the claim, demand, lawsuit, or the like, and (iv) Lessee shall send Lessor an original certificate evidencing such insurance upon the Effective Date of the term of this Lease, upon the anniversary of the Effective Date and at any other time during the term of this Lease upon the request of the Lessor.

(c) Lessee shall carry hazard insurance or self-insurance to cover damage to or destruction of the Lessee's equipment and other property. If the Premises or Facilities are destroyed or damaged and rendered unsuitable for normal use, Lessee may terminate this Lease upon providing thirty (30) days written notice to Lessor. In such event, with the exception of liabilities that arise prior to such termination and liabilities that survive termination of the Lease as provided in Paragraph 15 herein, all rights and obligations of the parties shall cease as of the date of the damage or destruction, without further liability hereunder. Notwithstanding the foregoing, Lessee shall remain responsible for removal of its equipment and other property and for restoration of the Parcel and this provision shall not limit Lessee's obligation to restore the site to its original condition.

13. Liens.

Lessee shall promptly pay for all work, labor, services or material supplied by or on behalf of Lessee at the Premises or in connection with the Facilities. If any mechanics' or materialmen's liens shall be filed affecting the Parcel, Lessee shall cause the same to be released of record by payment, bond, court order or otherwise, within thirty (30) days after notice of filing thereof.

14. Compliance with Laws.

Lessee shall, at its expense, throughout the term of this Agreement, obtain all building permits and other governmental or quasi-governmental licenses, permits, consents and approvals required for the construction, installation, operation and use of the Facilities in compliance with all applicable laws, rules, orders, ordinances and requirements, including but not limited to, all laws, rules, orders, ordinances and requirements which relate to the Federal Aviation Administration, Federal Communications Commission, health, safety, environment or land use. In the event of Lessee's failure to comply with this paragraph, Lessor may, but is not obligated to, take such actions as may be necessary to comply with any such laws, rules, regulations, order, ordinances or requirements, and Lessee shall immediately reimburse Lessor for all reasonable costs and expenses actually incurred thereby.

15. Representations and Warranties.

Lessee represents and warrants to Lessor that (i) it is a limited liability company duly organized and validly existing under the laws of the State of Delaware, (ii) it has all corporate power and authority necessary to own its properties and conduct its business, as presently conducted, and to enter into and perform its obligations under this Agreement, (iii) the person executing this Agreement on its behalf has been duly authorized to do so, and (iv) that it has not dealt with, nor is any brokerage commission due to, any broker in connection with this Agreement.

16. Termination.

(a) Upon the expiration or earlier termination of this Agreement unless Lessee and/or Lessor are in negotiations to extend or renew the Lease and Lessor has agreed in writing to extend the time period for removal, Lessee shall remove the Facilities and any foundation from the Premises as provided in Paragraph 2(c) of this Agreement, and shall repair any damage to the Premises and associated public utility areas caused by the installation, operation or removal of the Facilities. If Lessee remains on the Premises more than sixty (60) days after the expiration or termination of this Agreement, Lessee shall pay to Lessor for such holding over a license fee per month equal to 50% of the annual installment of the license fee which accrued during the immediately preceding term. The license fee for such holding over shall remain in effect until Lessee removes the Facilities. If the Facilities are not removed within one hundred twenty (120) days after expiration or earlier termination of this Agreement, Lessor shall at its option complete the removal and restoration at the Lessee's expense. Acceptance of the license fees upon termination shall not be a waiver by Lessor of any of its other remedies at law or in equity. Paragraphs 3, 7, 11, 13 and 16 of this Agreement shall survive termination of this Agreement.

(b) Lessee may terminate upon ninety (90) days prior written notice to Lessor for any reason or no reason, at any time after the Commencement Date by Lessee, so long as Lessee pays Lessor a termination fee equal to three (3) months' License Fee at the then current rate (i.e. (Annual License Fee/12) x 3).

17. Default.

(a) If Lessee shall fail to pay when due any of the installments of the license fee provided for herein or any other sum accruing pursuant to the terms of this Agreement, and such failure shall continue for thirty (30) days after written notice from Lessor, or if Lessee shall be in default or fail to perform in a timely manner any other obligation herein provided, other than the payment of license fee installments, and such failure shall continue for forty-five (45) days after written notice from Lessor, or if a petition in bankruptcy shall be filed by or against Lessee, in bankruptcy shall be filed by or against Lessee and not dismissed within one hundred twenty (120) days, or if Lessee shall be adjudicated insolvent, or if Lessee shall make a general assignment for the benefit of its creditors, or if a receiver or trustee shall be appointed to take

charge of and wind up Lessee's business, or if the Lessee abandons or vacates the Facilities for more than four (4) consecutive months prior to the termination of this Agreement, or if Lessee fails to comply with the Facility modification process as outlined in Paragraph 7, then Lessee shall be considered to have caused an event of default ("**Event of Default**"). If Lessee remains in default beyond any applicable cure period, Lessor may elect to terminate this Lease at its sole discretion and pursue its remedies hereunder, at law or in equity. All time periods set forth in this paragraph for a cure period may be extended by a mutual written agreement. In the event Lessor is in default, then Lessor has forty-five (45) days to cure default after written notice by the Tenant. If Lessor remains in default beyond any applicable cure period, Lessee may elect to terminate this Lease at its sole discretion and pursue its remedies hereunder, at law or in equity.

18. Authorized Representative

(a) Lessee and Lessor shall provide the names, titles, email addresses and direct telephone numbers of their qualified individuals employed by Lessor and Lessee ("**Authorized Representatives**") who can, from time-to-time, and as needed, answer questions and assist in any accounting discrepancies. The Authorized Representative is:

LESSOR:

Name:	Jose Comayagua
Title:	Director, Facilities Management Department
Email Address:	Jose.Comayagua@fairfaxcounty.gov
Direct Phone Line:	703-324-2886

LESSEE:

Name:	_____
Email Address:	_____
Direct Phone Line:	_____

19. Notices.

All notices required hereunder or in respect hereof shall be in writing and shall be transmitted by postage prepaid certified mail, return receipt requested, or transmitted by overnight courier to the following addresses:

<u>Lessor:</u>	Facilities Management Department Attn: Assistant Director, Real Estate Services 12000 Government Center Parkway, Suite 424 Fairfax, VA 22035
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and

Office of County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035

Lessee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:1152; Cell Site Name: Chancery (VA)
Fixed Asset No: 10134945
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

and

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:1152; Cell Site Name: Chancery (VA)
Fixed Asset No: 10134945
15 East Midland Ave.
Paramus, NJ 07652

Notices shall be deemed given upon delivery or mailing by certified mail with return receipt requested thereof to the address specified above. Either party may change its address or any address for copies by giving thirty (30) days prior notice of such change in the manner described above.

20. Assignment.

(a) Lessee may, upon notice to Lessor, assign this Lease to any corporation, partnership or other entity which (i) is controlled by, controlling or under common control with the Lessee, (ii) shall merge or consolidate with or into Lessee, or (iii) shall succeed to all or substantially all the assets, property and business of Lessee. In all other instances, Lessee may only assign or transfer its rights and obligations upon Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Lessee shall submit any requests for any requested consents of Lessor at least sixty (60) days before any assignment of this Agreement. Upon assignment, Lessee shall furnish to the Lessor six (6) 8 ½" x 11" colored photographs of the existing conditions and six (6) 8 ½"x 11" colored photographs of the assignee's telecommunications Facilities. Photographs will show all Facilities (i.e. co-locations, antennas, equipment cabinets, fenced compounds, and/or any other related appurtenances).

(b) This Lease shall not be interpreted to create anything other than a lease and, except as otherwise provided herein, shall not create any other right, title or interest in the Parcel or Premises, nor shall it create an easement. In the event of any assignment which requires Lessor's consent, Lessee agrees that it shall remain liable for all obligations hereunder. For all other assignments, the entity to which the Lease is assigned shall be liable for all obligations of the Lessee under this Lease, regardless of whether such obligation arose before or after such

assignment. Lessee may not sublease all or any portion of the Premises. No other parties are permitted use of the Premises without written permission of Lessor. Furthermore, no other party's equipment shall be permitted at the Premises without written permission of Lessor.

21. Miscellaneous.

This Lease contains the entire agreement between the parties with respect to the subject matter hereof and may not be amended except by a writing signed by the parties hereto. The invalidation of any of the provisions hereof shall not affect any of the other provisions hereof, which shall remain in full force. This Lease shall be binding on the parties hereto and their respective successors and assigns.

22. Sale of Parcel

(a) If Lessor, at any time during the Term of the Lease, decides to sell or otherwise transfer all or any part of the Premises, or all or any part of the Parcel, to a purchaser other than Lessee, Lessor shall notify Lessee in writing. In the event of a change in ownership, transfer or sale of the Parcel, Lessor shall notify Lessee within ten (10) days of such transfer. In the event of a change in ownership, transfer or sale of the Parcel, (i) the current Lessor (assignor) shall remain legally responsible for any and all of its obligations arising under this Lease prior to such change, transfer or sale and (ii) the new Lessor (assignee) shall be responsible for any and all of its obligations arising under this Lease after such change, transfer or sale. In no case shall such change, transfer or sale relieve any Lessor of its obligations prior to the transfer but the assignor will no longer be responsible for any obligations under the Lease following said transfer to assignee as described hereunder.

(b) Lessor agrees that any future lease or license it executes with other parties for use of the Parcel will include a clause that prohibits the lessee or licensee from installing such equipment that is of the type and frequency which causes harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Lessee.

The provisions of this Paragraph shall in no way limit or impair the obligations of Lessor under the Lease, including interference and access obligations.

23. Applicable Law.

This Agreement shall be executed, constructed and enforced in accordance with the laws of the Commonwealth of Virginia, disregarding those laws pertaining to conflicts of law. The only proper jurisdiction and venue for any lawsuit arising out of or relating to this Agreement shall be the Circuit Court of Fairfax County or the United States District Court for the Eastern District of Virginia.

24. Quiet Enjoyment.

Lessor covenants that Lessee, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises, subject to the terms and conditions herein contained.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Lease Agreement for Telecommunications to be executed on the day and year first written above.

LESSOR:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY

By: _____

Name: Joseph M. Mondoro

Title: Chief Financial Officer

LESSEE:

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation

Its: Manager

By: _____

Name: _____

Its: _____

Board Agenda Item
October 16, 2018

4:30 p.m.

Public Hearing to Lease County-Owned Property at the I-95 Landfill to Washington Metropolitan Area Transit Authority (Mount Vernon District)

ISSUE:

Public hearing to lease County-owned property adjacent to a radio tower to Washington Metropolitan Area Transit Authority (WMATA) for the provision of telecommunications services for its emergency safety network.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to lease County-owned property at the I-95 Landfill to WMATA.

TIMING:

On September 25, 2018, the Board authorized the advertisement of a public hearing on October 16, 2018, at 4:30 p.m., to lease County-owned property at the I-95 Landfill to WMATA.

BACKGROUND:

The Board of Supervisors is the owner of a 485-foot radio tower (Tower) located at the I-95 Landfill on a County-owned parcel with an address of 9850 Furnace Road and identified by Tax Map Parcel Number 1131 01 0014. Completed in July 2000, the Tower is a part of the County's Public Safety Radio System, providing portable coverage for the County's Police, Fire and Rescue, Emergency Management, Sheriff, Health and Animal Control Departments. A fenced, 576-square-foot shelter contains the equipment cabinets and a separately fenced compound encloses the propane gas tanks used as fuel for the backup emergency generators. Prince William County and Washington Gas have also co-located telecommunications facilities at the property.

WMATA is a tri-jurisdictional government agency that operates transit service in the greater Washington DC area. To enhance the range and reliability of its public safety radio network, WMATA approached the County about establishing a telecommunications facility at the Tower. The proposed facility will consist of four (4) antennas mounted on the Tower structure itself, with two at the 325' level and two at the 350' level. WMATA will secure its equipment cabinets in a new 400-square-foot pre-fabricated building situated between the existing shelter and the tank area and will install an additional propane gas tank for the supply of its backup generator. The existing fences will be extended to create one large enclosed compound.

WMATA has negotiated a lease with the County that has an initial term of ten (10) years, with two 5-year options to extend the lease, for a total possible term of twenty

Board Agenda Item
October 16, 2018

(20) years. The annual rental fee for the first year will be \$24,000, and will increase by a fixed 3 percent per year.

FISCAL IMPACT:

The proposed monopole license will generate approximately \$24,000 in revenue the first year with a 3.0 percent increase each subsequent year. An administrative fee of \$2,000 will be paid within thirty (30) days of execution of the lease. All revenue will be deposited into the General Fund.

ENCLOSED DOCUMENTS:

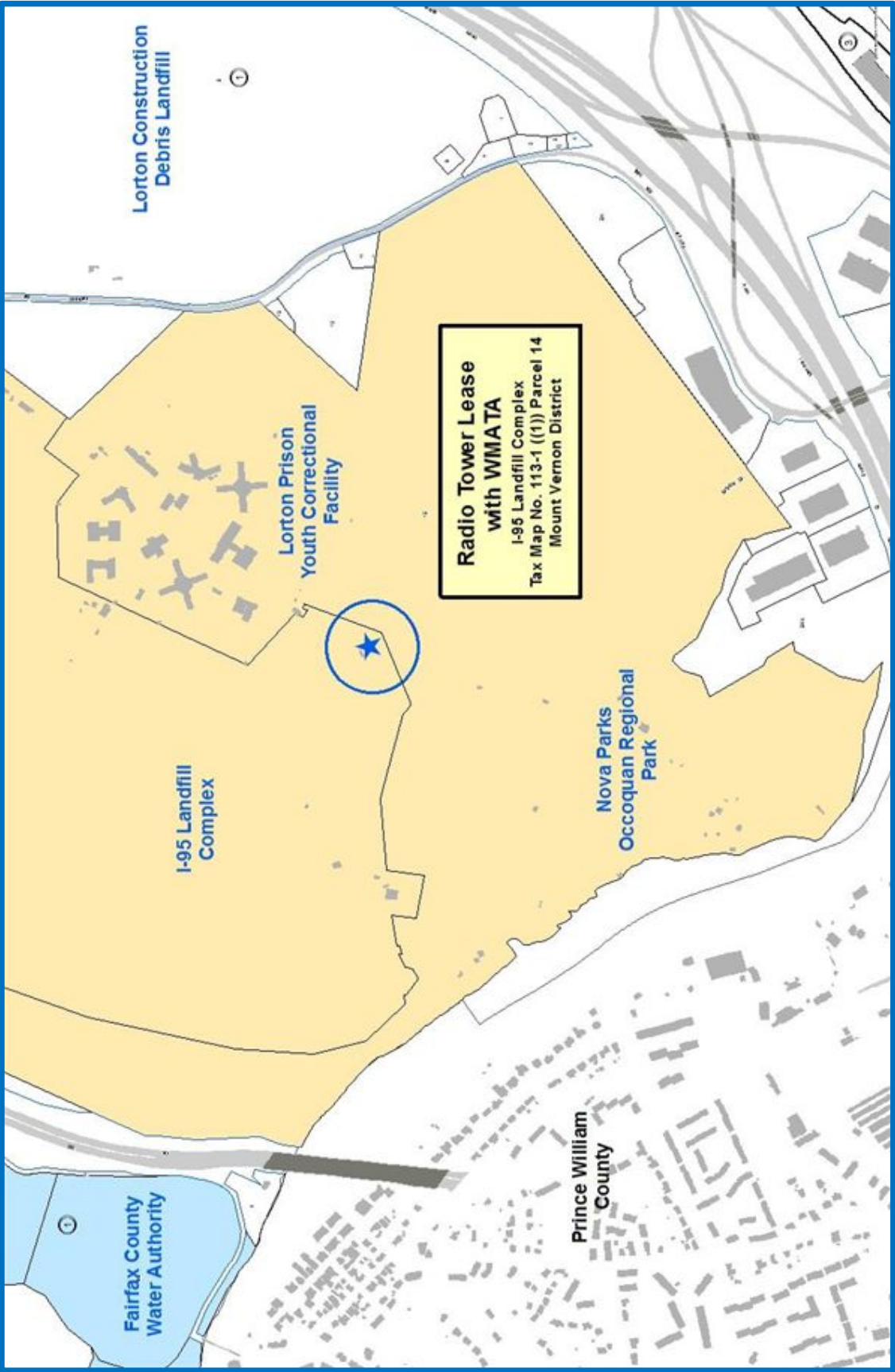
Attachment 1 – Location Map 1131 01 0014
Attachment 2 – Draft Lease Agreement

STAFF:

Joseph M. Mondoro, Chief Financial Officer
Wanda M. Gibson, Director, Department of Information Technology
James W. Patterson, Director, Department of Public Works and Environmental Services
José A. Comayagua, Jr., Director, Facilities Management Department
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney



LEASE AGREEMENT FOR RADIO TOWER SITE

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THIS LEASE AGREEMENT ("Lease"), is entered into this ____ day of _____, 2018 (the **"Effective Date"**), between the **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY**, with an address of 12000 Government Center Parkway, Fairfax, Virginia 22035 (**"Lessor"**), and **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of the District of Columbia Board of Commissioners adopted November 16, 1966, having an address of 600 5th Street, NW, Washington, DC 20001 (**"Lessee"**), and the parties mutually agree as follows:

Whereas, Lessee intends to co-locate on the radio tower located on the Parcel described below to enhance the capabilities of its Emergency Network, and

Whereas, Lessee desires to lease from the Lessor the Premises described below for the purpose of the operations as further described in this Lease;

NOW THEREFORE, in consideration of the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Leased Premises.

Lessor is the owner of a parcel of land located at 9850 Furnace Road, Lorton in Fairfax County, Virginia and referred to among the Tax Map records of Fairfax County as 113-1 ((1)) Parcel 14, and in Deed Book 13116, Page 2200 hereinafter referred to as the **"Parcel"**. A portion of the Parcel that constitutes approximately 400 square feet of ground space is delineated **"Premises"** on the attached **Exhibit C** and is hereinafter referred to as the **"Premises"**. Lessor is willing to permit Lessee to use the Premises for the purposes and in accord with the terms and conditions set forth in this Lease. Lessee will install and operate its Facilities, as defined below, on the Premises.

"Facilities," as used herein, means Lessee's wireless communications facility, which includes an equipment pad, generator, power and telephone utility pedestals, and cabinets and related cables and utility lines and a location based system, including without limitation, coaxial cables, base units and other associated antennas, equipment, cables, accessories and improvements, as more specifically described on **Exhibit A** and **Exhibit C** attached hereto.

2. Use of Premises.

(a) Lessor leases to Lessee the Premises for the purpose of operating the Facilities upon the Premises as described in **Exhibit A** in the configuration shown on **Exhibit C**. Subject to compliance with all laws, Lessee may at its own cost and expense, use the portion of the Premises shown on **Exhibit C** to install, operate, maintain, repair, replace, protect and secure the Facilities, as set forth herein.

(b) Lessor grants to Lessee, subject to all conditions herein, including but not limited to Paragraph 6, the right to install and operate underground electric lines from Lessee's meter to the Facilities and communication lines from the termination point of the communication utilities supplying communication service to the Facilities as shown on **Exhibit C**. Lessee acknowledges it or any third party granted an easement pursuant to Lessee's use of the Premises will file the necessary application to seek utility easements and pay all fees for such in a separate process through the Planning Division of the Department of Planning and Zoning.

(c) All portions of the Facilities brought onto the Premises by Lessee shall remain the Lessee's personal property and, at Lessee's option, may be removed by Lessee at any time during the term, so as long as Lessee is not in default. Upon the termination of the Lease, the Facilities and any foundation shall be removed entirely from the Premises by the Lessee no later than one hundred and eighty (180) days after the date of the termination of the Lease. Lessee shall verify and confirm in writing that all public service corporations and communication utility company(s) that were granted easements pursuant to Lessee's use of the Premises to have equipment on the Premises have been removed at the Lessee's expense and Lessee shall restore the Premises to an open area to the reasonable satisfaction of Lessor and which is free of any equipment, foundations, concrete mounting pads, grounding devices, utility connections which may have been graded and seeded. All such easements and Facilities shall be vacated at the Lessee's expense.

(d) Lessor grants Lessee a non-exclusive license for ingress and egress to the Premises as shown on **Exhibit C**; and a non-exclusive license to the extent of the Lessor's interest therein to any existing access roads, easements or rights of way serving the Premises for access to the Facilities for the purposes of installing, maintaining, operating, repairing, and removing the Facilities. Subject to the foregoing, Lessee shall have twenty-four (24) hour a day, seven (7) day a week access to the Premises and the Facilities for maintenance, unscheduled repairs and other emergencies.

(e) Except for the Premises (as shown in **Exhibit C**), Lessor reserves the right to continue all existing uses of the Parcel. Lessor further reserves the right to make or permit any such future additional use and to make or permit any use of the Parcel as Lessor deems appropriate, provided that Lessee's use of the Premises and the operation of the Facilities are not unreasonably interfered with by such future additional use.

(f) Lessee shall not (i) violate any environmental laws (now or hereafter enacted), in connection with Lessee's use or occupancy of the Premises; or (ii) use, generate, release, manufacture, refine, produce, process, store, or dispose of any hazardous wastes on, under, or about the Premises, or transport to or from the Premises any Hazardous Material (as defined in Paragraph 10); except as allowed by applicable law for the use of sealed batteries for emergency back-up, any fire suppression system, small quantities of cleaning products ordinarily used by commercial businesses and fuel in Lessee's backup generator(s), if any. Lessee will be responsible for all obligations of compliance with any and all environmental laws, including any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental conditions or concerns as may now or hereafter be in effect with respect to

the Facilities being installed on the Premises by the Lessee. Lessee shall cure, remedy and be responsible to cure or remedy any environmental condition which is created on the Premises by Lessee. Lessor represents that it has no knowledge of any substance, chemical, waste or Hazardous Material in the Premises that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Additionally, Lessor agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. This paragraph shall survive the termination of this Agreement. Lessor and Lessee acknowledge that Covanta Fairfax, Inc, occupies a portion of the Parcel and operates the Fairfax County Resource Recovery Facility on behalf of Lessor

(g) Any modifications of the Facilities or the addition of new Facilities shall be accomplished without interfering with the use or development of the Parcel, existing as of the date of this Agreement, by Lessor or any other party and/or the necessary day to day operations of the Lessor. Promptly upon completion of the forgoing modifications or maintenance, Lessee shall, at its own cost and expense, repair any damage to the Parcel resulting from such construction, installation or maintenance.

3. Term.

(a) Subject to the terms and conditions of this Agreement, the initial term of the License hereby granted ("**Term**") shall commence on the date that is the later to occur of (i) Fairfax County Board approval of the transaction contemplated herein or (2) October 1, 2018 ("**Commencement Date**") and ending at 11:59 P.M. on June 30, 2028. Upon thirty (30) days written notice given by Lessee to Lessor, Lessee may terminate this Agreement if Lessee determines the Premises has become unsuitable for Lessee because (i) Lessee is unable to obtain or maintain in force all necessary Governmental Approvals (as hereinafter defined); (ii) a material change in government regulations makes it impractical or uneconomic for Lessee to continue to operate the Facilities; (iii) interference by or to Lessee's operation that cannot be resolved; or (iv) the Premises are destroyed or damaged or taken in whole or in part (by condemnation or otherwise) sufficient in Lessee's reasonable judgment to affect adversely Lessee's use of the Facilities. Notwithstanding the foregoing, Lessee shall give written notice to Lessor to terminate this License within thirty (30) days after the occurrence of any of the foregoing described events that are the basis of termination.

(b) Provided that the Lessee does not breach any of the terms, conditions, covenants, representations or warranties set forth in this Agreement, this License shall automatically renew subject to the provisions of this Paragraph 3(b) for two (two) additional period of five (5) years (the "**Renewal Terms**") upon the same terms and conditions contained herein; provided, however, that the annual lease fee provided for in Paragraph 4 shall be adjusted at the commencement of each Renewal Term as provided in Paragraph 4. The License hereby granted shall automatically renew for each Renewal Term unless, at least sixty (60) days prior to expiration of the then-existing period, Lessee provides written notification to Lessor of its intention not to renew the License. If Lessee provides Lessor with such notice, the option(s) remaining shall be rendered null and void and the License shall terminate at the end of the then-current period. Each Renewal Term shall commence upon the expiration of the

immediately preceding Term or applicable Renewal Term. All references in this Agreement to the Term hereof shall include, where appropriate, all Renewal Terms so effected.

4. License Fee.

(a) Commencing upon the Commencement Date, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with **Exhibit B**, attached hereto and made a part hereof.

(b) If the License is renewed for the Renewal Terms, Lessee shall pay to Lessor a non-refundable annual license fee in accordance with **Exhibit B**.

(c) The first annual license fee shall be due and payable in one full payment on or before the Commencement Date without notice, demand, deduction or setoff. The annual payment hereinafter shall be due on or before the anniversary of the Commencement Date. If Lessee fails to pay any installment of license fees by the twenty-fifth (25th) day of the month in which it is due, Lessee shall also pay to Lessor a late fee equal to five percent (5%) of the late payment. If any amount remains unpaid more than thirty (30) days after its due date, Lessee shall pay Lessor interest on such unpaid amount at an annual rate of ten percent (10%) from the date such amount was due until the date such amount is paid to Lessor. If at the time of assessing any late fee, the applicable interest rate exceeds that which Lessor may lawfully assess, the interest rate for that late fee shall be the maximum that the Lessor may lawfully assess.

(d) Lessee and Lessor agree that Lessee shall not permit any other carriers on the Premises nor shall it transmit any other carrier's signal from the Premises.

5. Administrative Fee.

Lessee shall pay Lessor's reasonable administrative fees for preparing, reviewing and negotiating this Agreement in the sum of Two Thousand and 00/100ths Dollars (\$2,000.00), which shall be due and payable on August 1, 2018.

6. Modification of the Premises.

(a) Lessor will approve all existing plans, specifications, drawings, renderings, permits, applications and descriptions provided in **Exhibit C** and no additional approval of same is necessary with the exception of a structural report which shall be certified by a structural engineer and show approval of the proposed equipment to be affixed to the radio tower. Said approved structural report shall be submitted prior to the Commencement Date.

(b) Lessee shall have full responsibility and shall pay all costs for plan preparation and procurement of all necessary permits and other approvals from the appropriate governmental agencies.

(c) From the Effective Date of this Agreement and before commencement of any modifications of the Facilities, Lessee shall submit to Lessor for Lessor's written approval, which approval shall not be unreasonably withheld, conditioned, delayed or denied, the following:

- (i) a set of modification construction plans certified by a professional engineer satisfactory to Lessor which states that the modifications will be in compliance with all applicable laws, rules and regulations.
- (ii) a structural analysis report signed and stamped by a certified structural engineer affirming that any proposed modifications to the existing telecommunications tower will sustain the loads required by the equipment to be installed upon it.
- (iii) copies of all approved permits and governmental approvals.
- (iv) approved Department of Planning and Zoning 6409 Application (or status letter) or administrative review.

All of the preceding documents required to receive Lessor's approval shall be referred to as the "**Modification Documents**".

(d) After Lessee's submission of the Modification Documents, Lessor shall notify Lessee within thirty (30) days whether it deems the Modification Documents to be satisfactory. Should the Lessor determine the Modification Documents are unsatisfactory, Lessee shall revise the Modification Documents to remedy the defects noted by Lessor and re-submit the Modification Documents for Lessor's review pursuant to this paragraph.

(e) The Modification Documents will not be considered approved until Lessor signs a "Consent to Equipment Modification" in a form reasonably determined by Lessor. Lessee agrees that no modification to the Facilities will be performed until Lessor provides a signed Consent to Equipment Modifications letter, which will not be unreasonably withheld or delayed.

(f) All modifications will comply with the terms set forth in this Agreement and with all applicable laws, codes, ordinances (including the Fairfax County Zoning Ordinance as it applies to telecommunication facilities) and regulations.

(g) No damage will be done or interference committed with any equipment or structures located within the Parcel with respect to the modifications. If damage to the Parcel and/or equipment occurs then, Lessee shall within thirty (30) days repair the damage and return the Parcel to the condition existing before the damage occurred.

(h) If the modification of the Facilities should require the relocation of any facilities or equipment presently located at the Premises owned by the Lessor, such facilities or equipment may be relocated by Lessee only with Lessor's prior written consent and at Lessee's sole cost and expense.

(i) Notwithstanding the prior terms of this Paragraph 6, Lessee shall be permitted to make operational, maintenance, and emergency repairs without Lessor's consent so long as said maintenance and repairs do not change the size or number of antennas, or overall appearance of the structure.

7. Interference.

(a) Lessee agrees not to permit any use of the Facilities after the Commencement Date that will interfere with Lessor's operations or use of the Parcel.

(b) Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with Lessor's "Public Safety Grade" (Manufacturers High Tier) radio frequency communications equipment used by Lessor. In the event the Facilities cause such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon notification to Lessee's Authorized Representative of the interference. Lessee shall be obligated to respond to the problem of interference within twenty-four (24) hours of receipt of electronic notification from the Lessor and if the interference is not corrected within three (3) days of receipt of notification, the Lessee shall immediately turn off the Facilities causing such interference until the Facilities can be repaired or replaced.

Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with other forms of radio frequency communications equipment existing, or previously approved on the Parcel as of the execution date of this Agreement. In the event the Facilities cause such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon receipt of written notification of the interference. Lessee shall be obligated to respond to the problem of interference within forty-eight (48) hours of receipt of written notice from Lessor, and if the interference is not corrected within five (5) days of receipt of written notification (or such time as may reasonably be required with exercise of the due diligence provided such repairs are begun within said five (5) days), the Facilities causing such interference shall be immediately removed from the Premises.

8. Condition of the Premises.

Lessee and Lessor acknowledge and agree that Lessee has accepted the Premises "as is" and Lessor shall have no obligation to improve or modify the Premises in any manner whatsoever.

9. Maintenance and Repairs of Facilities.

Lessee shall be responsible for all maintenance and repair of the Facilities and any appurtenant equipment or facilities of Lessee during the term of this Agreement. Lessee shall promptly and diligently respond to any request by Lessor for any such maintenance or repair.

10. Indemnification.

Not applicable.

11. Insurance.

(a) WMATA is self-insured.

(b) Lessee shall require its contractors, if any, to acquire, maintain and pay for commercial liability insurance against claims for personal injury, including bodily injury or death, and property damage, occurring upon the Premises and arising from Lessee's contractor's use thereof. Insurance shall provide coverage of at least Two Million Dollars (\$2,000,000) combined single limit for both bodily injury and property damage, shall name Lessor as an additional insured, and shall provide that it may not be canceled without at least forty-five (45) days prior written notice to Lessor, and shall otherwise be reasonably satisfactory to Lessor. Such insurance may be included within the coverage of a blanket or umbrella policy, and must be issued by an insurance company licensed in the Commonwealth of Virginia and shall have a general policyholder's rating of at least A and a Financial rating of at least VIII in the current edition of Best's Insurance Reports. Lessee's contractor shall provide Lessor an original certificate evidencing such insurance prior to the commencement of any work on the Premises by Lessee's contractor, if any.

(c) In the event of damage to or destruction of the Facilities, neither Lessee nor Lessor shall have any obligation to restore, replace or rebuild the Facilities for any reason. If the Premises or Facilities are destroyed or damaged and rendered unsuitable for normal use, Lessee may terminate this Agreement upon providing thirty (30) days written notice to Lessor. In such event, with the exception of liabilities that arise prior to such termination and liabilities that survive termination of the Agreement as provided in Paragraph 15 herein, all rights and obligations of the parties shall cease as of the date of the damage or destruction, without further liability hereunder. Notwithstanding the foregoing, Lessee shall remain responsible for removal of its equipment and other property and for restoration of the Parcel as set forth in Section 2(c) and this provision shall not limit Lessee's obligation to restore the site.

12. Liens.

Lessee shall promptly pay for all work, labor, services or material supplied by or on behalf of Lessee at the Premises or in connection with the Facilities. If any mechanics' or materialmen's liens shall be filed affecting the Parcel, Lessee shall cause the same to be released of record by payment, bond, court order or otherwise, within thirty (30) days after notice of filing thereof.

13. Compliance with Laws.

Lessee shall, at its expense, throughout the term of this Agreement, obtain all building permits and other governmental or quasi-governmental licenses, permits, consents and approvals required for the construction, installation, operation and use of the Facilities in

compliance with all applicable laws, rules, orders, ordinances and requirements, including but not limited to, all laws, rules, orders, ordinances and requirements which relate to the Federal Aviation Administration, Federal Communications Commission, health, safety, environment or land use.

14. Representations and Warranties.

(a) Lessee represents and warrants to Lessor that it is (i) a regional body corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of the District of Columbia Board of Commissioners adopted November 16, 1966, and (ii) it has all corporate power and authority necessary to own its properties and conduct its business, as presently conducted, and to enter into and perform its obligations under this Agreement.

(b) Lessee and Lessor each represents and warrants to the other party that (i) the person executing this Agreement on its behalf has been duly authorized to do so, and (ii) that it has not dealt with, nor is any brokerage commission due to, any broker in connection with this Agreement.

15. Termination.

Upon the expiration or earlier termination of this Agreement, Lessee shall remove the Facilities and any foundation from the Premises as provided in Paragraph 2(c) of this Agreement, and shall repair any damage to the Premises and associated public utility areas caused by the installation, operation or removal of the Facilities. If Lessee remains on the premises more than ninety (90) days after the expiration or termination of this Agreement, Lessee shall pay to Lessor for such holding over a license fee per month equal to 50% of the annual installment of the license fee which accrued during the immediately preceding term. The license fee for such holding over shall remain in effect until Lessee removes the Facilities. If the Facilities are not removed within one hundred twenty (120) days after expiration or earlier termination of this Agreement, Lessor shall at its option complete the removal and restoration at the Lessee's expense. Acceptance of the license fees upon termination shall not be a waiver by Lessor of any of its other remedies at law or in equity. Paragraphs 6, 11, 13 and 16 of this Agreement shall survive termination of this Agreement.

16. Default.

(a) If Lessee shall fail to pay when due any of the installments of the license fee provided for herein or any other sum accruing pursuant to the terms of this Agreement, and such failure shall continue for ten (10) days after written notice from Lessor, or if Lessee shall be in default or fail to perform in a timely manner any other obligation herein provided, other than the payment of license fee installments, and such failure shall continue for thirty (30) days after written notice from Lessor, or if a petition in bankruptcy shall be filed by or against Lessee, or if Lessee shall be adjudicated insolvent, or if Lessee shall make a general assignment for the benefit of its creditors, or if a receiver or trustee shall be appointed to take charge of and wind up Lessee's business, or if the Lessee abandons or vacates the Facilities for more than four (4)

consecutive months prior to the termination of this Agreement, then Lessee shall be considered to have caused an event of default ("**Event of Default**") hereunder and Lessor may elect to terminate this Agreement at its sole discretion and pursue its remedies hereunder, at law or in equity.

(b) Lessor and Lessee agree that Lessee's failure to comply with the Facility modification process as outlined in Paragraph 6 will be considered an Event of Default and Lessor may terminate this Agreement at its sole discretion and pursue its remedies at law or in equity.

17. Authorized Representative

(a) Lessee and Lessor shall provide the names, titles, email addresses and direct telephone numbers of their qualified individuals employed by Lessor and Lessee ("**Authorized Representatives**") who can, from time-to-time, and as needed, answer questions and assist in any accounting discrepancies. The Authorized Representative is:

LESSOR:

Name:	Kaylynn Kingery
Title:	Leasing Manager
Email Address:	Kaylynn.kingery@fairfaxcounty.gov
Direct Phone Line:	703-324-2836

LESSEE:

Name:	Anabela Talaia
Email Address:	atalaia@wmata.com
Direct Phone Line:	202-962-1588

18. Notices.

All notices required hereunder or in respect hereof shall be in writing and shall be transmitted by postage prepaid certified mail, return receipt requested, delivered by hand, or transmitted by overnight courier to the following addresses:

Lessor:

Fairfax, Virginia
Attn: Leasing Manager
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035

And

County Attorney's Office
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035

Lessee:

Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001
Attention: Director of Real Estate and Parking

With copy to:

Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001
Attention: General Counsel

Notices given in connection with this License shall be in writing and shall be sent by: (a) registered or certified mail, return receipt requested; (b) hand delivery; (c) a nationally recognized overnight courier service for next business day delivery. Notices and other communications shall be deemed to have been given on the date of actual receipt. Refusal to accept delivery or inability to make delivery because the intended recipient has not provided a correct or current address shall constitute receipt as of the time of attempted delivery. Either party may change its address or any address for copies by giving ten (10) days prior notice of such change in the manner described above.

19. Miscellaneous.

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and may not be amended except by a writing signed by the parties hereto. The invalidation of any of the provisions hereof shall not affect any of the other provisions hereof, which shall remain in full force.

20. Applicable Law.

This Agreement shall be executed, constructed and enforced in accordance with the laws of the Commonwealth of Virginia, however, to the extent that said jurisdiction's law(s) conflict(s) with the WMATA Compact (Public Law 89-774, 80 Stat 1324, as amended), WMATA shall be governed by the WMATA Compact. The only proper jurisdiction and venue for any lawsuit arising out of or relating to this Agreement shall be the United States District Court for the Eastern District of Virginia.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Lease Agreement for Telecommunications to be executed on the day and year first written above.

WITNESS OR ATTEST:

LESSOR:

**BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA**

_____(SEAL)

By: _____

Name:

Title: Deputy County Executive

WITNESS OR ATTEST:

LESSEE:

**WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY**



By:  _____

Name: Anabela Talaia

Title: Contracting Officer

Approved as to form and legal sufficiency:



Kermit Welch
Chief Counsel

EXHIBIT A

SITE IMPROVEMENTS

1. Install 12'x34' Pre-fab shelter w/50KW Generator and Foundation
2. Install 1000 Gallon LP Tank and Foundation
3. Electrical Service (120/240 VAC 200A) & Isolation Transformer to Shelter
4. Telco/Fiber to Shelter – TBD
5. Ice Bridge and R56 Grounding
6. Install 2 RF Transmit Antennas (model SC412-HF2LDF(D02-E5765) at 325'
7. Install 2 RF Receive Antenna (model SC412-HF2LDF(D00-E5765) w TTA at 350'
8. 2 GPS Antennas at Ice Bridge
9. Install Seeding/Stone/Geotextile/Herbicide
10. Install Fire Protection-FM-200
11. Install Fence
12. Demolition, Excavation & Earthwork

EXHIBIT B
LEASE FEE SCHEDULE

9850 Furnace Road, Lorton, Fairfax County, Virginia

Lease Fee Escalation

103%

Term Period	Years	Annual Rent
Initial Term	Year 1	\$ 24,000.00
	Year 2	\$ 24,720.00
	Year 3	\$ 25,461.60
	Year 4	\$ 26,225.45
	Year 5	\$ 27,012.21
	Year 6	\$ 27,822.58
	Year 7	\$ 28,657.26
	Year 8	\$ 29,516.97
	Year 9	\$ 30,402.48
	Year 10	\$ 31,314.56
Renewal Term 1	Year 11	\$ 32,253.99
	Year 12	\$ 33,221.61
	Year 13	\$ 34,218.26
	Year 14	\$ 35,244.81
	Year 15	\$ 36,302.15
Renewal Term 2	Year 16	\$ 37,391.22
	Year 17	\$ 38,512.95
	Year 18	\$ 39,668.34
	Year 19	\$ 40,858.39
	Year 20	\$ 42,084.15



CLARKNEXSEN

WMATA 700MHZ METRO AREA RADIO SYSTEM (MARS)

LORTON LANDFILL

LORTON

9850 FURNACE ROAD

LORTON, VA 22079



MOTOROLA
SOLUTIONS

HICAPS

35% SUBMITTAL
NOT FOR CONSTRUCTION
03-30-18

A & E CONSULTING TEAM		PROJECT SUMMARY		INDEX OF DRAWINGS	
ARCHITECTURE AND ENGINEERING: CLARK NEXSEN 1111 E. MAIN STREET, SUITE 1905 RICHMOND, VA 23219 CONTACT: STUART PATTERSON, PE TELEPHONE: (804) 644-4690 MOBILE: (703) 328-8574 EMAIL: spatterson@clarknexsen.com CONSTRUCTION SERVICES: HICAPS, INC 600 NORTH REGIONAL ROAD GREENSBORO, NC 27409 CONTACT: COKE SMITH CONSTRUCTION MANAGER TELEPHONE: (336) 665-1234 MOBILE: (434) 270-5571 EMAIL: coke@hicaps.com PRIME CONTRACTOR: MOTOROLA SOLUTIONS, INC 8200 PROFESSIONAL PLACE SUITE 110 HYATTSVILLE, MD 20785 CONTACT: WES JONES PROGRAM DIRECTOR TELEPHONE: (410)-913-5897 MOBILE: Wes.jones@motorolasolutions.com EMAIL: OWNER: WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY 8200 PROFESSIONAL PLACE SUITE 107 HYATTSVILLE, MD 20785 CONTACT: ALLEN WONDER PROJECT MANAGER TELEPHONE: (202)-962-1743 MOBILE: (443)-963-4313 EMAIL: ajwonder@wmata.com		PROPERTY OWNER: BOARD OF SUPERVISORS FAIRFAX COUNTY 12000 GOVERNMENT CENTER PKWY SUITE 533 FAIRFAX, VA 22035 BUILDING OWNER: FAIRFAX COUNTY CORPORATION CONTACT: MICHAEL LAMBERT (571) 220-2251 PROJECT INFO: SITE NAME: LORTON LANDFILL LOCATION NAME: LORTON APPLICANT INFORMATION: HICAPS 600 NORTH REGIONAL ROAD GREENSBORO, NC 27409 CONTACT: TOM SMITHEY TELEPHONE: (336) 665-1234 FAX NUMBER: (336) 339-8629 PROJECT DATA: ZONING: RC (RES CONSERVATION 1DU/SAC) TAX MAP#: 1131 01 0014 ACREAGE: 489.766 JURISDICTION: FAIRFAX COUNTY SITE TYPE: COLLOCATION GEOGRAPHIC COORDINATES: LATITUDE: 38° 40' 59.84" N (NAD 83) LONGITUDE: 77° 14' 44.7" W (NAD 83) ADA COMPLIANCE: FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. SITE WILL NOT BE SERVED BY CITY SEWER OR WATER.		GENERAL G0001 GENERAL INFORMATION CIVIL C0101 DEMO SITE PLAN C0102 NEW WORK SITE PLAN C0103 UTILITY PLAN AND DETAILS C0201 TOWER ELEVATION	

SITE LOCATION
PLACE WILLIAM

DIRECTIONS FROM 600 5TH STREET NW, WASHINGTON, D.C.:
HEAD SOUTH ON 5TH ST NW TOWARD F ST NW. TURN LEFT ONTO F ST NW. TURN RIGHT ONTO 3RD ST NW. TURN LEFT TO MERGE ONTO I-395 S. MERGE ONTO I-395 S. KEEP RIGHT TO STAY ON I-395 S. KEEP LEFT TO STAY ON I-395 S. TAKE EXIT 7 TOWARD SHIRLINGTON. KEEP LEFT AT THE FORK. FOLLOW SIGNS FOR RICHMOND/I-395 S AND MERGE ONTO I-395 S. MERGE ONTO I-95 S. TAKE EXIT 163 FOR VA-642 TOWARD LORTON. TURN RIGHT ONTO VA-642/LORTON RD. TURN LEFT ONTO FURNACE ROAD. SLIGHT RIGHT ON MORDOR DRIVE. SHARP RIGHT, THEN SLIGHT LEFT

REFERENCE DRAWINGS				REVISIONS			
NUMBER	TITLE	DATE	NUM	DESCRIPTION			
DESIGNED	S.PATTERSON	03/30/18					
DRAWN	W.DUDLEY	03/30/18					
CHECKED	J.WEBSTER	03/30/18					

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
OFFICE OF DESIGN AND CONSTRUCTION
ENGA - COMMUNICATIONS ENGINEERING

APPROVED
BRIAN JAMES
ENGINEER OF RECORD

DATE

APPROVED
ALLEN WONDER
PROJECT MANAGER

DATE

WMATA 700MHZ METRO AREA RADIO SYSTEM (MARS)
LORTON
9850 FURNACE ROAD
LORTON, VA 22079

M NO.
FQ-

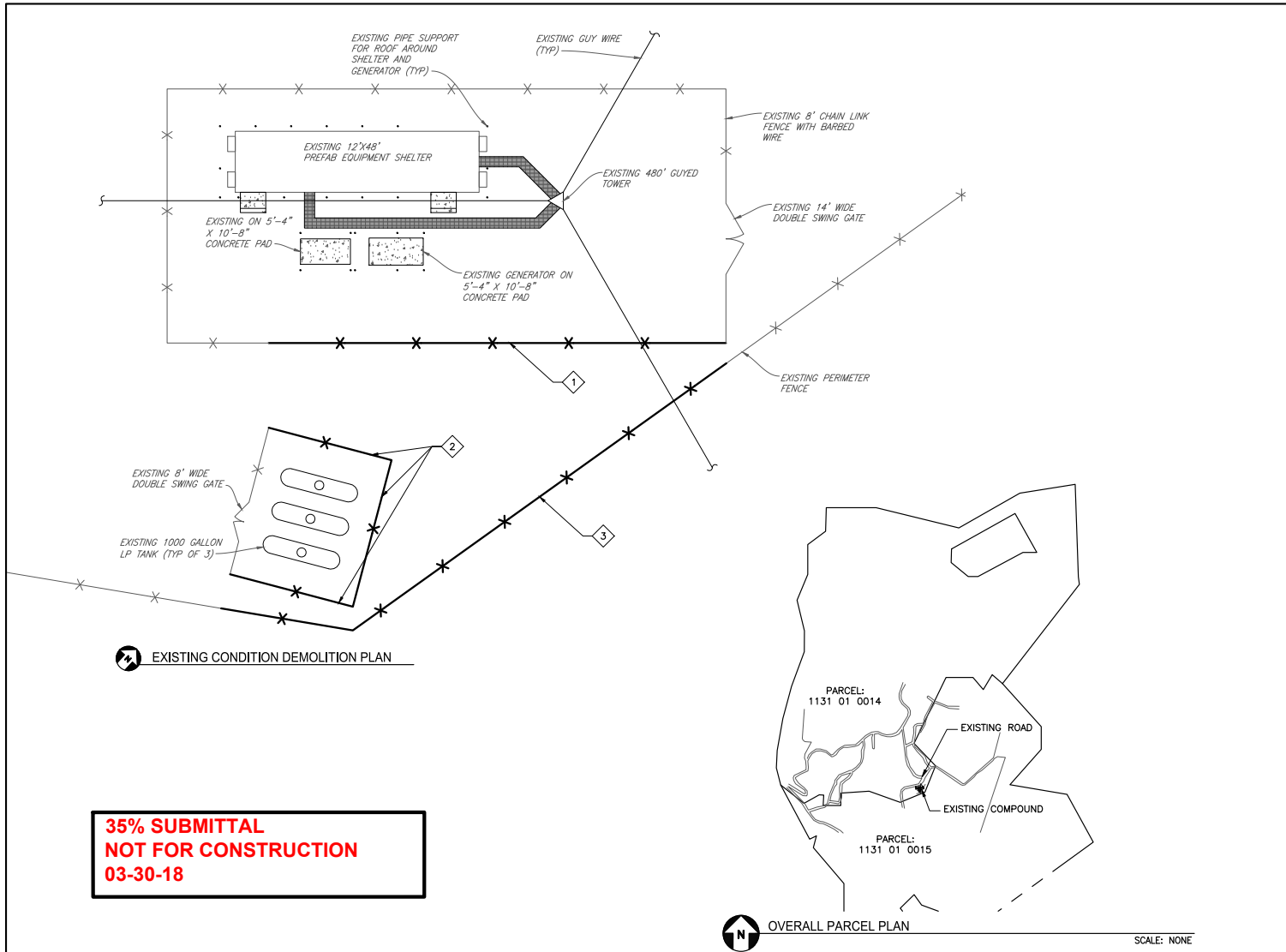
CONTRACT NO.
FQ-15000

SCALE
NONE

DRAWING NO.
WM700.AG.RF5.G0001

SHEET NO.
1 of 5

GENERAL INFORMATION
G0001



GENERAL NOTES

1. THE LOCATION, SIZE & TYPE OF MATERIAL OF EXISTING UTILITIES INDICATED ON THE PLANS IS NOT REPRESENTED AS BEING ACCURATE, SUFFICIENT OR COMPLETE. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE ACTUAL LOCATION OF ALL SUCH FACILITIES, INCLUDING THE SERVICE CONNECTIONS TO UNDERGROUND UTILITIES. PRIOR TO CONSTRUCTION THE CONTRACTOR SHALL NOTIFY THE UTILITY COMPANIES OF HIS OPERATIONAL PLANS & SHALL OBTAIN INFORMATION & ASSISTANCE RELATIVE TO THE LOCATION OF THEIR FACILITIES & THE WORKING SCHEDULE OF THE COMPANIES FOR REMOVAL OR ADJUSTMENT WHERE REQUIRED. IN THE EVENT AN UNEXPECTED UTILITY INTERFERENCE IS ENCOUNTERED DURING CONSTRUCTION.
2. ALL NEW CONSTRUCTION ACTIVITIES & MODIFICATIONS SHALL COMPLY WITH MOTOROLA R-56 STANDARDS, (2005).
3. PRIOR TO CONSTRUCTION THE CONTRACTOR SHALL ASSUME THE RESPONSIBILITY OF LOCATING ANY UNDERGROUND UTILITIES (PUBLIC OR PRIVATE) THAT MAY EXIST AND CROSS THROUGH THE AREA OF CONSTRUCTION THAT ARE NOT SHOWN ON THESE PLANS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR REPAIRING, AT HIS EXPENSE, ANY EXISTING UTILITIES DAMAGED DURING CONSTRUCTION.
4. THE CONTRACTOR IS RESPONSIBLE FOR THE REMOVAL OF SPOILS FROM EXCAVATION AND TRENCHING.
5. THE STOCKPILING OF EXCESS MATERIAL ON SITE WILL NOT BE ALLOWED.
6. ANY VEGETATED AREA DISTURBED BY CONSTRUCTION SHALL BE THE RESPONSIBILITY OF CONTRACTOR TO SEED AND ESTABLISH A PERMANENT VEGETATIVE COVER.
7. THE CONTRACTOR IS RESPONSIBLE FOR MEANS AND METHODS OF CONSTRUCTION. SAFETY IS THE RESPONSIBILITY OF THE CONTRACTOR. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH OSHA AND WMATA REQUIREMENTS.
8. THE CONTRACTOR IS RESPONSIBLE FOR SITE LAYOUT AND CONSTRUCTION STAKING. LOCATION OF EXISTING STRUCTURES AND UTILITIES MUST BE CONFIRMED BY THE CONTRACTOR.
9. ALL WORK SHALL BE ACCOMPLISHED IN ACCORDANCE WITH ALL LOCAL, STATE, AND FEDERAL CODES OR ORDINANCES.
10. THE INDICATED DIRECTION OF NORTH SHALL BE VERIFIED IN THE FIELD.
11. ALL TRENCHING AND DIGGING WITHIN EXISTING FENCED COMPOUND SHALL BE HAND DUG.

NOTES - DEMOLITION WORK

- 1 REMOVE 90'± OF EXISTING CHAIN LINK FENCE.
- 2 REMOVE 80'± OF EXISTING CHAIN LINK FENCE.
- 3 REMOVE 116'± OF EXISTING PERIMETER CHAIN LINK FENCE.



"PROFESSIONAL CERTIFICATION: I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA."

LICENSE No. _____
EXPIRATION DATE: _____
- COMAR 08.23.03.10

DESIGNED <u>S.PATTERSON</u> <u>03/30/18</u> DATE				REFERENCE DRAWINGS				REVISIONS				WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY				WMATA 700MHZ METRO AREA RADIO SYSTEM (MARS)				DEMO SITE PLAN			
DRAWN <u>W.DUDLEY</u> <u>03/30/18</u> DATE				NUMBER	TITLE	DATE	NUM	DESCRIPTION				OFFICE OF DESIGN AND CONSTRUCTION				LORTON				80101			
CHECKED <u>J.WEBSTER</u> <u>03/30/18</u> DATE												9850 FURNACE ROAD				LORTON, VA 22079				C0101			
												APPROVED				SCALE				DRAWING NO.			
												BRIAN JAMES				AS NOTED				WM700.AG.RF5.C0101			
												ENGINEER OF RECORD				FQ-				2 of 5			
												DATE				FQ-15000							
												APPROVED											
												ALLEN WONDER											
												PROJECT MANAGER											
												DATE											

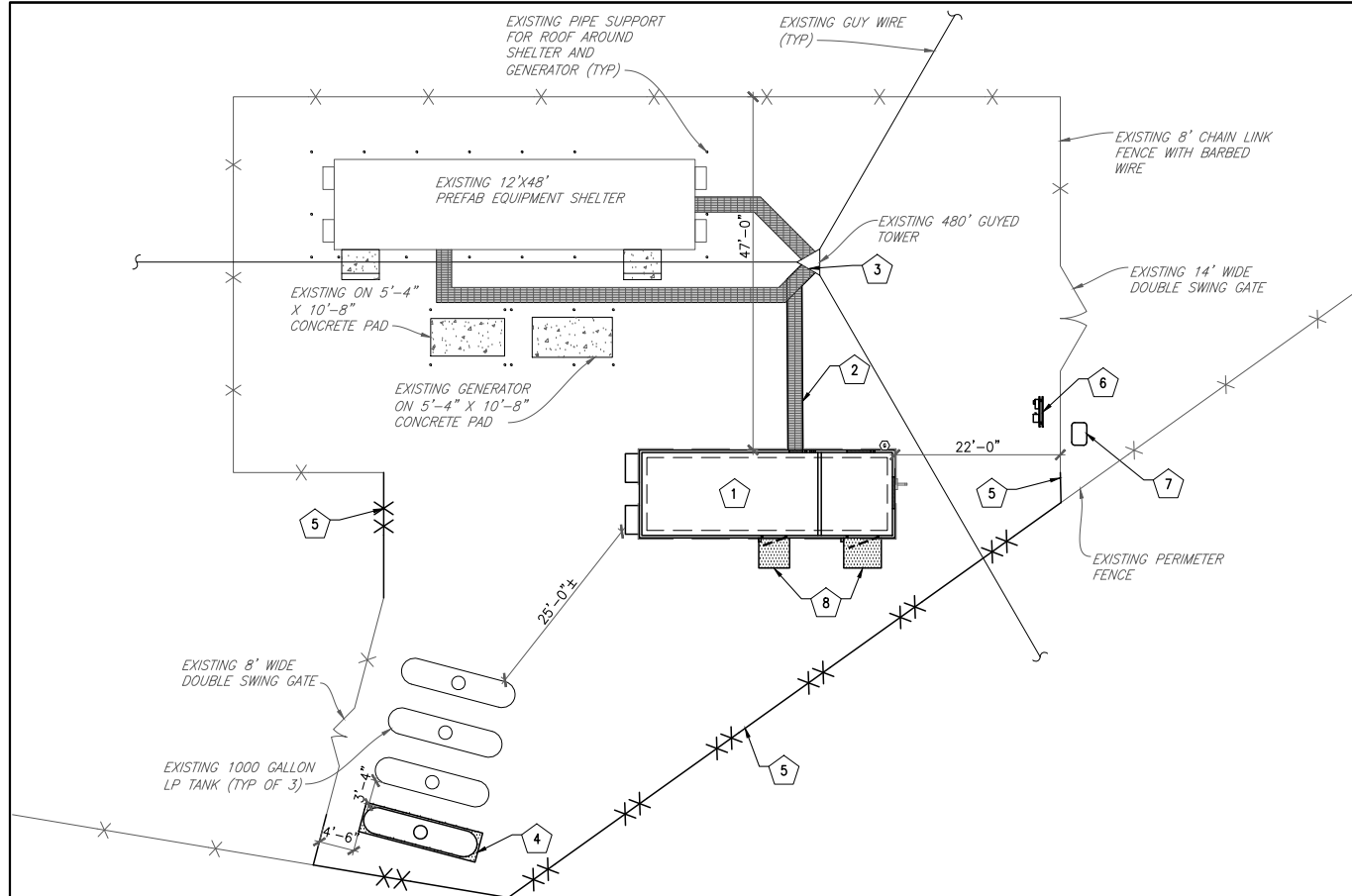
"PREMISES"

NOTES - NEW WORK

GENERAL: EQUIPMENT AND DEVICES SHOWN IN LIGHT LINE WEIGHT ARE EXISTING TO REMAIN. EQUIPMENT AND DEVICES SHOWN IN DARK LINE WEIGHT ARE NEW, UNLESS OTHERWISE NOTED.

- 1 NEW PREFABRICATED 11'-8" X 34' EQUIPMENT SHELTER WITH GENERATOR ROOM ON CONCRETE SLA-ON-GRADE.
- 2 NEW 21'-0"± LONG ICE BRIDGE. ICE BRIDGE SHALL BE NO CLOSER THAN 6" FROM BUILDING OR TOWER.
- 3 NEW CABLE LADDER.
- 4 NEW 1000 GALLON LPG GAS TANK ON CONCRETE PAD.
- 5 NEW CHAINLINK FENCIF WITH BARED WIRE TO MATCH EXISTING
- 6 NEW 4' UTILITY STAND.
- 7 NEW 24" X 36" HAND HOLE.
- 8 NEW CONCRETE STOOPS.

**35% SUBMITTAL
NOT FOR CONSTRUCTION
03-30-18**



"PROFESSIONAL CERTIFICATION: I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA."

LICENSE No. _____

EXPIRATION DATE: _____

- COMAR 09.23.03.10

DESIGNED <u>S.PATTERSON</u> <u>03/30/18</u> DATE			DRAWN <u>W.DUDLEY</u> <u>03/30/18</u> DATE			CHECKED <u>J.WEBSTER</u> <u>03/30/18</u> DATE			REFERENCE DRAWINGS			REVISIONS			WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY			WMATA 700MHZ METRO AREA RADIO SYSTEM (MARS)			SITE PLAN AND DETAILS		
									NUMBER			DATE			OFFICE OF DESIGN AND CONSTRUCTION			CONTRACT NO.			DRAWING NO.		
									TITLE			DESCRIPTION			ENG - COMMUNICATIONS ENGINEERING			FQ-			WM700.AG.RF5.C0102		
															APPROVED			SCALE			SHEET NO.		
															BRIAN JAMES			AS NOTED			3 of 5		
															ENGINEER OF RECORD								
															DATE								
															APPROVED								
															ALLEN WONDER								
															PROJECT MANAGER								
															DATE								

"PREMISES"

NOTES - NEW WORK

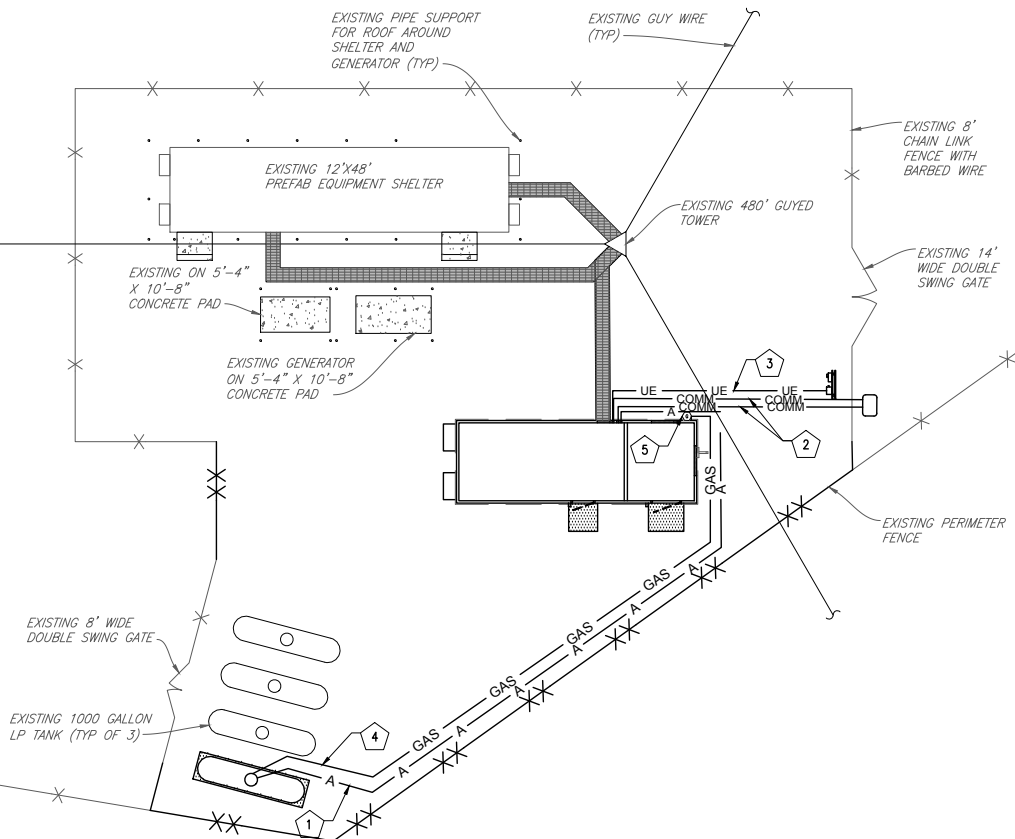
GENERAL: EQUIPMENT AND DEVICES SHOWN IN LIGHT LINE WEIGHT ARE EXISTING TO REMAIN. EQUIPMENT AND DEVICES SHOWN IN DARK LINE WEIGHT ARE NEW, UNLESS OTHERWISE NOTED.

- 1 NEW 3/4" CONDUIT FOR FUEL LEVEL ALARM
- 2 (2) NEW 2" PVC TELCO CONDUITS FROM JUNCTION BOX ATTACHED TO NEW SHELTER TO NEW HANDHOLE.
- 3 NEW 3" PVC POWER CONDUIT FROM NEW DISCONNECT TO NEW LB TRANSITION ON NEW SHELTER.
- 4 NEW GAS PIPE.
- 5 NEW GAS METER REGULATOR.

UTILITY NOTES

1. PROVIDE PULL CORD IN ALL EMPTY CONDUITS. SECURE AT EACH END.
2. ADJUST DEPTH OF CONDUITS AND PIPING TO PASS ABOVE GROUNDING SYSTEM WHERE UTILITY CROSSES GROUNDING SYSTEM.
3. ADJUST WIDTH OF TRENCH TO ACCOMMODATE COMPACTION EQUIPMENT.
4. LAP GEOTEXTILE FABRIC, PER MANUFACTURER'S INSTRUCTION. WHERE INTERRUPTED BY TRENCHING.
5. PROVIDE SPACERS TO HOLD CONDUITS IN POSITION.

**35% SUBMITTAL
NOT FOR CONSTRUCTION
03-30-18**



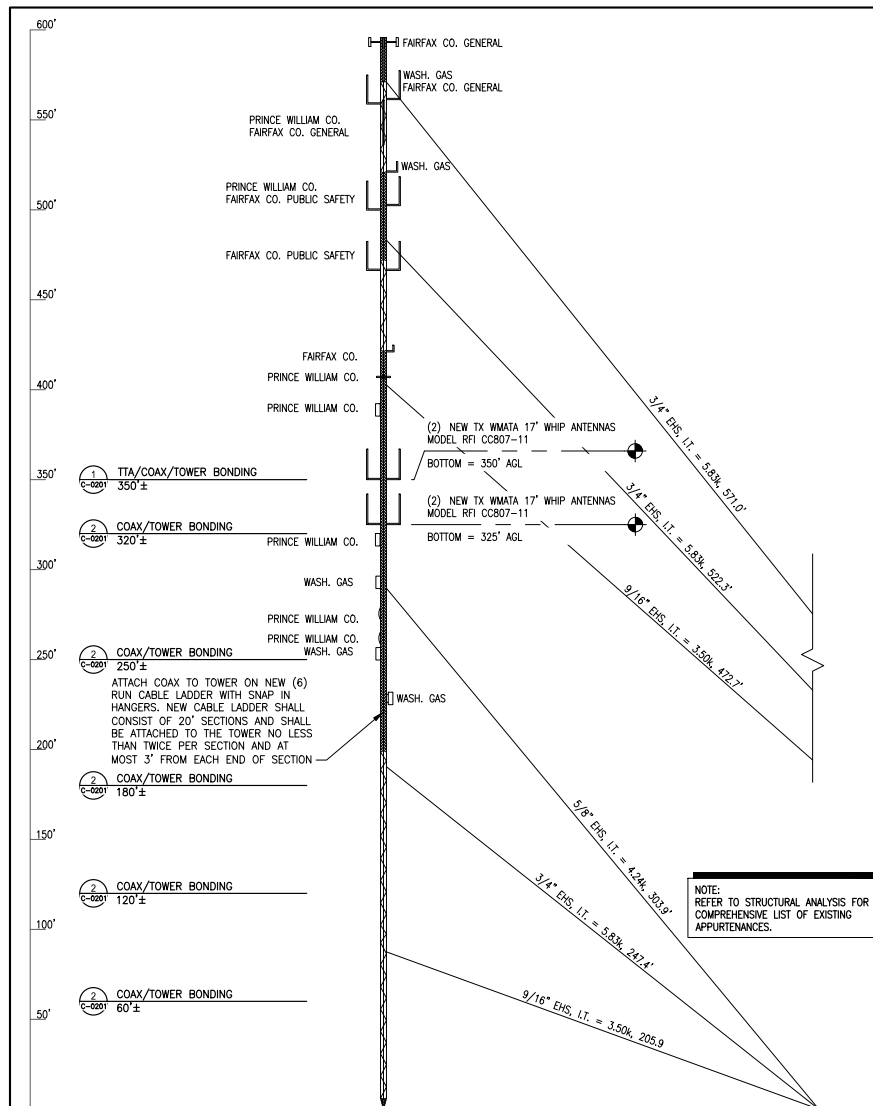
"PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA."

LICENSE No. _____

EXPIRATION DATE: _____

- COMAR 09.23.03.10

DESIGNED <u>S.PATTERSON</u> <u>03/30/18</u> DATE			<div><div></div><div>WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY</div><div>OFFICE OF DESIGN AND CONSTRUCTION ENGA - COMMUNICATIONS ENGINEERING</div><div><div>APPROVED BRIAN JAMES ENGINEER OF RECORD</div><div>DATE</div><div>APPROVED ALLEN WONDER PROJECT MANAGER</div><div>DATE</div></div></div>			WMATA 700MHZ METRO AREA RADIO SYSTEM (MARS)			<div>UTILITY PLAN AND DETAILS C0103</div> <div>4 of 5</div>		
DRAWN <u>W.DUDLEY</u> <u>03/30/18</u> DATE						LORTON 9850 FURNACE ROAD LORTON, VA 22079					
CHECKED <u>J.WEBSTER</u> <u>03/30/18</u> DATE						M NO. CONTRACT NO. SCALE FQ- FQ-15000 AS NOTED					
						DRAWING NO. WM700.AG.RF5.C0103					
REFERENCE DRAWINGS			REVISIONS								
NUMBER	TITLE		DATE	NUM	DESCRIPTION						



GENERAL LINES AND ANTENNA NOTES

1. THE STRUCTURAL ANALYSIS SHALL GOVERN ALL ASPECTS OF ANTENNA, LINES, AND MOUNTS INSTALLATION.
2. ALL VERTICAL TRANSMISSION LINE RUNS FROM THE ANTENNAS SHALL BE BONDED TO THE TOWER IN ACCORDANCE WITH THESE CONTRACT DOCUMENTS AND MOTOROLA R-56.
3. ANTENNAS, CONNECTORS, JUMPERS, TRANSMISSION LINES, TO BE FURNISHED BY MOTOROLA, AND INSTALLED BY CONTRACTOR.
4. CONTRACTOR SHALL TEST TRANSMISSION AND TEST LINES PRIOR TO INSTALLATION AND IMMEDIATELY NOTIFY MOTOROLA OF ANY LINE DEFICIENCIES.
5. THE CONTRACTOR SHALL CONDUCT A TDR SWEEP TEST ON ALL THE NEWLY INSTALLED TRANSMISSION LINES TO DETERMINE THE CABLE CONDUCTOR RESISTANCE, CABLE INSERTION LOSS, REFLECTION & STIMULUS RESPONSE MEASUREMENTS. RESULTS TO BE SUBMITTED TO MOTOROLA.
6. ALL TRANSMISSION LINES SHALL BE MARKED WITH APPROPRIATE COLOR TAPE BANDS (ONE INCH WIDE COLOR TAPE) FOR IDENTIFICATION NEAR THE ANTENNA, JUST BEFORE ENTERING THE SHELTER AS WELL AS INSIDE THE SHELTER, BEFORE CONNECTING TO THE SURGE SUPPRESSORS. SEE EQUIPMENT & COAXIAL CABLE SCHEDULE FOR COLOR CODE SCHEME.
7. CONTRACTOR TO ATTACH CABLES TO TOWER EVERY 3' (MAX).
8. CONTRACTOR TO WATERPROOF ALL EXTERNAL CONNECTIONS.
9. CONTRACTOR TO USE HOUSING GRIPS EVERY 200 FEET (MIN) FOR TRANSMISSION LINES.
10. DRIP LOOPS SHALL BE INCORPORATED IN CABLE RUNS TO PREVENT WATER FROM TRICKLING DOWN THE LINES INTO THE SHELTER.
11. CONTRACTOR TO INSTALL GALVANIZED OR STAINLESS STEEL MOUNTING.

**35% SUBMITTAL
NOT FOR CONSTRUCTION
03-30-18**



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NUMBER			TITLE			DATE		

Board Agenda Item
October 16, 2018

5:00 p.m.

Public Hearing to Sublease Property at 10609 Georgetown Pike (Turner Farm House)
in Connection with the Resident Curator Program (Dranesville District)

ISSUE:

Public hearing to sublease property owned by the Fairfax County Park Authority (FCPA) at 10690 Georgetown Pike (Turner Farm House) in connection with the Resident Curator Program.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to sublease Turner Farm House to the Resident Curator in substantially the same form as Attachment 2.

TIMING:

On September 25, 2018, the Board authorized a public hearing on October 16, 2018 to sublease Turner Farm House to the Resident Curator.

BACKGROUND:

In accordance with enabling legislation enacted by the Commonwealth, the Board approved the creation of the Resident Curator Program (Program) to address underutilized publicly owned historic properties by entering into long-term leases with qualified tenants who pledge to rehabilitate the property in accordance with federal standards established for the treatment of historic properties. The tenant under the lease (Resident Curator) agrees to complete the rehabilitation and provide ongoing maintenance and upkeep of the property for the duration of the lease in exchange for rent-free accommodation. The program is managed by the FCPA.

The state legislation requires that the Board serve as the landlord under the lease. Consequently, the FCPA will lease the property selected through the screening process established in the Program to the Board (Lease), and the Board will concurrently sublease the property to the Resident Curator (Sublease). The Sublease will contain the detailed provisions on the rehabilitative workplan for the property; however, the responsibility for monitoring the Resident Curator's progress with the workplan and the Program will remain with the FCPA per the terms of the Lease.

The second property selected by the FCPA for inclusion in the Program is the Turner Farm House, a 3,200 square-foot structure located at 10609 Georgetown Pike on five (5) acres of land within the 52-acre Turner Farm Park (Farm House). The Farm House is historically significant due to its Queen Anne style architecture and its role as the heart of a dairy farm, an agricultural enterprise that was the prevailing land use of the Great Falls area during the early years of the twentieth century. During the first phase of the twenty-year term of the sublease, the Resident Curator will restore the Farm House in accordance with an historic structures report and building condition

Board Agenda Item
October 16, 2018

assessment prepared for the FCPA. Subsequent phases will include renovation of the farm outbuildings and the development of a retreat center to help fund the costs of the ongoing restoration work.

The parties intend for the Lease and Sublease to commence on November 1, 2018; however, additional site preparation work may need to be completed by the FCPA before it transfers control of the Farm House to the Resident Curator, in which event the Lease and Sublease will be executed and commence upon the date such work is completed.

FISCAL IMPACT:

None. Any expenses associated with the Program or acting as landlord under the Sublease shall be borne by the FCPA.

ENCLOSED DOCUMENTS:

Attachment 1 – Location Map
Attachment 2 – Draft Lease Agreement
Attachment 3 – Photos of Turner Farm House and Turner Farm Park

Exhibits to the Sublease Agreement are available online at:

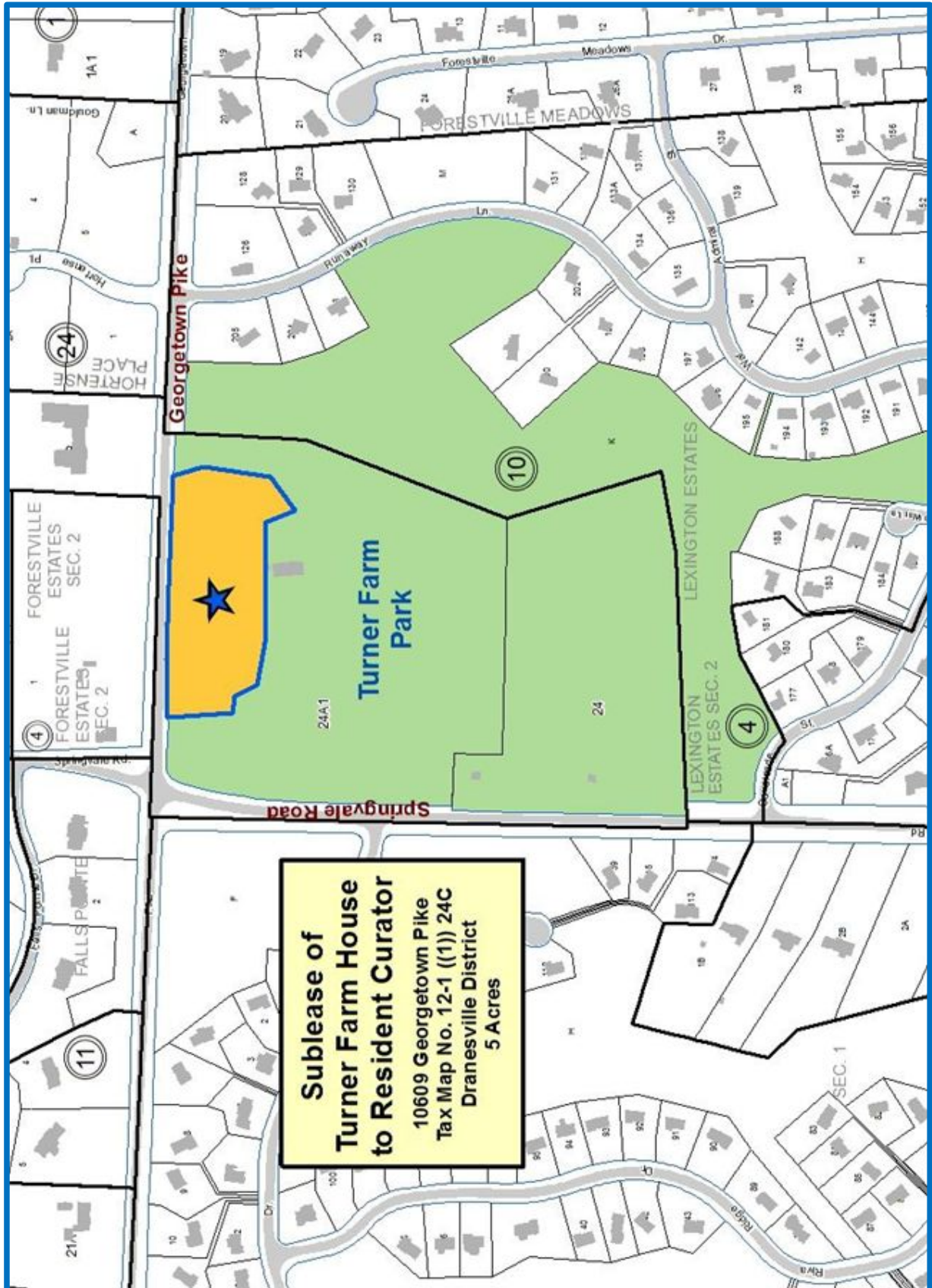
<https://www.fairfaxcounty.gov/parks/rcp/>

STAFF:

Joseph M. Mondoro, Chief Financial Officer
Kirk W. Kincannon, Director, Fairfax County Park Authority
Jose A. Comayagua, Jr., Director, Facilities Management Department
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

Daniel Robinson, Assistant County Attorney



RESIDENT CURATOR LEASE

COMMENCEMENT DATE (“COMMENCEMENT DATE”):

November 1, 2018

between

**BOARD OF SUPERVISORS OF FAIRFAX COUNTY as LESSOR (“LESSOR”)
and**

TURNER FARMHOUSE FOUNDATION as LESSEE (“RESIDENT CURATOR”)

on Property owned by the

FAIRFAX COUNTY PARK AUTHORITY (“PROPERTY OWNER”)

at the

**Turner Farm Park
10607, 10609 and 10611 Georgetown Pike Great Falls, VA 22066
Tax Map #12-1 ((1)) 24D**

RESIDENT CURATOR LEASE

THIS LEASE ("Lease") is made this ____ day of _____, 2018, ("Effective Date") by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY ("BOS")**, 12000 Government Center Parkway, Suite 552, Fairfax, Virginia 22035, as **Lessor ("Lessor")**, and **TURNER FARMHOUSE FOUNDATION** as **Lessee ("Resident Curator")** on property owned by the **FAIRFAX COUNTY PARK AUTHORITY ("FCPA")**, a body corporate and politic, as **Property Owner ("Property Owner")**.

RECITALS

R-1 Property Owner is the owner of certain real estate that is identified in the Fairfax County Tax Administration records as Tax Map #12-1 ((1)) 24D ("Parcel"), which is approximately twenty-two (22) acres in size and considered part of **Turner Farm Park ("Park")** in the Dranesville Magisterial District. Lessor desires to lease to Resident Curator, and Resident Curator desires to lease from Lessor, approximately five (5) acres within the Parcel as shown on **Exhibit A ("Leased Property")**, which Leased Property includes the **Turner Farm House ("Turner Farm House")** that has an address of 10609 Georgetown Pike, Great Falls, VA 22066. Resident Curator's uses for the Leased Property will be in accordance with the Property Owner's **Turner Farm Master Plan** that was approved on January 24, 2018 ("**Master Plan**"), any Special Exception or other land use approvals by the BOS for the Leased Property and the terms of this Lease. Property Owner leased the Leased Property to Lessor pursuant to a Lease dated xxxxxxxxxx x, 2018 ("Master Lease").

R-2 The Resident Curator Program Ordinance, Chapter 125 of *The Code of the County of Fairfax, Virginia*, established a **Resident Curator Program ("Resident Curator Program")** to preserve and maintain historic properties owned or leased by Fairfax County, by leasing such historic properties to individuals or businesses for the purposes of maintaining and improving such leased properties in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR Part 68 (2013) as shown on **Exhibit B**.

R-3 Subject to the Fairfax County Park Authority Turner Farm Park **Conceptual Development Plan ("CDP")** that was approved in July 2000 and which is incorporated by reference into this Lease, Resident Curator responded to an **Invitation to Submit Application ("ISA")** for participation in the Resident Curator Program at Turner Farm House. The Lessor and the Property Owner accepted the **Resident Curator's Response to the ISA ("Resident Curator's Response to ISA")** attached as **Exhibit C** and incorporated by reference into this Lease, and appointed Resident Curator as the Resident Curator of the **Leased Property** under this Lease.

R-4 Sarah Kirk ("Ms. Kirk") is the current President of Resident Curator, and in her capacity as President of Resident Curator, will act as the contact person for Resident Curator. The parties intend that Ms. Kirk and her successors will carry out the duties of the Resident Curator. Resident Curator intends to enter into a **Sublease ("Sublease")** with Ms. Kirk, individually, who will occupy the Leased Property and reside in the Turner Farm House along with her family and a

caregiver (collectively referred to as the “**Residents**”). The Residents also intend to board equines at the Leased Property.

R-5 Lessor desires to enter into this Lease with Resident Curator to fulfill the requirements of the Resident Curator Program, to include: (a) rehabilitating the Turner Farm House as a residence, (b) repairing the milk house, (c) restoring and preserving a corn crib, (d) and razing an equipment shed (the milk house, corn crib and equipment shed will be collectively referred to as the “**Outbuildings**”), (e) landscaping, and (f) renovating an existing garage into a retreat center (“**Retreat Center**”) subject to the terms and limitations of the necessary Special Exception for such use if and as approved by the BOS (the “**Special Exception**”) and this Lease. Retreat Center visitors will be customers of Resident Curator (“**Customers**”). Resident Curator’s performance of the requirements of the Resident Curator Program and this Lease will be subject to monitoring and review by the Property Owner’s staff.

R-6 Resident Curator will perform all of the required Resident Curator duties and maintain the grounds in accordance with the **Resident Curator’s Response to the ISA (“Response to ISA”)**, the **Resident Curator Maintenance Guidelines and Checklist (“Maintenance Guidelines”)**, attached hereto as **Exhibit D** and incorporated into this Lease and the **Turner Farm House Treatment Plan (“Treatment Plan”)**, attached hereto as **Exhibit E** and incorporated into this Lease. The Response to ISA, Maintenance Guidelines and Treatment Plan are collectively referred to as the **Curator Program (“Turner Farmhouse Curator Program”)**.

R-7 This Lease will incorporate as applicable any **Additional Non-Discretionary Improvements (“Additional Non-Discretionary Improvements”)** and **Additional Discretionary Improvements (“Additional Discretionary Improvements”)** in accordance with the terms of this Lease. All documents, plans, responsibilities, and improvements for the Turner Farmhouse Curator Program, Additional Non-Discretionary Improvements and Additional Discretionary Improvements are collectively referred to as **Curator Program Duties (“Curator Program Duties”)** and must be in compliance with the Master Plan and the Special Exception.

R-8 Resident Curator intends to enter into a written sublease agreement with Ms. Kirk, the requirements of which are addressed in this Lease.

R-9 The Lessor delegated certain responsibilities to the Property Owner to effectuate efficient administration of the Resident Curator Program per a March 29, 2016 memorandum and Property Owner will monitor Resident Curator’s compliance with this Lease pursuant to the Master Lease.

R-10 Lessor, Resident Curator, and the Property Owner will collectively be referred to as the **Parties (“Parties”)**.

R-11 Resident Curator provided to Property Owner a **TFF Business Plan (“Resident Curator Business Plan”)** that proposes four (4) phases and will become effective and commence on the Commencement Date as defined in this Lease. All deadlines and milestones related to the possession or occupancy of the Leased Property will be effective on the Commencement Date.

NOW, THEREFORE, the parties hereto mutually agreed as follows:

1. GRANT OF LEASED PROPERTY. Lessor does hereby lease unto Resident Curator and Resident Curator does hereby lease from Lessor the Leased Property, including nonexclusive access to the Leased Property through the Park via the driveway. It is agreed that by occupying the Leased Property, Resident Curator acknowledges that it has had full opportunity to examine the Leased Property and is fully informed, independent of any statements by Lessor and Property Owner, as to the character, construction and structure of the Leased Property. All amenities and appliances, if any, are in "AS IS" condition as of the Commencement Date and Lessor and Property Owner shall have absolutely no obligation whatsoever to repair such items or to replace any such amenities at the end of their useful life unless specifically stated otherwise in this Lease. It is agreed that by occupying the Leased Property, Resident Curator agrees that there are no requirements imposed upon Lessor or Property Owner to perform improvements or repairs to the Leased Property after the Commencement Date. Resident Curator and Lessor acknowledge that this Lease includes the agreement that Lessor and Property Owner have no requirement to perform repairs or otherwise maintain the Leased Property. Resident Curator must maintain the Leased Property, including all portions designated as a Resource Protection Area, in accordance with all applicable laws and regulations. This Lease is entered into in good faith and the Resident Curator's agreement to perform the maintenance and repairs required under this Lease support the purpose of the Resident Curator Program permitted under Va. Code § 15.2-2306.

Prior to the Commencement Date, the Property Owner must do the following:

1.1 The Property Owner will obtain an engineering design and install a residential septic system to accommodate the Turner Farm House Treatment Plan's needs. The Resident Curator must maintain the Turner Farm House septic system after the Commencement Date.

1.2 The Property Owner will obtain an engineering design for the Retreat Center septic system and will provide such design to the Resident Curator. The Resident Curator will be responsible for all of the costs associated with the installation and approval of the Retreat Center septic system, and must maintain the Retreat Center Septic System after it is approved for use by the appropriate governmental authority. If the Lessor or Property Owner incurs costs, emergency or otherwise, associated with the Retreat Center septic system, Resident Curator must reimburse the Property Owner for such costs.

1.3 The Property Owner will obtain an assessment of the Turner Farm House electrical and plumbing systems and a copy of the assessment will be provided to Resident Curator prior to the Commencement Date. The Property Owner will complete any repairs and perform any improvements to the electrical and plumbing systems in the Turner Farm House that are required in order for a Residential Use Permit ("RUP") to be issued for occupancy of the Turner Farm House by Ms. Kirk, and will obtain all necessary inspections and approvals of such repairs and improvements so that Ms. Kirk may obtain the RUP. The Resident Curator will be responsible for all of the costs associated with the electrical and plumbing systems for the Retreat Center and all costs associated with the electrical and plumbing systems for the Turner Farm House that arise after the Commencement Date.

2. **ACCEPTANCE OF POSSESSION.** Lessor shall deliver possession of the Leased Property to Resident Curator under this Lease on November 1, 2018 (the “**Commencement Date**”). Resident Curator shall accept possession of the Leased Property on the Commencement Date in its “AS IS” condition. Effective on the Commencement Date, the Resident Curator Business Plan proposes the following:

2.1 Phase 1

- a. Start design, permitting, construction activities on the Turner Farm House and Pony Farm fields.
- b. Complete the improvements to the Turner Farm House and the Pony Farm fields so the Residents can move into the Turner Farm House and the equines can be moved onto the Leased Property.

2.2 Phase 2

- a. Complete Turner Farm House Treatment Plan, Pony Farm fencing, Pony Farm barns, other Curator Program Duties.
- b. Start design, permitting, and fundraising to restore the Retreat Center and Outbuildings.

2.3 Phase 3

- a. Fundraise and complete Curator Program Duties for Retreat Center and Outbuildings.

2.4 Phase 4

- a. Fundraise and maintain the Leased Property for the Term of this Lease.

2.5 Resident Curator’s Business Plan must conform and comply with the Curator Schedules and Milestones as defined below.

3. **TERM and SCHEDULED TERMINATION DATE.** The term of this Lease (“**Term**”) shall be for a period of twenty (20) years commencing on 12:00 noon on the Commencement Date and will expire on the **31st day of October, 2038** (“**Scheduled Termination Date**”) unless otherwise agreed by the Parties subject to early termination as described in this Lease. At the expiration of the tenancy hereby created, or upon any re-entry by Lessor into the Leased Property pursuant to any provision herein, Resident Curator will surrender the Leased Property, all Residents will vacate the Turner Farm House and Residents will remove all equines from the Leased Property. Resident Curator does not have any right to extend or renew this lease except as provided for herein.

4. **OCCUPANCY.** Notwithstanding the stated Commencement Date under the Lease, under no circumstances shall Resident Curator, its Retreat Center customers or their invitees, or the Residents, be permitted to occupy the Leased Property, or part thereof, unless and until a **Residential Use Permit (“RUP”), Non-Residential Use Permit (“Non-RUP”), or Final Inspection (“Final Inspection”)** per Virginia Uniform Statewide Building Code, 2012. 113.8,

whichever is applicable, has been issued by the appropriate **Fairfax County Agency** (“**County Agency**”). If a temporary or partial RUP, Non-RUP, or Final Inspection has been issued by the appropriate County Agency, Resident Curator may occupy only that approved portion of the Leased Property.

5. CURATOR SCHEDULE and MILESTONES. Resident Curator, at Resident Curator's sole expense, must timely perform and complete the Turner Farmhouse Curator Program Duties in accordance with corresponding schedules and performance milestones set forth in the Turner Farmhouse Curator Program, herein referred to as **Curator Schedules and Milestones** (“**Curator Schedules and Milestones**”). The Turner Farmhouse Curator Program documents are set forth in detail sufficient to satisfy the Lessor and Property Owner of the items, methodology and timeframes for the development, redevelopment, remediation, repair, replacement, refurbishment, renovation, rehabilitation, and maintenance of the Leased Property. This Resident Curator’s agreement to perform the maintenance and repairs required under this Lease support the purpose of the Resident Curator Program permitted under Va. Code § 15.2-2306.

6. EARLY TERMINATION. Commencing fifteen (15) years after the Commencement Date, Lessor shall have the right to exercise an **Early Termination** (“**Early Termination**”) of this Lease, which shall occur prior to the Scheduled Termination Date, such early termination date herein referred to as **Early Termination Date** (“**Early Termination Date**”), provided that notice (via email and certified letter) is given to Resident Curator at least six (6) months prior to the Early Termination Date. At the expiration of the tenancy hereby created, pursuant to an Early Termination or any provision herein, Resident Curator shall surrender the Leased Property, in accordance with Section 23 of this Lease. Approved Installed Improvements pursuant to Section 8 related to the Curator Program Duties (including the Pony Farm) shall remain in place and become the property of the Property Owner.

6.1 The Resident Curator shall have the right to Early Termination in the event that the BOS does not approve the Special Exception within one (1) year of the Commencement Date. In order to exercise this right of Early Termination, Resident Curator must give written notice of its intent to exercise a right of Early Termination (“**Early Termination Notification**”). The Early Termination Notification may be sent via email. The Early Termination Notification must be delivered to Lessor within thirty (30) days of the date the BOS either votes to deny the Special Exception or fails to approve the Special Exception within one (1) year of the Commencement Date (“**Disapproval Date**”). The Early Termination Notification must set forth the date Resident Curator intends for the Lease to terminate (“**Early Termination Effective Date**”). The Early Termination Effective Date must be within 180 days of the Disapproval Date. At the Early Termination Effective Date, Resident Curator must surrender the Leased Property to Lessor in accordance with Section 23 of this Lease. Approved Installed Improvements pursuant to this Lease as part of the Curator Program Duties or the Pony Farm that are completed prior to the Early Termination Effective Date shall remain in place and will become the property of the Property Owner.

6.2 If Resident Curator has not provided written notice (email notification is acceptable) to Lessor that it wishes to exercise its right of Early Termination within thirty

(30) days from the Disapproval Date, then Resident Curator must complete the Term of Lease unless the Lease is otherwise terminated in accordance with the terms of the Lease.

7. **RENT and FAIR MARKET RENTAL VALUE.** Residents Curator's consideration for the Lease is the performance of the Turner Farmhouse Curator Program requirements as set forth in R-6 that the parties agree have an estimated cost of six hundred seventy-two thousand dollars and no/100 (\$672,000.00) and the Parties agree that the adjusted **Fair Market Rental Value ("Fair Market Rental Value")** for the Term is **six hundred seventy-two thousand dollars and no/100 (\$672,000.00)** as shown on **Exhibit F** which is attached and incorporated into this Lease. Any adjustments to the Fair Market Rental Value must be agreed to by the Parties in writing.

8. **WORK-IN-PROGRESS and APPROVED INSTALLED IMPROVEMENTS.** The Parties anticipate there will be the following three categories of improvements Resident Curator will make to the Leased Property pursuant to this Lease: (1) improvements required by the Turner Farmhouse Curator Program ("**Curator Program Improvements**"), (2) Additional Non-Discretionary Improvements, and (3) Additional Discretionary Improvements. All plan submissions, plan approvals, permitting, construction, inspections, and corrective action for the Curator Program Improvements, Additional Non-Discretionary Improvements, and Additional Discretionary Improvements shall be collectively referred to as **Work-In-Progress ("Work-In-Progress")** until deemed an approved installed improvement as defined in this section.

8.1 Construction, rehabilitation or installation of improvements that result in plan closeout, permit closeout, bond release, occupancy, or similar final approval for the Curator Program Improvements, the Additional Non-Discretionary Improvements, and the Additional Discretionary Improvements shall be collectively referred to as **Approved Installed Improvements ("Approved Installed Improvements")** and the date of final action that qualified Work-In-Progress as an Approved Installed Improvement shall be referred to as **Approved Improvement Date ("Approved Improvement Date")**.

8.2 In the event of Early Termination or Event of Default, as defined in this Lease, Property Owner, in its sole discretion, may require that Work-In-Progress be cured or removed at Resident Curator's cost especially if Work-In-Progress creates an unsafe condition.

9. **ADDITIONAL NON-DISCRETIONARY IMPROVEMENTS.** Resident Curator and Lessor acknowledge that there may be certain improvements that are necessary, that affect the structure of the Leased Property, that were unknown to the Parties at the execution of this Lease, that are not included in the Curator Schedules and Milestones and that are capital in nature; these improvements are defined as "**Additional Non-Discretionary Improvements.**"

9.1 If Resident Curator determines that it is required to perform such Additional Non-Discretionary Improvements, then it must provide written notice to Lessor and Property Owner of all such Additional Non-Discretionary Improvements. If Lessor and Property Owner agree that the improvements listed on that written notice qualify as Additional Non-Discretionary Improvements, then they shall (a) notify Resident Curator in writing that they agree the improvements qualify as Additional Non-Discretionary Improvements,

and(b) advise Resident Curator whether they consent to Resident Curator performing the Additional Non-Discretionary Improvements.

9.2 The Parties may agree to add the cost of the Additional Non-Discretionary Improvements to the estimated cost of the Turner Farmhouse Curator Program requirements if before commencement of the Additional Non-Discretionary Improvements (a) the Resident Curator first gives written notice to Lessor and Property Owner of any intent to add the cost of the Additional Non-Discretionary Improvements, and (b) the Resident Curator provides a cost accounting of all labor and materials to the Lessor and the Property Owner. Additional Non-Discretionary Improvements covered in this section shall be accounted for according to the template attached as **Exhibit G** and incorporated in this Lease, and if agreed to in writing by the Parties, the term of the Lease may be extended in accordance therewith.

10. ADDITIONAL DISCRETIONARY IMPROVEMENTS. **Additional Discretionary Improvements** (“**Additional Discretionary Improvements**”) are those improvements, capital or otherwise, that the Resident Curator decides to undertake for its own convenience or desire, and that are not considered a part of the Turner Farmhouse Curator Program or considered Additional Non-Discretionary Improvements. Resident Curator may not perform any Additional Discretionary Improvements unless it has the written consent of the Property Owner, which consent may be withheld in its absolute discretion. Resident Curator understands that it makes any such Additional Discretionary Improvements at its own risk and expense, and such Additional Discretionary Improvements become the property of the Property Owner at Property Owner’s sole discretion. At the sole discretion of Property Owner and Lessor, Additional Discretionary Improvements may be required to be removed and costs for removal, including offsite disposal or any necessary restoration (per approval by the Property Owner) shall be the responsibility of the Resident Curator.

11. CONDITIONS FOR WORK-IN-PROGRESS and APPROVED INSTALLED IMPROVEMENTS. The Resident Curator must fulfill the Turner Farmhouse Curator Program Duties as defined in R-7 and obtain all required governmental approvals and permits for such work. As part of the Turner Farmhouse Curator Program Duties, Resident Curator must submit applicable documents to Lessor and Property Owner for review and written approval of Work-In-Progress. Preliminary testing, construction, and other related activity may not commence until the Property Owner has determined that the Work-In-Progress will have “no adverse effect” on the historic integrity of the Leased Property and Property Owner has given final written approval.

11.1 APPROVAL, DISAPPROVAL. In order to obtain written approval for Work-In-Progress, Resident Curator must provide to the Property Owner the following support information: (a) narrative summary of proposed improvements; (b) representative photos (digital or print) that clearly indicate the proposed project area; (c) a site map indicating the project area; and (d) any supporting material, material samples, plans, schematics and specifications that the Property Owner determines is pertinent to review the project. The Property Owner shall review the plans and specifications for conformity with the terms of this Lease, and the Property Owner shall, within thirty (30) business days after receipt thereof, either approve the submissions, or notify the Resident Curator in writing of

disapproval including specifying the respects in which the submissions do not conform to the terms of this Lease. If the Property Owner fails to respond within thirty (30) business days, such plans and specifications for Curator Program Improvements and/or Additional Non-Discretionary Improvements shall be deemed approved, and such plans and specifications for Additional Discretionary Improvements shall be deemed disapproved.

11.2 RESUBMISSION. In the event of disapproval, the Resident Curator shall modify the plans and specifications to conform to the terms of this Lease in those respects specified by the Property Owner as the grounds for disapproval; provided the Resident Curator may elect not to pursue and therefore not to modify and resubmit the plans and specifications for Additional Non-Discretionary Improvements. The re-submission shall be subject to review and approval by the Property Owner in accordance with the procedure provided above for an original submission, until the plans and specifications have been approved by the Property Owner.

11.3 ADDITIONAL REVIEW. If the Work-In-Progress requires review by the **Fairfax County Architectural Review Board (“ARB”)**, or by another regulatory entity, then the Resident Curator will prepare required documents in accordance with the governing regulations and submit required documents to the ARB or other applicable regulatory entity for review with a copy to the Property Owner. Resident Curator will inform Lessor and the Property Owner of regulatory entity determination(s). In the event of a determination of adverse effect, Resident Curator must follow and fulfill any prescribed mitigation requirements if the Work-In-Progress proceeds as proposed. When such additional regulatory review is required, Work-In-Progress will be allowed to proceed if the Property Owner consents in writing and the ARB or other regulatory entity determines that there will be no adverse effect on the Leased Property’s historic or archaeological resources.

11.4 COMPLIANCE. Work-In-Progress undertaken by or for the Resident Curator at the Leased Property, and any future changes thereto, shall be in material conformity with all applicable Laws, including, without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq. and the Resident Curator’s insurance policies.

11.5 DUE DILIGENCE, PERMITS. The Resident Curator’s Work-In-Progress must comply with all applicable laws. The Resident Curator must obtain and pay for the preparation and approval of required engineering, architectural or other plans, permits, and inspections for any renovation, replacement and/or construction work undertaken by or for the Resident Curator on the Leased Property. Any architect or engineer undertaking any of the Work-In-Progress must carry professional liability insurance naming the Resident Curator, Lessor, and the Property Owner as additional insureds, and the Resident Curator must provide proof of such insurance to Lessor and the Property Owner.

11.6 CONSTRUCTION. The term **Contractor (“Contractor”)** means any person or entity, including the Resident Curator, that provides labor, materials or both for the Turner Farmhouse Curator Program Duties whether or not paid by the Resident Curator. Contractor must provide evidence of any required **license (“License”), bond (“Bond”)**

and **insurance (“Contractor’s Insurance”)** for Work-In-Progress performed by Contractor in accordance with all applicable local, state and federal laws and regulations and this Lease. During Work-In-Progress, Resident Curator must maintain or require its Contractor(s) to maintain worker’s compensation insurance in the amounts required by applicable law (or reasonably comparable insurance if such insurance is no longer available); builder’s risk insurance (or such reasonably comparable insurance) on an “all risk” basis (including collapse) insuring against casualty to such construction for full replacement value of the work performed and the equipment, supplies and materials furnished and stored, unless such insurance coverage is provided under policies carried by Resident Curator; automobile liability in the minimum amounts required by law; and public liability insurance within limits in an amount reasonably satisfactory to Lessor and Property Owner.

11.7 GENERAL PROVISIONS. Contractor may not commence Work-In-Progress until all required permits, certificates, or other approvals have been issued and are in effect. Once commenced, the Work-In-Progress must be prosecuted continuously and with diligence in accordance with the Curator Schedules and Milestones. Work-In-Progress must be of high quality and performed in a workmanlike manner, free from faults and defects. Resident Curator must dispose of all waste and debris that result from the demolition of existing structures or other Work-In-Progress performed on the Leased Property, and such disposal must be performed in accordance with applicable laws and regulations.

11.8 PAYMENT FOR WORK-IN-PROGRESS. Resident Curator must pay the entire cost of all Work-In-Progress in cash or its equivalent, promptly, within the time periods specified in its Contractor contract(s) or other business contract, unless the Parties agree in writing to a different payment arrangement.

11.9 INSPECTION OF WORK-IN-PROGRESS. Lessor and Property Owner will enter upon the Leased Property from time to time upon reasonable notice to Resident Curator and without material interruption to the Work-In-Progress, for the purpose of reviewing the Work-In-Progress being performed by or on behalf of Resident Curator, and such entry shall not be construed to be a violation of Resident Curator’s right to the Leased Property.

11.10 TIME FOR COMPLETION OF WORK-IN-PROGRESS. Notwithstanding any provision of this Lease, including any applicable cure period for a default or Force Majeure, the Work-In-Progress must be completed in accordance with the Curator Schedules and Milestones.

11.11 APPROVED INSTALLED IMPROVEMENTS. The Work-In-Progress will be considered an Approved Installed Improvement for the purposes of this Lease only when Resident Curator can demonstrate completion of plumbing, electrical, mechanical, structural, site, or other elements, proper offsite removal and disposal of construction debris, proof that all governmental inspections have been completed, and proof of issuance of required permits, approvals, and the like, necessary for the lawful use and occupancy of

such portion of the Leased Property impacted by the Work-In-Progress or any portion thereof, including any temporary or permanent certificates of occupancy, copies of which shall be delivered by Resident Curator to Property Owner.

11.12 WARRANTY. All Contractors must provide a **warranty (“Warranty”)** for labor for at least one (1) year after Approved Improvement Date. Warranties for materials shall be in accordance with the manufacturer’s warranty. Resident Curator must place user manuals and warranty documents for materials, equipment, appliances, and the like in a three (3) ring binder and store the binder in a safe place with easy access should Lessor or Property Owner request a review of the documents, which request must be granted by Resident Curator. The Binder will become the property of Property Owner upon any Early Termination or Scheduled Termination of this Lease.

11.13 RECORD SET OF DRAWINGS. Resident Curator must furnish Lessor and Property Owner with a complete record set of any final plans and specifications for Approved Installed Improvements constructed by or for Resident Curator as part of the Turner Farmhouse Curator Program Duties, together with copies of all final permits and approvals issued by plumbing, gas, electrical, building, health department, or other inspectors.

11.14 MECHANICS’ LIENS. No mechanics, materialmen or similar lien shall attach and remain against Lessor or Property Owner’s interest in or to the Leased Property for any Work-In-Progress or Approved Installed Improvements performed by or for Resident Curator. If, as part of the Turner Farmhouse Curator Program Duties, any lien relating to the Work-In-Progress or Approved Installed Improvements is filed against Lessor, Property Owner or Resident Curator’s interest in the Leased Property, and such lien is not removed within sixty (60) days after the date for payment under the contract for such Turner Farmhouse Curator Program Duties, then Resident Curator must discharge the same by payment or by filing any necessary bond within fifteen (15) days after the expiration of such sixty (60) day period.

11.15 CONTROL OF WORK-IN-PROGRESS and OWNERSHIP OF APPROVED INSTALLED IMPROVEMENTS. Property Owner will continue to have title to the Leased Property and Resident Curator, subject to the terms of this Lease, will have control of the Work-In-Progress within the Leased Property. Upon the expiration or termination of this Lease, all Approved Installed Improvements will become the property of Property Owner with no compensation to Resident Curator for any Approved Installed Improvements which may have been paid for by or on behalf of Resident Curator.

12. UTILITIES and SERVICE. Resident Curator is responsible for securing accounts with local utility companies in order to activate service of all utilities as of the Commencement Date, and is responsible for payment of all utility usage commencing on the Commencement Date. Utilities and services used at the Leased Property must be consistent with this Lease. Unless otherwise noted in this Lease, Resident Curator is responsible for costs associated with extending

utilities or other services within the Leased Property for utilities or services that support the Turner Farmhouse Curator Program Duties.

13. USE OF LEASED PROPERTY. This Section sets forth the only permitted uses of the Leased Property (“**Permitted Uses**”). The Leased Property may not be used for any use other than the Permitted Uses without the prior written permission of Property Owner.

13.1 RESIDENT CURATOR PROGRAM. Resident Curator will use the Leased Property to perform and fulfill the Turner Farmhouse Curator Program Duties.

13.2 RETREAT CENTER. Subject to the approval of the Special Exception, Resident Curator may use the Leased Property for all uses approved with the Special Exception for the Retreat Center. Retreat Center Customers shall carry applicable insurance and shall indemnify Lessor and Property Owner during their occupancy and use of the Leased Property pursuant to a Release and Indemnification Statement approved by the County Attorney [PERHAPS ATTACH AS AN EXHIBIT].

13.3 RECREATIONAL FIELD USAGE. As part of the Retreat Center experience, Retreat Center Customers will be allowed to walk through Field # 2 as identified on Exhibit A to access the pond. Resident Curator must allow **Turner Farm Events (“TFE”)** to continue using Field # 6 as shown on Exhibit A as a warm-up ring a minimum four (4) times a year, subject to such reasonable terms and conditions as Resident Curator may establish. Parking and unloading of horses related to TFE will remain in their current location on the Park property and not on the Leased Property.

13.4 PLANTED BUFFERS. As part of the Turner Farmhouse Curator Duties, Resident Curator will (i) plant an evergreen shrub buffer, fifteen feet (15’) wide, along Georgetown Pike, and (ii) plant screening between Field # 6 and the dirt road that leads to the main equestrian ring of the Park. All plantings are subject to the approval of the Property Owner and will remain the property of the Property Owner upon expiration or termination of this Lease.

13.5 USE OF THE TURNER FARM HOUSE AND THE LEASED PROPERTY FOR RESIDENTIAL PURPOSES. As set forth in this Lease, Resident Curator may enter into a written sublease agreement with Ms. Kirk, subject to written approval by Lessor and Property Owner in accordance with this Lease, which sublease will permit the Residents to reside in the Turner Farm House and to occupy the Leased Property subject to the terms and conditions of such sublease and in conformance with this Lease. In accordance with such an approved sublease agreement, the Residents may occupy and use the Turner Farm House as a residence and the remainder of the Leased Property for all lawfully permitted uses that are consistent with residential and agricultural use and that conform with the terms of this Lease.

14. SIGNS and MARKETING. Lessor and Property Owner will have the right to install one or more **Signs or Kiosks (“Signs”)** on the Leased Property on the exterior and in the interior of

the buildings provided that such Signs do not unreasonably interfere with Resident Curator's use of the Leased Property. Resident Curator will have the right to install interior and exterior signs on the Leased Property, including, without limitation, a sign for the Retreat Center, that comply with applicable provisions of the Zoning Ordinance with the approval of the Property Owner, such approval not to be unreasonably withheld, conditioned or delayed.

14.1 Property Owner shall have the right to install a plaque or other designating signage on the Leased Property in order to indicate the name of Turner Farm House and its inclusion in the Resident Curator Program. No signage, whether exterior or interior, that is visible from the exterior shall include any commercial advertising beyond the identification of Resident Curator and the Leased Property. Resident Curator agrees that Lessor's or Property Owner's name and logo shall be included in major signage such as entrance signage.

14.2 The location and method of installation will be determined in consultation with Resident Curator. If Resident Curator proposes any directional signs for the Leased Property located outside the Leased Property, Property Owner retains the right to review and approve any such signs in its absolute discretion. Resident Curator must comply with all applicable laws that impact the location, size, and installation of signs.

15. PARK USE and CONTACTS. Resident Curator acknowledges that the Leased Property is located in a public park and, therefore, (a) is subject to inconveniences due to the public nature of the grounds surrounding the Leased Property, and (b) is subject to **Fairfax County Park Authority Regulations ("Park Authority Regulations")** attached hereto as **Exhibit H** and incorporated into this Lease. Resident Curator shall provide a two (2) week advanced written notification (email notification is acceptable) to the Property Owner Contact and the Park Contact for any activities that could potentially impact or interfere with Park operations or management. Resident Curator shall adjust Work-In-Progress or other activities that could potentially impact or interfere with Park operations or management if required by Property Owner.

15.1 RESIDENT CURATOR CONTACT: Sarah C. Kirk, President, Turner Farmhouse Foundation, skirkbtr@gmail.com , (703) 403-3072

15.2 PROPERTY OWNER CONTACT: David Buchta, Heritage Conservation Branch Manager, Resource Management Division, david.buchta@fairfaxcounty.gov, (703) 324-8586

15.3 PARK CONTACT: Wayne Brissey, Area 6 Manager, Park Operations Division, wayne.brissey@fairfaxcounty.gov , (703) 759-4851

15.4 LESSOR CONTACT: Mike Lambert, Assistant Director, Facilities Management, michael.lambert@fairfaxcounty.gov, (703) 324-2825

The contacts listed in this Section may be changed by any Party through the Notice process set forth in this Lease.

16. PUBLIC ACCESS. Resident Curator shall allow reasonable access, including programmatic access, to the Leased Property to the public consistent with the historic property's nature and use as agreed upon by the Parties in writing (email confirmation is acceptable) pursuant to the Resident Curator Program, provided such access is consistent with Resident Curator's and the Residents' reasonable expectations of privacy and control of the Turner Farmhouse Residence and does not impact or interfere with Resident Curator's or the Residents' Permitted Uses of the Leased Property. Resident Curator will offer at least one of the following annually: open house opportunity for the farmhouse, lectures or workshops on Pasture Management and Manure Management and tours of the pony farm. A failure to allow the public access required in this section for two consecutive years will be considered an Event of Default.

17. MEETINGS. The Parties shall meet quarterly, or more frequently at the request of any Party, at a location determined by Property Owner, starting on the Commencement Date of this Lease. Meetings shall be set up with Contacts identified in Section 15 of this Lease.

18. ANNUAL REPORT. Within ninety (90) days after the end of the first year of the Term, and after the end of every year of the term thereafter, Resident Curator shall submit to the Property Owner a written **Annual Report** ("**Annual Report**") that summarizes the progress and status of the Resident Curator Program at the Leased Property for the then-ended term year. The Annual Report shall demonstrate to Lessor's and Property Owner's reasonable satisfaction that Resident Curator is rehabilitating and maintaining the Leased Property in compliance with the Resident Curator Program and this Lease. The Annual Report shall also note the nature and dates for any public and community activities at the Leased Property, and the number of visitors participating in each event. Each Annual Report must contain a financial statement accounting for all Approved Installed Improvements completed to date as well as the value of any Work-In-Progress. Resident Curator will certify each Annual Report under the penalty of perjury, as being accurate, true, and complete, to the best of Resident Curator's knowledge, belief, and ability to ascertain. Resident Curator's failure to file the Annual Report within the time limits prescribed hereunder shall be considered an Event of Default.

19. AUDIT. All reports, financial statements, analyses and other documentation provided by Resident Curator shall be subject to verification and audit by Lessor, Property Owner, agents or assigns. Resident Curator must provide additional documents upon request if required as part of an audit.

20. CONTRACT INSURANCE PROVISIONS

20.1 The Resident Curator shall be responsible for the Leased Property, and the Work-In-Progress and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Resident Curator assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work-In-Progress, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation permitted under the Lease or that occurs at the Leased Property.

20.2 The Resident Curator shall provide the following:

20.2.1 During the continuance of all Work-In-Progress, maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Resident Curator from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia. If the Resident Curator is exempt from this requirement based on Virginia law it should send confirmation of this waiver.

20.2.2 The Resident Curator agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Resident Curator, its subtenants, and the interests of Fairfax County, Lessor, and Property Owner, and each of their respective officers and employees, against any and all claims for injuries to third parties, including bodily injury and personal injury, wherever located, occurring on the Leased Property or resulting from any action or operation under the Lease or in connection with the Work in Progress.

20.2.3 The Resident Curator agrees to 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 Resident Curator. In addition, all mobile equipment used by the Resident Curator in connection with the Work in Progress will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.

20.2.4 Directors & Officers Insurance in the amount of \$1,000,000 per occurrence/aggregate.

20.2.5 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.

20.2.6 The Resident Curator agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.

20.2.7 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 Resident Curator'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.

20.2.8 Hold-harmless and Indemnification: The Resident Curator hereby agrees to indemnify, defend and hold harmless Fairfax County, Lessor and Property Owner, and each of their respective officers, agents and all employees and volunteers, from any and all claims for any combination of bodily injury, personal injury or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney fees, and the cost of appeals arising out of any claims or suits arising from any condition on the Leased Property or which result from errors, omissions, or negligent acts of any combination of the Resident Curator, its subtenants, its contractors or any of their agents and employees.

20.2.9 The Resident Curator will provide an original, signed Certificate of Insurance citing the Leased Property and such endorsements as prescribed herein.

20.2.10 The Resident Curator will secure and maintain all insurance certificates of its subtenants and contractors, which must be made available to the Property Owner on demand.

20.2.11 The Resident Curator will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the Property Owner. These certified copies will be sent to the Property Owner from the Resident Curator's insurance agent or representative.

20.3 No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty (30) day written notice to the Property Owner. The Resident Curator shall furnish a new certificate prior to any change or cancellation date. The failure of the Resident Curator to deliver a new and valid certificate will be considered an Event of Default.

20.4 Compliance by the Resident Curator and all subtenants and contractors with the foregoing requirements as to carrying insurance shall not relieve the Resident Curator and all subtenants and contractors of their liability provisions of the Lease.

20.5 Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the Property Owner from supervising and/or inspecting the Work in Progress as to the end result. Resident Curator shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of its contractors.

20.6 Nothing contained in the specifications shall be construed as creating any contractual relationship between any subtenant or contractor and Property Owner. The Resident Curator will be as fully responsible to Property Owner for the acts and omissions of the subtenants, contractors and of persons employed by them as it is for acts and omissions of person directly employed by it.

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

20.8 The Resident Curator and all subtenants and contractors must comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to the Work in Progress and this Lease.

20.9 Lessor, Property Owner, and their respective officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the Lessor/Property Owner may possess."

21. NO HAZARDOUS CONDITIONS. Resident Curator must not permit any hazardous materials, explosives, combustible, corrosive or erosive materials, as defined by the Fire Marshal, on the Leased Property or perform any action, or fail to perform any action, which would increase the cost of fire or other hazard insurance on the Leased Property.

22. PARTICIPATION IN ILLEGAL ACTIVITIES. If the Lessor or Property Owner determines that the Resident Curator has participated in or in any manner permitted any criminal activities on the Leased Property, Lessor or Property Owner reserves the right immediately to declare an Event of Default and Lessor shall thereafter have the immediate right to terminate this Lease.

23. EXPIRATION OR TERMINATION OF LEASE. Upon the expiration or other termination of this Lease, the Resident Curator shall quit and surrender to Property Owner the Leased Property with all Approved Installed Improvements, broom-cleaned and in such order and condition as Resident Curator is required to maintain the same hereunder and all Residents and animals must vacate the Leased Property. Resident Curator and Residents must remove all movable personal property therefrom to the extent that such personal property does not constitute a fixture to the Leased Property, failing which, such moveable personal property will be deemed to have been abandoned.

24. DEFAULT AND LESSOR'S RIGHT TO REPOSSESS.

24.1 An Event of Default ("Event of Default") will exist if any of the following situations occur:

24.1.1 Failure to Complete Work. If Resident Curator does not achieve benchmarks in accordance with the Curator Schedules and Milestones and has not commenced the required Work-In-Progress within thirty (30) days' notice of a failure to achieve a benchmark and/or does not diligently pursue such Work-In-Progress to completion.

24.1.2 Bankruptcy. If the Resident Curator files any petition or answer seeking any reorganization, arrangement, liquidation, dissolution, or similar relief for Resident Curator under the United States Bankruptcy Code, as then in effect, or any other present or future federal, state, or other statute, law, or regulation, or if Resident Curator seeks, consents to or acquiesces in the appointment of any trustee, receiver, or liquidator of Resident Curator or of all or any substantial part of

Resident Curator's properties, or makes any general assignment for the benefit of creditors.

24.1.3 Change of Resident Curator Status. If TFF's purpose is no longer consistent with the Resident Curator Program, or if TFF's compliance is no longer consistent with the terms of this Lease.

24.1.4 Failure to Perform Lease Requirements. In addition to the Events of Default defined above, and except as provided herein, if any Party fails to perform or observe any covenants, terms or conditions in this Lease after thirty (30) days written notice thereof from the non-defaulting party, then such a failure to perform or observe shall also be considered an Event of Default; provided that if compliance requires more than 30 days to perform, such additional time for performance shall be allowed as long as the defaulting party diligently pursue the performance to completion.

At the expiration of the tenancy hereby created pursuant to an Event of Default, Resident Curator shall surrender the Leased Property, Residents will vacate the Turner Farm House, and Residents will remove all equines from the Leased Property within thirty (30) days of such expiration of the tenancy.

24.2 Remedy of Default. In addition to its remedies under this Lease, a non-defaulting party shall have all available rights and remedies at law and in equity. The failure of one party to the action in case of a breach of the Lease, or the failure of a party to enforce its rights hereunder shall not be deemed a waiver of any breach of this Lease. In the absence of written notice or consent, any such breach shall be a continuing one. This section however shall not be construed as a waiver of any defenses that one party may assert against the other under the Lease. The non-defaulting party has the right to terminate this Lease in the Event of Default by providing written notice to the defaulting party that the Lease will be terminated ("Notice of Termination"). The Notice of Termination must set forth the date on which the Lease will terminate ("Default Termination Date"), which date must be at least 30 calendar days after the date the Notice of Termination is served on the defaulting party. If Lessor serves Resident Curator with a Notice of Termination, then after the Default Termination Date and notwithstanding any former breach of covenant or waiver of the benefit hereof or consent in a former instance, Lessor lawfully may, in addition to any and all rights and remedies otherwise available to Lessor at law, enter into and upon the Leased Property and repossess the same and expel Resident Curator and those claiming through or under Resident Curator or otherwise in occupancy and remove their effects (forcibly if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any rights or remedies to which Lessor might otherwise be entitled, for arrears of rent or preceding breach of covenant.

Resident Curator covenants and agrees any entry or re-entry by Lessor whether by summary proceedings, termination or otherwise, that Resident Curator is, and will remain, liable for any obligations of the Resident Curator under the Lease. If Resident Curator has not achieved completion of Curator Program Duties at the date of re-entry by Lessor or termination of the Lease,

then Lessor and Property Owner each have the right to finish the Work-In-Progress at the Resident Curator's expense. Lessor and Property Owner will have no obligation to mitigate damages upon the occurrence of an Event of Default. Resident Curator acknowledges that the Leased Property belongs to the Property Owner.

25. NOTICES. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, and/or whenever either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to the Leased Property, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows:

25.1 If to Lessor:

Director, Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, Virginia 22035

25.2 If to Property Owner:

Director, Fairfax County Park Authority
12055 Government Center Parkway, Suite 927
Fairfax, Virginia 22035

25.3 If to Resident Curator:

Sara Kirk, President, Turner Farmhouse Foundation
Prior to Occupancy: 731-E Walker Road, Great Falls, VA 22066
After Occupancy: 10609 Georgetown Pike, Great Falls, VA 22066

25.4 Every such notice, demand, request or other communication hereunder shall be deemed to have been given or served for all purposes hereunder on the date on which it is received or referred by the party to whom it was sent.

25.5 Wherever in this Lease notice or requests to Lessor and a response is required within a specified period of time, the envelope containing the notice or request shall bear on the outside thereof and the first page of such notice at the top of such page, the following legend, printed in bold-face type in a font of at least fourteen (14) points in size:

NOTICE

THIS NOTICE REQUIRES REPLY WITHIN [] DAYS

with the blank in such legend filled in with the number of days for notice or request referred to in the applicable Section of this Lease, as appropriate.

26. DAMAGE BY CASUALTY. Resident Curator must give prompt notice to Lessor of any damage or loss by fire or other casualty to the Leased Property. If the Leased Property shall be partially or completely damaged by fire or other cause and the damage renders the Leased Property or the approaches thereto unfit for use and occupancy, or if repairs to fix the damage are not financially feasible, each of which as determined by Lessor or Resident Curator in their sole respective discretions, Lessor or Resident Curator shall have the right to terminate this lease. Lessor and Property Owner are not responsible for Resident Curator's personal goods lost or damaged during any fire or fire suppression activity, and Lessor and Property Owner shall have no obligation to replace such items or compensate Resident Curator in any way for such loss or damage. Resident Curator may obtain insurance for any real or personal property not owned by Lessor and Property Owner but is under no obligation to obtain such coverage.

27. INTENTIONALLY OMITTED

28. WAIVERS. No waiver or oversight of any breach of covenant, condition, or agreement herein contained, or compromise of settlement relating to such a breach, shall operate as a waiver of the covenant, condition, or agreement itself, or of any subsequent breach thereof. Each property insurance policy obtained in connection with this Lease shall include a waiver by the insurer of all rights of subrogation against whichever party, if any, is not an insured under such policy. Resident Curator acknowledges that the Lessor and the Property Owner are not required to procure or maintain insurance of any kind on or with respect to the Leased Property under this Lease

29. ASSIGNMENT AND SUBLEASE. Except as provided in this section, Resident Curator may not assign, transfer, convey, encumber, sublease, or dispose of its right or interest in the whole or any part of the Leased Property, all and each of which shall be considered an impermissible transfer of Resident Curator's interest in the Leased Property.

Notwithstanding the above, Resident Curator may enter into property management agreements with the employees of Resident Curator to permit them to exercise substantial management responsibilities for the operations authorized by this Lease.

Resident Curator also may enter into a written Sublease agreement with Ms. Kirk or a successor President of Resident Curator that would allow such sublessees occupy and use the Leased Property for the Permitted Uses. Resident Curator's sublease agreement with Ms. Kirk must be approved in writing by Property Owner and must address the following issues: Ms. Kirk intends to keep up to four (4) equines on the Leased Property pursuant to the sublease she will enter into with Resident Curator. Such sublease must address her individual use of the Leased Property, including any proposed improvements to the Leased Property she intends to make to support the equines on the Leased Property, which may include (a) a dry lot, (b) two (2) barns, (c) equestrian fencing, (d) feed and tack room, (e) composter, (f) three (3) watering troughs, and (g) an underground polyvinyl chloride water pipe system that connects to the public water system or another acceptable water source (**collectively the "Pony Farm Improvements"**). The costs for the care of such equines and the costs for the installation and maintenance of the Pony Farm

Improvements will be the responsibility of Ms. Kirk. The Pony Farm Improvements are subject to written approval by the Property Owner. The equines and the Pony Farm Improvements will be considered an integral part of the Resident Curator Program's historic, pastoral, agrarian setting. The equines may not be rented to the general public for use on the Leased Property or be used by members of private clubs on the Leased Property without the approval of the Property Owner, which approval shall not be unreasonably withheld, conditioned or denied. Ms. Kirk's use of the Leased Property for equines must comply with all applicable laws and regulations.

Resident Curator may only enter into a sublease agreement with any other person other than Ms. Kirk if it obtains written consent from both Lessor and Property Owner, which each may withhold consent in their absolute discretion.

30. INTERPRETATION. All nouns used herein shall be interpreted and construed to include the singular, plural, masculine, feminine, or neuter forms in any place or places in which the context may require to indicate such interpretation and construction.

31. ENTIRE AGREEMENT. This Lease constitutes the entire agreement between Lessor and Resident Curator with respect to the Leased Property. This Lease shall not be changed or modified in any manner except by an instrument in writing executed by the Parties hereto.

32. KEYS AND SECURITY. Property Owner shall furnish Resident Curator with two (2) sets of keys to the Turner Farm House. Property Owner shall have the right to retain sets of keys as Property Owner deems appropriate for maintenance and emergency purposes as provided herein.

33. ANIMALS. Typical pets and farm animals are permitted under this Lease and the Sublease, including, without limitation, service animals as defined in the Americans with Disabilities Act, 42 U.S.C. § 12101, *et. seq*; provided such pets and farm animals are permitted by and remain in compliance with all applicable laws and do not interfere with Park use and the public access to the Leased Property permitted under this Lease. Resident Curator must provide written notice to Property Owner regarding any animals that will be allowed inside the Turner Farm House.

34. SMOKING. Smoking is prohibited inside the Turner Farm House and the Retreat Center.

35. SAFETY, SECURITY. Resident Curator is responsible for ensuring adequate law enforcement at the Leased Property when breach of the peace can be reasonably anticipated, or when required by the Park Authority Regulations. When applicable, Resident Curator shall develop and maintain safety and security plans for its own activities subject to Lessor's and Property Owner's prior written approval.

36. NONDISCRIMINATION. Resident Curator agrees that Resident Curator will not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation, discriminate against any qualified employee, applicant for employment, contractor, subcontractor, or person or firm seeking to provide goods or services to Resident Curator, or deny any person access to the Leased Property or to any activities or programs carried

out upon the Leased Property. Resident Curator must comply with all applicable laws prohibiting discrimination in employment or public accommodation.

37. **REAL ESTATE TAXES.** “Real Estate Taxes” means real estate taxes levied, assessed, or imposed against the Leased Property or the leasehold interest created pursuant to this Lease. Resident Curator acknowledges the leasehold created pursuant to this Lease will be assessed for Real Estate Taxes and that Resident Curator will pay timely all Real Estate Taxes imposed during the term of this Lease; provided, Resident Curator reserves the right (i) to apply for and participate in any County program that provides reductions in real estate taxes, and (ii) to appeal any real estate assessment of the leasehold interest as permitted by and in accordance with applicable law.

38. **LIABILITY.** No official, employee or consultant of Lessor or Property Owner will be personally liable to Resident Curator or to any successor in interest or person claiming through or under Resident Curator in the Event of Default or breach of this Lease by Resident Curator or for any amount which may become due or on any claim, cause or obligation whatsoever under the terms of this Lease.

39. **ESTOPPEL.** Lessor and Resident Curator agree, at any time and from time to time, upon not less than fifteen (15) days prior written request by the other, to execute, acknowledge and deliver to the other either a statement in writing certifying that this Lease is unmodified and in full force and effect or if there have been modifications, that the Lease is in full force and effect as modified, and stating the modifications, and that either under the Lease there is no default and no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default, or that a default exists under this Lease and specifying the nature and status thereof, and the dates to which the rent and other charges have been paid in advance.

40. **AMENDMENTS.** This Lease may be modified or altered only by agreement in writing by **Amendment (“Amendment”)** between Lessor and Resident Curator after review and consent by the Property Owner.

41. **GOVERNING LAW.** Lessor and Resident Curator agree to be bound by the Laws of the Commonwealth of Virginia in any proceeding, whether in law or in equity, with respect to any dispute arising under this Lease. The only proper jurisdiction and venue for any lawsuit arising out of or relating to this Lease shall be the Circuit Court of Fairfax County or the United States District Court for the Eastern District of Virginia.

42. **FORCE MAJEURE.** In any case where Resident Curator is required to do any act other than the payment of money, delays caused by or resulting from Acts of God, war, civil commotion, fire, flood or other casualty, strikes, unavailability of materials or equipment, unusually severe weather or other causes beyond the reasonable control of Resident Curator, herein referred to as **Force Majeure (“Force Majeure”)**, Force Majeure shall not be counted in determining the time when the performance of such act must be completed. The period of time for completion shall be extended by the same number of days as lost due to the Force Majeure event. If Resident Curator claims any delay was caused by Force Majeure, it must provide written notification to Property Owner within seven (7) days of the first day of delay caused by Force Majeure. This written notification (**“Force Majeure Notification”**) must set forth the basis for the claim of Force

Majeure, the delay that was caused and the length of the delay. If the delay continues for a period of time longer than seven (7) days, then Resident Curator must provide a Force Majeure Notification to Property Owner every seven (7) days until the delay no longer exists.

43. **LESSOR'S FINANCIAL OBLIGATIONS.** To the extent there are any financial obligations of the Lessor under this Lease, such financial obligations are subject to appropriations by the BOS to satisfy payment of such obligations.

44. **AGREEMENT AND COVENANT.** Every term, condition, agreement or provision contained in this Lease that imposes any obligation on Resident Curator or Lessor shall be deemed to be also a covenant by Resident Curator or Lessor.

45. **NO PARTNERSHIP.** Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Lessor and Resident Curator, or to create any other relationship between the parties hereto other than that of Lessor and Resident Curator.

46. **RECITALS.** Recitals R-1 through R-11, above, are incorporated into this Lease and are binding on Lessor and Resident Curator.

[SIGNATURES ON FOLLOWING PAGES]

Witness the following signatures and seals:

LESSOR:

**BOARD OF SUPERVISORS OF
FAIRFAX COUNTY**

By: _____
Joseph M. Mondoro
Chief Financial Officer
Fairfax County

Commonwealth of Virginia :
County of Fairfax :

The foregoing Lease was acknowledged before me this ____ day of _____,
201__ by XXXXXXXXXXXX, in his capacity as the Deputy County Executive of the Board of
Supervisors of Fairfax County, the Lessor hereunder.

Notary Public

My Commission expires: _____

Registration Number: _____

Witness the following signatures and seals:

RESIDENT CURATOR:

TURNER FARMHOUSE FOUNDATION

By: _____
Sarah C. Kirk, President
Turner Farmhouse Foundation
Resident Curator

Commonwealth of Virginia :
County of Fairfax :

The foregoing Lease was acknowledged before me this _____ day of _____
201__ by Sarah C. Kirk, in her capacity as President of Turner Farmhouse Foundation, the
Resident Curator.

Notary Public

My Commission expires: _____

Registration Number: _____

TURNER FARM HOUSE

