

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
September 24, 2019**

**AGENDA**

- 9:30 Presentations
- 10:30 Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
- 10:30 Public Hearing on the County and Schools' *FY 2019 Carryover Review* to Amend the Appropriation Level in the FY 2020 Revised Budget Plan
- 10:40 Items Presented by the County Executive

**ADMINISTRATIVE  
ITEMS**

- 1 Streets into the Secondary System (Hunter Mill and Sully Districts)
- 2 Authorization to Advertise a Public Hearing to Lease County-Owned Property at 8350 Richmond Highway to Clear Wireless LLC (Lee District)
- 3 Extension of Review Period for 2232 Applications (Mount Vernon, Sully, Mason, and Providence Districts)
- 4 Additional Time to Establish Use or Commence Construction for Special Exception SE 2017-DR-003, SunTrust Bank (Dranesville District)
- 5 Additional Time to Establish Use or Commence Construction for Special Exception SE 2016-DR-011, H & M of Virginia, LLC (Dranesville District)
- 6 Authorization to Advertise a Public Hearing to Consider Amending and Readopting Fairfax County Code Sections 4-14-1 and 4-14-3 Relating to Real Estate Tax Relief, to Exclude the Disability Income of Certain Relatives Living in an Owner's Sole Dwelling from Total Combined Income Calculations for Tax Relief Purposes
- 7 Approval of Traffic Calming Measures, "\$200 Additional Fine for Speeding" Signs and "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Mason, Mount Vernon, Providence and Springfield Districts)

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
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**ADMINISTRATIVE  
ITEMS  
(Continued)**

- 8 Supplemental Appropriation Resolution AS 20083 for the Fairfax-Falls Church Community Services Board to Accept Grant Funding from Virginia Department of Behavioral Health and Developmental Services for the Regional STEP-VA Community Crisis Response & Detox Services
- 9 Notification of the Continuum of Care Program Funding Application and Certification of Consistency with the Consolidated Plan and Authorization for the Office to Prevent and End Homelessness to Apply for and Accept Funding from the U.S. Department of Housing and Urban Development
- 10 Authorization to Advertise a Public Hearing to Sell Board-Owned Property North of Reston Station Boulevard to CRS Sunset Hills, LC and Proposed Amendment to Deed of Lease with Comstock Reston Station Holdings, LC to Remove Land Area (Hunter Mill District)
- 11 Appointment of Parent Representatives to the Fairfax-Falls Church Community Policy and Management Team (CPMT)

**ACTION ITEMS**

- 1 Presentation of the Delinquent Tax List for Tax Year 2018 (FY 2019)
- 2 Approval of a Grant Agreement Between the Virginia Department of Environmental Quality and Fairfax County for the Turkey Run at Truro Stream Restoration Project (Braddock District)
- 3 Approval of a Grant Agreement Between the Virginia Department of Environmental Quality and Fairfax County for the Difficult Run Tributary at Brittenford Stream Restoration Project (Hunter Mill District)
- 4 Approval of an Agreement Between the Town of Vienna and Fairfax County to Design and Construct the Bear Branch Tributary at Southside Park Stream Restoration Project (Hunter Mill District)



**FAIRFAX COUNTY  
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**ACTION ITEMS  
(Continued)**

- 5 Approval of Donation of Public Art for Installation at Tysons-Pimmit Regional Library (Dranesville District)
- 6 Approval of a Letter Agreement Between Fairfax County Department of Transportation and Fairfax County Park Authority for the Construction of the I-66 Trail at Random Hills (Braddock District)
- 7 Approval of a Letter Agreement Between Fairfax County Department of Transportation and Fairfax County Park Authority for the Construction and Maintenance of the Ashgrove Trail Extension (Hunter Mill District)
- 8 Approval of Project Agreements Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fiscal Year (FY) 2020 Transit Assistance Grant Funds
- 9 Approval of a Project Administration Agreement with the Virginia Department of Transportation for the Implementation of the Telegraph Road/Hayfield Road Intersection Improvement Project (Lee District)
- 10 Approval of and Authorization to Amend a Project Administration Agreement with the Virginia Department of Transportation for the I-495 Pedestrian Overpass from Route 123 and Provincial Drive to Tysons One Place (Providence District)
- 11 Approval of and Authorization to Execute a Project Administration Agreement with the Virginia Department of Transportation for Implementation of the Vienna Metrorail Station Trail Improvement (Providence District)
- 12 Authorization to Sign Standard Project Agreements (SPAs) for Distribution of I-66 Inside the Beltway Toll Revenues Allocated by the Commonwealth Transportation Board (CTB) to the Northern Virginia Transportation Commission (NVTC) for Bus Service in the I-66 Corridor (Braddock, Providence, Springfield, and Sully Districts)
- 13 Authorization for the Department of Transportation to Apply for Funding and Approval of a Resolution Endorsing Projects Being Submitted for the Virginia Department of Transportation's FY 2021 and FY 2022 Revenue Sharing and Transportation Alternatives Set-Aside Funding Programs

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
September 24, 2019**

**ACTION ITEMS  
(Continued)**

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| 14 | Supplemental Appropriation Resolution AS 20088 for the Department of Transportation to Accept Grant Funding from the Virginia Department of Rail and Public Transportation for the Transportation Demand Management Strategic Plan   |
| 15 | Approval of Addendum to the Memorandum of Agreement Between the Friends of the Fairfax County Animal Shelter and the Board of Supervisors of Fairfax County, Virginia, Regarding Certain Fundraising Projects (Springfield District) |
| 16 | Approval of Revisions to Chapters 2, 4, 5, 6, 7, 10, and 17 of the Personnel Regulations to Align Definitions, Align Practice with Policy, and Provide Administrative Clarification  |
| 17 | Approval of Amendments and Revisions to Action Item 17, Establishment of a Police Civilian Review Panel, Approved by the Fairfax County Board of Supervisors on December 6, 2016   |
| 18 | Approval of a Resolution Endorsing Projects Being Submitted to the Northern Virginia Transportation Authority for Fiscal Year 2024 to Fiscal Year 2025 Regional Funding  |
| 19 | Approval of a FY 2020 Washington Metropolitan Area Transit Authority (WMATA) Capital Funding Agreement   |
| 20 | Approval for the Implementation of a Body-Worn Camera Program for the Fairfax County Police Department   |

**CONSIDERATION  
ITEMS**

- |   |   |
|---|---|
| 1 | Proffer Interpretation Appeal A-RZ 86-C-12, Related to the Planning Commission's Denial of Conceptual Plan CP 86-C-121-15, Filed by NS Reston LLC |
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**INFORMATION  
ITEMS**

- |       |  |
|-------|--|
| 1     | County Holiday Schedule – Calendar Year 2020 |
| 10:50 | Matters Presented by Board Members           |
| 11:40 | Closed Session                               |

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
September 24, 2019**

3:00 p.m.  
Action 21

Board Approval of a Minor Variation Request for PCA 2003-MV-033, the Fairfax County Board of Supervisors, to add Craft Beverage Production Establishment and Small-Scale Production Establishment as Permitted Secondary Uses under Proffer 6(a) at the Workhouse Arts Center (Mount Vernon District)

**PUBLIC HEARING  
ITEMS**

3:00	Public Hearing on RZ 2016-PR-023 (Robert H. Pearson, Jr., R.H. Pearson, Inc. and Howard Wallach, Trustee for the Wallach Living Trust) (Providence District)
3:00	Public Hearing on SE 2018-PR-023 (Fairfax County Water Authority) (Providence District)
3:00	Public Hearing on RZ 2018-BR-025 (One University Development Partners, LLC) (Braddock District)
3:00	Public Hearing on PCA C-058 (One University Development Partners, LLC) (Braddock District)
3:00	Public Hearing on PCA 1998-HM-036 (Srinivas Akella & Krishna N. Kidambi; Mayur H. Maniar & Sonal B. Maniar; Na Ayuttaya Anuchit Suthus & Piyawannarat Benjawan; Paul D. Fauser & Kristine K. Fauser; Azaad Salena & Khan-Ramprashad Zalena) (Hunter Mill District)
3:30	Public Hearing on PCA 78-C-098-04 (AP Reston Campus LLC) (Hunter Mill District)
3:30	Public Hearing on PCA-C-597-05 (PS Business Parks, L.P.) (Providence District)
3:30	Public Hearing on SEA 2007-PR-014 (PS Business Parks, L.P.) (Providence District)
3:30	Public Hearing on SE 2019-PR-011 (Reston Hospital Center, LLC) (Providence District)
3:30	Public Hearing on AR 85-V-002-04 (Martin B. Jarvis, Jr. TR) (Mount Vernon District)
3:30	Public Hearing on AR 89-D-001-03 (The Eagle Family LLC; Charlotte Fredette Smith Eagle; Frederick Smith Trust Under Will for the Benefit of Charlotte Fredette Smith Eagle; Cumberland Trust, Trustee) (Dranesville District)

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
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**PUBLIC HEARING  
ITEMS  
(Continued)**

3:30	Public Hearing on RZ 2016-HM-016 (Golf Course Overlook, LLC) (Hunter Mill District)
4:00	Public Hearing on Proposed Plan Amendment 2019-IV-RH1, Oakwood Road Senior Housing, Located at the Southeast Quadrant of the Intersection of Oakwood Road and South Van Dorn Street (Lee District)
4:00	Public Hearing on Proposed Amendments to Chapter 101 (Subdivision Ordinance) and Chapter 112 (Zoning Ordinance) of <i>The Code of the County of Fairfax, Virginia</i> (County Code) and the Public Facilities Manual (PFM) Re: Development in Dam Break Inundation Zones, Construction of State-Regulated Impounding Structures, Plan Submissions, and Minor Editorial Changes
4:00	Public Hearing on Submission DSC-D1-2 (Jackson Property) of the Dulles Suburban Center Study (PA 2013-III-DS1), Located South and East of the Sunrise Valley Drive and Frying Pan Road Intersection (Dranesville District)
4:00	Public Hearing to Sell Board-Owned Property South of Spring Hill Road to Dominion Energy for an Electric Substation (Hunter Mill District)
4:30	Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Peyton Run at Longwood Knolls Stream Restoration (Springfield District)
4:30	Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive (Hunter Mill District)
4:30	Public Hearing on RZ 2007-SP-013 (E. James and Anne R. Souvaxis) (Springfield District)
4:30	<b>To Be Deferred</b> Public Hearing on PCA 2002-LE-005 (Alwadi, LLC) (Lee District)
5:00	Public Hearing to Consider Adopting an Ordinance to Establish the Westford Landing Community Parking District (Providence District)
5:00	Public Hearing to Consider Adopting an Ordinance to Establish the Fair Oaks Farms Community Parking District (Sully District)

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
September 24, 2019**

**PUBLIC HEARING  
ITEMS  
(Continued)**

- |      |   |
|------|---|
| 5:00 | Public Hearing on Proposed Site Specific Plan Amendment (SSPA) 2018-I-1MS, Merrifield Suburban Center Study, Located South of Lee Highway, North and South of Arlington Boulevard, and East of Gallows Road (Providence District) |
| 5:30 | Public Hearing to Consider an Ordinance to Amend the Fairfax County Code by Adding a New Chapter 9.2 and Repealing Chapter 9.1, Relating to Cable Regulation and Franchising  |
| 5:30 | Public Hearing on SE 2018-SU-027 (Stonebridge Investments, LLC) (Sully District)  |
| 5:30 | Public Hearing on PRC 86-C-121-06 (NS Reston LLC) (Hunter Mill District)  |
| 5:30 | Public Hearing on CP 86-C-121-15 (NS Reston LLC) (Hunter Mill District)   |



# *Fairfax County, Virginia*

## ***BOARD OF SUPERVISORS***

### ***AGENDA***

**Tuesday  
September 24, 2019**

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9:30 a.m.

#### **PRESENTATIONS**

- PROCLAMATION — To designate September 2019 as Suicide Awareness Month in Fairfax County. Requested by Supervisor Cook.
- PROCLAMATION — To designate October 2019 as Disability Employment Awareness Month in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION — To designate October 6–12, 2019, as Fire Prevention Week in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION — To designate September 2019 as Kinship Care Awareness Month in Fairfax County. Requested by Supervisor Hudgins.
- PROCLAMATION — To designate September 2019 as Hispanic Heritage Month in Fairfax County. Requested by Chairman Bulova.
- PROCLAMATION — To designate September 2019 as Sickle Cell Awareness Month in Fairfax County. Requested by Supervisor Hudgins.
- PROCLAMATION — To designate October 24, 2019, as Polio Awareness Day in Fairfax County. Requested by Chairman Bulova.

#### **STAFF:**

Tony Castrilli, Director, Office of Public Affairs  
Bill Miller, Office of Public Affairs  
Austin Hendrick, Office of Public Affairs

Board Agenda Item  
September 24, 2019

10:30 a.m.

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

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard September 24, 2019  
(An updated list will be distributed at the Board meeting.)

STAFF:

Jill G. Cooper, Clerk to the Board of Supervisors

September 24, 2019

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

**APPOINTMENTS TO BE HEARD SEPTEMBER 24, 2019**  
(ENCOMPASSING VACANCIES PROJECTED THROUGH **SEPTEMBER 30, 2019**)  
(Unless otherwise noted, members are eligible for reappointment)

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

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Eileen J. Garnett (Appointed 1/03-2/17 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason

**AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Mark Drake (Appointed 2/09-5/12 by McKay) Term exp. 5/16	Engineer/Architect/ Planner #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 <i>Resigned</i>	Lending Institution Representative		By Any Supervisor	At-Large



**AIRPORTS ADVISORY COMMITTEE (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by George Page; appointed 1/05-1/16 by Hudgins) Term exp. 1/19 <i>Resigned</i>	Hunter Mill Business Representative		Hudgins	Hunter Mill

**ALCOHOL SAFETY ACTION PROGRAM LOCAL POLICY BOARD (ASAP)  
(3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Frieda A. Tatem; appointed 10/93- 10/96 by Davis; 9/99- 10/02 by Hanley; 10/05-10/08 by Connolly; 11/11- 10/17 by Bulova) Term exp. 10/20 Deceased	At-Large #1 Representative		By Any Supervisor	At-Large
Grant J. Nelson (Appointed 10/95- 5/01 by Hanley; 6/04- 9/07 by Connolly; 6/10-1/17 by Bulova) Term exp. 6/19	At-Large #2 Representative	<b>Grant J. Nelson</b> (Bulova)	By Any Supervisor	At-Large
Darren Dickens (Appointed 11/96- 5/01 by Hanley; 6/04- 10/07 by Connolly; 6/10-11/16 by Bulova) Term exp. 6/19	At-Large #3 Representative	<b>Darren Dickens</b> (Bulova)	By Any Supervisor	At-Large

**ARCHITECTURAL REVIEW BOARD (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Stephen W. Kulinski (Appointed 12/18 by Storck) Term exp. 9/19	Architect #1 Representative	<b>Stephen W. Kulinski</b> (Storck)	By Any Supervisor	At-Large
John Allen Burns (Appointed 6/95-7/01 by Hanley; 10/04-9/13 by Hyland; 10/16 by Storck) Term exp. 9/19	Architect #2 Representative	<b>John Allen Burns</b> (Storck)	By Any Supervisor	At-Large
Jason F. Zellman (Appointed 5/18 by Herrity) Term exp. 9/19	Attorney Representative	<b>Jason F. Zellman</b> (Herrity)	By Any Supervisor	At-Large
Joseph Plumpe (Appointed 9/07-9/13 by Frey; 12/16 by K. Smith) Term exp. 9/19	Landscape Architect Representative		By Any Supervisor	At-Large

**ATHLETIC COUNCIL (2 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Douglas Phung; appointed 12/17 by Bulova) Term exp. 12/19 <i>Resigned</i>	Diversity-At-Large Principal Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Karin Stamper; appointed 9/09-4/16 by McKay) Term exp. 4/18 <i>Resigned</i>	Lee District Alternate Representative		McKay	Lee

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**ATHLETIC COUNCIL (2 years)**

Continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Terry Adams; appointed 11/11-7/13 by Gross) Term exp. 6/15 <i>Resigned</i>	Mason District Alternate Representative		Gross	Mason
Stephen McLaughlin (Appointed 9/98-9/03 by Connolly; 9/05- 10/17 by L. Smyth) Term exp. 9/19	Providence District Principal Representative		L. Smyth	Providence
Jane Dawber (Appointed 3/13-9/16 by Hudgins) Term exp. 6/18	Women's Sports Alternate Representative		By Any Supervisor	At-Large

**BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Therese Martin; appointed 2/13-6/18 by Hudgins) Term exp. 6/19 <i>Resigned</i>	Hunter Mill District Representative	<b>Marie Colturi</b>	Hudgins	Hunter Mill
VACANT (Formerly held by Linda J. Waller; appointed 9/16-6/18 by McKay) Term exp. 6/19 <i>Resigned</i>	Lee District Representative		McKay	Lee

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**BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)**  
continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Judith Fogel; appointed 6/12-5/15 by Gross) Term exp. 6/16 <i>Resigned</i>	Mason District Representative		Gross	Mason

**CELEBRATE FAIRFAX, INC. BOARD OF DIRECTORS**  
(2 years – limited to 3 consecutive terms)

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Patrick Lennon (Appointed 1/17 by Gross) Term exp. 9/19	At-Large #3 Representative		By Any Supervisor	At-Large
Peter F. Murphy (Appointed 6/06-9/08 by Connolly; 9/09- 9/17 by Bulova) Term exp. 9/19 <i>Not eligible for reappointment</i>	At-Large #4 Representative		By Any Supervisor	At-Large

**CHESAPEAKE BAY PRESERVATION ORDINANCE  
EXCEPTION REVIEW COMMITTEE (4 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
James C. Chesley (Appointed 5/12-9/15 by Bulova) Term exp. 9/19	At-Large #2 Representative	<b>James C. Chesley</b> (Bulova)	Bulova	At-Large Chairman's
Amy Gould (Appointed 10/18 by Cook) Term exp. 9/19	Braddock District Representative	<b>Amy Gould</b>	Cook	Braddock

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**CHESAPEAKE BAY PRESERVATION ORDINANCE EXCEPTION REVIEW  
COMMITTEE (4 years)**  
continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Edward W. Monroe (Appointed 3/18 by Foust) Term exp. 9/19	Dranesville District Representative		Foust	Dranesville
Kenneth J. Lanfear (Appointed 5/18 by Hudgins) Term exp. 9/19	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Grant Sitta; appointed 9/10-9/15 by Gross) Term exp. 9/19 <i>Resigned</i>	Mason District Representative		Gross	Mason
Elizabeth Martin (Appointed 10/16 by Storck) Term exp. 9/19	Mount Vernon District Representative	<b>Elizabeth Martin</b>	Storck	Mount Vernon
Sue Kovach Shuman (Appointed 11/17 by L. Smyth) Term exp. 9/19	Providence District Representative		L. Smyth	Providence
David W. Schnare (Appointed 12/03 by McConnell; 11/10- 1/18 by Herrity) Term exp. 9/19	Springfield District Representative	<b>David W. Schnare</b>	Herrity	Springfield
Chris Koerner (Appointed 2/16 by K. Smith) Term exp. 9/19	Sully District Representative		K. Smith	Sully

<b>CHILD CARE ADVISORY COUNCIL (2 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Courtney Park; appointed 2/10-9/18 by Hudgins) Term exp. 9/20 <i>Resigned</i>	Hunter Mill District Representative	<b>Dawn M. Edwards</b>	Hudgins	Hunter Mill
Pam Tinker (Appointed 9/16-9/17 by McKay) Term exp. 9/19	Lee District Representative	<b>Pam Tinker</b>	McKay	Lee
Scott Stroh (Appointed 6/17 by Storck) Term exp. 9/19	Mount Vernon District Representative	<b>Scott Stroh</b>	Storck	Mount Vernon
Mercedes O. Dash (Appointed 3/15-2/19 by L. Smyth) Term exp. 9/19	Providence District Representative		L. Smyth	Providence

<b>CITIZEN CORPS COUNCIL, FAIRFAX COUNTY (2 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Patrick J. Scott; appointed 10/16 by Hudgins) Term exp. 5/18 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Gary Nisker; appointed 5/18 by Gross) Term exp. 5/20 <i>Resigned</i>	Mason District Representative		Gross	Mason

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**CITIZEN CORPS COUNCIL, FAIRFAX COUNTY (2 years)**  
continued

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Nicholas Ludlum; appointed 1/17 by L. Smyth) Term exp. 5/18 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

**CONSUMER PROTECTION COMMISSION (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Jacqueline G. Rosier (Appointed 9/08 by Connolly; 7/10-7/16 by Bulova) Term exp. 7/19	Fairfax County Resident #1 Representative	<b>Jacqueline G. Rosier</b> (Bulova)	By Any Supervisor	At-Large

**CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Eric Clingan; appointed 4/16 by K. Smith) Term exp. 4/19 <i>Resigned</i>	Sully District Representative		K. Smith	Sully

**CONFIRMATION NEEDED:**

- Ms. Paige Valentine as the League of Women Voters Representative
- Ms. Mary Jane Cleary as the League of Women Voters Alternate Representative

**ECONOMIC ADVISORY COMMISSION (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Mark Silverwood; appointed 1/09-11/14 by Hudgins) Term exp. 12/17 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

**ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Maya Huber; appointed 12/09-1/14 by Confirmation; 05/18 by Bulova) Term exp. 3/21 <i>Resigned</i>	Citizen #4 Representative		By Any Supervisor	At-Large

**FAIRFAX AREA DISABILITY SERVICES BOARD**

**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**

[NOTE: Persons may be reappointed after being off for 3 years. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members. For this 15-member board, the minimum number of representation would be 5.]

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Michele Hymer Blitz (Appointed 6/06-3/16 by Hudgins) Term exp. 11/18 <i>Not eligible for reappointment</i>	Hunter Mill District Representative		Hudgins	Hunter Mill



**FAIRFAX COMMUNITY LONG TERM CARE COORDINATING COUNCIL  
(2 years)**

**CONFIRMATIONS NEEDED:**

- Ms. Janelle Ellis as the Educational Organizations #2 Representative
- Ms. Rikki Epstein as the Advocacy Organizations #1 Representative
- Mr. Michael Toobin as the Community/Religious Leaders #1 Representative
- Mr. Douglas Birnie as the Community/Religious Leaders #3 Representative
- Mr. Thomas B. Bash as the Disability Services Board Representative
- Ms. Pam Wiener as the Long Term Care Providers #2 Representative
- Ms. Denise Hyater as the Long Term Care Providers #7 Representative
- Ms. Rose Mario as the Long Term Care Providers #9 Representative
- Ms. Tara Turner as the Long Term Care Providers #12 Representative
- Ms. Allegra C. Joffe as the Long Term Care Providers #16 Representative
- Ms. Catie Ruth as the Long Term Care Providers #18 Representative
- Mr. Robert Sargeant as the Long Term Care Providers #19 Representative
- Ms. Melanie Bush as the Long Term Care Providers #22 Representative
- Ms. Renuka Chander as the Long Term Care Providers #23 Representative
- Mr. Aaron Rebuck as the Long Term Care Providers #24 Representative
- Ms. Nancy Fiedelman as the Long Term Care Providers #25 Representative
- Ms. Sonia Gow as the Long Term Care Providers #26 Representative
- Ms. Matrona Bush as the Long Term Care Providers #29 Representative

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

[NOTE: In accordance with *Virginia Code* Section 37.2-501, "prior to making appointments, the governing body shall disclose the names of those persons being considered for appointment." Members can be reappointed after 1-year break from initial 3 full terms, VA Code 37.2-502.]

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
VACANT (Formerly held by Jane H. Woods; appointed 11/08 by Connolly; 6/10-5/16 by Bulova) Term exp. 6/19 <i>Resigned</i>	At-Large #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Gary A. Ambrose; appointed 3/13-6/17 by Bulova) Term exp. 6/20 <i>Resigned</i>	At-Large #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Tom Burger; appointed 9/17 by Herrity) Term exp. 6/20 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield

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

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Sally Singer Horwatt (Appointed 1/14-6/16 by Hudgins) Term exp. 6/19	Provider #4 Representative	<b>Richard B. Hilburn</b> (Hudgins)	By Any Supervisor	At-Large

**HISTORY COMMISSION (3 years)**

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

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

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Robert E. Beach (Appointed 11/00 by Hanley; 1/04-12/06 by Connolly; 12/09- 1/16 by Bulova) Term exp. 12/18 <i>Braddock District Resident</i>	Architect Representative	<b>Robert E. Beach</b> (Bulova)	By Any Supervisor	At-Large
VACANT (Formerly held by Naomi D. Zeavin; appointed 1/95 by Trapnell; 1/96-11/13 by Gross) Term exp. 12/16 <i>Mason District Resident Resigned</i>	Historian #1 Representative		By Any Supervisor	At-Large

HUMAN RIGHTS COMMISSION (3 years)				
<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Harry Salinas (Appointed 4/08 by Connolly; 11/10-9/16 by Bulova) Term exp. 9/19	At-Large #4 Representative	<b>Harry Salinas</b> (Bulova)	By Any Supervisor	At-Large
Emanuel Solon (Appointed 9/95-7/01 by Connolly; 9/04-10/16 by L. Smyth) Term exp. 9/19	At-Large #5 Representative		By Any Supervisor	At-Large
Ahmed Selim (Appointed 7/08-9/10 by Gross; 4/14-10/16 by L. Smyth) Term exp. 9/19	At-Large #6 Representative		By Any Supervisor	At-Large
Kimberley Alton (Appointed 3/19 by McKay) Term exp. 9/19	At-Large #7 Representative		By Any Supervisor	At-Large
Daoud Khairallah (Appointed 11/05-9/14 by Gross) Term exp. 9/17	At-Large #8 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Raul Torres; appointed 6/18 by Bulova) Term exp. 9/20 <i>Resigned</i>	At-Large #9 Representative		By Any Supervisor	At-Large

<b>HUMAN SERVICES COUNCIL (4 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Michele Menapace (Appointed 7/15 by McKay) Term exp. 7/19	Lee District #1 Representative	<b>Michele Menapace</b>	McKay	Lee
VACANT (Formerly held by Adrienne Walters; appointed 3/14 by L. Smyth) Term exp. 7/17 <i>Resigned</i>	Providence District #2 Representative		L. Smyth	Providence
VACANT (Formerly held by Audrey F. Morton; appointed 2/16 by K. Smith) Term exp. 7/19 <i>Resigned</i>	Sully District #2 Representative		K. Smith	Sully

<b>INFORMATION TECHNOLOGY POLICY ADVISORY COMMITTEE (ITPAC) (3 years)</b>
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**CONFIRMATION NEEDED:**

- Captain Matthew C. Ragan as the Northern Virginia Chamber of Commerce Representative
- Ms. Anne Cahill as the League of Women Voters Representative

**JUVENILE AND DOMESTIC RELATIONS COURT  
CITIZENS ADVISORY COUNCIL (2 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Michael Berger; appointed 1/17-1/18 by McKay) Term exp. 1/20 <i>Resigned</i>	Lee District Representative		McKay	Lee
VACANT (Formerly held by Anya Gelernt-Dunkle; appointed 1/17 by L. Smyth) Term exp. 1/20 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

**OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)**

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Annette Koklauner (Appointed 1/16 by Bulova) Term exp. 6/19	At-Large Chairman's Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by William Uehling; appointed 3/10-7/12 by Bulova) Term exp. 6/15 <i>Resigned</i>	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville

**Continued on next page**

<b>OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Bob Tallman (Appointed 1/17 by McKay) Term exp. 6/19	Lee District Representative		McKay	Lee
Nabil S. Barbari (Appointed 1/07-9/16 by Gross) Term exp. 6/19	Mason District Representative		Gross	Mason
VACANT (Formerly held by Jeffrey Levy; appointed 7/02-6/13 by Hyland) Term exp. 6/16 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon
VACANT (Formerly held by Tina Montgomery; appointed 9/10-6/11 by L. Smyth) Term exp. 6/14 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

<b>POLICE CIVILIAN REVIEW PANEL (3 Years)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
Gregory Gadson (Appointed 11/18) Term exp. 2/19	Seat #6 Representative	<b>Atchuthan “Sris” Sriskandarajah</b> (Bulova)	By Any Supervisor	At-Large

**RESTON TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD**

The Board of Supervisors established the advisory board on April 4, 2017  
 There will be 14 members on this advisory board. The appointees would serve  
 for 4-year terms from April 4, 2017

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
VACANT (Formerly held by Alexander Rough; appointed 10/17 by Foust) Term exp. 9/21 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville
NEW POSITION	Residential Owners and HOA/Civic Association #1 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #2 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #3 Representative		Foust or Hudgins	At-Large



<b>ROAD VIEWERS BOARD (1 year)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08-11/13 by Herrity) Term exp. 12/14 <i>Resigned</i>	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by L. Smyth) Term exp. 12/12 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large
Micah D. Himmel (Appointed 12/11-1/18 by L. Smyth) Term exp. 12/18	At-Large #5 Representative		By Any Supervisor	At-Large

<b>SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Elizabeth Novak; appointed 10/05-1/16 by Gross) Term exp. 12/18 <i>Resigned</i>	Mason District Representative		Gross	Mason

TENANT LANDLORD COMMISSION (3 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Michael Congleton; appointed 7/13-2/17 by Herrity) Term exp. 1/20 <i>Resigned</i>	Citizen Member #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Antonio Gomez; appointed 1/99-1/02 by Hanley; 3/05-1/08 by Connolly; 1/11-1/17 by Bulova) Term exp. 1/20 <i>Resigned</i>	Citizen Member #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by L. Smyth) Term exp. 1/14 Deceased	Condo Owner Representative		By Any Supervisor	At-Large
Christopher Lee Kocsis (Appointed 3/99-11/00 by Hanley; 1/04-12/06 by Connolly; 12/09-1/16 by Bulova) Term exp. 12/18	Landlord Member #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Angelina Panettieri; appointed 6/11-1/15 by L. Smyth) Term exp. 1/18	Tenant Member #1 Representative		By Any Supervisor	At-Large

<b>TRAILS, SIDEWALKS AND BIKEWAYS COMMITTEE (2 years)</b>
---

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Jeffrey A. Anderson; appointed 5/11-1/18 by Hudgins) Term exp. 1/20 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

<b>TRANSPORTATION ADVISORY COMMISSION (2 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Vincent J. Fusaro; appointed 9/18 by Storck) Term exp. 6/20 <i>Resigned</i>	Mount Vernon District	<b>Peter Sitnik</b>	Storck	Mount Vernon
VACANT (Formerly held by Micah Himmel; appointed 6/13-7/16 by L. Smyth) Term exp. 6/18 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

<b>TREE COMMISSION (3 years)</b>
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Charles Ayers; appointed 6/16 by Herrity) Term exp. 10/19 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield

<b>TRESPASS TOWING ADVISORY BOARD (3 years)</b>
---

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
John Theodore Fee (Appointed 6/06-9/07 by Connolly; 9/10- 9/16 by Bulova) Term exp. 9/19	Citizen Representative	<b>John Theodore Fee</b> (Bulova)	By Any Supervisor	At-Large
Alvin C. Leach (Appointed 7/06-9/07 by DuBois; 10/10- 9/16 by Foust) Term exp. 9/19	Towing #2 Representative		By Any Supervisor	At-Large

<b>TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD (2 YEARS)</b>
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<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Barry Mark; appointed 3/15-2/17 by Bulova) Term exp. 2/19 <i>Resigned</i>	Commercial or Retail Ownership Representative #3		Bulova	At-Large
VACANT (Formerly held by Jay Klug; appointed 2/13- 2/17 by Hudgins) Term exp. 2/19	Hunter Mill District Representative #1		Hudgins	Hunter Mill
VACANT (Formerly held by Molly Peacock; appointed 2/13-1/15 by L. Smyth) Term exp. 2/17 <i>Resigned</i>	Providence District Representative #2		L. Smyth	Providence
VACANT (Formerly held by Pindar Van Arman; appointed 11/16-2/17 by L. Smyth) Term exp. 2/19 <i>Resigned</i>	Residential Owners and HOA/Civic Association Representative #1		L. Smyth	Providence

<b>WATER AUTHORITY (3 years)</b>
----------------------------------

<u><b>Incumbent History</b></u>	<u><b>Requirement</b></u>	<u><b>Nominee</b></u>	<u><b>Supervisor</b></u>	<u><b>District</b></u>
VACANT (Formerly held by Linda Singer; appointed 7/04-6/16 by Hudgins) Term exp. 6/19 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

**ADDITIONAL BOARD**

<b>DISTRICT OF COLUMBIA (DC) WATER AND SEWER AUTHORITY</b>
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**CONFIRMATIONS NEEDED:**

- Mr. Randy Bartlett, Director, Fairfax County Department of Public Works and Environmental Services (DPWES) as the Principal Representative
- Ms. Sarah Motsch, Wastewater Planning and Monitoring Division, DPWES as the Alternate Representative

Board Agenda Item  
September 24, 2019

10:30 a.m.

Public Hearing on the County and Schools' *FY 2019 Carryover Review* to Amend the  
Appropriation Level in the FY 2020 Revised Budget Plan

ISSUE:

Public Hearing and Board action on the County and Schools' *FY 2019 Carryover Review*.

RECOMMENDATION:

The County Executive recommends that, after holding a public hearing, the Board approve staff recommendations including the County and Schools' *FY 2019 Carryover Review*.

TIMING:

The public hearing has been advertised for 10:30 a.m. on September 24, 2019. State law allows the Board to act on proposed amendments to the budget on the same day as the public hearing.

BACKGROUND:

On July 30, 2019, the Board of Supervisors authorized staff to advertise a public hearing scheduled to be held on September 24, 2019, regarding the County and Schools' Carryover Review. Section 15.2-2507 of the Code of Virginia requires that a public hearing be held prior to Board action. Board approval of an amendment to increase the FY 2020 appropriation level can occur immediately following the public hearing.

ENCLOSED DOCUMENTS:

Attachment 1: Summary of FY 2019 Carryover Consideration Items

The *FY 2019 Carryover Review* is available online at:

<https://www.fairfaxcounty.gov/budget/fy-2019-carryover-budget-package>.

STAFF:

Bryan J. Hill, County Executive

Joseph M. Mondoro, Chief Financial Officer

Christina Jackson, Director, Department of Management and Budget

Philip Hagen, Budget Services Coordinator, Department of Management and Budget

**SUMMARY OF FY 2019 CARRYOVER CONSIDERATION ITEMS  
as of July 30, 2019**

#	Consideration Item	Requested By	Positions	Net Cost/(Savings)
1.	Provide funding to support the development of phases I and II of the Community Wide Energy and Climate Action Plan (CECAP)	Foust, Gross, McKay, Storck	0 / 0.0	\$750,000
2.	Provide for a tourism placemaking and marketing strategy on behalf of the Mount Vernon Tourism Task Force	Storck	0 / 0.0	\$100,000
<b>Subtotal FY 2019 Carryover Consideration Items:</b>			<b>0 / 0.0</b>	<b>\$850,000</b>

***Total FY 2020 Impact: 0/0.0 FTE Positions and Total Funding (not including reserves) of  
\$850,000***

Board Agenda Item  
September 24, 2019

10:40 a.m.

Items Presented by the County Executive



ADMINISTRATIVE - 1

Streets into the Secondary System (Hunter Mill and Sully Districts)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the streets listed below be added to the State Secondary System:

<u>Subdivision</u>	<u>District</u>	<u>Street</u>
Avion Development	Sully	Avion Parkway
Avion Development	Sully	Concorde Parkway
Iris Hills	Hunter Mill	Margaret Thomas Lane

TIMING:

Routine.

BACKGROUND:

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

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Street Acceptance Forms

STAFF:

Rachel Flynn, Deputy County Executive  
William D. Hicks, P.E., Director, Land Development Services

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

<b>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</b>  <b>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</b>		<b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b>  REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.  <b>PLAN NUMBER:</b> 6455-SP-01 <b>SUBDIVISION PLAT NAME:</b> Avion Development <b>COUNTY MAGISTERIAL DISTRICT:</b> Sully	
<b>ENGINEERING MANAGER:</b> Houda A. Ali, PMP <b>BY:</b> <u>Nadia Alphonse</u>		<b>FOR OFFICIAL USE ONLY</b>  <b>DATE OF VDOT INSPECTION APPROVAL:</b> <u>07/23/2019</u>	

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Avion Parkway	CL Lee-Jackson Memorial Highway (Route 50) - 1,325' NW CL Lee Road (Route 661)	4,888' NW to CL Stonecroft Boulevard (Route 8460)	0.93
Concorde Parkway	CL Avion Parkway - 1,857' NE CL Stonecroft Boulevard (Route 8460)	2,622' N/S (Loop) to CL Avion Parkway	0.50
<b>TOTALS:</b>			1.43
<b>NOTES:</b>			
Avion Parkway & Concorde Parkway: Asphalt Trails & Concrete Sidewalks to be maintained by Fairfax County			

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

<b>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</b>  <b>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</b>		<b>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA</b>  REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.  <b>PLAN NUMBER:</b> 4332-SD-001 <b>SUBDIVISION PLAT NAME:</b> Iris Hills <b>COUNTY MAGISTERIAL DISTRICT:</b> Hunter Mill	
<b>ENGINEERING MANAGER:</b> Houda A. Ali, PMP <b>BY:</b> <u>Nadia Alphonse</u>		<b>FOR OFFICIAL USE ONLY</b>  <b>DATE OF VDOT INSPECTION APPROVAL:</b> <u>07/26/2019</u>	

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Margaret Thomas Lane	CL Lawyers Road (Route 602) SBL - 500' N CL Myterra Way (Route 5998)	527' W/SW to End of Cul-de-Sac	0.10
<b>TOTALS:</b>			0.10

**NOTES:**  
 5' Concrete Sidewalk on Both Sides to be maintained by VDOT  
 :  
 :  
 :  
 :  
 :

ADMINISTRATIVE - 2

Authorization to Advertise a Public Hearing to Lease County-Owned Property at 8350 Richmond Highway to Clear Wireless LLC (Lee District)

ISSUE:

Authorization to advertise a public hearing to lease County-owned property to Clear Wireless Mobile LLC for the installation of new telecommunications equipment for public use on the roof of the South County Center located at 8350 Richmond Highway.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to publish the advertisement of a public hearing to be held on October 15, 2019, at 5:00 p.m.

TIMING:

Board action is requested on September 24, 2019 to provide sufficient time to advertise the proposed public hearing on October 15, 2019, at 5:00 p.m.

BACKGROUND:

The Board of Supervisors is the owner of the South County Center located at 8350 Richmond Highway on a County-owned parcel identified as Tax Map Number 101-3 ((1)) 16A. The property is currently improved with a five-story, 160,000 square foot building that primarily operates as a social services facility (Building). In 2010, Clear Wireless LLC, predecessor-in-interest to Sprint Corporation (Sprint), entered into a lease with the County to allow the installation and operation of telecommunications equipment on a portion of the roof of the Building (Lease). Verizon Wireless, AT&T and T-Mobile also have lease agreements for the use of space on the rooftop.

Sprint currently has six (6) panel antennas located on the walls of the penthouse and one (1) equipment cabinet fixed on a 49-square-foot steel platform that sits on the roof of the Building. Sprint has submitted a proposal to the Facilities Management Department to replace its existing equipment with six (6) new panel antennas and one (1) GPS antenna. The equipment cabinet and steel roof mount will be removed and a larger equipment cabinet will be placed on a steel platform located right next to the existing roof mount. To reduce the visibility of the equipment from the ground, the antennas will be mounted flush with the penthouse wall and the new cabinet will be screened by an existing three-sided, ten-foot-high metal wall.

Board Agenda Item  
September 24, 2019

Staff negotiated proposed terms for an amendment to the existing Lease with Sprint. The leased area will be enlarged from 49 to 180 square feet. In exchange, Sprint will pay a supplemental \$300 per month or \$3,600 per year as additional rent. All of the other primary terms of the Lease shall remain the same. Virginia Code Ann. § 15.2-1800 requires a locality to hold a public hearing before it may lease its real property. Staff recommends that the Board authorize the staff to advertise a public hearing to lease additional County property to Sprint, which will permit the installation of new equipment on the rooftop of the South County Center.

FISCAL IMPACT:

The proposed amendment will generate an additional \$3,600 in revenue the first year after execution for a total annual rent of approximately \$29,000. All revenue will be deposited in the General Fund.

ENCLOSED DOCUMENTS:

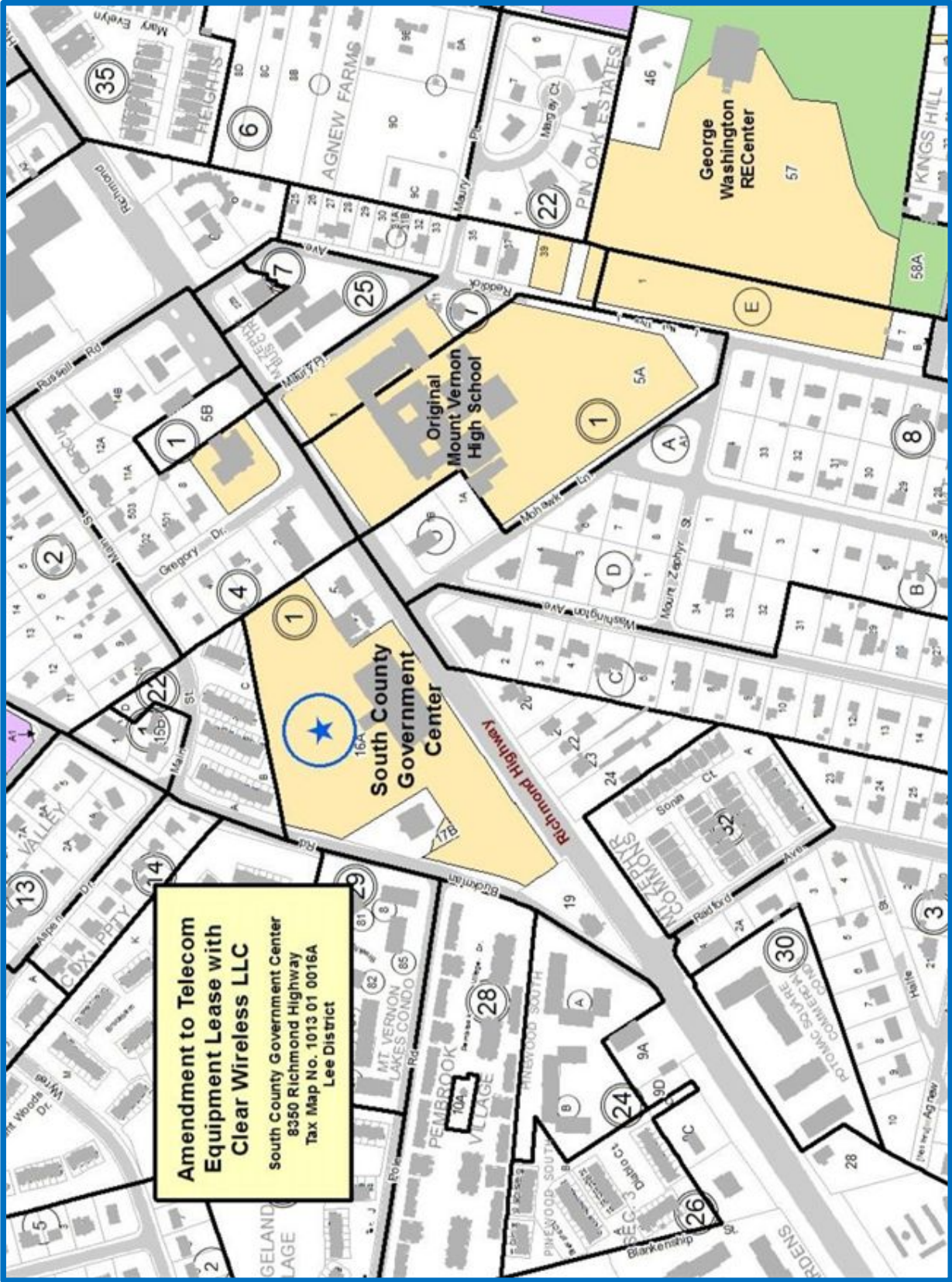
Attachment 1 – Location Map 101-3 ((1)) 16A

STAFF:

Joseph M. Mondoro, Chief Financial Officer  
José A. Comayagua, Jr., Director, Facilities Management Department  
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

Linda Choe, Assistant County Attorney



ADMINISTRATIVE - 3

Extension of Review Period for 2232 Applications (Mount Vernon, Sully, Mason, and Providence Districts)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following applications: 456A-M83-21-3, 2232-S19-7, 2232-P18-26, 2232-V19-2, 2232-M19-5, 2232A-Y18-15-1

TIMING:

Board action is required September 24, 2019, to extend the review period for the applications noted above before their expiration dates.

BACKGROUND:

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

The review period for the following application should be extended:

456A-M83-21-3	Fairfax County Department of Public Works and Environmental Services Pine Ridge Operations and Support Bureau Tax Map No. 59-3 ((1)) 11B 3911 Woodburn Road Annandale, VA Mason District Accepted August 1, 2019 Extend to July 1, 2020
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Board Agenda Item  
September 24, 2019

- 2232-S19-7      Fairfax County Department of Public Works and Environmental  
Services  
Police Heliport  
Tax Map No. 56-1 ((1)) 2  
4604 West Ox Road  
Fairfax, VA  
Sully District  
Accepted August 20, 2019  
Extend to July 20, 2020
- 2232-P18-26      Fairfax County Water Authority  
Central Distribution System Maintenance Facility  
Tax Map No. 49-3 ((1)) 50A  
8505 Lee Highway  
Fairfax, VA  
Providence District  
Accepted August 22, 2019  
Extend to July 22, 2020
- 2232-V19-2      Fairfax County Department of Public Works and Environmental  
Services  
Urban Search and Rescue Training Facility  
Tax Map No. 113-1 ((1)) 15  
8505 Lee Highway  
Lorton, VA  
Mount Vernon District  
Accepted August 22, 2019  
Extend to July 22, 2020
- 2232-M19-5      Fairfax County Department of Public Works and Environmental  
Services  
Seven Corners Fire Station #28  
Tax Map No. 50-4 ((21)) 1  
6637 South Street  
Falls Church, VA  
Mason District  
Accepted August 22, 2019  
Extend to July 22, 2020



Board Agenda Item  
September 24, 2019

2232A-Y18-15-1     Fairfax County Department of Public Works and Environmental  
Services  
Sully Community Center  
Tax Map No. 24-4 ((7)) 8A  
13800 Wall Road  
Herndon, VA  
Sully District  
Accepted August 22, 2019  
Extend to July 22, 2020

FISCAL IMPACT:  
None.

ENCLOSED DOCUMENTS:  
None.

STAFF:  
Rachel Flynn, Deputy County Executive  
Barbara A. Byron, Director, Department of Planning and Development (DPD)  
Michelle K. Stahlhut, Chief, Facilities Planning Branch, Planning Division, DPD  
Bryan D. Botello, Planner, Facilities Planning Branch, Planning Division, DPD

ADMINISTRATIVE - 4

Additional Time to Establish Use or Commence Construction for Special Exception  
SE 2017-DR-003, SunTrust Bank (Dranesville District)

ISSUE:

Board consideration of additional time to establish use or commence construction for SE 2017-DR-003, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve twenty-four (24) months additional time for SE 2017-DR-003 to March 12, 2022.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On September 12, 2017, the Board of Supervisors approved Special Exception SE 2017-DR-003, subject to development conditions. The application was filed in the name of SunTrust Bank to permit, in pertinent part, a drive-in financial institution within the C-6 zoning district for the property located at 778 Walker Road, Tax Map 13-1 ((9)) 6B (see Locator Map in Attachment 1). The drive-in financial institution, a Category 5 special exception use, is permitted pursuant to Section 4-604 of the Fairfax County Zoning Ordinance. SE 2017-DR-003 was approved with a condition that the use be established, or construction be commenced and diligently prosecuted within thirty (30) months of the approval date unless the Board grants additional time. The development conditions for SE 2017-DR-003 are included as part of the Clerk to the Board's letter contained in Attachment 2.

On June 18, 2019, the Department of Planning and Development (DPD) received a letter dated June 18, 2019, from Lynne J. Strobel, agent for the Applicant, requesting twenty-

Board Agenda Item  
September 24, 2019

four (24) months of additional time (see Attachment 3). While the current expiration date is March 12, 2020, the approved Special Exception will not expire pending the Board's action on the request for additional time.

Ms. Strobel states additional time is necessary to commence construction and establish the use. According to Ms. Strobel's letter, the Applicant is currently undergoing business organizational changes that have delayed the completion and approval of a site plan. The merger of SunTrust Bank and BB&T Bank to "Truist" is anticipated to occur at the end of 2019. This change was unforeseen during the entitlement, therefore, in an abundance of caution, Ms. Strobel is requesting this additional time of twenty-four (24) months to ensure the special exception approval remains valid and will allow the requestor to establish use and commence construction.

Staff has reviewed Special Exception SE 2017-DR-003 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a drive-in financial institution within the C-6 zoning district. Further, staff knows of no change in land use circumstances that affects compliance of SE 2017-DR-003 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception. Finally, the conditions associated with the Board's approval of SE 2017-DR-003 are still appropriate and remain in full force and effect. Staff believes that approval of the request for twenty-four (24) months additional time is in the public interest and recommends that it be approved.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Clerk's Letter dated October 18, 2017, to Robert D. Brant

Attachment 3: Letter dated June 18, 2019, to Leslie B. Johnson

STAFF:

Rachel Flynn, Deputy County Executive

Barbara A. Byron, Director, Department of Planning and Development (DPD)

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

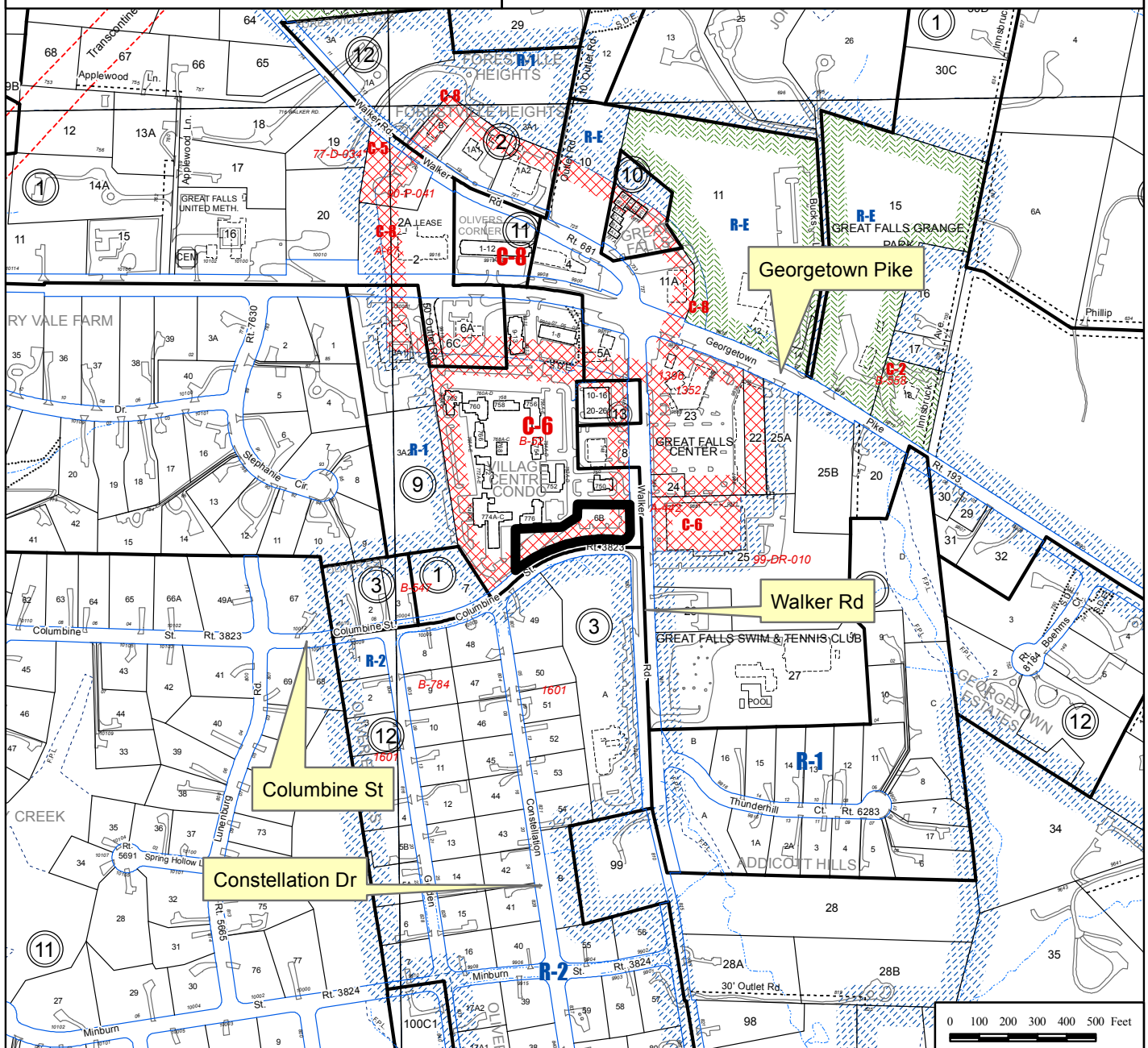
Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD

Denise James, Chief, Environment & Development Review Branch, Planning Division, DPD

Laura O'Leary, Staff Coordinator, ZED, DPD



Applicant:	SUN TRUST BANK
Accepted:	01/25/2017
Proposed:	DRIVE-IN FINANCIAL INSTITUTION AND WAIVER OF MINIMUM LOT SIZE
Area:	38466 SF OF LAND; DISTRICT - DRANESVILLE
Zoning Dist Sect:	09-061004-0604
Located:	778 WALKER ROAD, GREAT FALLS, VA 22066
Zoning:	C- 6
Plan Area:	3,
Overlay Dist:	
Map Ref Num:	013-1- /09/ /0006B





# County of Fairfax, Virginia

*To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County*

October 18, 2017

(Amended letter  
corrected conditions numbering)

Robert D. Brant  
Walsh, Colucci, Lubeley & Walsh, P.C.  
2200 Clarendon Boulevard, Suite 1300  
Arlington, VA 22201



Re: Special Exception Application SE 2017-DR-003

Dear Mr. Brant:

At a regular meeting of the Board of Supervisors held on September 12, 2017, the Board approved Special Exception Application SE 2017-DR-003 in the name of SunTrust Bank. The subject property is located at 778 Walker Road on approximately 38,466 square feet of land, zoned C-6 in the Dranesville District [Tax Map 13-1 ((9)) 6B]. The Board's action permits a drive-in financial institution and waiver of minimum lot size, pursuant to Sections 4-604, 9-501, 9-502, and 9-610 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception (SE) is granted for and runs with ~~the~~ land indicated in this application and is not transferable to other land.
2. This SE is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Exception Plat approved with the application, as qualified by these development conditions.
3. A copy of these SE conditions, along with the Non-Residential Use Permit (Non-RUP), shall be posted in a conspicuous place on the property of ~~the~~ use and be made available to all departments of the County of Fairfax during hours of operation for the permitted use.
4. This SE is subject to the provisions of Article 17, Site Plans, as may be determined by DPWES. Any plan submitted pursuant to this SE shall be in substantial conformance with the approved Special Exception Plat entitled "SunTrust Great Falls, Special Exception Plat," prepared by Infinity Engineering Group, LLC consisting of ten sheets dated November 8, 2016, revised through May 10, 2017 (the "SE Plat"), and these conditions. Minor modifications to the approved Special Exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors

12000 Government Center Parkway Suite 533

Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 711

Email: [clerktothebos@fairfaxcounty.gov](mailto:clerktothebos@fairfaxcounty.gov)

<http://www.fairfaxcounty.gov/bosclerk>



5. The design of the drive-in financial institution shall be generally consistent with the Architectural Elevations prepared by Gensler, dated June 29, 2017 included as Attachment 1 to these development conditions.
6. All signage shall conform to the provisions of Article 12 of the Zoning Ordinance, which includes the requirement that signs affixed to or clearly visible through windows shall not exceed thirty (30) percent of the total window area of the window in which they are displayed.
7. All signs that are illuminated shall conform to Part 9 of Article 14 in order to minimize glare. All lighting within the windows located at the northeast corner of the bank building shall be dimmed to fifty (50) percent of full operational levels within one (1) hour after the close of business.
8. No signage is allowed in three (3) of the five (5) windows located at the northeast corner of the bank building. These three (3) windows shall include art such as a permanent display of local images and/or objects representative of the historical significance of the Great Falls area. Routine maintenance of the art may be performed, and, from time to time, the art may be replaced and updated in consultation with the Dranesville District Supervisor. The art shall be installed prior to the issuance of a Non-RUP; however, any unreasonable delays in the coordination and installation of the public art, through no fault of the Applicant, shall not preclude the issuance of a Non-RUP.
9. At the time of site plan, the Applicant shall submit a request to waive the requirement to install street lights along the Application Property's frontage. A copy of the submitted waiver shall be provided to the Great Falls Citizens Association.
10. Tree Preservation and Landscaping: The following landscaping procedures shall be followed to assure adequate tree preservation.
  - A. Tree Preservation: A Tree Preservation plan shall be submitted for review and approval as part of the first and all subsequent subdivision plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a Certified Arborist or Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 12 inches in diameter and greater located within the first 25 feet of the undisturbed area from the limits of clearing and grading and the first 10 feet from the limits of clearing in the disturbed area shown on the SE Plan for the entire site.

The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the SE Plan and those additional areas in which trees can be preserved as a result of final engineering. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

- B. Tree Preservation Walk-Through: The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's Certified Arborist or Registered Consulting Arborist shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made, if any, to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.
- C. Limits of Clearing and Grading: The limits of clearing and grading shall be strictly adhered to as shown on the SE Plan, subject to allowances specified in these development conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SE Plan, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
- D. Tree Preservation Fencing: All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the



limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" condition below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the direct supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD, DPWES.

- E. Root Pruning: The Applicant shall root prune, as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the submitted plan. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:
- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
  - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
  - Root pruning shall be conducted with the supervision of a certified arborist.
  - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
- F. Site Monitoring: During any clearing or tree/vegetation/structure removal on the Applicant Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as per specific development conditions and as approved by the UFMD. The Applicant shall retain the services of a Certified Arborist or Registered Consulting Arborist to monitor all construction and demolition work adjacent to any vegetation to be preserved, tree preservation efforts and landscape installation, in order to ensure conformance with all tree preservation and landscaping development conditions, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.



11. The four-foot wide sidewalk and bicycle racks shown on the SE Plat shall be provided prior to the issuance of the Non-RUP. The sidewalk shall include an exposed aggregate finish. The bicycle racks shall be properly installed per the Fairfax County Bicycle Parking Guidelines, subject to the review and approval of Fairfax County Department of Transportation (FCDOT). Bicycle racks shall include a black powder metal finish, and shall be inverted U-style racks or an alternative style as approved by FCDOT.
12. Subject to approval by the Virginia Department of Transportation (VDOT) and FCDOT, prior to the issuance of the Non-RUP, a maximum of two R4-11 'Bicycle May Use Full Lane Signs' or other similar signage shall be installed by the Applicant along the Walker Road frontage of the Application Property.
13. In order to promote sustainable design, the following measures shall be taken in conjunction with the construction of the proposed drive-in financial institution shown on the SE Plat. A LEED-AP shall be included as a member of the design team. The LEED-AP will work with the Applicant to incorporate sustainable design elements and innovative technologies into the proposed buildings. Prior to site plan approval, documentation will be provided to the Environment and Development Review Branch (EDRB) of DPZ, demonstrating compliance with the commitment to engage such a professional.

Prior to the final construction bond release, the LEED-AP shall submit a certification statement to EDRB, including supporting documentation as detailed below, confirming that the green building elements listed below have been incorporated into the design and construction of the building.

Green building elements for inclusion in the project:

- A. Only native and non-invasive species, including perennials and seed mixes, shall be used for landscape and other plantings on the property. Planting lists showing species and location of plantings on the landscape plan shall be submitted with the site plan.
- B. LED or fluorescent lamps shall be incorporated in the interior building light fixtures to the extent possible.
- C. Motion sensor faucets, flush valves, and ultralow-flow plumbing fixtures that have a maximum water usage as listed below shall be used in restroom facilities in the building(s).

Water Closet (gallons per flush, gpf): 1.0  
Lavatory faucets (gpm\*\*): 1.5  
Kitchen sink faucet: 1.5

- D. Low-emitting materials shall be used for all adhesives, sealants, paints, coatings, floor systems, composite wood, and agrifiber products. Low-emitting is defined according to the following table:

<u>Application</u>	<u>VOC Limit g/L less water</u>
Carpet adhesive	50
Rubber floor adhesive	60
Ceramic tile adhesive	65
Anti-corrosive/anti-rust paint	250
Clear wood finishes	350

- E. Carpet and carpet padding shall be installed that meets the testing and product requirements of the Carpet and Rug Institute Green Label Plus program. Manufacturers' product data shall be provided prior to the issuance of a Non-RUP.
- F. Vinyl composition tile and rubber flooring shall be installed which meets the requirements of the FloorScore certification program. Manufacturers' product data and certification letter shall be provided prior to the issuance of a Non-RUP.
- G. Water heaters and roof top mechanical units will be Energy Star, or equivalent. Installation locations and manufacturers' product data, including the Energy Star energy guide, if installed, shall be provided prior to the issuance of a Non-RUP.
- H. A white thermoplastic membrane will be used on all flat roof surfaces.
- I. A building automation system that monitors water, energy and electrical consumption and controls HVAC equipment and lighting to achieve greater energy efficiency.
- J. Occupancy sensors to reduce energy consumption.
- K. A Variable Refrigerant Flow (VRF) HVAC system to allow for temperature control over individual spaces within the proposed building.
- L. A supplemental HVAC system within the building's IT/electrical room in order for IT and electrical equipment to operate at optimal efficiency.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit (Non-RUP) through established procedures, and this Special Exception shall not be valid until this has been accomplished.

SE 2017-DR-003  
October 18, 2017

Pursuant to Section 9-015 of the Zoning Ordinance, this Special Exception shall automatically expire, without notice, 30 months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Exception. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

**The Board also:**

- Modified the transitional screening required per Sect. 13-303 of the Zoning Ordinance along the southern property line, in favor of the proposed landscaping, as shown on the SE Plat
- Waived the barrier required per Sect. 13-304 of the Zoning Ordinance along the southern property line
- Waived the loading space requirement per Sect. 11-203 of the Zoning Ordinance

Sincerely,



Catherine A. Chianese  
Clerk to the Board of Supervisors

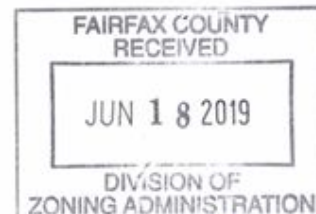
cc: Chairman Sharon Bulova  
Supervisor John Foust, Dranesville District  
Howard Goodie, Director, Real Estate Division, Dept. of Tax Administration  
Tracy D. Strunk, Acting Director, Zoning Evaluation Division, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning  
Thomas Conry, Dept. Manager, GIS, Mapping/Overlay  
Michael Davis, Section Chief, Transportation Planning Division  
Donald Stephens, Transportation Planning Division  
Ken Williams, Plans & Document Control, ESRD, DPWES  
Department of Highways-VDOT  
Andrea Dorlester, Park Planning Branch Manager, FCPA  
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division  
Jill Cooper, Executive Director, Planning Commission  
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

Lynne J. Strobel  
(703) 528-4700 Ext. 5418  
[lstrobel@thelandlawyers.com](mailto:lstrobel@thelandlawyers.com)



**WALSH COLUCCI  
LUBELEY & WALSH PC**

June 18, 2019



**Via E-Mail and Certified Mail/Return Receipt Requested**

Leslie B. Johnson, Zoning Administrator  
Zoning Administration Division  
Fairfax County Department of Planning and Zoning  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035

Re: SE 2017-DR-003  
Fairfax County Tax Map Reference: 13-1 ((9)) 6B  
Property Owner: 778 Walker, LLC

Dear Ms. Johnson:

On behalf of the owner of property identified as Fairfax County Tax Map 13-1 ((9)) 6B (the "Subject Property"), please accept this letter as a request in accordance with Section 9-015 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance") for additional time to establish the previously approved drive-in financial institution on the Subject Property or commence construction thereof.

At its hearing held on September 12, 2017, the Fairfax County Board of Supervisors (the "Board") approved the referenced special exception application to allow a drive-in financial institution on the Subject Property and a waiver of minimum lot size. The Board approved the application subject to development conditions, including a requirement that the use be established or construction commence and be diligently prosecuted within thirty (30) months of the approval date. A copy of the approved development conditions is attached for your convenient reference. The current expiration date of the approval is March 12, 2020.

SunTrust Bank, the Applicant in SE 2017-DR-003, is currently undergoing business organizational changes and has therefore been delayed in the completion and approval of a site plan. As these business issues will take time to resolve, it is unlikely that the site plan will be pursued before the end of the year. These changes were unforeseen circumstances at the time of the Board's approval of the special exception. While SunTrust Bank is diligently working through these business matters, it is clear that additional time will be needed to establish the approved use. In an abundance of caution, the property owner is submitting this request for additional time to ensure that the special exception approval remains valid.

ATTORNEYS AT LAW

703 528 4700 • [WWW.THELANDLAWYERS.COM](http://WWW.THELANDLAWYERS.COM)  
2200 CLARENDON BLVD. • SUITE 1300 • ARLINGTON, VA 22201-3359  
LOUDOUN 703 737 3633 • WOODBRIDGE 703 680 4664



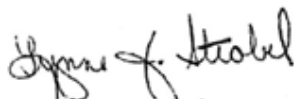
Page 2

In accordance with Section 9-015 of the Zoning Ordinance, I would appreciate the acceptance of this letter as a request for twenty four (24) months of additional time to establish the drive-in financial institution or commence construction of the improvements approved with SE 2017-DR-003. If this additional time is granted by the Board, the new expiration date of the approval will be March 12, 2022. There have been no changes in circumstances that would render the prior approval inconsistent with the Zoning Ordinance, the Comprehensive Plan or the public interest.

Should you have any questions regarding this request, or require additional information, please do not hesitate to contact me. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.



Lynne J. Strobel

LJS:kae

cc: Jorge Kfoury  
Nathan Smith

{A0856563.DOCX / I Ltr to Johnson re: additional time request (6-18-19) 006680 000017}

ADMINISTRATIVE - 5

Additional Time to Establish Use or Commence Construction for Special Exception  
SE 2016-DR-011, H & M of Virginia, LLC (Dranesville District)

ISSUE:

Board consideration of additional time to Establish Use or Commence Construction for SE 2016-DR-011, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:

The County Executive recommends that the Board approve eighteen (18) months additional time for SE 2016-DR-011 to February 14, 2021.

TIMING:

Routine.

BACKGROUND:

Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On February 14, 2017, the Board of Supervisors approved Special Exception SE 2016-DR-011, subject to development conditions. The application was filed in the name of H & M of Virginia, LLC to permit a reduction in minimum lot width to facilitate subdivision of the subject property, located at 7072 Idylwood Road, Tax Map 40-1 ((1)) 12, as shown on the Locator Map, Attachment 1. Subsequent to subdivision, each of the resultant two lots will be developed with a single family detached dwelling.

Reduction in lot width, a Category 6, special exception use, is permitted pursuant to Sect. 9-610 of the Fairfax County Zoning Ordinance. SE 2016-DR-011 was approved with a provision that the use be established or construction be commenced and diligently prosecuted within thirty (30) months of the approval date unless the Board granted additional time. Under this provision, the current expiration date of the approval is August 14, 2019. The development conditions for SE 2016-DR-011 are included as part

Board Agenda Item  
September 24, 2019

of the Clerk to the Board's letter contained in Attachment 2.

On July 17, 2019, the Department of Planning and Development (DPD) received a letter dated July 15, 2019 (Attachment 3), from Lynne Strobel, agent for the Applicant, requesting twenty-four (24) months of additional time. (See Attachment 3.) In her letter, Ms. Strobel cites the change in ownership of the subject property as the basis for the delay in subdividing the parcel and in constructing the two approved single family dwellings and states that the request for an additional 24 months will allow the requestor to subdivide and commence construction. The approved special exception will not expire pending the Board's action on the request for additional time.

Staff has reviewed Special Exception SE 2016-DR-011 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit modification of lot width in the R-2 zoning district. Further, staff knows of no change in land use circumstances that affects compliance of SE 2016-DR-011 with the special exception standards applicable to this proposal, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the special exception. Finally, the conditions associated with the Board's approval of SE 2016-DR-011 are still appropriate and remain in full force and effect. However, staff is aware that timely completion of a trail segment along the front of the subject property, as required by development conditions 8 and 9, is a matter of consideration. Therefore, staff believes that approval of the request for eighteen (18) months (in lieu of the request twenty-four (24) months) additional time is in the public interest and recommends that it be approved.

FISCAL IMPACT:  
None.

ENCLOSED DOCUMENTS:  
Attachment 1: Locator Map  
Attachment 2: Clerk's Letter dated February 15, 2017, to Lynne Strobel  
Attachment 3: Letter dated July 15, 2019, to Leslie B. Johnson

STAFF:  
Rachel Flynn, Deputy County Executive  
Barbara A. Byron, Director, Department of Planning and Development (DPD)  
Tracy D. Strunk, Acting Director, Zoning Evaluation Division (ZED), DPD  
Suzanne Wright, Chief, Conformance Review & Acceptance Branch, ZED, DPD  
Bobby H. Katai, Staff Coordinator, ZED, DPD



# Special Exception

SE 2016-DR-011



Applicant:

H&M OF VIRGINIA, LLC

Accepted:

05/11/2016

Proposed:

MODIFICATION TO THE MINIMUM ATTACHMENT 1

Area:

1.27 AC OF LAND; DISTRICT - DRANESVILLE

Zoning Dist Sect: 09-0610

Located:

7072 IDYLWOOD ROAD, FALLS CHURCH, VA 22043

Zoning:

R- 2

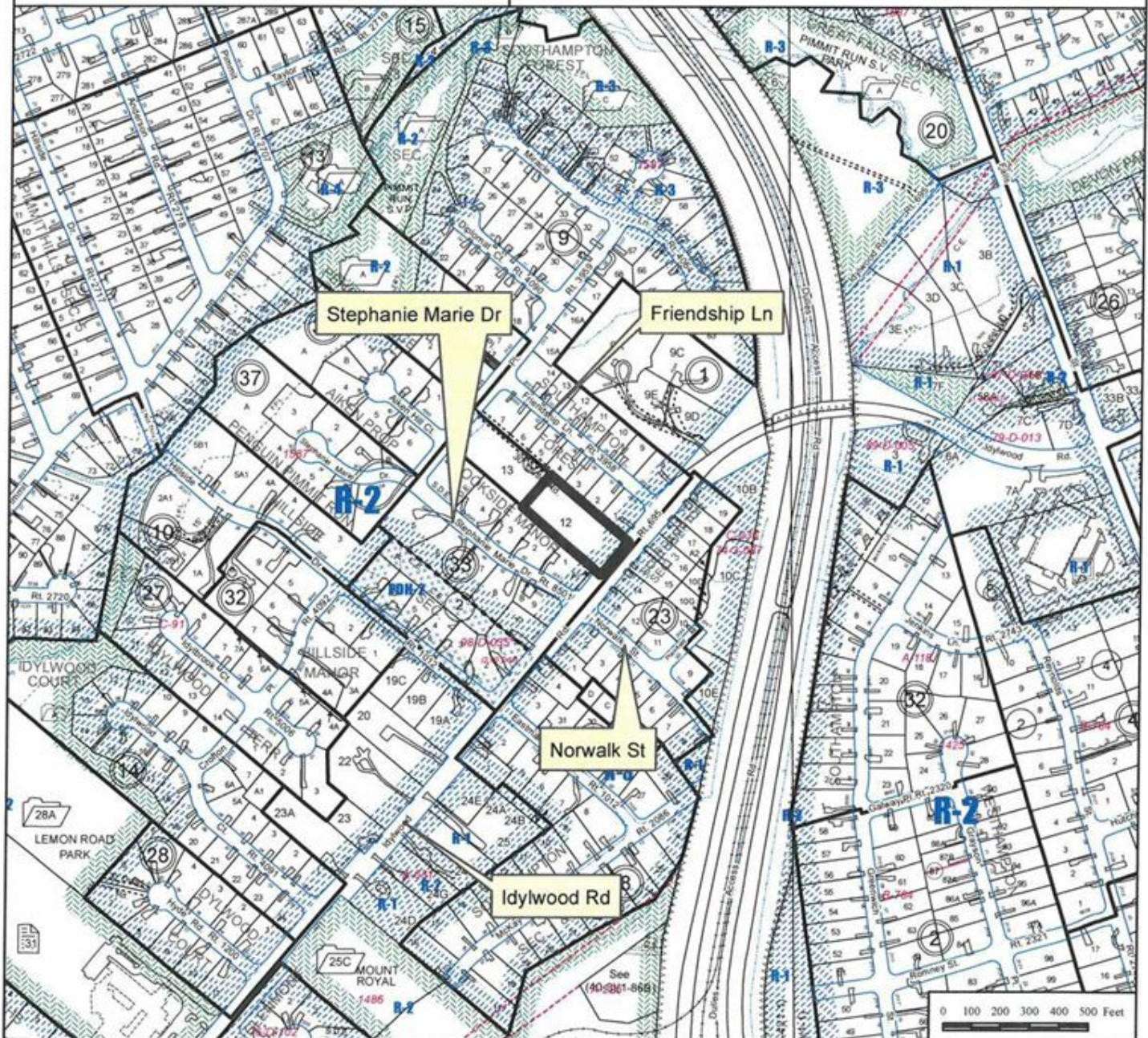
Plan Area:

2,

Overlay Dist:

Map Ref Num:

040-1- /01/ /0012







## County of Fairfax, Virginia

*To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County*

February 15, 2017

Lynne Strobel  
Walsh, Colucci, Lubeley & Walsh, P.C.  
2200 Clarendon Boulevard, Suite 1300  
Arlington, VA 22201

Re: Special Exception Application SE 2016-DR-011

Dear Ms. Strobel:

At a regular meeting of the Board of Supervisors held on February 14, 2017, the Board approved Special Exception Application SE 2016-DR-011 in the name of H&M of Virginia, LLC. The subject property is located at 7072 Idylwood Road on approximately 1.27 acres of land, zoned R-2 in the Dranesville District [Tax Map 40-1 ((1)) 12]. The Board's action permits a reduction in the lot width requirement from 100 feet to 40 feet, pursuant to Section 9-610 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions.
3. This Special Exception is subject to the provisions of Chapter 101, the Subdivision Ordinance, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception Plat (SE Plat) titled "7072 Idylwood Road Special Exception Plat," prepared by Walter L. Phillips, Inc., consisting of six sheets dated January 10, 2017, and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors  
12000 Government Center Parkway, Suite 533  
Fairfax, Virginia 22035

Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 711  
Email: [clerktothebos@fairfaxcounty.gov](mailto:clerktothebos@fairfaxcounty.gov)  
<http://www.fairfaxcounty.gov/bosclerk>

4. New dwelling units on the Application Property shall be constructed in accordance with one of the following programs, or an alternative third-party certification as approved by the Environmental and Development Review Branch of the Department of Planning and Zoning ("DPZ"). Selection of one of the following certification methods, or a DPZ-approved alternative, shall be within the Applicant's sole discretion at time of subdivision plan submission.
  - a. Certification in accordance with the Earth Craft Home Program as demonstrated through documentation provided to DPWES and DPZ prior to the issuance of a RUP for each dwelling;
  - b. Certification in accordance with the 2015 National Green Building Standard (NGBS) using the ENERGY STAR® Qualified Homes path for energy performance as demonstrated through documentation submitted to DPWES and DPZ from a home energy rater certified through Home Innovation Research Labs that demonstrates that the dwelling unit has attained the certification prior to issuance of a RUP for each dwelling.
5. Stormwater Management
  - a. Prior to first submission of the Subdivision Plan, the applicant shall conduct a geotechnical investigation to the satisfaction of DPWES to demonstrate that the proposed detention and Best Management Practices (BMP) facilities shown on the SE Plat are feasible and that detention requirements will be met pursuant to the Public Facilities Manual (PFM).
  - b. Prior to approval of the Subdivision Plan, the applicant shall demonstrate how BMP measures will be provided to the satisfaction of DPWES.
  - c. Prior to issuance of a Residential Use Permit (RUP) for either lot, the applicant shall construct the bioretention facilities on the subject lot.
  - d. Prior to approval of the Subdivision Plan, adequate outfall shall be demonstrated in accordance with the PFM, as determined by DPWES.
  - e. If a modification of the PFM to permit the proposed facilities on individual lots as shown on the SE Plat is not granted by DPWES and facilities that are in substantial conformance with the SE Plat cannot be provided, then a Special Exception Amendment (SEA) shall be filed to provide water quantity and quality control measures in accordance with the PFM as determined by DPWES. Prior to record plat approval, residential covenants shall be recorded in the County Land Records which disclose to the existing and all subsequent property owners the maintenance obligations of the bioretention facilities.

- f. As stated in the Stormwater Management Narrative on page 5 of the SE Plat, water quality and quantity measures shall be met without purchasing offsite nutrient credits.
- 6. Tree Preservation and Landscaping: The following landscaping procedures shall be followed to assure adequate tree preservation.
  - A. Tree Preservation: A Tree Preservation plan shall be submitted for review and approval as part of the first and all subsequent subdivision plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a Certified Arborist or Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 12 inches in diameter and greater located within the first 25 feet of the undisturbed area from the limits of clearing and grading and the first 10 feet from the limits of clearing in the disturbed area shown on the SE Plan for the entire site.

The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the SE Plan and those additional areas in which trees can be preserved as a result of final engineering. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.
  - B. Tree Preservation Walk-Through: The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's Certified Arborist or Registered Consulting Arborist shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made, if any, to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner



causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.

- C. Limits of Clearing and Grading: The limits of clearing and grading shall be strictly adhered to as shown on the SE Plan, subject to allowances specified in these development conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the SE Plan, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
- D. Tree Preservation Fencing: All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" condition below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the direct supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD, DPWES.

- E. Root Pruning: The Applicant shall root prune, as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the submitted plan. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

F. Site Monitoring: During any clearing or tree/vegetation/structure removal on the Applicant Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as per specific development conditions and as approved by the UFMD. The Applicant shall retain the services of a Certified Arborist or Registered Consulting Arborist to monitor all construction and demolition work adjacent to any vegetation to be preserved, tree preservation efforts and landscape installation, in order to ensure conformance with all tree preservation and landscaping development conditions, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

7. A statement shall be included in the deed of conveyance for proposed Lots 1 and 2 that states that both properties are governed by a Special Exception. A copy of the approved SE Plat and associated development conditions shall also be attached to any deed of conveyance.
8. Prior to or concurrent with subdivision plan approval, the Applicant shall dedicate, in fee simple, the proposed right-of-way dedication area on Idylwood Road to the Board of Supervisors of Fairfax County.
9. The asphalt walk shall be constructed in consultation with and to the satisfaction of VDOT.
10. The proposed driveway may be relocated in consultation with VDOT and FCDOT to provide acceptable transitions to the existing sidewalk on the adjacent property. In addition, notwithstanding what is shown on the plat, the applicant shall have the flexibility to reduce the width of the apron of the driveway at the time of subdivision plan, subject to approval by VDOT, FCDOT, and DPWES. .
11. In consultation with VDOT, appropriate drainage facilities will be provided along the Idylwood Road frontage in order to prevent ponding.
12. As shown on the SE Plat, the Buildable Area Schematics shall be honored to prevent any land disturbances or structures / uses outside of these areas.



SE 2016-DR-011  
February 15, 2017

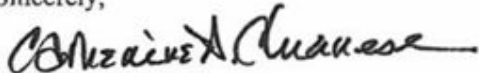
Information regarding the buildable area for each lot along with the restrictions shall be provided in the initial deeds of conveyance. All subsequent plans, including building permits, shall reflect the buildable areas as shown on the SE plat.

13. Within eight (8) months of approval of the application, a deed of vacation will be recorded among the Fairfax County land records to vacate an existing thirty (30) foot outlet road recorded in Deed Book B-12 at Page 407 among the Fairfax County land records. Said vacation shall be recorded subject to receipt of signatures from all beneficiaries. If all required signatures are not obtained, the outlet road shall not be required to be vacated. If the outlet road is not vacated, it shall not be improved by the Applicant nor used for vehicular access.
14. Subject to receipt of permission from the property owners, the Applicant shall remove gravel from those properties identified among the Fairfax County tax assessment records as 40-1 ((9)) 1, 2, 3 and 4. Upon removal of the gravel, the area shall be graded and seeded. Should one or more property owners refuse to grant permission to enter the property, this will not preclude removal of gravel, grading and seeding on those properties whose owners do grant permission. Said removal of gravel, grading and reseeded shall take place concurrent with development of the application property.
15. The two homes constructed on the property shall be generally compatible with the surrounding community with regard to architecture and building materials.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Sincerely,



Catherine A. Chianese  
Clerk to the Board of Supervisors

SE 2016-DR-011  
February 15, 2017

cc: Chairman Sharon Bulova  
Supervisor John Foust, Dranesville District  
Howard Goodie, Director, Real Estate Division, Dept. of Tax Administration  
Barbara Berlin, Director, Zoning Evaluation Division, DPZ  
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning  
Thomas Conry, Dept. Manager, GIS, Mapping/Overlay  
Michael Davis, Section Chief, Transportation Planning Division  
Donald Stephens, Transportation Planning Division  
Ken Williams, Plans & Document Control, ESRD, DPWES  
Department of Highways-VDOT  
Sandy Stallman, Park Planning Branch Manager, FCPA  
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division  
Jill Cooper, Executive Director, Planning Commission  
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

Lynne J. Strobel  
(703) 528-4700 Ext. 5418  
lstrobel@thelandlawyers.com



July 15, 2019



2019-0586

RECEIVED  
Dept of Planning & Development

JUL 17 2019

Zoning Evaluation Division

**Via E-Mail and Certified Mail/Return Receipt Requested**

Leslie B. Johnson, Zoning Administrator  
Zoning Administration Division  
Fairfax County Department of Planning and Development  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035

Re: SE 2016-DR-011

Fairfax County Tax Map Reference: 40-1 ((1)) 12 (the "Subject Property")

Dear Ms. Johnson:

Please accept this letter as a request in accordance with Section 9-015 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance") for additional time to establish the previously approved reduction in minimum lot width on the Subject Property.

At its hearing held on February 14, 2017, the Fairfax County Board of Supervisors (the "Board") approved the referenced special exception application to allow a reduction in minimum lot width on the Subject Property. The Board approved the application subject to fifteen development conditions, including a requirement that the use be established or construction commence and be diligently prosecuted within thirty (30) months of the approval date. A copy of the Clerk's letter confirming the approval is attached for your convenient reference. The current expiration date of the approval is August 14, 2019.

Graphene Development Group, Inc. (the "Owner") recently acquired the Subject property, which has not been subdivided. As such, construction will not commence for many months. The Owner has retained a civil engineer to prepare a subdivision plat that will be submitted to Fairfax County for review and approval. The Owner intends to commence construction as soon as possible. As it will take time to prepare and record the subdivision plat, as well as commence construction, additional time is needed to establish the use.

In accordance with Section 9-015 of the Zoning Ordinance, I would appreciate the acceptance of this letter as a request for twenty four (24) months of additional time to establish the use or commence construction in accordance with SE 2016-DR-011. A change in ownership is an event that was unforeseen at the time of the approval and has considerably delayed the development process. There have been no changes in circumstances that would render the prior approval inconsistent with the Zoning Ordinance, the Comprehensive Plan or the public interest.

**ATTORNEYS AT LAW**

703 528 4700 • WWW.THELANDLAWYERS.COM  
2200 CLARENDON BLVD. • SUITE 1300 • ARLINGTON, VA 22201-3359

LOUDOUN 703 737 3633 • WOODBRIDGE 703 680 4664



Page 2

Should you have any questions regarding this request, or require additional information, please do not hesitate to contact me. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.



Lynne J. Strobel

LJS:kae

Enclosure

cc: Pawan Malhotra  
Aaron Vinson  
Monica Westgate

{A0871804.DOCX / 1 Ltr to Johnson re: additional time request for 7072 Idylwood Road (SE 2016-DR-011) 000157 004268}

ADMINISTRATIVE - 6

Authorization to Advertise a Public Hearing to Consider Amending and Readopting Fairfax County Code Sections 4-14-1 and 4-14-3 Relating to Real Estate Tax Relief, to Exclude the Disability Income of Certain Relatives Living in an Owner's Sole Dwelling from Total Combined Income Calculations for Tax Relief Purposes

ISSUE:

Authorization to advertise a public hearing to consider amendments to Fairfax County Code Sections 4-14-1 and 4-14-3 that would exclude the disability income of permanently and totally disabled relatives living in an owner's sole dwelling from the property owner's total combined income, thereby potentially expanding the number of properties that qualify for tax relief.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing on October 29, 2019, to consider adopting the proposed amendments to Chapter 4, Article 14 of the Fairfax County Code.

TIMING:

Board action is required on September 24, 2019, in order to provide sufficient time to advertise the public hearing on October 29, 2019.

BACKGROUND:

Pursuant to Virginia Code §§ 58.1-3210 through -3217, Fairfax County provides income-based real estate tax relief to qualified homeowners based upon income and/or disability if the home is their sole dwelling. For Fiscal Year 2019, the Fairfax County Tax Relief Program approved roughly 7,000 real estate applications representing approximately \$28 million in relief. The availability and extent of relief is based on the "total combined income" of the owner, which is calculated in accordance with Virginia law and Fairfax County Code and includes all income from non-caregiving relatives living in the home regardless of disability.

Virginia Code § 58.1-3212 was amended effective July 1, 2019. Under the revised statute, localities may now exclude the disability income of permanently and totally disabled relatives residing in a taxpayer's sole dwelling from the total combined income calculation.

Board Agenda Item  
September 24, 2019

The proposed amendments to Fairfax County Code Sections 4-14-1 and 4-14-3 put that exclusion in place for Fairfax County taxpayers. The proposed amendments also make housekeeping changes to conform the language of the ordinance with the existing requirements in, and current County practice under, state code.

FISCAL IMPACT:

The total amount of relief resulting from this amendment is difficult to estimate because the Department of Tax Administration cannot precisely determine how many individuals will apply and qualify under the revised calculation. It is anticipated that the fiscal impact will be minor.

ENCLOSED DOCUMENTS:

Attachment 1 – Virginia Code § 58.1-3212

Attachment 2 – Proposed Ordinance change to amend and readopt Fairfax County Code Sections 4-14-1 and 4-14-3

STAFF:

Joseph M. Mondoro, Chief Financial Officer

Jaydeep "Jay" Doshi, Director, Department of Tax Administration (DTA)

Gregory A. Bruch, Fiscal Administrator, Supervision Division, DTA

Justin K. Nejad, Management Analyst, Supervision Division, DTA

ASSIGNED ATTORNEY:

Martin R. Desjardins, Assistant County Attorney

## § 58.1-3212. Local restrictions and exemptions

Pursuant to Article X, Section 6 (b) of the Constitution of Virginia, the General Assembly hereby authorizes the governing body of a county, city or town to establish by ordinance net financial worth or annual income limitations as a condition of eligibility for any exemption or deferral of tax allowed pursuant to this article. If the governing body establishes an annual income limitation, the computation of annual income shall be based on adding together the income received during the preceding calendar year, without regard to whether a tax return is actually filed, by (i) owners of the dwelling who use it as their principal residence, (ii) owners' relatives who live in the dwelling, except for those relatives living in the dwelling and providing bona fide caregiving services to the owner whether such relatives are compensated or not, and (iii) at the option of each locality, nonrelatives of the owner who live in the dwelling except for bona fide tenants or bona fide caregivers of the owner, whether compensated or not. A locality may provide in its ordinance that, for the purpose of the computation of annual income, if an individual described in clause (ii) and (iii) is permanently and totally disabled, any disability income received by such person shall not be included. If the governing body establishes a net financial worth limitation, net financial worth shall be based on adding together the net financial worth, including the present value of equitable interests, as of December 31 of the immediately preceding calendar year, of the owners, and of the spouse of any owner, of the dwelling.

Nothing in this section shall be construed or interpreted as to preclude or prohibit the governing body of a county, city or town from excluding certain sources of income, or a portion of the same, for purposes of its annual income limitation or excluding certain assets, or a portion of the same, for purposes of its net financial worth limitation.

Any county, city, or town that pursuant to this article provides for the exemption from, deferral of, or a combination program of exemptions from and deferrals of real property taxes may exempt or defer the real property taxes of the qualifying dwelling and the land, not exceeding ten acres, upon which it is situated.

No local ordinance shall require that a citizen reside in the jurisdiction for a designated period of time as a condition for qualifying for any real estate tax exemption or deferral program established pursuant to § 58.1-3210.

Code 1950, § 58-760.1; 1971, Ex. Sess., c. 169; 1972, cc. 315, 616; 1973, c. 496; 1974, c. 427; 1976, c. 543; 1977, cc. 48, 453, 456; 1978, cc. 774, 776, 777, 780, 788, 790; 1979, cc. 543, 544, 545, 563; 1980, cc. 656, 666, 673; 1981, c. 434; 1982, cc. 123, 457; 1984, cc. 267, 675; 1989, c. 568; 2011, cc. 438, 496; 2012, c. 299; 2014, c. 767; 2019, c. 16.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

1        **AN ORDINANCE AMENDING AND READOPTING FAIRFAX COUNTY CODE**  
2        **SECTIONS 4-14-1 AND 4-14-3 RELATING TO REAL ESTATE TAX RELIEF, TO**  
3        **EXCLUDE FROM TOTAL COMBINED INCOME THE DISABILITY INCOME OF**  
4        **CERTAIN RELATIVES LIVING IN THE OWNER'S SOLE DWELLING**

5  
6                                **Draft of August 27, 2019**  
7

8        **AN ORDINANCE amending and readopting Fairfax County Code**  
9        **Sections 4-14-1 and 4-14-3 relating to real estate tax relief, to exclude from**  
10       **total combined income the disability income of certain relatives living in the**  
11       **owner's sole dwelling.**

12  
13        **Be it ordained by the Board of Supervisors of Fairfax County:**  
14

15       **1. That Sections 4-14-1 and 4-14-3 of the Fairfax County Code are amended and readopted**  
16       **as follows:**  
17

18       **Section 4-14-1. – Definitions.**  
19

20       For the purposes of this Article, the following words and phrases shall have the meanings  
21       respectively ascribed to them by this Section.

22                (1) *Director* means the Director of the Fairfax County Department of Tax Administration  
23                or the designated agent of the Director.

24                (2) *Net combined financial worth* means all assets of the owners of the dwelling and the  
25                spouse of the owner who resides therein, including equitable interests, excluding  
26                furniture, household appliances and other items typically used in a home and the value of  
27                the dwelling and the land in an amount not to exceed one acre upon which that dwelling  
28                is located.  
29

30                (3) *Total combined income* means gross income from all sources of owners of the  
31                dwelling residing therein and any relative of the owner who resides in the dwelling,  
32                except for those relatives living in the dwelling and providing bona fide caregiving  
33                services to the owner whether such relatives are compensated or not, provided that the  
34                first \$7,500.00 of any income received by an owner who is permanently and totally  
35                disabled and the first \$6,500.00 of income of each relative, other than the spouse of the  
36                owner or owners who is living in the dwelling, shall not be included in such total. If a  
37                relative subject to this subsection (3) is permanently and totally disabled, any disability  
38                income received by such person shall not be included in the calculation of total combined  
39                income.  
40

41       **Section 4-14-3. – Application for exemption; affidavits.**  
42

43 Application for exemption provided for by this Article shall be made not later than April 1 of  
44 each year for which exemption is sought, except this date may be extended by the Director to  
45 December 31 of the year following the year that application was due, if the applicant is applying  
46 for relief for the first time or if hardship conditions exist which through no fault of the applicant  
47 prohibit applying by April 1, and if proper application is made along with sworn affidavit that  
48 failure to apply was due to reasons beyond the control of the applicant.

49  
50 All applications for exemption shall be made to the Director on application forms provided by  
51 the Director. Each application shall be accompanied by an affidavit, setting forth the names of all  
52 persons owners and relatives occupying such dwelling and stating the total combined income,  
53 and the net combined financial worth of all such persons and such other information required by  
54 the Director to administer the provisions of this Article. If the application is made by an person  
55 owner filing for exemption because of permanent and total disability, or if the owner is seeking  
56 exclusion from total combined income of the disability income of a relative living in the  
57 residence, the application shall also be accompanied by a certification affidavits made in  
58 accordance with Code of Virginia § 58.1-3213 stating that such person owner or relative, as the  
59 case may be, meets the definition of permanently and totally disabled specified by Code of  
60 Virginia § 58.1-3217. The Director may require an applicant to answer questions under oath  
61 concerning the requirements under this Article and/or to produce for inspection certified federal  
62 income tax returns for the preceding three (3) years to establish the total combined income or net  
63 combined financial worth as defined in Section 4-14-1.

64  
65 Beginning January 1, 1997, applications for real estate tax relief shall be filed on a three-year  
66 cycle. Applicants approved for real estate tax relief for 1996, or for any year thereafter pursuant  
67 to the filing of an application for exemption, shall file a certification in each of the two (2) years  
68 following approval attesting that no information contained on the last previous years application  
69 has changed in a way that would exceed the limitations and conditions prescribed herein  
70 pertinent to the eligibility for tax relief. The annual certification shall be filed no later than  
71 April 1 each year. The deadline to file a certification may be extended by the Director to  
72 December 31 of the year following the calendar year in which the certification was due, if  
73 hardship conditions existed where, through no fault of the applicant, the applicant was prohibited  
74 from filing by the April 1 due date. Failure to file an application or certification as specified in  
75 this section shall result in denial of tax relief.

76  
77 **3. That the provisions of this ordinance shall take effect January 1, 2020.**  
78

79  
80 GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2019

81  
82 \_\_\_\_\_  
83 Jill G. Cooper  
84 Clerk to the Board of Supervisors

ADMINISTRATIVE - 7

Approval of Traffic Calming Measures, "\$200 Additional Fine for Speeding" Signs and "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Mason, Mount Vernon, Providence and Springfield Districts)

ISSUE:

Board endorsement of Traffic Calming measures as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends that the Board endorse the traffic calming plan and resolution for Westmoreland Road (Attachment I and Attachment II); and the traffic calming plan and resolution for Powder Horn Road (Attachment III and Attachment IV) consisting of the following:

- One Speed Hump on Westmoreland Road (Mason District)
- Two Speed Humps on Powder Horn Road (Springfield District)

The County Executive further recommends approval of resolutions (Attachment V and Attachment VII) for the installation of "\$200 Additional Fine for Speeding" signs on the following roads:

- Gallows Road, between the Capital Beltway and Surrey Lane (Attachment VI) (Providence District)
- Electric Avenue, between Gallows Road and Cedar Lane (Attachment VIII) (Providence District)

The County Executive further recommends approval for "Watch for Children" signs on the following roads:

- Two "Watch for Children" signs on Hemlock Drive (Providence District)
- One "Watch for Children" sign on Holmes Run Drive (Providence District)
- One "Watch for Children" sign on Sycamore Drive (Providence District)
- One "Watch for Children" sign on Executive Avenue (Providence District)
- One "Watch for Children" sign on Hartwell Court (Providence District)
- One "Watch for Children" sign on Surrey Lane (Providence District)
- One "Watch for Children" sign on Cunningham Drive (Mount Vernon District)
- One "Watch for Children" sign on Wessynton Way (Mount Vernon District)
- Two "Watch for Children" signs on Electric Avenue (Providence District)

Board Agenda Item  
September 24, 2019

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) be requested to schedule the installation of the approved traffic calming measures and the “Watch for Children” signs as soon as possible. The County Executive also recommends that FCDOT request VDOT to schedule the installation of the approved “\$200 Additional Fine for Speeding” signs (Attachment VI and Attachment VIII) as soon as possible.

TIMING:

Board action is requested on September 24, 2019.

BACKGROUND:

As part of RTAP, roads are reviewed for traffic calming when requested by a Board member on behalf of a homeowners or civic association. Traffic calming employs the use of physical devices such as speed humps, speed tables, raised pedestrian crosswalks, chokers, or median islands to reduce the speed of traffic on a residential street. Staff performed engineering studies documenting the attainment of qualifying criteria. Staff worked with the local Supervisor’s office and community to determine the viability of the requested traffic calming measure to reduce the speed of traffic. Once the plan for the road under review is approved and adopted by staff, that plan is then submitted for approval to the residents within the ballot area in the adjacent community.

On July 2, 2019, FCDOT received verification from the Mason District Supervisor’s office confirming community support for the Westmoreland Road traffic calming plan.

On July 9, 2019, FCDOT received verification from the Springfield District Supervisor’s office confirming community support for the Powder Horn Road traffic calming plan. This project was initiated under the new Fairfax County Traffic Calming Guidelines and requires a resolution to VDOT prior to installation. FCDOT will deliver the resolution to VDOT after it is signed and stamped by the Clerk to the Board.

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

Electric Avenue, between Gallows Road and Cedar Lane (Providence District) met the RTAP requirements for posting the “\$200 Additional Fine for Speeding Signs.” On July 29, 2019, FCDOT received written verification from the Providence District



Board Agenda Item  
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Gallows Road, between the Capital Beltway and Surrey Lane (Providence District) met the RTAP requirements for posting the "\$200 Additional Fine for Speeding Signs." On August 8, 2019, FCDOT received written verification from the Providence District Supervisor's Office confirming community support.

The RTAP allows for installation of "Watch for Children" signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. FCDOT reviews each request to ensure the proposed signs will be effectively located and will not be in conflict with any other traffic control devices.

On July 29, 2019, FCDOT received verification from the Providence District Supervisor's Office confirming community support for the referenced "Watch for Children" signs on Electric Avenue (Providence District).

On August 8, 2019, FCDOT received verification from the Providence District Supervisor's Office confirming community support for the referenced "Watch for Children" signs on Hemlock Drive, Holmes Run Drive, Sycamore Drive, Executive Avenue, Hartwell Court and Surrey Lane (Providence District).

On August 13, 2019, FCDOT received verification from the Mount Vernon District Supervisor's Office confirming community support for the referenced "Watch for Children" signs on Cunningham Drive and Wessynton Way (Mount Vernon District).

FISCAL IMPACT:

Funding in the amount of \$33,000 for the traffic calming measures associated with these traffic calming projects and the "Watch for Children" signs is available in Fund 2G25-076-000, General Fund, under Job Number 40TTCP. For the "\$200 Additional Fine for Speeding" signs, \$750 is to be paid out of the VDOT secondary road construction budget.

ENCLOSED DOCUMENTS:

Attachment I: Traffic Calming Plan for Westmoreland Road

Attachment II: Traffic Calming Resolution for Westmoreland Road

Attachment III: Traffic Calming Plan for Powder Horn Road

Attachment IV: Traffic Calming Resolution for Powder Horn Road

Attachment V "\$200 Additional Fine for Speeding" Signs Resolution – Gallows Road

Attachment VI: Area Map of Proposed "\$200 Additional Fine for Speeding" Signs – Gallows Road

Attachment VII "\$200 Additional Fine for Speeding" Signs Resolution – Electric Avenue

Attachment VIII: Area Map of Proposed "\$200 Additional Fine for Speeding" Signs – Electric Avenue

Board Agenda Item  
September 24, 2019

STAFF:

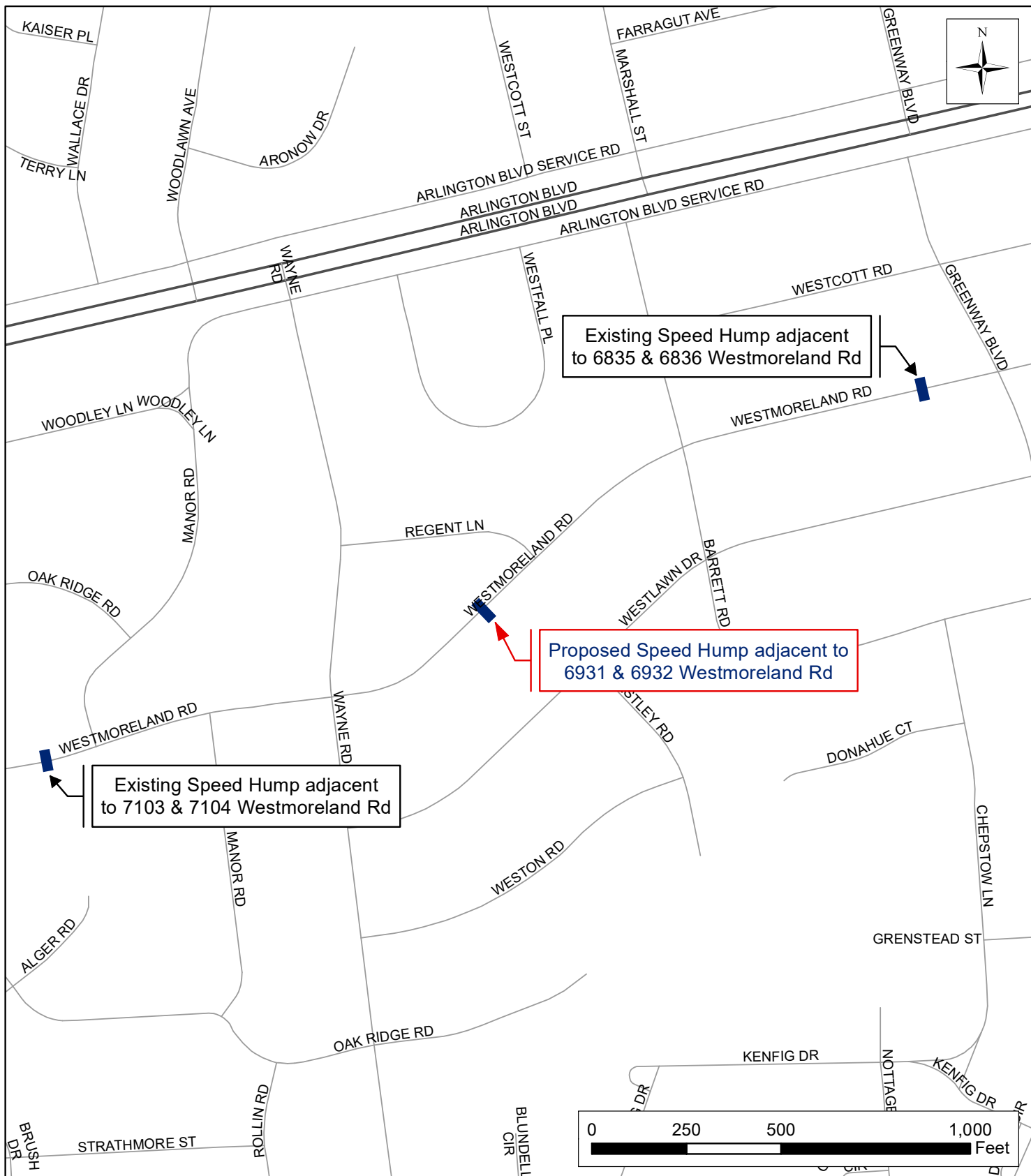
Rachel Flynn, Deputy County Executive

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

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



Tax Map: 50-3, 50-4

August 2019

**Fairfax County Department of Transportation**  
**Residential Traffic Administration Program**  
**Traffic Calming Plan**  
**Westmoreland Road**  
**Mason District**



## **RESOLUTION**

**FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)  
TRAFFIC CALMING MEASURES  
WESTMORELAND ROAD  
MASON DISTRICT**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, September 24, 2019, at which a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, the residents in the vicinity of Westmoreland Road have requested the Mason District Supervisor's Office of Fairfax County to consider remedial measures to reduce the speed of traffic on Westmoreland Road; and

**WHEREAS**, an engineering study by the Fairfax County Department of Transportation (FCDOT) for Westmoreland Road indicates that all basic traffic calming criteria are met pertaining to functional classification of the roadways, identification of a significant speeding concern, and proof of community support; and

**WHEREAS**, the proposed Traffic Calming Plan was properly presented to the community in the affected survey for their review and consideration; and

**WHEREAS**, the Traffic Calming Plan was subsequently approved by 90 percent of the occupied residences and businesses within the appropriate surveyed area; and

**WHEREAS**, the intended source of funding for the Traffic Calming Plan is Fairfax County.

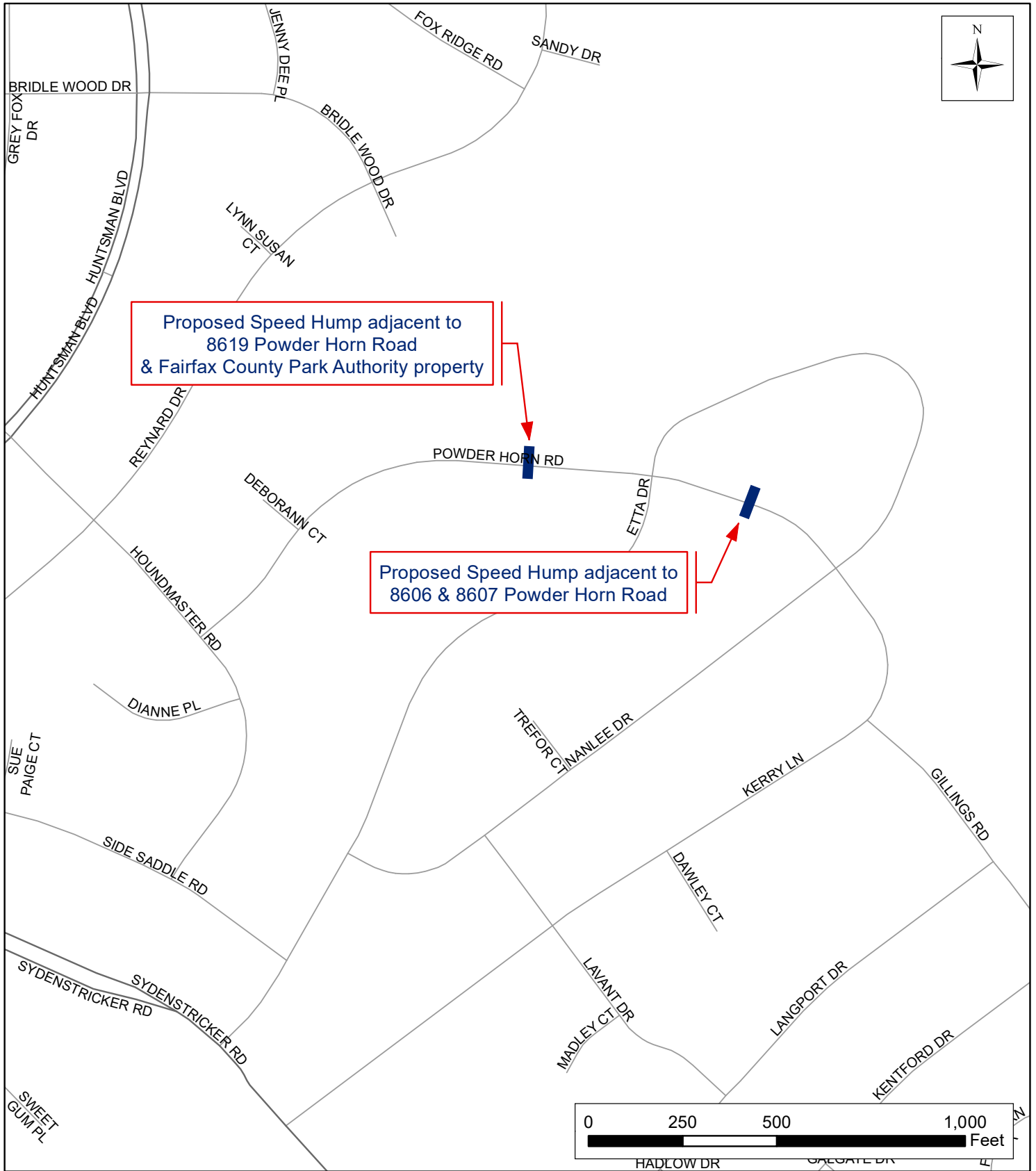
**NOW THEREFORE BE IT RESOLVED**, that the Board of Supervisors endorses the proposed Traffic Calming Plan and requests that the Virginia Department of Transportation review and approve the feasibility of implementing traffic calming measures on Westmoreland Road as part of FCDOT's Residential Traffic Administration Program.

**ADOPTED** this 24<sup>th</sup> day of September, 2019.

A Copy Teste:

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Jill G. Cooper  
Clerk to the Board of Supervisors



Tax Map: 89-1

August 2019

**Fairfax County Department of Transportation  
Residential Traffic Administration Program  
Traffic Calming Plan  
Powder Horn Road  
Springfield District**



## **RESOLUTION**

**FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)  
TRAFFIC CALMING MEASURES  
POWDER HORN ROAD  
SPRINGFIELD DISTRICT**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, September 24, 2019, at which a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, the residents in the vicinity of Powder Horn Road have requested the Springfield District Supervisor's Office of Fairfax County to consider remedial measures to reduce the speed of traffic on Powder Horn Road; and

**WHEREAS**, an engineering study by the Fairfax County Department of Transportation (FCDOT) for Powder Horn Road indicates that all basic traffic calming criteria are met pertaining to functional classification of the roadways, identification of a significant speeding concern, and proof of community support; and

**WHEREAS**, the proposed Traffic Calming Plan was properly presented to the community in the affected survey for their review and consideration; and

**WHEREAS**, the Traffic Calming Plan was subsequently approved by 71 percent of the occupied residences and businesses within the appropriate surveyed area; and

**WHEREAS**, the intended source of funding for the Traffic Calming Plan is Fairfax County.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Supervisors endorses the proposed Traffic Calming Plan and requests that the Virginia Department of Transportation review and approve the feasibility of implementing traffic calming measures on Powder Horn Road as part of FCDOT's Residential Traffic Administration Program.

**ADOPTED** this 24<sup>th</sup> day of September, 2019.

A Copy Teste:

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Jill G. Cooper  
Clerk to the Board of Supervisors

## RESOLUTION

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

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, September 24, 2019, at which a quorum was present and voting, the following resolution was adopted:

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

**WHEREAS**, the Fairfax County Department of Transportation has verified that a bona-fide speeding problem exists on Gallows Road from the Capital Beltway to Surrey Lane. Such road also being identified as a Minor Arterial Road; and

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

**NOW, THEREFORE BE IT RESOLVED** that "\$200 Additional Fine for Speeding" signs are endorsed for Gallows Road from the Capital Beltway to Surrey Lane.

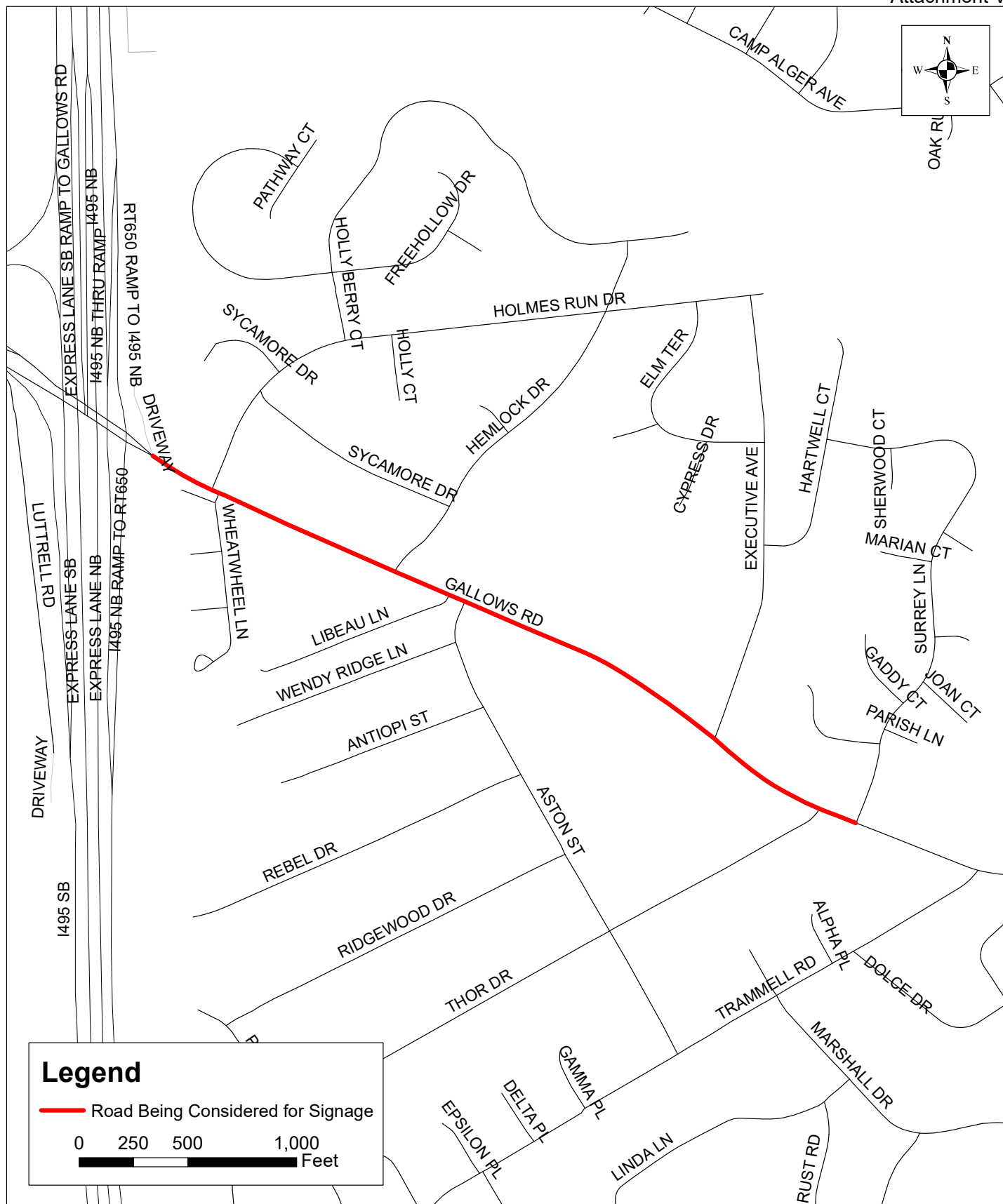
**AND FURTHER**, the Virginia Department of Transportation is requested to allow the installation of the "\$200 Additional Fine for Speeding" signage, and to maintain same, with the cost of each sign to be funded from the Virginia Department of Transportation's secondary road construction budget.

**ADOPTED** this 24<sup>th</sup> day of September, 2019.

A Copy Teste:

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Jill G. Cooper  
Clerk to the Board of Supervisors



August 2019



A Fairfax Co. Va., publication

Fairfax County Department of Transportation  
 Residential Traffic Administration Program (RTAP)  
 PROPOSED ADDITIONAL \$200 FINE FOR SPEEDING  
 Gallows Road- I-495 NB to Surrey Lane  
 Providence District



Tax Map: 59-2, 60-1



## RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)  
\$200 ADDITIONAL FINE FOR SPEEDING SIGNS  
ELECTRIC AVENUE  
PROVIDENCE DISTRICT

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, September 24, 2019, at which a quorum was present and voting, the following resolution was adopted:

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

**WHEREAS**, the Fairfax County Department of Transportation has verified that a bona-fide speeding problem exists on Electric Avenue from the Gallows Road to Cedar Lane. Such road also being identified as a Major Collector Road; and

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

**NOW, THEREFORE BE IT RESOLVED** that "\$200 Additional Fine for Speeding" signs are endorsed for Electric Avenue from the Gallows Road to Cedar Lane.

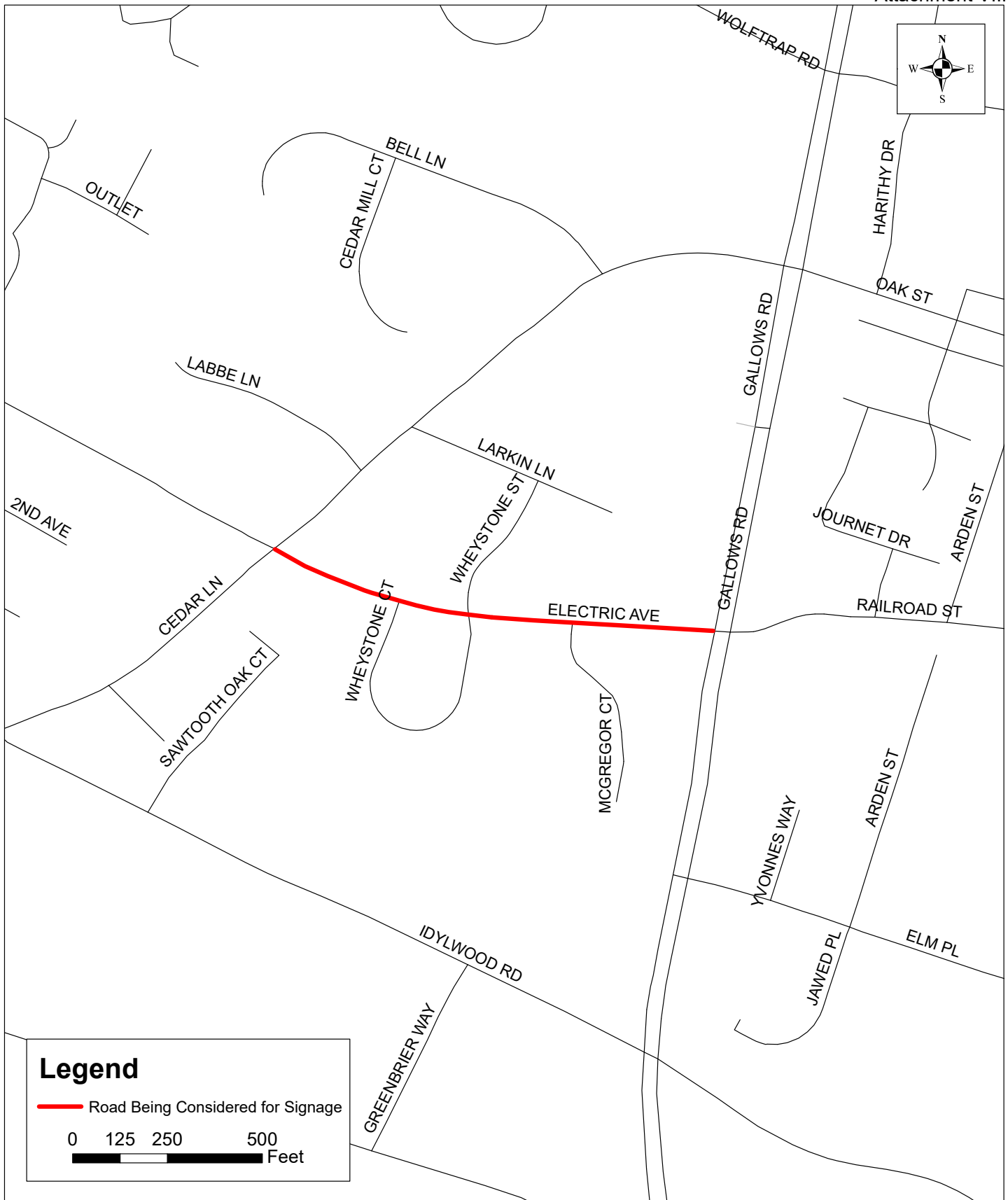
**AND FURTHER**, the Virginia Department of Transportation is requested to allow the installation of the "\$200 Additional Fine for Speeding" signage, and to maintain same, with the cost of each sign to be funded from the Virginia Department of Transportation's secondary road construction budget.

**ADOPTED** this 24<sup>th</sup> day of September, 2019.

A Copy Teste:

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Jill G. Cooper  
Clerk to the Board of Supervisors



August 2019



A Fairfax Co. Va., publication

Fairfax County Department of Transportation  
 Residential Traffic Administration Program (RTAP)  
 PROPOSED ADDITIONAL \$200 FINE FOR SPEEDING  
 Electric Avenue- Gallows Road to Cedar Lane  
 Providence District



Tax Map: 39-3, 39-4

ADMINISTRATIVE - 8

Supplemental Appropriation Resolution AS 20083 for the Fairfax-Falls Church Community Services Board to Accept Grant Funding from Virginia Department of Behavioral Health and Developmental Services for the Regional STEP-VA Community Crisis Response & Detox Services

ISSUE:

Board approval of Supplemental Appropriation Resolution AS 20083 for the Fairfax-Falls Church Community Services Board (CSB) to accept grant funding from the Virginia Department of Behavioral Health and Developmental Services (DBHDS) in the amount of \$886,861 to provide community crisis stabilization and detoxification services. These funds will be used to expand detoxification services regionally by adding an additional service of medically-monitored residential withdrawal management services at the 16-bed residential crisis stabilization program, Woodburn Place Crisis Care. The grant period is from July 1, 2019 to June 30, 2020. When grant funding expires, the County is under no obligation to continue funding the program. Board authorization is also requested for the Chairman of the Board of Supervisors, the County Executive and/or a designee appointed by the County Executive to enter into the grant agreement and any related agreements, including but not limited to Federal Subaward Agreements, on behalf of the County.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve Supplemental Appropriation Resolution AS 20083 to accept funding from DBHDS in the amount of \$886,861 to provide community crisis stabilization and detoxification services. These funds will be used to expand detoxification services regionally by adding an additional service of medically monitored residential withdrawal management services at the 16-bed residential crisis stabilization program, Woodburn Place Crisis Care. There are 4/4.0 FTE new grant positions associated with this award. No Local Cash Match is required. The County Executive also recommends the Board authorize the Chairman of the Board of Supervisors, the County Executive and/or a designee appointed by the County Executive to enter into the grant agreement and any related agreements, including but not limited to Federal Subaward Agreements, on behalf of the County.

TIMING:

Board approval is requested on September 24, 2019.

BACKGROUND:

DBHDS Region 2 includes the Community Services Boards of Alexandria, Arlington, Fairfax-Falls Church, Loudoun, and Prince William and represents 28 percent of the state's population. These communities are experiencing an increased number of individuals entering the crisis system with a presenting crisis that includes the need for detoxification services. Due to a lack of capacity, a significant number of these individuals are being admitted to state hospitals. As part of Virginia's System Transformation, Excellence, and Performance in Virginia (STEP-VA) initiative, DBHDS awarded \$2.0 million to CSBs across the state in order to expand detoxification and crisis stabilization services, as well as reduce the number of individuals admitted to state hospitals.

These funds will expand detoxification services in Region 2 by adding medically-monitored residential withdrawal management services at the 16-bed residential crisis stabilization program, Woodburn Place Crisis Care. This will increase CSB's capacity to accept individuals in need of detoxification services and crisis stabilization. During FY 2019, the Fairfax Detoxification Center diverted 121 potential admissions to hospital-based medical detoxification. However, the Fairfax Detoxification Center was unable to admit within 72 hours 403 individuals requiring medically-monitored withdrawal. Funding will support 4/4.0 FTE new grant positions, including 1/1.0 FTE Behavioral Health Nursing Supervisor and 3/3.0 FTE Behavioral Health Nurse Clinician/Case Manager positions, to increase capacity to provide crisis stabilization and detoxification services and divert individuals from hospital admissions. Funds will also be used for medication and 24/7 security to be able to accept high acuity and high complexity individuals for detoxification and crisis stabilization services.

FISCAL IMPACT:

Grant funding from DBHDS in the amount of \$886,861 will support the regional residential crisis stabilization program by expanding detoxification services at Woodburn Place Crisis Care through additional services of medically-monitored residential withdrawal management services. No Local Cash Match is required. This action does not increase the expenditure level of the Federal-State Grant Fund as funds are held in reserve for unanticipated awards in FY 2020. This grant does not allow the recovery of indirect costs.

CREATION OF NEW POSITIONS:

These funds will be used to support 4/4.0 FTE new grant positions. The County has no obligation to continue funding these positions when the grant period ends.

Board Agenda Item  
September 24, 2019

ENCLOSED DOCUMENTS:

Attachment 1: Award Letter from DBHDS

Attachment 2: Supplemental Appropriation Resolution AS 20083

STAFF:

Tisha Deeghan, Deputy County Executive

Daryl Washington, Executive Director, Fairfax-Falls Church Community Services Board



HUGHES MELTON, M.D. MBA  
FAAFP, FABAM  
COMMISSIONER

## *COMMONWEALTH of VIRGINIA*

DEPARTMENT OF  
*BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES*

Post Office Box 1797  
Richmond, Virginia 23218-1797

Telephone (804) 786-3921  
Fax (804) 371-6638  
[www.dbhds.virginia.gov](http://www.dbhds.virginia.gov)

Daryl Washington, Executive Director  
Fairfax Community Services Board  
12011 Government Center Parkway, Suite 836  
Fairfax, VA 22035

Re: Award of Detox Expansion Funds

Dear Mr. Washington,

I am writing to inform you that DBHDS will be granting Fairfax CSB as the fiscal agent for Region 2, ongoing funding in the amount of \$886,861 to fully fund the detox expansion proposal submitted by Region 2. The funds will be sent across FY 2020 for these services. Reporting requirements for these additional funds will be forthcoming. It is our hope these funds will expand the ability for Crisis Care at Woodburn Place to be able to accept individuals who need detoxification services as well as crisis stabilization. We hope the funds will also support the use of the unit for some individuals under temporary detention be diverted from state hospitals.

Congratulations on the award.

Please contact Mary Begor ([mary.begor@dbhds.virginia.gov](mailto:mary.begor@dbhds.virginia.gov)) or at 804-514-4716.

Sincerely,  
Mary Begor  
Crisis Services Coordinator

**SUPPLEMENTAL APPROPRIATION RESOLUTION AS 20083**

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 September 24, 2019, at which a quorum was present and voting, the following resolution was adopted:

**BE IT RESOLVED** by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2020, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund: 500-C50000, Federal-State Grant Fund

Agency: G7620, Fairfax-Falls Church Community Services Board \$886,861

Grant: 1760059-2020, Regional SUD STEP VA, Community Crisis Response & Detox Services

Reduce Appropriation to:

Agency: G8787, Unclassified Admin \$886,861

Fund: 500-C50000, Federal-State Grant Fund

Source of Funds: Virginia Department of Behavioral Health and Developmental Services, \$886,861

A Copy - Teste:

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Jill G. Cooper  
Clerk to the Board of Supervisors



ADMINISTRATIVE - 9

Notification of the Continuum of Care Program Funding Application and Certification of Consistency with the Consolidated Plan and Authorization for the Office to Prevent and End Homelessness to Apply for and Accept Funding from the U.S. Department of Housing and Urban Development

ISSUE:

The Office to Prevent and End Homelessness (OPEH) coordinates one Continuum of Care Program application on behalf of various County agencies as well as Fairfax County non-profit organizations. HUD requires that the projects included in the Continuum of Care Program application be certified as consistent with the County's Consolidated Plan. Combating homelessness for both families and individuals is a high priority in the County's Five-Year Consolidated Plan for FY 2016-2020. The plan was approved by the Board on April 28, 2015. Therefore, the projects in the Continuum of Care Program application are consistent with this priority. The County Executive signed the Certification of Consistency with the Consolidated Plan, as required as part of the CoC application.

Total grant funding of \$9,985,236 will be requested and will support a total of 24 homeless assistance projects and 1 homeless assistance planning project. While one Continuum of Care Program application is submitted on behalf of both County agencies and Fairfax County non-profit organizations, funding is awarded directly to the County agency or non-profit organization administering the project. The County is applying for a total of 4 projects and non-profit organizations are applying for a total of 21 projects.

Anticipated grant funding awarded directly to the County is included in the Federal-State Grant Fund as part of the FY 2020 Adopted Budget Plan. However, the Office to Prevent and End Homelessness would like to add a new grant position to support the planning efforts and HUD compliance for the County's homeless service delivery system. Therefore, authorization is being requested for the Office to Prevent and End Homelessness to apply for and accept grant funding from the U.S. Department of Housing and Urban Development to support 1/1.0 FTE new grant position. No Local Cash Match is required. Staff will process these awards administratively in accordance with Board policy. However, if the actual County grant awards received are significantly different from what is included in the FY 2020 Adopted Budget Plan, another item will be submitted to the Board requesting appropriation of grant funds.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Office to Prevent and

Board Agenda Item  
September 24, 2019

End Homelessness to apply for and accept grant funding, if received, from the U.S. Department of Housing and Urban Development to support 1/1.0 FTE new grant position. No General Fund Local Cash Match is required.

TIMING:

Board approval is requested on September 24, 2019 due to an application deadline of September 30, 2019.

BACKGROUND:

The Fairfax-Falls Church community has been very successful for more than two decades in applying for and receiving HUD Continuum of Care funds. These funds have contributed to the development of a core continuum of services to enable homeless families and individuals to move toward stable housing. The housing opportunities provided under the Continuum of Care grant funds play a critical role in achieving the metrics called for in the Fairfax County Housing Blueprint, and meeting the goals of the 10-Year Plan to Prevent and End Homelessness in the Fairfax-Falls Church Community.

There are 20 existing projects that are eligible for renewal in the 2019 Continuum of Care application. All of these projects were included in the 2018 Continuum of Care award. In addition to the existing projects, non-profit organizations are applying for 4 new housing projects (permanent supportive housing for chronic homeless individuals and rapid rehousing for households with and without children experiencing homelessness as a result of domestic violence). The County is also applying for a CoC planning grant in the amount of \$130,000. This brings the total Continuum of Care applications to 25.

In summary, if awarded, Continuum of Care Program funding will provide the following:

- One year of continued funding of permanent supportive housing for 374 formerly homeless individuals with disabilities.
- One year of continued funding of permanent supportive housing for 22 families with a disabled head of household with minor children.
- One year of continued funding of rapid rehousing for both families and individuals, 11 households where the head of household is between the ages of 18-24 and an additional 66 households, all coming from emergency shelters, places not meant for human habitation, or fleeing domestic violence.

Board Agenda Item  
September 24, 2019

- One year of funding for 3 new projects providing permanent supportive housing to approximately 18 chronically homeless individuals and rapid rehousing for 33 households with and without children experiencing homelessness as a result of domestic violence.
- One year of funding to support continued planning efforts and HUD compliance for our homeless service delivery system.

Attachment 1 summarizes the Continuum of Care Program applications, with projects sponsored by County agencies listed first followed by those sponsored by non-profit organizations.

FISCAL IMPACT:

Total Continuum of Care Program funding of \$9,985,236 will be requested and supports a total of 25 homeless assistance projects. Funding is awarded directly to the County agency or non-profit organization administering the project. Anticipated grant funding awarded directly to the County is included in the Federal-State Grant Fund as part of the FY 2020 Adopted Budget Plan. Therefore, staff will process these awards administratively in accordance with Board policy. However, if the actual County grant awards received are significantly different from what is included in the FY 2020 Adopted Budget Plan, another item will be submitted to the Board requesting appropriation of grant funds. The CoC match requirement of 25 percent is met utilizing in-kind resources and/or the non-profit organization provides the cash match for individual projects. No County Local Cash Match is included in the Federal-State Grant Fund.

POSITIONS:

County grant funding will be used to support 1/1.0 FTE new grant position. The County has no obligation to continue funding this position when the grant funding expires.

ENCLOSED DOCUMENTS:

Attachment 1 – HUD 2019 Continuum of Care Grant Applications

Attachment 2 – Certification of Consistency with the Consolidated Plan

STAFF:

Tisha Deeghan, Deputy County Executive

Dean H. Klein, Director, OPEH

Jamie Ergas, Continuum of Care Manager, OPEH

Tom Fleetwood, Director, Department of Housing and Community Development

## HUD 2019 CONTINUUM OF CARE GRANT APPLICATIONS

	#	Agency & Project Name	Project Description	HUD Funding
Grants Sponsored by County Agencies	1	DHCD/Pathway Homes DHCD/Pathway Homes SPC 1C	<i>Renewal (04/2020 – 03/2021) – 29 leased units providing permanent supportive housing for 34 formerly homeless individuals with severe mental illness</i>	\$587,089
	2	DHCD/Pathway Homes DHCD/Pathway Homes SPC 9C	<i>Renewal (08/2020 – 07/2021) – 22 leased units providing permanent supportive housing for 25 formerly homeless individuals with severe mental illness</i>	\$423,290
	3	DHCD/Pathway Homes DHCD/Pathway Homes SPC 10C	<i>Renewal (06/2020 – 05/2021) – 50 leased units providing permanent supportive housing for 59 formerly homeless individuals with severe mental illness</i>	\$954,151
	4	Office to Prevent and End Homelessness Planning Grant	<i>One year of funding (09/2020 – 08/2021) – to support continued planning efforts and HUD compliance for our homeless service delivery system</i>	\$130,000
Grants Sponsored by Non-Profit Agencies	5	Pathway Homes 1994 CRSVA/PH/PRS SHP	<i>Renewal (07/2020 – 06/2021) – 7 owned units providing permanent supportive housing for 17 formerly homeless individuals with severe mental illness</i>	\$239,515
	6	Pathway Homes 1995 CRSVA/PH/PRS SHP	<i>Renewal (02/2020 – 01/2021) – 4 owned units providing permanent supportive housing for 14 formerly homeless individuals with severe mental illness</i>	\$319,499
	7	Pathway Homes 1991 CRSC/Pathway Homes SHP	<i>Renewal (01/2020 – 12/2020) – 7 owned units providing permanent supportive housing for 16 formerly homeless individuals with severe mental illness</i>	\$153,140
	8	Pathway Homes 1991 Pathway Homes SHP Expansion	<i>Renewal (01/2020 – 12/2020) – 12 owned units providing permanent supportive housing for 24 formerly homeless individuals with severe mental illness</i>	\$235,845
	9	Pathway Homes 2007 Pathway Homes SHP	<i>Renewal (12/2020 – 11/2021) – 7 leased units providing permanent supportive housing for 7 formerly chronically homeless individuals with severe mental illness</i>	\$189,428
	10	Pathway Homes 2009 Pathway Homes SHP	<i>Renewal (11/2020 – 10/2021) – 7 leased units providing permanent supportive housing for 7 formerly chronically homeless individuals with severe mental illness</i>	\$189,079
	11	Pathway Homes 2011 Pathway Homes SHP	<i>Renewal (09/2020 – 08/2021) – 10 leased units and 1 leased group home providing permanent supportive housing for 25 formerly homeless or chronically homeless individuals with severe mental illness</i>	\$384,386
	12	Pathway Homes 2014 Pathway Homes SHP	<i>Renewal (08/2020 – 07/2021) – 50 leased units providing permanent supportive housing for 55 chronically homeless individuals with severe mental illness.</i>	\$1,383,177
	13	Pathway Homes 2015 Pathway Homes SHP	<i>Renewal (11/2020 – 10/2021) – 22 leased units providing permanent supportive housing for 22 formerly chronically homeless individuals with severe mental illness.</i>	\$590,776
	14	FACETS TRIUMPH PSH	<i>Renewal (02/2020 – 01/2021) – 7 leased units providing permanent supportive housing for 9 formerly chronically homeless individuals.</i>	\$189,160

## HUD 2019 CONTINUUM OF CARE GRANT APPLICATIONS

Grants Sponsored by Non-Profit Agencies	#	Agency & Project Name	Project Description	HUD Funding
	15	FACETS TRIUMPH III PSH	<i>Renewal (09/2020 – 08/2021)</i> – 25 leased units providing permanent supportive housing for 32 formerly chronically homeless individuals. (TRIUMPH II and TRIUMPH III were consolidated into TRIUMPH III.)	\$691,744
	16	FACETS Linda's Gateway PSH	<i>Renewal (10/2020 – 09/2021)</i> – 2 leased group homes providing permanent supportive housing for 12 formerly chronically homeless individuals and 2 leased units providing permanent supportive housing to 2 chronically homeless families.	\$444,555
	17	New Hope Housing PSH Group Homes	<i>Renewal (08/2020 – 07/2021)</i> – 2 group homes (one leased and one owned) providing permanent supportive housing for 16 formerly chronically homeless individuals. (Max's Place and Gartlan House were consolidated into PSH Group Homes.)	\$368,838
	18	Second Story (formerly Alternative House) Rapid Rehousing for Transition Age Youth	<i>Renewal (12/2020 – 11/2021)</i> – Rapid Rehousing (rental assistance and supportive services) for 11 households for those between the ages of 18 and 24, with and without accompanying children.	\$214,880
	19	Shelter House Rapid Re-Housing Project	<i>Renewal (10/2020 – 09/2021)</i> – Rapid Rehousing (rental assistance and supportive services) for 30 households, both families and individuals.	\$452,630
	20	Shelter House RISE	<i>Renewal (08/2020 – 07/2021)</i> – 20 leased units providing permanent supportive housing for 20 formerly homeless families with a disabled head of household.	\$565,668
	21	Shelter House Rapid Re-Housing Project for Victims of Domestic Violence	<i>Renewal (12/2020 – 12/2021)</i> – Rapid Rehousing (rental assistance and supportive Services) for 33 households, including individuals and families.	\$405,006
	22	FACETS TRIUMPH III PSH Expansion	<i>New (grant year ending in 2021)</i> – 1 leased unit providing permanent supportive housing for 1 formerly chronically homeless individuals as an expansion of TRIUMPH III	\$15,000
	23	FACETS 2019 Permanent Supportive Housing	<i>New (grant year ending in 2021)</i> – 9 leased units providing permanent supportive housing for 9 formerly chronically homeless individuals.	\$224,921
	24	Pathway Homes 2019 Pathway Homes SHP	<i>New (grant year ending in 2021)</i> – 9 leased units providing permanent supportive housing for 9 formerly chronically homeless individuals.	\$224,921
	25	Shelter House Rapid Re-Housing Project for Victims of Domestic Violence 2	<i>New (grant year ending in 2021)</i> – Rapid Rehousing (rental assistance and supportive Services) for 33 households, including individuals and families.	\$408,538

**TOTAL            \$9,985,236**

**Certification of Consistency  
with the Consolidated Plan****U.S. Department of Housing  
and Urban Development**

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Con (Type or consolidated Plan.  
clearly print the following information:)

ApplicantName: Fairfax County CoC

ProjectName: List Attached

Location of the Project: Fairfax County, VA

Name of the Federal  
Program to which the  
applicant is applying: HUD CoC Program

Name of  
Certifying Jurisdiction: Fairfax County, VA

Certifying Official  
of the Jurisdiction  
Name: Bryan J. Hill

Title: County Executive

Signature: 

Date: 8/19/19

**Attachment to Form HUD-2991**  
**Certification of Consistency with the Consolidated Plan**  
**2019 Fairfax County Continuum of Care (CoC)**  
**Grant Process Applicant and Project Names**

**FEDERAL PROGRAM:** Continuum of Care Program

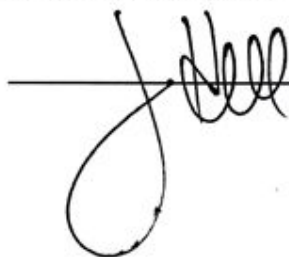
***Applicant and Project Name:***

1. Fairfax County Dept. of Housing and Community Development; DHCD/Pathway Homes SPC 1C
2. Fairfax County Dept. of Housing and Community Development; DHCD/Pathway Homes SPC 9C
3. Fairfax County Dept. of Housing and Community Development; DHCD/Pathway Homes SPC 10C
4. Fairfax County Office to Prevent and End Homelessness; Planning Grant
5. FACETS, Inc.; TRIUMPH Permanent Supportive Housing
6. FACETS, Inc.; TRIUMPH III Permanent Supportive Housing
7. FACETS, Inc.; Linda's Gateway Permanent Supportive Housing
8. Pathway Homes, Inc.; 1994 Pathway Homes SHP
9. Pathway Homes, Inc.; 1995 Pathway Homes SHP
10. Pathway Homes, Inc.; 1991 CRSC/Pathway Homes SHP
11. Pathway Homes, Inc.; 1991 Pathway Homes SHP Expansion
12. Pathway Homes, Inc.; 2007 Pathway Homes SHP
13. Pathway Homes, Inc.; 2009 Pathway Homes SHP
14. Pathway Homes, Inc.; 2011 Pathway Homes SHP
15. Pathway Homes, Inc.; 2014 Pathway Homes SHP
16. Pathway Homes, Inc.; 2015 Pathway Homes SHP
17. New Hope Housing, Inc.; PSH Group Homes
18. Second Story Rapid Rehousing for Transition Age Youth
19. Shelter House Inc.; Rapid Re-Housing Project
20. Shelter House Inc.; DV Rapid Re-Housing Project
21. Shelter House Inc.; RISE
22. FACETS, Inc.; TRIUMPH III Permanent Supportive Housing Expansion
23. FACETS, Inc.; 2019 Permanent Supportive Housing
24. Pathway Homes, Inc.; 2019 Pathway Homes SHP
25. Shelter House Inc.; DV Rapid Re-Housing Project 2

**Name of Certifying Jurisdiction:** Fairfax County, Virginia

**Certifying Official Name and Title:** Bryan J. Hill, County Executive

**Signature:**



**Date:**





ADMINISTRATIVE - 10

Authorization to Advertise a Public Hearing to Sell Board-Owned Property North of Reston Station Boulevard to CRS Sunset Hills, LC and Proposed Amendment to Deed of Lease with Comstock Reston Station Holdings, LC to Remove Land Area (Hunter Mill District)

ISSUE:

Authorization from the Board of Supervisors (the Board) to advertise a public hearing to sell Board-owned property to CRS Sunset Hills, LC (Purchaser) and on the proposed amendment (Amendment) to the existing Deed of Lease (Lease) between the Board, as landlord, and Comstock Reston Station Holdings LC (Comstock), as tenant, regarding Fairfax County Tax Map 17-4 ((1)) Parcel 17A (the Site). The Amendment would remove the portion of the parcel sold to the Purchaser from the Lease and accordingly adjust the future rent on the remainder of the Site.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing to sell Board-owned property north of Reston Station Boulevard, which includes an Amendment to the Lease to reflect the removal of that property from the Lease, to occur on October 15, 2019.

TIMING:

Board action is requested on September 24, 2019, to provide sufficient time to advertise a public hearing to be held before the Board on October 15, 2019 at 5:30 p.m.

BACKGROUND:

On June 1, 2009, the Board approved a Comprehensive Agreement with Comstock (together with its affiliates). The agreement provided for Comstock to construct an under-ground County-owned garage that serves the adjacent Wiehle-Reston East Metrorail station. The garage is located on that portion of the Site that is south of Reston Station Boulevard. The Comprehensive Agreement also encompassed a 99-year ground lease that leases the rest of the Site (other than the County-owned garage) to Comstock for private development (currently marketed as Reston Station). The parking garage began operations on July 26, 2014. Comstock has obtained land use approval for six buildings on the Site, has completed construction on two buildings, and has started construction on two additional buildings.

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The Lease, by its terms, may be split, or “severed”, into multiple leases. This flexibility exists to facilitate development of private buildings. Two buildings have already been severed off, each into its own lease with a distinct Comstock-affiliated tenant entity, and the remainder of the premises remains subject to the original lease with Comstock. (It is anticipated that a third building, currently under construction, will be further severed off into its own lease, in September or October 2019). The Amendment applies only to the original Lease with Comstock.

In general terms, Comstock currently pays an aggregate annual base rent of \$2,900,000 per year for all of its leases with the Board. The base rent will increase in three future phases:

- Base rent will increase to \$3,302,593 on June 28, 2024 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of the fourth building to be constructed on the Site, whichever occurs first.
- Base rent will increase to \$3,705,187 on June 28, 2027 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of the fifth building to be constructed on the Site, whichever occurs first.
- Base rent will increase to \$4,107,780 on June 28, 2030 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of the sixth building to be constructed, whichever occurs first.

At such time, the aggregate annual base rent remains at \$4,107,780 until July 2035, at which point the base rent will be reset at 8% of the then-market value of the premises.

On December 5, 2017 the Board approved the Sixth Amendment to the Lease. (The previous amendments dealt with lease severances or other issues not directly relevant here). The Sixth Amendment allowed, among other things, for County staff and Comstock to explore the possibility of selling (or otherwise modifying the ownership structure of) an approximately 0.91-acre portion of the Site located north of Reston Station Boulevard (Sale Area) depicted in Attachment 1. Over the past 18 months, County staff and Comstock have developed the framework of such a sale for the Board’s review and approval.

Under the proposal, the Site would be subdivided into two new parcels. The County would convey the Sale Area, comprising 0.906 acres (39,480 square feet), together with the density associated with 19,599 square feet that has been dedicated for a public street. The Sale Area parcel is disconnected from the Wiehle-Reston Station Metrorail garage by Reston Station Boulevard and is not necessary for garage operations. Further, the Sale Area was integrated into the Reston Station Promenade

rezoning (RZ 2016-HM-035 / PCA 2009-HM-019), approved on April 10, 2018. The proposed conveyance of the Sale Area to the Purchaser would thus enable a more efficient redevelopment of the Reston Station Promenade project.

The County would also retain the fee simple interest in the remaining 6.67 acres of the parcel (the Garage-Plaza Area) which contains the Wiehle-Reston Station garage and to which the Amended Lease, together with the severance leases, would continue to apply.

County staff obtained an appraisal that determined the value of the Sale Area to be \$10,750,000, based on a base density of 3.5 FAR (i.e., the base density for the approved Reston Station Promenade project). The proposed compensation for the Sale Area consists of two components:

- A lump sum cash payment of \$3,070,000, based on the value of 1.0 FAR on the Sale Area. This figure equates to two-sevenths (i.e., 1.0 FAR / 3.5 FAR) of the value of the Sale Area and was confirmed by a separate appraisal.
- A transfer of 147,690 square feet of density from the parcel located at Tax Map No. 17-4 ((24)), Parcel 3, which is also known as Reston Station Block 2, which is owned by another Comstock affiliate, and which is part of the same land use case (RZ 2009-HM-019 (Plaza Rezoning)) as the Garage-Plaza Area. The Plaza Rezoning allows for density to be transferred from Block 2 to the Garage-Plaza Area. The proposed amount of transfer density equates to the land of the Sale Area at a 2.5 FAR (i.e., its current, actual 3.5 FAR, less the 1.0 FAR being paid for in a lump sum as noted in the previous bullet). This density transfer would, in turn, enhance the value Garage-Plaza Area and thus result in a rental stream under the Lease with an estimated net present value of \$8,600,000 or greater.

County staff recommends this compensation structure, as it is anticipated to have the following benefits:

- Generate a higher net present value to the County for the Sale Area asset;
- Locate a greater amount of approved density closer to the adjacent Wiehle-Reston East Metrorail station;
- Simplify the ownership structure within Reston Station Promenade to facilitate redevelopment of that site and generate additional economic development and revenue for the County.

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This compensation structure was reviewed and endorsed by Savills, an international real estate consultant contracted by the County to review this proposed structure.

Since the proposed sale would convey Sale Area to Purchaser, the Lease will need to be amended to remove the Sale Area from the terms of the Lease. Accordingly, the Amendment to the Lease (Attachment 2) would further adjust rent levels to account for the fact that the County would be receiving a lump sum payment of \$3,070,000 within the next nine months, with the Sale Area transaction. Specifically, the Amendment would retain the current aggregate annual base rent of \$2,900,000 per year but revise the rent increases described above as follows:

- Base rent would increase to \$3,446,262 on July 25, 2025 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of the fourth building to be constructed on the Garage-Plaza Area, whichever occurs first.
- Base rent would increase to \$3,901,004 on July 25, 2030 or on the issuance of a RUP (or Non-RUP, as may be applicable) for 25,000 square feet of any the fifth building to be constructed on the Garage-Plaza Area, whichever occurs first.

The aggregate annual base rent would then remain at \$3,901,004 until July 2035, at which point the base rent would be reset at 8% of the then-market value of the premises, just as the current Lease contemplates.

If approved by the Board, the conveyance would close promptly after the satisfaction of certain conditions (discussed below), but no later than April 30, 2020, unless the County opted to modify that date. The Purchaser will post a deposit of \$250,000 to secure its performance under the purchase agreement (Attachment 3).

Of the conditions to closing, the most significant is approval by the Federal Transit Administration (FTA) of the use to which the Board would put a majority of the sales proceeds. When the Board originally acquired the Site in 1995, it used an FTA grant to fund 75% of the initial acquisition and project costs. (The Site was used as a surface parking lot for over a decade prior to the PPEA with Comstock.) Because of the use of FTA funds in acquiring the Site, the Board must also obtain FTA approval of the conveyance, of the compensation for the conveyance, and – if the Board wishes to retain the federal share of the sales proceeds – of a transportation project to which the Board would apply the federal share of the sales proceeds. The Department of Transportation has identified the grade separation project of the Washington and Old Dominion Trail at Wiehle Avenue (W&OD Trail Project) as the preferred eligible transportation project for these funds.

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Staff has obtained FTA approval of both the conveyance and the compensation structure described above (Attachment 4). Staff has initiated the process with FTA to have use of the funds approved for the W&OD Trail Project. If such FTA approval is not received before April 30, 2020, the County will have no obligation to complete the sale and related Lease Amendment. It may, however, at its sole election, opt to modify or waive that condition and proceed to close if the County determined that doing so was in its best interests.

The proposed Amendment to the Lease also expressly requires Comstock to permit electoral campaigning and voter registration activities on the plaza next to the entry to the north entrance to the Wiehle-Reston East Metrorail Station.

Lastly, the original Comprehensive Agreement and Lease were entered into pursuant to the Public-Private Education and Infrastructure Act of 2002, Title 56, Chapter 22.1 of the Virginia Code (PPEA). As the conveyance of the Sale Area to the Purchaser would represent a significant alteration to the original transaction, the PPEA statute requires not only a public hearing on the proposed documents but also a period of not less than 30 days between the public hearing and the final Board action to approve the conveyance. Thus, the action of October 15, 2019, would be a public hearing; decision on the sale and Amendment would occur on or after November 19, 2019.

FISCAL IMPACT:

Proceeds from the \$3,070,000 land sale to CRS Sunset Hills, LC will be allocated between two funds. \$2,302,500 will be retained to be used by FCDOT to offset the cost of a future eligible public transportation capital project. FTA approval of the proceeds to a subsequent capital award, such as the W&OD Trail Project, is required.

The remaining \$767,500 in land sale proceeds will be placed in Fund 40125, Metrorail Parking System Pledged Revenues, to offset the required debt service on the bonds issued to finance construction of the Wiehle-Reston East parking garage, as well as associated operation and maintenance expense.

The existing base rent under the current Lease is \$2.9 million per year, with an increase to \$4.1 million per year by no later than 2030. Under the Amendment, the current Lease rate of \$2.9 million per year would remain unchanged, with an increase to \$3.9 million per year by no later than 2030.

Base rents under the Amendment will continued be allocated to Fund 40125, Metrorail Parking System Pledged Revenues, to offset the required debt service on the bonds issued to finance construction of the Wiehle-Reston East parking garage, as well as associated operation and maintenance expenses.

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ENCLOSED DOCUMENTS:

Attachment 1 – Graphic of Proposed Board-Owned Property Conveyance

Attachment 2 – Proposed Amendment to the Deed of Lease with Comstock can be found online at: [http://www.fairfaxcountypartnerships.org/P3-Joint\\_Ventures/Wiehle-Toe-8th-Amendment\\_FFX\\_public.pdf](http://www.fairfaxcountypartnerships.org/P3-Joint_Ventures/Wiehle-Toe-8th-Amendment_FFX_public.pdf)

Attachment 3 – Proposed Purchase and Sale Agreement can be found online at: [http://www.fairfaxcountypartnerships.org/P3-Joint\\_Ventures/Wiehle-Toe-PSA-public.pdf](http://www.fairfaxcountypartnerships.org/P3-Joint_Ventures/Wiehle-Toe-PSA-public.pdf)

Attachment 4 – FTA Letter Approving Conveyance and Compensation

STAFF:

Rachel Flynn, Deputy County Executive

Martha Coello, Division Chief, Special Projects, Department of Transportation

Joe LaHait, Debt Coordinator, Department of Management and Budget

Michael Lambert, Deputy Director, Facilities Management Department

Scott Sizer, P3/Joint-Venture Policy Coordinator, Department of Economic Initiatives

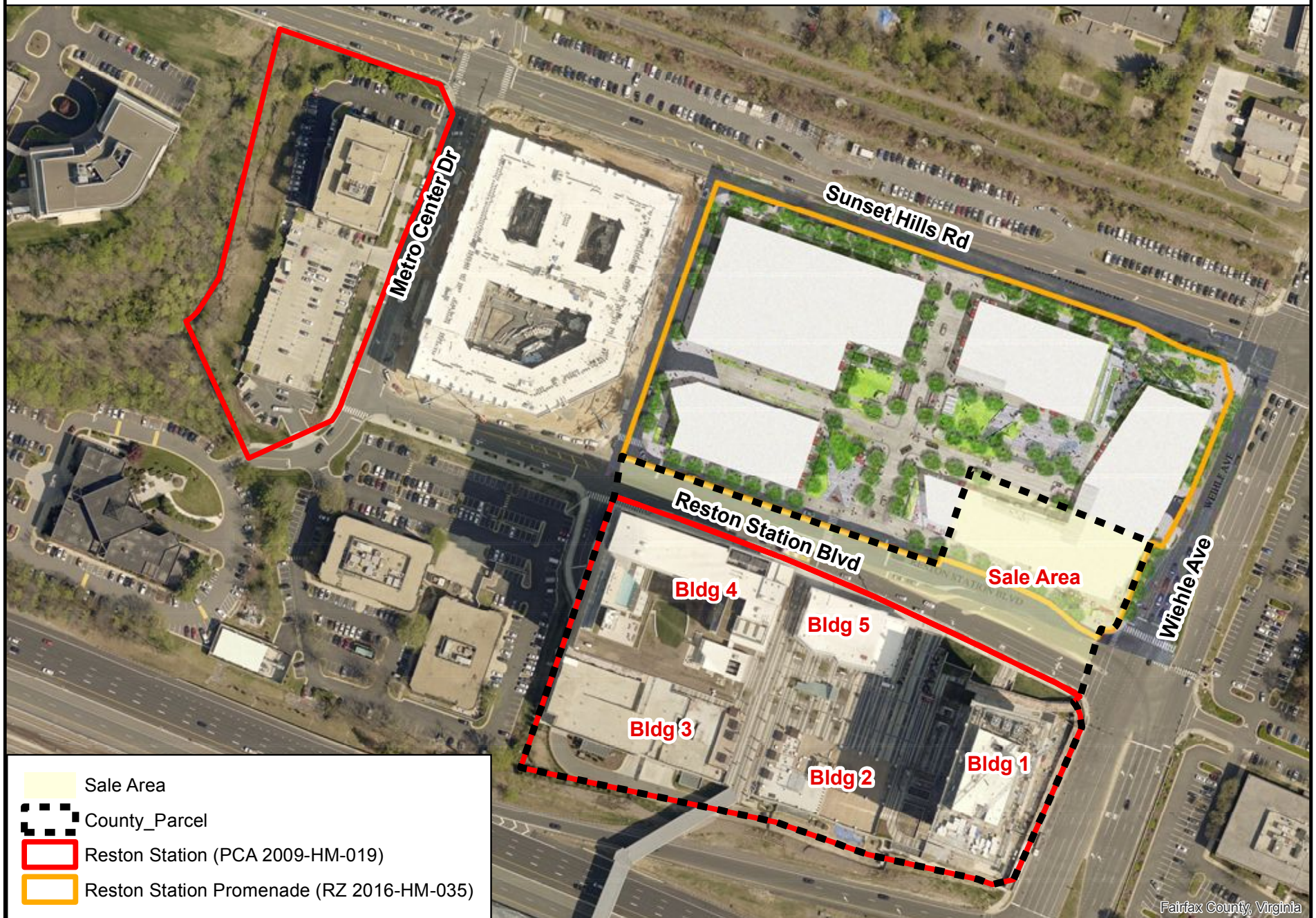
ASSIGNED COUNSEL:

Cynthia Bailey, Deputy County Attorney

Ryan Wolf, Assistant County Attorney



# Sale of County Property at Reston Station







U.S. Department  
of Transportation  
**Federal Transit  
Administration**

REGION III  
Delaware, District of  
Columbia, Maryland,  
Pennsylvania, Virginia,  
West Virginia

1760 Market Street  
Suite 500  
Philadelphia, PA 19103-4124  
215-656-7100  
215-656-7260 (fax)

July 25, 2019

Mr. Tom Biesiadny  
Director  
Fairfax County Department of Transportation  
4050 Legato Road, Suite 400  
Fairfax, VA 22033-2895

**RE: Disposition of Property – 1900 Block Reston Station Boulevard (North Side)**

Dear Mr. Biesiadny:

The Federal Transit Administration (FTA) has reviewed and considered Fairfax County Department of Transportation's (FCDOT) letter dated June 18, 2019, which was received on July 9, 2019, requesting FTA concurrent to dispose of real property that is no longer required for intended public transportation use. The letter also requested FTA approval for FCDOT to retain and utilize the sales proceeds to offset the cost of a future eligible public transportation capital project.

Per the information submitted, the total land area is 59,079 square feet (1.36 acres). The property is improved with a kiss-and-ride parking lot and related site improvements. The property was appraised with a 'before value' and an 'after value' to estimate a baseline market value in its' current density of 2.5 FAR and to estimate the increase in property value associated with a recent 'up zoning' of the property to Planned Development Commercial. The highest and best use is to assemble with other land at the subject block that supports Reston Promenade – a mixed use site. The review appraiser concurs that eventual development of the site is pursuant to 'up zoning' requirements.

The appraiser arrived at a value of \$3,070,000 by considering the difference between the 'before value' and the 'after value' utilizing the Sales Comparison Approach. The review appraiser reached the conclusion that the \$3,070,000 value set in the appraisal report for the fee simple interest represents the supported estimate of fair market value. Hence, the appraisal report is recommended for approval.

FTA conducted an administrative review of the appraisal and review appraisal provided as part of the disposition request. The appraisal submitted meets the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing regulations, 49 CFR Part 24.102, 103 and 104. FTA also confirmed that no Federal funds were utilized to construct the kiss-and-ride improvements located on the parcel being disposed. Therefore, there are no Federal interest considerations for these improvements.

Per FTA's Circular 5010.1E, "Award Management Requirements", with FTA approval a recipient

July 25, 2019  
Mr. Tom Biesiadny  
Page 2

may sell real property and use the proceeds for other capital projects under an award (see FTA C. 5010.1E, Chapter IV, Section 2.j.2.3). When this disposition method is utilized, the recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the amount of those restricted funds as those proceeds are applied to one or more FTA approved capital projects under awards. FTA must approve the application of the proceeds to a subsequent capital award, which should clearly show that the gross cost of the Award has been reduced with proceeds from the earlier transaction.

Based on the information submitted, FTA concurs in the request to dispose of this property and retain the sales proceeds to be reinvested into FCDOT's capital budget to offset the cost of a future eligible public transportation capital project. As indicated in your letter, the Federal share of the proceeds from the sale of this property is \$2,302,500 (75% of \$3,070,000 sale value). FCDOT is to track the proceeds per the requirements prescribed in FTA C 5010.1E and discussed in the previous paragraph. FTA must approve the application of the proceeds to a subsequent capital award, which should clearly show that the gross cost of the award has been reduced with proceeds from the earlier transaction. Please attach all correspondence associated with this action to the new capital award.

This letter only provides approval for the disposition of the real property and approval to retain the sales proceeds for a future capital project. In your June 18, 2019 letter, FCDOT requested FTA's approval to utilize these proceeds towards a grade separation project of the Washington & Old Dominion (W&OD) Trail at Wiehle Avenue. FTA will continue to discuss in subsequent conversations with FCDOT the potential to apply these disposition proceeds towards the W&OD trail project.

If you have any questions, please contact Tim Steinitz at (215) 656-7253 or via e-mail at [timothy.steinitz@dot.gov](mailto:timothy.steinitz@dot.gov).

Sincerely,

Tony Cho  
Director, Office of Program Management & Oversight

cc: Martha Coello, Fairfax County Department of Transportation

ADMINISTRATIVE - 11

Appointment of Parent Representatives to the Fairfax-Falls Church Community Policy and Management Team (CPMT)

ISSUE:

In order to fulfill Virginia Code requirements and local Bylaws, the Fairfax-Falls Church Community Policy and Management Team (CPMT) nominated five (5) parent representatives for approval by the Board of Supervisors for terms of up to two years.

RECOMMENDATION:

The County Executive recommends that the Board appoint Staci Alexander, Cristy Gallagher, Jacqueline Benson, Annie Henderson, and Joe Klemmer as parent representatives to the CPMT with terms to expire on June 30, 2021.

TIMING:

Board action is requested on September 24, 2019.

BACKGROUND:

In order to fulfill Virginia Code requirements and local bylaws, the Fairfax-Falls Church CPMT nominated five parent representatives for appointment by the Board of Supervisors for terms of up to two years. Re-appointments may be made for additional consecutive terms upon approval of the CPMT and Board of Supervisors.

The CPMT nominating committee interviewed prospective parent representatives who represent a range of lived experience to include: adoption, blended families, military, kinship care, and dual diagnosis of medical and behavioral health care needs and recommended the following individuals be nominated to the Board of Supervisors for appointment to the CPMT:

- Staci Jones Alexander (re-appointment)
- Jacqueline Benson
- Cristy Gallagher
- Annie Henderson
- Joe Klemmer

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FISCAL IMPACT:

Parent Representatives are eligible for a \$100 stipend for board meetings. Funding is included in the FY 2020 Adopted Budget Plan.

ENCLOSED DOCUMENTS:

Attachment 1 - Summary of Experience of CPMT Parent Representative Nominees

STAFF:

Tisha Deeghan, Deputy County Executive

Janet Bessmer, Program Manager, Children's Services Act

### **Summary of Experience of CPMT Parent Representative Nominees**

*Staci Alexander* has served on the CPMT since 2012. She is the mother of 14-year-old twins including a daughter with autism and cerebral palsy. Staci's passion for the inclusion and empowerment of special needs families has been fueled by her own experiences with healthcare, educational and social support services and systems. Staci's other full-time job is with AARP as the Director of Thought Leadership, where she works to amplify AARP's voice in key conversations around longevity, aging and equity. Staci resides in Annandale, VA. She and her husband Jason Alexander are active in their local PTA and church ministries supporting special needs children and their families.

*Jacqueline Benson* has previously worked as a Physician Assistant with a master's degree in Behavior Modification. She has adopted four children from Russian Orphanages; all of which have had mental health and academic challenges. As a result, the family has availed themselves of services through FAPT to include CSB, Wrap Around Services and various community resources both in and out of state. She is currently an active member of a LHRC as well as a member of the Parent and Patient Council at Walter Reed National Military Medical Center.

*Cristy Gallagher* previously served on the CPMT from 2012 to 2015. She currently serves and was appointed by the Fairfax County Executive to the Fairfax County's Consolidated Community Funding Advisory Committee (CCFAC) as the representative for the youth-serving community. As the mother of a child with behavioral, emotional and physical challenges, she has volunteered for many years to impact health and human services policies at the state and local level. Her advocacy has led her to become an important voice on the need for better services for children with behavioral and emotional disabilities. Cristy's daughter goes to Mount Vernon High School, where she attends a Comprehensive Services Site program, and her son also attends middle school in Fairfax County.

As a stepfather, *Joe Klemmer* has lived experience parenting a youth with dual diagnosis of intellectual disabilities and severe mental illness. He represents the perspective of a growing population of youth, and their families, living with these challenges.

*Annie Henderson* is grandmother raising 4 boys. She is interested in the serving on the CPMT to support kinship care that prevents children from entering foster care. She is interested in the services needed to support kinship care providers such as housing, childcare, transportation, and school (special education). She believes it is important to inform people of what services are available to support/help caregivers. She has worked in various social services field from group home, homeless shelter, childcare, and elder care.

ACTION - 1

Presentation of the Delinquent Tax List for Tax Year 2018 (FY 2019)

ISSUE:

Presentation to the Board of the annual list of delinquent real estate, personal property, and business, professional, occupational license (BPOL) taxes; presentation of the annual list of small uncollectable accounts. Review of delinquent collection program.

RECOMMENDATION:

The County Executive recommends that (1) staff continue to pursue the collection of delinquent taxes found in Attachment A, and continue collection of non-tax delinquencies; and, (2) the Board removes certain small uncollectable overdue accounts listed in Attachments B and C pursuant to Virginia Code § 58.1-3921.

TIMING:

Routine.

BACKGROUND:

In accordance with State Code, the Department of Tax Administration (DTA) has prepared a list of delinquent taxpayers for tax year 2018 (FY 2019) for Board consideration (Attachment A). DTA and its agents will continue to pursue the collection of all taxes and other charges due that are within the statute of limitations in accordance with Virginia Code §§ 58.1-3933 and 58.1-3940.

Presented below is a summary of delinquent taxes still outstanding for Tax Year 2018, as of June 30, 2019:

	<u>Tax year 2018 (FY 2019)</u>	
	<u>Accounts</u>	<u>Local Tax Amount</u>
Real Estate	2,331	\$ 7,688,594
Personal Property – Vehicles	37,300	\$ 5,934,877
Business Personal Property	1,874	\$ 1,765,449
Public Service Corp. Properties	3	\$ 1,740
BPOL	<u>2,328</u>	<u>\$ 2,057,170</u>
Total	43,836	\$ 17,447,830

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The list being presented to the Board is a "snapshot" of outstanding delinquent taxes as of June 30, 2019. This includes delinquent taxpayers who may already be on a payment plan, and delinquencies of taxpayers in bankruptcy.

For perspective, the total amount of all unpaid current year taxes, or \$17.45 million, represents less than 1% of the levy for Tax Year 2018 (FY 2019). This is consistent with prior years. Of the \$5,934,877 in delinquent vehicle taxes, \$1,439,396 is from business owned and used vehicles, and \$4,495,481 is from personal property taxes on personally owned and used vehicles.

With outstanding support from the Sheriff's Office, the Police Department, and the Office of the County Attorney, DTA and its collection agents utilized a broad array of collection tools throughout FY 2019 to pursue delinquent accounts. Among other things, these tools include the use of computer-generated letters; telephone calls; statutory summons authority; payment plans; bank and wage liens; set-offs against income tax refunds; booting and towing of vehicles; and, the seizure of equipment.

In accordance with Virginia law, DTA also has an agreement with the Virginia Department of Motor Vehicles (DMV) whereby vehicle registrations are withheld from citizens who have delinquent personal property taxes. A total of 52,988 accounts with DMV holds were successfully collected in FY 2019.

As noted, DTA engages in major outsourcing for delinquent collections. Pursuant to Virginia Code § 58.1-3958 and by prior Board action, the private collection agents are compensated by a 20% fee added to the total delinquency, enabling the County to reduce program expenditures. DTA still provides substantial account research, reconciliation, adjudication, and oversight in support of the collection efforts. Outsourcing the bulk of collections continues to be a very productive and successful partnership.

The collection agent for personal property, BPOL, and parking tickets is a Fairfax County company, Nationwide Credit Corporation (NCC). NCC collected \$14.5 million in delinquent personal property taxes and vehicle registration fees and \$1.3 million in delinquent BPOL revenue in FY 2019.

These results were achieved through a robust collection program that included more than two million telephone calls, using automated outbound dialing technology. In addition, NCC sent more than 110,895 dunning letters, issued approximately 25,195 bank and wage liens, processed just over 1,617 boot and tow orders in concert with the Sheriff's Office, and pursued judgments in General District Court. DTA staff provides the review and direct authorization of all NCC seizure activities.

In addition to delinquent taxes, parking ticket collections are also outsourced. Citation Management, a division of Duncan Solutions, handles front end ticket



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processing and current collections for DTA. NCC pursues the collection of delinquent parking tickets. FY 2019 ticket collections totaled approximately \$2.6 million.

The private law firm of Taxing Authority and Consulting Services (TACS), based in Richmond, Virginia, handles delinquent real estate accounts. With coordination and oversight from DTA, TACS collected approximately \$11.5 million in delinquent real estate taxes for Fairfax County in FY 2019. Of this amount, \$1.2 million came as a result of litigation being initiated and/or from the sale of properties at auction. TACS also collected \$105,474 in zoning violations fees.

Although most of the County Attorney collections have likewise been outsourced to TACS, the County Attorney's Office still directly handles bankruptcy collection cases. A total of 169 new bankruptcy collection cases were opened in FY 2019, and \$1,659,351 was collected from all bankruptcy matters.

Thanks to these combined efforts, the county collected more than \$30 million in net delinquent taxes in FY 2019 for all prior tax years. Strong collection efforts are also reflected in the current year tax collection rates:

	<u>FY 2019</u>
Real Estate	99.76 %
Personal Property (local share)	98.06 %
BPOL	98.62 %

FY 2019 was the sixth full year of the non-tax delinquent collection program in DTA. In addition to collections, DTA continues to work with agencies to improve billing operations, clarify the potential collection actions to be taken, and standardize the use of Set-Off Debt opportunities and referrals to NCC. The individual agencies, and in some cases DTA, pursue initial collection efforts. After the statutory period of 180 days, delinquent accounts are referred to NCC. Working together, we collected approximately \$1.9 million in FY 2019.

Finally, Virginia Code §§ 58.1-3921 and 58.1-3924 state that upon submission to the Board of a list of small tax amounts for which no bills were sent (Attachment B) and a list of small uncollected balances of previously billed taxes (Attachment C), credit shall be given for these uncollected taxes. The lists presented in Attachments B and C average \$2.00 per account:

	<u>Accounts</u>	<u>Dollars</u>
Real Estate	5,568	\$ 1,254
Personal Property	<u>20,929</u>	<u>\$ 52,295</u>
TOTAL	26,497	\$ 53,549

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FISCAL IMPACT:

None. Collection agents collect their fee directly from the delinquent taxpayers, not to exceed 20% of the amount collected plus administrative costs as specified by law.

ENCLOSED DOCUMENTS:

Attachment A - Delinquent Taxpayers for Tax Year 2018 (FY 2019)

Attachment B - Tax Year 2018 accounts valued less than \$5 that were not billed

Attachment C - Tax Year 2018 "balance due" accounts of less than five dollars

(Attachments A, B, and C listed above are computer printouts which will be made available in the Board Conference Room on September 24, 2019, from 9:00 A.M. - 4:30 P.M.)

STAFF:

Joseph M. Mondoro, Chief Financial Officer

Jaydeep "Jay" Doshi, Director, Department of Tax Administration

E. Scott Sizemore, Director, Revenue Collection Division, DTA

Kimberly Sebulina, Assistant Director, Revenue Collection Division, DTA

ASSIGNED COUNSEL:

Martin Desjardins, Assistant County Attorney

Board Agenda Item  
September 24, 2019

ACTION - 2

Approval of a Grant Agreement Between the Virginia Department of Environmental Quality and Fairfax County for the Turkey Run at Truro Stream Restoration Project (Braddock District)

ISSUE:

Board of Supervisors' authorization is requested for the county to approve the Grant Agreement between the Virginia Department of Environmental Quality (DEQ) and Fairfax County that provides Stormwater Local Assistance Funds (SLAF) for the design and construction of the Turkey Run at Truro Stream restoration project (Project).

RECOMMENDATION:

The County Executive recommends that the Board approve and authorize the County Executive or his designee to sign the agreement with DEQ to provide SLAF grant funds to the county for the design and construction of the Project.

TIMING:

Board approval is requested on September 24, 2019.

BACKGROUND:

The Virginia General Assembly created SLAF to provide matching grants to local governments for planning, designing, and implementing best management practices to reduce pollution generated from stormwater runoff. In October 2018, the county submitted applications to DEQ in response to the Fiscal Year 2019 SLAF grant solicitation. In its applications, the county requested funding for five stream and water quality improvement projects. In February 2019, DEQ issued a project funding list that included the following two projects that were submitted by the county:

Turkey Run at Truro Stream Restoration Project  
Difficult Run Tributary at Brittenford Stream Restoration Project

The two funded projects are located in the Braddock and Hunter Mill magisterial districts, respectively.

DEQ is issuing a separate grant agreement for each funded project. Grant agreements are issued after construction contract award has occurred for the project.

Board Agenda Item  
September 24, 2019

The Project was completed in October 2017. The Project restored approximately 3,580 linear feet of stream, and is identified as AC9212 and AC9213 in the Accotink Creek Watershed Management Plan. The Project is located within Floodplain easements on private properties, near 4146 Elizabeth Lane and found on Tax Maps 70-1 and 69-2. The county estimates the Project reduces phosphorous, nitrogen, and total suspended solids in our streams and the Chesapeake Bay by 773 pounds/year, 1,662 pounds/year, and 132.9 tons/year, respectively.

In order to receive reimbursement for the Project the attached Grant Agreement must be executed.

FISCAL IMPACT:

This grant reimburses funds expended by the county in the amount up to \$1,796,801 which is fifty percent of the total SLAF eligible Project costs.

County funding for this project is appropriated in Fund 40100, Stormwater Services, Project SD-000031, Streams and Water Quality Improvements, and in Fund 30090, Pro-Rata Share Drainage Construction, Project SD-000001, Accotink Creek Watershed. Reimbursed amounts will be received as revenue to the Stormwater program providing funds for other watershed improvement projects.

ENCLOSED DOCUMENTS:

Attachment 1: Grant Agreement SLAF 19-03

STAFF:

Rachel Flynn, Deputy County Executive  
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)  
Craig Carinci, Director, DPWES, Stormwater Planning Division

**STORMWATER LOCAL ASSISTANCE FUND  
GRANT AGREEMENT  
SLAF Grant No.: 19-03**

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THIS AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, by and between the Virginia Department of Environmental Quality (the “Department”), and Fairfax County (the “Grantee”).

Pursuant to Item 360 in Chapter 860 of the 2013 Acts of Assembly (the Commonwealth’s 2013-14 Budget) (the “Act”), the General Assembly created the Stormwater Local Assistance Fund (the “Fund”). The Department is authorized pursuant to Section 62.1-44.15:29.1 of the Code of Virginia to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads.

The Grantee has been approved by the Department to receive a Grant from the Fund subject to the terms and conditions herein to finance fifty percent (50%) of the cost of the Eligible Project, which consists of the planning, design and implementation of best management practices for stormwater control as described herein. The Grantee will use the Grant to finance that portion of the Eligible Project Costs not being paid for from other sources as set forth in the Total Project Budget in Exhibit B to this Agreement. Such other sources may include, but are not limited to, the Virginia Water Facilities Revolving Fund, Chapter 22, Title 62.1 of the Code of Virginia (1950), as amended.

This Agreement provides for payment of the Grant, design and construction of the Eligible Project, and development and implementation by the Grantee of provisions for the long-term responsibility and maintenance of the stormwater management facilities and other techniques installed under the Eligible Project. This Agreement is supplemental to the State Water Control Law, Chapter 3.1, Title 62.1 of the Code of Virginia (1950), as amended, and it does not limit in any way the other water quality restoration, protection and enhancement, or enforcement authority of the State Water Control Board (the “Board”) or the Department.

**ARTICLE I  
DEFINITIONS**

1. The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise:

(a) “Agreement” means this Stormwater Local Assistance Fund Grant Agreement between the Department and the Grantee, together with any amendments or supplements hereto.

(b) “Authorized Representative” means any member, official or employee of the Grantee authorized by resolution, ordinance or other official act of the governing body of the Grantee to perform the act or sign the document in question.

(c) “Capital Expenditure” means any cost of a type that is properly chargeable to a 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 Treasury Regulation Section 1.150-2(c)) under general federal income tax principles, determined at the time the expenditure is paid.

(d) “Eligible Project” means all grant eligible items of the particular stormwater project described in Exhibit A to this Agreement to be designed and constructed by the Grantee with, among other monies, the Grant, with such changes thereto as may be approved in writing by the Department and the Grantee.

(e) “Eligible Project Costs” means costs of the individual items comprising the Eligible Project as permitted by the Act with such changes thereto as may be approved in writing by the Department and the Grantee. All Eligible Project Costs shall be Capital Expenditures and no Eligible Project Costs shall be Working Capital Expenditures.

(f) “Extraordinary Conditions” means unforeseeable or exceptional conditions resulting from causes beyond the reasonable control of the Grantee such as, but not limited to fires, floods, strikes, acts of God, and acts of third parties that singly or in combination cause material breach of this Agreement.

(g) “Grant” means the particular grant described in Section 4.0 of this Agreement, with such changes thereto as may be approved in writing by the Department and the Grantee.

(h) “Total Eligible Project Budget” means the sum of the Eligible Project Costs as set forth in Exhibit B to this Agreement, with such changes thereto as may be approved in writing by the Department and the Grantee.

(i) “Total Project Budget” means the sum of the Eligible Project Costs (with such changes thereto as may be approved in writing by the Department and the Grantee) plus any ineligible costs that are solely the responsibility of the Grantee, as set forth in Exhibit B to this Agreement.

(j) “Project Engineer” means the Grantee’s engineer who must be a licensed professional engineer registered to do business in Virginia and designated by the Grantee as the Grantee’s engineer for the Eligible Project in a written notice to the Department.

(k) “Project Schedule” means the schedule for the Eligible Project as set forth in Exhibit C to this Agreement, with such changes thereto as may be approved in writing by the Department and the Grantee. The Project Schedule assumes timely approval of adequate plans and specifications and timely reimbursement in accordance with this Agreement by the Department.

(l) “Working Capital Expenditure” means any cost that is not a Capital Expenditure. Generally, current operating expenses are Working Capital Expenditures.

(m) “VPBA” means the Virginia Public Building Authority, a political subdivision of the Commonwealth of Virginia.

(n) “VPBA Bonds” means (i) the Virginia Public Building Authority Public Facilities Revenue Bonds, Series 2013A, which were issued by VPBA on February 21, 2013, (ii) any other bonds issued by VPBA, the proceeds of which are used in whole or in part to provide funds for the making of the Grant, and (iii) any refunding bonds related thereto.

## **ARTICLE II**

### **SCOPE OF PROJECT**

2. The Grantee will cause the Eligible Project to be designed, constructed and placed in operation as described in Exhibit A to this Agreement.

## **ARTICLE III**

### **SCHEDULE**

3. The Grantee will cause the Eligible Project to be designed, constructed and placed in operation in accordance with the Project Schedule in Exhibit C to this Agreement.

## **ARTICLE IV**

### **COMPENSATION**

4.0. Grant Amount. The total Grant award from the Fund under this Agreement is up to **\$1,796,801.00** and represents the Commonwealth's fifty percent (50%) share of the Total Eligible Project Budget. Any material changes made to the Eligible Project after execution of this Agreement, which alters the Total Eligible Project Budget, will be submitted to the Department for review of grant eligibility. The amount of the Grant award set forth herein may be modified from time to time by agreement of the parties to reflect changes to the Eligible Project or the Total Eligible Project Budget.

4.1. Payment of Grant. Disbursement of the Grant will be in accordance with the payment provisions set forth in Section 4.2 herein and the eligibility determinations made in the Total Project Budget (Exhibit B).

4.2. Disbursement of Grant Funds. The Department will disburse the Grant to the Grantee not more frequently than once each calendar month for approved eligible reimbursement of a minimum of one thousand (\$1,000.00) dollars, excluding the final payment, upon receipt by the Department of the following:

(a) A requisition for approval by the Department, signed by the Authorized Representative and containing all receipts, vouchers, statements, invoices or other evidence that costs in the Total Eligible Project Budget, including the applicable local share for the portion of the Eligible Project covered by such requisition, have been incurred or expended and all other information called for by, and otherwise being in the form of, Exhibit D to this Agreement.

(b) If any requisition includes an item for payment for labor or to contractors, builders or material men, a certificate, signed by the Project Engineer, stating that such work was actually performed or such materials, supplies or equipment were actually furnished or installed in or about the construction of the Eligible Project.

Upon receipt of each such requisition and accompanying certificate(s) and schedule(s), the Department shall request disbursement of the Grant to the Grantee in accordance with such requisition to the extent approved by the Department.

Except as may otherwise be approved by the Department, disbursements shall be held at ninety-five percent (95%) of the total Grant amount to ensure satisfactory completion of the Eligible Project. Satisfactory completion includes the submittal to the Department the Responsibilities & Maintenance



Plan required by Section 5.1 herein. Upon receipt from the Grantee of the certificate specified in Section 4.5 and a final requisition detailing all retainage to which the Grantee is then entitled, the Department, subject to the provisions of this section and Section 4.3 herein, shall request disbursement to the Grantee of the final payment from the Grant.

4.3 Application of Grant Funds. The Grantee agrees to apply the Grant solely and exclusively to the reimbursement of Eligible Project Costs. The Grantee represents and warrants that the average reasonably expected economic life of the assets to be financed with the Grant is set forth in Exhibit E attached hereto.

4.4. Agreement to Complete Project. The Grantee agrees to cause the Eligible Project to be designed and constructed, as described in Exhibit A to this Agreement, and in accordance with (i) the schedule in Exhibit C to this Agreement and (ii) plans and specifications prepared by the Project Engineer and approved by the Department.

4.5 Notice of Substantial Completion. When the Eligible Project has been completed, the Grantee shall promptly deliver to the Department a certificate signed by the Authorized Representative and by the Project Engineer stating (i) that the Eligible Project has been completed substantially in accordance with the approved plans and specifications and addenda thereto, and in substantial compliance with all material applicable laws, ordinances, rules, and regulations; (ii) the date of such completion; (iii) that all certificates of occupancy and operation necessary for start-up for the Eligible Project have been issued or obtained; and (iv) the amount, if any, to be released for payment of the final Eligible Project Costs.

4.6 Source of Grant Funds; Reliance. The Grantee represents that it understands that the Grant funds are derived from the proceeds of the VPBA Bonds, the interest on which must remain excludible from gross income for federal income tax purposes (that is, "tax- exempt") pursuant to contractual covenants made by VPBA for the benefit of the owners of the VPBA Bonds. The Grantee further represents that (a) the undersigned Authorized Representative of the Grantee has been informed of the purpose and scope of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended, as they relate to the VPBA Bonds and the Grant, and (b) the representations and warranties contained in this Agreement can be relied on by VPBA and bond counsel to VPBA in executing certain documents and rendering certain opinions in connection with the VPBA Bonds.

## **ARTICLE V**

### **RESPONSIBILITIES AND MAINTENANCE PLAN**

5.0 Plan Submittal. No later than thirty (30) days from the date of the Notice of Substantial Completion, the Grantee shall submit to the Department a Responsibilities and Maintenance Plan for the Eligible Project.

5.1 Plan Elements. The plan required by Section 5.0 shall include a description of the project type, a recommended schedule of inspection and maintenance, and the identification of a person, persons or position within an organization responsible for administering and maintaining the plan for the useful service life of the installed facilities. If the Eligible Project includes construction on private property, the plan shall document the Grantee's right to access the Eligible Project for purposes of implementing the plan required by Section 5.0.

5.2 Recordation. Long-term responsibility and maintenance requirements for stormwater management facilities located on private property shall be set forth in an instrument recorded in the local land records and shall be consistent with 9VAC25-870-112 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

## **ARTICLE VI** **MATERIAL BREACH**

6.0. Material Breach. Any failure or omission by the Grantee to perform its obligations under this Agreement, unless excused by the Department, is a material breach.

6.1. Notice of Material Breach. If at any time the Grantee determines that it is unable to perform its obligations under this Agreement, the Grantee shall promptly provide written notification to the Department. This notification shall include a statement of the reasons it is unable to perform, any actions to be taken to secure future performance and an estimate of the time necessary to do so.

6.2. Monetary Assessments for Breach. In case of Material Breach, Grant funds will be re-paid into the State Treasury and credited to the Fund. Within 90 days of receipt of written demand from the Department, the Grantee shall re-pay the Grant funds for the corresponding material breaches of this Agreement unless the Grantee asserts a defense pursuant to the requirements of Section 6.3 herein.

6.3 Extraordinary Conditions.

(a) The Grantee may assert and it shall be a defense to any action by the Department to collect Grant funds or otherwise secure performance of this Agreement that the alleged non-performance was due to Extraordinary Conditions, provided that the Grantee:

(1) takes reasonable measures to effect a cure or to minimize any non-performance with the Agreement, and

(2) provides written notification to the Department of the occurrence of Extraordinary Conditions, together with an explanation of the events or circumstances contributing to such Extraordinary Conditions, no later than 10 days after the discovery of the Extraordinary Conditions.

(b) If the Department disagrees that the events or circumstances described by the Grantee constitute Extraordinary Conditions, the Department must provide the Grantee with a written objection within sixty (60) days of Grantee's notice under paragraph 6.3(a)(2), together with an explanation of the basis for its objection.

6.4 Resolution and Remedy. If no resolution is reached by the parties, the Department may immediately bring an action in the Circuit Court of the City of Richmond to recover part or all of the Grant funds. In any such action, the Grantee shall have the burden of proving that the alleged noncompliance was due to Extraordinary Conditions. The Grantee agrees to venue to any such action in the Circuit Court of the City of Richmond, either north or south of the James River in the option of the Department.

6.5 Indemnification. To the extent permitted by law and subject to legally available funds, the Grantee shall indemnify and hold the Department, the Fund, VPBA and the owners of the VPBA

Bonds, and their respective members, directors, officers, employees, attorneys and agents (the "Indemnitees"), harmless against any and all liability, losses, damages, costs, expenses, penalties, taxes, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any misrepresentation, breach of warranty, noncompliance or default by or on behalf of the Grantee under this Agreement, including, without limitation, all claims or liability (including all claims of and liability to the Internal Revenue Service) resulting from, arising out of or in connection with the loss of the excludability from gross income of the interest on all or any portion of the VPBA Bonds that may be occasioned by any cause whatsoever pertaining to such misrepresentation, breach, noncompliance or default, such indemnification to include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by any of the Indemnitees in connection therewith. This paragraph shall not constitute an express or implied waiver of any applicable immunity afforded the Grantee.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

7.0. Effect of the Agreement on Permits. This Agreement shall not be deemed to relieve the Grantee of its obligations to comply with the terms of its Virginia Pollutant Discharge Elimination System (VPDES) and/or Virginia Water Protection (VWP) permit(s) issued by the Board. This Agreement does not obviate the need to obtain, where required, any other State or Federal permit(s).

7.1. Disclaimer. Nothing in this Agreement shall be construed as authority for either party to make commitments which will bind the other party beyond the covenants contained herein.

7.2. Non-Waiver. No waiver by the Department of any one or more defaults by the Grantee in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults of whatever character.

7.3. Integration and Modification. This Agreement constitutes the entire Agreement between the Grantee and the Department. No alteration, amendment or modification of the provisions of this Agreement shall be effective unless reduced to writing, signed by both the parties and attached hereto. This Agreement may be modified by agreement of the parties for any purpose, provided that any significant modification to this Agreement must be preceded by public notice of such modification.

7.4. Collateral Agreements. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements which are made a part of this Agreement by reference, the provisions of this Agreement shall control.

7.5. Non-Discrimination. In the performance of this Agreement, the Grantee warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin or other non-job related factors. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

7.6. Conflict of Interest. The Grantee warrants that it has fully complied with the Virginia Conflict of Interest Act as it may apply to this Agreement.

7.7. Applicable Laws. This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.

The Grantee further agrees to comply with all laws and regulations applicable to the Grantee's performance of its obligations pursuant to this Agreement.

7.8. Records Availability. The Grantee agrees to maintain complete and accurate books and records of the Eligible Project Costs, and further, to retain all books, records, and other documents relative to this Agreement for three (3) years after final payment. The Department, its authorized agents, and/or State auditors will have full access to and the right to examine any of said materials during said period. Additionally, the Department and/or its representatives will have the right to access work sites during normal business hours, after reasonable notice to the Grantee, for the purpose of ensuring that the provisions of this Agreement are properly carried out.

7.9. Severability. Each paragraph and provision of this Agreement is severable from the entire Agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

7.10. Notices. All notices given hereunder shall be in writing and shall be sent by United States certified mail, return receipt requested, postage prepaid, and shall be deemed to have been received at the earliest of: (a) the date of actual receipt of such notice by the addressee, (b) the date of the actual delivery of the notice to the address of the addressee set forth below, or (c) five (5) days after the sender deposits it in the mail properly addressed. All notices required or permitted to be served upon either party hereunder shall be directed to:

Department: Virginia Department of Environmental Quality  
Clean Water Financing and Assistance Program  
P.O. Box 1105  
Richmond, VA 23218  
Attn: CWFAP Program Manager

Grantee: County of Fairfax, Virginia  
12000 Government Center Parkway  
Fairfax, Virginia 22035-0052  
Attn: Mr. Craig Carinci

7.11. Successors and Assigns Bound. This Agreement shall extend to and be binding upon the parties hereto, and their respective legal representatives, successors and assigns.

7.12. Exhibits. All exhibits to this Agreement are incorporated herein by reference.

7.13. Termination. The Agreement shall terminate upon final reimbursement to the Grantee.

## **ARTICLE VIII** **COUNTERPARTS**

8. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Fairfax County, Virginia

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**ARTICLE IX**  
**CREDIT GENERATION**

9. Any land area generating stream or wetland mitigation credits from the Eligible Project is not eligible for the generation of any other environmental credits. Any project designs approved by the Department under the Grant may not meet the design requirements for approval from other State or Federal water programs. The Grantee is responsible for obtaining information on design and permit requirements for the type of environmental credit they are seeking.

WITNESS the following signatures, all duly authorized.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Its: \_\_\_\_\_

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

GRANTEE'S AUTHORIZED REPRESENTATIVE

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

Its: \_\_\_\_\_

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

## **EXHIBIT A**

### **ELIGIBLE PROJECT DESCRIPTION**

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Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-03

Project Description: Construction of approximately 3,580 linear feet of stream channel through natural stream design in order to restore and stabilize the degraded stream channel bed and banks as to provide aquatic benefits, grade control, improve water quality and prevent future erosion.

Fairfax County, Virginia

## EXHIBIT B

### TOTAL PROJECT BUDGET

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Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-03

The following budget reflects the estimated costs associated with eligible cost categories of the project.

Project Category / Project Name	Project Cost	SLAF Eligible	Grant %	Grant Amount
<b>Design Engineering</b>				
Turkey Run	\$740,704.00	\$650,314.00	50.00%	\$325,157.00
<b>Sub-Total</b>	\$740,704.00	\$650,314.00		\$325,157.00
<b>Construction</b>				
Turkey Run	\$2,803,130.00	\$2,803,130.00	50.00%	\$1,401,565.00
<b>Sub-Total</b>	\$2,803,130.00	\$2,803,130.00		\$1,401,565.00
<b>Other</b>				
Contingency				
Turkey Run	\$140,158.00	\$140,158.00	50.00%	\$70,079.00
<b>Sub-Total</b>	\$140,158.00	\$140,158.00		\$70,079.00
<b>TOTALS</b>	<b>\$3,683,992.00</b>	<b>\$3,593,602.00</b>		<b>\$1,796,801.00</b>

Fairfax County, Virginia

## EXHIBIT C

### PROJECT SCHEDULE

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Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-03

The Grantee has proposed the following schedule of key activities/milestones as a planning tool which may be subject to change. Unless authorized by a grant modification, it is the responsibility of the Grantee to adhere to the anticipated schedule for the Eligible Project as follows:

Project Name	Project Description / Milestone	Schedule / Timeline	Note
Turkey Run	Engineering	Completed	
	Construction	Completed	

Fairfax County, Virginia



**EXHIBIT D**

**REQUISITION FOR REIMBURSEMENT**

(To be on Grantee's Letterhead)

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Department of Environmental Quality  
Clean Water Financing and Assistance Program  
P.O. Box 1105  
Richmond, VA 23218  
Attn.: CWFAP Program Manager

**RE: Stormwater Local Assistance Fund Grant**

SLAF Grant No.: 19-03

Dear Program Manager:

This requisition, Number \_\_\_\_, is submitted in connection with the referenced Grant Agreement, dated as of *[insert date of grant agreement]* between the Virginia Department of Environmental Quality and \_\_\_\_\_. Unless otherwise defined in this requisition, all capitalized terms used herein shall have the meaning set forth in Article I of the Grant Agreement. The undersigned Authorized Representative of the Grantee hereby requests disbursement of grant proceeds under the Grant Agreement in the amount of \$\_\_\_\_\_, for the purposes of payment of the Eligible Project Costs as set forth on Schedule I attached hereto.

Copies of invoices relating to the items for which payment is requested are attached.

The undersigned certifies that the amounts requested by this requisition will be applied solely and exclusively to the reimbursement of the Grantee for the payment of Eligible Project Costs that are Capital Expenditures.

This requisition includes (if applicable) an accompanying Certificate of the Project Engineer as to the performance of the work.

Sincerely,

\_\_\_\_\_  
(Authorized Representative of the Grantee)

Attachments

Fairfax County, Virginia

**SCHEDULE 1**  
**STORMWATER LOCAL ASSISTANCE FUND**  
**FORM TO ACCOMPANY REQUEST FOR REIMBURSEMENT**

REQUISITION # \_\_\_\_\_

Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-03 CERTIFYING SIGNATURE: \_\_\_\_\_ TITLE: \_\_\_\_\_

Cost Category	Total Project Budget	SLAF Eligible Project Budget	SLAF 50% Grant Budget	Eligible Expenditures This Period	Current Grant Payment	Previous Grant Payment	Total Grant Payments to Date	SLAF Grant Balance
<b>Engineering</b>								
Turkey Run	\$740,704.00	\$650,314.00	\$325,157.00					
<b>Sub-Total</b>	<b>\$740,704.00</b>	<b>\$650,314.00</b>	<b>\$325,157.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Construction</b>								
Turkey Run	\$2,803,130.00	\$2,803,130.00	\$1,401,565.00					
<b>Sub-Total</b>	<b>\$2,803,130.00</b>	<b>\$2,803,130.00</b>	<b>\$1,401,565.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Other</b>								
Contingency	\$140,158.00	\$140,158.00	\$70,079.00					
<b>Sub-Total</b>	<b>\$140,158.00</b>	<b>\$140,158.00</b>	<b>\$70,079.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Totals</b>	<b>\$3,683,992.00</b>	<b>\$3,593,602.00</b>	<b>\$1,796,801.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Total Grant Amount: \$1,796,801.00

Previous Disbursements: \$0.00

This Request: \$0.00

Grant Proceeds Remaining: \$1,796,801.00

Fairfax County, Virginia

CERTIFICATE OF THE PROJECT ENGINEER  
FORM TO ACCOMPANY REQUEST FOR REIMBURSEMENT

Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-03

This Certificate is submitted in connection with Requisition Number \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, submitted by the \_\_\_\_\_ (the "Grantee") to the Virginia Department of Environmental Quality. Capitalized terms used herein shall have the same meanings set forth in Article I of the Grant Agreement referred to in the Requisition.

The undersigned Project Engineer for \_\_\_\_\_ hereby certifies that insofar as the amounts covered by this Requisition include payments for labor or to contractors, builders or material men, such work was actually performed or such materials, supplies, or equipment were actually furnished to or installed in the Eligible Project.

\_\_\_\_\_  
(Project Engineer)

\_\_\_\_\_  
(Date)

Fairfax County, Virginia

## EXHIBIT E

### DETERMINATION OF AVERAGE REASONABLY EXPECTED ECONOMIC LIFE OF PROJECT ASSETS

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Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-03

The Internal Revenue Code of 1986, as amended, limits the length of average maturity for certain tax-exempt bonds, such as the VPBA Bonds, to no more than 120% of the average reasonably expected economic life of the assets being financed with the proceeds of such bonds. This life is based on Revenue Procedure 62-21 as to buildings and Revenue Procedures 83-35 and 87-56 as to equipment and any other assets. In this Exhibit, the Grantee will certify as to the average reasonably expected economic life of the assets being financed by the Grant.

Please complete the attached chart as follows:

**Step 1.** Set forth in Column II the corresponding total cost of each type of asset to be financed with the Grant.

**Step 2.** Set forth in Column III the economic life of each type of asset listed in accordance with the following:

*Land.* Exclude the acquisition of any land financed with a portion of the Grant funds from the economic life calculation.

*Land Improvements.* Land improvements (i.e., depreciable improvements made directly to or added to land) include sidewalks, roads, canals, waterways, site drainage, stormwater retention basins, drainage facilities, sewers (excluding municipal sewers), wharves and docks, bridges, fences, landscaping, shrubbery and all other general site improvements, not directly related to the building. Buildings and structural components are specifically excluded. 20 years is the economic life for most stormwater projects.

*Buildings.* Forty years is the economic life for most buildings.

*Equipment.* Please select an Asset Depreciation Range (“ADR”) midpoint or class life for each item of equipment to be financed. The tables of asset guideline classes, asset guideline periods and asset depreciation ranges included in IRS Revenue Procedures 83-35 and 87-56 may be used for reference. To use the tables, you should first determine the asset guideline class in which each item of equipment falls. General business assets fall into classes 00.11 through 00.4 to the extent that a separate class is provided for them. Other assets, to the extent that a separate class is provided, fit into one or more of classes 01.1 through 80.0. Subsidiary assets (jigs, dies, molds, patterns, etc.) are in the same class as are the other major assets in an industry activity unless the subsidiary assets are classified separately for that industry. Each item of equipment should be classified according to the activity in which it is primarily used. If the equipment is not described in any asset guideline class, its estimated economic life must be determined on a case by case basis.

*Contingency.* Any amounts shown on the Project Budget as “contingency” should be assigned to the shortest-lived asset. For example, contingency for a stormwater project should likely be given an economic life of 20 years.

**Step 3.** Set forth in Column IV the date each asset is expected to be placed in service. An asset is first placed in service when it is first placed in a condition or state of readiness and available for a

Fairfax County, Virginia

specifically assigned function. For example, the placed in service date for a stormwater project is likely the project's expected completion date.

**Step 4.** Determine the adjusted economic life of the asset in Column V by adding the amount of time between February 21, 2013 (the earliest date upon which the VPBA Bonds were issued) and the specified placed in service date from Column IV. For example, if a stormwater project with an economic life of 20 years will be placed in service 2 years after February 21, 2013, then the adjusted economic life for such stormwater project should be 22.

**Step 5.** For Column VI, multiply the Total Costs Financed with the Grant from Column II by the Adjusted Economic Life from Column V for each type of asset.

**Step 6.** Total all the entries in Column II and in Column VI.

**Step 7.** Divide the total of Column VI by the total of Column II. The quotient is the average reasonable expected economic life of the assets to be financed with the Grant.

#### AVERAGE REASONABLY EXPECTED ECONOMIC LIFE OF PROJECT ASSETS

Column I	Column II	Column III	Column IV	Column V	Column VI
<u>Asset</u>	<u>Total Cost Financed with Grant</u>	<u>Economic Life</u>	<u>Date Asset Placed in Service</u>	<u>Adjusted Economic Life</u>	<u>Column II x Column V</u>
Land Improvements	\$1,726,722	20	10/2017	4.7	\$8,115,593.40
Building					
Equipment					
Contingency	\$70,079	20	10/2017	4.7	\$329,371.30
TOTAL	<u>\$1,796,801</u>				<u>\$8,444,964.70</u>

Average Reasonably Expected Economic Life: Total of Column VI ÷ Total of Column II =  4.7

ACTION - 3

Approval of a Grant Agreement Between the Virginia Department of Environmental Quality and Fairfax County for the Difficult Run Tributary at Brittenford Stream Restoration Project (Hunter Mill District)

ISSUE:

Board of Supervisors' authorization is requested for the county to approve the Grant Agreement between the Virginia Department of Environmental Quality (DEQ) and Fairfax County that provides Stormwater Local Assistance Funds (SLAF) for the design and construction of the Difficult Run Tributary at Brittenford stream restoration project (Project).

RECOMMENDATION:

The County Executive recommends that the Board approve and authorize the County Executive or his designee to sign the agreement with the DEQ to provide SLAF grant funds to the county for the design and construction of the Project.

TIMING:

Board approval is requested on September 24, 2019.

BACKGROUND:

The Virginia General Assembly created SLAF to provide matching grants to local governments for planning, designing, and implementing best management practices to reduce pollution generated from stormwater runoff. In October 2018, the county submitted applications in response to the Fiscal Year 2019 SLAF grant solicitation. In its applications, the county requested funding for five stream and water quality improvement projects. In February 2019, DEQ issued a project funding list that included the following two projects that were submitted by the county:

Turkey Run at Truro Stream Restoration Project  
Difficult Run Tributary at Brittenford Stream Restoration Project

The two funded projects are located in the Braddock and Hunter Mill magisterial districts, respectively

Board Agenda Item  
September 24, 2019

DEQ is issuing a separate grant agreement for each funded project. Grant agreements are issued after construction contract award has occurred for the project.

The Project is under construction and scheduled for substantial completion in March 2020. The Project will restore approximately 5,400 linear feet of stream. The Project is located near 10333 Brittenford Drive and found on Tax Maps 27-2 and 18-4. The county estimates that the Project will reduce phosphorous, nitrogen, and total suspended solids in our streams and the Chesapeake Bay by 1,736 pounds/year, 3,890 pounds/year, and 278.67 tons/year, respectively.

In order to receive reimbursement for the Project, the attached Grant Agreement must be executed.

FISCAL IMPACT:

This grant reimburses funds expended by the county in the amount up to \$2,154,392 which is fifty percent of the total SLAF eligible project costs.

County funding for this Project is appropriated in Fund C40100, Stormwater Services, Project SD-000031, Streams and Water Quality Improvements, and in Fund 30090, Pro-Rata Share Drainage Construction, Project SD-000008, Difficult Run Watershed. Reimbursed amounts will be received as revenue to the Stormwater program providing funds for other watershed improvement projects.

ENCLOSED DOCUMENTS:

Attachment 1: Grant Agreement SLAF 19-01

STAFF:

Rachel Flynn, Deputy County Executive

Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)

Craig Carinci, Director, DPWES, Stormwater Planning Division

**STORMWATER LOCAL ASSISTANCE FUND  
GRANT AGREEMENT  
SLAF Grant No.: 19-01**

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THIS AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, by and between the Virginia Department of Environmental Quality (the “Department”), and Fairfax County (the “Grantee”).

Pursuant to Item 360 in Chapter 860 of the 2013 Acts of Assembly (the Commonwealth’s 2013-14 Budget) (the “Act”), the General Assembly created the Stormwater Local Assistance Fund (the “Fund”). The Department is authorized pursuant to Section 62.1-44.15:29.1 of the Code of Virginia to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads.

The Grantee has been approved by the Department to receive a Grant from the Fund subject to the terms and conditions herein to finance fifty percent (50%) of the cost of the Eligible Project, which consists of the planning, design and implementation of best management practices for stormwater control as described herein. The Grantee will use the Grant to finance that portion of the Eligible Project Costs not being paid for from other sources as set forth in the Total Project Budget in Exhibit B to this Agreement. Such other sources may include, but are not limited to, the Virginia Water Facilities Revolving Fund, Chapter 22, Title 62.1 of the Code of Virginia (1950), as amended.

This Agreement provides for payment of the Grant, design and construction of the Eligible Project, and development and implementation by the Grantee of provisions for the long-term responsibility and maintenance of the stormwater management facilities and other techniques installed under the Eligible Project. This Agreement is supplemental to the State Water Control Law, Chapter 3.1, Title 62.1 of the Code of Virginia (1950), as amended, and it does not limit in any way the other water quality restoration, protection and enhancement, or enforcement authority of the State Water Control Board (the “Board”) or the Department.

**ARTICLE I**  
**DEFINITIONS**

1. The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise:

(a) “Agreement” means this Stormwater Local Assistance Fund Grant Agreement between the Department and the Grantee, together with any amendments or supplements hereto.

(b) “Authorized Representative” means any member, official or employee of the Grantee authorized by resolution, ordinance or other official act of the governing body of the Grantee to perform the act or sign the document in question.

(c) “Capital Expenditure” means any cost of a type that is properly chargeable to a 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 Treasury Regulation Section 1.150-2(c)) under general federal income tax principles, determined at the time the expenditure is paid.



(d) “Eligible Project” means all grant eligible items of the particular stormwater project described in Exhibit A to this Agreement to be designed and constructed by the Grantee with, among other monies, the Grant, with such changes thereto as may be approved in writing by the Department and the Grantee.

(e) “Eligible Project Costs” means costs of the individual items comprising the Eligible Project as permitted by the Act with such changes thereto as may be approved in writing by the Department and the Grantee. All Eligible Project Costs shall be Capital Expenditures and no Eligible Project Costs shall be Working Capital Expenditures.

(f) “Extraordinary Conditions” means unforeseeable or exceptional conditions resulting from causes beyond the reasonable control of the Grantee such as, but not limited to fires, floods, strikes, acts of God, and acts of third parties that singly or in combination cause material breach of this Agreement.

(g) “Grant” means the particular grant described in Section 4.0 of this Agreement, with such changes thereto as may be approved in writing by the Department and the Grantee.

(h) “Total Eligible Project Budget” means the sum of the Eligible Project Costs as set forth in Exhibit B to this Agreement, with such changes thereto as may be approved in writing by the Department and the Grantee.

(i) “Total Project Budget” means the sum of the Eligible Project Costs (with such changes thereto as may be approved in writing by the Department and the Grantee) plus any ineligible costs that are solely the responsibility of the Grantee, as set forth in Exhibit B to this Agreement.

(j) “Project Engineer” means the Grantee’s engineer who must be a licensed professional engineer registered to do business in Virginia and designated by the Grantee as the Grantee’s engineer for the Eligible Project in a written notice to the Department.

(k) “Project Schedule” means the schedule for the Eligible Project as set forth in Exhibit C to this Agreement, with such changes thereto as may be approved in writing by the Department and the Grantee. The Project Schedule assumes timely approval of adequate plans and specifications and timely reimbursement in accordance with this Agreement by the Department.

(l) “Working Capital Expenditure” means any cost that is not a Capital Expenditure. Generally, current operating expenses are Working Capital Expenditures.

(m) “VPBA” means the Virginia Public Building Authority, a political subdivision of the Commonwealth of Virginia.

(n) “VPBA Bonds” means (i) the Virginia Public Building Authority Public Facilities Revenue Bonds, Series 2013A, which were issued by VPBA on February 21, 2013, (ii) any other bonds issued by VPBA, the proceeds of which are used in whole or in part to provide funds for the making of the Grant, and (iii) any refunding bonds related thereto.

## **ARTICLE II**

### **SCOPE OF PROJECT**

2. The Grantee will cause the Eligible Project to be designed, constructed and placed in operation as described in Exhibit A to this Agreement.

## **ARTICLE III**

### **SCHEDULE**

3. The Grantee will cause the Eligible Project to be designed, constructed and placed in operation in accordance with the Project Schedule in Exhibit C to this Agreement.

## **ARTICLE IV**

### **COMPENSATION**

4.0. Grant Amount. The total Grant award from the Fund under this Agreement is up to **\$2,154,392.00** and represents the Commonwealth's fifty percent (50%) share of the Total Eligible Project Budget. Any material changes made to the Eligible Project after execution of this Agreement, which alters the Total Eligible Project Budget, will be submitted to the Department for review of grant eligibility. The amount of the Grant award set forth herein may be modified from time to time by agreement of the parties to reflect changes to the Eligible Project or the Total Eligible Project Budget.

4.1. Payment of Grant. Disbursement of the Grant will be in accordance with the payment provisions set forth in Section 4.2 herein and the eligibility determinations made in the Total Project Budget (Exhibit B).

4.2. Disbursement of Grant Funds. The Department will disburse the Grant to the Grantee not more frequently than once each calendar month for approved eligible reimbursement of a minimum of one thousand (\$1,000.00) dollars, excluding the final payment, upon receipt by the Department of the following:

(a) A requisition for approval by the Department, signed by the Authorized Representative and containing all receipts, vouchers, statements, invoices or other evidence that costs in the Total Eligible Project Budget, including the applicable local share for the portion of the Eligible Project covered by such requisition, have been incurred or expended and all other information called for by, and otherwise being in the form of, Exhibit D to this Agreement.

(b) If any requisition includes an item for payment for labor or to contractors, builders or material men, a certificate, signed by the Project Engineer, stating that such work was actually performed or such materials, supplies or equipment were actually furnished or installed in or about the construction of the Eligible Project.

Upon receipt of each such requisition and accompanying certificate(s) and schedule(s), the Department shall request disbursement of the Grant to the Grantee in accordance with such requisition to the extent approved by the Department.

Except as may otherwise be approved by the Department, disbursements shall be held at ninety-five percent (95%) of the total Grant amount to ensure satisfactory completion of the Eligible Project. Satisfactory completion includes the submittal to the Department the Responsibilities & Maintenance

Plan required by Section 5.1 herein. Upon receipt from the Grantee of the certificate specified in Section 4.5 and a final requisition detailing all retainage to which the Grantee is then entitled, the Department, subject to the provisions of this section and Section 4.3 herein, shall request disbursement to the Grantee of the final payment from the Grant.

4.3 Application of Grant Funds. The Grantee agrees to apply the Grant solely and exclusively to the reimbursement of Eligible Project Costs. The Grantee represents and warrants that the average reasonably expected economic life of the assets to be financed with the Grant is set forth in Exhibit E attached hereto.

4.4. Agreement to Complete Project. The Grantee agrees to cause the Eligible Project to be designed and constructed, as described in Exhibit A to this Agreement, and in accordance with (i) the schedule in Exhibit C to this Agreement and (ii) plans and specifications prepared by the Project Engineer and approved by the Department.

4.5 Notice of Substantial Completion. When the Eligible Project has been completed, the Grantee shall promptly deliver to the Department a certificate signed by the Authorized Representative and by the Project Engineer stating (i) that the Eligible Project has been completed substantially in accordance with the approved plans and specifications and addenda thereto, and in substantial compliance with all material applicable laws, ordinances, rules, and regulations; (ii) the date of such completion; (iii) that all certificates of occupancy and operation necessary for start-up for the Eligible Project have been issued or obtained; and (iv) the amount, if any, to be released for payment of the final Eligible Project Costs.

4.6 Source of Grant Funds; Reliance. The Grantee represents that it understands that the Grant funds are derived from the proceeds of the VPBA Bonds, the interest on which must remain excludible from gross income for federal income tax purposes (that is, "tax- exempt") pursuant to contractual covenants made by VPBA for the benefit of the owners of the VPBA Bonds. The Grantee further represents that (a) the undersigned Authorized Representative of the Grantee has been informed of the purpose and scope of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended, as they relate to the VPBA Bonds and the Grant, and (b) the representations and warranties contained in this Agreement can be relied on by VPBA and bond counsel to VPBA in executing certain documents and rendering certain opinions in connection with the VPBA Bonds.

## **ARTICLE V**

### **RESPONSIBILITIES AND MAINTENANCE PLAN**

5.0 Plan Submittal. No later than thirty (30) days from the date of the Notice of Substantial Completion, the Grantee shall submit to the Department a Responsibilities and Maintenance Plan for the Eligible Project.

5.1 Plan Elements. The plan required by Section 5.0 shall include a description of the project type, a recommended schedule of inspection and maintenance, and the identification of a person, persons or position within an organization responsible for administering and maintaining the plan for the useful service life of the installed facilities. If the Eligible Project includes construction on private property, the plan shall document the Grantee's right to access the Eligible Project for purposes of implementing the plan required by Section 5.0.

5.2 Recordation. Long-term responsibility and maintenance requirements for stormwater management facilities located on private property shall be set forth in an instrument recorded in the local land records and shall be consistent with 9VAC25-870-112 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

## **ARTICLE VI** **MATERIAL BREACH**

6.0. Material Breach. Any failure or omission by the Grantee to perform its obligations under this Agreement, unless excused by the Department, is a material breach.

6.1. Notice of Material Breach. If at any time the Grantee determines that it is unable to perform its obligations under this Agreement, the Grantee shall promptly provide written notification to the Department. This notification shall include a statement of the reasons it is unable to perform, any actions to be taken to secure future performance and an estimate of the time necessary to do so.

6.2. Monetary Assessments for Breach. In case of Material Breach, Grant funds will be re-paid into the State Treasury and credited to the Fund. Within 90 days of receipt of written demand from the Department, the Grantee shall re-pay the Grant funds for the corresponding material breaches of this Agreement unless the Grantee asserts a defense pursuant to the requirements of Section 6.3 herein.

6.3 Extraordinary Conditions.

(a) The Grantee may assert and it shall be a defense to any action by the Department to collect Grant funds or otherwise secure performance of this Agreement that the alleged non-performance was due to Extraordinary Conditions, provided that the Grantee:

(1) takes reasonable measures to effect a cure or to minimize any non-performance with the Agreement, and

(2) provides written notification to the Department of the occurrence of Extraordinary Conditions, together with an explanation of the events or circumstances contributing to such Extraordinary Conditions, no later than 10 days after the discovery of the Extraordinary Conditions.

(b) If the Department disagrees that the events or circumstances described by the Grantee constitute Extraordinary Conditions, the Department must provide the Grantee with a written objection within sixty (60) days of Grantee's notice under paragraph 6.3(a)(2), together with an explanation of the basis for its objection.

6.4 Resolution and Remedy. If no resolution is reached by the parties, the Department may immediately bring an action in the Circuit Court of the City of Richmond to recover part or all of the Grant funds. In any such action, the Grantee shall have the burden of proving that the alleged noncompliance was due to Extraordinary Conditions. The Grantee agrees to venue to any such action in the Circuit Court of the City of Richmond, either north or south of the James River in the option of the Department.

6.5 Indemnification. To the extent permitted by law and subject to legally available funds, the Grantee shall indemnify and hold the Department, the Fund, VPBA and the owners of the VPBA

Bonds, and their respective members, directors, officers, employees, attorneys and agents (the "Indemnitees"), harmless against any and all liability, losses, damages, costs, expenses, penalties, taxes, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any misrepresentation, breach of warranty, noncompliance or default by or on behalf of the Grantee under this Agreement, including, without limitation, all claims or liability (including all claims of and liability to the Internal Revenue Service) resulting from, arising out of or in connection with the loss of the excludability from gross income of the interest on all or any portion of the VPBA Bonds that may be occasioned by any cause whatsoever pertaining to such misrepresentation, breach, noncompliance or default, such indemnification to include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by any of the Indemnitees in connection therewith. This paragraph shall not constitute an express or implied waiver of any applicable immunity afforded the Grantee.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

7.0. Effect of the Agreement on Permits. This Agreement shall not be deemed to relieve the Grantee of its obligations to comply with the terms of its Virginia Pollutant Discharge Elimination System (VPDES) and/or Virginia Water Protection (VWP) permit(s) issued by the Board. This Agreement does not obviate the need to obtain, where required, any other State or Federal permit(s).

7.1. Disclaimer. Nothing in this Agreement shall be construed as authority for either party to make commitments which will bind the other party beyond the covenants contained herein.

7.2. Non-Waiver. No waiver by the Department of any one or more defaults by the Grantee in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults of whatever character.

7.3. Integration and Modification. This Agreement constitutes the entire Agreement between the Grantee and the Department. No alteration, amendment or modification of the provisions of this Agreement shall be effective unless reduced to writing, signed by both the parties and attached hereto. This Agreement may be modified by agreement of the parties for any purpose, provided that any significant modification to this Agreement must be preceded by public notice of such modification.

7.4. Collateral Agreements. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements which are made a part of this Agreement by reference, the provisions of this Agreement shall control.

7.5. Non-Discrimination. In the performance of this Agreement, the Grantee warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin or other non-job related factors. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

7.6. Conflict of Interest. The Grantee warrants that it has fully complied with the Virginia Conflict of Interest Act as it may apply to this Agreement.

7.7. Applicable Laws. This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.

The Grantee further agrees to comply with all laws and regulations applicable to the Grantee's performance of its obligations pursuant to this Agreement.

7.8. Records Availability. The Grantee agrees to maintain complete and accurate books and records of the Eligible Project Costs, and further, to retain all books, records, and other documents relative to this Agreement for three (3) years after final payment. The Department, its authorized agents, and/or State auditors will have full access to and the right to examine any of said materials during said period. Additionally, the Department and/or its representatives will have the right to access work sites during normal business hours, after reasonable notice to the Grantee, for the purpose of ensuring that the provisions of this Agreement are properly carried out.

7.9. Severability. Each paragraph and provision of this Agreement is severable from the entire Agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

7.10. Notices. All notices given hereunder shall be in writing and shall be sent by United States certified mail, return receipt requested, postage prepaid, and shall be deemed to have been received at the earliest of: (a) the date of actual receipt of such notice by the addressee, (b) the date of the actual delivery of the notice to the address of the addressee set forth below, or (c) five (5) days after the sender deposits it in the mail properly addressed. All notices required or permitted to be served upon either party hereunder shall be directed to:

Department: Virginia Department of Environmental Quality  
Clean Water Financing and Assistance Program  
P.O. Box 1105  
Richmond, VA 23218  
Attn: CWFAP Program Manager

Grantee: County of Fairfax, Virginia  
12000 Government Center Parkway  
Fairfax, Virginia 22035-0052  
Attn: Mr. Craig Carinci

7.11. Successors and Assigns Bound. This Agreement shall extend to and be binding upon the parties hereto, and their respective legal representatives, successors and assigns.

7.12. Exhibits. All exhibits to this Agreement are incorporated herein by reference.

7.13. Termination. The Agreement shall terminate upon final reimbursement to the Grantee.

## **ARTICLE VIII** **COUNTERPARTS**

8. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Fairfax County, Virginia

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**ARTICLE IX**  
**CREDIT GENERATION**

9. Any land area generating stream or wetland mitigation credits from the Eligible Project is not eligible for the generation of any other environmental credits. Any project designs approved by the Department under the Grant may not meet the design requirements for approval from other State or Federal water programs. The Grantee is responsible for obtaining information on design and permit requirements for the type of environmental credit they are seeking.

WITNESS the following signatures, all duly authorized.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Its: \_\_\_\_\_

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

GRANTEE'S AUTHORIZED REPRESENTATIVE

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

Its: \_\_\_\_\_

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

## **EXHIBIT A**

### **ELIGIBLE PROJECT DESCRIPTION**

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Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-01

Project Description: Construction of approximately 5,400 linear feet of stream channel through natural stream design in order to restore and stabilize the degraded stream channel bed and banks as to provide aquatic benefits, grade control, improve water quality and prevent future erosion.

Fairfax County, Virginia



## EXHIBIT B

### TOTAL PROJECT BUDGET

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Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-01

The following budget reflects the estimated costs associated with eligible cost categories of the project.

Project Category / Project Name	Project Cost	SLAF Eligible	Grant %	Grant Amount
<b>Design Engineering</b>				
Difficult Run	\$1,108,000.00	\$995,966.00	50.00%	\$497,983.00
<b>Sub-Total</b>	\$1,108,000.00	\$995,966.00		\$497,983.00
<b>Construction</b>				
Difficult Run	\$3,155,064.20	\$3,155,064.00	50.00%	\$1,577,532.00
<b>Sub-Total</b>	\$3,155,064.20	\$3,155,064.00		\$1,577,532.00
<b>Other</b>				
Contingency				
Difficult Run	\$157,754.00	\$157,754.00	50.00%	\$78,877.00
<b>Sub-Total</b>	\$157,754.00	\$157,754.00		\$78,877.00
<b>TOTALS</b>	<b>\$4,420,818.20</b>	<b>\$4,308,784.00</b>		<b>\$2,154,392.00</b>

Fairfax County, Virginia

## EXHIBIT C

### PROJECT SCHEDULE

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Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-01

The Grantee has proposed the following schedule of key activities/milestones as a planning tool which may be subject to change. Unless authorized by a grant modification, it is the responsibility of the Grantee to adhere to the anticipated schedule for the Eligible Project as follows:

Project Name	Project Description / Milestone	Schedule / Timeline	Note
Difficult Run	Engineering	Completed	
	Construction	Under Construction	

Fairfax County, Virginia

**EXHIBIT D**

**REQUISITION FOR REIMBURSEMENT**

(To be on Grantee's Letterhead)

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Department of Environmental Quality  
Clean Water Financing and Assistance Program  
P.O. Box 1105  
Richmond, VA 23218  
Attn.: CWFAP Program Manager

**RE: Stormwater Local Assistance Fund Grant**

SLAF Grant No.: 19-01

Dear Program Manager:

This requisition, Number \_\_\_\_, is submitted in connection with the referenced Grant Agreement, dated as of *[insert date of grant agreement]* between the Virginia Department of Environmental Quality and \_\_\_\_\_. Unless otherwise defined in this requisition, all capitalized terms used herein shall have the meaning set forth in Article I of the Grant Agreement. The undersigned Authorized Representative of the Grantee hereby requests disbursement of grant proceeds under the Grant Agreement in the amount of \$\_\_\_\_\_, for the purposes of payment of the Eligible Project Costs as set forth on Schedule I attached hereto.

Copies of invoices relating to the items for which payment is requested are attached.

The undersigned certifies that the amounts requested by this requisition will be applied solely and exclusively to the reimbursement of the Grantee for the payment of Eligible Project Costs that are Capital Expenditures.

This requisition includes (if applicable) an accompanying Certificate of the Project Engineer as to the performance of the work.

Sincerely,

\_\_\_\_\_  
(Authorized Representative of the Grantee)

Attachments

Fairfax County, Virginia

**SCHEDULE 1**  
**STORMWATER LOCAL ASSISTANCE FUND**  
**FORM TO ACCOMPANY REQUEST FOR REIMBURSEMENT**

REQUISITION # \_\_\_\_\_

Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-01 CERTIFYING SIGNATURE: \_\_\_\_\_ TITLE: \_\_\_\_\_

Cost Category	Total Project Budget	SLAF Eligible Project Budget	SLAF 50% Grant Budget	Eligible Expenditures This Period	Current Grant Payment	Previous Grant Payment	Total Grant Payments to Date	SLAF Grant Balance
<b>Engineering</b>								
Difficult Run	\$1,108,000.00	\$995,966.00	\$497,983.00					
<b>Sub-Total</b>	<b>\$1,108,000.00</b>	<b>\$995,966.00</b>	<b>\$497,983.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Construction</b>								
Difficult Run	\$3,155,064.20	\$3,155,064.00	\$1,577,532.00					
<b>Sub-Total</b>	<b>\$3,155,064.20</b>	<b>\$3,155,064.00</b>	<b>\$1,577,532.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Other</b>								
Contingency	\$157,754.00	\$157,754.00	\$78,877.00					
<b>Sub-Total</b>	<b>\$157,754.00</b>	<b>\$157,754.00</b>	<b>\$78,877.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Totals</b>	<b>\$4,420,818.20</b>	<b>\$4,308,784.00</b>	<b>\$2,154,392.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Total Grant Amount: \$2,154,392.00

Previous Disbursements: \$0.00

This Request: \$0.00

Grant Proceeds Remaining: \$2,154,392.00

Fairfax County, Virginia

CERTIFICATE OF THE PROJECT ENGINEER  
FORM TO ACCOMPANY REQUEST FOR REIMBURSEMENT

Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-01

This Certificate is submitted in connection with Requisition Number \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, submitted by the \_\_\_\_\_ (the "Grantee") to the Virginia Department of Environmental Quality. Capitalized terms used herein shall have the same meanings set forth in Article I of the Grant Agreement referred to in the Requisition.

The undersigned Project Engineer for \_\_\_\_\_ hereby certifies that insofar as the amounts covered by this Requisition include payments for labor or to contractors, builders or material men, such work was actually performed or such materials, supplies, or equipment were actually furnished to or installed in the Eligible Project.

\_\_\_\_\_  
(Project Engineer)

\_\_\_\_\_  
(Date)

Fairfax County, Virginia

## EXHIBIT E

### DETERMINATION OF AVERAGE REASONABLY EXPECTED ECONOMIC LIFE OF PROJECT ASSETS

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Grantee: Fairfax County, Virginia

SLAF Grant No.: 19-01

The Internal Revenue Code of 1986, as amended, limits the length of average maturity for certain tax-exempt bonds, such as the VPBA Bonds, to no more than 120% of the average reasonably expected economic life of the assets being financed with the proceeds of such bonds. This life is based on Revenue Procedure 62-21 as to buildings and Revenue Procedures 83-35 and 87-56 as to equipment and any other assets. In this Exhibit, the Grantee will certify as to the average reasonably expected economic life of the assets being financed by the Grant.

Please complete the attached chart as follows:

**Step 1.** Set forth in Column II the corresponding total cost of each type of asset to be financed with the Grant.

**Step 2.** Set forth in Column III the economic life of each type of asset listed in accordance with the following:

*Land.* Exclude the acquisition of any land financed with a portion of the Grant funds from the economic life calculation.

*Land Improvements.* Land improvements (i.e., depreciable improvements made directly to or added to land) include sidewalks, roads, canals, waterways, site drainage, stormwater retention basins, drainage facilities, sewers (excluding municipal sewers), wharves and docks, bridges, fences, landscaping, shrubbery and all other general site improvements, not directly related to the building. Buildings and structural components are specifically excluded. 20 years is the economic life for most stormwater projects.

*Buildings.* Forty years is the economic life for most buildings.

*Equipment.* Please select an Asset Depreciation Range (“ADR”) midpoint or class life for each item of equipment to be financed. The tables of asset guideline classes, asset guideline periods and asset depreciation ranges included in IRS Revenue Procedures 83-35 and 87-56 may be used for reference. To use the tables, you should first determine the asset guideline class in which each item of equipment falls. General business assets fall into classes 00.11 through 00.4 to the extent that a separate class is provided for them. Other assets, to the extent that a separate class is provided, fit into one or more of classes 01.1 through 80.0. Subsidiary assets (jigs, dies, molds, patterns, etc.) are in the same class as are the other major assets in an industry activity unless the subsidiary assets are classified separately for that industry. Each item of equipment should be classified according to the activity in which it is primarily used. If the equipment is not described in any asset guideline class, its estimated economic life must be determined on a case by case basis.

*Contingency.* Any amounts shown on the Project Budget as “contingency” should be assigned to the shortest-lived asset. For example, contingency for a stormwater project should likely be given an economic life of 20 years.

**Step 3.** Set forth in Column IV the date each asset is expected to be placed in service. An asset is first placed in service when it is first placed in a condition or state of readiness and available for a

Fairfax County, Virginia

specifically assigned function. For example, the placed in service date for a stormwater project is likely the project's expected completion date.

**Step 4.** Determine the adjusted economic life of the asset in Column V by adding the amount of time between February 21, 2013 (the earliest date upon which the VPBA Bonds were issued) and the specified placed in service date from Column IV. For example, if a stormwater project with an economic life of 20 years will be placed in service 2 years after February 21, 2013, then the adjusted economic life for such stormwater project should be 22.

**Step 5.** For Column VI, multiply the Total Costs Financed with the Grant from Column II by the Adjusted Economic Life from Column V for each type of asset.

**Step 6.** Total all the entries in Column II and in Column VI.

**Step 7.** Divide the total of Column VI by the total of Column II. The quotient is the average reasonable expected economic life of the assets to be financed with the Grant.

#### AVERAGE REASONABLY EXPECTED ECONOMIC LIFE OF PROJECT ASSETS

Column I	Column II	Column III	Column IV	Column V	Column VI
<u>Asset</u>	<u>Total Cost Financed with Grant</u>	<u>Economic Life</u>	<u>Date Asset Placed in Service</u>	<u>Adjusted Economic Life</u>	<u>Column II x Column V</u>
Land Improvements	\$2,075,515	20	3/2020	7	\$14,528,605
Building					
Equipment					
Contingency	\$78,877	20	3/2020	7	\$552,139
TOTAL	<u>\$2,154,392</u>				<u>\$15,080,744</u>

Average Reasonably Expected Economic Life: Total of Column VI ÷ Total of Column II = 7

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ACTION - 4

Approval of an Agreement Between the Town of Vienna and Fairfax County to Design and Construct the Bear Branch Tributary at Southside Park Stream Restoration Project (Hunter Mill District)

ISSUE:

Board of Supervisors' authorization is requested for the county to execute an agreement with the Town of Vienna (Town) that provides funding for the design and construction of the Bear Branch Tributary at Southside Park Stream Restoration project (Project), which is located in the Town and the Accotink Creek watershed.

RECOMMENDATION:

The County Executive recommends that the Board approve and authorize the County Executive or his designee to sign an agreement with the Town to provide funding for the design and construction of the Project.

TIMING:

Board approval is requested on September 24, 2019.

BACKGROUND:

The Bear Branch Tributary is located in the Town and Accotink Creek watershed. The Project will restore approximately 1,900 linear feet of stream on Bear Branch Tributary, providing nutrient reduction and improved water quality in the Accotink Creek watershed. The Department of Environmental Quality (DEQ) awarded the Town a Stormwater Local Assistance Fund (SLAF) grant, which will cover half the estimated design and construction costs.

Under the Cooperative Agreement between the Fairfax County Board of Supervisors, the Town of Vienna, and the Town of Herndon to Share Certain Stormwater Service District Fees and Responsibility for Related Projects, the parties will use the project benefits towards compliance with their respective Municipal Separate Storm Sewer System permits and Chesapeake Bay Total Maximum Daily Load reduction requirements. Consistent with the framework of the Cooperative Agreement, the Town has asked the county to fund the design and construction costs. The Town will administer the design and construction of the Project. Partnering with the Town on this



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project will save the county the time and administrative costs that would be incurred if the county were to implement the Project under its stormwater program.

FISCAL IMPACT:

The estimated total cost of the Project is \$2,040,000. The county will fund \$1,020,000 for the design and construction. DEQ SLAF grant funds in the amount of \$1,020,000 will be used to fund the remaining costs. The county has the discretion to pay construction cost overruns, but in an amount not to exceed ten percent of the total estimated project cost. County funds can only be used for the design and construction of the Project. The Town will reimburse the county funds that are not expended in accordance with the terms of the attached agreement. Funding is currently available in Project Number SD-000031, Streams and Water Quality, Fund 40100, Stormwater series, for the county's obligation to this Project.

ENCLOSED DOCUMENTS:

Attachment 1: Agreement between the Board of Supervisors of Fairfax County, Virginia and the Town of Vienna

STAFF:

Rachel Flynn, Deputy County Executive  
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)  
Craig Carinci, Director, DPWES, Stormwater Planning Division

**BEAR BRANCH TRIBUTARY AT SOUTHSIDE PARK (AC9225A)  
STREAM RESTORATION PROJECT  
FUNDING AGREEMENT**

This Agreement (“Agreement”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA** (the "County"), a body politic, and the **TOWN OF VIENNA** (the “Town”) (collectively, the “Parties”).

**WITNESSETH:**

WHEREAS, the Town has been awarded a Stormwater Local Assistance Fund Grant from the Virginia Department of Environmental Quality for up to one million twenty thousand dollars (\$1,020,000) (the “DEQ Grant”) to design and implement the Bear Branch Tributary at Southside Park (AC9225A) Stream Restoration Project (the “Project”), which will be located within the boundaries of the Town and will restore a portion of the body of water known as an unnamed tributary to Bear Branch and

WHEREAS, the location of the Project is located between Longitude 38.88362N and Latitude 77.24964W and 38.87969N and 77.25268W, and is more specifically shown on the Fairfax County Real Property Identification Map as Tax Map Numbers; 48-2((3)) parcel 2360A, 49-1 ((8)) parcel 2380A, 48-2 ((2)) parcel 13B, 49-1 ((2)) parcel 4; and

WHEREAS, the Project is within the Chesapeake Bay, Potomac River, and Accotink Creek watersheds; and

WHEREAS, the Town is part of the County’s Stormwater Service District and the County, Town, and the Town of Herndon have entered into an agreement known as the “Cooperative Agreement Between the Fairfax County Board of Supervisors, the Town of Vienna, and Town of Herndon to Share Certain Stormwater Service District Fees and Responsibility for Related Projects” (the “Cooperative Agreement”) to share funds and responsibility to maintain, operate, and improve stormwater systems to meet the Chesapeake Bay Total Maximum Daily Load (“TMDL”) and other water quality goals. Cooperative Agreement is attached hereto as Attachment 1 and is incorporated herein by reference; and

WHEREAS, under the Cooperative Agreement, annually, the County pays the Town a percentage of the Stormwater Service District Fees that are collected from residents of the Town (the “Paid Vienna Revenues”); and

WHEREAS, the Town and County agree that under the Cooperative Agreement, Stormwater Service District funds can be used for the Project because the Project meets the water quality objectives of each locality and their respective Chesapeake Bay TMDL obligations; and

WHEREAS, the Project is estimated to cost two million forty thousand dollars (\$2,040,000) (the “Total Project Cost”), half of which is to be paid using the DEQ Grant; and

WHEREAS, the County intends to pay one million twenty thousand dollars (\$1,020,000) for the purpose of supporting the design and construction of the Project from its Stormwater Budget; and

WHEREAS, the Town intends to dedicate Town staff expertise and time for the purpose of supporting, developing, and implementing the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein as if restated as binding provisions of this agreement, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereto further agree as follows:

1. Upon execution of this Agreement, the County will grant to the Town funds in the amount of one million twenty thousand dollars (\$1,020,000) (the “County Contribution”) to be paid with monies from the County’s Stream and Water Quality Improvement Project (fund I/O 2G25-029-001) of the Stormwater Budget (fund 400-C40100, Stormwater Services).
2. The County Contribution will not be charged against the PAID VIENNA REVENUES as set forth in the Cooperative Agreement, but rather, are a separate grant to the Town from the County.
3. The Town will dedicate Town staff expertise and time for the purpose of supporting, developing, and implementing the Project.

4. The Town must expend the DEQ Grant solely for the purpose of supporting the design and construction of the Project when the DEQ Grant is received.
5. The Town will expend the County Contribution solely for the purpose of supporting the design and construction of the Project, and not for the cost of any feasibility study or acquisition of any land or easements necessary for the completion of the Project.
6. The Town will provide to the County a copy of the final site plan (the “Plan”) for the Project.
7. The Town will acquire, at its sole expense, any and all land or easements, or other interests in real property, if any, that are necessary to complete the Project.
8. The Town, at its sole expense, will administer the design and construction contracts, obtain approval of all plans, and obtain all permits necessary for the completion of the Project.
9. The Town will notify the County if the Town, at any time, modifies the scope of the Project, which is generally described herein above and in the Town’s “Department of Environmental Quality Application for Stormwater Local Assistance Fund (SLAF) – Stormwater Capital Projects,” which was submitted to DEQ for the DEQ Grant (the “Plan”). If the scope of the Project’s design, in the sole judgment of the County, significantly deviates from the design scope described in the Plan, the Town must, within 30 days after notification by the County of such deviation, reimburse to the County the amount of the Total Contribution.
10. The Town must retain all invoices and all records of payments for any and all services rendered for the design, construction, and any related expenses for completion of the Project, and copies of any such invoices and records of payments must be provided to the County upon request within three business days after such a request.
11. If at any time the Town abandons or otherwise ceases the Project for any reason, the Town must immediately return any amount of the County Contribution not expended in accordance with this agreement and all invoices and records of payments. “Abandon,” as used herein, includes, but is not limited to, the failure to initiate or the termination of the design or construction before the Project’s completion.

12. The County, in its sole discretion, may agree to pay cost overruns that exceed the Total Project Cost, including construction costs that exceed the current estimate, change orders and/or related costs that arise during construction of the Project, but only to the extent that funds are available in the County's Stream and Water Quality Improvement Project (fund I/O 2G25-029-001) of the Stormwater Budget (fund 400-C40100, Stormwater Services ) and are not more than 10% of the estimated Project Cost.

13. The Town must complete the Project not later than four years after this agreement is executed.

14. The Project is subject to the Cooperative Agreement, and, as such, the total pollutant load reduction credits for the Project will be apportioned among the parties as established pursuant to the terms of the Cooperative Agreement or any amendments or attachments thereto.

15. This agreement can only be modified in writing and signed by both parties.

**[Signatures appear on following page]**

TOWN OF VIENNA, Virginia

By: \_\_\_\_\_  
Laurie A. Di Rocco  
Mayor

STATE OF VIRGINIA :  
: to-wit  
COUNTY OF FAIRFAX :

The foregoing Agreement was acknowledged before me by Mayor Laurie A. DiRocco of the Town of Vienna, this \_\_\_\_\_ day of \_\_\_\_\_ 2019, on behalf of the Town of Vienna.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA

By: \_\_\_\_\_  
Bryan J. Hill, County Executive  
Fairfax County, Virginia

STATE OF VIRGINIA :  
: to-wit  
COUNTY OF FAIRFAX :

The foregoing Agreement was acknowledged before me by Bryan J. Hill, County Executive of Fairfax County, Virginia, on behalf of the Board of Supervisors of Fairfax County, Virginia this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

ACTION - 5

Approval of Donation of Public Art for Installation at Tysons-Pimmit Regional Library  
(Dranesville District)

ISSUE:

Board approval to accept donation of public art from Fairfax County residents Promila and Krishan Chhabra (Chhabras) for placement at Tysons-Pimmit Regional Library (Library).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors accept the donation of public art from Promila and Krishan Chhabra for the beautification of the Library, and further accept Memorial Maintenance Agreement which is substantially in the form of Attachment 2.

TIMING:

Board action is requested on September 24, 2019, to allow the Chhabras to initiate the fabrication of the art.

BACKGROUND:

After she retired from the Fairfax County Public Library (FCPL) system in 2017, Ms. Promila Chhabra and her husband, Krishan, looked for a way to express her gratitude to the County for her fulfilling career as a library aide at the Library. The couple became inspired by the idea of donating a monument for installation on the Library grounds. One sculpture that caught their attention is a life-size bronze of a girl reading a book by artist Dennis Smith. This sculpture weighs 108 pounds and measures approximately 51 inches wide, 19 inches high and 16 inches deep. The donors envision mounting the bronze on a 3-foot cinderblock pedestal with brick siding and a polished black stone pedestal top, with a small plaque on one side of the pedestal that states the dedication is made "in honor of Promila Chhabra's years of service" to the Library.

Pursuant to Fairfax County Procedural Memorandum 25-32 on donations of public art, the Chhabras submitted their formal proposal to an interagency staff committee (Committee) formed to review their donation to ensure that it was in compliance with the requirements set forth in the policy. The Committee found that the sculpture's theme of childhood literacy was a topic of interest to the local community and an approved topic



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for government speech. The proposed location of the art installation in the mulch bed near the Library's front window is ADA-accessible and could be viewed from both the interior and exterior of the Library. Since the building was only recently renovated, this landscaped area would not need to be incorporated into any future capital project.

After endorsing the conceptual design for the artwork, the Committee and the donors negotiated the terms of a Memorial Maintenance Agreement (Agreement) for the installation of the art on the Library grounds. The Chhabras would select the contractor and bear all of the costs of construction, while the County would have the right to review all plans and approve the contractor. Because staff believes the statue and its accompanying pedestal would present few maintenance issues, staff assigned responsibility in the Agreement for ongoing maintenance concerns to the County.

Staff recommends that the Board accept the donation of public art from the Chhabras since it conforms to the County's donation policy and will enhance the curb appeal of the entrance to the Library.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

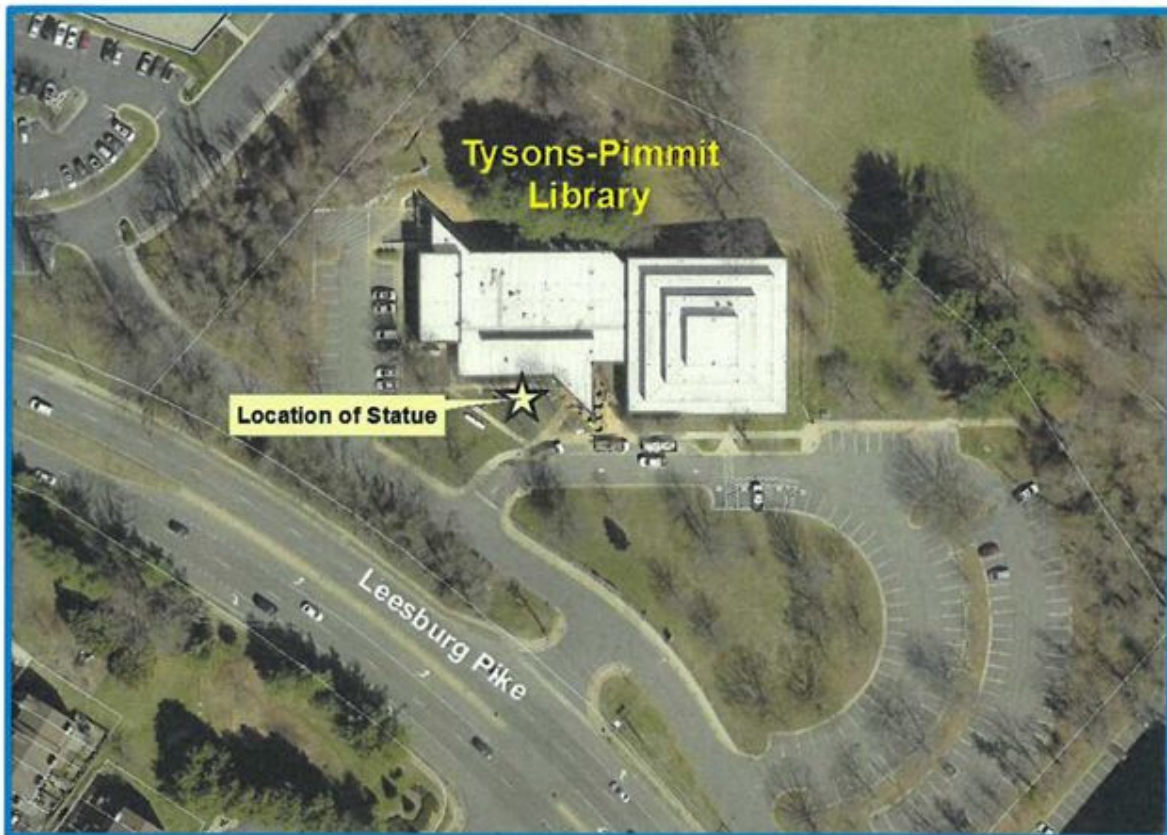
Attachment 1 – Proposed Location of Public Art and Photograph of Statue  
Attachment 2 – Memorial Maintenance Agreement

STAFF:

Joseph M. Mondoro, Chief Financial Officer  
Jessica Hudson, Director, Fairfax County Public Library  
Jose A. Comayagua, Jr., Director, Facilities Management Department  
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

Linda Choe, Assistant County Attorney



**PROPOSED LOCATION OF PUBLIC ART**



**GIRL READING BY DENNIS SMITH**

**MEMORIAL MAINTENANCE AGREEMENT**

This MEMORIAL MAINTENANCE AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic ("County"), and **PROMILA AND KRISHAN CHHABRA**, husband and wife (collectively, "Donors"). The County and the Donors are collectively known as "the Parties".

**WITNESSETH:**

WHEREAS, the property owned by the County that is the subject of this Agreement is the Tysons-Pimmit Regional Library, located at 7584 Leesburg Pike, Falls Church, Virginia 22043, and shown on the Fairfax County Real Property Identification Map as Tax Map No. 40-1 ((1)) Parcel 37, which was acquired by the County by a deed recorded among the land records of Fairfax County, Virginia, in Deed Book 4755 at Page 0186 ("Property"); and

WHEREAS, the Agreement abides by the Fairfax County, Virginia Procedural Memorandum #25-32 detailing the policy regarding the placement of permanent memorials, monuments and works of public art on Fairfax, County property. Memorial ("Memorial") shall be defined as "a large-scale marker, plaque or other installment intended to commemorate a person or event."

WHEREAS, Donors wish to install and donate a Memorial to the County in the mulched beds near the front windows of the Property designated as "Location of Statue" on Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Memorial will consist of a life-size bronze statue created by artist Dennis Smith of a girl reading a book, measuring 51 inches wide, 19 inches high and 16 inches deep and mounted on a 3-foot cinderblock pedestal with brick siding and a granite/polish black stone pedestal top, substantially in the same form as Exhibit B attached hereto and incorporated herein. Said Memorial signifies Donors' intention to promote literacy in the community and for Ms. Chhabra's contribution and substantial impact upon Fairfax County for thirty (30) years of service as a Public Library Aide; and



WHEREAS, the Memorial and the area of the Property immediately surrounding the Memorial comprise the "Donors' Area."

NOW, THEREFORE, in consideration of the foregoing premises, the following terms and conditions, and for and in consideration of the Memorial provided by Donors to the County, the Parties hereto agree as follows:

1. The foregoing recitals are incorporated herein by reference as if fully set forth herein.
2. The Donors shall be permitted to use the Donors' Area for the purposes named herein, including the right of pedestrian access to and from said area. Donors shall not use or occupy or permit the Donors' Area to be used or occupied for any unlawful or illegal purpose.
3. The Donors shall indemnify, defend and hold harmless the County, its officers and employees, from and against any claims, demands, cause of action, lawsuits, litigation, loss, cost, damage, judgments, including attorneys' fees and costs, and/or liability of any kind arising out of or relating to the construction of the Memorial, Donors' Area, and/or the work performed by the Donors under this Agreement during the construction of said Memorial. Donors' obligation to indemnify shall continue until the County's acceptance of the Memorial. Acceptance shall occur when the County accepts the Memorial after it has met the required specifications as written in Paragraphs 4 to 7 of this Agreement.
4. Donors shall bear the sole cost and responsibility for completing the design of the installation in accordance with any conditions imposed by the County, obtaining any and all other required permits and approvals from the County and any other regulatory authority, contacting Miss Utility and completing all stipulations as required by Miss Utility prior to the start of construction, posting any and all required bonds and/or escrows and constructing and installing the Memorial in accordance with all plans and permits and all other applicable ordinances, regulations and laws. The Donors shall engage the services of a qualified contractor licensed in the Commonwealth of Virginia to complete the installation and obtain all necessary permits and approvals. The County shall have the right to review and approve the selection of the contractor and any changes proposed to the design during installation/construction. The County shall have the right to send County staff to attend any construction-related meetings.
5. Until the County's approval of the construction and acceptance of the Memorial, the Donors will require the approved contractor carry Commercial Automobile and General

Liability insurance in the amount of \$500,000 per occurrence/aggregate, to protect the interest of the County against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation during construction. The County of Fairfax, its employees and officers, shall be named as an insured in the General Liability policy. Donors shall have no obligation to insure the Memorial after the County's acceptance.

6. Upon acceptance of the Memorial to the satisfaction of Facilities Management Department ("FMD"), all right, title and interest in the Memorial shall be transferred to the Board, including any and all construction warranties associated with the Memorial. All bonds and/or escrows shall be returned to the Donors after acceptance of the Memorial. If the Memorial is not constructed to the satisfaction of FMD, then all items comprising the Memorial shall be immediately removed from the Property at the Donors' sole cost and at the direction of FMD within the timeframes established by FMD. If the Memorial is not immediately removed by Donors within the timeframes established by FMD, the County shall have the right, but not the obligation, to remove and dispose of such materials and the Donors shall be responsible for reimbursing the County for all costs and expenses associated with such removal.

7. Donors shall install the Memorial within the Donors' Area at the sole expense of the Donors in a condition acceptable to the County.

8. The County will provide snow, leaf, or litter removal to, from, or within the Donors' Area according to its own schedule and priority at no cost to the Chhabras.

9. The County shall not bear any responsibility or liability for any damage to the Donors' Area or any injury to any person in or about the Donors' Area. Nothing contained herein is intended to or shall be construed as a waiver of the sovereign immunity of Fairfax County, Virginia.

10. This Agreement shall not be construed to convey any utility service or other easement of any kind on the Donors' Area or the Property to the Donors.

11. The Donors shall comply with all applicable Fairfax County ordinances and regulations and state code provisions and regulations that are applicable to the Donors' activities under this Agreement, including, but not limited to the Americans with Disabilities Act.

12. The County and Donors have agreed that the Memorial will require less than \$1,000.00 worth of maintenance per year.



13. Donors shall provide notice to the County upon ordering the Memorial and include an expected timeline of when the Memorial shall be ready for shipping and installation. Donors must install the Memorial within one (1) year of notice unless otherwise agreed upon by the Parties ("Installation Period"). The County may not terminate this Agreement during the Installation Period. If the Memorial has not been installed within one (1) year of the notice, then the County may terminate this Agreement as stated in Paragraph 14 below.

14. Unless otherwise stated, this Agreement may be terminated by the County for any reason, including, without limitation, if the County determines, in its sole discretion, that the Donors are not acting in accordance with the terms of this Agreement, the Donors are causing an adverse impact to the County or the Property, or if the Donors' Area is needed by the County for any other reason. The County shall have the right to remove the Memorial within one-hundred twenty (120) days of issuing said notice to Donors. All items comprising the Memorial shall be removed from the Property by the County under the direction of FMD within the timeframes established by FMD.

15. In the event that the County, in its sole discretion, determines that the terms of this Agreement have been violated, the County shall notify the Donors in writing of the determination and allow sixty (60) days for the Donors to correct any other issues to the satisfaction of the County. Upon correction of all identified violations to the satisfaction of the County, the County shall notify the Donors, in writing, of its acceptance of the Donors' corrective action. If the Donors fail to correct maintenance or other issues in a manner satisfactory to the County, in its sole discretion, the County may terminate this Agreement as set forth in Paragraph 14 above.

16. The County shall have no obligation to replace the Memorial in the event the Memorial is partially or totally damaged or destroyed. If the County chooses to relocate the library to a new facility, the County has no obligation to relocate the Memorial to the new library facility but may do so if it so chooses. The County shall provide notice of relocation to Donors within one-hundred twenty (120) days of relocation. Should the County decide not to relocate the Memorial, all items comprising the Memorial shall be removed from the Property by the County under the direction of FMD within the timeframes established by FMD.

17. No assignment by the Donors of this Agreement or any rights hereunder shall be made without the prior written consent of the County.

18. Notices under this Agreement shall be deemed to be properly served if delivered in writing by certified mail with return receipt requested to the following addresses or such other places as the parties reasonably designate:

To the County:

Director, Facilities Management Department  
12000 Government Center Parkway  
Suite 424  
Fairfax, Virginia 22035-0011

To the Donors:

Promila and Krishan Chhabra  
1361 Carpers Farm Way  
Vienna, Virginia 22182

It shall remain the responsibility of the Parties to notify the other of any change in address within thirty (30) days of the move.

18. Choice of Law, Venue Selection, and Agreement Interpretation:

- A. If this Memorial Maintenance Agreement is to be interpreted by a court or any other decision-maker during the proceedings of a dispute resolution process, this Memorial Maintenance Agreement will be considered to have been drafted by the County and Donors as joint authors;
- B. This Memorial Maintenance Agreement shall be governed by, construed, and enforced under the law of the Commonwealth of Virginia and shall only be enforceable in the Fairfax County Circuit Court or Fairfax County General District Court;
- C. If any provision of this Memorial Maintenance Agreement shall be held to be invalid, illegal, unenforceable, or void, the remaining provisions shall remain in full force and effect; and
- D. This Memorial Maintenance Agreement can be amended or modified only by a written agreement duly executed by the parties.

19. This Agreement contains the entire agreement of the parties, and it shall not be amended or modified except by an agreement in writing by the parties.

[SIGNATURES APPEAR BELOW]

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

\_\_\_\_\_  
**PROMILA CHHABRA**

\_\_\_\_\_  
**KRISHAN CHHABRA**

State of Virginia  
County of Fairfax, to wit:

The foregoing Memorial Maintenance Agreement was acknowledged before me by Promila Chhabra and Krishan Chhabra on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration Number: \_\_\_\_\_



**BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**

Executed on behalf of the Board of Supervisors of Fairfax County, Virginia, by authority granted by said Board.

By: \_\_\_\_\_  
Joseph M. Mondoro, Chief Financial Officer

State of Virginia  
County of Fairfax, to wit:

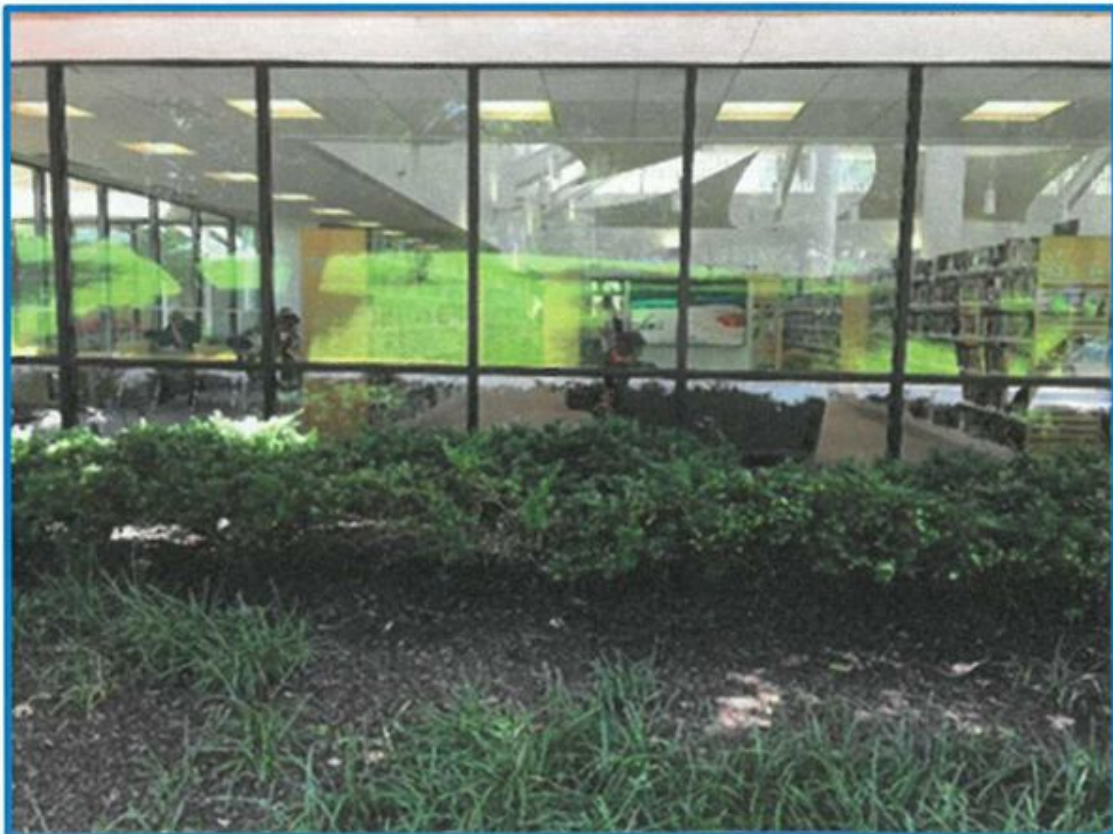
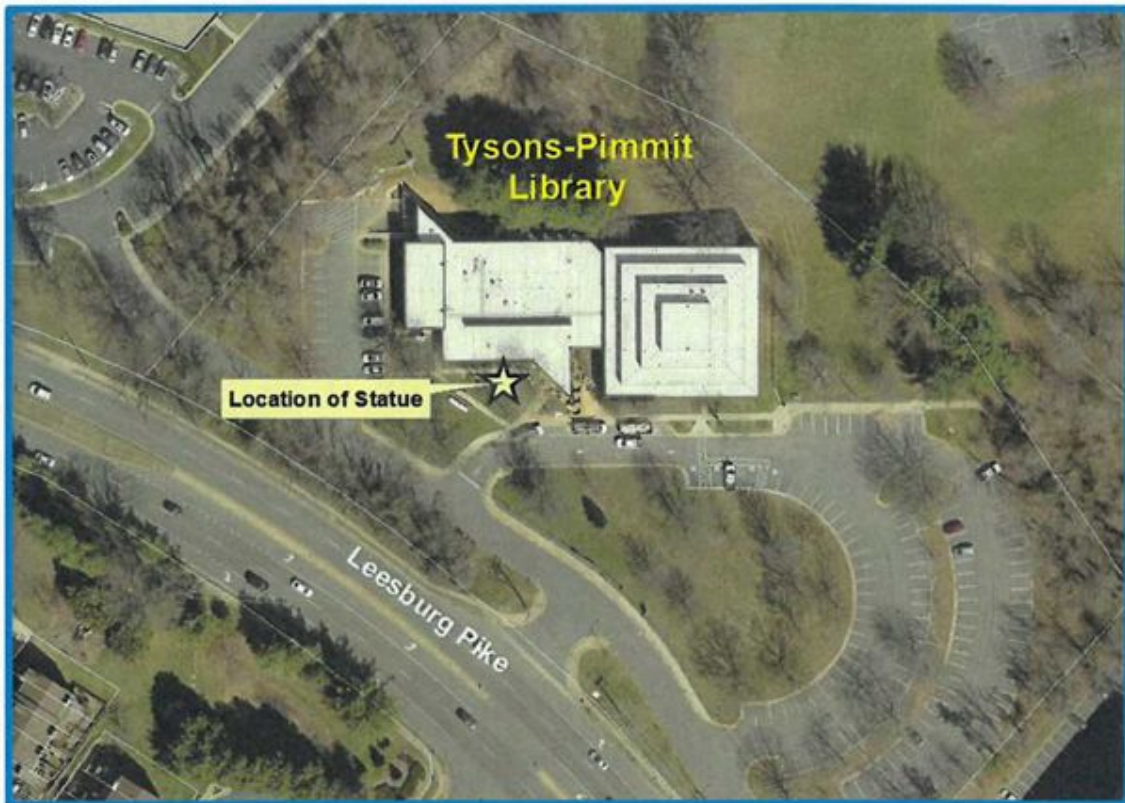
The foregoing Memorial Maintenance Agreement was acknowledged before me by Joseph M. Mondoro, Chief Financial Officer, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

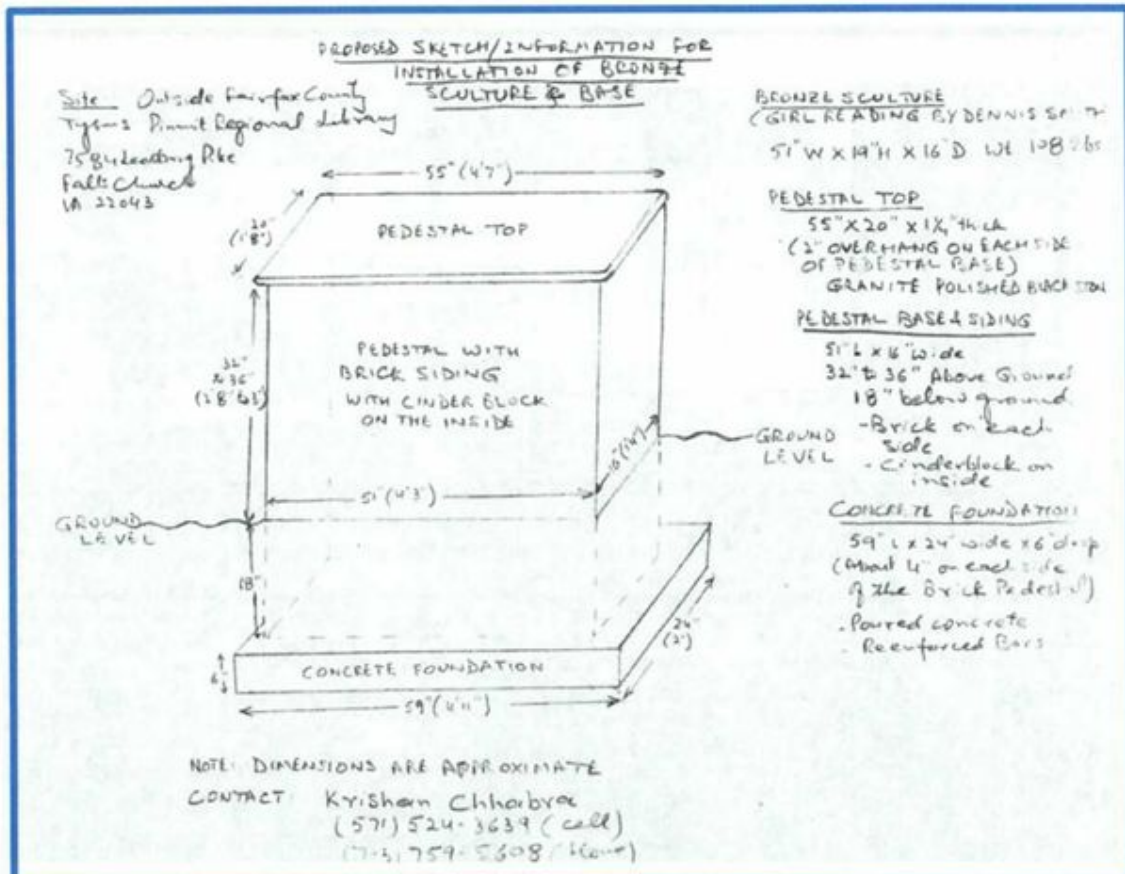
Registration Number: \_\_\_\_\_

EXHIBIT A  
PROPOSED LOCATION OF PUBLIC ART





# EXHIBIT B MEMORIAL DESIGN



ACTION - 6

Approval of a Letter Agreement Between Fairfax County Department of Transportation and Fairfax County Park Authority for the Construction of the I-66 Trail at Random Hills (Braddock District)

ISSUE:

Board approval of an agreement between Fairfax County Department of Transportation (FCDOT) and the Fairfax County Park Authority (FCPA) to administer the proposed construction and maintenance of a portion of the I-66 Trails.

RECOMMENDATION:

The County Executive recommends that the Board approve a letter agreement (Attachment I) between FCDOT and FCPA to manage the design, construction and maintenance of the I-66 Trails project on FCPA property in Random Hills Park.

TIMING:

The Board should act on this item on September 24, 2019, to allow the construction contract for the proposed I-66 Trails to move forward with project oversight by FCDOT.

BACKGROUND:

The Transform 66 project plans to complete a parallel trail along the I-66 highway corridor as part of the widening to implement Express Lanes Outside the Beltway. In areas where the highway right-of-way is limited and the trail cannot be accommodated, portions of the trail will continue along the street network or FCPA property, until it can be reconnected to the trail located in the highway right-of-way.

One such section is through Random Hills Park, which will link the highway portion of the trail to areas west of the park, such as Random Hills Road, Post Forest, the Fair Lakes area, and ultimately return to the highway right-of-way. Random Hills Park is property of the FCPA and currently has an existing trail that will be connected to the I-66 trail and improved to provide greater functionality for additional users of the corridor-wide trail.

Given that the location of the Random Hills Park trail is mostly within FCPA property and FCPA has considerable experience building trails, a partnership between FCPA and FCDOT was formed for the purpose of building a trail through Random Hills Park to

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connect to the I-66 Trails. Under this agreement FCPA will administer the design and construction of the proposed I-66 Trails in accordance with all applicable federal, state and local laws and regulations but with oversight from FCDOT.

FISCAL IMPACT:

Funding for the I-66 Trails project will be provided as part of the Transform I-66 Outside the Beltway Project under an agreement between FCDOT and the Virginia Department of Transportation (VDOT). The total estimated project cost is \$809,900 (Attachment 2). There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Letter Agreement for Project Administration of I-66 Trails Improvements

Attachment 2: Random Hills Scope and Budget Schedule

STAFF:

Rachael Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

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

Chris Wells, Active Transportation Program Manager, FCDOT

Martha Coello, Chief, Special Projects Division, FCDOT

Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT

Brent Riddle, Coordination and Funding Division, FCDOT

ASSIGNED COUNSEL:

Robert M. Falconi, Assistant County Attorney



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

"[Month Day, Year]"

**TO:** Kirk Kincannon  
Director, Fairfax County Park Authority

**FROM:** Tom Biesiadny  
Director, Fairfax County Department of Transportation

**SUBJECT:** Letter Agreement for Project Administration of I-66 Trail Projects

This letter agreement (Agreement) made and executed in duplicate on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the Fairfax County Park Authority (Park Authority) and Fairfax County (County) will set forth the necessary funding, design, land acquisition, construction and administration requirements for the design, construction, and completion of the following I-66 Trails project (collectively defined as "Project"), and further described in the Project Scope, Budget, and Schedule (Attachment 1):

- Random Hills Park Trail Improvements

The County and Park Authority further agree to several Project-specific conditions and requirements as outlined in this Agreement and its attachment to ensure a timely and smooth progression for Project completion.

The Project will be designed and constructed in accordance with all applicable federal, state, and local laws and regulations, and the estimates in the Project Scope, Budget, and Schedule established by the County and Park Authority.

Pursuant to this Agreement,

A. The Park Authority agrees:

1. To complete the work identified in Project Scope, Budget, and Schedule. The agreed-upon schedule may be adjusted by the Parties for any delays due to unforeseen circumstances.
2. To act as the Project Manager for the Project. Financing for the Project will be with fund provided by the County in accordance with this Agreement. Since the County is considered responsible for the funding of this Project, all Project decisions will be subject to final County approval as it deems necessary and appropriate.

Fairfax County Department of Transportation  
4050 Legato Road, Suite 400  
Fairfax, VA 22033-2895  
Phone: (703) 877-5600 TTY: 711  
Fax: (703) 877-5723  
[www.fairfaxcounty.gov/fcdot](http://www.fairfaxcounty.gov/fcdot)



3. That the Park Authority shall be responsible for all invoice tracking and will work with the County Department of Transportation per the following:
  - a. Park Authority Project staff time costs shall be well documented and charged to the project on a bi-weekly basis utilizing normal Work Performed for Others (WPFO) procedures. A summary report of charges and activities shall be sent to the County Department of Transportation on a quarterly basis for review and approval by the County.
  - b. Park Authority will review all contractor and consultant invoices and route payment requests to the County Department of Transportation. Park Authority shall submit to the County Department of Transportation invoice documents in formats that follow established County invoicing procedures.
  - c. Once Park Authority has received any Project invoices, Park Authority will have 15 days to review, approve or reject, and submit invoices to the Department of Transportation; after which the County Department of Transportation will also have 15 days to review, approve or reject, and make available to the Park Authority payment for the consultant and/or contractor.
4. The design, construction, and completion of the Project shall be performed in accordance with all applicable federal and state laws, regulations, and standards approved by the County.
5. To adhere to the agreed-upon schedule referenced in Attachment 1 and will coordinate with the County on major milestones that may require modifications to the schedule. The agreed-upon schedule will be adjusted for any delays in the schedule due to Project-related activities by County staff and/or required by the County
6. To give the County the opportunity to review the design contracts at least 15 days prior to the letting of the design contracts for the Project and will be accorded the opportunity to review the design plans and cost estimates at each stage of Project development.
7. To provide to the County a copy of the final site plans for the Project upon completion of final design.
8. To commence with the bidding, award, and administration of the construction contracts for the Project following both parties' concurrence that design phases have been concluded satisfactorily to both parties.
9. To provide during the construction and the completion of the Project and all activities associated therewith, to include, but not be limited to: project management, budgetary

controls, further engineering, survey and field engineering, and if necessary in tandem with the County, any additional utility relocations, construction, contract administration, permitting and inspection activities for the Project as is required by applicable law.

10. To maintain accurate and complete records of the Project's development and documentation of all expenditures and make such information available for inspection or auditing by the County. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final request for payment in the Project.
11. The County will be accorded the opportunity to review all design and construction documents at any stage of Project.
12. All Park Authority's contractors shall name the County as an additional insured on any insurance policy issued for the work to be performed for the Project by or on behalf of Park Authority for the Project and present the County with satisfactory evidence thereof before any work on the Project commences or continues.
13. To provide certification to the County, that upon final payment to all contractors for the Project, Park Authority will use the Project for its intended purposes for the duration of the Project's useful life.
14. To comply with all applicable requirements of the Virginia Public Procurement Act and other applicable Code of Virginia provisions, or local ordinances which govern the letting of public contracts.
15. That, upon approval of final design by the County and Park Authority, the Park Authority shall, at no additional cost to the County, grant to the County all easements that may be necessary for temporary construction, permanent grading, and permanent trail and utility easements on Park Authority property for the perpetual use, maintenance and operation of the trail.

B. The County shall:

Provide to the Park Authority the necessary funding for the Project in accordance with Project Scope, Budget, and Schedule in the amount not to exceed \$809,000 for design, engineering, including all environmental work, any additional right-of-way acquisition or utility relocations, inspection services, testing services, construction, and/or capital asset acquisition(s) as set forth in this Agreement.



1. If the County and or the Park Authority determine that the Project may not be feasible as a result of the standard process, the Park Authority will coordinate with the County to meet, confer and consider alternatives that could move the Project to the next stage.
2. The Park Authority has no other funding for this project. If for any reason the Park Authority is unable to complete the Project within the \$809,000 budget provided by the County and/or if claims are made that exceed the \$809,000 amount, upon prior notice to the County, consultation with the County regarding the basis for the proposed additional costs, and consent by the County, the County shall provide funding for such additional costs and the Park Authority incurs no obligation for such costs.
3. All requirements for funding by the County under this Agreement are subject to annual appropriations by the Fairfax County Board of Supervisors.

C. The Parties agree:

1. Nothing herein shall be construed as a waiver of the County's or the Park Authority's sovereign immunity.
2. This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.
3. Should this Agreement be terminated by either party upon at least 45 days written notice given to the party, prior to the effective date of termination, the parties shall meet and confer to discuss options to complete the Project or preserve the County's interest in the Project.
4. Should there be a breach of agreement, by either party, the non-breaching party shall provide notice to the other party with a specific description of any alleged breach of this Agreement. Upon receipt of the notice of breach, the breaching party will be provided the opportunity to cure such breach or to provide a plan to cure. If, within sixty (60) days after receipt of the written notice the breaching party has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the other party, then the other party may pursue any remedies that it may have under this Agreement or at law.
5. Upon completion of the Project, the trail as an asset will belong to the Park Authority. The County shall fund the maintenance for the trail on an annual basis and the Park Authority or their respective designees will provide, or have others provide, maintenance of the Project, unless otherwise agreed to by the parties.

6. Upon completion of the Project, the County shall maintain any future electrical service, lighting and related fixtures as an asset, and provide, or have others provide, maintenance of the lighting system and any required snow removal as deemed appropriate by the County. The County shall be responsible for any Utility bills related to any future electrical service.

7. The Park Authority shall provide notices and correspondence to the County via email and/or U.S. mail to:

Tom Biesiadny ([Tom.Biesiadny@fairfaxcounty.gov](mailto:Tom.Biesiadny@fairfaxcounty.gov)), Director, FCDOT, and to Lauren Delmare, P.E. ([Lauren.Delmare@fairfaxcounty.gov](mailto:Lauren.Delmare@fairfaxcounty.gov)), Project Manager, FCDOT, 4050 Legato Road, Suite 400, Fairfax, VA 22033-2895.

The County shall provide notices and correspondence to the Park Authority via email and/or U.S. mail to:

Kirk Kincannon (Kirk.[Kincannon@fairfaxcounty.gov](mailto:Kincannon@fairfaxcounty.gov)), Director, FCPA and to Thomas A. McFarland ([Thomas.McFarland@fairfaxcountv.gov](mailto:Thomas.McFarland@fairfaxcountv.gov)), Trails Program Manager, FCPA 12055 Government Center Parkway, Suite 927, Fairfax, Virginia, 22033

8. This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia.

**Signatures below acknowledge project concurrence**

\_\_\_\_\_  
County of Fairfax

By: Tom Biesiadny  
Director, Fairfax County Department of Transportation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Fairfax County Park Authority

By: Kirk Kincannon  
Director, Fairfax County Park Authority

\_\_\_\_\_  
Date

[Month Day, Year]"

Page 6 of 6

Attachment:

1. Project Scope, Budget, and Schedule

Cc: Eric Teitelman, P.E., Chief, Capital Projects & Traffic Engineering, Division, FCDOT  
Chris Wells, Active Transportation Program Manager, FCDOT  
Todd Wigglesworth, Division Chief, Coordination and Funding, FCDOT  
Ray Johnson, Funding Section Chief, Coordination and Funding, FCDOT  
Rickey Foley, Right of Way Project Coordinator, CPTED, FCDOT  
Ellen F. M. Posner, Esq., Coordination & Funding Division, FCDOT  
Tom McFarland, Project Manager, Planning & Development Division, FCPA  
David Bowden, Chief, Planning & Development Division, FCPA

## Attachment 2

### Project Cost Estimate - I-66 Trail

Project ID / Name Random Hills Park Trail Improvement  
 Date: 3/19/2019  
 Project description: 850 LF asphalt trail

TOTAL project cost: \$810,000

	stone base	asphalt	concrete	Other (Bridge, access)-		
Construction:	- LF	LF	LF	LF	Total	Comments
Access		850			\$ 34,000.00	Stone and fabric for access in wet area
Trail - improved					\$ -	
Trail - new	850	750	100		\$ 129,500.00	10 ft Wide Asphalt/Concrete Trail
Road crossing				60	\$ 10,500.00	Improve Roandom Hills Crossing
Steel bridge				40	\$ 112,000.00	Bridge over pond outfall
F/G Bridge					\$ -	
F/W crossing					\$ -	
Invasive controls		850			\$ 11,900.00	Invasive plants and unhealthy trees
Fill Material (Hauling and Placement)					\$ 70,000.00	Fabric and fill placed in lifts. Some wall.
Culverts (2)					\$ 10,000.00	Drainage for wet area
Crossing Signal					\$ 15,000.00	HAWK Type Signal, Auto Activated
CONSTRUCTION TOTAL:					\$ 392,900.00	
<b>Other</b>						
Utilities - Lump Sum						
Inspection		1			\$ 10,000.00	GER, SIER for bridge, Geotech for fill
Site fixtures - HAWK Crossing - Lump Sum						
OTHER TOTAL:					\$ 10,000.00	
<b>Design</b>					Total	
Design - in house					\$ -	
Design consultant / site permit		1			\$ 160,000.00	FCDOT Consultant
Building Permit					\$ 3,000.00	Bridge Permitting
Environmental Permit		1			\$ 15,000.00	MSP, JPA, Stormwater
Consultant Const. Admin					\$ 13,000.00	Construction admin, bid assist.
Other - lump sum					\$ 10,000.00	Tree Inventory
DESIGN TOTAL					\$ 201,000.00	
<b>Scope</b>						
Land acquisition - Lump Sum					\$ -	
Public input - Lump Sum						
Archaeology - Lump Sum					\$ 1,000.00	Archeology investigation performed by FCPA
SCOPE TOTAL					\$ 1,000.00	
<b>Administrative:</b>						
Contingency- 30% construction					\$ 118,000.00	
Administrative - 12% construction and design					\$ 87,000.00	Design+Permitting+Construction Admin
ADMINISTRATIVE TOTAL					\$ 205,000.00	
PROJECT TOTAL					\$ 809,900.00	

Board Agenda Item  
September 24, 2019

ACTION - 7

Approval of a Letter Agreement Between Fairfax County Department of Transportation and Fairfax County Park Authority for the Construction and Maintenance of the Ashgrove Trail Extension (Hunter Mill District)

ISSUE:

Board approval of a Letter Agreement between Fairfax County Department of Transportation (FCDOT) and Fairfax County Park Authority (FCPA) to administer the construction and maintenance of the Ashgrove Trail Extension.

RECOMMENDATION:

Board approval of a Letter Agreement between FCDOT and FCPA (Attachment 4) to administer the proposed construction and maintenance of the Ashgrove Trail Extension.

TIMING:

The Board should act on this item on September 24, 2019, to allow for the proposed Ashgrove Trail Extension by FCPA to advance with oversight by FCDOT.

BACKGROUND:

The Ashgrove Trail Extension project is one of the approved projects originating from the Tysons Metrorail Station Access Management Study (TMSAMS). The goal of the TMSAMS projects is to create a more multi-modal transportation environment by building needed infrastructure to create better access to the Metrorail stations within Tysons.

As proposed, the Ashgrove Trail Extension will be located in the Tysons West area and will connect cyclists and pedestrians from the Tysons Green community to Westwood Center Drive, and ultimately to the Spring Hill Metrorail Station in Tysons. See Attachment 1: Tax Map 2018 Properties: 28-2 and 29-3.

Since the alignment of the trail follows FCPA easements, and FCPA has intimate knowledge of building park trails, a partnership between FCDOT and FCPA was formed. An initial agreement between FCDOT and FCPA for project design was signed on February 25, 2015 (Attachment 2). Under this new Letter Agreement, FCPA will construct the Ashgrove Trail Extension in accordance with all applicable federal, state, and local laws and regulations with oversight from FCDOT.

Board Agenda Item  
September 24, 2019

FISCAL IMPACT:

As part of the FY 2015 Carryover process, the Board approved a total of \$1,500,000 in funding for the Ashgrove Trail Extension project. These funds have been budgeted in Fund 40010, County and Regional Transportation Projects, as part of RSTP Advanced Project Implementation-TMSAMS project number 2G40-051-000, and are sufficient to fully fund this action. See Attachment 3: Ashgrove Trail Cost Estimate. There is no impact to the General Fund or any other project in the Transportation Priorities Plan (TPP).

ENCLOSED DOCUMENTS:

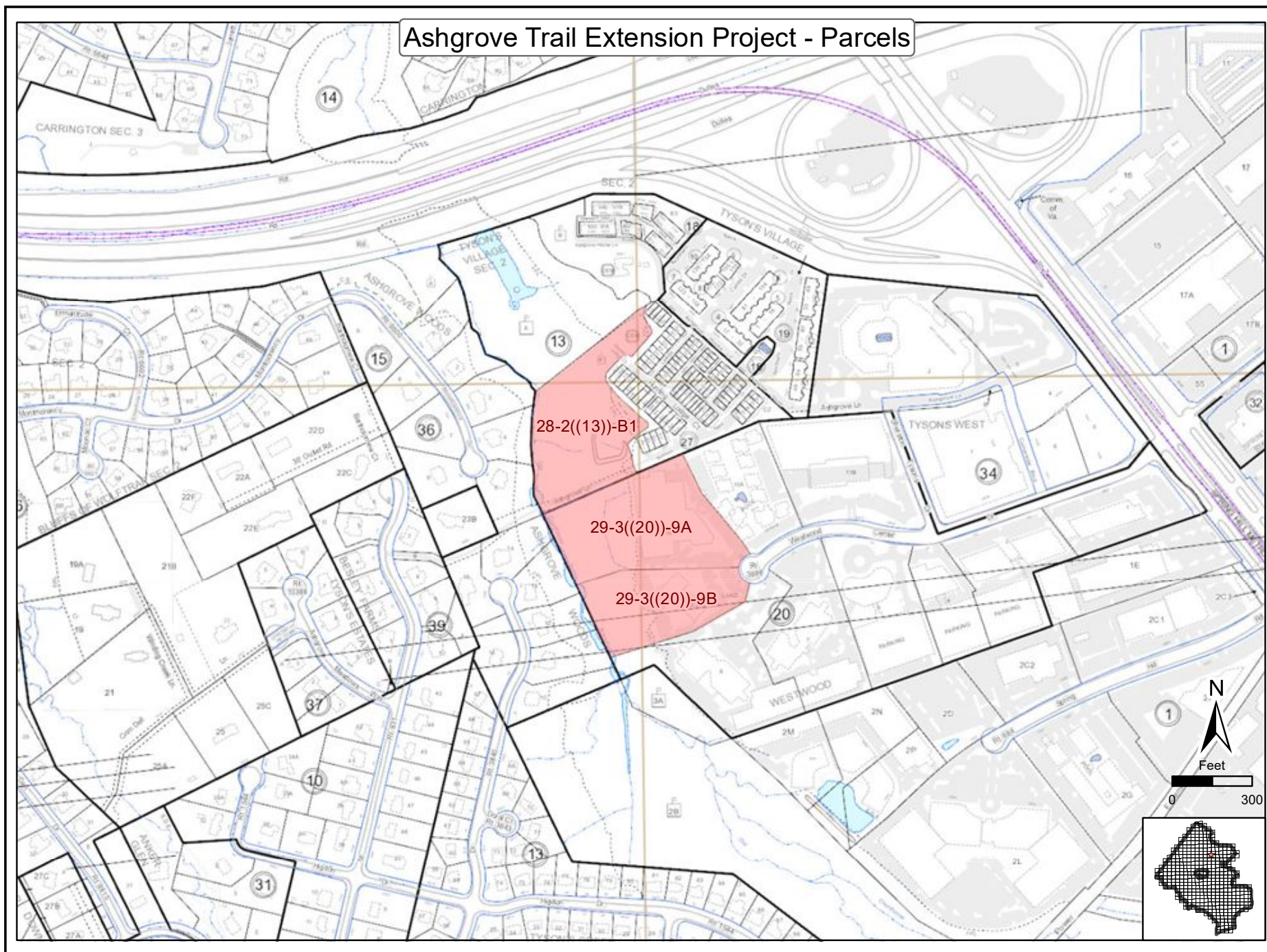
Attachment 1: Tax Map 2018 Properties: 28-2 and 29-3  
Attachment 2: Letter Agreement for Ashgrove Trail Extension Design  
Attachment 3: Ashgrove Trail Cost Estimate  
Attachment 4: Letter Agreement for Project Administration, Land Acquisition and Construction of Ashgrove Trail Extension with Supporting Documentation

STAFF:

Rachel Flynn, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric M. Teitelman, P.E., Chief, Capital Projects and Operations Division, FCDOT  
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT  
Brent Riddle, Coordination and Funding Division, FCDOT  
Chris Wells, Active Transportation Program Manager, FCDOT

ASSIGNED COUNSEL:

Robert Falconi, Assistant County Attorney





## County of Fairfax, Virginia

---

**DATE:** February 25, 2015

**TO:** Kirk Kincannon  
Director, Fairfax County Park Authority

**FROM:** Tom Biesiadny  
Director, Fairfax County Department of Transportation

**SUBJECT:** Letter Agreement for Project Administration of Ashgrove Trail Extension,  
TMSAMS-815, FOCUS #2G40-051-015

This letter agreement made and executed between the Fairfax County Park Authority (Park Authority) and Fairfax County (County) will set forth the funding and administration for the design phase of the "Ashgrove Trail Extension Project" (Project).

The County and Park Authority agree to several Project specific conditions and requirements as outlined in this letter and its attachments to ensure a timely and smooth progression for Project design completion.

The Project will be designed and engineered in accordance with all applicable federal, state and local laws and regulations and the "Project Schedule" (Attachment 1) established by the County and Park Authority.

It is the intention of the parties that should the Project be completed, the County will maintain the trail and lighting.

Pursuant to this Letter Agreement, Park Authority agrees:

1. The Ashgrove Trail Extension Project, as described on "Conceptual Layout" (Attachment 2), shall be located within Park Authority easements (Attachment 3), as further located on "Tax Map No. 29-3-0008" and "Tax Map No. 29-3-009" and "Tax Map No. 29-3-009A" (Attachment 4). The trail shall be connected from the existing Ashgrove Trail between Ashgrove Lane and Northern Neck Drive to the western terminus of Westwood Center Drive.
2. Park Authority shall act as the Project Manager for the Project as further described in this letter of agreement. However, all Project design decisions will be subject to final County approval.

---

Fairfax County Department of Transportation  
4050 Legato Road, Suite 400  
Fairfax, VA 22033-2895  
Phone: (703) 877-5600 TTY: 711  
Fax: (703) 877-5723  
[www.fairfaxcounty.gov/fcdot](http://www.fairfaxcounty.gov/fcdot)





3. Park Authority shall be responsible for all invoice tracking and budgeting tasks and will work with County staff per the following:
  - A. Park Authority Project staff time costs shall be well documented and sent to the County on a monthly basis for which the Park Authority will be reimbursed by the County.
  - B. County staff will review all design consultant invoices, and make payments. Park Authority shall submit to the County invoice documents in formats that follow established County invoicing procedures
  - C. Once Park Authority has received any Project invoices, Park Authority will have 15 days to review, approve and submit invoices to the County; after which the County will also have 15 days to review approve and make payment to the design consultant.
4. Funding for this Project is available through Fund 40010 (County and Regional Transportation Fund) in the total amount of \$418,000.
5. All design aspects for the Project shall be prepared in accordance with all applicable laws, regulations, and design standards to include compliance with all applicable Virginia and County procurement laws and regulations.
6. Park Authority shall adhere to the agreed upon schedule (Attachment 1) and will coordinate with the County on major milestones that may require modifications to the schedule. The agreed upon schedule will be adjusted for any delays in the schedule due to Project related activities by County staff and/or required by the County.
7. The County will be accorded the opportunity to review the design contract at least 15 days prior to the letting of the design contract for the Project and will be accorded the opportunity to review the design plans and cost estimates at each stage of Project development.
8. Park Authority shall provide to the County a copy of the final site plan for the Project upon completion of final design.
9. Park Authority shall retain all records for the Project for the time periods required by Virginia's Records Retention Act and shall make available to the County any such records upon request at no cost to the County.
10. If the County determines that the Project may not be feasible as a result of the standard design process, Park Authority will coordinate with the County to meet, confer and consider alternatives that would move the Project to the next stage, in accordance with County procedures and available funding.

11. Upon approval of final design by the County, Park Authority shall at no cost to the Project, grant to the County, all easements that may be necessary for temporary grading, construction and permanent trail and utility easements on Park Authority property or easements for the perpetual use, maintenance and operation of the trail as needed by the Project. The County shall prepare the easement documents for Park Authority approval.
12. All requirements for funding by the County under this letter agreement are subject to annual appropriations by the Fairfax County Board of Supervisors.
13. Nothing herein shall be construed as a waiver of the County's or Park Authority's sovereign immunity and nothing herein shall create or vest any rights in any third parties.
14. This letter agreement shall not be construed as creating any personal liability on the part of any officer, employee, agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.
15. Park Authority shall provide notices and correspondence to the County via email and/or U.S. mail to:

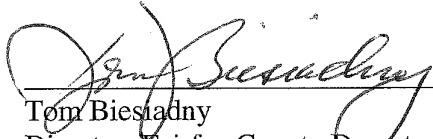
Tom Biesiadny ([Tom.Biesiadny@fairfaxcounty.gov](mailto:Tom.Biesiadny@fairfaxcounty.gov)), Director, FCDOT, and to Adam Lind ([Adam.Lind@fairfaxcounty.gov](mailto:Adam.Lind@fairfaxcounty.gov)), Project Manager, FCDOT, 4050 Legato Road, Suite 400, Fairfax, VA 22033-2895.

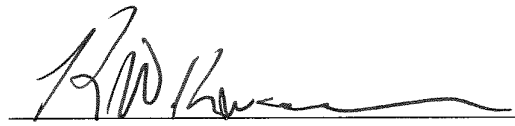
The County shall provide notices and correspondence to the Park Authority via email and/or U.S. mail to:

Kirk Kincannon (Kirk. [Kincannon@fairfaxcounty.gov](mailto:Kincannon@fairfaxcounty.gov)), Director, FCPA and to Tom McFarland ([Thomas.McFarland@fairfaxcounty.gov](mailto:Thomas.McFarland@fairfaxcounty.gov)), Project Manager, FCPA  
12055 Government Center Parkway, Suite 927, Fairfax, Virginia, 22033, and to Liz Cronauer ([Elizabeth.Cronauer@fairfaxcounty.gov](mailto:Elizabeth.Cronauer@fairfaxcounty.gov)), Trails Manager, FCPA  
12055 Government Center Parkway, Suite 927, Fairfax, Virginia, 22033

16. Upon approval of final design of the Project, the parties may negotiate a supplement to this letter agreement for the acquisition of right of way and construction of the Project.

**Signatures below acknowledge Project concurrence.**

  
\_\_\_\_\_  
Tom Biesiadny  
Director, Fairfax County Department of Transportation

  
\_\_\_\_\_  
Kirk Kincannon  
Director, Fairfax County Park Authority  
Attachments:

- 1-Project Schedule
- 2-Conceptual Layout
- 3-Easements and Proffer
- 4-Tax Map No. 29-03
- 5-Cost Estimate

cc: Eric Teitelman, P.E., Chief, Capital Projects & Traffic Engineering, Division, FCDOT  
W. Todd Minnix, P.E., Chief, Transportation Design Division, FCDOT  
Andrew Kolaitis, Right of Way Project Coordinator, CPTED, FCDOT  
Ellen F. M. Posner, Esq., Coordination & Funding Division (CFD), FCDOT  
Vanessa Aguayo, Transportation Planner III, CPTED, FCDOT  
Doug Miller, Environmental Project Coordinator, CPTED, FCDOT  
John Dresser, Engineer, Transportation & Design Division, FCDOT  
Ray Johnson, Transportation Planner III, CFD, FCDOT  
Janet Nguyen, Transportation Planner, CFD, FCDOT  
Elizabeth Cronauer, Trails Program Manager, FCPA  
David Bowden, Chief, Planning & Development Division, FCPA

Project Number:	16002-12	UPC Number:			
Project Location:	Fairfax County, Virginia	Designed By:	Rinker Design Associates, P.C.		
VDOT District:	Northern Virginia	Designer:	See Hoon Lee		
Project Manager:	John Cummings	Date:	10-Aug-18		
ASHGROVE TRAIL - QUANTITY LIST					
NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
GRADING ITEMS					
1	MOBILIZATION	LS	1	\$ 14,966.40	\$ 14,966.40
2	CONSTRUCTION SURVEYING	LS	1	\$ 5,986.56	\$ 5,986.56
3	CLEAR & GRUB	AC	0.55	\$ 12,790.00	\$ 7,034.50
4	FILL MATERIAL	CY	390	\$ 40.00	\$ 15,600.00
PAVEMENT ITEMS					
5	10' TRAIL	SY	920	\$ 36.00	\$ 33,120.00
6	#21-A AGGREGATE MATERIAL FOR SHOULDER	TON	131	\$ 30.00	\$ 3,929.06
7	MILL 2" ASPHALT PAVEMENT	SY	40	\$ 8.58	\$ 343.20
8	OVERLAY 2" ASPHALT PAVEMENT	SY	40	\$ 12.33	\$ 493.20
9	CONCRETE (RIP-RAP CROSSING)	SY	16	\$ 63.00	\$ 1,008.00
10	GABION MAT (RIP-RAP CROSSING)	CY	3	\$ 210.00	\$ 630.00
INCIDENTAL ITEMS					
11	REMOVE EX. RIP-RAP	SY	195	\$ 10.00	\$ 1,950.00
12	REMOVE ASPHALT PAVEMENT	SY	415	\$ 10.00	\$ 4,150.00
13	REMOVE FITNESS AREA	SY	25	\$ 100.00	\$ 2,500.00
14	HR-2 (HANDRAIL)	LF	29	\$ 120.00	\$ 3,420.00
15	CONCRETE COLLAR	SF	50	\$ 13.00	\$ 650.00
EROSION CONTROL/LANDSCAPING					
16	SUPER SILT FENCE	LF	1,715	\$ 13.00	\$ 22,295.00
17	GRAVEL STONE CONSTRUCTION ENTRANCE	EA	1	\$ 3,240.00	\$ 3,240.00
18	SEEDING INCLUDES FERTILIZING	SY	1,225	\$ 3.00	\$ 3,675.00
19	DECIDUOUS TREES 2" CALIPER	EA	58	\$ 880.00	\$ 51,040.00
20	EVERGREEN TREES 2" CALIPER	EA	3	\$ 490.00	\$ 1,470.00
SIGNAGE					
21	YIELD SIGN	EA	2	\$ 450.00	\$ 900.00
22	TEMPORARY CONSTRUCTION SIGN	SF	24	\$ 40.00	\$ 960.00
UTILITIES					
23	LIGHT POLE	EA	11	\$ 5,200.00	\$ 57,200.00
24	UTILITY POLE	EA	1	\$ 64,760.00	\$ 64,760.00
25	TRANSFORMER	EA	1	\$ 7,200.00	\$ 7,200.00
26	METER BOX	EA	1	\$ 1,000.00	\$ 1,000.00
27	36" HDPE CULVERT	LF	27	\$ 180.00	\$ 4,860.00
28	EW-1 (END WALL)	EA	2	\$ 1,920.00	\$ 3,840.00
29	RIP-RAP	SY	26	\$ 69.00	\$ 1,794.00
30	ADJUST SANITARY SEWER TOP	VF	1.24	\$ 214.45	\$ 265.92
Construction Sub Total					\$ 320,280.8
Contingency (10%)					\$ 32,028.09
CONSTRUCTION ESTIMATE TOTAL					\$ 352,308.93

Construction Total	\$ 352,308.93
Contract Contingency	\$ 35,230.89
Administration	\$ 35,230.89
Estimated CN Total	\$ 422,770.72



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

"[Month Day, Year]"

**TO:** Kirk Kincannon  
Director, Fairfax County Park Authority

**FROM:** Tom Biesiadny  
Director, Fairfax County Department of Transportation

**SUBJECT:** Letter Agreement for Project Administration of Ashgrove Trail Extension,  
TMSAMS-815, FOCUS #2G40-051-015

This letter agreement (Agreement) made and executed in duplicate on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the Fairfax County Park Authority (Park Authority) and Fairfax County (County) will set forth the necessary land acquisition, funding, construction and administration requirements for the construction and completion of the "Ashgrove Trail Extension Project" (Project).

In addition to the "The Design Letter Agreement" (Attachment 1) the County and Park Authority further agree to several Project specific conditions and requirements as outlined in this Agreement and its attachments to ensure a timely and smooth progression for Project construction and completion.

The Project will be constructed in accordance with all applicable federal, state and local laws and regulations and the estimated "Project Cost" ((Attachment 2) and any supplements thereto) established by the County and Park Authority and unless otherwise specified by the parties in writing, in accordance with the design in LDS Plan #3741-MSP-006-2

Pursuant to this Agreement,

A. The Park Authority agrees:

1. The Ashgrove Trail Extension Project, as described on Final Design (LDS Plan #3741-MSP-006-2), shall be located within Park Authority easements (Attachment 3), as further located on Parcels #28-2-((13))-B1, #29-3-((20))-9A, and #29-3-((20))-9B (Attachment 4). The trail shall be connected from the existing Ashgrove Trail between Ashgrove Lane and Northern Neck Drive to the western terminus of Westwood Center Drive, as has shown in LDS Plan #3741-MSP-006-2.

Fairfax County Department of Transportation  
4050 Legato Road, Suite 400  
Fairfax, VA 22033-2895  
Phone: (703) 877-5600 TTY: 711  
Fax: (703) 877-5723  
[www.fairfaxcounty.gov/fcdot](http://www.fairfaxcounty.gov/fcdot)



2. Park Authority shall act as the project manager. Financing for the Project will be with funds provided by the County in accordance with this Agreement. Since the County is funding this Project, all Project decisions will be subject to final County approval as it deems necessary and appropriate.
3. Park Authority shall be responsible for all invoice tracking and will work with the County's Department of Transportation per the following:
  - a. Park Authority Project staff time costs shall be well documented and charged to the project on a bi-weekly basis utilizing normal Work Performed for Others (WPFO) procedures. A summary report of charges and activities shall be sent to the Department of Transportation on a quarterly basis for review and approval by the County.
  - b. Park Authority will review all contractor and consultant invoices and route payment requests to Department of Transportation. Park Authority shall submit to the Department of Transportation invoice documents in formats that follow established County invoicing procedures.
  - c. Once Park Authority has received any Project invoices, Park Authority will have 15 days to review, approve or reject, and submit invoices to the Department of Transportation; after which the Department of Transportation will also have 15 days to review, approve or reject, and make available to the Park Authority payment for the consultant and/or contractor.
4. The construction and the completion of the Project shall be performed in accordance with all applicable federal and state laws, regulations, and standards approved by the County.
5. To commence with the bidding, award, and administration of the construction contract for the Project following both parties' concurrence that the design phase has been concluded satisfactorily to both parties.
6. To provide during the construction and the completion of the Project and all activities associated therewith, to include but not be limited to: project management, budgetary controls, further engineering, survey and field engineering, and if necessary in tandem with the County, any additional utility relocations, construction, contract administration, permitting and inspection activities for the Project as is required by applicable law.
7. To complete the work identified in LDS Plan #3741-MSP-006-2 and in accordance with the schedule for all activities required by paragraph 6. The agreed upon schedule may be adjusted by the Parties for any delays in the schedule due to unforeseen circumstances.

8. To maintain accurate and complete records of the Project's development and documentation of all expenditures and make such information available for inspection or auditing by the County. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final request for payment in the Project.
9. That the County will be accorded the opportunity to review all design and construction documents at any stage of Project.
10. That the Park Authority's contractors name the County as an additional insured on any insurance policy issued for the work to be performed in any way related to the Project and present the County with satisfactory evidence thereof before any work on the Project commences or continues.
11. To provide certification to the County, that upon final payment to all contractors for the Project, Park Authority will use the Project for its intended purposes for the duration of the Project's useful life.
12. To comply with all applicable requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, and the Fairfax County Code related to the governance of public contracts.
13. Upon approval of final design by the County and Park Authority, Park Authority shall, at no additional cost to the County , grant to the County all easements that may be necessary for temporary construction, permanent grading, and permanent trail and utility easements on Park Authority property for the perpetual use, maintenance and operation of the trail.

B. The County shall:

Provide to the Park Authority the necessary funding for the Project in accordance with paragraph (A)3. above and except provided for in paragraph B2 below, in the amount not to exceed \$600,000 for engineering, including all environmental work, any additional right-of-way acquisition or utility relocations, inspection services, testing services, construction, and/or capital asset acquisition(s) as set forth in this Agreement.

1. If the County and or Park Authority determine that the Project may not be feasible as a result of the standard process, Park Authority will coordinate with the County to meet, confer and consider alternatives that could move the Project to the next stage.

2. The Park Authority has no other funding for this project. If for any reason the Park Authority is unable to complete the Project within the \$600,000 budget provided by the County and/or if claims are made that exceed the \$600,000 amount, upon prior notice to the County, consultation with the County regarding the basis for the proposed additional costs, and consent by the County, the County shall provide funding for such additional costs and the Park Authority incurs no obligation for such costs.
3. All requirements for funding by the County under this Agreement are subject to annual appropriations by the Fairfax County Board of Supervisors.

C. The Parties agree:

1. Nothing herein shall be construed as a waiver of the County's or Park Authority's sovereign immunity.
2. This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.
3. Should this Agreement be terminated by either party upon at least 45 days written notice given to the party, prior to the effective date of termination, the parties shall meet and confer to discuss options to complete the project or preserve the County's interest in the project.
4. Should there be a breach of agreement, by either party, the non-breaching party shall provide notice to the other party with a specific description of any alleged breach of this Agreement. Upon receipt of the notice of breach, the breaching party will be provided the opportunity to cure such breach or to provide a plan to cure. If, within sixty (60) days after receipt of the written notice the breaching party has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the other party, then the other party may pursue any remedies that it may have under this Agreement or applicable at law.
5. Upon completion of the Project, the trail as an asset will belong to the Park Authority. The County shall fund the maintenance for the trail on an annual basis and the Park Authority or their respective designees will provide, or have others provide, maintenance of the Project, unless otherwise agreed to by the parties.
6. Upon completion of the Project, the County shall maintain the electrical service, lighting and related fixtures as an asset, and provide, or have others provide, maintenance of the lighting system and any required snow removal as deemed



appropriate by the County. The County shall be responsible for any Utility bills related to the electrical service.

7. The County shall provide the following annual maintenance funding (Maintenance Funding) to the Park Authority starting at the time of completion of this Agreement:

Annual Trail Maintenance Funding: \$800

In future years starting with FY2021, the County shall make the Maintenance Funding available to the Park Authority on July 1 of each year. The Maintenance Funding shall be adjusted each year by applying a multiplier consisting of the then current monthly Engineering News Record Construction Cost Index (ENRCCI) divided by the monthly ENRCCI at the time of the execution of this agreement. Unused Maintenance Funding shall rollover to future years for any necessary major maintenance work.

8. If there are unused funds at the completion of the services under the "The Design Letter Agreement" (Attachment 1) and/or this Agreement, then these unused funds shall be applied to the design and construction of the replacement of the Ashgrove Lane trail crossing over Old Courthouse Spring Branch via the Stormwater Planning Division stream restoration project.
9. Park Authority shall provide notices and correspondence to the County via email and/or U.S. mail to:

Tom Biesiadny ([Tom.Biesiadny@fairfaxcounty.gov](mailto:Tom.Biesiadny@fairfaxcounty.gov)), Director, FCDOT, and to Lauren Delmare, P.E. ([Lauren.Delmare@fairfaxcounty.gov](mailto:Lauren.Delmare@fairfaxcounty.gov)), Project Manager, FCDOT, 4050 Legato Road, Suite 400, Fairfax, VA 22033-2895.

The County shall provide notices and correspondence to the Park Authority via email and/or U.S. mail to:

Kirk Kincannon (Kirk.[Kincannon@fairfaxcounty.gov](mailto:Kincannon@fairfaxcounty.gov)), Director, FCPA and to Thomas A. McFarland ([Thomas.McFarland@fairfaxcounty.gov](mailto:Thomas.McFarland@fairfaxcounty.gov)), Trails Program Manager, FCPA 12055 Government Center Parkway, Suite 927, Fairfax, Virginia, 22033

10. This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia.

**Signatures below acknowledge project concurrence**

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County of Fairfax

By: Tom Biesiadny  
Director, Fairfax County Department of Transportation

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Date

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Fairfax County Park Authority

By: Kirk Kincannon  
Director, Fairfax County Park Authority

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Date

**Attachments:**

1. Design Letter Agreement
2. Project Cost Estimate
3. Easements
4. Parcels - #28-2-((13))-B1, #29-3-((20))-9A, and #29-3-((20))-9B

Cc: Eric Teitelman, P.E., Chief, Capital Projects & Traffic Engineering, Division, FCDOT  
Chris Wells, Active Transportation Program Manager, CPTED, FCDOT  
Todd Wigglesworth, Division Chief, Coordination and Funding, FCDOT  
Ray Johnson, Section Chief, Coordination and Funding, FCDOT  
Brent Riddle, Transportation Planner, Coordination and Funding, FCDOT  
Rickey Foley, Right of Way Project Coordinator, CPTED, FCDOT  
Ellen F. M. Posner, Esq., Coordination & Funding Division, FCDOT  
Tom McFarland, Project Manager, Planning & Development Division, FCPA  
David Bowden, Chief, Planning & Development Division, FCPA

Board Agenda Item  
September 24, 2019

ACTION - 8

Approval of Project Agreements Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fiscal Year (FY) 2020 Transit Assistance Grant Funds

ISSUE:

Approval for the Director of the Department of Transportation to sign nine Project Agreements with DRPT to enable the County's receipt of FY 2020 transit operating and capital assistance.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Director of the Department of Transportation to sign nine Project Agreements between DRPT and Fairfax County, in substantial form as those attached, for FY 2020 transit operating and capital assistance (Attachments 1 through 9).

TIMING:

The Board of Supervisors should act on this item on September 24, 2019, so that DRPT can release FY 2020 transit funding to Fairfax County.

BACKGROUND:

For more than 30 years, the state disbursed state transit assistance to the Northern Virginia jurisdictions through the Northern Virginia Transportation Commission (NVTC). Pursuant to the Code of Virginia, NVTC uses a Subsidy Allocation Model (SAM) to distribute regional transit funding among the jurisdictions.

Prior to 2013, NVTC processed three main funding agreements between Fairfax County and DRPT: two for Washington Metropolitan Area Transit Authority (WMATA) regional projects and one for Fairfax County local projects. In 2012, Fairfax County and DRPT entered into a Master Agreement for the Use of Commonwealth Transportation Funds (the Master Agreement), which provides the basis for which the County receives numerous transportation project grant funds.

NVTC acts as Fairfax County's agent for WMATA regional agreements. This relationship reduces the number of project agreements that Fairfax County is required to process. NVTC is also the grantee for Virginia's share of WMATA capital and operating funds,

Board Agenda Item  
September 24, 2019

which is brought forward in a separate agreement. As mentioned above, in FY 2020, Fairfax County is seeking approval for nine agreements in this Board Item.

FISCAL IMPACT:

The following nine attached agreements provide the County with \$4,185,400 for approved Fairfax County Transit Capital Projects and \$16,268,916 for operating assistance. Capital funding from the Commonwealth is provided on a reimbursement basis after the purchase and/or project is complete. These revenues are included in Fund 30000 (Metro Operations and Construction) and Fund 40000 (County Transit Systems). There is no General Fund impact.

ENCLOSED DOCUMENTS:

Attachment 1 – Project Grant # 72020-25: FY 2020 Fairfax Connector Operating Assistance  
Attachment 2 – Project Grant # 73020-39: Purchase of Passenger Shelters, Passenger Shelter Amenities and Bus Stop Improvements  
Attachment 3 – Project Grant # 73020-41: Purchase of Four Replacement Support Vehicles  
Attachment 4 – Project Grant # 73020-42: Funding the Third Party Contract for Bus Maintenance Inspections and Audits  
Attachment 5 – Project Grant # 73020-44: Funding the Rehabilitation and Rebuild of 25 Buses  
Attachment 6 – Project Grant # 73020-46: Funding Improvements to the Existing Bus Canopy and Bus Loop Adjacent to the Herndon-Monroe Parking Garages  
Attachment 7 – Project Grant # 73020-40: Purchase of Two Bobcats  
Attachment 8 – Project Grant # 73020-45: Funding for ADA Improvements at Five Park-and-Ride Facilities  
Attachment 9 – Project Grant #73020-43: Purchase of Engines, Transmissions, and Differentials

STAFF:

Rachel Flynn, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT  
Noelle Dominguez, Chief, Coordination Section, FCDOT  
Malcolm Watson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Robert M. Falconi, Assistant County Attorney

**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 72020-25**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively the “Parties”), is for the provision of funding for Fiscal Year 2020 operating assistance for the Grantee’s transit operations (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding in the Fiscal Year 2020 Six Year Improvement Program from the State Aid Operating Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
  - a. Provide Fiscal Year 2020 transit operations.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$16,268,916 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to

appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## **Appendix 1**

**Grantee: Fairfax County**

**Project: Fiscal Year 2020 Operating Assistance for  
the Grantee's Transit Operations**

**State Project Agreement**

**Project Number: 72020-25**

**Project Start Date: July 1, 2019**

**Project Expiration Date: June 30, 2020**

### **Operating Assistance Payment Schedule**

<b>Payment No.</b>	<b>Estimated Payment Date</b>	<b>Payment Amount</b>
1	August 15, 2019	\$4,067,229
2	November 15, 2019	\$4,067,229
3	February 15, 2020	\$4,067,229
4	May 15, 2020	\$4,067,229
<b>TOTAL GRANT AMOUNT</b>		<b>\$16,268,916</b>

In no event shall this grant exceed \$16,268,916.



**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 73020-39**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of passenger shelters, passenger shelter amenities and bus stop improvements (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission on behalf of the Grantee submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. Under the terms of this Agreement, the Grantee shall:
  - a. Purchase passenger shelters, passenger shelter amenities and bus stop improvements.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$544,000 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## **Appendix 1**

**Grantee: Fairfax County**

**Project: Purchase Passenger Shelters, Passenger Shelter Amenities and Bus Stop Improvements**

### **Capital Assistance Program Project Agreement**

**Project Number: 73020-39**

**Project Start Date: July 1, 2019**

**Project Expiration Date: June 30, 2021**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 68%)	\$544,000
1400	Local expense (share of Project cost - 32%)	\$256,000
	Total Project Expense	\$800,000

In no event shall this grant exceed \$544,000.

**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 73020-41**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of four replacement support vehicles (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission on behalf of the Grantee submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. Under the terms of this Agreement, the Grantee shall:
  - a. Purchase four replacement support vehicles to replace vehicles with vehicle identification numbers (“VIN”) identified in Appendix 1, which is attached and made part of this Agreement.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$51,000 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## Appendix 1

**Grantee: Fairfax County**

**Project: Purchase Four Replacement Support Vehicles to Replace Vehicles with the  
Following VINs:**

**1FMCU59HX8KE43288**

**1FMCU59H88KE43287**

**1FMCU59H68KE43286**

**1FMCU59HX8KA16323**

### **Capital Assistance Program Project Agreement**

**Project Number: 73020-41**

**Project Start Date: July 1, 2019**

**Project Expiration Date: September 30, 2020**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 68%)	\$51,000
1400	Local expense (share of Project cost - 32%)	\$24,000
	Total Project Expense	\$75,000

In no event shall this grant exceed \$51,000.



**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 73020-42**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the third party contract for bus maintenance inspections and audits (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission on behalf of the Grantee submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. Under the terms of this Agreement, the Grantee shall:
  - a. Fund a third party contract for bus maintenance inspections and audits.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$306,000 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## **Appendix 1**

**Grantee: Fairfax County**

**Project: Third Party Contract for Bus Maintenance  
Inspections and Audits**

**Capital Assistance Program Project Agreement**

**Project Number: 73020-42**

**Project Start Date: July 1, 2019**

**Project Expiration Date: December 31, 2020**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 68%)	\$306,000
1400	Local expense (share of Project cost - 32%)	\$144,000
	Total Project Expense	\$450,000

In no event shall this grant exceed \$306,000.

**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 73020-44**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the rehabilitation and rebuild of 25 buses (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission on behalf of the Grantee submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. Under the terms of this Agreement, the Grantee shall:
  - a. Rehabilitate and rebuild 25 buses with vehicle identification numbers (“VIN”) identified in Appendix 1, which is attached and made part of this Agreement
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$1,700,000 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012 as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## Appendix 1

### Grantee: Fairfax County

#### Project: Rehabilitate and Rebuild 25 Buses with the Following VINs:

5FYD5FV1X9B035153 5FYD5FV199B035161 5FYD5FV149B036735 5FYD5FV179B036745  
5FYD5FV139B035155 5FYD5FV109B035162 5FYD5FV189B036737 5FYD5FV109B036747  
5FYD5FV159B035156 5FYD5FV129B035163 5FYD5FV119B036739 5FYD5FV129B036751  
5FYD5FV179B035157 5FYD5FV149B035164 5FYD5FV1X9B036741 5FYD5FV149B036752  
5FYD5FV179B035160 5FYD5FV169B035165 5FYD5FV139B036743 5FYD5FV169B036753  
5FYD5YV139B036757 5FYD5FV159B036758 5FYD5FV179B036759 5FYD5FV139B036760  
5FYD5FV179B036762

### Capital Assistance Program Project Agreement

**Project Number: 73020-44**

**Project Start Date: July 1, 2019**

**Project Expiration Date: June 30, 2021**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 68%)	\$1,700,000
1400	Local expense (share of Project cost - 32%)	\$ 800,000
	Total Project Expense	\$2,500,000

In no event shall this grant exceed \$1,700,000.



**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 73020-46**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding improvements to the existing bus canopy and bus loop adjacent to the Herndon-Monroe parking garages (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. Under the terms of this Agreement, the Grantee shall:
  - a. Make improvements to the existing bus canopy and bus loop adjacent to the Herndon-Monroe parking garages.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$850,000 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## **Appendix 1**

**Grantee: Fairfax County**

**Project: Improvements to the Existing Bus Canopy and Bus Loop Adjacent to the  
Herndon-Monroe Parking Garages**

### **Capital Assistance Program Project Agreement**

**Project Number: 73020-46**

**Project Start Date: July 1, 2019**

**Project Expiration Date: December 31, 2020**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 68%)	\$ 850,000
1400	Local expense (share of Project cost - 32%)	\$ 400,000
	Total Project Expense	\$1,250,000

In no event shall this grant exceed \$850,000.

**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 73020-40**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of two bobcats (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission on behalf of the Grantee submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. Under the terms of this Agreement, the Grantee shall:
  - a. Purchase two bobcats.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$102,000 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## **Appendix 1**

**Grantee: Fairfax County**

**Project: Purchase Two Bobcats**

### **Capital Assistance Program Project Agreement**

**Project Number: 73020-40**

**Project Start Date: July 1, 2019**

**Project Expiration Date: September 30, 2020**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 68%)	\$102,000
1400	Local expense (share of Project cost - 32%)	\$ 48,000
	Total Project Expense	\$150,000

In no event shall this grant exceed \$102,000.



**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 73020-45**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding improvements to five park and ride facilities to comply with Americans with Disabilities Act (“ADA”) mandates (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission, on behalf of the Grantee, submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. Under the terms of this Agreement, the Grantee shall:
  - a. Make improvements to the following five park and ride facilities to comply with ADA mandates: Centreville, Rolling Road VRE, Burke Center VRE, Backlick Road VRE, and Reston South.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$326,400 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## **Appendix 1**

**Grantee: Fairfax County**

**Project: Make Improvements to the Following Five Park and Ride Facilities to Comply with ADA Mandates: Centreville, Rolling Road VRE, Burke Center VRE, Backlick Road VRE, and Reston South**

### **Capital Assistance Program Project Agreement**

**Project Number: 73020-45**

**Project Start Date: July 1, 2019**

**Project Expiration Date: September 30, 2020**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 68%)	\$326,400
1400	Local expense (share of Project cost - 32%)	\$153,600
	Total Project Expense	\$480,000

In no event shall this grant exceed \$326,400.

**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 73020-43**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the purchase of replacement engines, transmissions, and differentials (“Project”).

WHEREAS, on February 1, 2019, the Northern Virginia Transportation Commission on behalf of the Grantee submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program from the Capital Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. Under the terms of this Agreement, the Grantee shall:
  - a. Purchase replacement engines, transmissions, and differentials.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$306,000 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## Appendix 1

**Grantee: Fairfax County**

**Project: Replacement Engines, Transmissions, and Differentials**

**Capital Assistance Program Project Agreement**

**Project Number: 73020-43**

**Project Start Date: July 1, 2019**

**Project Expiration Date: July 31, 2020**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 68%)	\$306,000
1400	Local expense (share of Project cost - 32%)	\$144,000
	Total Project Expense	\$450,000

In no event shall this grant exceed \$306,000.



ACTION - 9

Approval of a Project Administration Agreement with the Virginia Department of Transportation for the Implementation of the Telegraph Road/Hayfield Road Intersection Improvement Project (Lee District)

ISSUE:

Board of Supervisors' approval and authorization for the Director of the Department of Transportation to execute a Project Administration Agreement (PAA) with the Virginia Department of Transportation (VDOT), substantially in the form of Attachment 2, for the administration of the Telegraph Road/Hayfield Road Intersection Improvement Project.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve a resolution (Attachment 1), authorizing the Director of the Fairfax County Department of Transportation (FCDOT) to execute a PAA with VDOT, substantially in the form of Attachment 2, for the design, right-of-way, utilities and construction of the Project.

TIMING:

The Board should act on this item on September 24, 2019, so that VDOT can continue to advance the project.

BACKGROUND:

In 2017, VDOT conducted an operational analysis to study the intersection of Telegraph Road at Hayfield Road for FCDOT, in response to concerns about traffic congestion and safety. VDOT evaluated several concepts to determine the intersection configuration that would be the most cost effective. The recommended concept included the addition of one through lane on northbound Telegraph Road through the intersection with Hayfield Road, starting north of the intersection of Broadmoor Road and ending approximately 600 feet north of Hayfield Road. On the southbound Telegraph Road approach, this concept recommends reconfiguring the lane usage providing a combination right turn and through lane, one through lane, and one left turn lane. This would allow for two through lanes continuing through the intersection with Hayfield Road. The Telegraph Road / Hayfield Road project will modify the traffic signal as required to accommodate the new lane configuration and relocate utilities as needed. A project sketch has been included as Attachment 3. VDOT has started preliminary engineering, and will be the administering

Board Agenda Item  
September 24, 2019

agency for the project through construction. The current total project estimate is \$3.0 million.

FISCAL IMPACT:

On June 4, 2019, the Board approved full funding in the amount of \$3.0 million. The funds have been identified in Project 2G40-172-000, Telegraph Road Widening / Hayfield Road, Fund 40010 (County and Regional Transportation Projects). Provided the Board approves this request, and after execution of the agreements, funding will be transferred to VDOT to continue implementation of the project. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution to Execute a Project Administration Agreement with the Virginia Department of Transportation.

Attachment 2: Project Administration Agreement (including Related Appendices) with the Virginia Department of Transportation for Telegraph Road/Hayfield Road Intersection Improvement Project.

Attachment 3: Project Sketch.

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Todd Minnix, Chief, Transportation Design Division, FCDOT

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division (CPTED), FCDOT

Michael Guarino, Section Chief, CPTED, FCDOT

Ron Lilley, Transportation Planner, CPTED, FCDOT

Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), FCDOT

Ray Johnson, Chief, Funding Section, CFD, FCDOT

Benjamin Atsem, Transportation Planner, CFD, FCDOT

Joe LaHait, Debt Coordinator, Department of Management and Budget

ASSIGNED COUNSEL:

Robert Falconi, 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 in Fairfax, Virginia, on Tuesday, September 24, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

### **AGREEMENT EXECUTION RESOLUTION**

#### **A RESOLUTION FOR THE BOARD OF SUPERVISORS OF THE COUNTY OF FAIRFAX, VIRGINIA AS AN ENDORSEMENT OF THE**

Telegraph Road/Hayfield Road Intersection Improvement Project (Lee District).

**WHEREAS**, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring local jurisdiction or agency requesting the Virginia Department of Transportation (VDOT) to establish a project(s), if not already established, in the County of Fairfax.

**NOW, THEREFORE, BE IT RESOLVED**, that the County of Fairfax requests the Commonwealth Transportation Board to establish a project, if not already established, for the implementation of, Telegraph Road / Hayfield Road Northbound through Lane (UPC T23163) Project.

**BE IT FURTHER RESOLVED THAT**, the County of Fairfax hereby agrees to provide its share of the local contributions, in accordance with the Project Administration Agreement ("PAA", attached) and associated financial documents (Appendix A), executed pursuant to this Resolution.

**BE IT FURTHER 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, the PAA with the Virginia Department of Transportation for the implementation of the Project to be administered by VDOT.

Adopted this 24<sup>th</sup> day of September 2019, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Jill G. Cooper  
Clerk to the Board of Supervisors

**VDOT ADMINISTERED – LOCALLY FUNDED  
PROJECT ADMINISTRATION AGREEMENT**

Attachment 2

FAIRFAX COUNTY  
PROJECT NUMBER 0611-029-467 UPC T23163

THIS AGREEMENT, made and executed in triplicate on this the \_\_\_\_ day  
of \_\_\_\_\_, 2019, between the COMMONWEALTH OF  
VIRGINIA DEPARTMENT OF TRANSPORTATION, hereinafter referred  
to as the "DEPARTMENT" and the COUNTY OF FAIRFAX, hereinafter  
referred to as the "COUNTY."

WITNESSETH

WHEREAS, the COUNTY has expressed its desire to have the DEPARTMENT administer the work as described in Appendix B, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds as shown in Appendix A have all been allocated by the COUNTY to finance the project; and

WHEREAS, the COUNTY has requested that the DEPARTMENT design and construct this project in accordance with the scope of work described in Appendix B, and the DEPARTMENT has agreed to perform such work; and

WHEREAS, both parties have concurred in the DEPARTMENT's administration of the project identified in this Agreement and its associated Appendices A and B in accordance with applicable federal, state, and local law and regulations; and

WHEREAS, the County's governing body has, by resolution, which is attached hereto, authorized its designee to execute this Agreement; and

WHEREAS, Section 33.2-338 of the Code of Virginia authorizes both the DEPARTMENT and the COUNTY to enter into this Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

- A. The DEPARTMENT shall:
  - 1. Complete said work as identified in Appendix B, advancing such diligently, and all work shall be completed in accordance with the schedule established by both parties.
  - 2. Perform or have performed, and remit all payments for, all preliminary engineering, right-of-way acquisition, construction, contract administration, and inspection services activities for the project(s) as required.

3. Provide a summary of project expenditures to the COUNTY for charges of actual DEPARTMENT cost.
  4. Notify the COUNTY of additional project expenses resulting from unanticipated circumstances and provide detailed estimates of additional costs associated with those circumstances. The DEPARTMENT will make all efforts to contact the COUNTY prior to performing those activities.
  5. Return any unexpended funds to the COUNTY no later than 90 days after the project(s) have been completed and final expenses have been paid in full.
- B. The COUNTY shall:
1. Provide funds to the Department for Preliminary Engineering (PE), Right of Way (ROW) and/or Construction (CN) in accordance with the payment schedule outlined in Appendix A.
  2. Accept responsibility for any additional project costs resulting from unforeseeable circumstances, but only after concurrence of the COUNTY and modification of this Agreement.
- C. Funding by the COUNTY shall be subject to annual appropriation or other lawful appropriation by the Board of Supervisors.
- D. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
- E. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the County or the Department shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the

County or the Department has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

- F. Nothing in this Agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.
- G. Should funding be insufficient and county funds be unavailable, both parties will review all available options for moving the project forward, including but not limited to, halting work until additional funds are allocated, revising the project scope to conform to available funds, or cancelling the project.
- H. Should the project be cancelled as a result of the lack of funding by the COUNTY, the COUNTY shall be responsible for any costs, claims and liabilities associated with the early termination of any construction contract(s) issued pursuant to this agreement.
- I. This Agreement may be terminated by either party upon 60 days advance written notice. Eligible expenses incurred through the date of termination shall be reimbursed to the DEPARTMENT subject to the limitations established in this Agreement.

THE COUNTY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors and assigns.

THIS AGREEMENT may be modified in writing upon mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

**COUNTY OF FAIRFAX, VIRGINIA:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name of Signatory Date

\_\_\_\_\_  
Signature of Witness Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_  
Chief of Policy  
Commonwealth of Virginia  
Department of Transportation Date

\_\_\_\_\_  
Signature of Witness Date

Attachments: Appendix A (UPC T23163)  
Appendix B (UPC T23163)

## VDOT Administered, Locally Funded Appendix A

Date: Draft 6/18/2019

Project Number: 0611-029-467	UPC: T23163	CFDA# N/A	Locality: Fairfax County
Project Location ZIP+4: 22315-3821	Locality DUNS #074837626	Locality Address (incl ZIP+4): 4050 Legato Rd, Suite 400 Fairfax, VA 22033-2895	
<b>Project Narrative</b>			
Work Description: Add additional northbound thru lane on Telegraph Road through the signalized intersection with Hayfield Road to reduce congestion and improve safety.			
From: 0.18 miles south of the intersection with Hayfield Road.			
To: 0.14 miles north of the intersection with Hayfield Road.			
Locality Project Manager Contact info:		Michael Guarino 703-877-5600	Michael.Guarino@fairfaxcounty.gov
Department Project Manager Contact Info:		Tim Hartzell 703-259-2749	Timothy.Hartzell@vdot.virginia.gov

Project Estimates	
Phase	Estimated Project Costs
Preliminary Engineering	\$600,000
Right of Way & Utilities	\$300,000
Construction	\$2,100,000
Total Estimated Cost	\$3,000,000

Project Cost				
Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering	\$600,000	Local Funds	100%	\$600,000
				\$0
				\$0
Total PE	\$600,000			\$600,000
Right of Way & Utilities	\$300,000	Local Funds	100%	\$300,000
				\$0
				\$0
Total RW	\$300,000			\$300,000
Construction	\$2,100,000	Local Funds	100%	\$2,100,000
				\$0
				\$0
Total CN	\$2,100,000			\$2,100,000
Total Estimated Cost	\$3,000,000			\$3,000,000

Total Maximum Reimbursement / Payment by Locality to VDOT	\$3,000,000
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Project Financing				
Local Funds				Aggregate Allocations
\$3,000,000				\$3,000,000

Payment Schedule		
FY 2020	FY2021	FY2022
\$600,000	\$300,000	\$2,100,000

Program and Project Specific Funding Requirements	
<ul style="list-style-type: none"> <li>This is a limited funds project. The locality shall be responsible for all funding and including any additional funding in excess of \$3,000,000</li> <li>All local funds included on this appendix have been formally committed by the local government's board or council resolution subject to appropriation.</li> <li>VDOT has billed the LOCALITY \$0 for this project as of 6/18/2019</li> <li>VDOT has received \$0 from the LOCALITY for this project as of 6/18/2019.</li> <li>The LOCALITY shall make payments to VDOT as follows:               <ul style="list-style-type: none"> <li>\$600,000 no later than 60 days after execution of this agreement/appendix</li> <li>\$300,000 prior to Right of Way Authorization</li> <li>\$2,100,000 prior to CN Advertisement (The billing will be adjusted to include the Construction estimate beginning at the award date)</li> </ul> </li> </ul>	

This attachment is certified and made an official attachment to this document by the parties to this agreement

Authorized Locality Official and Date

Authorized VDOT Official and Date

Typed or printed name of person signing

Typed or printed name of person signing

Revised: February 1, 2019



## Appendix B

**Project Number: 0611-029-467 (UPC T23613)      Locality: Fairfax County**

Project Scope			
<b>Work Description:</b>	<b>Add additional northbound thru lane on Telegraph Road through the signalized intersection with Hayfield Road to reduce congestion and improve safety.</b>		
<b>From:</b>	<b>0.18 miles south of the intersection with Hayfield Road.</b>		
<b>To:</b>	<b>0.14 miles north of the intersection with Hayfield Road.</b>		
Locality Project Manager Contact Info:	Michael Guarino	703-877-5600	Michael.Guarino@fairfaxcounty.gov
Department Project Coordinator Contact Info:	Tim Hartzell	703-259-2749	Timothy.Hartzell@vdot.virginia.gov

Detailed Scope of Services
<ul style="list-style-type: none"><li>• Design and construct additional northbound thru lane on Telegraph Road through the signalized intersection with Hayfield Road to create two northbound lanes, a median left turn lane and two sound bound lanes south of Hayfield Road. This shall be accomplished by eliminating the parking along southbound Telegraph in front of Hayfield High School.</li><li>• Provide SWM measures and/or purchase nutrient credits to address SWM requirements.</li><li>• Modify traffic signal as required to accommodate new lane configuration.</li><li>• Relocate utilities as needed.</li></ul>

This attachment is certified and made an official attachment to this document by the parties of this agreement

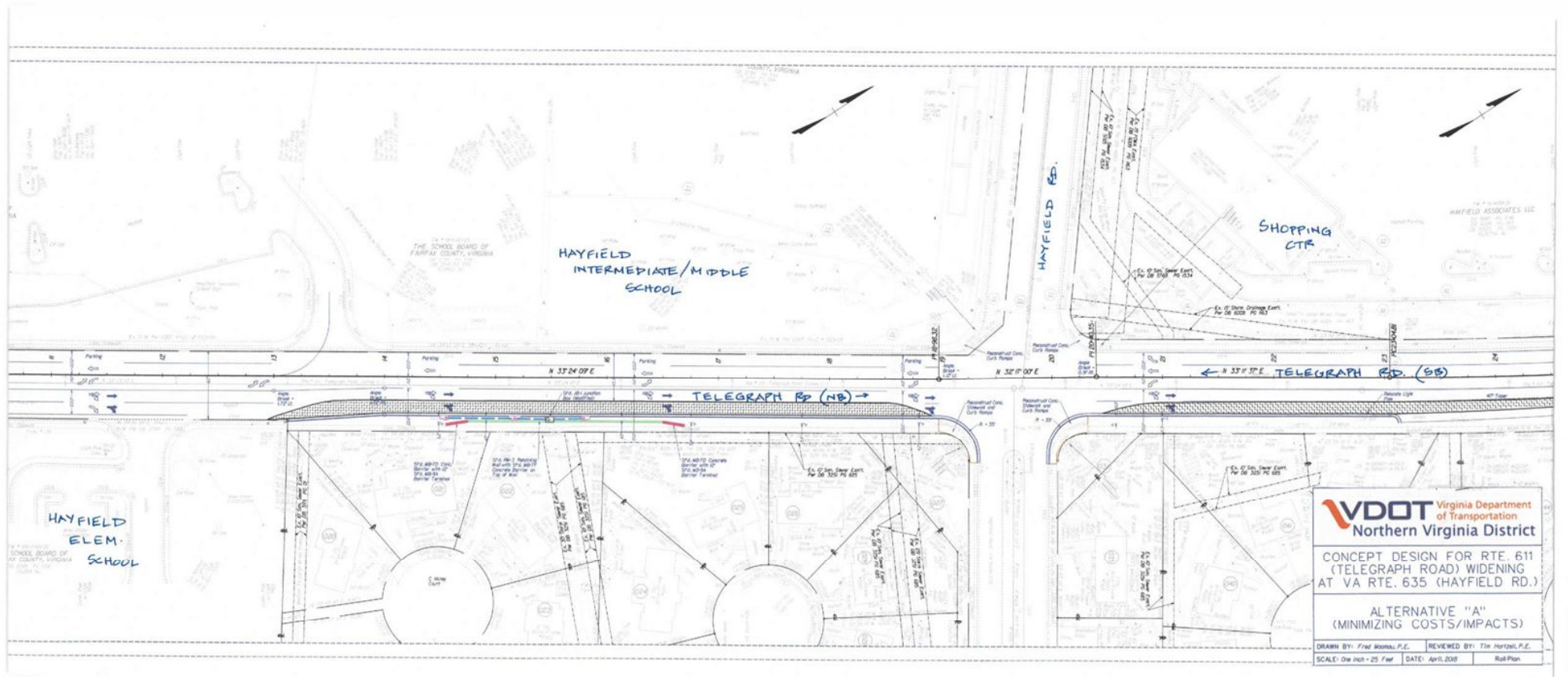
\_\_\_\_\_  
Authorized Locality Official and date

\_\_\_\_\_  
Residency Administrator/PE Manager/District Construction Engineer  
Recommendation and date

\_\_\_\_\_  
Typed or printed name of person signing

\_\_\_\_\_  
Typed or printed name of person signing

# Attachment 3



ACTION - 10

Approval of and Authorization to Amend a Project Administration Agreement with the Virginia Department of Transportation for the I-495 Pedestrian Overpass from Route 123 and Provincial Drive to Tysons One Place (Providence District)

ISSUE:

Board of Supervisors' approval of, and authorization for the Director of the Fairfax County Department of Transportation (FCDOT) to amend a Project Administration Agreement (PAA) with the Virginia Department of Transportation (VDOT), substantially in the form of Attachment 2, for the implementation of the I-495 Pedestrian Overpass from Route 123 and Provincial Drive to Tysons One Place.

RECOMMENDATION:

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

1. Approve an additional \$3 million in funding for the project, and
2. Adopt a resolution, substantially in the form of Attachment 1, authorizing the Director of the FCDOT to execute an amendment to the PAA with VDOT, substantially in the form of Attachment 2, for the implementation of the project.

TIMING:

The Board should act on this item on September 24, 2019, so that VDOT can continue project implementation.

BACKGROUND:

The project will provide for the design and construction of a ten foot shared use path along Old Meadow Road beginning at the intersection of Route 123 and Provincial Drive, and terminating at Tysons One Place near the intersection with Fashion Boulevard. The project includes the design and construction of a bicycle/pedestrian bridge over the Capital Beltway (I-495).

As stated in the Tysons Comprehensive Plan Amendment (June 2010) and the Fairfax County's Countywide Bicycle Master Plan (October 2014), there is a need for enhanced bicycle and pedestrian connectivity in Tysons, especially across I-495. The project area has a mix of retail, business, and residential communities with no bicycle and pedestrian access across I-495.

Since VDOT is the administering agency for the project, the Board authorized the Director of FCDOT to execute a PAA with VDOT on June 19, 2018 (Attachment 3). At that time, the

project was fully funded through several sources of revenue, and the total project estimate was \$9.2 million. The estimate subsequently increased to \$12.2 million, and funding has been identified to address the difference. The increase in costs is due to a revision in the right-of-way estimates, inclusion of utility relocations not previously identified in the development of preliminary engineering plans, and increased construction costs. Table 1 below shows the funding summary for the Project with the revised cost estimate.

Table 1

Revised Total Project Estimate	\$12,234,968
Secured Funding to Date	\$9,234,968
Balance Needed	\$3,000,000

FISCAL IMPACT:

Per the amended Agreement, the County is required to contribute an additional \$3,000,000 to meet the revised cost estimate. Staff has identified local funds in Fund 40010, County and Regional Transportation Projects, in the NVTa 30% Construction Reserve (2G40-107-000) to satisfy this requirement. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution authorizing the amendment of Project Administration Agreement (UPC 104005) between Fairfax County and the Virginia Department of Transportation.

Attachment 2: Revised Appendices A and B for the PAA.

Attachment 3: August 9, 2018, Project Administration Agreement between Fairfax County and the Virginia Department of Transportation.

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division (CPTED), FCDOT

Chris Wells, Senior Transportation Planner, CPTED, FCDOT

Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), FCDOT

Ray Johnson, Chief, Funding Section, CFD, FCDOT

Christina Farrar, Transportation Planner, CFD, FCDOT

Joe LaHait, Debt Coordinator, Department of Management and Budget

ASSIGNED COUNSEL:

Joanna 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 in Fairfax, Virginia, on Tuesday, September 24, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

### **AGREEMENT AMENDMENT EXECUTION RESOLUTION**

#### **A RESOLUTION FOR THE BOARD OF SUPERVISORS OF THE COUNTY OF FAIRFAX, VIRGINIA**

#### **FOR THE AMENDMENT OF AN AGREEMENT OF I-495 Pedestrian Overpass from Route 123 and Provincial Drive to Tysons One Place PROJECT**

**WHEREAS**, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring local jurisdiction or agency requesting the Virginia Department of Transportation (VDOT) to establish a project(s), if not already established, in the County of Fairfax.

**NOW, THEREFORE, BE IT RESOLVED**, that the County of Fairfax requests the Commonwealth Transportation Board to establish a project(s), if not already established, for the implementation of, the I-495 Pedestrian Overpass from Route 123 and Provincial Drive to Tysons One Place Project.

**BE IT FURTHER RESOLVED THAT**, the County of Fairfax hereby agrees to provide its share of the local contribution, in accordance with the Project Administration Agreements (“PAA”, attached) and associated financial documents (Appendix A), executed pursuant to this Resolution.

**BE IT FURTHER 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, an amendment to the PAA with the Virginia Department of Transportation for the implementation of the Project to be administered by VDOT.

Adopted this 24<sup>th</sup> day of September 2019, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Jill G. Cooper  
Clerk to the Board of Supervisors

## VDOT Administered, Locally Funded Appendix A - Revision I

Project Number: 1495-029-078      UPC: 104005      CFDA# 20.205      Locality: Fairfax County      Date: 8/22/2019

Project Location ZIP+4: 22102-1819	Locality DUNS #074837626	Locality Address (incl ZIP+4): 4050 Legato Rd, Suite 400, Fairfax, VA 22033-2895
<b>Project Narrative</b>		
Scope: Design and construct a 10' shared use path along Old Meadow Road beginning at the intersection of Old Meadow Road and Provincial Drive, terminating at Tysons One Place near the intersection with Fashion Boulevard. The project includes the design and construction of a bicycle/pedestrian bridge over the Capital Beltway (I-495).		
From: Route 123 & Provincial Drive		
To: Tysons One Place & Fashion Boulevard		
Locality Project Manager Contact info:	Chris Wells	703-877-5772      chris.wells@fairfaxcounty.gov
Department Project Coordinator Contact Info:	Abraham Lerner	703-259-3345      abraham.lerner@vdot.virginia.gov

Project Estimates	
Phase	Estimated Project Costs
Preliminary Engineering	\$2,287,078
Right of Way & Utilities	\$2,326,067
Construction	\$7,621,823
Total Estimated Cost	\$12,234,968
Estimate for Current Billing	\$12,234,968

Project Cost				
Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering	\$2,287,078	CMAQ	0%	\$0
Total PE	\$2,287,078			\$0
Right of Way & Utilities	\$2,125,991	CMAQ	0%	\$0
	\$200,076	NHS	0.00%	\$0
Total RW	\$2,326,067			\$0
Construction	\$3,009,237	NHS	0%	\$0
	\$4,612,586	Local Funds (Tysons SD)	100%	\$4,612,586
Total CN	\$7,621,823			\$4,612,586
Total Estimated Cost	\$12,234,968			\$4,612,586

Total Maximum Reimbursement / Payment by Locality to VDOT	\$4,612,586
---	-------------

Project Financing				
NHS	CMAQ	Local Funds (Tysons Service District)	Local Funds	Aggregate Allocations
\$3,209,313	\$4,413,069	\$1,612,586	\$3,000,000	\$12,234,968

Payment Schedule			
FY 2019	FY 2020		
\$1,612,586	\$3,000,000		

Program and Project Specific Funding Requirements	
<ul style="list-style-type: none"> <li>This is a limited funds project. The LOCALITY shall be responsible for any additional funding in excess of \$7,622,382</li> <li>The LOCALITY will be billed the LOCALITY share above beginning at the project scoping phase for the estimated PE and RW costs. The billing will be adjusted to include the Construction estimate beginning at the award date. (if applicable)</li> <li>All local funds included on this appendix have been formally committed by the local government's board or council resolution.</li> <li>This project is funded with federal-aid Congestion Mitigation and Air Quality Program (CMAQ) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.</li> <li>VDOT has billed the LOCALITY \$3,412,586 for this project as of 8/14/2019.</li> <li>VDOT has received \$3,412,586 from the LOCALITY for this project as of 8/14/2019.</li> <li>The LOCALITY shall make one (1) payment to VDOT in the amount of \$3,000,000 no later than 60 days after agreement execution.</li> <li>The LOCALITY will continue to operate and maintain the facility as constructed. Should the design features of the project be altered by the LOCALITY subsequent to project completion without approval of the Department, the LOCALITY inherently agrees, by execution of this agreement, to make restitution, either physically or monetarily, as required by the DEPARTMENT.</li> <li>\$1,800,000 (Accounts Receivable) was originally received under UPC 94363 (parent UPC) and transferred to this project.</li> </ul>	

This attachment is certified and made an official attachment to this document by the parties to this agreement

\_\_\_\_\_  
Authorized Locality Official and Date

\_\_\_\_\_  
Authorized VDOT Official and Date

\_\_\_\_\_  
Typed or printed name of person signing

\_\_\_\_\_  
Typed or printed name of person signing

Project Scope			
<b>Work Description:</b>	Pedestrian and bicycle facility connection across I-495 in the Tysons area.		
<b>From:</b>	Route 123 and Provincial Drive		
<b>To:</b>	Tysons One Place & Fashion Boulevard		
Locality Project Manager Contact Info:		Chris Wells	Phone: 703-877-5772
Department Project Coordinator Contact Info:		Abraham Lerner	Phone: 703-259-3345
		Email:	Chris.Wells@fairfaxcounty.gov
		Email:	Abraham.Lerner@vdot.virginia.gov

Detailed Scope of Services
<p>Design and construct a 10' shared use path along Old Meadow Road beginning at the intersection of Old Meadow Road and Provincial Drive, terminating at Tysons One Place near the intersection with Fashion Boulevard. The project includes the design and construction of a bicycle/pedestrian bridge over the Capital Beltway (I-495).</p>

Authorized Locality Official and date	Residency Administrator/PE Manager/District Construction Engineer Recommendation and date
Typed or printed name of person signing	Typed or printed name of person signing



**VDOT ADMINISTERED – LOCALLY FUNDED  
PROJECT ADMINISTRATION AGREEMENT**

FAIRFAX COUNTY  
PROJECT NUMBER I495-029-078 UPC 104005

THIS AGREEMENT, made and executed in triplicate on this the 9<sup>TH</sup> day  
of AUGUST, 2018, between the COMMONWEALTH OF  
VIRGINIA DEPARTMENT OF TRANSPORTATION, hereinafter referred  
to as the "DEPARTMENT" and the COUNTY OF FAIRFAX, hereinafter  
referred to as the "COUNTY."

WITNESSETH

WHEREAS, the COUNTY has expressed its desire to have the DEPARTMENT administer the work as described in Appendix B, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds as shown in Appendix A have all been allocated by the COUNTY to finance the project; and

WHEREAS, the COUNTY has requested that the DEPARTMENT design and construct this project in accordance with the scope of work described in Appendix B, and the DEPARTMENT has agreed to perform such work; and

WHEREAS, both parties have concurred in the DEPARTMENT's administration of the project identified in this Agreement and its associated Appendices A and B in accordance with applicable federal, state, and local law and regulations; and

WHEREAS, the County's governing body has, by resolution, which is attached hereto, authorized its designee to execute this Agreement; and

WHEREAS, Section 33.2-338 of the Code of Virginia authorizes both the DEPARTMENT and the COUNTY to enter into this Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

A. The DEPARTMENT shall:

1. Complete said work as identified in Appendix B, advancing such diligently, and all work shall be completed in accordance with the schedule established by both parties.
2. Perform or have performed, and remit all payments for, all preliminary engineering, right-of-way acquisition, construction, contract administration, and inspection services activities for the project(s) as required.



3. Provide a summary of project expenditures to the COUNTY for charges of actual DEPARTMENT cost.
  4. Notify the COUNTY of additional project expenses resulting from unanticipated circumstances and provide detailed estimates of additional costs associated with those circumstances. The DEPARTMENT will make all efforts to contact the COUNTY prior to performing those activities.
  5. Return any unexpended funds to the COUNTY no later than 90 days after the project(s) have been completed and final expenses have been paid in full.
- B. The COUNTY shall:
1. Provide funds to the DEPARTMENT for Preliminary Engineering (PE) and Right-of-Way (ROW) upon execution of this Agreement and for Construction (CN) no less than 90 days prior to advertisement in the amounts shown in Appendix A
  2. Accept responsibility for any additional project costs resulting from unforeseeable circumstances, but only after concurrence of the COUNTY and modification of this Agreement.
- C. Funding by the COUNTY shall be subject to annual appropriation or other lawful appropriation by the Board of Supervisors.
- D. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
- E. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the County or the Department shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the

County or the Department has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

- F. Nothing in this Agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.
- G. Should funding be insufficient and county funds be unavailable, both parties will review all available options for moving the project forward, including but not limited to, halting work until additional funds are allocated, revising the project scope to conform to available funds, or cancelling the project.
- H. Should the project be cancelled as a result of the lack of funding by the COUNTY, the COUNTY shall be responsible for any costs, claims and liabilities associated with the early termination of any construction contract(s) issued pursuant to this agreement.
- I. This Agreement may be terminated by either party upon 60 days advance written notice. Eligible expenses incurred through the date of termination shall be reimbursed to the DEPARTMENT subject to the limitations established in this Agreement.

THE COUNTY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors and assigns.

THIS AGREEMENT may be modified in writing upon mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

**COUNTY OF FAIRFAX, VIRGINIA:**

<u>Todd Myglersworth for TB</u>	<u>7-19-18</u>
	Date
<u>TOM BIESIADNY</u>	<u>7/19/18</u>
Typed or Printed Name of Signatory	Date
<u>[Signature]</u>	<u>7/19/18</u>
Signature of Witness	Date

NOTE: The official signing for the COUNTY must attach a certified copy of his or her authority to execute this Agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:**

<u>[Signature]</u>	<u>8/9/18</u>
Chief of Policy	Date
Commonwealth of Virginia	
Department of Transportation	
<u>Brenda Crouch</u>	<u>8/9/2018</u>
Signature of Witness	Date

Attachments:

- Appendix A (UPC 104005)
- Appendix B (UPC 104005)

## VDOT Administered, Locally Funded Appendix A

Date: 7/10/2018

Project Number: I495-029-078

UPC: 104005 CFDA# 20 205

Locality: Fairfax County

Project Location ZIP+4: 22102-1819

Locality DUNS #074837626

Locality Address (incl ZIP+4): 4050 Legato Rd,  
Suite 400, Fairfax, VA 22033-2895

## Project Narrative

Scope Design and construct a 10' shared use path along Old Meadow Road beginning at the intersection of Old Meadow Road and Route 123, terminating at Tysons One Place near the intersection with Fashion Boulevard. The project includes the design and construction of a bicycle/pedestrian bridge over the Capital Beltway (I-495).

From: Route 123 &amp; Old Meadow Road

To: Tysons One Place &amp; Fashion Boulevard

Locality Project Manager Contact Info:

Chris Wells 703-877-5772

chris.wells@fairfaxcounty.gov

Department Project Coordinator Contact Info:

Abraham Lerner 703-259-3345

abraham.lerner@vdot.virginia.gov

## Project Estimates

Phase	Estimated Project Costs
Preliminary Engineering	\$1,945,207
Right of Way & Utilities	\$503,798
Construction	\$6,785,963
Total Estimated Cost	\$9,234,968
Estimate for Current Billing	\$9,234,968

## Project Cost

Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering	\$1,945,207	CMAQ	0%	\$0
Total PE	\$1,945,207			\$0
Right of Way & Utilities	\$503,798	CMAQ	0%	\$0
Total RW	\$503,798			\$0
Construction	\$1,964,064	CMAQ	0%	\$0
	\$1,409,313	NHS	0%	\$0
	\$1,800,000	Local Funds (AR)	100%	\$1,800,000
	\$1,612,586	Local Funds (Tysons SD)	100%	\$1,612,586
Total CN	\$6,785,963			\$3,412,586
Total Estimated Cost	\$9,234,968			\$3,412,586

Total Maximum Reimbursement / Payment by Locality to VDOT

\$3,412,586

## Project Financing

Local Funds (Accounts Receivable)	NHS	CMAQ	Local Funds (Tysons Service District)	Aggregate Allocations
\$1,800,000	\$1,409,313	\$4,413,069	\$1,612,586	\$9,234,968

## Payment Schedule

FY 2019			
\$1,612,586			

## Program and Project Specific Funding Requirements

- This is a limited funds project. The LOCALITY shall be responsible for any additional funding in excess of \$5,622,382.
- The LOCALITY will be billed the LOCALITY share above beginning at the project scoping phase for the estimated PE and RW costs. The billing will be adjusted to include the Construction estimate beginning at the award date. (if applicable)
- All local funds included on this appendix have been formally committed by the local government's board or council resolution.
- This project is funded with federal-aid Congestion Mitigation and Air Quality Program (CMAQ) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.
- VDOT has billed the LOCALITY \$1,800,000 for this project as of 7/10/2018.
- VDOT has received \$1,800,000 from the LOCALITY for this project as of 7/10/2018.
- The LOCALITY shall make one (1) payment to VDOT in the amount of \$1,612,586 no later than 60 days after agreement execution.
- The LOCALITY will continue to operate and maintain the facility as constructed. Should the design features of the project be altered by the LOCALITY subsequent to project completion without approval of the Department, the LOCALITY inherently agrees, by execution of this agreement, to make restitution, either physically or monetarily, as required by the DEPARTMENT.
- \$1,800,000 (Accounts Receivable) was originally received under UPC 94363 (parent UPC) and transferred to this project.

This attachment is certified and made an official attachment to this document by the parties to this agreement

*Tom W. Giesiadny* For TB 7-19-18  
Authorized Local Official and Date

Tom GIESIADNY  
Typed or printed name of person signing

*OTL* for AS 7/27/16  
Authorized VDOT Official and Date  
*OTL*  
Typed or printed name of person signing

Revised: June 15, 2016

Appendix B

Project Number: 1495-029-078 (UPC 104005)

Locality: Fairfax County

Project Scope	
<b>Work Description:</b>	Pedestrian and bicycle facility connection across I-495 in the Tysons area.
<b>From:</b>	Route 123 and Old Meadow Road
<b>To:</b>	Tysons One Place & Fashion Boulevard
Locality Project Manager Contact Info: Chris Wells Phone: 703-877-5772 Email: Chris.Wells@fairfaxcounty.gov	
Department Project Coordinator Contact Info: Abraham Lerner Phone: 703-259-3345 Email: Abraham.Lerner@vdot.virginia.gov	

Detailed Scope of Services
Design and construct a 10' shared use path along Old Meadow Road beginning at the intersection of Old Meadow Road and Route 123, terminating at Tysons One Place near the intersection with Fashion Boulevard. The project includes the design and construction of a bicycle/pedestrian bridge over the Capital Beltway (I-495).

This attachment is certified and made an official attachment to this document by the parties of this agreement

Jared W. Wigglesworth for TB 7-19-18 OT Lyata for LB 7/27/14  
Authorized Locality Official and date Residency Administrator/PE Manager/District Construction Engineer  
Recommendation and date

Tom BIESIAWY  
Typed or printed name of person signing

Terry Yata  
Typed or printed name of person signing

Board Agenda Item  
September 24, 2019

ACTION - 11

Approval of and Authorization to Execute a Project Administration Agreement with the Virginia Department of Transportation for Implementation of the Vienna Metrorail Station Trail Improvement (Providence District)

ISSUE:

Board of Supervisor's approval of, and authorization for, the Director of the Fairfax County Department of Transportation (FCDOT) to execute a Project Administration Agreement (PAA), substantially in the form of Attachment 2, for the implementation of Vienna Metrorail Station Trail Improvement Project.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve a resolution (Attachment 1), authorizing the Director of FCDOT to enter a PAA with the Virginia Department of Transportation (VDOT), substantially in the form of Attachment 2, for the development of the project.

TIMING:

The Board should act on this item on September 24, 2019, so that VDOT can begin implementation of the project.

BACKGROUND:

On October 24, 2017, the Board of Supervisors endorsed the County's applications for Transportation Alternatives (TA) Projects, which included a funding request for Vienna Metrorail Station Bicycle Connectivity (similar in scope to the project). The Commonwealth Transportation Board (CTB) awarded funding for the project in Summer 2018, and the Board approved a PAA with VDOT on September 25, 2018. However, the PAA was never executed by VDOT, as the County and VDOT decided the project should be administered by VDOT (instead of the County) as part of the I-66 Outside the Beltway Project.

The original agreement (Attachment 3) approved by the Board in September 2018 was for \$1 million, consisting of \$800,000 in TA grant funds, and \$200,000 in local cash match identified in Fund 30050, Transportation Improvements. The proposed agreement and Total Project Estimate (TPE) is for \$6.5 million. The estimated costs of the improvements were approximately \$6.5 million when the County applied for TA

Board Agenda Item  
September 24, 2019

funding, but as the average award of TA grants is approximately \$1 million, staff proposed to pursue TA funding in the amount of \$1 million.

The project will enhance bike access to the Vienna Metrorail Station. Improvements will include construction of a new shared use path along Virginia Center Boulevard (south side), removing the existing sidewalk on Sutton Road (west side), and construction of a two-way cycle track and sidewalk along Country Creek Road (south side). The project also includes bike wayfinding signage and shared lane markings. Under this PAA, VDOT will administer the construction of and maintain the proposed improvements in accordance with all applicable federal, state and local laws and regulations.

FISCAL IMPACT:

The current TPE is \$6.5 million. The funding breakdown shown in the agreement is: \$5.5 million Regional Surface Transportation Program (RSTP), \$800,000 in TA grant funding, and \$200,000 in local cash match funds from Fund 30050, Transportation Improvements, Project ST-000037, County-maintained Bike/Trail Improvements – 2014. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution to Execute a Project Administration Agreement with the Virginia Department of Transportation

Attachment 2: Project Administration Agreement for Vienna Metro Bike Connection Project (including Related Appendices)

Attachment 3: Original Project Administration Agreement Approved by the Board September 25, 2018 (never executed)

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Todd Minnix, Chief, Transportation Design Division (CPTED), FCDOT

Chris Wells, Active Transportation Program Manager, CPTED, FCDOT

Martha Coello, Chief, Special Projects Division, FCDOT

Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), FCDOT

Ray Johnson, Chief, Funding Section, CFD, FCDOT

Joe LaHait, Debt Coordinator, Department of Management and Budget

ASSIGNED COUNSEL:

Joanna 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 in Fairfax, Virginia, on Tuesday, September 24, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

### AGREEMENT EXECUTION RESOLUTION

#### A RESOLUTION FOR THE BOARD OF SUPERVISORS OF THE COUNTY OF FAIRFAX, VIRGINIA

#### AS AN ENDORSEMENT OF THE Vienna Metrorail Station Trail Improvement PROJECT

**WHEREAS**, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring local jurisdiction or agency requesting the Virginia Department of Transportation (VDOT) to establish a project(s), if not already established, in the County of Fairfax.

**NOW, THEREFORE, BE IT RESOLVED**, that the County of Fairfax requests the Commonwealth Transportation Board to establish a project(s), if not already established, for the implementation of, Vienna Metrorail Station Trail Improvement project (VDOT project # EN18-029-423, UPC 113611) (“Project”).

**BE IT FURTHER RESOLVED THAT**, the County of Fairfax hereby agrees to provide its share of the local contribution, in accordance with the Project Administration Agreements (“PAA”, attached) and associated financial documents (Appendix A and B), executed pursuant to this Resolution.

**BE IT FURTHER 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, the PAA with the Virginia Department of Transportation for the implementation of the Project to be administered by Fairfax County.

Adopted this 24<sup>th</sup> day of September 2019, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Jill G. Cooper  
Clerk to the Board of Supervisors



**VDOT ADMINISTERED – LOCALLY FUNDED  
PROJECT ADMINISTRATION AGREEMENT**

FAIRFAX COUNTY  
PROJECT NUMBER EN18-029-423    UPC 113611

THIS AGREEMENT, made and executed in triplicate on this the \_\_\_\_\_ day  
of \_\_\_\_\_, 2019, by and between the COMMONWEALTH OF  
VIRGINIA DEPARTMENT OF TRANSPORTATION, hereinafter referred  
to as the "DEPARTMENT" and the COUNTY OF FAIRFAX, hereinafter  
referred to as the "COUNTY."

WITNESSETH

WHEREAS, the COUNTY has expressed its desire to have the DEPARTMENT administer the work as described in Appendix B, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds as shown in Appendix A have all been allocated by the COUNTY to finance the project; and

WHEREAS, the COUNTY has requested that the DEPARTMENT design and construct this project in accordance with the scope of work described in Appendix B, and the DEPARTMENT has agreed to perform such work; and

WHEREAS, both parties have concurred in the DEPARTMENT's administration of the project identified in this Agreement and its associated Appendices A and B in accordance with applicable federal, state, and local law and regulations; and

WHEREAS, the County's governing body has, by resolution, which is attached hereto, authorized its designee to execute this Agreement; and

WHEREAS, Section 33.2-338 of the Code of Virginia authorizes both the DEPARTMENT and the COUNTY to enter into this Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

A.     The DEPARTMENT shall:

1.     Complete said work as identified in Appendix B, advancing such diligently, and all work shall be completed in accordance with the schedule established by both parties.
2.     Perform or have performed, and remit all payments for, all preliminary engineering, right-of-way acquisition, construction, contract administration, and inspection services activities for the project(s) as required.

3. Provide a summary of project expenditures to the COUNTY for charges of actual DEPARTMENT cost.
  4. Notify the COUNTY of additional project expenses resulting from unanticipated circumstances and provide detailed estimates of additional costs associated with those circumstances. The DEPARTMENT will make all efforts to contact the COUNTY prior to performing those activities.
  5. Return any unexpended funds to the COUNTY no later than 90 days after the project(s) have been completed and final expenses have been paid in full.
- B. The COUNTY shall:
1. Provide funds to the Department for Preliminary Engineering (PE), Right of Way (ROW) and/or Construction (CN) in accordance with the payment schedule outlined in Appendix A.
  2. Accept responsibility for any additional project costs resulting from unforeseeable circumstances, but only after concurrence of the COUNTY and modification of this Agreement.
- C. Funding by the COUNTY shall be subject to annual appropriation or other lawful appropriation by the Board of Supervisors.
- D. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
- E. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the County or the Department shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the

County or the Department has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

- F. Nothing in this Agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.
- G. Should funding be insufficient and county funds be unavailable, both parties will review all available options for moving the project forward, including but not limited to, halting work until additional funds are allocated, revising the project scope to conform to available funds, or cancelling the project.
- H. Should the project be cancelled as a result of the lack of funding by the COUNTY, the COUNTY shall be responsible for any costs, claims and liabilities associated with the early termination of any construction contract(s) issued pursuant to this agreement.
- I. This Agreement may be terminated by either party upon 60 days advance written notice. Eligible expenses incurred through the date of termination shall be reimbursed to the DEPARTMENT subject to the limitations established in this Agreement.

THE COUNTY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors and assigns.

THIS AGREEMENT may be modified in writing upon mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

**COUNTY OF FAIRFAX, VIRGINIA:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name of Signatory Date

\_\_\_\_\_  
Signature of Witness Date

NOTE: The official signing for the COUNTY must attach a certified copy of his or her authority to execute this Agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_  
Chief of Policy  
Commonwealth of Virginia  
Department of Transportation Date

\_\_\_\_\_  
Signature of Witness Date

Attachments: Appendix A (UPC 113611)  
Appendix B (UPC 113611)

## VDOT Administered, Locally Funded Appendix A

Date: DRAFT 8/12/2019

Project Number: EN18-029-423 UPC: 113611 CFDA# 20.205 Locality: Fairfax County

Project Location ZIP+4: 22181-4800	Locality DUNS # 074837626	Locality Address (incl ZIP+4): 4050 Legato Rd, Suite 400, Fairfax, VA 22033-2867
<b>Project Narrative</b>		
Scope: Construct new shared use path along Virginia Center Blvd (south side) and Sutton Road (west side), removing existing sidewalk. Construct two-way Cycle Track and sidewalk along Country Creek Road (south side).		
From: Blake Lane		
To: Virginia Center Boulevard		
Locality Project Manager Contact info:	Lauren Delmare	703-877-5781 lauren.delmare@fairfaxcounty.gov
Department Project Coordinator Contact Info:	Tim Hartzell	703-259-2749 timothy.hartzell@vdot.virginia.gov

Project Estimates	
Phase	Estimated Project Costs
Preliminary Engineering	\$1,000,000
Right of Way & Utilities	\$350,000
Construction	\$5,150,000
Total Estimated Cost	\$6,500,000

Project Cost				
Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering	\$1,000,000	Transp. Alternatives	20%	\$200,000
Total PE	\$1,000,000			\$200,000
Right of Way & Utilities	\$350,000	RSTP	0%	\$0
Total RW	\$350,000			\$0
Construction	\$5,150,000	RSTP	0%	\$0
Total CN	\$5,150,000			\$0
Total Estimated Cost	\$6,500,000			\$200,000

Total Maximum Reimbursement / Payment by Locality to VDOT	\$200,000
---	-----------

Project Financing				
RSTP	Transportation Alternatives State Match	Transportation Alternatives Local Match		Aggregate Allocations
\$5,500,000	\$800,000	\$200,000		\$6,500,000

Payment Schedule	
• The LOCALITY shall make one payment to VDOT of \$200,000 within 60 days of execution of the agreement.	

Program and Project Specific Funding Requirements	
<ul style="list-style-type: none"> <li>• This is a limited funds project. The locality shall be responsible for any additional funding in excess of \$6,300,000</li> <li>• VDOT has billed the LOCALITY \$0 for this project as of 8/2/2019.</li> <li>• VDOT has received \$0 from the LOCALITY for this project as of 8/2/2019.</li> <li>• All local funds included on this appendix have been formally committed by the local government's board or council resolution.</li> <li>• This project is funded with federal-aid Regional Surface Transportation Program (RSTP) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.</li> <li>• This is a limited funds project. Financing of any eligible costs in excess of \$6,300,000 and all ineligible costs as determined by the DEPARTMENT pursuant to the DEPARTMENT's current policy and procedure in administration of the Transportation Alternatives Program Guide will be borne 100% percent by the LOCALITY.</li> <li>• When reimbursing with TA funding, eligible VDOT Project expenses will be recovered as follows: 80% will be deducted from the federal allocation and 20% will be deducted from</li> <li>• For Transportation Alternatives (TA) Projects, the LOCALITY shall maintain the Project or have it maintained in a manner satisfactory to the DEPARTMENT for its useful life and make ample provisions each year for such maintenance unless otherwise agreed to by the DEPARTMENT. Failure to do so, or the sale of a TA funded improvement prior to the expectations as identified in the TA Guide, may require repayment of federal funds.</li> <li>• In accordance with CTB policy, the Project must be under construction by or the federal Transportation Alternatives (TA) funding may be subject to de-allocation.</li> </ul>	

This attachment is certified and made an official attachment to this document by the parties to this agreement

\_\_\_\_\_  
Authorized Locality Official and Date\_\_\_\_\_  
Authorized VDOT Official and Date\_\_\_\_\_  
Typed or printed name of person signing\_\_\_\_\_  
Typed or printed name of person signing

Revised: August 13, 2018

## Appendix B

**Project Number:** (UPC 113611)

**Locality:** Fairfax County

Project Scope			
<b>Work Description:</b>	Construct new shared use path along Virginia Center Blvd (south side) and Sutton Road (west side), removing existing sidewalk. Construct two-way Cycle Track and sidewalk along Country Creek Road (south side).		
<b>From:</b>	Blake Lane		
<b>To:</b>	Virginia Center Boulevard		
Locality Project Manager Contact Info:	Lauren Delmare	703-877-5781	Lauren.Delmare@fairfaxcounty.gov
Department Project Coordinator Contact Info:	Tim Hartzell	703-259-2749	Timothy.Hartzell@vdot.virginia.gov

Detailed Scope of Services
<p>Virginia Center Boulevard (from I-66 WB On Ramp to Vaden Drive):</p> <ul style="list-style-type: none"><li>• 200 ft of new 10' wide Shared Use Path along the I-66 WB ramp in front of the parking lot.</li><li>• 1,200 ft of new 10' wide Shared Use Path along the south side of the road by reducing the road by one lane to accommodate the shared use path and maintaining the existing sidewalk, where feasible (subject to approval of road diet)</li><li>• Provide new pavement markings, signage, and traffic signal optimization</li><li>• Conduct Traffic Analysis to determine feasibility of road diet.</li><li>• Provide enhanced crosswalks.</li></ul> <p>Country Creek Road (from Vaden Drive to Sutton Road)</p> <ul style="list-style-type: none"><li>• 1,500 ft of two-way Cycle Track and sidewalk along the south side of the road (included in road diet)</li><li>• Provide new pavement markings, signage and traffic signal.</li><li>• Remove free flow right turn from I-66 ramp and add right turn lane at signal (subject to approval of Interchange Modification Report (IMR)).</li><li>• Provide enhanced crosswalks.</li></ul> <p>Sutton Road (from Country Club Road to Blake Lane)</p> <ul style="list-style-type: none"><li>• 1,900 ft of new 10' Shared Use Path on the south side of Sutton Road.</li><li>• Reduce right of way impacts north of Sutton Green Court by using excessive pavement while maintaining on-street parking both sides of Sutton Road.</li><li>• Potential 800 ft of retaining wall due to steep grades</li><li>• Provide new bike/pedestrian crossing on Blake Lane on the south side of the intersection along with a new traffic signal.</li><li>• Upgrade 100 ft. of existing sidewalk on west side of Blake Lane to 10' shared use path.</li></ul>

This attachment is certified and made an official attachment to this document by the parties of this agreement

\_\_\_\_\_  
Authorized Locality Official and date

\_\_\_\_\_  
Residency Administrator/PE Manager/District Construction Engineer  
Recommendation and date

\_\_\_\_\_  
Typed or printed name of person signing

\_\_\_\_\_  
Typed or printed name of person signing

**STANDARD PROJECT ADMINISTRATION AGREEMENT**  
**Federal-aid Projects**

Project Number	UPC	Local Government
EN18-029-423 Vienna Metro Bike Connection	113611	Fairfax County

THIS AGREEMENT, made and executed in triplicate this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the County of Fairfax, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the LOCALITY has expressed its desire to administer the work described in Appendix A, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds shown in Appendix A have been allocated to finance each Project; and

WHEREAS, the LOCALITY is committed to the development and delivery of each Project described in Appendix A in an expeditious manner; and;

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in Appendix A in accordance with applicable federal, state, and local law and regulations.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties hereto agree as follows:

1. The LOCALITY shall:
  - a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown in Appendix A, except for activities, decisions, and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties. Each Project will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or supplementary standards approved by the DEPARTMENT
  - b. Meet all funding obligation and expenditure timeline requirements in accordance with all applicable federal and state laws and regulations, and Commonwealth Transportation Board and DEPARTMENT policies and as identified in Appendix A to this Agreement. Noncompliance with this requirement can result in deallocation of the funding, rescinding of state funding match, termination of this Agreement, or DEPARTMENT denial of future requests to administer projects by the LOCALITY.

- c. Receive prior written authorization from the DEPARTMENT to proceed with preliminary engineering, right-of-way acquisition and utility relocation, and construction phases of each Project.
- d. Administer the project(s) in accordance with guidelines applicable to Locally Administered Projects as published by the DEPARTMENT.
- e. Maintain accurate and complete records of each Project's development and documentation of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final voucher on each Project.
- f. No more frequently than monthly, submit invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT. The supporting documentation shall include copies of related vendor invoices paid by the LOCALITY and an up-to-date project summary and schedule tracking payment requests and adjustments. A request for reimbursement shall be made within 90 days after any eligible project expenses are incurred by the Locality. For federally funded projects and pursuant to 2 CFR 200.338, Remedies for Noncompliance, violations of the provision may result in the imposition of sanctions including but not limited to possible denial or delay of payment of all or a part of the costs associated with the activity or action not in compliance.
- g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if, due to action or inaction solely by the LOCALITY, federally funded Project expenditures incurred are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements are required to be returned to the FHWA, or in the event the reimbursement provisions of Section 33.2-214 or Section 33.2-331 of the Code of Virginia, 1950, as amended, or other applicable provisions of federal, state, or local law or regulations require such reimbursement.
- h. On Projects that the LOCALITY is providing the required match to state or federal funds, pay the DEPARTMENT the LOCALITY's match for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 2.a.
- i. Administer the Project in accordance with all applicable federal, state, or local laws and regulations. Failure to fulfill legal obligations associated with the project may result in forfeiture of federal or state-aid reimbursements



- j. Provide certification by a LOCALITY official that all LOCALITY administered Project activities have been performed in accordance with all federal, state, and local laws and regulations. If the locality expends over \$750,000 annually in federal funding, such certification shall include a copy of the LOCALITY's single program audit in accordance with 2 CFR 200.501, Audit Requirements.
  - k. If legal services other than that provided by staff counsel are required in connection with condemnation proceedings associated with the acquisition of Right-of-Way, the LOCALITY will consult the DEPARTMENT to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General. Costs associated with outside counsel services shall be reimbursable expenses of the project.
  - l. For Projects on facilities not maintained by the DEPARTMENT, provide, or have others provide, maintenance of the Project upon completion, unless otherwise agreed to by the DEPARTMENT.
  - m. Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination.
2. The DEPARTMENT shall:
- a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal and state laws and regulations or as otherwise agreed to, in writing, between the parties and provide necessary coordination with the FHWA as determined to be necessary by the DEPARTMENT.
  - b. Upon receipt of the LOCALITY's invoices pursuant to paragraph 1.f., reimburse the LOCALITY the cost of eligible Project expenses, as described in Appendix A. Such reimbursements shall be payable by the DEPARTMENT within 30 days of an acceptable submission by the LOCALITY.
  - c. If appropriate, submit invoices to the LOCALITY for the LOCALITY's share of eligible project expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.
  - d. Audit the LOCALITY's Project records and documentation as may be required to verify LOCALITY compliance with federal and state laws and regulations.

- e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.
3. Appendix A identifies the funding sources for the project, phases of work to be administered by the LOCALITY, and additional project-specific requirements agreed to by the parties. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.
4. If designated by the DEPARTMENT, the LOCALITY is authorized to act as the DEPARTMENT's agent for the purpose of conducting survey work pursuant to Section 33.2-1011 of the Code of Virginia, 1950, as amended.
5. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.
6. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
7. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
8. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between either party and

other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

- 9 This Agreement may be terminated by either party upon 30 days advance written notice. Eligible Project expenses incurred through the date of termination shall be reimbursed in accordance with paragraphs 1.f, 1.g., and 2.b, subject to the limitations established in this Agreement and Appendix A. Upon termination, the DEPARTMENT shall retain ownership of plans, specifications, and right of way, unless all state and federal funds provided for the Project have been reimbursed to the DEPARTMENT by the LOCALITY, in which case the LOCALITY will have ownership of the plans, specifications, and right of way, unless otherwise mutually agreed upon in writing.
10. Prior to any action pursuant to paragraphs 1.b or 1.g of this Agreement, the DEPARTMENT shall provide notice to the LOCALITY with a specific description of the breach of agreement provisions. Upon receipt of a notice of breach, the LOCALITY will be provided the opportunity to cure such breach or to provide a plan to cure to the satisfaction to the DEPARTMENT. If, within sixty (60) days after receipt of the written notice of breach, the LOCALITY has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the DEPARTMENT, then upon receipt by the LOCALITY of a written notice from the DEPARTMENT stating that the breach has neither been cured, nor is the LOCALITY diligently pursuing a cure, the DEPARTMENT may exercise any remedies it may have under this Agreement.

THE LOCALITY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS AGREEMENT may be modified in writing by mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

**COUNTY OF FAIRFAX, VIRGINIA:**

\_\_\_\_\_

\_\_\_\_\_  
Typed or printed name of signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF  
TRANSPORTATION:**

\_\_\_\_\_  
Chief of Policy  
Commonwealth of Virginia  
Department of Transportation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

**Attachments**

Appendix A – UPC 113611

**Appendix A****Date:** 7/17/2018

Project Number: EN18-029-423      UPC: 113611      CFDA # 20.205      Locality: Fairfax County

Project Location ZIP+4: 22181-9600	Locality DUNS# 074837626	Locality Address (incl ZIP+4): 4050 Legato Road, Suite 400 Fairfax, VA 22033-2895
<b>Project Narrative</b>		
Scope:	Vienna Metro Bike Connection Improvement - Enhance bike access to the Vienna Metrorail and Metro West Town Center along Virginia Center Boulevard and Country Creek Road.	
From:	Country Creek Rd and Sutton Rd	
To:	Virginia Center Boulevard and Nutley St	
Locality Project Manager Contact info:	Todd Minnix 703-877-5749	<a href="mailto:Wesley.Minnix@fairfaxcounty.gov">Wesley.Minnix@fairfaxcounty.gov</a>
Department Project Coordinator Contact Info:	Mauricio Felix 703-259-2205	<a href="mailto:Mauricio.Felix@vdot.virginia.gov">Mauricio.Felix@vdot.virginia.gov</a>

Project Estimates				
	Preliminary Engineering	Right of Way and Utilities	Construction	Total Estimated Cost
Estimated Locality Project Expenses	\$288,000	\$54,000	\$612,500	\$954,500
Estimated VDOT Project Expenses	\$32,000	\$1,000	\$12,500	\$45,500
Estimated Total Project Costs	\$320,000	\$55,000	\$625,000	\$1,000,000

Project Cost and Reimbursement						
Phase	Estimated Project Costs	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount	Maximum Reimbursement (Estimated Cost - Local Share)	Estimated Reimbursement to Locality (Max. Reimbursement - Est. VDOT Expenses)
Preliminary Engineering	\$320,000	Transportation Alternatives	20%	\$64,000	\$256,000	
				\$0	\$0	
<b>Total PE</b>	\$320,000			\$64,000	\$256,000	\$224,000
Right of Way & Utilities	\$55,000	Transportation Alternatives	20%	\$11,000	\$44,000	
				\$0	\$0	
<b>Total RW</b>	\$55,000			\$11,000	\$44,000	\$43,000
Construction	\$625,000	Transportation Alternatives	20%	\$125,000	\$500,000	
				\$0	\$0	
<b>Total CN</b>	\$625,000			\$125,000	\$500,000	\$487,500
<b>Total Estimated Cost</b>	\$1,000,000			\$200,000	\$800,000	\$754,500

<b>Total Maximum Reimbursement by VDOT to Locality (Less Local Share)</b>	\$800,000
<b>Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses)</b>	\$754,500

Project Financing						
Transportation Alternatives (80%)	Local Match (20%)					Aggregate Allocations
\$800,000	\$200,000					\$1,000,000

<p align="center"><b>Program and Project Specific Funding Requirements</b></p> <ul style="list-style-type: none"> <li>• This project shall be administered in accordance with VDOT's Locally Administered Projects Manual and Transportation Alternatives Program Guide.</li> <li>• In accordance with Chapter 12.1.3 (Scoping Process Requirements) of the LAP Manual, the locality shall complete project scoping on or before 10/30/2019.</li> <li>• This is a limited funds project. The LOCALITY shall be responsible for any additional funding in excess of \$800,000.</li> <li>• Reimbursement for eligible expenditures shall not exceed funds allocated each year by the Commonwealth Transportation Board in the Six Year Improvement Program.</li> <li>• Eligible VDOT project expenses will be recovered as follows: 80% will be deducted from the federal allocation and 20% will be deducted from reimbursement requests.</li> <li>• Any ineligible items identified throughout project development will not be reimbursable.</li> <li>• The DEPARTMENT will conduct all environmental studies necessary to complete an environmental document in compliance with the National Environmental Policy Act. The LOCALITY is responsible for implementing any environmental commitments from the environmental document. In addition, the LOCALITY is responsible for obtaining any water quality permits and conducting any required hazardous materials due diligence efforts. VDOT's estimated cost for the environmental document and studies will be provided to the locality and deducted from the project funds.</li> <li>• For Transportation Alternatives projects, the LOCALITY shall maintain the project or have it maintained in a manner satisfactory to the DEPARTMENT for its useful life and make ample provisions each year for such maintenance unless otherwise agreed to by the DEPARTMENT. Failure to do so, or the sale of a TAP funded improvement prior to the expectations as identified in the TAP Guide, may require repayment of federal funds.</li> <li>• In accordance with CTB policy, the project must be under construction by October 1, 2022 or the federal Transportation Alternatives funding may be subject to de-allocation.</li> </ul>
--

This attachment is certified and made an official attachment to this document by the parties to this agreement.

\_\_\_\_\_  
 Authorized Locality Official and Date  
  
 Tom Biesiadny  
 Typed or printed name of person signing

\_\_\_\_\_  
 Authorized VDOT Official and Date  
  
 Ray Burkhardt  
 Typed or printed name of person signing

Revised: July 3, 2018

ACTION - 12

Authorization to Sign Standard Project Agreements (SPAs) for Distribution of I-66 Inside the Beltway Toll Revenues Allocated by the Commonwealth Transportation Board (CTB) to the Northern Virginia Transportation Commission (NVTC) for Bus Service in the I-66 Corridor (Braddock, Providence, Springfield, and Sully Districts)

ISSUE:

Board approval of a resolution (Attachment 1) authorizing the Director of the Department of Transportation to execute the attached Standard Project Agreements (Attachments 2 and 3) between Fairfax County and NVTC for bus service in the I-66 corridor. The SPAs will govern the terms of the transfer of funds allocated by NVTC, under the Amended and Restated Memorandum of Agreement, Transform 66: Inside the Beltway Project (MOA) (Attachment 4), and ensure that the requirements of the MOA and the SPAs are met.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve a resolution (Attachment 1) authorizing the Director of the Fairfax County Department of Transportation (FCDOT) to sign two SPAs, substantially in the form of Attachments 2 and 3, between the County and NVTC for distribution of \$6,265,500 million in I-66 toll revenues. These funds will be allocated by NVTC to Fairfax County for a new commuter bus service on I-66 from the Stringfellow Road Park-and-Ride to the L'Enfant Plaza area of Washington D.C. and the expansion of Fairfax Connector Route 699, which provides commuter bus service on I-66 between the Fairfax County Government Center and the Foggy Bottom area of Washington D.C.

TIMING:

Board action is requested on September 24, 2019, so that NVTC can begin distributing the funding.

BACKGROUND:

In January 2017, the CTB, the Virginia Department of Transportation (VDOT), and NVTC signed an MOA to initiate a multimodal transportation program called Transform 66. The project seeks to fund and implement solutions to move more people in the I-66 corridor. This program uses toll revenues to support projects that are reasonably

expected to benefit the toll payers. Tolls were implemented inside the Beltway in the peak direction during the morning and evening peak periods.

Under the MOA, NVTC is responsible for selecting and administering multimodal projects that allow more people to travel faster and more reliably through the I-66 Inside the Beltway corridor. The principal objective of the Transform 66 Multimodal Project is to select projects that (1) move more people, (2) enhance transportation connectivity, (3) improve transit service, (4) reduce roadway congestion, and (5) increase travel options.

In December 2018, the Fairfax County Board approved a resolution authorizing the FCDOT to apply for FY 2020 regional funding through NVTC to fund three projects that would increase travel options for commuters on I-66 Inside the Beltway:

- Express bus service operating from the Stringfellow Road Park-&-Ride Lot to the L'Enfant Plaza area in the District of Columbia: Cost \$4,326,000 to include the purchase of six additional buses. The map of the new route is provided in Attachment 5.
- Renewal of existing grant funds for the expansion of the Fairfax Connector Route 699, which operates between the Fairfax County Government Center and the Foggy Bottom area of the District of Columbia, and adding three additional trips in the morning and evening peak hours: Cost \$1,939,500 to include the purchase on one additional bus. The map of Route 699 is provided in Attachment 6.
- Vienna Metrorail Trail from Blake Lane to Vienna Metrorail Station: Cost \$3,000,000.

NVTC received \$32.8 million in funding requests for 20 projects, as part of the FY 2020 program. The public comment period for input on these projects was April 5, 2019, through May 15, 2019. During this time, NVTC held three public meetings to solicit public input for the proposed projects. On June 6, NVTC approved the FY 2020 Commuter Choice Program of projects, which includes 13 projects totaling \$19,649,539. On June 19, the Commonwealth Transportation Board approved funding for the FY 2020 Commuter Choice Program. NVTC and the CTB approved funding for the expansion of Fairfax Connector Route 699 and the new route from Stringfellow Road Park-&-Ride Lot to L'Enfant Plaza, but the Vienna Metrorail Trail project was not selected.

The MOA specifies that NVTC may use toll revenues to support the financing of approved projects. To accomplish this, the NVTC developed the SPA, in consultation with the respective localities and public transportation providers, to govern the terms of the toll revenue transfers and ensure that the requirements of the MOA are met. The SPA must be approved by the County and the Commission before distributions occur.

Board Agenda Item  
September 24, 2019

FISCAL IMPACT:

Funding in the amount of \$6,265,500 for the new commuter bus service on I-66 from the Stringfellow Road Park-and-Ride Lot to the L'Enfant Plaza area of Washington, D.C., and the expansion of bus route 699, from the Fairfax County Government Center to the

Foggy Bottom area of Washington, D.C., will be reimbursed by NVTC as part of the FY 2020 Commuter Choice Program. This funding will be included in Fund 40000 (County Transit Systems) in subsequent budget processes. There is no General Fund impact.

ENCLOSED ATTACHMENTS:

Attachment 1 - Resolution authorizing the Director of the Department of Transportation to execute the attached Standard Project Agreements between Fairfax County and NVTC

Attachment 2 – Standard Project Agreement for Transform 66: Inside the Beltway Project, Toll Revenue Funding of Projects and Administration for Fairfax Connector New Express Bus Service between the Stringfellow Road Park-and-Ride Lot and L'Enfant Plaza

Attachment 3 – Standard Project Agreement for Transform 66: Inside the Beltway Project, Toll Revenue Funding of Projects and Administration for Enhanced Bus Service from the Government Center to the Foggy Bottom Area

Attachment 4 – Amended and Restated Memorandum of Agreement Transform 66: Inside the Beltway Project

Attachment 5 – Map: Fairfax Connector Route 697 – Stringfellow Road Park and Ride Lot to L'Enfant Plaza area of Washington, D.C.

Attachment 6 – Map: Fairfax Connector Route 699 – Government Center to the Foggy Bottom/State Department area of Washington, D.C.

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation, FCDOT

Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT

Dwayne Pelfrey, Chief, Transit Services Division, FCDOT

Joe Mondoro, Department of Management and Budget

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

Noelle Dominguez, Chief Coordination Section, FCDOT

Malcolm Watson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Emily Harwood Smith, Assistant County Attorney



## 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, September 24, 2019, at which a quorum was present and voting, the following resolution was adopted.

**WHEREAS**, in December 2018, the Board approved a resolution authorizing the Fairfax County Department of Transportation to apply for regional funding under the Northern Virginia Transportation Commission (NVTC)'s FY 2020 I-66 Inside the Beltway Commuter Choice Program for the following projects ("the County Projects").

- Express bus service operating from the Stringfellow Road Park-&-Ride Lot to the L'Enfant Plaza area in the District of Columbia.
- Renewal and expansion of Fairfax Connector Route 699, from the Government Center to the Foggy Bottom area of the District of Columbia, adding three additional morning and afternoon trips during peak hours.

**WHEREAS**, on June 6, 2019, NVTC approved the FY 2020 Commuter Choice Program of projects, including the County Projects, and on June 19, 2019, the Commonwealth Transportation Board approved funding for the FY 2020 Commuter Choice Program.

**WHEREAS**, NVTC developed the Standard Project Agreement (SPA), in consultation with the respective localities and public transportation providers, to govern the terms of the toll revenue transfers and ensure that the requirements of the Transform 66: Inside the Beltway Project Memorandum of Agreement are met.

**WHEREAS**, a SPA for each project must be executed by the County and NVTC before distributions of toll revenues occur.

**NOW, THEREFORE, BE IT RESOLVED**, that the Director of the Department of Transportation is authorized to execute the Standard Project Agreements with the Northern Virginia Transportation Commission for the County Projects.

This Resolution shall take effect immediately.

A Copy Teste:

---

Jill G. Cooper  
Clerk to the Board of Supervisors

**Standard Project Agreement for Transform 66: Inside the Beltway Project, Toll  
Revenue Funding of Projects and Administration**

**Between the Northern Virginia Transportation Commission and  
Fairfax County**

NVTC Project Number: 059-02-20

NVTC Project Name: New Bus Service from the Stringfellow Road Park and Ride Lot to  
L'Enfant Plaza

This Standard Project Agreement for Transform 66: Inside the Beltway Project, Toll Revenue Funding of Projects and Administration ("this Agreement") is made and executed in duplicate on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Northern Virginia Transportation Commission ("NVTC") and \_\_\_\_ Fairfax County \_\_\_\_ ("Recipient Entity").

**WITNESSETH**

WHEREAS, NVTC is a political subdivision of the Commonwealth of Virginia created by the General Assembly in accordance with the Transportation District Act of 1964, §§ 33.2-1900 et seq. of the Code of Virginia, 1950, as amended, and is authorized to enter into this Agreement by the provisions of § 33.2-1915 of the Code of Virginia, 1950, as amended;

WHEREAS, NVTC entered into a Memorandum of Agreement Transform 66: Inside the Beltway Project ("MOA"), on January 5, 2016, with the Commonwealth Transportation Board ("CTB"), and the Virginia Department of Transportation ("VDOT"), as such may be amended from time to time, which MOA delegated to NVTC the authority to select and administer the implementation of multimodal transportation improvements to the roadways and associated transportation and transit facilities ("Components" as used in the MOA and, for purposes of this Agreement, "Projects") in the vicinity of the portion of I-66 beginning at the intersection of I-66 and I-495 (the "Beltway") and ending at U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (said portion of I-66 being referred to as the "Facility") which Projects are designed to attain the Improvement Goals defined in the MOA, specifically, to (1) move more people; (2) enhance transportation connectivity; (3) improve transit service; (4) reduce roadway congestion; and (5) increase travel options all of which are reasonably expected to benefit the toll paying users of the Facility;

WHEREAS, the MOA provides for the transfer to and use by NVTC of a portion of the funds collected from the CTB's tolling of the Facility ("Toll Revenue") for the implementation of Projects selected by NVTC and approved by the CTB, as well as operating costs related to Projects, and NVTC financing and debt service payments and any allowable costs related thereto;

WHEREAS, based on information provided by Recipient Entity in response to NVTC's call for Projects, NVTC has determined the Project set forth and described on Appendix A to this Agreement satisfies the requirements of Section II.B.1 of the MOA, and the provisions of § 33.2-309 of the Code of Virginia, 1950, as amended, and the CTB has approved use of Toll Revenue to fund such Project;

WHEREAS, the Toll Revenue to be provided by NVTC described in Appendix B have been duly authorized and directed by Recipient Entity to finance the Project, and the Recipient Entity is authorized to enter into this Agreement and has authorized execution of it on its behalf;

WHEREAS, NVTC agrees that Recipient Entity will, itself or through its contractors or agents, design, construct, acquire and/or operate the Project or perform such other specific work for the Project and Recipient Entity agrees that it will perform or have performed, such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

WHEREAS, both parties have concurred in the Recipient Entity'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, NVTC's governing body and Recipient Entity'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 resolution or 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**

Recipient Entity shall:

- I. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement. Recipient Entity expressly agrees that, for non-debt financed Projects, Recipient Entity must obligate the Toll Revenue to the cost of the Project within two (2) fiscal years and to expend the Toll Revenue within five (5) fiscal years of the fiscal year in which the funds for the Project were allocated by the CTB unless an extension has been approved by NVTC and the CTB.

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.
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, capital asset acquisitions, or operations, and all allowable expenses for the Project, as is required by this Agreement and that may be necessary for completion of the Project.
4. Not use the NVTC Toll Revenues specified on Appendix B to pay any Project cost if the MOA or any applicable provision of law does not permit such Project cost to be paid with NVTC Toll Revenue.
5. Recognize that, if the Project, as approved, contains “multiple phases” (as such “multiple phases” are defined for the Project on Appendix A), for which NVTC will provide funding for such multiple phases (as set forth on Appendix B), NVTC may not provide Toll Revenue funding to Recipient Entity to advance the Project to the next phase until the current phase is completed. In any circumstance where Recipient Entity seeks to advance a Project to the next phase using NVTC Toll Revenue, Recipient Entity shall submit a written request to NVTC’s Executive Director explaining the need for NVTC’s funding of an advanced phase. NVTC’s Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTC’s current and projected cash flow position and make a recommendation to NVTC whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit Recipient Entity from providing its own funds to advance a future phase of the Project and from requesting reimbursement from NVTC for having advance funded a future phase of the Project. However, Recipient Entity further recognizes that NVTC’s reimbursement to Recipient Entity for having advance funded a Project phase will be dependent upon NVTC’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 NVTC’s Executive Director will periodically update NVTC’s cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. Recipient Entity shall provide all information required by NVTC 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 NVTC requests for payment consistent with Appendix B and the most recently approved NVTC cash flow estimates that include NVTC's standard payment requisition(s), containing detailed summaries of actual Project costs incurred with supporting documentation as determined by NVTC 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 NVTC, Recipient Entity can expect to receive payment within twenty (20) days upon receipt by NVTC. Approved payments may be made by means of electronic transfer of funds from NVTC to or for the account of Recipient Entity.
8. Promptly notify NVTC's Executive Director of any additional Project costs resulting from unanticipated circumstances which costs exceed the amount allocated by the CTB for the Project, and provide to NVTC detailed estimates of additional costs associated with those circumstances. Recipient Entity understands that it will be within NVTC's sole discretion, subject to CTB approval, whether to seek and to provide any additional funding to the Project in such circumstances and that NVTC will do so only in accordance with NVTC's approved Project selection process and upon formal action and approval by NVTC. Recipient Entity shall timely provide to NVTC a complete and accurate update to Appendix B if NVTC and the CTB approve funding of any additional Project costs for the Project under this Paragraph.
9. Release or return any unexpended funds to NVTC no later than 90 days after final payment has been made to the contractors.
10. Should Recipient Entity be required to provide matching funds in order to proceed or complete the funding necessary for the Project, Recipient Entity shall certify to NVTC that all such matching funds have been either authorized and/or appropriated by Recipient Entity's governing body or have been obtained through another, independent funding source;
11. 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 Recipient Entity and provide copies of any such financial records to NVTC, free of charge, upon request.
12. 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 Recipient Entity; and provide to NVTC copies of all such drawings and plans free of charge, upon request.

13. Reimburse NVTC for all NVTC Toll Revenue (with interest earned at the rate earned by NVTC) that Recipient Entity misapplied or used in contravention of the MOA or any term or condition of this Agreement.
14. Name NVTC and its Bond Trustee, the Commonwealth of Virginia, the CTB, VDOT, DRPT and their officers, employees and agents, or require that all Recipient Entity's contractors name NVTC and its Bond Trustee, the Commonwealth of Virginia, the CTB, VDOT, DRPT and their officers, employees and agents as additional insureds on any insurance policy issued for the work to be performed by or on behalf of Recipient Entity for the Project, and present NVTC with satisfactory evidence thereof before any work on the Project commences or continues, so that they are protected from and against any losses actually suffered or incurred, except for losses to the extent caused by the negligence or willful misconduct of such entity or person, from third party claims that are directly related to or arise out of: (a) any failure by Recipient Entity to comply with, to observe or to perform in any material respect any of the covenants, obligations, agreements, terms or conditions in this Agreement, or any breach by Recipient Entity of its representations or warranties in this Agreement; (b) any actual or willful misconduct or negligence of Recipient Entity, its employees or agents in direct connection with the Projects; (c) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents proprietary information, know-how, trademarked or service-marked materials, equipment devices or processes, copyright rights or inventions by Recipient Entity in direct connection with the Project; (d) inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by Recipient Entity, its employees or agents in direct connection with the Project; or (e) any assumed liabilities. Recipient Entity will contractually require its contractors, subcontractors, vendors and other third parties working or performing services related to any Project funded by NVTC Toll Revenue to indemnify NVTC and its Bond Trustee, the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees and agents from the same losses.
15. Recipient Entity covenants and agrees it will comply with all applicable requirements of state and federal laws relating to anti-discrimination, including but not limited to Titles VI and VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act, and shall contractually require the same of all contractors, subcontractors, vendors, and recipients of any funding. Recipient Entity recognizes the importance of the participation of

minority, women-owned and small businesses through the federal and local Disadvantaged Business Enterprise programs and will abide by such programs in implementing the Project. Recipient Entity shall comply with all applicable federal requirements, including those applicable to highways that are part of the National Highway System.

16. Give notice to NVTC that Recipient Entity may use NVTC Toll Revenue to pay outside legal counsel services (as opposed to utilizing the services of its own in-house counsel or NVTC's in-house legal counsel) in connection with the work performed under this Agreement so as to ensure that no conflict of interest may arise from any such representation.
17. Provide certification to NVTC, that upon final payment to all contractors for the Project, Recipient Entity will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTC 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 Recipient Entity.
19. Acknowledge that if the Project is being funded in whole or in part by NVTC Bond Proceeds, comply with the applicable tax covenants as may be attached as Appendix D.
20. Acknowledge that if Recipient Entity expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that Recipient Entity agrees to comply with VDOT's "Standards, Requirements and Guidance" applicable to the Project.
21. Recognize that Recipient Entity is solely responsible for obtaining all permits, permissions and regulatory approval necessary to develop, construct, operate and/or maintain 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 Recipient Entity is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTC Toll Revenue and/or NVTC Bond Proceeds, that Recipient Entity 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 acknowledge that NVTC will not be a party or signatory to that

agreement; nor will NVTC have any obligation to comply with the requirements of that agreement.

23. Provide a certification to NVTC no later than 90 days after final payment to the contractors that Recipient Entity adhered to all applicable laws and regulations and all requirements of this Agreement.
24. Provide quarterly (January 30th, April 30th, July 30th, and October 30th) written status updates on all approved, active Projects to NVTC on all items described in the Recipient's Project application including progress toward milestones and/or statistics including such information as ridership and/or percent completion.
25. Assist NVTC in the preparation of the annual report to the CTB required by the MOA, by providing data, or other Project information as requested by NVTC, including data to measure the degree to which the expected benefits were realized, or are being realized, as well as other reporting as required by the NVTC reporting guidance.
26. To the greatest extent possible, include the I-66 Commuter Choice logo and recognition of Project funding source as being from the I-66 Commuter Choice Program, in a form approved by NVTC, in all publicly-available materials, documents, websites, etc.

**B. NVTC's Obligations**

NVTC shall:

1. Provide to Recipient Entity the funding authorized by NVTC for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s), and operations, and all allowable expenses 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 NVTC.
2. Assign a Program Coordinator for the Project. NVTC's Program Coordinator will be responsible for monitoring the Project on behalf of NVTC so as to ensure compliance with this Agreement and the MOA, and all NVTC's requirements and for overseeing, managing, reviewing, and processing, in consultation with NVTC's Executive Director and its Director of Finance and Administration (DFA), all payment requisitions submitted by Recipient Entity for the Project. NVTC'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 NVTC's assigned Program Coordinator all Recipient Entity'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 NVTC for the Project. After submission to NVTC, NVTC'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. NVTC's Program Coordinator will then make a recommendation to the NVTC's DFA and Executive Director whether to authorize payment, refuse payment, or seek additional information from Recipient Entity. 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, NVTC's Program Coordinator will notify Recipient Entity 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 NVTC have been corrected. Under no circumstances will NVTC authorize payment for any work performed by or on behalf of Recipient Entity that is not in conformity with the requirements of this Agreement or the MOA.
4. Route all Recipient Entity's supplemental requests for funding from NVTC under Paragraphs A.5 and A.8 of this Agreement to NVTC's Executive Director. NVTC's Executive Director will initially review those requests and all supporting documentation with NVTC's DFA. After such initial review, NVTC's Executive Director will make a recommendation to NVTC's Executive Committee for its independent consideration and review of whether CTB approval of, and an allocation for, supplemental funding should be sought. NVTC's Executive Committee will thereafter make a recommendation on any such request to NVTC for final determination by NVTC, and approval by the CTB.
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 MOA, and other applicable law. Such compliance reviews may entail review of Recipient Entity's financial records for the Project and on-site inspections.
6. Acknowledge that if, as a result of NVTC's review of any payment requisition or of any NVTC compliance review, NVTC staff determines that Recipient Entity has misused or misapplied any NVTC Toll Revenue in derogation of this

Agreement or in contravention of the MOA or applicable law, NVTC staff will promptly advise NVTC's Executive Director and will advise Recipient Entity's designated representative in writing. Recipient Entity will thereafter have thirty (30) days to respond in writing to NVTC's initial findings. NVTC's staff will review Recipient Entity's response and make a recommendation to the NVTC Executive Committee which will, in turn, make a recommendation to NVTC for a final determination. Pending final resolution of the matter, NVTC will withhold further funding of the Project. If NVTC makes a final determination that Recipient Entity has misused or misapplied funds in contravention of this Agreement, the MOA, or other applicable law, NVTC will cease further funding for the Project and will seek reimbursement from Recipient Entity of all funds previously remitted by NVTC (with interest earned at the rate earned by NVTC) which were misapplied or misused by Recipient Entity. 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 Recipient Entity 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.

**C. Term**

1. This Agreement shall be effective upon adoption and execution by both parties and, unless terminated in accordance with the express provisions hereof, shall continue until completion of the Project and final payment of Toll Revenue hereunder, with the exception of those provisions which, by their express terms, survive termination.
2. Recipient Entity may terminate this Agreement, for cause, in the event of a material breach by NVTC of this Agreement. If so terminated, NVTC shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by Recipient Entity to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds, or CTB's failure to allocate, or VDOT's failure to distribute to NVTC as described in paragraph F of this Agreement or shall not be considered material breaches of this Agreement by NVTC. Before initiating any proceedings to terminate under this Paragraph, Recipient Entity shall give NVTC sixty (60) days written

notice of any claimed material breach of this Agreement; thereby allowing NVTC an opportunity to investigate and cure any such alleged breach.

3. NVTC may terminate this Agreement, for cause, resulting from Recipient Entity's material breach of this Agreement. If so terminated, Recipient Entity shall refund to NVTC all funds NVTC provided to Recipient Entity for the Project (including interest earned at the rate earned by NVTC). NVTC will provide Recipient Entity with sixty (60) days written notice that NVTC is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, Recipient Entity may request that NVTC excuse Recipient Entity from refunding all funds NVTC provided to Recipient Entity for the Project based upon Recipient Entity's substantial completion of the Project or severable portions thereof; and NVTC may, in its sole discretion, excuse Recipient Entity from refunding all or a portion of the funds NVTC provided to Recipient Entity for the Project. No such request to be excused from refunding will be allowed where Recipient Entity has either misused or misapplied NVTC funds in contravention of applicable law.
4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, Recipient Entity will release or return to NVTC all unexpended NVTC Toll Revenue with interest earned at the rate earned by NVTC 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. NVTC's Executive Director and Recipient Entity'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 NVTC and to Recipient Entity'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. NVTC's Entitlement to Refund of Value of Project Assets**

Recipient Entity 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 NVTC Toll Revenues 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. In the event that Recipient Entity 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, Recipient Entity shall refund to NVTC, with interest at the rate earned by NVTC, the amount of the value of each 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 NVTC under this Agreement. If Recipient Entity refuses or fails to refund said monies to NVTC, NVTC may recover the proportionate value from Recipient Entity by pursuit of any remedies available to NVTC, including but not limited to NVTC's withholding of commensurate amounts from future distributions of NVTC Toll Revenue to Recipient Entity. In no event shall the Recipient Entity be obligated to refund the aforesaid value to both NVTC and the Commonwealth.

**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 Toll Revenues provided by NVTC pursuant to the MOA are subject to appropriation by the Virginia General Assembly, allocation by the CTB and distribution by VDOT. The parties further acknowledge that NVTC's obligations under this Agreement are subject to such funds being appropriated by the General Assembly, allocated by the CTB and distributed by VDOT to NVTC.

**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: NVTC, to the attention of its Executive Director;  
2300 Wilson Blvd., Suite 230  
Arlington, VA 22201
- 2) to: Fairfax County Department of Transportation  
to the attention of Tom Biesiadny, Director  
4050 Legato Road  
Fairfax County, 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**

Recipient Entity represents that it is not acting as a partner or agent of NVTC; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

**L. Sovereign Immunity**

The provisions of 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 Commission

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

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

[Fairfax County Department of Transportation](#) (Name of Recipient Entity)

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

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

## **Appendix A –Project Description and Performance Measures**

Project Number: 059-02-20

Project Title: New Bus Service from Stringfellow to L’Enfant Plaza

Recipient Entity: Fairfax County

Toll Revenue Funds: \$4,326,000

### **Project Description**

This project will fund the purchase of six new buses and operating costs for new express bus service from the Stringfellow Park and Ride Lot to L’Enfant Plaza in Washington, D.C. The route will feature 10 morning and 10 evening peak-direction trips and provide access to major employment areas in Washington, D.C. including federal agencies along the south side of the National Mall and along Seventh Street SW.

Project opening year inbound AM peak period increase in person throughput as entered in project application: 200 persons.

### **Performance Measures and Reporting**

#### **Performance Measures**

Report average weekday ridership.

#### **Collection Period**

Report average weekday daily boardings collected for a two-week period in March or April. Chosen period should not include any holiday periods and the average should be calculated from Tuesdays, Wednesdays, and Thursdays during the period.

#### **Reporting**

Report data to NVTC in a technical memorandum outlining the following:

1. Data collection methodology
2. Data collection dates
3. Results – data
4. Notes (if necessary)

Reports are due by July 30<sup>th</sup> of each year. Submit reports by email to Ben Owen at NVTC at [benowen@novatransit.org](mailto:benowen@novatransit.org).

## APPENDIX B - PROJECT BUDGET & CASH FLOW

Project Title:	New Bus Service from Stringfellow to L'Enfant Plaza	Project Number:	059-02-20
Recipient Entity:	Fairfax County	Revision Number:	
Recipient Contact:		Revision Date:	
Name	Stuart Boggs		
Email	<a href="mailto:stuart.boggs@fairfaxcounty.gov">stuart.boggs@fairfaxcounty.gov</a>		
Phone	(703) 877-5608		

**TABLE B-1 PROJECT BUDGET**

Project Type	Total Project Budget	Funding Sources		Source of Other Funds
		Approved NVTC Toll Revenue Funds	Other Funds (if applicable)	
Study	\$ -	\$ -	\$ -	
Preliminary Engineering (PE)	-	-	-	
Right-of-Way (ROW)	-	-	-	
Construction (CN)	-	-	-	
Capital Asset Acquisition	3,120,000	3,120,000	-	
Annual Transit Operating Costs	1,680,000	1,176,000	504,000	Fare Recovery
Other Operating Costs			-	
Other-Marketing	30,000	30,000	-	
<b>Total</b>	<b>\$ 4,830,000</b>	<b>\$ 4,326,000</b>	<b>\$ 504,000</b>	

**TABLE B-2 NVTC PROJECT FUNDS PROGRAMMED**

Project Type	FY2020
Study	\$ -
Preliminary Engineering (PE)	-
Right-of-Way (ROW)	-
Construction (CN)	-
Capital Asset Acquisition	3,120,000
Annual Transit Operating Costs	1,176,000
Other Operating Costs	-
Other-Marketing	30,000
<b>Total</b>	<b>\$ 4,326,000</b>

**TABLE B-3 QUARTERLY PROJECT CASH FLOW FOR NVTC TOLL REVENUE FUNDS ONLY**

Quarter	FY2020	FY2021	FY2022	FY2023	FY2024
1st, September 30th	\$ -	147,000	147,000	\$ -	\$ -
2nd, December 31st	-	147,000	147,000	-	-
3rd, March 31st	3,120,000	147,000	147,000	-	-
4th, June 30th	177,000	147,000	-	-	-
<b>Total</b>	<b>\$ 3,297,000</b>	<b>\$ 588,000</b>	<b>\$ 441,000</b>	<b>\$ -</b>	<b>\$ -</b>

This attachment is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

<b>Recipient Entity</b>	<b>Northern Virginia Transportation Commission</b>	
Signature	Signature	Signature
	NVTC Executive Director	NVTC Director of Finance and Administration
Title	Title	Title
Date	Date	Date
Print name of person signing		

Revised 2019-05-08



## APPENDIX C

### REIMBURSEMENT REQUEST

NVTC Project Number: \_\_\_\_\_

NVTC Project Title: \_\_\_\_\_

Draw Request Number: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Northern Virginia Transportation Commission  
2300 Wilson Blvd., Suite 230  
Arlington, Virginia 22201

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration dated \_\_\_\_\_, 20\_\_\_\_ (the "Agreement") between the Northern Virginia Transportation Commission ("NVTC") and \_\_\_\_\_ (the "Recipient Entity"). The Recipient Entity hereby requests \$\_\_\_\_\_ of Toll Revenue, to pay the costs of the Project set forth in the attached detailed Reimbursement Request form and in accordance with the Agreement.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of the Recipient Entity's approved costs of the Project, (ii) the Recipient Entity is responsible for payment to vendors/contractors, (iii) the Recipient Entity is not in default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in Appendix D to the agreement, (iv) the representations and warranties made by the Recipient Entity in the Agreement are true and correct as of the date of this Requisition and (v) to the knowledge of the Recipient Entity, no condition exists under the Agreement that would allow NVTC to withhold the requested advance.

#### RECIPIENT ENTITY

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

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

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

### **APPENDIX C - REIMBURSEMENT REQUEST**

Project Number: \_\_\_\_\_ Request Number: \_\_\_\_\_  
Project Title: \_\_\_\_\_ Request Date: \_\_\_\_\_  
Recipient Entity: \_\_\_\_\_ Request Amount: \_\_\_\_\_

**Table C-1, SUMMARY**

<b>Project Type</b>	<b>Total Toll Revenue Funds</b>	<b>Previous Amount Requested to Date*</b>	<b>Amount of This Request</b>	<b>Total Requested to Date</b>	<b>Balance Toll Revenue Funds</b>
Study	\$ -	\$ -	\$ -	\$ -	\$ -
Preliminary Engineering	-	-	-	-	-
Right-of-Way	-	-	-	-	-
Construction	-	-	-	-	-
Capital Asset Acquisition	-	-	-	-	-
Annual Transit Operating	-	-	-	-	-
Other	-	-	-	-	-
Other	-	-	-	-	-
<b>TOTALS</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

\* Enter amounts from "Total Requested to Date" column from the previous reimbursement request.

**Table C-2, LISTING OF ATTACHED INVOICES AND PROOF OF PAYMENT**

<b>Vendor/Contractor</b>	<b>Invoice Number</b>	<b>Item Number</b>	<b>Component Type</b>	<b>Invoice Total</b>	<b>NVTC Funding Request</b>
				\$ -	\$ -
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
<b>Total</b>				<b>\$ -</b>	<b>\$ -</b>

Version 2018-10-23

**APPENDIX D - Reserved for TAX COVENANTS**

**(Use for components funded with bond proceeds, assuming NVTC issues bonds.)**

**APPENDIX E –Authorization of designee(s)**

***Recipient governing body's authorization for their respective designee(s) to execute this agreement on their behalf(s) as evinced by entity's clerk's minutes or resolution.***

**Standard Project Agreement for Transform 66: Inside the Beltway Project, Toll Revenue Funding of Projects and Administration**

**Between the Northern Virginia Transportation Commission and Fairfax County**

NVTC Project Number: 059-01-20

NVTC Project Name: Enhanced Bus Service from the Fairfax County Government Center to D.C

This Standard Project Agreement for Transform 66: Inside the Beltway Project, Toll Revenue Funding of Projects and Administration ("this Agreement") is made and executed in duplicate on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Northern Virginia Transportation Commission ("NVTC") and \_\_\_Fairfax County\_\_\_ ("Recipient Entity").

**WITNESSETH**

WHEREAS, NVTC is a political subdivision of the Commonwealth of Virginia created by the General Assembly in accordance with the Transportation District Act of 1964, §§ 33.2-1900 et seq. of the Code of Virginia, 1950, as amended, and is authorized to enter into this Agreement by the provisions of § 33.2-1915 of the Code of Virginia, 1950, as amended;

WHEREAS, NVTC entered into a Memorandum of Agreement Transform 66: Inside the Beltway Project ("MOA"), on January 5, 2016, with the Commonwealth Transportation Board ("CTB"), and the Virginia Department of Transportation ("VDOT"), as such may be amended from time to time, which MOA delegated to NVTC the authority to select and administer the implementation of multimodal transportation improvements to the roadways and associated transportation and transit facilities ("Components" as used in the MOA and, for purposes of this Agreement, "Projects") in the vicinity of the portion of I-66 beginning at the intersection of I-66 and I-495 (the "Beltway") and ending at U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (said portion of I-66 being referred to as the "Facility") which Projects are designed to attain the Improvement Goals defined in the MOA, specifically, to (1) move more people; (2) enhance transportation connectivity; (3) improve transit service; (4) reduce roadway congestion; and (5) increase travel options all of which are reasonably expected to benefit the toll paying users of the Facility;

WHEREAS, the MOA provides for the transfer to and use by NVTC of a portion of the funds collected from the CTB's tolling of the Facility ("Toll Revenue") for the implementation of Projects selected by NVTC and approved by the CTB, as well as operating costs related to Projects, and NVTC financing and debt service payments and any allowable costs related thereto;

WHEREAS, based on information provided by Recipient Entity in response to NVTC's call for Projects, NVTC has determined the Project set forth and described on Appendix A to this Agreement satisfies the requirements of Section II.B.1 of the MOA, and the provisions of § 33.2-309 of the Code of Virginia, 1950, as amended, and the CTB has approved use of Toll Revenue to fund such Project;

WHEREAS, the Toll Revenue to be provided by NVTC described in Appendix B have been duly authorized and directed by Recipient Entity to finance the Project, and the Recipient Entity is authorized to enter into this Agreement and has authorized execution of it on its behalf;

WHEREAS, NVTC agrees that Recipient Entity will, itself or through its contractors or agents, design, construct, acquire and/or operate the Project or perform such other specific work for the Project and Recipient Entity agrees that it will perform or have performed, such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

WHEREAS, both parties have concurred in the Recipient Entity'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, NVTC's governing body and Recipient Entity'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 resolution or 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**

Recipient Entity shall:

- I. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement. Recipient Entity expressly agrees that, for non-debt financed Projects, Recipient Entity must obligate the Toll Revenue to the cost of the Project within two (2) fiscal years and to expend the Toll Revenue within five (5) fiscal years of the fiscal year in which the funds for the Project were allocated by the CTB unless an extension has been approved by NVTC and the CTB.

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.
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, capital asset acquisitions, or operations, and all allowable expenses for the Project, as is required by this Agreement and that may be necessary for completion of the Project.
4. Not use the NVTC Toll Revenues specified on Appendix B to pay any Project cost if the MOA or any applicable provision of law does not permit such Project cost to be paid with NVTC Toll Revenue.
5. Recognize that, if the Project, as approved, contains “multiple phases” (as such “multiple phases” are defined for the Project on Appendix A), for which NVTC will provide funding for such multiple phases (as set forth on Appendix B), NVTC may not provide Toll Revenue funding to Recipient Entity to advance the Project to the next phase until the current phase is completed. In any circumstance where Recipient Entity seeks to advance a Project to the next phase using NVTC Toll Revenue, Recipient Entity shall submit a written request to NVTC’s Executive Director explaining the need for NVTC’s funding of an advanced phase. NVTC’s Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTC’s current and projected cash flow position and make a recommendation to NVTC whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit Recipient Entity from providing its own funds to advance a future phase of the Project and from requesting reimbursement from NVTC for having advance funded a future phase of the Project. However, Recipient Entity further recognizes that NVTC’s reimbursement to Recipient Entity for having advance funded a Project phase will be dependent upon NVTC’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 NVTC’s Executive Director will periodically update NVTC’s cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. Recipient Entity shall provide all information required by NVTC 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 NVTC requests for payment consistent with Appendix B and the most recently approved NVTC cash flow estimates that include NVTC's standard payment requisition(s), containing detailed summaries of actual Project costs incurred with supporting documentation as determined by NVTC 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 NVTC, Recipient Entity can expect to receive payment within twenty (20) days upon receipt by NVTC. Approved payments may be made by means of electronic transfer of funds from NVTC to or for the account of Recipient Entity.
8. Promptly notify NVTC's Executive Director of any additional Project costs resulting from unanticipated circumstances which costs exceed the amount allocated by the CTB for the Project, and provide to NVTC detailed estimates of additional costs associated with those circumstances. Recipient Entity understands that it will be within NVTC's sole discretion, subject to CTB approval, whether to seek and to provide any additional funding to the Project in such circumstances and that NVTC will do so only in accordance with NVTC's approved Project selection process and upon formal action and approval by NVTC. Recipient Entity shall timely provide to NVTC a complete and accurate update to Appendix B if NVTC and the CTB approve funding of any additional Project costs for the Project under this Paragraph.
9. Release or return any unexpended funds to NVTC no later than 90 days after final payment has been made to the contractors.
10. Should Recipient Entity be required to provide matching funds in order to proceed or complete the funding necessary for the Project, Recipient Entity shall certify to NVTC that all such matching funds have been either authorized and/or appropriated by Recipient Entity's governing body or have been obtained through another, independent funding source;
11. 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 Recipient Entity and provide copies of any such financial records to NVTC, free of charge, upon request.
12. 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 Recipient Entity; and provide to NVTC copies of all such drawings and plans free of charge, upon request.

13. Reimburse NVTC for all NVTC Toll Revenue (with interest earned at the rate earned by NVTC) that Recipient Entity misapplied or used in contravention of the MOA or any term or condition of this Agreement.
14. Name NVTC and its Bond Trustee, the Commonwealth of Virginia, the CTB, VDOT, DRPT and their officers, employees and agents, or require that all Recipient Entity's contractors name NVTC and its Bond Trustee, the Commonwealth of Virginia, the CTB, VDOT, DRPT and their officers, employees and agents as additional insureds on any insurance policy issued for the work to be performed by or on behalf of Recipient Entity for the Project, and present NVTC with satisfactory evidence thereof before any work on the Project commences or continues, so that they are protected from and against any losses actually suffered or incurred, except for losses to the extent caused by the negligence or willful misconduct of such entity or person, from third party claims that are directly related to or arise out of: (a) any failure by Recipient Entity to comply with, to observe or to perform in any material respect any of the covenants, obligations, agreements, terms or conditions in this Agreement, or any breach by Recipient Entity of its representations or warranties in this Agreement; (b) any actual or willful misconduct or negligence of Recipient Entity, its employees or agents in direct connection with the Projects; (c) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents proprietary information, know-how, trademarked or service-marked materials, equipment devices or processes, copyright rights or inventions by Recipient Entity in direct connection with the Project; (d) inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by Recipient Entity, its employees or agents in direct connection with the Project; or (e) any assumed liabilities. Recipient Entity will contractually require its contractors, subcontractors, vendors and other third parties working or performing services related to any Project funded by NVTC Toll Revenue to indemnify NVTC and its Bond Trustee, the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees and agents from the same losses.
15. Recipient Entity covenants and agrees it will comply with all applicable requirements of state and federal laws relating to anti-discrimination, including but not limited to Titles VI and VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act, and shall contractually require the same of all contractors, subcontractors, vendors, and recipients of any funding. Recipient Entity recognizes the importance of the participation of

minority, women-owned and small businesses through the federal and local Disadvantaged Business Enterprise programs and will abide by such programs in implementing the Project. Recipient Entity shall comply with all applicable federal requirements, including those applicable to highways that are part of the National Highway System.

16. Give notice to NVTC that Recipient Entity may use NVTC Toll Revenue to pay outside legal counsel services (as opposed to utilizing the services of its own in-house counsel or NVTC's in-house legal counsel) in connection with the work performed under this Agreement so as to ensure that no conflict of interest may arise from any such representation.
17. Provide certification to NVTC, that upon final payment to all contractors for the Project, Recipient Entity will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTC 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 Recipient Entity.
19. Acknowledge that if the Project is being funded in whole or in part by NVTC Bond Proceeds, comply with the applicable tax covenants as may be attached as Appendix D.
20. Acknowledge that if Recipient Entity expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that Recipient Entity agrees to comply with VDOT's "Standards, Requirements and Guidance" applicable to the Project.
21. Recognize that Recipient Entity is solely responsible for obtaining all permits, permissions and regulatory approval necessary to develop, construct, operate and/or maintain 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 Recipient Entity is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTC Toll Revenue and/or NVTC Bond Proceeds, that Recipient Entity 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 acknowledge that NVTC will not be a party or signatory to that

agreement; nor will NVTC have any obligation to comply with the requirements of that agreement.

23. Provide a certification to NVTC no later than 90 days after final payment to the contractors that Recipient Entity adhered to all applicable laws and regulations and all requirements of this Agreement.
24. Provide quarterly (January 30th, April 30th, July 30th, and October 30th) written status updates on all approved, active Projects to NVTC on all items described in the Recipient's Project application including progress toward milestones and/or statistics including such information as ridership and/or percent completion.
25. Assist NVTC in the preparation of the annual report to the CTB required by the MOA, by providing data, or other Project information as requested by NVTC, including data to measure the degree to which the expected benefits were realized, or are being realized, as well as other reporting as required by the NVTC reporting guidance.
26. To the greatest extent possible, include the I-66 Commuter Choice logo and recognition of Project funding source as being from the I-66 Commuter Choice Program, in a form approved by NVTC, in all publicly-available materials, documents, websites, etc.

**B. NVTC's Obligations**

NVTC shall:

1. Provide to Recipient Entity the funding authorized by NVTC for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s), and operations, and all allowable expenses 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 NVTC.
2. Assign a Program Coordinator for the Project. NVTC's Program Coordinator will be responsible for monitoring the Project on behalf of NVTC so as to ensure compliance with this Agreement and the MOA, and all NVTC's requirements and for overseeing, managing, reviewing, and processing, in consultation with NVTC's Executive Director and its Director of Finance and Administration (DFA), all payment requisitions submitted by Recipient Entity for the Project. NVTC'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 NVTC's assigned Program Coordinator all Recipient Entity'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 NVTC for the Project. After submission to NVTC, NVTC'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. NVTC's Program Coordinator will then make a recommendation to the NVTC's DFA and Executive Director whether to authorize payment, refuse payment, or seek additional information from Recipient Entity. 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, NVTC's Program Coordinator will notify Recipient Entity 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 NVTC have been corrected. Under no circumstances will NVTC authorize payment for any work performed by or on behalf of Recipient Entity that is not in conformity with the requirements of this Agreement or the MOA.
4. Route all Recipient Entity's supplemental requests for funding from NVTC under Paragraphs A.5 and A.8 of this Agreement to NVTC's Executive Director. NVTC's Executive Director will initially review those requests and all supporting documentation with NVTC's DFA. After such initial review, NVTC's Executive Director will make a recommendation to NVTC's Executive Committee for its independent consideration and review of whether CTB approval of, and an allocation for, supplemental funding should be sought. NVTC's Executive Committee will thereafter make a recommendation on any such request to NVTC for final determination by NVTC, and approval by the CTB.
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 MOA, and other applicable law. Such compliance reviews may entail review of Recipient Entity's financial records for the Project and on-site inspections.
6. Acknowledge that if, as a result of NVTC's review of any payment requisition or of any NVTC compliance review, NVTC staff determines that Recipient Entity has misused or misapplied any NVTC Toll Revenue in derogation of this

Agreement or in contravention of the MOA or applicable law, NVTC staff will promptly advise NVTC's Executive Director and will advise Recipient Entity's designated representative in writing. Recipient Entity will thereafter have thirty (30) days to respond in writing to NVTC's initial findings. NVTC's staff will review Recipient Entity's response and make a recommendation to the NVTC Executive Committee which will, in turn, make a recommendation to NVTC for a final determination. Pending final resolution of the matter, NVTC will withhold further funding of the Project. If NVTC makes a final determination that Recipient Entity has misused or misapplied funds in contravention of this Agreement, the MOA, or other applicable law, NVTC will cease further funding for the Project and will seek reimbursement from Recipient Entity of all funds previously remitted by NVTC (with interest earned at the rate earned by NVTC) which were misapplied or misused by Recipient Entity. 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 Recipient Entity 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.

**C. Term**

1. This Agreement shall be effective upon adoption and execution by both parties and, unless terminated in accordance with the express provisions hereof, shall continue until completion of the Project and final payment of Toll Revenue hereunder, with the exception of those provisions which, by their express terms, survive termination.
2. Recipient Entity may terminate this Agreement, for cause, in the event of a material breach by NVTC of this Agreement. If so terminated, NVTC shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by Recipient Entity to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds, or CTB's failure to allocate, or VDOT's failure to distribute to NVTC as described in paragraph F of this Agreement or shall not be considered material breaches of this Agreement by NVTC. Before initiating any proceedings to terminate under this Paragraph, Recipient Entity shall give NVTC sixty (60) days written

notice of any claimed material breach of this Agreement; thereby allowing NVTC an opportunity to investigate and cure any such alleged breach.

3. NVTC may terminate this Agreement, for cause, resulting from Recipient Entity's material breach of this Agreement. If so terminated, Recipient Entity shall refund to NVTC all funds NVTC provided to Recipient Entity for the Project (including interest earned at the rate earned by NVTC). NVTC will provide Recipient Entity with sixty (60) days written notice that NVTC is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, Recipient Entity may request that NVTC excuse Recipient Entity from refunding all funds NVTC provided to Recipient Entity for the Project based upon Recipient Entity's substantial completion of the Project or severable portions thereof; and NVTC may, in its sole discretion, excuse Recipient Entity from refunding all or a portion of the funds NVTC provided to Recipient Entity for the Project. No such request to be excused from refunding will be allowed where Recipient Entity has either misused or misapplied NVTC funds in contravention of applicable law.
4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, Recipient Entity will release or return to NVTC all unexpended NVTC Toll Revenue with interest earned at the rate earned by NVTC 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. NVTC's Executive Director and Recipient Entity'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 NVTC and to Recipient Entity'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. NVTC's Entitlement to Refund of Value of Project Assets**

Recipient Entity 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 NVTC Toll Revenues 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. In the event that Recipient Entity 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, Recipient Entity shall refund to NVTC, with interest at the rate earned by NVTC, the amount of the value of each 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 NVTC under this Agreement. If Recipient Entity refuses or fails to refund said monies to NVTC, NVTC may recover the proportionate value from Recipient Entity by pursuit of any remedies available to NVTC, including but not limited to NVTC's withholding of commensurate amounts from future distributions of NVTC Toll Revenue to Recipient Entity. In no event shall the Recipient Entity be obligated to refund the aforesaid value to both NVTC and the Commonwealth.

**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 Toll Revenues provided by NVTC pursuant to the MOA are subject to appropriation by the Virginia General Assembly, allocation by the CTB and distribution by VDOT. The parties further acknowledge that NVTC's obligations under this Agreement are subject to such funds being appropriated by the General Assembly, allocated by the CTB and distributed by VDOT to NVTC.

**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: NVTC, to the attention of its Executive Director;  
2300 Wilson Blvd., Suite 230  
Arlington, VA 22201
- 2) to: Fairfax County Department of Transportation  
to the attention of Tom Biesiadny, Director  
4050 Legato Road  
Fairfax County, 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**

Recipient Entity represents that it is not acting as a partner or agent of NVTC; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

**L. Sovereign Immunity**

The provisions of 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 Commission

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

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

[Fairfax County Department of Transportation](#) (Name of Recipient Entity)

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

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

## Appendix A –Project Description and Performance Measures

Project Number: 059-01-20

Project Title: Enhanced Bus Service from Government Center to D.C.

Recipient Entity: Fairfax County

Toll Revenue Funds: \$1,939,500

### Project Description

This project enhances the service of the in-demand Route 699 on 66 bus, which runs from the Fairfax County Government Center to major employment areas in Washington, D.C. including the George Washington University campus, U.S. Department of State, and the World Bank. By adding three morning and three evening peak-direction trips to the existing 10 trips in each direction per day, the project offers commuters more travel choices.

Project opening year inbound AM peak period increase in person throughput as entered in project application: 144 persons per day.

### Performance Measures and Reporting

#### Performance Measures

Report average weekday ridership.

#### Collection Period

Report average weekday daily boardings collected for a two-week period in March or April. Chosen period should not include any holiday periods and the average should be calculated from Tuesdays, Wednesdays, and Thursdays during the period.

#### Reporting

Report data to NVTC in a technical memorandum outlining the following:

1. Data collection methodology
2. Data collection dates
3. Results – data
4. Notes (if necessary)

Reports are due by July 30<sup>th</sup> of each year. Submit reports by email to Ben Owen at NVTC at [benowen@novatransit.org](mailto:benowen@novatransit.org).

## APPENDIX B - PROJECT BUDGET & CASH FLOW

Project Title:	Enhanced Bus Service from Government Center to D.C.	Project Number:	059-01-20
Recipient Entity:	Fairfax County	Revision Number:	
Recipient Contact:		Revision Date:	
Name	Stuart Boggs		
Email	<a href="mailto:stuart.boggs@fairfaxcounty.gov">stuart.boggs@fairfaxcounty.gov</a>		
Phone	(703) 877-5608		

**TABLE B-1 PROJECT BUDGET**

Project Type	Total Project Budget	Funding Sources		Source of Other Funds
		Approved NVTC Toll Revenue Funds	Other Funds (if applicable)	
Study	\$ -	\$ -	\$ -	
Preliminary Engineering (PE)	-	-	-	
Right-of-Way (ROW)	-	-	-	
Construction (CN)	-	-	-	
Capital Asset Acquisition	520,000	520,000	-	
Annual Transit Operating Costs	1,985,000	1,389,500	595,500	Fare Recovery
Other Operating Costs			-	
Other-Marketing	30,000	30,000	-	
<b>Total</b>	<b>\$ 2,535,000</b>	<b>\$ 1,939,500</b>	<b>\$ 595,500</b>	

**TABLE B-2 NVTC PROJECT FUNDS PROGRAMMED**

Project Type	FY2020
Study	\$ -
Preliminary Engineering (PE)	-
Right-of-Way (ROW)	-
Construction (CN)	-
Capital Asset Acquisition	520,000
Annual Transit Operating Costs	1,389,500
Other Operating Costs	-
Other-Marketing	30,000
<b>Total</b>	<b>\$ 1,939,500</b>

**TABLE B-3 QUARTERLY PROJECT CASH FLOW FOR NVTC TOLL REVENUE FUNDS ONLY**

Quarter	FY2020	FY2021	FY2022	FY2023	FY2024
1st, September 30th	\$ -	173,687.50	173,687.50	\$ -	\$ -
2nd, December 31st	-	173,687.50	173,687.50	-	-
3rd, March 31st	520,000.00	173,687.50	173,687.50	-	-
4th, June 30th	203,687.50	173,687.50	-	-	-
<b>Total</b>	<b>\$ 723,688</b>	<b>\$ 694,750</b>	<b>\$ 521,063</b>	<b>\$ -</b>	<b>\$ -</b>

This attachment is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

<b>Recipient Entity</b>	<b>Northern Virginia Transportation Commission</b>	
<div style="background-color: #cccccc; height: 20px; width: 100%;"></div>		
Signature	Signature	Signature
Fairfax County Department of Transportation	NVTC Executive Director	NVTC Director of Finance and Administration
Title: Director	Title	Title
	Date	Date
Date		
Print name of person signing		
Tom Biesiadny		
Revised 2019-05-08		

## APPENDIX C

### REIMBURSEMENT REQUEST

NVTC Project Number: \_\_\_\_\_

NVTC Project Title: \_\_\_\_\_

Draw Request Number: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Northern Virginia Transportation Commission  
2300 Wilson Blvd., Suite 230  
Arlington, Virginia 22201

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration dated \_\_\_\_\_, 20\_\_\_\_ (the "Agreement") between the Northern Virginia Transportation Commission ("NVTC") and \_\_\_\_\_ (the "Recipient Entity"). The Recipient Entity hereby requests \$\_\_\_\_\_ of Toll Revenue, to pay the costs of the Project set forth in the attached detailed Reimbursement Request form and in accordance with the Agreement.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of the Recipient Entity's approved costs of the Project, (ii) the Recipient Entity is responsible for payment to vendors/contractors, (iii) the Recipient Entity is not in default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in Appendix D to the agreement, (iv) the representations and warranties made by the Recipient Entity in the Agreement are true and correct as of the date of this Requisition and (v) to the knowledge of the Recipient Entity, no condition exists under the Agreement that would allow NVTC to withhold the requested advance.

#### RECIPIENT ENTITY

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

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

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

### APPENDIX C - REIMBURSEMENT REQUEST

Project Number:			Request Number	
Project Title:			Request Date	
Recipient Entity:			Request Amount	

**Table C-1, SUMMARY**

Project Type	Total Toll Revenue Funds	Previous Amount Requested to Date*	Amount of This Request	Total Requested to Date	Balance Toll Revenue Funds
Study	\$ -	\$ -	\$ -	\$ -	\$ -
Preliminary Engineering	-	-	-	-	-
Right-of-Way	-	-	-	-	-
Construction	-	-	-	-	-
Capital Asset Acquisition	-	-	-	-	-
Annual Transit Operating	-	-	-	-	-
Other	-	-	-	-	-
Other	-	-	-	-	-
<b>TOTALS</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

\* Enter amounts from "Total Requested to Date" column from the previous reimbursement request.

**Table C-2, LISTING OF ATTACHED INVOICES AND PROOF OF PAYMENT**

Vendor/Contractor	Invoice Number	Item Number	Component Type	Invoice Total	NVTC Funding Request
				\$ -	\$ -
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
				-	-
<b>Total</b>				<b>\$ -</b>	<b>\$ -</b>

Version 2018-10-23

**APPENDIX D - Reserved for TAX COVENANTS**

**(Use for components funded with bond proceeds, assuming NVTC issues bonds.)**

**APPENDIX E –Authorization of designee(s)**

*Recipient governing body's authorization for their respective designee(s) to execute this agreement on their behalf(s) as evinced by entity's clerk's minutes or resolution.*

**AMENDED AND RESTATED  
MEMORANDUM OF AGREEMENT  
TRANSFORM66: INSIDE THE BELTWAY PROJECT**

This Amended and Restated Memorandum of Agreement (“MOA”) is entered into on JAN 5, 2017, between the Commonwealth Transportation Board (“CTB”), and the Virginia Department of Transportation (“VDOT”), both acting by and through the Commissioner of Highways, and the Northern Virginia Transportation Commission (“NVTC”) (collectively, the “Parties”).

**RECITALS**

WHEREAS, the CTB, VDOT, and the Virginia Department of Rail and Public Transportation (“DRPT”) have embarked upon a multimodal transportation program, Transform66, which seeks to fund and implement solutions to move more people in the Interstate 66 (“I-66”) corridor between Haymarket, Virginia and Route 29 in the Rosslyn area of Arlington County, Virginia; and

WHEREAS, the Transform66 program is composed of two distinct projects: (1) the Transform66: Inside the Beltway Project, which involves multimodal transportation improvements in the I-66 corridor beginning at the intersection of I-66 and I-495 (the “Beltway”) and ending at U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (the “Transform66: Inside the Beltway Project” or the “Project”), and (2) the Transform66: Outside the Beltway Project, which involves multimodal transportation improvements in the I-66 corridor beginning at Haymarket, Virginia, and ending at the Beltway; and

WHEREAS, the goals of the Transform66: Inside the Beltway Project are to (1) move more people; (2) enhance transportation connectivity; (3) improve transit service; (4) reduce roadway congestion; and (5) increase travel options (collectively, the “Improvement Goals”), all of which will benefit the users of the portion of I-66 beginning at the Beltway and ending at U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (the “Facility”); and

WHEREAS, the Project will facilitate implementation of recommendations from VDOT’s June 2012 Final Report of the I-66 Multimodal Study Inside the Beltway, and the further refinements found in the August 2013 Supplemental Report, as well as recommendations from DRPT’s 2009 Transportation Demand Management/Transit Report (collectively, the



"Commonwealth Reports"), and projects in the region's constrained long range plan, as such plan may be updated from time to time, including but not limited to multimodal transportation improvements to the roadways and associated transportation and transit facilities in the vicinity of the Facility ("Components") as described in the aforesaid VDOT and DRPT reports and depicted in the diagram attached hereto and incorporated herein as Exhibit 1 (such area together with the Facility, the "Corridor" ); and

WHEREAS, the Transform66: Inside the Beltway Project is intended to achieve the Improvement Goals by (1) converting the existing Facility to a tolled facility with dynamic tolling during the peak periods; (2) allowing mass transit and commuter buses to ride free at all times; (3) permitting HOV-2 vehicles to ride free at all times until the later of 2020 or until any increase to HOV-3 occupancy requirements for HOV lanes of I-66 outside the Beltway; (4) thereafter permitting HOV-3 vehicles to ride free at all times; (5) improving transit services; and (6) improving the Facility, including widening of I-66 eastbound from two lanes to three lanes between Exit 67 at the Dulles Connector Road ("Exit 67") and Exit 71, the Fairfax Drive/Glebe Road exit ("Exit 71"), all subject to the conditions provided herein; and

WHEREAS, the multimodal transportation Components in the Transform66: Inside the Beltway Project must meet the criteria enunciated in this MOA; and

WHEREAS, VDOT, on behalf of the CTB, will control and manage tolling on the Facility, with the toll revenues being utilized and distributed according to this MOA, to support the tolling operations and tolling maintenance of the Facility, and to fund Components selected by NVTC and approved by the CTB for the Project, designed specifically to attain the Improvement Goals; and

WHEREAS, the CTB intends to finance the widening of the Facility eastbound between Exits 67 and 71 from funds of the Commonwealth other than toll revenues of the Facility; and

WHEREAS, the CTB desires to delegate to NVTC the authority to select and administer the implementation of Components designed specifically to attain the Improvement Goals to be financed in whole or in part from the portion of the toll revenues of the Facility transferred to NVTC as provided in this MOA;

WHEREAS, such delegation to NVTC shall not constitute approval by NVTC of the Commonwealth's actions to impose tolling along the Facility; and,

WHEREAS, the Parties initially memorialized their agreement regarding the allocation and expenditure of certain toll revenue arising from travel on the Facility, the criteria for use of toll revenue to implement Components and the relationship between the Parties in a Memorandum of Agreement dated January 5, 2016, and now wish to amend and restate that agreement to reflect the time frame in which the eastbound widening of the Facility will occur and the funding to be used therefor, as well as other amendments related to use of toll revenue, duration of tolling and debt financing by NVTC to fund Components.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and the mutual benefit to the Parties of attaining the Improvement Goals, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **I. Nature of the Parties' Interest under This MOA**

This MOA provides for the transfer to and use by NVTC of specified funds collected from the CTB's tolling of the Facility, as allowed by law and according to the terms of this MOA, for the selection and administration of Components to attain the Improvement Goals. This MOA is specifically subject to, and is governed by applicable state and federal laws concerning the allowable use of tolls, including but not limited to § 33.2-309 of the *Code of Virginia* (1950), as amended ("Virginia Code"), 23 U.S.C. §§ 129 and 166 and the terms of any agreement by and between the Federal Highway Administration ("FHWA") and VDOT that may be required in order to toll the Facility.

This MOA does not grant NVTC any authority over I-66, the tolling of I-66, or any other roadways in the I-66 corridor. It also does not address toll revenues that may be derived from the tolling of I-66 outside the Beltway. It also does not obligate VDOT or the CTB to provide any specified amount of revenues beyond the toll revenues generated from the Facility, and allocated by the CTB in compliance with Virginia Code § 33.2-309 as provided in this MOA, all subject to appropriation by the General Assembly.

#### **II. Basic Agreement; Roles and Responsibilities**

A. VDOT and the CTB shall have the following roles and responsibilities:

**1. Design and Construction of Dynamic Tolling Operation on I-66 Inside the Beltway.** VDOT shall be responsible for the design and construction of all improvements and facilities to convert the existing Facility to a dynamic tolled operation (the "Conversion"). Funding to accomplish this Conversion will be

advanced from the Toll Facilities Revolving Account pursuant to Virginia Code § 33.2-1529 and repaid out of toll revenues collected from the Facility.

**2. Toll Collection and Establishment.** Subject to the necessary approvals of the CTB and FHWA, and in accordance with law, VDOT and the CTB, as applicable, shall establish, charge, modify and collect tolls throughout the term of this MOA for vehicles using the Facility during peak hours in the peak direction, which shall include dynamic pricing to ensure travel speeds in accordance with 23 U.S.C. § 166. The CTB reserves the right to make any changes to the tolling of the Facility that increase the hours or directions of tolling and any toll revenue generated from any change shall be governed by this MOA.

**3. HOV Requirements.** In accordance with the long range plan adopted by the National Capital Region Transportation Planning Board, VDOT and the CTB shall take the required actions necessary to change the Project HOV-2 designation to HOV-3 by the later of January 2, 2020, or upon any increase to HOV-3 occupancy requirements for HOV lanes of I-66 outside the Beltway

**4. Use of Toll Revenues.** VDOT shall include in the annual budget presented to the CTB for approval in June of each year, an estimate of the toll revenues anticipated to be collected in the upcoming year and the proposed allocation of all such toll revenues, including to pay any Debt Service (as defined below) in the upcoming year. Allocation of these toll revenues shall be provided as follows with the intent that after the allocations provided for in (a), (b), (c), and (d) all remaining toll revenues shall be made available for Components selected by NVTC in accordance with (e):

(a) reasonable costs and expenses of tolling operation and tolling maintenance, including reasonable reserves for major maintenance of tolling operations of the Facility;

(b) repayments to the Toll Facilities Revolving Account (i) for any allocation advanced from the Toll Facilities Revolving Account for the Conversion and (ii) the initial allocation to NVTC of \$10 million for the Project described in II.C., with a repayment schedule for the Conversion allocation and the initial allocation to NVTC (x) of not less than 25 years

from the first date of disbursement, (y) reflecting a 0% interest rate, and (z) annually committing not more than six percent of anticipated toll revenues to such repayment; provided, however, if toll revenues remaining after the allocation described above in II.A.4(a) is below two times the amount budgeted for allocation described below in II.A.4(c), then the repayment to the Toll Facilities Revolving Account shall not exceed an amount that would result in the toll revenues remaining after the allocations described in II.A.4(a) and II.A.4(b) of less than one and a half times the amount budgeted for allocation in II.A.4(c);

(c) Debt Service on NVTC Debt (as defined below) incurred to finance Components selected by NVTC and approved by the CTB under the terms of this MOA: provided that the annual amount of the Debt Service payments does not exceed 60 percent of toll revenues remaining after the allocations described above in II.A.4(a) and (b); provided further that no NVTC Debt may be incurred unless the toll revenues remaining after the allocation described above in II.A.4(a) in the fiscal year prior to the fiscal year the NVTC Debt will be incurred must be at least two times the maximum annual scheduled Debt Service on all outstanding NVTC Debt and the proposed NVTC Debt in the then-current or any future fiscal year;

(d) repayment to the Toll Facilities Revolving Account not paid in any prior and current year in accordance with II.A.4(b) as a result of not meeting the coverage requirements specified in II.A.4(b);

(e) for Components selected by NVTC and approved by the CTB under the terms of this MOA, and any implementation costs related to Components as well as operating costs related to Components, provided that in any fiscal year not more than 50 percent of the average amount of toll revenues remaining after the allocation described above in II.A.4(a), (b), (c) and (d) over the preceding five (5) fiscal year period may be used for Component operating costs, however: Operating costs may not be provided for any Component for more than eight (8) years subject to the following maximum amounts: (i) up to 100% for the first five (5) years;

(ii) up to 75% for year six (6); (iii) up to 50% for year seven (7); and (iv) up to 25% for year eight (8).

"NVTC Debt" means (i) any bonds, promissory notes, loan, financing or credit agreements under which NVTC is obligated to repay money borrowed to finance a Component, (ii) all installment sales, conditional sales and capital lease obligations incurred or assumed by NVTC to finance a Component. The term "incurred" as used in the MOA with respect to NVTC Debt shall also mean issued or assumed. "Debt Service" means for a fiscal year or other measurement period the aggregate of the payments to be made in respect of the principal of and interest on NVTC Debt and the associated financing or trustee's fees or charges and required deposits to any reserve funds.

**5. Approval of Components of the Project.** Provided NVTC complies with the criteria established herein for selection of Components, and subject to II.A.4. above, the CTB shall consider, approve, and allocate toll revenue funding for such Components.

**6. Suspension of Tolling.** VDOT shall, in its sole discretion, and in accordance with Virginia Code § 33.2-613(B) as amended, have the right to order immediate suspension of Facility tolling in the event I-66 is required for use as an emergency mass evacuation route. VDOT shall lift any such emergency toll suspension as soon as the need for emergency mass evacuation ceases. Neither the Commonwealth of Virginia, the CTB, nor VDOT shall have any liability to NVTC for any loss of toll revenues or any increase in costs and expenses attributable to any such toll suspension to facilitate emergency mass evacuation.

If I-66 is designated for immediate use as any alternate route for diversion of traffic from another highway or is temporarily closed to all lanes in one or both directions due to a significant incident or emergency, VDOT shall have the right to order the immediate suspension of tolling in the direction(s) of any diversion. Neither the Commonwealth of Virginia, the CTB, nor VDOT shall have any liability to NVTC for the loss of any toll revenues or any increase in costs and expenses attributable to the hours the toll suspension is in effect.

**7. Duration of Tolling:** Nothing in this MOA shall obligate or be construed as obligating VDOT to continue or cease tolls after the end of this MOA's term except as provided in III and IV.

**8. Operation and Maintenance of I-66.** Except as set forth in II.A.4(a), VDOT shall throughout the term of this MOA, maintain and operate, or cause others to maintain and operate the Facility from Highway Maintenance and Operating Fund revenues.

**9. Annual Budget Process.** In preparation for the CTB's annual budget process, VDOT shall estimate toll revenues and anticipated allocation of the estimated toll revenues for the upcoming six-year period presented in the Six Year Financial Plan and Six Year Improvement Program and provide said estimates to NVTC not later than January 30<sup>th</sup> of each year.

The CTB agrees to do the following:

(a) Each year and in accordance with the schedule of the Department of Planning and Budget of the Commonwealth, the CTB or the CTB's designee shall request that the Governor include in the budget to be delivered to the General Assembly during their next session a provision that there be appropriated from the revenues expected from the Facility amounts sufficient to pay the budgeted amount of funds expected to be provided to NVTC during the next succeeding fiscal year or biennial period, as applicable.

(b) The CTB shall use its best efforts to have (i) the Governor include, in each biennial or any supplemental budget that is presented to the General Assembly, the amounts described in (a) above and (ii) the General Assembly deposit, appropriate and reappropriate, as applicable, such amounts.

(c) The CTB shall take all actions necessary to have payments which are made pursuant to (b) above charged against the proper appropriation made by the General Assembly.

(d) The CTB shall notify the NVTC promptly upon becoming aware of any failure by the General Assembly to appropriate for the next

succeeding fiscal year or biennial period, as applicable, amounts sufficient to pay the budgeted amounts due NVTC.

**10. Quarterly Payments.** VDOT shall provide quarterly payments of actual toll revenues to NVTC of those toll revenues allocated pursuant to II.A.4(c) and (e) of this MOA by the 15<sup>th</sup> day of each quarter. The quarterly payment shall be equal to the lesser of 25 percent of the amount appropriated and allocated under II.A.4(c) and (e), or the toll revenues available to make such payment. To the extent VDOT is unable in any quarter to provide the full 25 percent of the amount appropriated and allocated, VDOT shall make up the deficiency in subsequent quarters to the extent toll revenues are available to do so after the allocations are made pursuant to II.A.4(a), (b) and (d). Neither VDOT nor DRPT shall deduct from such quarterly payments any administrative fee or other charges. At NVTC's request, VDOT may elect to provide monthly payments of the actual toll revenues to NVTC. If VDOT so elects, the payments shall be made on a monthly basis with the necessary changes to the foregoing terms of payment.

**11. Reports.** VDOT shall provide quarterly reports documenting the actual revenues and distributions of said toll revenues to NVTC.

B. NVTC shall have the following roles and responsibilities:

**1. Coordination and Development of Transportation Plan; Use of Toll Revenues; Compliance with Laws Limiting Use.** As part of the Six Year Improvement Program presented to the CTB for approval in June of each year, NVTC shall submit to the CTB, a list of Components proposed to be funded in whole or in part with toll revenues from the Facility. Such Components shall be selected by NVTC in accordance with a process established by NVTC pursuant to this MOA. Such Components shall be separately identified with supporting documentation as set forth in Exhibit 2. The CTB shall consider and approve the Components selected by NVTC, and allocate toll revenues for them, pursuant to II.A.4, provided the Components meet the criteria below and are selected in accordance with NVTC's selection process described in II.B.2. Each proposed Component must meet each of the following five criteria:

(a) Must benefit the toll-paying users of the Facility;

(b) Must have the capacity to attain one or more of the Improvement Goals;

(c) Must be one of the following multimodal transportation improvements serving the Corridor:

i. New or enhanced local and commuter bus service, including capital and operating expenses (e.g., fuel, tires, maintenance, labor and insurance), subject to the limitations in IIA.4.(e), and transit priority improvements;

ii. Vanpool, and formal and informal carpooling programs and assistance;

iii. Capital improvements for Washington Metropolitan Area Transit Authority rail and bus service, including capital and operating expenses, subject to the limitations in II.A.4.(e), and improved access to Metrorail stations and Metrobus stops;

iv. Park and ride lot(s) and access or improved access thereto;

v. Roadway improvements to address impacts from the dynamic tolling of the Facility on roadways in the Corridor (including but not limited to Routes 7, 29, 50, and 309, and Washington Boulevard, Wilson Boulevard, and Westmoreland Street);

vii. Roadway operational improvements in the Corridor;

viii. Transportation Systems Management and Operations as defined in 23 U.S.C. § 101(a)(30) on December 1, 2015; and

ix. Projects identified in the Commonwealth Reports or projects in the region's constrained long range plan, as such plan may be updated from time to time.

(d) For non-debt financed Components, must demonstrate the ability to obligate the toll revenues to the cost of the Component within two fiscal years and to expend the toll revenues within five fiscal years of the fiscal year in which the funds are allocated by the CTB except to the extent to



which the CTB approves an extension of such timeframes upon the request of NVTC; and

(e) Must demonstrate that the Components will be in compliance with all applicable laws, rules and regulations and have received or will receive all required regulatory approvals.

Under no circumstances shall the aforesaid criteria be modified except by written amendment to this MOA agreed to in writing by the Parties.

NVTC shall have no right to use the toll revenues to pay any debt, obligation or liability unrelated to the Project, or for any purposes other than those specified in this MOA.

NVTC understands and agrees that in the selection and implementation of Components using the toll revenues, it is bound by the provisions of Virginia Code § 33.2-309 as well as all other state and federal laws and regulations that limit the use of toll revenues, and toll revenues from interstate highways specifically. Accordingly, NVTC agrees to provide VDOT access to all records relating to Components and the use of the toll revenues. Further, NVTC will provide all such records for inspection and audit by VDOT, DRPT, and federal agencies, including but not limited to the United States Department of Transportation, the Federal Highway Administration, and the Federal Transit Administration, or their designees, upon reasonable notice at all times during the term of this MOA.

NVTC agrees to promptly furnish to VDOT and DRPT copies of all reports and notices it delivers to bondholders or other credit providers or any trustee relating to the use of the toll revenues.

**2. Project Component Selection Process:** Any Component to be proposed for CTB approval shall be selected by NVTC through a process established by NVTC. Such process shall include the following three elements:

(a) A request to submit proposed Components issued by NVTC to all jurisdictions and other public transportation providers in Planning District 8;

(b) The evaluation, prioritization, and selection of proposed Components by NVTC, and the submission of selected Components by NVTC to the CTB; and

(c) A public hearing held by NVTC prior to NVTC's selection of Components for submission to the CTB.

The CTB shall consider and approve the Components selected by NVTC and, subject to appropriation by the General Assembly, shall allocate toll revenues for such Components, pursuant to II.A.4, provided the Components meet the criteria in II.B.1. As part of the list of Components submitted to the CTB for consideration and approval and allocation of toll revenues, NVTC may submit for CTB consideration and approval additional Components that exceed the annual estimated toll revenues for that year. Provided those Components meet the criteria in II.B.1, the CTB shall consider and approve such additional Components and, pursuant to II.A.4 and subject to any other approvals that may be necessary, approve the allocation of toll revenues for such Components up to the amount of actual toll revenues for that year that are sufficient to fund one or more of those additional Components.

**3. Financing of Components of the Project.** NVTC may use toll revenues appropriated by the General Assembly and allocated by the CTB to NVTC to support the financing of approved Components, however, the amount of annual Debt Service to be paid from toll revenues shall be limited as set forth in II.A.4(c).

NVTC is solely responsible for obtaining and repaying all NVTC Debt at its own cost and risk, and without recourse to the Commonwealth of Virginia, the CTB, VDOT, and/or DRPT, for any Component for which toll revenues have been provided to NVTC under this MOA.

The Commonwealth of Virginia, the CTB, VDOT, and DRPT have no liability whatsoever for payment of any Debt Service on any NVTC Debt incurred by NVTC in connection with this MOA, or any other sum secured by or accruing under any financing document entered into by NVTC as a result of this MOA. No

document evidencing or associated with any NVTC Debt for the financing of any Component shall contain any provisions whereby a trustee would be entitled to seek any damages or other amounts from the Commonwealth of Virginia, CTB, or VDOT due to any breach of this MOA.

Each bond, promissory note or other document evidencing NVTC Debt must include a conspicuous recital on its face stating: (a) payment of the principal and interest does not constitute a claim against VDOT's interest in I-66 or any part thereof; (b) payment is not an obligation of the Commonwealth of Virginia, VDOT, DRPT, the CTB, or any other agency, instrumentality or political subdivision of the Commonwealth of Virginia moral or otherwise; and (c) neither the full faith and credit nor the taxing power of the Commonwealth of Virginia, VDOT, DRPT, the CTB, or any other agency, instrumentality, or political subdivision of the Commonwealth of Virginia and/or its member jurisdictions, is pledged to the payment of the principal and interest on such NVTC Debt.

NVTC shall not enter into agreements with holders of any NVTC Debt incurred by NVTC or its member jurisdictions that contain a pledge or claim on the toll revenues or NVTC's interest in the toll revenue under this MOA except such debt issued for Components. If, despite such efforts, toll revenues are applied to satisfy any debt of NVTC that is not properly payable out of toll revenues in accordance with this MOA and state and federal law, NVTC shall reimburse in full any such toll revenues or accounts from any other available revenues other than the toll revenues.

**4. Monitoring:** NVTC shall provide an annual report to the CTB within 120 days of the end of NVTC's fiscal year. The report shall contain at a minimum the following three items:

- (a) A description of the Components selected for funding in the past fiscal year and the benefits that were the basis for evaluation and selection of each such Component;
- (b) Starting five years after the effective date of this MOA, a review of the Components funded in past fiscal years describing the degree to which the expected benefits were realized or are being realized; and,

(c) In the event that a funded Component is not providing substantially similar benefits to those that were the basis for evaluation and selection of the Component, the report shall evaluate the viability of a plan to either, (i) modify such Component; or (ii) redeploy assets in such Component to other eligible Components that are expected to provide greater benefits.

**5. Accounting.** NVTC shall receive and manage, as a fiduciary, the toll revenue appropriated by the General Assembly, allocated by the CTB, and distributed to it by VDOT. NVTC shall maintain all funds and accounts containing said toll revenues from this MOA separate and apart from all other funds and accounts of NVTC. The revenues and expenses relating to the use of the toll revenues, and the Components undertaken with the toll revenues from this MOA, shall not be commingled with any other funds, accounts, venues, or expenses of NVTC. NVTC shall create and maintain for the term of this MOA segregated accounting and financial reporting for the Components financed by toll revenues provided by this MOA and reported as a separate fund in NVTC's financial statements, and such accounting shall constitute a proprietary "special revenue fund" as defined by the Governmental Accounting Standards Board. Expenditures will be recorded and reported for each Component.

All toll revenues provided to NVTC pursuant to the terms of this MOA shall be held by NVTC in accounts with a financial institution under an arrangement that, to the extent reasonably practicable, preclude such funds from being an asset subject to the claims of creditors of NVTC, other than a holder of NVTC Debt, or other claims related to the Components undertaken in accordance with this MOA.

**6. Quality Management.** NVTC shall be responsible for all quality assurance and quality control activities necessary to properly manage the funding of the development, design, construction, purchases, acquisition, operation and maintenance of any Component it has undertaken pursuant to this MOA, and will develop and provide to VDOT and DRPT for information purposes its manuals, policies, and procedures to accomplish the same.

**7. Public Information.** During the term of this MOA, NVTC shall provide information to the public concerning the Components it has undertaken, including any public meetings and public hearing that may be required by law or regulation.

**8. Regulatory Approvals.** NVTC shall obtain, keep in effect, maintain, and comply with all regulatory approvals necessary for funding the development, operation, and maintenance of any Components funded under this MOA.

**9. Contracting Practices.** During the term of this MOA, NVTC covenants and agrees, that with respect to the Components it has undertaken, it will comply with all requirements of state and federal laws relating to anti-discrimination, including but not limited to Titles VI and VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act, and shall contractually require the same of all contractors, subcontractors, vendors, and recipients of any funding. NVTC recognizes the importance of the participation of minority, women-owned and small businesses through the federal and local Disadvantaged Business Enterprise programs and will abide by such programs in implementing Components.

NVTC shall comply with all applicable federal requirements, including those applicable to highways that are part of the National Highway System.

**10. Insurance and Indemnity by Contractors.** NVTC shall include the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees and agents, as additional insureds on NVTC's insurance policies so that they are protected from and against any losses actually suffered or incurred, except for losses to the extent caused by the negligence or willful misconduct of such entity or person, from third party claims that are directly related to or arise out of: (a) any failure by NVTC to comply with, to observe or to perform in any material respect any of the covenants, obligations, agreements, terms or conditions in this MOA, or any breach by NVTC of its representations or warranties in this MOA; (b) any actual or willful misconduct or negligence of NVTC, its employees or agents in direct connection with the Project or any related Components; (c) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents, proprietary information, know-how, trademarked or service-marked materials,

equipment devices or processes, copyright rights or inventions by NVTC in direct connection with the Project or; (d) inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by NVTC, its employees or agents in direct connection with the Project; or (e) any assumed liabilities. NVTC shall contractually require its contractors, subcontractors, vendors, and others working or performing services related to any Component it has funded to indemnify the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees and agents from the same losses.

All insurance purchased by NVTC or its contractors pursuant to this section shall name the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees and agents as additional insureds.

This provision shall survive the expiration or earlier termination of this MOA.

In the event any third-party claim to which this section applies is asserted in writing against the Commonwealth, the CTB, VDOT, DRPT, or their officers, employees, and agents, VDOT will as promptly as practicable notify NVTC in writing of such claim, which shall include a copy and any related correspondence or documentation from the third party asserting the claim. However, any failure to give such prompt notice shall not constitute a waiver of any rights of VDOT unless such failure limits or precludes the availability of those rights.

**C. Initial Multimodal Transportation Improvements.** NVTC shall undertake a Component selection process upon execution of this MOA, and submit to the CTB a list of Components for an advanced allocation of funding in the amount of \$10 million (which shall be provided upon commencement of construction of the dynamic tolling of the Facility as provided in II.A.1, and shall be repaid as specified in II.A.4). Components shall be multimodal transportation improvements that meet the criteria set forth in II.B.1 and are capable of being obligated not later than at the time tolling begins on the Facility. In the event litigation is filed challenging the implementation of the Project, or a Component of the Project, prior to the initiation of tolling, or in the event any other action prohibits or restricts the ability to toll the Facility, then the CTB may withhold this funding until such time that the litigation or other event or action is resolved in a manner

that allows the Project to be implemented. NVTC may choose to expend other funds after the execution of this MOA for Components identified through the selection process described in this MOA prior to the commencement of construction. Any such expenditures are at NVTC's risk but shall be reimbursable from the advanced allocation identified in this paragraph provided the expenditures otherwise comply with the provisions of the MOA.

**D. Widening and Related Improvements to I-66.** VDOT will proceed with plans to widen the eastbound lanes of the Facility from two lanes to three lanes between the Dulles Connector Road and Exit 71.

The design for the widening shall be limited to increasing the number of eastbound lanes of the Facility from two lanes to three lanes consistent with an approved environmental assessment conducted pursuant to the National Environmental Policy Act, and other laws and regulations applicable to the widening, and shall apply the principals of Context Sensitive Solutions as described in FHWA's Publication FHWA-HEP-07-014 as follows:

- Avoid, minimize or mitigate impacts to the parks, stream corridors, and vegetation along the corridor and within the right-of-way;
- Avoid, minimize or mitigate impacts to the W&OD Trail and the Custis Trail;
- Reduce the cost of this component of the Project; and
- Avoid, minimize or mitigate the need for acquisition of additional right-of-way.

**III. Term.** Unless this MOA is otherwise terminated in accordance with VII, the term of this MOA shall commence on the date last signed by the Parties ("the Effective Date") and shall expire on the 40<sup>th</sup> anniversary of the Effective Date subject to the provisions of IV.

**IV. Debt Financing:** NVTC shall not incur any NVTC Debt that is dependent on toll revenue from the Project and which matures or extends beyond the 40<sup>th</sup> anniversary of the Effective Date. If this MOA is terminated in accordance with VII prior to the 40<sup>th</sup> Anniversary of the Effective Date, and there is outstanding NVTC Debt for which toll revenues has been pledged to pay Debt Service or there are pay-go Components which are yet to be completed, and further provided the

use of toll revenues to pay Debt Service or the costs of the pay-go Components is not a misuse of toll revenues under this MOA and the cause or basis of the termination, then, subject to CTB approval, tolls shall continue to be imposed on the Facility and toll revenues shall continue to be allocated in accordance with II.A.4(a), (b), (c), (d) and (e) to pay Debt Service or to complete the pay-go Components. The CTB will not approve funding for pay-go Components for more than two fiscal years past the termination of the MOA in accordance with VII prior to the 40<sup>th</sup> Anniversary of the effective Date.

**V. Entire Agreement.** This MOA constitutes the entire and exclusive agreement between the Parties relating to the specific matters covered. All prior written, and prior or contemporaneous verbal agreements, understandings, and representations are superseded, revoked, and rendered ineffective for any purpose.

**VI. Amendment.** This MOA may be altered, amended or revoked only by an instrument in writing signed by all Parties or their permitted successor(s) or assignee(s).

**VII. Termination.** This MOA may be terminated (a) by a Party for material non-compliance with this MOA which has not either been remedied, or a remedy commenced and diligently pursued thereafter, within 120 days after written notice from the other Party, and (b) by written agreement of the Parties. However, prior to any termination, the Parties shall meet and confer to make a good faith attempt to resolve any non-compliance issues as follows. Within 30 days of the notice, the Commissioner of Highways and the NVTC Executive Director shall meet to discuss resolution of the non-compliance issues. If a resolution cannot be reached within 30 days, the Secretary of Transportation and the Chairman of NVTC shall meet within 30 days to discuss resolution of the non-compliance issues. If a resolution cannot be agreed upon within 30 days, the termination shall be effective as set forth in the written notice and in accordance with this MOA.

**VIII. Notices.** Notices shall be made in writing and shall not be effective for any purpose unless and until actually received by the addressee or unless served personally, by independent reputable overnight commercial courier, by facsimile transmission followed by a timely service of the original, or by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:



**If to NVTC:**

Executive Director  
Northern Virginia Transportation Commission  
2300 Wilson Boulevard, Suite 620  
Arlington, VA 22201

Fax:

**If to VDOT:**

Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219  
Attn: Commissioner of Highways  
Fax: (804) 786-2940

*With a copy to:*

Office of the Attorney General  
Chief, Transportation Section  
202 North Ninth Street  
Richmond, Virginia 23219  
Fax: (804) 692-1647

Any Party may, by notice as specified above, in writing designate an additional or a different entity or mailing address to which all such notices should be sent.

**VIII. Relationship of the Parties.** The relationship of NVTC to VDOT shall be one of an independent contractor, not an agent, partner, lessee, joint venture, or employee.

**IX. No Third Party Beneficiaries.** Nothing contained in this MOA is intended or shall be construed as creating or conferring any rights benefits or remedies upon or creating any obligations of the Parties toward any person or entity not a party to this MOA .

**X. Governing Law.** This MOA shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.

**XI. Assignment.** This MOA may be assigned only with the written approval of the other Party. In the event of an agreed assignment, there will be an amendment to this MOA to reflect the change in Parties.

**XII. Survival.** If any provisions in this MOA are rendered obsolete or ineffective, the Parties agree to negotiate in good faith appropriate amendments to, or replacement of such provisions, in order to restore and carry out the original purposes to the extent practicable. If any provision is rendered void or invalid, all remaining provisions shall survive.

**XII. Notice of Legal Proceedings.** The Parties agree to promptly notify each other if they become aware of any claim or legal proceeding that could impact the program, projects, and activities undertaken pursuant to this MOA.

**XIII. Construction of Agreement.** This MOA is intended by the Parties to be construed as a whole, and indivisible, and its meaning is to be ascertained from the entire instrument. All parts of the MOA are to be given effect with equal dignity, including but not limited to the recitals at the beginning of this MOA, and all such parts, including the recitals, are to be given full force and effect in construing this MOA. No provision of any recital shall be construed as being controlled by, or having less force and effect, than any other part of this MOA because the provision is set forth in a recital.

**XIV. No Personal Liability.** 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.

**XV. No Waiver of Sovereign Immunity.** Nothing in this MOA shall be deemed a waiver of sovereign immunity by any Party.

**XVI. Appropriations.** All obligations of the CTB to allocate toll revenues are subject to appropriation by the Virginia General Assembly.

*This space intentionally left blank*

In witness whereof, the Parties hereby cause this MOA to be executed, each by its duly authorized officers, as of the date below.

COMMONWEALTH TRANSPORTATION BOARD



The Honorable Aubrey L. Layne, Jr  
Secretary of Transportation

Date: 1/11/2017

VIRGINIA DEPARTMENT OF TRANSPORTATION



Charles A. Kilpatrick, P.E.  
Commissioner of Highways

Date: 1/11/17

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

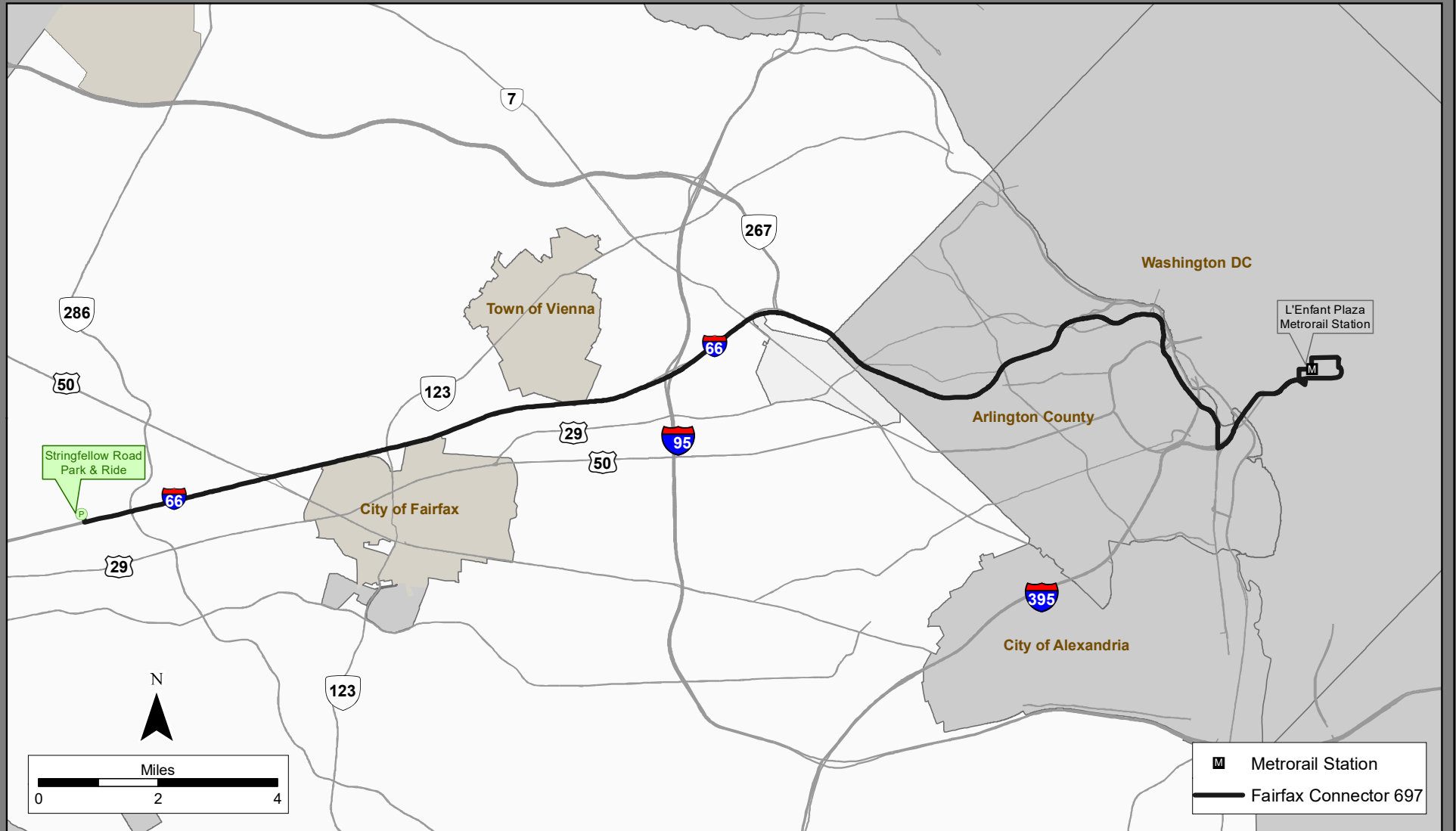


Katherine A. Mattice  
Executive Director

Date: 1/5/2017

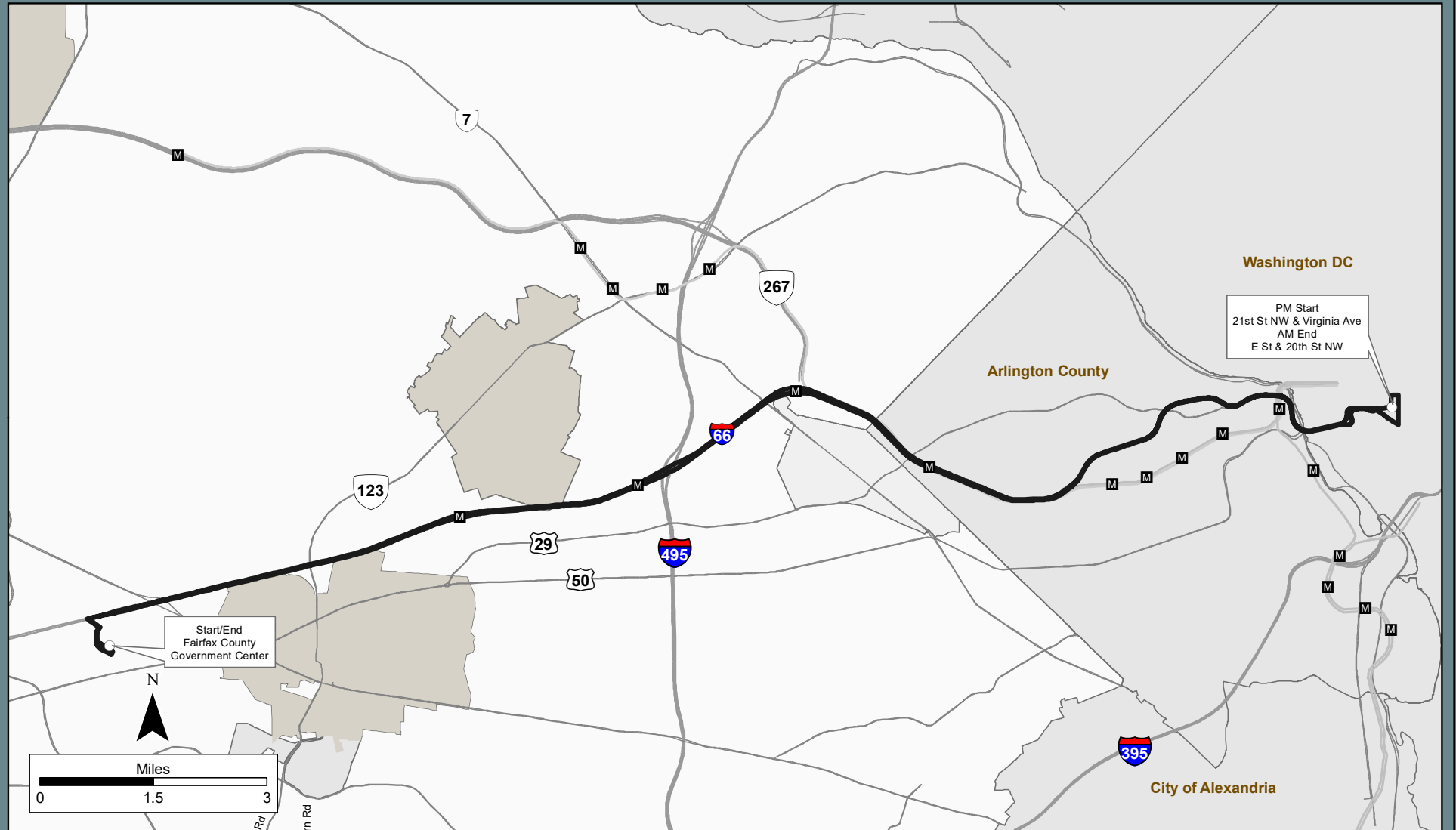


## Fairfax Connector 697 - Stringfellow Road to Downtown D.C.





## Fairfax Connector 699 - Government Center - Foggy Bottom/State Department



ACTION - 13

Authorization for the Department of Transportation to Apply for Funding and Approval of a Resolution Endorsing Projects Being Submitted for the Virginia Department of Transportation's FY 2021 and FY 2022 Revenue Sharing and Transportation Alternatives Set-Aside Funding Programs

ISSUE:

Board of Supervisors authorization is requested for the Department of Transportation to apply for funding from the Virginia Department of Transportation (VDOT) FY 2021 and FY 2022 Revenue Sharing and the Transportation Alternatives Set-Aside Programs. Staff recommends that \$23.5 million, including \$10.7 million in Local Cash Match (LCM) be requested for the following projects:

Revenue Sharing

- Fairfax County Parkway Widening (Popes Head Road to Route 29);  
Transportation Priorities Plan (TPP) # 51
  - \$12,000,000, including \$6,000,000 in LCM
- Lincoln Street (New Road Connection) TPP # 314
  - \$8,000,000, including \$4,000,000 in LCM

Transportation Alternatives Set-Aside

- Shrevewood Elementary School Pedestrian Improvements
  - \$700,000, including \$140,000 in LCM
- Orange Hunt Elementary School Pedestrian Improvements
  - \$200,000, including \$40,000 in LCM
- Bikeshare Expansion
  - \$625,000, including \$125,000 in LCM
- Mason Neck Trail; TPP # 206
  - \$1,000,000, including \$200,000 in LCM
- Columbia Pike Complete Streets
  - \$975,000, including \$195,000 in LCM

The total required Local Cash Match is available in other transportation funding sources and does not require new General Fund resources. Each project requires a project endorsement resolution (Attachment 1) from the local governing body. If the County is awarded funding, staff will submit another item to accept the awards and execute the Project Administration Agreements with VDOT.

**RECOMMENDATION:**

The County Executive recommends that the Board of Supervisors authorize the Department of Transportation to apply for funding in the amount of \$23.5 million, including \$10.7 million in Local Cash Match and to adopt the project endorsement resolution (substantially in the form of Attachment 1). The total required Local Cash Match is available from transportation funding sources and does not require new General Fund resources.

**TIMING:**

Board of Supervisors' approval is requested on September 24, 2019, to meet VDOT's submission deadline of October 1, 2019.

**BACKGROUND:**

**Revenue Sharing**

The Revenue Sharing program is administered by VDOT, in cooperation with the participating localities, under the authority of Section 33.2-357 of the *Code of Virginia* and the CTB's Revenue Sharing Program Policy. An annual allocation of funds for this program is designated by the CTB.

The Revenue Sharing program provides additional funding for use by a county, city, or town to construct, reconstruct, improve or maintain the highway systems within such county, city, or town, and for eligible rural additions in certain counties of the Commonwealth. These funds must be equally matched by the locality. If awarded, these funds result in a net increase of state funds available for transportation projects in the County.

On July 19, 2017, the CTB approved a policy that caps annual allocations to localities at \$5.0 million per year (previous cap was \$10.0 million per year), and a project limit of no more than \$10.0 million in Revenue Sharing awards (previously no cap, and the new policy is retroactive). VDOT staff argued that larger projects were receiving the majority of Revenue Sharing funds, and its current intent for the program is to advance small-scale projects with a shorter timeline for implementation.

State law prioritizes project types for the Revenue Sharing program, stating that priority will be given: first, to projects that have previously received Revenue Sharing funds; second, to projects that (i) meet a transportation need identified in the Statewide Transportation Plan or (ii) accelerate a project in a locality's capital plan; and third, to projects that address pavement resurfacing and bridge rehabilitation projects where the maintenance needs analysis determines that the infrastructure does not meet VDOT's maintenance performance targets.

Staff recommends the following projects (in priority order) for the FY2021 – FY 2022 Revenue Sharing request of \$20.0 million (includes \$10.0 million in Local Cash Match):

- Fairfax County Parkway Widening (Popes Head Road to Route 29) - \$12.0 million, and
- Lincoln Street (new road/connection in Tysons) - \$8.0 million.

See Attachment 2 for project details.

### **Transportation Alternatives**

The Transportation Alternatives (TA) Set-Aside, included in the Fixing America's Surface Transportation (FAST) Act, replaced the Transportation Alternatives Program (TAP), included in the Federal Surface Transportation Act, Moving Ahead for Progress in the 21st Century (MAP-21). TA is similar in nature to TAP. Applicants are required to provide the same 20 percent match, with grant awards covering the remaining 80 percent. Some of the major aspects are:

- Transportation Alternatives Set-Aside has the same eligible categories as TAP. The categories of eligible projects are:
  - Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation;
  - Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers to access daily needs;
  - Conversion and use of abandoned railroad corridors for trails;
  - Construction of turn-outs, overlooks, and viewing areas to promote the scenic and historic character of local roads;
  - Inventory, control, or removal of outdoor advertising;
  - Historic preservation and rehabilitation of historic transportation facilities;
  - Vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control;
  - Archaeological activities relating to impacts from implementation of a transportation project eligible under this title;
  - Environmental mitigation activity, including prevention and abatement activities to address storm water management, control, and water pollution related to highway runoff; and
  - Wildlife mortality mitigation activities to decrease the negative impacts of roads on the natural environments.



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- Safe Routes to Schools (SRTS) and Recreational Trails Programs are merged under TA, and, SRTS applicants will continue to provide the 20 percent local match.

All submissions require a 20 percent local cash match. Staff will also pursue future funding opportunities, such as future TA grants or other resources, to reduce the total County commitment. The Board should be aware that jurisdictions are responsible for any cost overruns, future maintenance, and operating costs of any projects that are funded.

On September 4, 2019, staff conducted a public meeting in response to VDOT guidelines that allow for other means of public participation rather than public hearings for TA.

Applications are due to VDOT on October 1, 2019. The applications submitted to VDOT will be reviewed by both VDOT staff (with recommendations forwarded to the CTB) and the Transportation Planning Board (TPB). Both the CTB and TPB will make announcements on funding decisions in Summer 2020.

County staff recommends forwarding five applications to VDOT and TPB for FY 2021 – FY 2022 funding consideration:

- Shreveview Elementary School Pedestrian Improvements
  - Total Project Estimate (TPE)/Grant request - \$700,000
    - Including \$140,000 in LCM
- Orange Hunt Elementary School Pedestrian Improvements
  - TPE/Grant request - \$200,000
    - Including \$40,000 in LCM
- Bikeshare Expansion (Countywide)
  - TPE/Grant request- \$625,000
    - Including \$125,000 in LCM
- Mason Neck Trail
  - TPE - \$4,965,000
  - Grant request – up to \$1,000,000
    - Including up to \$200,000 in LCM
- Columbia Pike Complete Streets Phase I
  - TPE/Grant request \$975,000
    - Including \$195,000 in LCM

See Attachment 2 for project details.

FISCAL IMPACT:

Grant funding of \$23.5 million, including \$10.7 million in Local Cash Match, is being

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recommended to be sought from the VDOT FY 2021 and FY 2022 Revenue Sharing and the Transportation Alternatives Set-Aside Programs. The total Revenue Sharing request is \$20.0 million, including \$10.0 million in Local Cash Match for the two projects. It is anticipated that Northern Virginia Transportation Authority (NVTA) regional funding will be requested to satisfy the Local Cash Match requirement for the Fairfax County Parkway Widening Project and using Fund 30040 Contributed Roadway Improvements road fund contributions to satisfy the Local Cash Match requirement for the Lincoln Street project. The total Transportation Alternatives Set-Aside request is \$3.5 million, including \$0.7 million in Local Cash Match. The total required Local Cash Match for these five projects is available in Fund 40010, County and Regional Transportation Projects. No General Fund resources are required.

These programs do not allow for the recovery of indirect costs. If the County is awarded funding, staff will submit another item to accept the awards and execute the Project Administration Agreements with VDOT.

CREATION OF POSITIONS:

No positions will be created through this action.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution Endorsing Transportation Projects for FY 2021 – FY 2022 Revenue Sharing, and Transportation Alternatives Set-Aside Programs  
Attachment 2 – Project Details

STAFF:

Rachel Flynn, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT  
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT  
Michael Guarino, Section Chief, Capital Projects and Operations Division, FCDOT  
Chris Wells, Capital Projects and Operations Division, FCDOT  
Lauren Delmare, Capital Projects and Operations Division, FCDOT

## **Fairfax County Board of Supervisors Resolution**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, September 24, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

### **PROJECT ENDORSEMENT RESOLUTION**

WHEREAS, Fairfax County desires to submit applications for allocation of funds of \$20,000,000, including \$10,000,000 in Local Cash Match (LCM), through the Virginia Department of Transportation (VDOT) Fiscal Year 2021-22, Revenue Sharing Program; and,

WHEREAS, Fairfax County desires to submit applications for allocation of funds of \$3,500,000, including \$700,000 in LCM, through VDOT's Fiscal Year 2021-22, Transportation Alternatives Set-Aside Program; and,

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby endorses and approves submissions to VDOT's Fiscal Year 2021-22 Revenue Sharing, and Transportation Alternatives Set-Aside Program, for the following projects with requested amounts not to exceed:

#### **Revenue Sharing**

- Fairfax County Parkway Widening (Popes Head Road to Route 29)
  - \$12,000,000 request with \$6,000,000 as LCM.
- Lincoln Street (New Road Connection)
  - \$8,000,000 request with \$4,000,000 as LCM.

#### **Transportation Alternatives Set-Aside**

- Shrevewood Elementary School Pedestrian Improvements
  - \$700,000 request with \$140,000 as LCM.
- Orange Hunt Elementary School Pedestrian Improvements
  - \$200,000 request with \$40,000 as LCM.
- Bikeshare Expansion
  - \$625,000 request with \$125,000 as LCM.
- Mason Neck Trail
  - \$1,000,000 request with \$200,000 as LCM
- Columbia Pike Complete Streets
  - \$975,000 request with \$195,000 as LCM.

Adopted this 24<sup>th</sup> day of September 2019, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Jill G. Cooper  
Clerk to the Board of Supervisors

## Attachment 2

### List of Recommended Projects for Revenue Sharing and Transportation Alternatives Set-Aside Grant Submissions Fall 2019

#### Revenue Sharing Projects

PROJECT	PROJECT DESCRIPTION	CURRENT COST ESTIMATE	GRANT REQUEST w/ LCM
Fairfax County Parkway Widening (Popes Head Road to Route 29)	The project proposes to widen Fairfax County Parkway from Popes Head Road to just north of Route 29, from the existing four-lane, divided roadway to a six-lane, divided roadway. The purpose of the project is to relieve congestion and improve safety by increasing capacity along Fairfax County Parkway. In addition, the project will improve or provide pedestrian and bicycle amenities along the widening segment and include the provision for potential future HOV usage.	\$80,900,700	\$12,000,000
Lincoln Street (new road/connection in Tysons)	Lincoln Street (part of Tysons Grid of Streets) will provide a connection between Old Meadow Road and Magarity Road, just north of Westgate Elementary School, to accommodate residents and the growing population within the Tysons East area. Lincoln Street will include parking lanes, and bicycle and pedestrian facilities.	\$33,464,000	\$8,000,000

#### Transportation Alternatives Projects

PROJECT	PROJECT DESCRIPTION	CURRENT COST ESTIMATE	GRANT REQUEST
Shrevewood Elementary School	The proposed project will add two new marked crosswalks across Shreve Road: one at Fairwood Lane to the west that will provide access for walking and bicycling students from the northwest; and one at the eastern driveway that will cross the bifurcated portion of Shreve Road and, along with a third crosswalk across Virginia Lane at Virginia Avenue, will provide access for students to the	\$700,000	\$700,000

## Attachment 2

### List of Recommended Projects for Revenue Sharing and Transportation Alternatives Set-Aside Grant Submissions Fall 2019

	northeast of the school. These crosswalks will include new connections to existing sidewalks and paths, curb ramps, curb extensions where feasible, and school crosswalk signing and markings. These improvements will improve safety and access for students choosing to walk or bicycle to school from the north. The crosswalks will also provide neighborhood access to school amenities and the W&OD Trail.		
Orange Hunt Elementary School	The proposed project would improve the existing crosswalk crossing Huntsman Boulevard between the school path and Spelman Drive by adding a pedestrian refuge island and curb extensions. This crosswalk improvement project would provide a safety enhancement for students coming from the east and southeast to Orange Hunt Elementary School and all community users of this existing crosswalk.	\$200,000	\$200,000
Bikeshare Expansion	A bike share is a program of "public use" bicycles that allows users who have registered with the program to rent a bike for short periods of time. The bikes can be used to travel from bike dock to bike dock located at activity centers and employment centers throughout Fairfax County. Capital Bikeshare currently operates in the Tysons, Merrifield and Reston areas of Fairfax County, as well as in Arlington County, the Cities of Falls Church and Alexandria, and the District of Columbia. The stations in Fairfax County will expand upon the existing Capital Bikeshare system and neighboring jurisdictions and allow users to travel by bike between these stations. The capital equipment needed for a bike share station includes, but is not limited to, the docking stations, bicycles and kiosks. The proposed use of the grant funding is to purchase the capital equipment for ten stations that will support 80 bicycles and to install them in	\$625,000	\$625,000

## Attachment 2

### List of Recommended Projects for Revenue Sharing and Transportation Alternatives Set-Aside Grant Submissions Fall 2019

	locations throughout Fairfax County, such as Richmond Highway, Springfield, Seven Corners, and others.		
Mason Neck Trail	The Mason Neck Trail is envisioned to span a six-mile length of the Mason Neck Peninsula from Richmond Highway to the Mason Neck State Park and the Potomac River along the Gunston Road corridor. Previously constructed project segments (#2, #2A, and #3) have completed the middle three miles of the Trail, currently connecting Pohick Bay Regional Park, Meadowood Farm Recreation Area, George Mason's Gunston Hall Historic Site, and Mason Neck State Park. The remaining segments (#1 and #4) would complete the western and eastern ends of the trail. The proposed project is the mile-long segment #1 on the western end of the trail which will connect the existing trail at Julia Taft Way, approximately 1,500 feet east of Richmond Highway, to the previously completed segments of the trail at the Pohick Bay Regional Park golf course driveway.	\$4,965,000	\$1,000,000 (up to)
Columbia Pike Complete Streets Phase I	The proposed project will include adding a sidewalk along the south side of Columbia Pike from Backlick Road to Tom Davis Drive and adding a crosswalk and curb ramps crossing Columbia Pike at the west leg of Tom Davis Drive, set in the ultimate location to accommodate a pedestrian refuge island with a future road diet.	\$975,000	\$975,000

ACTION - 14

Supplemental Appropriation Resolution AS 20088 for the Department of Transportation to Accept Grant Funding from the Virginia Department of Rail and Public Transportation for the Transportation Demand Management Strategic Plan

ISSUE:

Board of Supervisors' approval of Supplemental Appropriation Resolution AS 20088 for the Fairfax County Department of Transportation (FCDOT) to accept grant funding from the Virginia Department of Rail and Public Transportation (VDRPT) in the amount of \$65,000, including \$32,500 in Local Cash Match. The grant period runs from July 1, 2019, to September 30, 2020. Funding will be used to update Fairfax County's Transportation Demand Management (TDM) Strategic Plan. There are no positions associated with this funding. Board approval and authorization is also requested for the Director of FCDOT to execute the Project Funding Agreement supported by the grant, substantially in the form of Attachment 2, with VDRPT for use of Commonwealth Transportation Board FY 2020 funds.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve Supplemental Appropriation Resolution AS 20088, substantially in the form of Attachment 1, for FCDOT to accept funding from VDRPT. Funding in the amount of \$65,000, including \$32,500 in Local Cash Match will be used to update Fairfax County's TDM Strategic Plan. The County Executive also recommends that the Board of Supervisors authorize the Director of FCDOT to execute the Project Funding Agreement, substantially in the form of Attachment 2.

TIMING:

Board action is requested on September 24, 2019.

BACKGROUND:

The TDM Marketing and Ridesharing Program receives state grant support for programs that promote the use of High Occupancy Vehicle (HOV) lanes, park-and-ride facilities, and commuter alternatives throughout Fairfax County including ride matching, carpooling, teleworking, vanpooling, Guaranteed Ride Home (GRH), and use of Fairfax Connector, Metrobus, Metrorail, Virginia Railway Express (VRE), and other HOV/transit options. The program promotes cooperative events and marketing campaigns, such as transportation fairs, County expos, and marketing campaigns with other jurisdictions and the Washington Metropolitan Area Transit Authority (WMATA). In addition, funds

are used to support FCDOT's TDM activities. Examples of TDM activities supported include:

- Proffer review;
- Participation in Congestion Mitigation programs and coordination with other entities to reduce vehicle miles traveled;
- Providing support to Transportation Management Associations (TMAs);
- Promoting specific marketing campaigns in targeted areas;
- Supporting desktop publishing, production, and distribution of various marketing materials, such as maps, timetables, brochures, flyers, and posters;
- Participation in the Metropolitan Washington Council of Governments' Commuter Connections network; and
- Providing ride matching assistance to commuters Countywide. The Ridesources Program provides free ride matching services to County residents and to employees who work at employment sites within the County.

DRPT requires that every jurisdiction that receives DRPT funding to apply for the Technical Assistance Program (TAP) grant every six years to update the jurisdiction's TDM Strategic Plan.

FISCAL IMPACT:

Grant funding in the amount of \$65,000, including \$32,500 in Local Cash Match is available from VDRPT. These funds will be used to update Fairfax County's TDM Strategic Plan. The Local Cash Match requirement of \$32,500 is available in the Local Cash Match reserve for unanticipated grant awards. This action does not increase the expenditure level of the Federal-State Grant Fund as funds are held in reserve for unanticipated awards in FY 2020. This grant does not allow the recovery of indirect costs.

CREATION OF POSITIONS:

There are no new grant positions associated with this award.

ENCLOSED DOCUMENTS:

Attachment 1: Supplemental Appropriation Resolution AS 20088

Attachment 2: Resolution Authorizing the Execution of Project Funding Agreement 71320-02 with the Virginia Department of Rail and Public Transportation

Attachment 3: FY2020 Technical Assistance Program Project Funding Agreement – DRPT Grant Number 71320-02



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STAFF:

Rachel Flynn, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Anna Nissinen, Chief, Communications and Marketing Section, FCDOT  
Lisa Witt, Acting Chief, Administration Section, FCDOT  
Walter E. Daniel, Jr., Communications and Marketing Section, FCDOT  
Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), FCDOT  
Ray Johnson, Chief, Funding Section, CFD, FCDOT  
Christina Farrar, Transportation Planner, CFD, FCDOT

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

**SUPPLEMENTAL APPROPRIATION RESOLUTION AS 20088**

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 September 24, 2019, at which a quorum was present and voting, the following resolution was adopted:

**BE IT RESOLVED** by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2020, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund: 500-C50000, Federal-State Grant Fund

Agency:	G4040, Fairfax County Department of Transportation	\$65,000
Grant:	1400154-2020, Technical Assistance Program	

Reduce Appropriation to:

Agency:	G8787, Unclassified Admin	\$65,000
Fund:	500-C50000, Federal-State Grant Fund	

Source of Funds:	Virginia Department of Rail and Public Transportation,	\$32,500
	Local Cash Match,	\$32,500

A Copy - Teste:

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Jill G. Cooper  
Clerk to the Board of Supervisors

## **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, September 24, 2019, 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 the County of Fairfax, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, Project Funding Agreements with the Virginia Department of Rail and Public Transportation (DRPT) for use of Commonwealth Transportation Funds for the following project:

- Fairfax County FY2021-2026 TDM Strategic Plan Technical Assistance Program (DRPT Grant Number 71320-02) in the amount of \$65,000

Adopted this 24<sup>th</sup> day of September 2019, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Jill G. Cooper  
Clerk to the Board of Supervisors

**Project Agreement for Use of  
Commonwealth Transportation Funds  
Fiscal Year 2020  
Six Year Improvement Program Approved Project  
Grant Number 71320-02**

This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding the development of a Transportation Demand Management (“TDM”) strategic plan (“Project”).

WHEREAS, on January 29, 2019, the Grantee submitted an application to the Department for funding for the Project in the Fiscal Year 2020 Six Year Improvement Program (“SYIP”) from the Technical Assistance Program; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 19, 2019, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

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

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

**ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET**

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:
  - a. Hire a consultant to develop a FY2021-2026 TDM strategic plan for Fairfax County.
2. The Department agrees to provide funding as detailed below:
  - a. State grant funding in the amount of \$32,500 for the Project approved in the Fiscal Year 2020 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
3. The Agreement may be amended only prior to the Project Expiration Date identified in Appendix 1 and upon written agreement of the Parties.
4. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

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

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

*This space intentionally left blank*

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

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

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

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

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

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

## **Appendix 1**

**Grantee: Fairfax County**

**Project: Hire Consultant to Develop a FY2021-2026 TDM Strategic Plan for Fairfax County**

### **Technical Assistance Program Project Agreement**

**Project Number: 71320-02**

**Project Start Date: July 1, 2019**

**Project Expiration Date: September 30, 2020**

<b>Fund Code</b>		<b>Item Amount</b>
477	Grant Amount (State share of Project cost - 50%)	\$32,500
1400	Local expense (share of Project cost - 50%)	\$32,500
	Total Project Expense	\$65,000

In no event shall this grant exceed \$32,500.

ACTION - 15

Approval of Addendum to the Memorandum of Agreement Between the Friends of the Fairfax County Animal Shelter and the Board of Supervisors of Fairfax County, Virginia, Regarding Certain Fundraising Projects (Springfield District)

ISSUE:

Board approval of Addendum to the Memorandum of Agreement (“Addendum”) between the Friends of the Fairfax County Animal Shelter (“FFCAS”) and the Board regarding proposals for certain fundraising projects.

RECOMMENDATION:

The County Executive recommends that the Board approve the Addendum and authorize him to sign it on behalf of the Board.

TIMING:

Board action is requested on September 24, 2019, to allow FFCAS to begin soliciting donations pursuant to the fundraising programs.

BACKGROUND:

FFCAS is a nonprofit corporation formed in 2006 to support and enhance the general operation of the Fairfax County Animal Shelter (“Shelter”), now managed by the Fairfax County Department of Animal Sheltering. FFCAS supports the Shelter by financing veterinary treatment for animals housed at the shelter, defraying adoption costs, assisting with foster and rescue programs, purchasing supplies and conducting outreach and education efforts related to companion animals. FFCAS is the sole nonprofit entity organized to support the Shelter exclusively.

Over the last thirteen (13) years, FFCAS has raised over \$2,100,000 to benefit the Shelter. FFCAS has increased its annual support from \$10,000 in 2006 to \$221,900 in 2017 and \$275,671 in 2018.

On March 14, 2017, the Board approved a Memorandum of Agreement with FFCAS (“MOA”). The MOA governs the relationship between FFCAS and the County, including fundraising activities conducted by the Friends on behalf of the Shelter. Pursuant to the terms of the MOA, FFCAS can only raise money to support the Shelter and its programs.



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FFCAS has subsequently identified several specific fundraising projects that require an Addendum to the MOA. These projects are (1) a brick patio on the grounds of the Shelter ("Patio"), (2) a Tree of Life in the main reception area of the Shelter ("Tree of Life"), and (3) plaques that will hang in adoption rooms and on dog kennels and cat condominiums in the Shelter ("Plaques").

The Patio will be in the shape of the Shelter's logo and will consist of bricks and stepping-stones inscribed with the names of individuals and/or animals. The Patio will be located in front of the Shelter dog adoption windows to the right of the main entrance. A donor can select an inscription for a brick or stone for a contribution to FFCAS of \$250 or \$500, respectively.

The Tree of Life is an artistic representation of a tree with leaves. For a specified monetary contribution, a donor can have his or her name inscribed on a leaf.

The Plaques will hang in various areas of the Shelter. For a specified monetary contribution to FFCAS, a donor can have his or her name inscribed on a plaque for a period of one year per contribution.

The proposed Addendum sets forth certain terms and conditions for these projects. The County and FFCAS will develop guidelines for approval of all inscriptions and the County will have the right to approve the construction contract for the Patio. FFCAS will remain responsible for maintenance. The County will have the right to order removal of any inscribed brick, leaf or Plaque in its sole discretion and at FFCAS's expense. County will also have the sole discretion to remove the entire Patio, Tree of Life or all Plaques. The County will assume ownership of the Patio, Tree of Life and the Plaques when FFCAS has completed its fundraising activities in connection with each project respectively.

FISCAL IMPACT:

FFCAS estimates that the Patio will generate over \$200,000 in donations. FFCAS has not prepared estimates for the Tree of Life or Plaque fundraising initiatives.

ENCLOSED DOCUMENTS:

Attachment 1 – Memorandum of Agreement

Attachment 2 – Addendum to Memorandum of Agreement

Attachment 3 – Diagram of Proposed Patio

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STAFF:

David M. Rohrer, Deputy County Executive  
Joseph M. Mondoro, Chief Financial Officer  
Jose A Comayagua, Jr., Director, Facilities Management Department  
Karen Diviney, Director, Department of Animal Sheltering  
Michael Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

John W. Burton, Assistant County Attorney

## ATTACHMENT 1

### MEMORANDUM OF AGREEMENT BETWEEN THE FRIENDS OF THE FAIRFAX COUNTY ANIMAL SHELTER AND THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

This Memorandum of Agreement, by and between the Board of Supervisors of Fairfax County, Virginia (hereinafter "the County"), and the Friends of the Fairfax County Animal Shelter, Inc. (hereinafter "the Corporation"), and together known as the "Parties", is for the purpose of defining the relationship between the Parties. This Memorandum of Agreement (hereinafter "Agreement") shall replace all other Agreements, Memoranda of Understanding or Contracts that may be in existence between the Parties.

WHEREAS, the Fairfax County Animal Shelter ("Shelter") is a public animal shelter as defined in the Code of Virginia that is funded by the County to fulfill the requirements of Virginia law and is operated by the Fairfax County Department of Animal Sheltering; and,

WHEREAS, the Shelter maintains certain programs to control animal overpopulation, reduce euthanasia of adoptable pets, promote responsible pet ownership and improve animal welfare in Fairfax County that are not mandated by Virginia law; and,

WHEREAS, the Corporation, EIN 20-5009244, has been organized in the Commonwealth of Virginia as a non-stock, 501(c)(3) non-profit corporation for the purpose of supporting and enhancing the general operation of the Shelter, and assisting the Shelter with caring for animals in need, humane education in the community and ending animal homelessness, pet overpopulation and animal cruelty in Fairfax County; and,

WHEREAS, the Corporation is an independent, separate, legal entity apart from the County and the Shelter; and,

WHEREAS, it is in the mutual interest of the Parties to work toward supporting, improving, and promoting the Shelter's programs;

WITNESSETH: that for and in consideration of the County's recognition of the Corporation, and the raising of funds and the acceptance of contributions by the Corporation in the name of the Shelter to benefit the Shelter's programs, the Parties hereto mutually agree as follows:

1. **PRIVILEGES GRANTED.** In executing this Agreement the County grants the Corporation the privilege to solicit contributions in the name of and on behalf of the Shelter for use in support of the programs and objectives of the Shelter, and agrees to accept such contributions subject to the terms of this Agreement and applicable law and County policies.

## 2. CORPORATE STATUS AND DISSOLUTION

- a. The Corporation has registered with the Virginia State Corporation Commission and will comply with all laws or other requirements so as to maintain its registration with the Commonwealth of Virginia as a duly incorporated non-profit, non-stock corporation. Further, the Corporation has obtained a valid determination letter from the Internal Revenue Service designating the Corporation as a not-for-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code, 1986, as amended, and the Corporation shall comply with all requirements of the Internal Revenue Code so as to remain an approved 501(c)(3) charitable tax exempt corporation. If the Corporation receives notice from the Internal Revenue Service that its status as a 501(c)(3) has changed, or if the Corporation receives notice from the Virginia State Corporation Commission that it is no longer in good standing with that body, then the Corporation shall notify the County of the change in status and any steps that the Corporation is taking to regain such status. Such notification to the County shall be made within five (5) business days of the Corporation's receipt of notice from the Internal Revenue Service or the State Corporation Commission, respectively.
- b. The Articles of Incorporation and Bylaws of the Corporation shall provide that, upon dissolution of the Corporation, all assets of the Corporation will be distributed to the County for the benefit of the Shelter. In the event that there is no longer a Shelter in existence upon dissolution, the assets of the Corporation shall be distributed pursuant to Virginia law. If, at the time of the execution of this Agreement, the Articles of Incorporation and Bylaws of the Corporation do not contain such a provision, the Corporation will file amended Articles of Incorporation with the Virginia State Corporation Commission within thirty (30) days of execution of this Agreement, and will take action to amend the Corporation's Bylaws to include such a provision within sixty (60) days of execution of this Agreement. The Corporation further agrees to maintain this provision throughout the duration of this Agreement.
- c. The Articles of Incorporation of the Corporation provide that the Corporation is organized to assist the Shelter with caring for animals in need, assisting with humane education in the community and ending animal homelessness, pet overpopulation and animal cruelty in Fairfax County. The Bylaws of the Corporation provide that the purpose of the Corporation is to support and enhance the general operation of the Shelter, including, but not limited to assistance with medical treatment for animals with special needs, financial support of Shelter or community programs, and humane education in the community that enhances the well-being of animals, and more general animal welfare issues that affect animals in



Fairfax County and its shelter(s). The Corporation agrees to maintain these provisions throughout the duration of this Agreement.

### 3. FUNDRAISING.

- a. The Corporation shall conduct fundraising activities in support of the programs, services and capital improvement projects of the Shelter by soliciting donations, property or services.
- b. The Corporation shall not conduct any fundraising activities for any entity other than the Shelter, or for programs other than those of the Shelter.
- c. Nothing in this Agreement shall prohibit the Corporation from accepting donations of any nature directed toward a specific Shelter animal, program or service, and distributing such donations in accordance with the donors' instructions.

### 4. BUDGETING AND FUNDING REQUESTS.

- a. From time to time, the Shelter Director or designee will provide the Corporation with a list of programs, services and capital improvement projects that will further the mission of the Shelter. The Board of Directors of the Corporation will vote on such programs, services and capital improvement projects the Corporation will support and include in current or future budgets.
- b. By December 1 of each calendar year, the Corporation will submit a proposed annual budget to the Shelter Director or designee for the following calendar year. By January 1 of each calendar year, the Shelter director or designee and the Corporation's president or designee will develop a final annual budget and submit it to the Corporation for approval at its next regularly scheduled meeting. If the Corporation fails to approve such annual budget, the Parties agree to revise the proposed annual budget and re-submit it for approval at the next regularly scheduled meeting of the Corporation. This process shall continue until a final annual budget is approved by the Corporation.
- c. Nothing in this section shall prohibit a subsequent reallocation of budgeted funds based on the needs of the Shelter or emergencies, provided such reallocation is approved by majority vote of the Corporation's Board of Directors.
- d. The Shelter director or designee and the Corporation's president or designee shall meet on a monthly basis to discuss the current needs of the Shelter and use of budgeted funds.

- e. From time to time, the Shelter Director or designee may make funding requests to the Corporation for a specific program, service or capital improvement project. The Corporation shall review and vote on such requests at its next regularly scheduled meeting or sooner if there is an immediate need and shall notify the Shelter Director or designee of the results of such vote.
- f. In the event of an emergency or other time sensitive situation, the Corporation agrees to immediately review and vote upon such funding requests, including, but not limited to, funding requests for emergency veterinary treatment. The Corporation further agrees to immediately notify the Shelter Director or designee of the results of such vote.
- g. To the extent permitted by law and County policies, the Corporation agrees to support the Shelter's programs, services and capital improvement projects by paying providers of goods and services directly.
- h. All donations made by the Corporation to the Shelter shall be accepted in accordance with the County's Purchasing Resolution.
- i. The Shelter Director or designee agrees to provide such information as requested by the Corporation to make informed decisions on all budget items and funding requests.

##### 5. FACILITIES AND RESOURCES.

- a. The Shelter will provide office space, storage space and office support to the Corporation within the Shelter, as available and reasonable in light of the Corporation's contributions, for purposes related to this Agreement. Such office support shall include, but not be limited to, use of Shelter office and computer equipment for purposes related to this Agreement.
- b. The Shelter agrees to provide space in its main reception area, as available, for the Corporation's brochures, flyers, advertisements and similar literature in order to inform the public of the Corporation's existence and fundraising efforts. The Shelter further agrees to include in its adoption materials written acknowledgement of supplies provided by the Corporation to adopters such as leashes, tags and collars.
- c. The County may provide additional office space at other locations subject to availability and the needs of the Corporation.
- d. The Corporation agrees to execute any lease or license agreements that the County may require for use of space at the Shelter or elsewhere.

- e. To the extent permitted by law and County policies, the parties agree to provide links and posts to each other's websites and social media accounts.
- f. Upon request by the Corporation, the Shelter Director or designee agrees to contact adopters on behalf of the Corporation for purposes related to this Agreement.

6. NAME AND LOGO.

- a. The County agrees that the Corporation is authorized to use the name and logo of the Shelter for purposes related to this Agreement. The County further recognizes the Corporation as the sole non-profit entity organized to support the Shelter exclusively.
- b. Any such use shall make clear that the Corporation is not an agency of the County.
- c. The Corporation agrees that the County and the Shelter are authorized to use the name and logo of the Corporation for purposes relating to this Agreement.
- d. All such use of official logos and names shall be done in a favorable way and in a manner as to emphasize the benefits that this partnership provides to the community and the animals. Each party agrees that it shall not participate in activities that would portray the other party in a disparaging way.

7. BOOKS, RECORDS AND REPORTS.

- a. The Corporation shall keep complete and accurate books of account and records of its activities under and in connection with this Agreement. The Corporation shall also obtain an audit of its financial statements on an annual basis and make such audit available to the County.
- b. The County and its designees shall have the right to inspect and copy at any time during normal business hours at a mutually agreed location, all books and records, in whatever form maintained, including electronic media, to the extent that those books and records relate to fundraising activities conducted pursuant to this Agreement.
- c. The County may request that the Corporation's records be audited by an independent party at the County's expense.

- d. Upon request, the Shelter Director or designee agrees to provide written reports to the Corporation that detail the use of funds appropriated to the Shelter by the Corporation.

8. TERM.

- a. This Agreement shall be in effect for a term of five (5) years from the date entered above unless it is terminated earlier as set forth in this paragraph.
- b. This Agreement may be terminated by either Party, with or without cause, upon thirty (30) days written notice.
- c. The term of this Agreement may be extended for successive five-year terms upon mutual, written agreement of the Parties.

9. INSURANCE AND INDEMNIFICATION.

- a. The Corporation agrees to maintain business owner's insurance in the amount of \$1,000,000, with the County as an additional insured, throughout the term of this Agreement.
- b. The Corporation agrees to maintain non-profit organization management insurance in the amount of \$1,000,000 throughout the term of this Agreement.
- c. The Corporation agrees to maintain crime insurance in the amount of \$25,000 throughout the term of this Agreement.
- d. The Corporation will indemnify and hold harmless the County, its agents, officials, employees and volunteers from and against all losses, damages, expenses, claims, demands, suits, and actions by any party based on any intentional or negligent action or omission to act by any member or agent of the Corporation in connection with any work or activities performed or conducted by the Corporation relating to the County or the Shelter.

10. NOTICES. All notices relating to the term or the termination of this Agreement shall be in writing and sent by certified mail to the parties at the following addresses:

Friends of the Fairfax County Animal Shelter  
P.O. Box 2321  
Centreville, VA 20122

Fairfax County Animal Shelter  
4500 West Ox Road  
Fairfax, VA 22030



## 11. GENERAL PROVISIONS.

- a. This Agreement shall be governed by the laws of the Commonwealth of Virginia without reference to its conflicts of law rules. Each party acknowledges that this Agreement is made and will be performed in Fairfax County, Virginia, and hereby voluntarily submits to and consents to the jurisdiction and venue of the courts of Fairfax County, Virginia and of the United States District Court for the Eastern District of Virginia, Alexandria Division, in connection with any action, suit or other proceeding between the parties, and hereby waives preferred or more convenient venues, if any.
- b. Any assignment or attempted assignment of this Agreement by either Party without the prior written consent of the other Party shall be void.
- c. The failure of either Party to insist upon the complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not constitute a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future.
- d. This document contains the entire Agreement between the Parties and it may not be modified, amended, altered or extended except by a written amendment executed by both Parties.
- e. The Corporation is not an agent of the County. The Corporation's officers, agents and employees shall not be considered employees of Fairfax County for any purpose and they shall not be entitled to receive any of the benefits associated with regular employment with Fairfax County and will not be subject to the provisions of the Fairfax County Employee Merit System. Nothing in this section shall prohibit the Corporation's officers, agents and employees from using office space and support from the Shelter as set forth in Section 6 above.
- f. The Corporation agrees to comply with all federal, state, and local laws, including those laws governing charitable organizations and the solicitation of charitable contributions.
- g. Nothing in this Agreement shall prohibit the County or the Shelter from receiving donations from other individuals or groups.
- h. For the purposes of this Agreement, the term "Shelter" shall encompass all facilities used by the County as public animal shelters under Virginia law,

and, where applicable, the Fairfax County Department of Animal Sheltering.

- i. For the purposes of this Agreement, the Shelter Director or designee shall act on behalf of the Shelter.

IN WITNESS WHEREOF, the parties enter into this Agreement this 14<sup>th</sup> day of March, 2017.

CORPORATION

By: Evelyn C. Grieve  
Evelyn C. Grieve, President  
Friends of the Fairfax County  
Animal Shelter

Date: 3/14/17

COUNTY

By: Edward J. Long Jr.  
Edward J. Long Jr.  
Fairfax County Executive

Date: 3/14/2017

**ADDENDUM TO MEMORANDUM OF AGREEMENT BETWEEN THE  
FRIENDS OF THE FAIRFAX COUNTY ANIMAL SHELTER AND FAIRFAX  
COUNTY, VIRGINIA**

WHEREAS, Fairfax County, Virginia ("County") and the Friends of the Fairfax County Animal Shelter, Inc. ("Corporation"), entered into a Memorandum of Agreement ("MOA") on March 14, 2017; and,

WHEREAS, the MOA provided, in part, that the Corporation would undertake fundraising activities exclusively for the benefit of the Fairfax County Animal Shelter ("Shelter"); and,

WHEREAS, the Corporation desires to undertake certain fundraising projects that require terms to be added to the MOA;

NOW THEREFORE the County and the Corporation mutually agree as follows:

**1. DESCRIPTION OF PROJECTS.**

- a. The Corporation will construct a brick patio on the Shelter grounds ("Patio"). The Patio will consist of bricks with a stepping-stone walkway. Bricks and stones can be inscribed with the names of individuals and/or animals. In return for a specified monetary contribution to the Corporation, donors to the Corporation will select an inscription for a brick or stone.
- b. The Corporation will hang a Tree of Life on the wall in the vestibule of the main reception area of the Shelter. The Tree of Life will be an artistic representation of a tree with leaves. In return for a specified monetary contribution or bequest to the Corporation, a donor will have his or her name inscribed on a leaf.
- c. The Corporation will hang plaques ("Plaques") in or on adoption rooms, dog kennels and or/cat condominiums. For a specified monetary contribution to the Corporation a donor will have his or her name inscribed on a Plaque to hang in or on an adoption room, dog kennel or cat condominium for up to one year per contribution.

**2. APPROVAL OF PROJECTS.**

- a. The Corporation and the County will develop guidelines for inscriptions. The Corporation will process inscriptions within the agreed upon guidelines.
- b. The County shall have the right to request removal of any inscribed Plaque, Patio brick or stone, or leaf on the Tree of Life. Upon such

request, the Corporation shall remove the Plaque, inscribed Patio brick or stone, or leaf within five (5) business days. The County shall have no obligation to reimburse the Corporation for such removal, including the cost of removal and the underlying donation. The provisions of this Paragraph shall remain in effect after the County assumes ownership of the Patio, Tree of Life and Plaques in accordance with Section 5 of this Addendum.

- c. The County shall have the right to review and approve any contracts for the construction and maintenance of the Patio.

### 3. MAINTENANCE.

- a. The Corporation shall be responsible for properly maintaining the Patio, Tree of Life and Plaques.
- b. If the Corporation fails to properly maintain the Patio, Tree of Life and Plaques, the County reserves the right to conduct such maintenance. The Corporation shall be liable for the actual costs of such maintenance. The County shall provide the Corporation fifteen (15) days prior written notice before undertaking any such maintenance.
- c. The Corporation's maintenance responsibilities under this Section shall continue after the County assumes ownership of the Patio, Tree of Life and Plaques in accordance with Section 5 of this Addendum.

### 4. REMOVAL.

- a. The County shall have the authority to order the removal of the Patio, Plaques or Tree of Life in its sole discretion.
- b. Such removal shall take place within five (5) business days of a written request to the Corporation for removal of the Plaques or Tree of Life and thirty (30) business days for removal of the Patio, until such time as the County assumes ownership of the Patio, Tree of Life and Plaques in accordance with Section 5 of this Addendum.
- c. Such removal shall be at the sole expense of the Corporation until such time as the County assumes ownership of the Patio, Tree of Life and Plaques in accordance with Section 5 of this Addendum. At no time shall the County be liable to the Corporation for the underlying donations or bequests in the event of removal.

### 5. USE AND OWNERSHIP.



- a. The Corporation shall have no right to exclusive or priority use of the Patio, any dog kennel, adoption room or cat condominium that is marked with a Plaque, or the area in which the Tree of Life hangs.
- b. All right, title and interest in the Patio, Tree of Life and Plaques shall be transferred to the County when the Corporation has completed its fundraising activities related to each project respectively. For the purposes of this Addendum, completion of fundraising activities for each project shall occur when every available component of the Patio, Tree of Life or Plaques has been inscribed and installed pursuant to a donation or bequest.

6. GENERAL PROVISIONS. All other terms and conditions of the MOA shall remain in full force and effect.

IN WITNESS WHEREOF, the parties enter into this Addendum this \_\_\_\_ day of \_\_\_\_\_, 2019.

CORPORATION

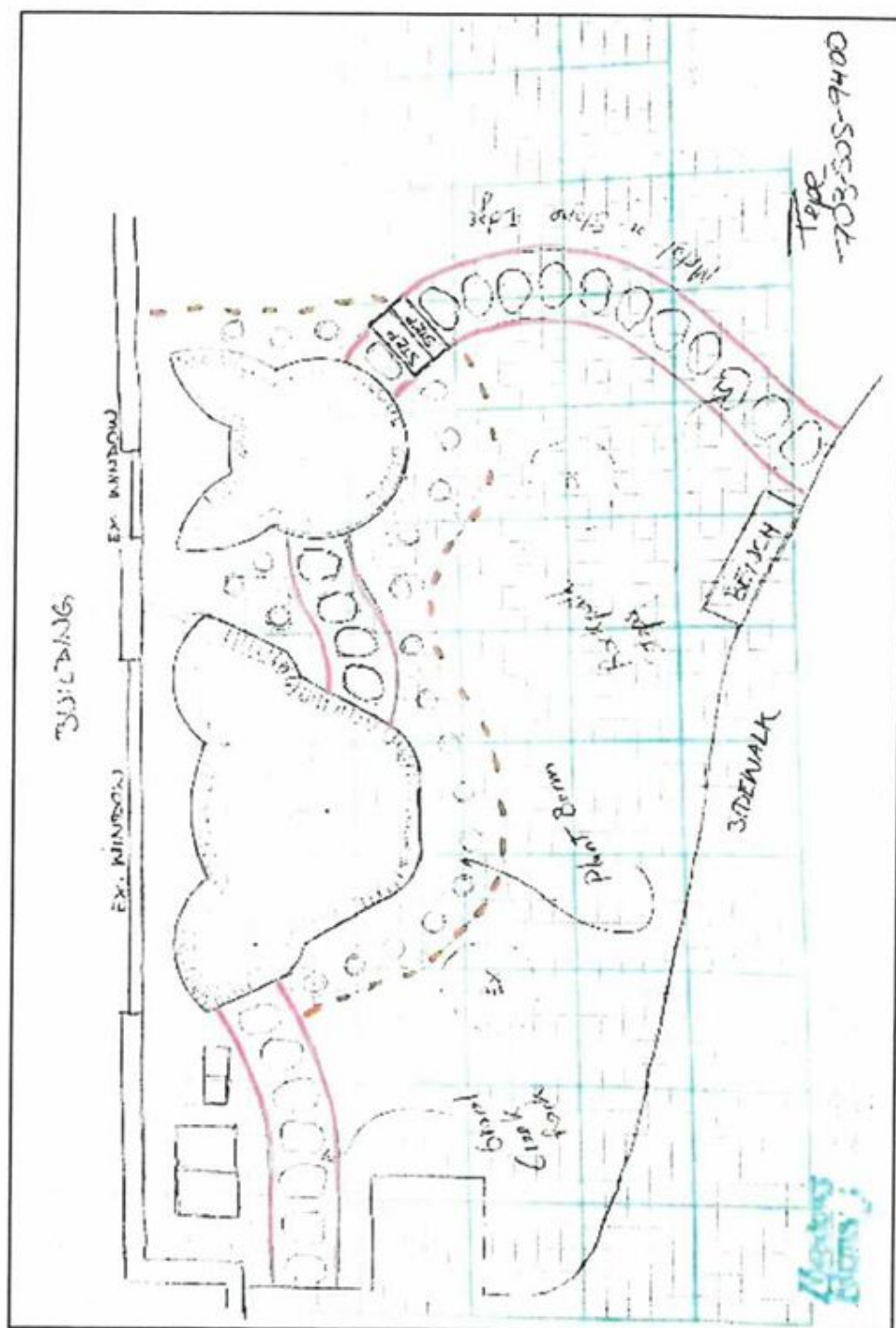
By: \_\_\_\_\_  
Evelyn C. Grieve, President  
Friends of the Fairfax County  
Animal Shelter

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

COUNTY OF FAIRFAX

By: \_\_\_\_\_  
Bryan J. Hill  
Fairfax County Executive

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



ACTION - 16

Approval of Revisions to Chapters 2, 4, 5, 6, 7, 10, and 17 of the Personnel Regulations to Align Definitions, Align Practice with Policy, and Provide Administrative Clarification

ISSUE:

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

RECOMMENDATION:

The County Executive recommends the Board of Supervisors approve the proposed revisions to Chapters 2, 4, 5, 6, 7, 10 and 17 of the Personnel Regulations, as specified below.

TIMING:

Routine.

BACKGROUND:

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

Following an advertised public hearing held on August 27, 2019 the Civil Service Commission considered the below referenced proposed revisions to the Personnel Regulations. Prior to the hearing, extensive discussions occurred between DHR Staff, Office of County Attorney (OCA), employee groups and agency personnel to promote aligned understanding and agreement with the proposed changes. OCA reviewed all proposed changes. At the hearing the Director of Human Resources gave an overview of the proposed changes for each chapter. There was no testimony offered by employees, management or employee groups.

The following content highlights proposed changes, by chapter.

Chapter 2 – Definitions (Attachment 1)

- Updated the language for the definition of anniversary date and eligible list and expanded the definition of extended family to include stepsister, stepbrother, stepchild and stepparent.

Chapter 4 – Pay Plan, Hours of Work and Overtime (Attachment 2)

- Removed language referencing Master Police Officer proficiency pay. The newly established Police Officer III level classification, also known as the Master Police Officer, eliminates the need for the current language.

Chapter 5 – Recruitment and Examination (Attachment 3)

- Updated the language from resume to application throughout;
- Swap Section 5.1-2.c and Section 5.1-2.d;
- Updated the language in Section 5.1-2.d and included that the best qualified are certified for the position advertised;
- Added language in Section 5.1-2.e to reflect that family members, members of household and extended family relationships, as defined in the proposed updated definition in Chapter 2, are prohibited from participating in the screening or selection process;
- Created 5.1-2.f with language moved from prior version of 5.1-2.e;
- Added language to 5.2-1, 5.2-2 and 5.2-2.a to include “or designee” following Human Resources Director;
- Added language in Section 5.2-1.a and Section 5.2-1.b codifying the requirement to review and update the class specification and position description prior to submitting a requisition to advertise the position;
- Moved language in prior version of 5.2-1.b regarding advertisement of the position prior to vacancy occurring to 5.2-1.c;
- Added the language “supplemental questions” to Section 5.2-3;
- Updated the language in Section 5.2-4 to reflect the current manner in which positions are advertised;
- Updated and added language to 5.5.4 to codify consequences of noncompliance with the credit check requirements for selected candidates receiving conditional offers of employment in a position of trust;
- Updated the language in Section 5.7 regarding the security and retention of applications and related records;
- Updated language in Section 5.8 from category/categories to band/bands;
- Deleted the language “projected staffing needs” and added “validity” in Section 5.8-1;
- Deleted the language “if it is an initial hire opportunity for the veteran” in Section 5.8-2.a and in 5.8-5.b;
- Added Section 5.8-4 on Examination Security;
- Switched bullets b and c in newly renumbered Section 5.8-5;
- Update the language in newly renumbered Section 5.8-6. to make consistent with earlier changes in language from category/categories to band/bands;



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- Moved language “In the event of a tie in scores, veterans, shall be listed ahead of non-veterans, and veterans with a service connected disability rating shall be listed ahead of other veterans. Within each category all eligible applicants within the category will be considered tied” to newly created Section 5.8-6.b;
- Corrected several typographical and numbering errors throughout.

Chapter 6 – Eligible Lists (Attachment 4)

- Updated the language throughout from resume to application and from jobs to positions.

Chapter 7 – Certification and Appointment (Attachment 5)

- Updated the language throughout from resume to application;
- Added language regarding the establishment of the certification list of the best qualified applicants in the revised Section 7.3-2;
- Updated and added language “and position description” and “applicant responses to supplemental questions under revised Section 7.3-2;
- Added “or designee” language to Section 7.4-5;
- Added “authorized” language to Section 7.6-2.c and 7.6-4.c;
- Add bulleted item Section 7.6-2.d with language stating “a reclassification action changes the classification of the position and the incumbent does not meet minimum qualification”;
- Added Section 7.6-4.d with language stating that the employee’s pay shall revert to its pre-agreement level if the employee discontinues performance under the underfill agreement or takes a different position with the County than the one authorized under the agreement prior to satisfaction of all of the agreement terms;
- Added language “without the Human Resources Director approval” to Section 7.6-3;
- Added and updated the language to reflect the proposed updated definition of extended family in Chapter 2 in Section 7.7-3;
- Added the language “the approval exception request shall be maintained in each employee’s respective personnel file” in Section 7.7-5

Chapter 10 – Leave (Attachment 6)

- Updated the language in Sections 10.36-2.f and 10.36-2.g to accurately reflect the correct number of days of administrative leave employees receive for length of service awards, Outstanding Performance Awards and Team Excellence Awards.

Board Agenda Item  
September 24, 2019

Chapter 17- Grievance Procedure (Attachment 7)

- Updated the hearing panel selection process to reflect the random assignment of Commissioners to a schedule, and selection for a panel based on availability in order of assignment on the schedule;
- Corrected several typographical errors.

In accordance with the Merit System Ordinance, the proposed revisions were forwarded to the Civil Service Commission for public hearing. The public hearing was held on August 27, 2019, and the Commission's comments are included as Attachment Eight (8).

FISCAL IMPACT:

None noted.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Revisions to Chapter 2 of the Personnel Regulations  
Attachment 2: Proposed Revisions to Chapter 4 of the Personnel Regulations  
Attachment 3: Proposed Revisions to Chapter 5 of the Personnel Regulations  
Attachment 4: Proposed Revisions to Chapter 6 of the Personnel Regulations  
Attachment 5: Proposed Revisions to Chapter 7 of the Personnel Regulations  
Attachment 6: Proposed Revisions to Chapter 10 of the Personnel Regulations  
Attachment 7: Proposed Revisions to Chapter 17 of the Personnel Regulations  
Attachment 8: Civil Service Commissioners' Memorandum

STAFF:

Catherine Spage, Director, Department of Human Resources

ASSIGNED COUNSEL:

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

# Attachment 1

DRAFT

## CHAPTER 2 Definitions

### Allocation

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

### Anniversary Date

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

### Appeal

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

### Appointing Authority

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

### Appointment

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

### Assembled Examination

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

### Break in Service

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

### Bullying

Unnecessary, unwelcome, unwarranted and repeated mistreatment of a targeted individual or group by an individual or group. The actions are sufficiently severe and/or pervasive as to create a work environment such that a reasonable person would consider it intimidating, humiliating, dehumanizing, or offensive. Establishing behaviors as bullying depends on factors such as severity, pervasiveness,

context, work relationships, employee performance and intent of action. Bullying is separate and discrete as compared to harassment, discrimination and workplace violence.

#### Business Day

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

#### Class

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

#### Class Series

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

#### Class Specification

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

#### Classification

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

#### Classification Review or Reclassification Review

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

#### Classification Plan

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

administering the classification plan.

#### Compensation

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

#### Compensation Plan

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

#### Compensatory Leave

Time off in lieu of monetary payment for overtime worked.

#### Compensatory Time Eligible

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

#### Competitive Promotion

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

#### Competitive Service

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

#### Continuous Service

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

#### Deferred Retirement Option Plan (DROP)

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

#### Definition of Duties

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

#### Demotion

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

#### Department

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

#### Department Head

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

#### Deputy

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

#### Eligible

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

#### Eligible List

~~The ranking of eligibles by class in order of score earned.~~ An eligible list is a list of applicants who meet the minimum qualifications for the class for which they applied, as determined under the provisions of Chapter 5.

#### Employee

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

#### Examination

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

#### Exempt Service

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

#### Extended Family Including Household Member

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

#### Fire Protection Personnel

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

#### Fair Labor Standards Act (FLSA)

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

#### FLSA Eligible (FLSA Non-exempt)

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

#### FLSA Exempt

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

#### Full-Time Employee



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

*Full-Time Position*

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

*Hourly Rate of Pay*

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

*Immediate Family Including Household Member*

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

*Incumbent*

An employee occupying a position in the County service.

*Law Enforcement Personnel*

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

*Longevity Pay Increment*

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

*Merit Employee*

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



### Merit System

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

### Minimum Wage

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

### Multi Rater Option

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

### Negative Time Reporting

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

### Open Examination

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

### Overtime (FLSA)

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

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

### Overtime Pay

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

regular rate of pay as prescribed in Section 4.15 of these rules.

*Part-Time Employee*

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

*Part-Time Position*

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

*Pay Grade*

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

*Pay Grade Reallocation Review*

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

*Pay Period*

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

*Pay Range*

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

*Pay Rate*

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

*Pay Status*

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

### Performance Pay Increase

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

### Performance Pay Increase (PPI) Date

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

### Performance Review Period

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

### Position

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

### Positive Time Reporting

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

### Primary Position

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

### Probationary Period

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

### Promotion

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

#### Promotional Examination

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

#### Public Safety Employees

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

#### Qualifications

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

#### Reduction in Rank

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

#### Reemployment

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

#### Reemployment List

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

#### Regular Rate of Pay

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

#### Reinstatement

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

#### Restoration

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

#### Scheduled Hours

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

#### Self-Assessment

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

#### Separation

Leaving a position for any of the following reasons:

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

#### Straight Pay Eligible



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

#### Suspension

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

#### Transfer

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

#### Unassembled Examination

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

#### Vacancy

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

#### Veteran

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

#### Workday

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

#### Workweek

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

#### Work Period

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

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## CHAPTER 4

### Pay Plan, Hours of Work and Overtime

#### 4.1 Pay Ranges

- 1 In preparing the pay plan, consideration shall be given to the duties and responsibilities of the various types of positions, the prevailing rates paid for comparable services in public and private employment and to experience in recruiting for such positions. Pay ranges shall include a minimum rate, a midpoint rate and a maximum rate for each class. Pay ranges assigned to classes consisting of public safety employees shall include such intermediate rates or steps as deemed necessary.
- 2 The rate of pay set forth in the plan shall include all pay in every form, except that it shall not include allowance for actual and necessary travel expense authorized and included as incident to employment. If subsistence, quarters or other maintenance is furnished to an employee, the reasonable value thereof shall be deducted from the rate of pay set forth in the plan. Exceptions to this provision must be approved by the Board of Supervisors.
- 3 When, in the opinion of the department head or deputy, following these rules results in an inequity, the Human Resources Director may authorize a salary adjustment if he/she concurs in the opinion of the department head or deputy.
- 4 Except as provided in these regulations, performance pay increase dates shall not be affected by the adoption of the new pay plan.
- 5 Employee pay increases, to include performance pay increases and/or longevity increases, as provided in this chapter are subject to conditions outlined in the appropriate section of the regulations and are subject to available funding.

#### 4.2 Starting Rate of Pay

- 1 The minimum rate of pay for a class shall normally be paid upon appointment.
- 2 Original appointment not to exceed the midpoint rate may be made if any of the following conditions exist:
  - a. The qualifications of the applicant significantly exceed the requirements for the class.
  - b. Difficulty of recruitment requires payment of a higher rate.



- 3 Original appointment above the midpoint rate requires the approval of the Human Resources Director.
- 4 A former employee being reinstated, as defined in Chapter 2, will be appointed at a rate of pay equal to or greater than the rate he/she was receiving at the time of his/her separation, adjusted to reflect any cost of living or market pay adjustments pay to that pay grade since his/her separation.

#### 4.3 Performance Pay Increase

- 1 Performance pay increases may be granted to those employees who meet the requirements specified for such increases. Employees considered not qualified for a performance pay increase shall be handled in accordance with the provisions of Chapter 12.

- 2 Eligibility

A non-public safety employee receiving less than the maximum scheduled rate for his/her grade may be granted a percentage salary increase not to exceed the amount authorized by the Board of Supervisors. A performance pay increase for a public safety employee advances him/her to the next step in the grade. Eligibility for performance pay increases is subject to available funding and the following:

- a. His/her work has met or exceeded the performance requirements established by his/her department head or designee to qualify for a pay increase. Public safety employees' performance must exceed the minimum performance standards to qualify for a performance pay increase. Effective August 1, 1990 employees who enlist, or are inducted into military service, or who are members of a reserve component of the armed forces of the United States who are ordered to active duty and return to County employment; upon their release from active duty and whose service is other than dishonorable shall be deemed to have satisfied this requirement for the period they are on active duty. The total length of active military service may not exceed five years.
- b. A performance review period is 12 months.

Notwithstanding the merit review periods listed above, effective July 13, 1991, the beginning of the first full pay period in FY 1992, all employees who have merit increment dates shall have their merit increment date extended by one year.

Thus, for example, an employee who had a merit increment date of the first day of payroll number 15 in 1991, which falls on July 13, 1991, would have a new increment date of the first day of payroll number 15 in 1992. An employee who had a merit increment date of the first day of payroll number

15 in 1992, which falls on July 11, 1992, would have a new merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993. An employee who had a merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993, would have a new merit increment date of the first day of payroll number 15 in 1994, which falls on July 9, 1994.

Notwithstanding the merit review periods listed above, effective July 11, 1992, the beginning of the first full pay period in FY 1993, all employees who have merit increment dates shall have their merit increment date extended by one year. Thus, for example, an employee who had a merit increment date of the first day of payroll number 15 in 1992 which falls on July 11, 1992, would have a new merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993. An employee who had a merit increment date of the first day of payroll number 15 in 1993 which falls on July 10, 1993, would have a new merit increment date of the first day of payroll number 15 in 1994 which falls on July 9, 1994. An employee who had a merit increment date of the first day of payroll number 15 in 1994, which falls on July 9, 1994, would have a new merit increment date of the first day of payroll number 15 in 1995, which falls on July 8, 1995.

- 3 Each employee shall have a performance pay increase date established when he/she is initially appointed to a merit position.
- a. For uniformed public service employees, that date corresponds to the beginning of the pay period in which he/she is appointed or promoted
  - b. Performance pay increase date for other employees corresponds with the first full pay period of the fiscal year. Partial pay periods do not count towards the performance pay increase date and initial probationary employees must be hired prior to April 1 to be eligible to receive performance increases in the given year.

- 4 Creditable service in the completion of performance review periods includes:

- a. Continuous employment in the competitive service not including overtime.
- b. Period of involuntary separation initiated by the department head followed by reinstatement after appeal by the Civil Service Commission under the grievance procedure, for which the Commission determines that the employee is entitled to back pay.
- c. Honorable service with the armed forces by employees who enlist or are inducted into military service or who are members of a reserve component of the United States who are ordered to active duty and who return to County employment upon their release from active duty. The total length of active military service, which can be credited, may not exceed five years.

#### 4.4 Outstanding Performance Award

- 1 An employee who has completed their initial probationary period and performs the duties and responsibilities of his/her position in an outstanding manner and whose work generally is well above expectations shall be eligible to be considered for an outstanding performance award.
- 2 An outstanding performance award may be recommended by a department head or designee. Such outstanding performance award recommendation shall be in writing, shall state the reason for such recommendation and shall be submitted through the Deputy County Executive to the Human Resources Director, as appropriate, for implementation.
- 3 Outstanding performance awards may be granted in a dollar amount not to exceed \$1,000 the amount authorized by the Board of Supervisors.

#### 4.5 Longevity Pay Increments

Public Safety employees shall receive a longevity increment increase after 15 years of service and reaching top step in grade. A second longevity increase is awarded after 20 years of service and reaching top step in grade (step 9).

Non-public safety employees may be eligible to receive longevity increases, in lieu of performance increases, after 20 and 25 years of service. These increases are awarded to employees who attain the required length of service before July 1 of the year funded.

#### 4.6 Within-Grade Adjustment

When in the opinion of the County Executive, it is in the best interest of the County to do so, he/she may authorize a salary adjustment to encourage retention of highly qualified County employees and address pay inequities not to exceed the maximum rate of pay assigned to the employee's class.

#### 4.7 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Except Public Safety Employees

If an employee other than a public safety employee is promoted, demoted, appointed to a reallocated position or transferred, his/her rate of pay for the new position shall be determined as follows:

- 1 When a position is filled by promotion, the appointee shall receive a salary increase equal to 10% for one and two-grade promotions and 15% for promotions of three or more grades not to exceed the maximum rate of pay assigned to the new job class or the minimum rate of pay for the new job class whichever is greater.
- 2 With the exception of disciplinary demotions or demotions during a promotional probationary period, when an employee is demoted, he/she shall be placed at the same salary in the new pay grade. If the employee's salary is greater than the maximum salary of the new pay grade he/she shall be placed at the maximum salary for the new pay grade.

When an employee is promoted or reinstated to his or her former job class within a year from the date of demotion, he or she shall remain at the same salary or be placed at the salary he or she was receiving prior to the demotion, whichever is greater.

- 3 When an employee is demoted for disciplinary reasons, he or she shall be placed at the salary in the new grade that is 5% less than his/her current salary not to exceed the maximum salary for the pay grade.
- 4 When an employee is demoted during a promotional probationary period, the employee's former rate of pay shall be reinstated in the new lower pay grade, not to exceed the maximum salary for the pay grade.
- 5 When an employee is transferred from a position of one class to a position of another class at the same level, he/she shall continue to be paid at the same rate of pay.
- 6 Upon upward reclassification of a position, the incumbent shall receive a pay increase equal to 5% of the midpoint of the salary range for the new, higher pay job class or move to the minimum of the new range, whichever is greater not to exceed the maximum rate of pay for the new pay grade.
- 7 Upon review of a job class to determine if a regrade is warranted, the incumbents in the job class may be entitled to a pay adjustment regardless of whether the job class is regraded or not. The determination of pay increase eligibility and the amount of such pay increase will be made in accordance with procedures approved by the County Executive and the Board of Supervisors. In no case shall the employee's salary be less than the minimum or greater than the maximum for the new pay range.

#### 4.8 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Public Safety Employees

If a public safety employee is promoted, demoted, appointed to a reallocated position or transferred, his/her rate of pay for the new position shall be determined as follows:



-1 When a position is filled by promotion, except as noted elsewhere in this chapter, the appointee shall receive the greater amount of the minimum rate for the class of the new position or an amount in excess of one normal within grade increase in the pay grade of the class of the position held prior to promotion. Such increase shall not be less than 5% and if the promotion is three grades or more, the employee shall be placed in the new grade at a step closest to their identified years of service threshold. The appointee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of his/her promotion.

-2 When an employee is demoted, he/she shall be placed in the pay step in the new pay grade, which represents the closest dollar amount that is less than the former pay. An employee may be placed in a longevity step under this provision only if the employee meets the length of service requirement for that step. The performance pay increase date shall not change.

When an employee is promoted or reinstated to his or her former job class within a year from the date of demotion, he or she shall remain at the same salary or be placed at the salary he or she was receiving prior to the demotion, whichever is greater and the performance pay increase date shall not change.

-3 When an employee is demoted to his or her former job class during a promotional probationary period, the employee's former grade and step shall be reinstated. When an employee is demoted to a job class lower than that in which he/she was serving at the time of promotion, he/she shall be placed at the step in the lower grade that is closest to, but not less than the employee was making prior to promotion. If the employee's pre-promotion performance pay increase (PPI) date falls between the date of promotion and the date of the subsequent demotion, the promotion date will be retained as the PPI date; otherwise the pre-promotion PPI date shall be reinstated.

-4 When an employee is transferred from a position of one class to a position of another class at the same level, he/she shall continue to be paid at the same rate of pay.

-5 Upon upward reclassification/reallocation of a position, the incumbent shall receive the greater amount of either the minimum rate for the new grade or the next higher dollar rate in the new pay grade as compared to the dollar rate in the lower grade except in the following instances:

- a. Employees who have served one year or more in a two year review period and who upon reclassification/reallocation, move to a step with a one year review period, shall receive an additional step upon reclassification/reallocation to the new grade. The employee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of the reclassification/reallocation using the performance review period for the new step.

- b. Except as noted above, the performance pay increase date shall not change unless the reclassification/reallocation moves the employee to a step with a shorter review period. In such cases, the year of the performance pay increase date is reduced if the time between the effective date of the reclassification/reallocation action and the employee's performance pay increase date is more than one year.

4.9 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Police Officers, Deputy Sheriffs and Animal Control Officers

- 1 A Police Officer I promoted to Police Officer II, a Deputy Sheriff I promoted to Deputy Sheriff II, or an Animal Control Officer I to II shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
- 2 A Police Officer II or Deputy Sheriff II who is receiving a proficiency pay adjustment and is promoted to Police Sergeant or Deputy Sheriff Sergeant respectively, shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
- 3 In all other cases, the normal rules affecting promotion, demotion, reallocation of positions, and transfer for public safety employees shall apply.

4.10 Allowances Granted Police Officers

- 1 Police Officers required to wear civilian clothes while on duty shall be granted a clothing allowance while such assignment lasts.
- 2 A Police Officer II who has a minimum of five (5) years of service as a sworn officer with Fairfax County and who is certified by the Chief of Police or designee as demonstrating exemplary expertise in an authorized Police Officer II specialty, may be eligible to receive a police proficiency pay adjustment and assume the work title of "Master Police Officer".
  - a. A Police Officer II who is eligible for a police proficiency pay adjustment shall be reassigned to pay grade O-19 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.
  - b. The number of Police Officers receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Police Officer II positions.

#### 4.11 Allowances Granted Deputy Sheriffs

- 1 A Deputy Sheriff II who has a minimum of five (5) years of service as a sworn Deputy Sheriff with Fairfax County and who is certified by the Sheriff or designee as demonstrating exemplary expertise in an authorized Deputy Sheriff position, may be eligible to receive a proficiency pay adjustment and assume the work title of "Master Deputy Sheriff".
  - a. A Deputy Sheriff who is eligible for a proficiency pay adjustment shall be reassigned to pay grade C-19 and shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
  - b. The number of Deputy Sheriff II's receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Deputy Sheriff II positions.

#### 4.12 Allowances Granted Uniformed Fire Employees

- 1 A Fire Technician who has a minimum of five (5) years of service as a uniformed Fire employee with Fairfax County, and who is certified by the Chief of Fire and Rescue or designee as demonstrating exemplary expertise in an authorized Fire Technician specialty, may be eligible to receive a fire proficiency pay adjustment and assume the work title of "Master Firefighter".
  - a. A Fire Technician who is eligible for a fire proficiency pay adjustment shall be reassigned to pay grade P-20 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.
  - b. The number of Fire Technicians receiving a fire proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Fire Technician positions.

#### 4.13 Allowances Granted Animal Protection Police Officers

- 1 An Animal Protection Police Officer II who has a minimum of five (5) years of service as an Animal Protection Police Officer with Fairfax County and who is certified by the Chief of Police or designee as demonstrating exemplary expertise in an authorized Animal Protection Police Officer specialty, may be eligible to receive a proficiency pay adjustment and assume the work title of "Master Animal Protection Officer."
  - a. An Animal Protection Police Officer II who is eligible for a proficiency pay adjustment shall be reassigned to pay grade P-21 and shall receive an

increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.

- b. The number of Animal Protection Police Officer II's receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Animal Protection Police Officer II positions.

#### 4.14 Hours of Work

- 1 The regular work period for all full-time County employees, excluding law enforcement and fire protection personnel, shall be 40 hours worked or on paid leave (excluding meal periods) within a seven consecutive calendar day period beginning and ending as defined in Chapter 2. The schedule of hours for the workweek shall be determined by the department head or designee.
- 2 The regular work period for fire protection personnel shall be 28 consecutive calendar days, beginning and ending as defined in Chapter 2. The number of hours worked during the 28-day work period may vary depending on shift schedules and department needs.
- 3 The regular work period for law enforcement personnel shall be 14 consecutive calendar days, beginning and ending as defined in Chapter 2. The number of hours worked during the 14-day work period may vary depending on shift schedules and department needs.
- 4 The County Executive may authorize the inclusion of the meal period as actual work for shift positions.
- 5 All employees in the Merit System shall be entitled to a 15 minute rest period for each four hours of assigned work, during a duty day, as scheduled by the department head or designee. Whenever possible, the rest period shall be scheduled at the middle of each four-hour period of work.
- 6 Shift Differential Premium Pay shall be authorized for all merit employees who are scheduled to work on fixed and/or rotating shifts that start at or after 1:00 P.M. wherein the hours scheduled on a shift after 4:00 P.M. are greater than the hours scheduled prior to 4:00 P.M., excluding employees who work flex-time schedules. If an employee whose regular shift schedule qualifies him/her for shift differential premium pay, reports to work prior to the start of their regular shift hours, he/she remains eligible for shift differential premium pay for all hours worked after 1:00 P.M. regardless of the time he/she actually begins working on that day. The hours worked before the beginning of the regular shift schedule are not eligible for shift differential.



- 7 The Evening Shift shall encompass all shift schedules, which begin between the hours of 1:00 P.M. and 7:59 P.M. The premium pay rate established for the Evening Shift shall apply for all regularly scheduled hours actually worked between 1:00 P.M. and 7:59 P.M.
- 8 The Night Shift shall encompass all shift schedules, which begin at 8:00 P.M. and thereafter. The premium pay rate established for the Night Shift shall apply for all regularly scheduled hours actually worked between 8:00 P.M. and 6:59 A.M.
- 9 Employees assigned to 24-Hour Shift Schedules shall be paid Shift Differential Premium Pay for all regularly scheduled hours actually worked between the hours of 4:00 P.M. and 7:00 A.M. and in accordance with established payroll procedures.
- 10 Employees are paid and earn leave based on data recorded in official time and attendance records. An "online" timesheet is used to document time worked and leave taken. There are two types of time and attendance reporting:
  - a. Employees required to use positive time reporting must record all absences and hours worked each pay period.
  - b. Employees required to use negative time reporting only record exceptions to their scheduled work hours. If no exceptions are entered, the employee is paid a biweekly amount based on their scheduled hours.

#### 4.15 Overtime, Compensatory Time, Call-Back Time, Consecutive Shift Time

##### -1 Overtime.

FLSA overtime shall include all hours worked or on paid leave by an FLSA eligible employee (other than law enforcement and fire protection personnel) in excess of 40 hours in a work week.

Overtime for FLSA eligible law enforcement personnel (excluding sworn Police Officers, Animal Protection Police Officers, and Deputy Sheriffs scheduled to work a 40 hour week) shall include all hours worked or on paid leave in excess of 86 hours in a 14-day work period. Overtime for FLSA eligible law enforcement personnel in the Police Department and Deputy Sheriffs scheduled to work a 40 hour week shall include all hours worked or on paid leave in excess of 80 hours in a 14-day work period. Overtime for FLSA eligible fire protection personnel shall include all hours worked or on paid leave in excess of 212 hours in a 28-day work period. Non-FLSA overtime includes hours worked in excess of the employee's scheduled hours but less than the eligibility requirement for FLSA overtime. Overtime shall be kept to a minimum and shall be used to relieve occasional excessive workloads or emergencies, and not to provide for constant recurring requirements. Overtime may be mandated when related to the health, welfare or

safety of either the public or employees. Except in emergency situations, all overtime worked by an employee shall be approved by the employee's supervisor or designee, verbally or in writing prior to the overtime being worked. Employees shall not work in excess of authorized scheduled hours without express approval of the supervisor.

-2 Eligibility.

Employees shall earn compensatory time or be paid for overtime hours actually worked in accordance with the following provisions:

- a. FLSA eligible employees excluding law enforcement and fire protection personnel as defined in Chapter 2:
  - (1) shall be compensated at one and one-half times their regular rate of pay for all eligible hours worked or on paid leave in excess of 40 hours during the designated seven consecutive day work period. If requested by the employee and approved by the department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.
  - (2) shall earn straight compensatory time or be paid overtime at their hourly rate, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the time actually worked is less than forty hours in a seven day work period. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at the hourly rate of pay must be awarded.
- b. Straight eligible employees shall, at the discretion of the department head or designee, earn straight compensatory time or be compensated at their hourly rate of pay for all time worked in excess of their scheduled work hours.
- c. Compensatory time eligible employees shall earn straight compensatory time for time worked in excess of their scheduled work hours.
- d. FLSA eligible fire protection personnel:
  - (1) shall be compensated at one and one-half times their regular rate of pay for all eligible hours worked or on paid leave in excess of 212 hours during the 28 consecutive day work period. If requested by the

employee and approved by department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 336 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.

- (2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the hours actually worked are less than 212 hours in a 28 day work period. If the employee's compensatory leave balance is 336 hours or greater, overtime pay at the hourly rate of pay must be awarded.

All other Fire and Rescue Department employees shall be treated as described in Section 4.15 - 2a, b, or c.

e. FLSA eligible law enforcement personnel:

- (1) shall be compensated at one and one-half times their regular rate of pay for all hours worked or on paid leave in excess of 86 hours (80 hours for sworn Police Officers and Deputy Sheriffs scheduled to work a 40 hour week) during the 14 consecutive day work period. If requested by the employee and approved by the department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.
- (2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the hours actually worked are less than 86 hours (80 hours for sworn Police Officers and Deputy Sheriffs scheduled to work a 40 hour week) in a 14 day work period. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at the hourly rate of pay must be awarded.
- (3) shall be compensated at one and one-half times their hourly rate of pay for actual court time worked when such court time falls on the employee's scheduled day off or begins more than two hours prior to the employee's scheduled shift, regardless of the number of hours worked in a given work period.

All other public safety employees shall be treated as described in Section 4.15 - 2a, b, or c.

-3 Holiday/Emergency Administrative Leave.

Pro-rata adjustments shall be made for the holiday usage rate for shift schedules other than 40 hours per week to ensure compliance with the provisions of Chapter 10.

- a. Part-time merit employees shall be granted holiday time off with pay on a pro-rated basis regardless of the number of hours scheduled on the day on which a holiday falls computed at the rate of one-tenth of an hour times the employees bi-weekly scheduled hours.
- b. When an employee is required to work due to an emergency, staff shortage or hours worked that are a part of the regular work week on a holiday (actual or observed), the employee shall be compensated for the hours actually worked at the employee's hourly rate of pay or in accordance with the rules governing overtime, if applicable.

To receive holiday compensation on an actual holiday, an employee must be directed by his/her supervisor to work due to staff shortage or other operational necessity.

In addition, employees shall receive holiday compensation as follows:

- (1) FLSA eligible employees shall, at the employee's discretion, be granted holiday compensatory time or be paid holiday pay not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday. If the employee's compensatory leave balance is 240 hours or greater, holiday pay at the employee's hourly rate must be granted.
- (2) Straight pay eligible employees shall, at the discretion of the department head or designee, be granted holiday compensatory time or be paid holiday pay not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday) at the employee's hourly rate of pay.
- (3) Compensatory time eligible employees shall be granted holiday compensatory time not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday) at the employee's hourly rate of pay.

- c. When a holiday falls on an employee's scheduled day off, the employee shall be compensated as follows:

- (1) FLSA eligible employees shall, at the employee's discretion, be granted holiday compensatory time or be paid holiday pay not

exceeding eight hours (4 hours for a half-day holiday) at the employee's hourly rate of pay. If an employee's compensatory leave balance is 240 hours or greater, holiday pay at the employee's hourly rate must be granted.

- (2) Straight pay eligible employees shall at the discretion of the department head or designee, be granted holiday compensatory time or be paid holiday pay not exceeding eight hours (4 hours for a half-day holiday) at the employee's hourly rate of pay.
  - (3) Compensatory time eligible employees shall be granted holiday compensatory time not exceeding eight hours (4 hours for a half-day holiday).
- d. When a holiday falls on an employee's scheduled work day and the employee does not work, the employee shall receive holiday pay at the employee's hourly rate of pay. Full-time merit employees (other than Fire and Rescue Department employees on the 24-hour shift schedule) who are scheduled to work more than 8 hours due to departmental operational needs (this does not include employees who elect to work a compressed work week or flex schedule), shall be granted holiday time off with pay up to the regularly scheduled hours for a full holiday (or one-half of the regularly scheduled hours for a half holiday).
- e. In the event of extreme inclement weather or other emergency, wherein the general County government is closed by the County Executive and all employees are granted Emergency Administrative Leave, those employees required to perform emergency services shall be compensated for the hours actually worked at the employee's hourly rate of pay or in accordance with the rules governing overtime. In addition, the employee shall be compensated as follows:
- (1) FLEHA eligible employees shall at the employee's discretion, be granted compensatory time or be paid at the employee's hourly rate of pay for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive. If the employee's compensatory leave balance is 240 hours (336 hours for fire protection personnel) or greater, the employee must be paid for these hours.
  - (2) Straight pay eligible employees shall, at the discretion of the department head or designee, be granted compensatory time or be paid at the employee's hourly rate of pay for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive.



- (3) Compensatory time eligible employees shall be granted compensatory time for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive.

-4 Compensatory Time.

Compensatory time shall be earned and credited to an employee's records on the basis of actual hours worked in excess of the employee's scheduled hours. FLSA eligible employees who earn compensatory time for FLSA overtime hours worked (as defined 4.15 – 2 a(l), d(l), and e(l)) shall accrue 1 1/2 hours of compensatory time for each overtime hour worked.

All other compensatory time shall be accrued on an hour for hour basis. Compensatory time off for overtime worked shall be granted upon request of the employee, when approved by the department head or designee.

- a. In the event that an employee is granted compensatory time off in excess of the employee's accrued balance, the excess shall be charged against the employee's annual leave balance.
- b. Compensatory time not to exceed 240 hours may be carried forward from one calendar year to the next calendar year.
- c. County employees shall be awarded a terminal leave payment for any accrued compensatory time not to exceed a maximum of 240 hours (336 hours for fire protection personnel). This will be paid at the employee's current hourly rate of pay at the time of termination with the exception that FLSA eligible employees will be paid at the current regular rate or at the average regular rate for the last 3 years, whichever is greater.
- d. Notwithstanding the provisions of this section or any other provision of these personnel regulations or of the procedural directives governing the exempt service, effective July 1, 1998, senior managers shall not be eligible to earn or accrue compensatory leave. For purposes of this section, "senior managers" are noted in a procedural memorandum issued by the Human Resources Director.

Senior managers shall be credited with the amount of unused compensatory leave accrued as of July 1, 1998. Subject to the provisions of these regulations and any other applicable procedural directive, they may take such compensatory leave after July 1, 1998 until such leave balances are exhausted. Senior managers may carry over no more than 240 hours of previously accrued and unused compensatory leave into the 1999 calendar

year. Upon separation, senior managers shall be granted a terminal leave payment for any such accrued and unused compensatory leave paid at the senior manager's current rate of pay, on an hourly basis, at the time of separation not to exceed a maximum of 240 hours.

-5 Call-Back Time.

Call-back time refers to situations wherein an employee is off duty and is called to return to work after departing from the work place. It does not apply to those incidents where an employee is at work or has not departed from the work site and the work period is extended.

Employees called back to work shall be credited with a minimum of four hours overtime in each separate instance, excluding travel time, regardless of the hours actually worked.

- (a) FLSA eligible employees shall, at the employee's discretion, be granted compensatory time (at the time and one-half rate) or be paid at one and one-half times their hourly rate of pay for call-back hours. If the employee's compensatory leave balance is 240 hours or greater, the employee must be paid.
- (b) Straight pay eligible employees shall, at department head's or designee's discretion, earn straight compensatory time or be compensated at their hourly rate of pay for all call-back time.
- (c) Compensatory time eligible employees on all pay scales shall earn straight compensatory time for all call-back time.

-6 Consecutive Shift Time.

Consecutive Shift time refers to situations wherein an employee has completed a full eight or more hour shift and is required to remain on duty a second consecutive shift to perform essential services during an emergency situation or to meet minimum State certification standards in the Department of Public Works and Environmental Services.

Employees required to perform 2nd consecutive shifts shall be compensated as follows:

- (a) FLSA eligible employees shall, at the employee's discretion, be granted compensatory time (at the time and one-half rate) or be paid at one and one-half times their hourly rate of pay for consecutive shift hours. If the employee's compensatory leave balance is 240 hours or greater, the employee must be paid.

- (b) Straight pay eligible employees shall, at the department head's or designee's discretion, earn straight compensatory time or be compensated at their hourly rate of pay for all consecutive shift time.
- (c) Compensatory time eligible employees shall earn straight compensatory time for all consecutive shift time.

4.16 Outside Employment; Violation of State Law on Conflict of Interests

- 1 Employees in the competitive service shall not engage in any employment, activity or enterprise, which has been or may be determined to be inconsistent, incompatible, or in conflict with duties, functions, or responsibilities of their County employment.
- 2 No employee in the competitive service shall hold any other position in any other governmental jurisdiction or in private employment when such other position may have the effect of reducing the efficiency of such employee in the competitive service.
- 3 Employees in the competitive service who desire to accept outside employment in addition to their regular County position shall inform their respective department head or designee of the nature and extent of such outside employment. The department head or designee shall thereupon determine whether or not the holding of such employment conflicts with the duties and responsibilities of said employee to the County.
- 4 Violation of the County's rules on outside employment or the Virginia State and Local Government Conflicts of Interests Act or any successor statute thereto may be grounds for dismissal.

4.17 Application of Pay Policies to Deferred Retirement Option Plan (DROP) Participants

Notwithstanding any provision of this chapter to the contrary, employees who are participating in the Deferred Retirement Option Plan (DROP) are considered as merit employees and the pay provisions included in this chapter continue to apply during their DROP participation.



## Attachment #3

**CHAPTER 5****Recruitment and Examination****5.1 Overview of the Process**

- 1 By law, appointments to positions in the competitive service of Fairfax County must be on a competitive basis, free of discrimination on the basis of race, color, national origin, religion, sex, age, political affiliation, disability, genetic information, veterans' status, or disabled veterans' status, and on the basis of ability, training and experience of the appointees which fit them for the work which they are to perform.
- 2 To accomplish this end:
  - a. Positions in the competitive service are advertised periodically in a manner designed to reach a broad sector of qualified potential applicants. ~~Resumes~~ Applications are accepted for an individual position or specified group of positions.
  - b. In the case of positions for which vacancies occur with some frequency or periodically in large numbers, ~~resumes-applications~~ may be accepted at intervals for specific classes rather than for specific positions and qualified applicants may be placed on eligibility lists and certified from such lists for consideration by department heads or deputies as vacancies occur;
  - ~~e.~~ Applicants are screened through a variety of processes which may include written, oral, and performance testing, and evaluation of education and experience. The best qualified are certified for only those positions advertised.
  - ~~cd.~~ Applicants are selected from certification lists for further screening, which usually includes either a personal or panel interview.
  - ~~d.~~ Applicants are screened through a variety of processes which usually includes either a personal or panel interview and may include written, oral, and performance testing, and evaluation of education and experience. The best qualified are certified for only those positions advertised.
  - ~~e.~~ Family members, members of households and extended relationships (as defined in Chapter 2) of an applicant/employee shall not participate in any part of the screening or selection process (including development of the process) in which the applicant/employee is on the eligible list.
  - ~~fe.~~ Successful applicants are appointed and serve a one-year probation period.

- 3 When an adequate number of well qualified potential applicants for a position exist within the competitive service, competition may be restricted to County employees unless doing so would create or perpetuate a serious imbalance of the work force in terms of race or sex, in which case the position will be advertised for open competition. However, when there are an adequate number of well qualified applicants for a particular position in an agency, the Human Resources Director may restrict admission to the examination for that position to current employees of the department.
- 4 The Human Resources Director is responsible for all aspects of the recruitment and certification process, except those aspects delegated by him/her to department heads as authorized in these regulations; and for ensuring that all appointments to positions in the competitive service comply with the Merit System Ordinance and these regulations. Periodically, the Human Resources Director will offer training on laws, regulations and techniques pertinent to interviewing potential employees.
- 5 Any applicant who believes that his/her failure to receive an appointment was the result of illegal discrimination as defined in the Merit System Ordinance has certain appeal rights defined herein.

## 5.2 Announcement of Vacancies

- 1 In the interest of minimizing delay in filling vacancies, department heads or designee should inform the Human Resources Director of actual or impending vacancies as soon as this information becomes available.
  - a. This is accomplished by reviewing and updating the class specification and position description, as needed, in advance of submitting an on-line personnel requisition to advertise the vacancy.  
submission of an on-line personnel requisition including a job description, and a list of any special or preferred qualifications, and supplemental questions for the applicant desired.
  - b. Once the class specification and position description have been reviewed and approved, the department shall submit an on-line personnel requisition including a position number, job description, physical requirements, number of vacancies, a list of special or preferred qualifications, required background checks, supplemental questions for screening the preferred qualifications, the selection procedure to be used, and the length of the announcement.~~A vacancy may be advertised and applicants certified before the vacancy occurs, but no appointment may become effective more than three pay periods before the position is vacant unless dual encumbrance has been authorized by the County Executive or his/her designee.~~
  - c. A vacancy may be advertised and applicants certified before the vacancy occurs, but no appointment may become effective more than three pay

periods before the position is vacant unless dual encumbrance has been authorized by the County Executive or his/her designee.

- 2 The announcement period for job vacancies shall be at least two weeks unless otherwise authorized by the Human Resources Director, or designee.
  - a. If, in the opinion of the Human Resources Director, or designee, there is an adequate pool of potential applicants and there is an urgent need to fill the position the announcement period may be reduced to one week but in no case shall the announcement period be less than five business days.
  - b. Except for public safety uniformed jobs the Human Resources Director may accept ~~resumes~~ applications after the closing date if the eligibility or certification list for a position has not been issued.
  - c. Positions for which a continuing need for applicants exists or for which recruitment is particularly difficult may be announced with an open or indefinite closing date, and applicants may be placed on an eligibility list or certified at any time after the announcement has been open for five business days.
- 3 Each announcement of a vacancy shall include information on the position (e.g., number of vacancies, title, salary, duties, minimum and preferred qualifications, supplemental questions, screening process, closing date) so applicants have sufficient information to be able to consider whether to apply for the position.
- ~~-4 Job announcements shall be available at the Department of Human Resources, all County Governmental Centers, all Fairfax County Public Libraries, and such other locations as the Human Resources Director may direct. Vacancies also may be announced in news media of general and special circulation, to include the internet, which are likely to reach a large and varied population.~~
- ~~-4 Job announcements shall be available through multiple online sources and may include printed communications, which are likely to reach a large and varied population.~~

### 5.3 Evaluation of Applicants

- 1 The Human Resources Director or his/her designee may investigate any applicant's statements regarding their qualifications and experience to ensure their accuracy and completeness.
- 2 The content of all evaluations, including interviews, shall be based on bona fide occupational qualifications pertinent to the duties to be performed. Department

heads or deputies shall ensure that all interviewers are aware of legal restrictions on the types of questions, which may be asked of applicants.

- 3 The Human Resources Director may delegate some or all of the actions described in this section to department heads.

#### 5.4 Disqualification of Applicants

- 1 In addition to failure to meet basic qualifications, a finding of any of the following facts may be cause for rejection of an applicant.
  - a. The applicant has falsely stated any material fact or has attempted to practice deception or fraud in his/her ~~resume~~/application.
  - b. The applicant has any disqualifying condition (mental or physical); although the mere finding of such shall not be disqualifying if reasonable accommodation can be made.
  - c. The applicant currently is a substance abuser, except that a history of substance abuse shall not in itself disqualify a person in recovery.
  - d. The applicant has been found guilty of a felony, misdemeanor, or crime involving moral turpitude, or has committed disgraceful conduct, such as to render him/her presently unfit, in the judgment of the Human Resources Director, for a position in the class for which he/she is applying or for County service.
  - e. The applicant has a recent record of previous unsatisfactory service in County employment or elsewhere of such a nature as to demonstrate unsuitability for employment in a position of the class for which he/she is applying.
  - f. The applicant has used or attempted to use, prior to, during or subsequent to the examination, fraud or pressure of any kind for the purpose of bettering his/her grade on the examination or to obtain certification to any position.
  - g. The applicant has received a dishonorable discharge from the Armed Forces resulting from conviction by a general court martial for an offense which renders him/her presently unfit, in the judgment of the Human Resources Director, for a position in the class for which he/she is applying or the County service.
  - h. The applicant has received a bad conduct discharge from the Armed Forces resulting from conviction by a special court martial for an offense which renders him/her presently unfit, in the judgment of the Human Resources



Director, for a position in the class for which he/she is applying or for County service.

- 2 When such finding is made, the Human Resources Director may reject the application and may cancel the eligibility of the applicant if he/she already has been certified or has attained a place on an eligible list. In the event the applicant has already received an appointment, the Human Resources Director may take appropriate action to remove him/her from the County service. The applicant shall be informed in writing of the action taken under this provision and of the reason therefore, and shall be advised of the method of appeal outlined in the following subsection.
- 3 Any person whose ~~resume~~ application is rejected by order of the Human Resources Director, whose eligibility is canceled or who is removed from any position under the provisions of this rule may make a written request to the Human Resources Director for reconsideration, giving his/her reasons therefore, within fifteen business days of the date on which he/she received notice of this action. The decision of the Human Resources Director is final, except that an employee in the competitive service who is dismissed in accordance with this section after having completed his/her initial probationary period may grieve his/her dismissal under the provisions of Chapter 17.

#### 5.5 Investigations and Fingerprinting

- 1 Department heads or their designees are responsible for verifying references and claimed veteran status of prospective appointees.
- 2 Investigations of the backgrounds of candidates for public safety positions will be conducted by the various public safety agencies. The backgrounds of candidates for other sensitive positions may be investigated at the request of a department head or designee with the concurrence of the Human Resources Director.
- 3 Selected candidates receiving a conditional offer of employment in a sensitive position will be fingerprinted and the prints forwarded to the Federal Bureau of Investigation for checking against its records. Any such candidate who refuses to be fingerprinted shall be disqualified. Candidates with a conviction or convictions on their record that are incompatible with the nature of employment in the sensitive position may be denied employment and the conditional offer of employment rescinded.
- 4 Selected candidates receiving a conditional offer of employment into a position identified by the agency director as a position of trust shall be required to submit for a credit check. Any candidate who refuses to do so shall be disqualified and the conditional offer of employment shall be rescinded. The agency director or designee shall review credit reports of candidates who receive an unfavorable report

and take action in accordance with Personnel/Payroll Administration Policies and Procedures, Memorandum No. 56, Credit Check Requirements for Positions of Trust.

- 4 All appointees will be required to present evidence of United States citizenship or, in the case of non-citizens, evidence of eligibility to work in the United States as required by law. All appointees who have claimed veteran status will be required to present evidence of the status claimed.

5.6 Medical Examinations

- 1 The Human Resources Director shall designate classes for which a pre-employment medical examination shall be required.
- 2 Candidates who fail such examinations shall be disqualified, but such failure shall not disqualify any individual from consideration for a position for which the physical qualification he/she failed to meet does not apply.

5.7 Security and Retention of ~~Resume~~ Applications and Related Records

- 1 Applications of successful and unsuccessful candidates and selection process shall be securely retained in accordance with the Library of Virginia Retention Schedule GS-3.
- 2 Individual applicant performance and records shall not be discussed or shared outside of the Human Resources Director or designee, department director or designee and interview panel.  
~~Resume Applications of successful candidates will be retained in their central personnel files. Copies may be retained by departments.~~
- 2 ~~Resume Applications of unsuccessful candidates and related records shall be retained for at least five years.~~
- 3 Retention of records may be in paper, photographic or electronic form.

5.8 Promotional Public Safety/Uniformed Employee Examinations

- 1 Qualifying Scores
  - a. In establishing qualifying scores, the Human Resources Director or his/her designee may consider the following factors: ~~projected staffing needs,~~ minimum standards of job performance, distribution of candidates' raw scores in a particular examination, standard deviation of test scores, test reliability, adverse impact, validity and standard error of measurement.

- b. When an exam consists of several components, such as written, performance and physical portions, a candidate may be required to attain a qualifying score in each portion of the exam.

-2 Method of Breaking Ties

- a. If two or more candidates attain the same final score, the tie shall be resolved in favor of the applicant who receives the highest score in the most heavily weighted portion of the examination. If a tie still exists, scores on the remaining portions of the examination will be considered in order of their relative weight. If a tie still exists, the tie shall be resolved in favor of the applicant, who is a veteran, ~~if it is an initial hire opportunity for the veteran.~~ If the tie is between an applicant who is a veteran and an applicant who is a veteran with a service-connected disability rating, the tie will be resolved in favor of the latter applicant ~~if it is an initial hire opportunity for the veteran with a service-connected disability rating.~~
- b. For promotional examinations for uniformed public safety job classes, if the tie extends beyond the procedure noted above, the tie shall be resolved in favor of the employee having the longest period of continuous service in the class series, beginning with date of appointment to the public safety class series (police, fire, sheriff).

-3 Notice of Examination Results for Public Safety Examinations

If an examination was conducted for the purpose of establishing a continuing eligibility list, all successful candidates will be advised of the results as soon as practicable after establishment of the list. Such notice shall include the following information:

- a. The position class,
- b. The length of time the list will be maintained,
- c. The number of persons on the list, except in the case of open announcements where the individual's position on the list may change from time to time as other applicants are found eligible, and
- d. The individual's position on the list as determined by applicable sections of Chapter 6 of these Regulations, except in the case of open announcements where the individual's position on the list may change from time to time as other applicants are found eligible.

-4 Examination Security

- a. Family members, members of households and extended relationships (as defined in Chapter 2) of candidates eligible to participate in an examination shall not serve on a promotional examination committee, as a pre-tester, nor in the administration of the examination.
- b. Committee members, pre-testers and personnel who participate in test administration are prohibited from discussing any component of an examination except as authorized by the Human Resources Director.

-5 Examination Reevaluations

- a. For written multiple choice exams that test the candidate's technical knowledge (such as departmental operating manuals, standard operating procedures, etc.), candidates may request a reevaluation of their examination papers with a view towards obtaining a higher score providing such request is made to the Human Resources Director within 15 business days following written notification of the examination results. Other types of written exams (including but not limited to situational judgment tests, multiple choice in-baskets, etc.) that measure other abilities are not subject to reevaluation.
- b. ~~Reevaluation of performance-based examinations (including but not limited to practical examinations and assessment centers) shall not be allowed. However, candidates may request an explanation of their performance rating in such exams providing such request is made to the Human Resources Director within 15 business days following written notification of the examination results. The explanation shall be provided by the examining staff of the Employment Division and the Agency Test Evaluators, if any. Staff shall answer questions of the candidate, including information on how the test was graded and how scores were obtained in general. Staff shall not normally reveal individual scores on specific dimension ratings.~~
- b. e. — When a request for reevaluation results in a candidate obtaining a higher score so that the relative standing of the candidate on an eligible list is changed, the Human Resources Director shall review certifications made subsequent to the promulgation of the eligible list and determine whether or not the initial and incorrect score resulted in the candidate's losing certification. When, as a result of error, a certification has been lost to an eligible candidate, the Human Resources Director shall place the name of the candidate on the eligible list so that he/she benefits from the next certification. Appointments already made from such eligible lists shall not be affected by such correction.



- c. Reevaluation of performance-based examinations (including but not limited to practical examinations and assessment centers) shall not be allowed. However, candidates may request an explanation of their performance rating in such exams providing such request is made to the Human Resources Director within 15 business days following written notification of the examination results. The explanation shall be provided by the examining staff of the Employment Division and the Agency Test Evaluators, if any. Staff shall answer questions of the candidate, including information on how the test was graded and how scores were obtained in general. Staff shall not normally reveal individual scores on specific dimension ratings.

-6 Eligible Lists

- a. The names of applicants who meet minimum qualifications as determined by an examination, which is numerically scored, shall be placed on the appropriate eligible list in order of their total scores or grouped into categoriesbands. Candidates will be grouped into bands based on similar scores. If grouped into bands, at least two bands (well-qualified and qualified) are required and within each band all eligible candidates will be considered tied.
- a.b. In the event of a tie in scores, veterans, who are applying as initial hires, shall be listed ahead of non-veterans, and veterans with a service connected disability rating shall be listed ahead of other veterans. Within each category band all eligibles eligible applicants within the band will be considered tied.

## CHAPTER 6

## Certification and Eligible Lists

6.1 Definitions

- 1 An eligible list is a list of applicants who meet the minimum qualifications for the class for which they applied, as determined under the provisions of Chapter 5.
- 2 A certification list is a list of applicants who have been determined to meet the minimum qualifications for the class for which they have applied, and who have also been determined to be among the best qualified for that specific job. A certification list may either be a promotional list (based upon competition that is restricted to current Fairfax County employees as described in Chapter 5) or an open, competitive list (based upon competition that is open to outside applicants as well as current County employees).

The format of the certification list may take various forms, such as a spreadsheet, memorandum, computer generated form, etc., as long as the format has been issued by the Human Resources Director or designee.

6.2 Reinstatement/Reemployment

- 1 A former merit employee who satisfactorily completed his/her probation period and was separated in good standing but did not retire may be eligible to be non-competitively reinstated to the position or class formerly held, or to be non-competitively employed in any class at the same or a lower grade for which he/she is qualified for a period of one year from the date of separation. Reemployment eligibility of an employee who was laid off is governed by the provisions of Chapter 9.

6.3 Duration of Certification Lists and Eligibility of Individuals

- 1 A certification/eligible list is normally used to fill a vacancy/vacancies that currently exist, or that are expected to occur during the short term after it is established. However, a certification/eligible list may be used for up to one year after it has been established, in order to fill unanticipated vacancy/vacancies, with the approval of the Human Resources Director or designee. Factors that the Human Resources Director may consider in granting this approval include business necessity, whether the list is promotional or open, whether the list still contains a viable, diverse pool of certified applicants, difficulty of recruitment for the vacancy, etc.
- 2 At the request of a department head or designee and with respect to certification and/or eligibility lists for positions entirely under that department head, the Human

Resources Director may extend the duration of an open competition list to a maximum of two years and that of a promotion eligibility list to a maximum of three years. No list may be extended beyond these time limits.

- 3 When an eligibility list is dissolved prior to the expiration date in the announcement, individuals remaining on the list shall be so notified.

#### 6.4 Removal of Certified Applicant From Job Consideration

A certified applicant (from either a certification or eligible list) may be ruled ineligible for job consideration for any of the reasons listed in the section on disqualification of applicants in Chapter 5 or for any of the following reasons:

- 1 Appointment through certification from such list to fill a merit position.
- 2 Appointment through certification from a list for another job class at the same or higher salary. At the request of the appointee, however, his/her name may be continued on any lists other than the one from which the appointment was made.
- 3 Notification from the applicant that he/she desires his/her name removed from consideration.
- 4 Refusal of appointment by the applicant under such conditions as he/she previously indicated he/she would accept.
- 5 Inability to locate the applicant by mail or telephone within five business days.
- 6 Failure by the applicant to reply to inquiry from the Human Resources Director or his/her designee within five business days of the date of such inquiry.
- 7 Failure to accept appointment within three business days when offered, or to report for duty on the date prescribed by the department head or designee, provided that no candidate shall be required to report for duty less than two weeks from the date an appointment is offered.
- 8 Separation of an employee on a promotional list from the County service.

## CHAPTER 7

### Certification and Appointment

#### 7.1 Appointments to the Competitive Service

- 1 Merit appointment indicates that the employee has been selected for appointment in accordance with the provisions of Chapters 5 and 6 of the Regulations. Merit employees shall receive annual and sick leave and other fringe benefits.
- 2 Merit positions may be filled from within or outside the merit system. Appointments from within the system may be promotions, lateral transfers or demotions.
- 3 Merit employees scheduled for 20 or more hours per week, including those in more than one merit position, shall have all the benefits of full-time merit employees, including:
  - A. Leave Accrual: Annual and sick leave will accrue as stated in Chapter 10 of the Fairfax County Personnel Regulations.
  - B. Health Benefits: Employees scheduled to work less than 31 hours per week may be subject to higher premium payments for certain benefits, in accordance with county benefits policy.
  - C. Performance Pay Increases: Employees holding more than one merit position are eligible to receive pay increases in all positions.

#### 7.2 Status of Employees and Positions

- 1 Merit employees normally occupy positions in the competitive service and exempt employees normally occupy positions in the exempt service. In exceptional circumstances, however, particularly when it is urgent that a position be filled without delay, a merit employee may occupy a position in the exempt service or an exempt employee may occupy a position in the competitive service.
- 2 Except as provided in 7.2-3 below, a merit employee shall not have his/her status changed to exempt while assigned to a position in the exempt service when there has been no break in service. There shall be no change in the merit employee's rights and benefits entitlement while serving in an exempt service a position. When a merit employee is appointed to an exempt service a position, the personnel action request form shall indicate in what manner it is planned to return the employee to a merit position. The rules governing temporary acting promotion or demotion shall apply. Upon return to the merit position, the

employee's grade, salary and performance pay increase date shall be determined as if the exempt appointment had not occurred.

- 3 A merit employee may occupy an exempt position without a change in status for no longer than ninety days. A merit employee who accepts an appointment in excess of ninety days to an exempt position loses his/her merit status, but may be reinstated to a position in the competitive service at his/her former merit grade and salary within one calendar year of the end of the exempt appointment.

### 7.3 Certification of Applicants

- 1 Upon receipt of a personnel requisition, the Human Resources Director or the ~~Director's~~ designee shall promptly announce the vacancy and certify applicants following the procedures specified in Chapters 5 and 6.
- 2 ~~Following the closing date of the job announcement, the Department of Human Resources Director or the Director's designee will establish a certification list of the best qualified applicants and submit it to the agency contact.~~
- 2 When creating the certification list, in addition to the employment standards, necessary knowledge, skills and abilities as defined in the class specification and position description, consideration shall be given to the following: the number of vacant positions to be filled from that list, applicant responses to supplemental application questions, preferred qualifications considered critical to successful performance in the job when approved by the Human Resources Director or designee, as well as the diversity needs as identified in the agency's Diversity Plan. Where possible, the certification list should contain at least ten applicants.
- 3 Applicants shall be certified in accordance with the following rules.
  - a. If a position has been announced exclusively as a promotional opportunity open only to current employees, only current County employees shall be certified.
  - b. Applicants shall be listed in alphabetical order on certification lists furnished to departments. The certification list shall identify the applicants who are veterans and veterans with a service-connected disability rating.
- 4 The Human Resources Director may delegate some or all of the actions described in this section to department heads.

### 7.4 Selection and Appointment



- 1 Before making any appointment, the department head or his/her designee shall review the ~~resume~~applications of all certified applicants and shall interview at least one more than half of those certified.
- 2 For the purpose of this subsection, the department head's designee may be either an individual or a panel. Department heads are encouraged to use panels for all positions. When panels are used, either to review ~~resume~~applications or to conduct interviews, they should be constituted with due regard for the demographic characteristics of the certified applicants. Due to the scope and rigorous nature of the selection procedures used for public safety job classes, interviews are not required for these job classes except when deemed appropriate at the discretion of the department head or deputy.
- 3 The department head or his/her designee should review and consider the performance records of current and former employees who are finalists for a job vacancy.
- 4 Department heads or deputies normally should complete the process of screening, interviewing and appointing within 30 calendar days of receipt of a certification list. If a period longer than 30 days is required to make a selection, department heads or deputies shall consider the likelihood that the best qualified applicants may no longer be available. This subsection does not apply to applicants for uniformed public safety positions, who are required to undergo additional screening after initial certification and whose appointments may be timed to coincide with the convening dates of training academy classes.
- 5 Appointment to a vacancy in the competitive service shall be made by the proper department head or deputy from those applicants certified by the Human Resources Director or designee. Such appointment shall be indicated by the completion of a personnel action request form.
- 6 No applicant shall seek or attempt to use any political endorsement in connection with any merit system appointment and no consideration shall be given to political or partisan affiliation, activity or endorsement in selecting candidates for original or promotional appointment in the merit service.
- 7 Every appointee shall be required to show proof of identity and proof of eligibility to work in the United States, before his/her appointment becomes effective.

#### 7.5 Probationary Period

- 1 Except as noted in 7.5-2 below every merit appointee shall serve a probationary period of twelve months after original appointment (initial probationary period) or promotion (promotional probationary period). The probationary period shall be used for closely observing the employee's work, for obtaining the most effective

adjustment of a new employee to his/her position, and for separating any new employee or demoting any promoted employee whose performance does not meet the performance requirements.

- 2 Sworn police officers, animal control officers, deputy sheriffs and uniformed firefighters shall serve an initial probationary period of twelve months commencing with the date of graduation from the appropriate training academy. Public safety communicators shall serve an initial probationary period of twelve months commencing upon graduation from the Department of Public Safety Communications Academy and the completion of a 10 week on the job training program. The performance pay increase date shall be determined by the date of original appointment. For all other merit employees, the initial probationary period shall commence with the date of appointment.
- 3 With the approval of the Human Resources Director, a department head or deputy may extend the initial or promotional probationary period in limited circumstances situations where the employee has been unable to perform the duties for which he or she was hired due to extended absence or extended period of restricted duty for medical reasons due to FMLA for a period not to exceed 120 calendar days.
  - a. Requests for extension of the probationary period must be made in writing to the Human Resources Director stating the specific facts and circumstances justifying the request. The request for extension must be made in advance of the expiration of the employee's probationary period and may be granted under the following circumstances:
    - (1) when an employee is absent from work on an approved absence in excess of 30 calendar days during the probationary period;
    - (2) when an employee is unable to perform the assigned duties of the job for which he/she was hired for a period in excess of 30 days, such as when serving in a temporary light duty assignment to accommodate a medical condition.
  - b. Such extension shall commence on the date the employee resumes the assigned duties of the job for which he/she was hired.
- 4 An employee serving in the initial probationary period is eligible to apply for, be certified to, and be appointed to a class of a higher level. Under such circumstances, a promotional probationary period begins with the date of the promotion but the initial probationary period expires twelve months from initial appointment date unless extended in accordance with the provisions of this action.
- 5 Unless alleging illegal discrimination, an employee serving an initial appointment probationary period including extensions authorized in accordance with this

section has no right to grieve or appeal under these rules. Any employee who has satisfactorily completed an initial probationary period and who is serving a probationary period following promotion retains his/her grievance rights.

7.6 Underfill Appointments

- 1 With the approval of the Human Resources Director or designee, an applicant who does not meet all the ~~employment qualification~~employment standards as outlined in the class specification and approved position description for a merit class may be appointed competitively to fill a position in that class at a lower grade than that of the class under the conditions specified in this section.
- 2 Underfills are appropriate under the following circumstances:
  - a. When recruitment difficulties exist for a class at the authorized grade.
  - b. When appointees require specialized training and work experience within a particular function to meet the performance standards for the position at the authorized grade.
  - c. When underfilling a position is part of an authorized upward mobility program for career employees.
  - d. A reclassification action changes the classification of the position and the incumbent does not meet the minimum qualifications.
- 3 When it is planned or likely that a position will be underfilled, the vacancy announcement will so state.
- 4 Before making a formal offer of an underfill appointment, the department head or deputy shall prepare a written underfill agreement, which must be approved by the Human Resources Director or designee in advance of the offer. The agreement shall include at least the following information:
  - a. The specific training and experience requirements the employee must meet before promotion to the authorized grade.
  - b. The manner in which they are to be met and the time frame within which the appointee is expected to meet the performance standards for the position, which standards shall be included ~~as an appendix~~within ~~to the~~ agreement.
  - c. A statement to the effect that promotion will be made without further competition when the appointee meets the terms of the agreement and the performance standards of the authorized position; and that if the appointee



fails to do so within the allotted time the department head or deputy will effect a transfer, demotion, dismissal or unsatisfactory service separation or a statement to the effect that after successfully completing the terms of the agreement, the employee will be required to compete for promotion to the higher level position and if not selected, the department head or deputy will effect a transfer, demotion, dismissal or unsatisfactory service separation.

- d. A statement that the employee's pay shall revert to its pre-agreement level if the employee, before satisfying the agreement's terms and conditions, discontinues performance under the agreement or takes a position with the County different than the one authorized under the agreement.

- 5 Underfill agreements normally will be for a period of not more than one year but may be for periods of up to four years in multi-tiered underfill agreements. The department head or deputy may extend an underfill agreement without the Human Resources Director approval if the employee necessarily is absent for more than 30 consecutive calendar days or because of the unavailability of ~~for~~ required training. The department head or deputy must inform the Human Resources Director of all such extensions.

#### 7.7 Appointment of Family Members, Members of Household or Extended Relationships

- 1 Except as provided herein, no applicant/employee shall be hired, reinstated, reemployed, transferred, promoted or demoted to a position which places him/her in a direct supervisory line as defined herein or otherwise permits them to participate in any personnel action relative to a family member or members of his/her household or extended relationships.
- 2 This prohibition may also be extended to positions, in which the duties involve access, review, verification, authorization, or approval of the transactions of family members, members of household, or extended relationships in financial, personnel, purchasing, or other sensitive matters, even though the respective functions are in different departments. Such positions will be identified by an affected department head or designee, with the approval of the Human Resources Director.
- 3 For purposes of this regulation, the definition of 'Extended Family Including Household Member' is defined in Chapter 2.  
For the purposes of this regulation, "family member" is defined by the following relationships, including those legalized by adoption:

aunt	grandparent	sister-in-law
brother	half brother	son-in-law
brother-in-law	half sister	spouse

child	mother-in-law	stepbrother
daughter-in-law	nephew	stepchild
father-in-law	niece	stepparent
first-cousin	parent or parent-in-law	stepsister
grandchild	sister	uncle

- 4 For the purposes of this regulation, "Extended Relationships" is defined as those personal relationships creating a potential conflict of interest or having the possibly of creating adverse impact (actual or perceived) on supervision, safety, and security. Additionally, a direct supervisory line is defined as those situations where an employee, regardless of job description or title, has authority to hire, transfer, promote, assign, reward, discipline or terminate other employees or has responsibility to direct their work or conduct their performance evaluation. This also includes those situations where an employee effectively is able to recommend these actions where such recommendations are given substantive weight in the final decisions being made.
- 5 If a change occurs which causes employees to be in conflict with this regulation, one of the employees shall be transferred to a vacant position within the County. In the absence of an agreement which is satisfactory to all the concerned parties, the employee with the lower grade, or, if they are of the same grade, the employee with the fewer years of County service shall be transferred.
- 6 Requests for exceptions to this policy shall be submitted in writing to the Human Resources Director, who has the authority to waive this regulation when it is in the best interest of the County to do so. The approved exception request shall be maintained in each employee's respective personnel file.

#### 7.8 Applicant Right of Appeal on Discriminatory Practices

- 1 An applicant who is not employed by the County at the time of his/her application and who believes he/she has been discriminated against on the basis of race, sex, color, religion, national origin, age, disability, political affiliation, genetic information or his or her status as a veteran or disabled veteran during the selection process may file an appeal on the alleged discriminatory practice. A bona fide occupational requirement for any position, the minimum age qualifications for public safety occupations, and the exclusion of family members, members of household, or extended relationships as defined in Section 7.7 shall not be appealable except as provided in Sec. 7.7-6.5
- 2 Such an appeal stating the alleged discriminatory practice and the corrective action desired must be filed in writing with the Director of the Office of Human Rights and Equity Programs within fifteen business days of the date the applicant knew or should have known that he/she was not selected for employment.

- 3 The Director of the Office of Human Rights and Equity Programs shall investigate the allegations and respond in writing to the applicant within twenty business days.
- 4 Should the applicant believe the Director of the Office of Human Rights and Equity Programs' response to be unsatisfactory, the applicant may file a written request for a hearing with the Civil Service Commission. The applicant's request for a hearing must contain a complete statement of the alleged discriminatory practice and the corrective action desired, and must be filed within fifteen business days of receipt of the Director of the Office of Human Rights and Equity Programs' response.
- 5 The Civil Service Commission shall set a time and place for such hearing to be held not more than thirty workdays after receipt of such request. At its discretion, the Commission may appoint a hearing officer to hear the appeal.
- 6 The hearing shall be conducted in accordance with hearing procedures adopted by the Civil Service Commission.
- 7 After the hearing, the Commission shall forward an advisory finding on the merit of the appeal and disposition of the case to the County Executive. The Commission does not have the authority to award or recommend monetary damages.

## CHAPTER 10



## Leave

10.1 Leave Defined

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

10.2 Leave Policy

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

10.3 Maintenance of Leave Records

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

10.4 Procedures for Requesting Leave

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

10.5 Unauthorized Absence

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

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

#### 10.6 Types of Leave

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

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

#### 10.7 Granting Annual Leave

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



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

#### 10.8 Crediting of Annual Leave

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

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

#### 10.9 Debiting Annual Leave

Annual leave shall be debited as follows:

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

#### 10.10 Transfer of Annual and Sick Leave

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

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

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

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

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

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

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

#### 10.13 Sick Leave Policy

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



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

#### 10.14 Granting Ordinary Sick Leave

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

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

#### 10.15 Granting Advance Sick Leave

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

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

#### 10.16 Granting Extraordinary Sick Leave

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

#### 10.17 Crediting Sick Leave

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

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

#### 10.18 Debiting Sick Leave

Sick leave shall be debited as follows:

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

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

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



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

1. Sick leave credits shall not be paid to an employee upon separation.
2. Upon application for retirement, an employee's sick leave credits can be applied towards membership service credit at the rate of one month of credit for each 172 hours of accrued unused sick leave, and prorated for any fraction of this amount.
3. Employees who are participants in the Deferred Retirement Option Plan may apply all sick leave credits towards membership service credit for retirement, or retain 40 hours as an initial sick leave balance, while the remaining sick leave credits are applied towards membership service credit for retirement.

#### 10.21 Other Factors Relative to Sick Leave

- 1 Reporting of sickness.  
Employees who are absent from duty for reasons which entitle them to sick leave shall notify their respective supervisors within the time frame established by the Department unless physically unable to do so. Upon return to work, the employee shall submit immediately to his/her supervisor an authorization for leave form.
- 2 Medical certificate.  
A department head or designee may require a medical statement for sick leave when it occurs before or after a holiday or other scheduled day off, or when it is in excess of two workdays. When an employee has a record of repetitious usage of short amounts of sick leave over an extended period, a department head or designee may require a medical certificate for each day of sick leave taken. Employees shall be provided advance notice that a medical certificate will be required for future absences.
- 3 The department head or designee may require an employee returning from sick leave to take a medical examination, or, with the concurrence of the Human Resources Director, on such other occasions that he/she deems it in the best interest of the County. The medical examination shall be given by a medical doctor designated by the Human Resources Director or his designee.
- 4 Investigation of sickness. A department head or designee may investigate the alleged illness of an employee absent on sick leave.
- 5 False or fraudulent use of sick leave. False or fraudulent use of sick leave shall be cause for disciplinary action against the offending employee. Such disciplinary action may include dismissal.
- 6 An employee on annual leave who presents a medical certificate giving the dates of illness may have that portion of his/her annual leave converted to sick leave.

- 7 Conversion of sick leave. Conversion of sick leave to annual leave shall not be permitted.
- 8 State worker's compensation insurance. An employee, who is eligible to receive state worker's compensation payments beyond the year of injury leave, may elect to use accumulated sick leave and/or annual leave. The use of such leave will be coordinated with worker's compensation payments so that the total amount received from both sources does not exceed the employee's full wage or salary until such sick and/or annual leave is depleted or until the employee returns to work.

Leave hours used will be calculated only on that portion of total compensation over the workers' compensation payment. While using sick and/or annual leave the employee will continue accruing sick and annual leave.

#### 10.22 Family and Medical Leave

Eligible employees, as defined by the implementing regulations of the Family and Medical Leave Act, may take job-protected, unpaid leave, or substitute appropriate paid leave, for up to a total of 12 workweeks in a single 12-month period for the birth of a child, for the placement of child for adoption or foster care, because the employee is needed to care for a family member (child, spouse, parent or parent-in-law) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, parent or parent-in-law is a covered military member on covered active duty. In addition, eligible employees may take job-protected, unpaid leave, or substitute appropriate paid leave for up to a total of 26 workweeks in a single 12-month period to care for a covered service member with a covered serious injury or illness. The terms "covered military member," "covered active duty," and "covered serious injury or illness" shall be defined as set forth in the Family and Medical Leave Act as amended.

Family and medical leave consists of any combination of sick leave, annual leave, compensatory leave, and leave without pay. Sick leave used for the purpose of family or medical leave must conform to the requirements in Section 10.13. If parental leave (Section 10.22) is taken for the birth, adoption, or foster care placement of a child, the leave must be applied towards the employee's Family and Medical Leave entitlement if applicable.

- 1 Family and medical leave shall be granted to any merit employee for a period of up to twelve work weeks over a twelve-month period. The twelve-month period during which family leave may be taken for the birth of or placement of a child shall expire at the end of the twelve-month period beginning on the date of birth or placement. Service member caregiver leave is granted for up to 26 workweeks during a single 12-month period on a per-covered service member and per-injury/illness basis. Work week is defined as the hours an employee is regularly scheduled to work in a seven (7) consecutive day period.

- 2 The twelve-month period for family and medical leave usage shall commence with the first use of family or medical leave. The single twelve-month period for service member caregiver leave shall commence with the first day the eligible employee takes service member caregiver leave and ends 12 months after that date regardless of the 12-month period established for prior FMLA qualifying events.
- 3 Requests for leave beyond 12/26 work weeks are subject to regular leave policies with approval determined by the department head or designee.
- 4 Requests for family and medical leave must be made in writing and submitted 30 calendar days in advance whenever the necessity for such leave is foreseeable.
- 5 The mother may take six (6) weeks of sick leave immediately following the birth of her child. Use of additional sick leave requires medical certification. The father may take four (4) weeks of sick leave immediately following the birth of his child. Use of additional sick leave requires medical certification.
- 6 Mothers and/or fathers may take four (4) weeks of sick leave immediately following placement of a child for adoption or foster care. Use of additional sick leave requires medical certification.
- 7 Family leave to include exigency leave may be taken on an intermittent or reduced schedule basis with the approval of the department head or designee. Medical leave may be taken on an intermittent or reduced schedule basis if certified as necessary by the health provider.
- 8 At the request of the department head or designee, the employee shall provide certification from a health care provider in connection with a request for medical leave. Additionally, an employee may be required to provide medical documentation concerning the continuing necessity for medical leave and in connection with any issue concerning his/her ability to return to work at the expiration of medical leave.
- 9 At the request of the department head or designee, the employee shall provide certification of a qualifying exigency in connection with a request for exigency leave.
- 10 At the discretion of the department head or designee, an employee requesting family leave for the birth or adoption of a child may be required to use accrued annual or sick leave prior to use of leave without pay. Employees requesting family or medical leave for all other reasons may be required to use accrued sick, and/or annual leave prior to use of leave without pay.
- 11 During the leave period, the County will provide coverage under the health insurance plan which the employee had selected prior to going on leave at the level and



under the conditions coverage would have been provided if the employee had not gone on leave.

- 12 If the employee fails to return to work for a reason other than the continuation, recurrence, or onset of a serious health condition for him or herself, children, spouse, parents, parents-in-law, or injured family service member or other circumstances beyond the control of the employee, the County may recover the employer's contribution to the health insurance premium paid during any period of unpaid leave.
- 13 No employee shall be prevented from returning to work prior to the expiration of the 12/26 week period.
- 14 Employees shall return to the position vacated or, with the approval of the Human Resources Director, to another position in the same class.
- 15 Employees who do not plan to return to work shall notify their department no later than at the expiration of the leave. Failure to return to work without giving notice at the expiration of the leave without good cause may result in an unsatisfactory service separation.
- 16 This regulation shall be construed as to ensure compliance with the minimum requirements of the Family and Medical Leave Act of 1993.

#### 10.23 Parental Leave

Paid leave granted for the birth, adoption, or foster care placement of a child. Merit employees are provided 80 hours per qualifying event (120 hours for full time 24-hour shift fire protection employees). Merit employees scheduled to work less than 80 hours per pay period shall have parental leave pro-rated on the basis of scheduled hours. The parental leave must be applied towards the employee's Family and Medical Leave entitlement if applicable. If an employee has already exhausted that entitlement for the qualifying period, the mother or father is still eligible to take the 80 hours of parental leave (120 hours for full time 24-hour shift fire protection employees).

Mothers and/or fathers are entitled to take up to 80 hours of paid parental leave (120 hours for full time 24-hour shift fire protection employees) up to 12 months immediately following the birth, adoption, or foster care placement of a child. Such time will run concurrently with Family Medical Leave (FML) to the extent that FML is available to the employee. In some instances when deemed medically necessary, parental leave may be taken prior to the birth. If an employee has already exhausted FML for the qualifying period, the mother or father is still eligible to take the 80 hours of parental leave.

#### 10.24 Leave for Injury in Line of Duty

- 1 A merit employee who is injured while performing the duties of his/her position,

without fault or negligence on his/her part, and who is accepted as compensable under the Virginia Worker's Compensation Act, shall be granted injury leave with pay, as approved by the County Executive or his/her designee. Such eligibility for injury leave with pay begins on the first day of injury and shall expire not later than twelve calendar months from the original injury date. Reinjuries do not extend the period of eligibility for injury leave. Such leave requires a medical certificate from an approved licensed physician authorized by the County to treat worker's compensation claims. This certificate must set forth the nature and extent of the injury and the probable period of disability.

- 2 Extensions of injury leave beyond twelve calendar months may be granted by the department head or designee. In no case shall the employee be granted injury leave in excess of 2080 (2912 for 24-hour shift fire protection employees) total hours. In evaluating such requests, the following elements shall be considered:
  - a. The circumstances in which the injury occurred include consideration of the nature and extent of the injury;
  - b. The nature and extent of treatment providing that the employee has continued under the regular care of the authorized physician requiring an office visit at minimum intervals of at least once every three months; and providing that the medical records clearly substantiate relationship between the current prescribed treatment and the original injury;
  - c. The likelihood of the employee return to duty;
  - d. The employee's past injury, leave and service record;
  - e. The employee's compliance with injury leave policies and requirements.
- 3 When possible, employees who have been injured but are not totally disabled, will be placed in temporary assignments without loss of pay with duties that fall within the medical restrictions prescribed by the treating physician.
- 4 When injury leave is used other leave benefits shall not accrue.
- 5 An employee on injury leave is expected to follow medical procedures and complete necessary forms/reports so as to ensure that worker's compensation payment will be credited to the appropriate account.
- 6 An employee on injury leave is specifically prohibited from engaging in activities that may impair his/her recovery. This includes:
  - a. Engaging in strenuous recreational or other physical activities without the approval of the authorized physician.



- b. Being employed or self-employed to perform work of any kind without the prior written approval of the authorized physician and the Human Resources Director.
- 7 An employee on injury leave is not required to remain at home, but is required to be available for contact by his/her supervisor and to notify the supervisor of any change of residence during authorized absence.
- 8 Failure of an employee on injury leave to follow prescribed procedures or to accept appropriate medical treatment, vocational rehabilitation, or medically appropriate temporary assignments, may result in disallowal of full salary continuation and reversion to straight worker's compensation wages, if eligible, for the time period of noncompliance, with the employee being liable for repayment of the monetary differential.

#### 10.25 Bereavement Leave

Bereavement leave may be used to cover an absence resulting from the death of an employee's extended family or household member, as defined in Chapter 2. Department heads or designees shall grant bereavement leave with pay to merit employees in accordance with the following provisions:

- 1 Full time merit employees shall be eligible to use up to 16 hours of bereavement leave per calendar year (24 hours for full time 24-hour shift fire protection employees). Merit employees scheduled to work less than 80 hours per pay period shall be eligible for bereavement leave on a prorated basis.
- 2 Bereavement leave may not be carried over from one calendar year to the next.
- 3 The amount of bereavement leave to be debited shall be computed on the basis of the exact number of hours an employee is scheduled to work in the period when the leave is taken.
- 4 Bereavement leave shall be debited in no less than one-tenth hour units.
- 5 Sick leave may be granted for absences extending beyond bereavement leave eligibility in accordance with the sick leave provisions herein.

#### 10.26 Compensatory Leave

- 1 Compensatory leave shall be credited to an employee as provided for in the rules governing overtime. Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting compensatory leave.
- 2 Compensatory time for overtime worked shall be granted at the discretion of the employee at

a time convenient to and approved by the department head or designee.

- 3 Overdrawn compensatory leave shall be debited in the following order: annual leave, leave without pay.

10.27 Effect of Transfers on Compensatory Leave

An employee who transfers from one department to another shall have his/her compensatory leave transferred to the new department.

10.28 Effect of Separation on Compensatory Leave

An employee who is separated from service may only be paid for any accrued overtime for which he/she has not been granted compensatory leave in accordance with the provisions of section 4.15-4.

10.29 Military Leave

- 1 A merit employee who is a member of the National Guard or an organized military reserve of the United States, or is a former member of the Armed Services and has been reactivated by a competent authority shall be allowed military leave under the following circumstances:

- a. Leaves of absence without pay not to exceed fifteen workdays during any one federal fiscal year (October 1 - September 30) to attend federally funded military duty, including duty in the field. For the purposes of this section, one 24-hour shift workday shall equate to two military leave workdays. The employee shall report to work in accordance with the following schedule:

1. If the period of service is less than 31 days, the employee must report back to work not later than the beginning of the next regularly scheduled workday after the military duty, including travel time and an 8-hour rest period, is completed.
2. If the period of service is more than 30 days but less than 181 days, the employee must report back to work not later than 14 calendar days after completing service.
3. If the period of service is more than 180 days, the employee must report back to work not later than 90 days after completing service.
4. If the employee is hospitalized or convalescing from an injury or illness incurred during the period of service, then the time for the employee to report back to work will be extended.

- b. Leaves of absence without pay for training not covered above. The employee shall report to work the next regularly scheduled workday after the training



period, including travel time and an 8-hour rest period, is completed.

- 2 A merit employee who is a member of the Virginia National Guard and who is called to emergency duty by the Governor to combat floods, riots, winter storms, hurricanes, or other disasters shall be allowed military leave with pay for each day of such service. A merit employee who is a member of any National Guard organization other than the State of Virginia and who is called to emergency duty by the competent authority of that state may elect to be placed on military leave without pay for each day of such service.
- 3 The employee shall notify his/her supervisor as far in advance as possible when taking military leave. The employee's notice may be either verbal or written. A copy of military orders may be requested, but cannot be required. Failure to notify the County in advance shall not deprive the employee of rights and benefits.
- 4 An employee who leaves the County service in order to join the military forces of the United States or who is inducted into such service has resigned and is not considered to be on military leave. (Section 9.2-5).
- 5 In the event of any conflict between County regulations and federal or state law, the latter shall take precedence.

#### 10.30 Civil Leave

A merit employee shall be given time off without loss of pay when performing jury duty, when subpoenaed or requested to appear before a court, public body or commission except when the employee is a party to the suit, when performing emergency civilian duty in connection with national defense, or for the purpose of voting. Leave for the purpose of voting shall only be granted when the employee's work schedule prohibits voting before or after duty hours or through absentee balloting.

#### 10.31 Volunteer Activity Leave

Volunteer activity leave may be used to participate in volunteer activities and initiatives to support the neighborhoods in which employees live and work to include educational and charitable institutions, religious/faith-based, and community service entities. Department heads or designees shall grant volunteer activity leave with pay to merit employees in accordance with the following provisions:

- 1 Full time merit employees shall be eligible to use up to 16 hours of volunteer activity leave per calendar year (24 hours for full time 24-hour shift fire protection employees). Merit employees scheduled to work less than 80 hours per pay period shall be eligible for voluntary activity leave on a pro-rated basis.

- 2 Voluntary activity leave may not be carried over from one calendar year to the next.
- 3 The amount of voluntary activity leave to be debited shall be computed on the basis of the exact number of hours an employee is scheduled to work in the period when the leave is taken.
- 4 Voluntary activity leave shall be debited in no less than one-tenth hour units.

#### 10.32 Leave Without Pay

A department head or designee may grant a merit employee a leave without pay for a period not to exceed one year, subject to the following conditions:

- 1 Leave without pay shall be granted only when it is in the interests of the County to do so. The interests of the employee shall be considered when he/she has shown by his/her record to be of more than average value to the County and when it is desirable to return the employee even at some sacrifice.
- 2 At the expiration of a leave without pay, the employee shall be reinstated in the position he/she vacated or in any other vacant position in the same class.
- 3 The employee does not earn leave while on leave without pay.
- 4 Failure on the part of the employee to report promptly at the expiration of a leave without pay may be cause for dismissal.

#### 10.33 Education Leave

A merit employee engaged in professional or technical work may be granted a leave of absence with full or partial pay for enrollment in a special institute or course of study of direct benefit to the County service, at the discretion of the department head or designee.

Such leave may be granted on the assumption that the employee will remain with the County service for a reasonable period to be recommended by the department head or designee, upon completion of the institute or course of study.

#### 10.34 Holiday Leave

- 1 The following holidays are observed by the County and shall be granted to merit employees with pay, unless such employees are required to be on scheduled duty.
  - a. New Year's Day (January 1);
  - b. Martin Luther King, Jr.'s Birthday (Third Monday in January);

- c. Washington's Birthday (Third Monday in February);
- d. Memorial Day (Last Monday in May);
- e. Independence Day (July 4);
- f. Labor Day (First Monday in September);
- g. Columbus Day (Second Monday in October);
- h. Veteran's Day;
- j. Thanksgiving Day (Fourth Thursday in November);
- k. Fall Holiday (Friday after Thanksgiving);
- l. Christmas Eve (One-half day on December 24);
- m. Christmas Day (December 25);
- n. Inauguration Day (January 20, every fourth year) when it falls on a business day, Monday through Friday.

-2 The County Executive may also set aside other days as holidays.

#### 10.35 Granting Holiday Leave

The granting of holiday observed by the County shall be subject to the following provisions:

- 1 Holidays on a weekend.  
When a holiday falls on Saturday, it shall be observed on the preceding Friday. When a holiday falls on Sunday, the following Monday shall be observed as the holiday.
- 2 Holiday on scheduled workday
  - a. Holiday on scheduled workday; employee works.

Employees who are required to work on a holiday (actual or County observed) shall be compensated for the time worked in accordance with the rules governing hours and overtime. Holiday compensation will be provided on an hour for hour basis for an employee's regular scheduled hours not to include overtime hours. If an employee who would not normally work the holiday, is scheduled to work to meet staffing or other operational needs, the employee is entitled to receive holiday compensation for hours worked not to exceed the number of his/her regularly scheduled hours.



- b. Holiday on scheduled workday; employee does not work. Employees who are required to work on a holiday (actual or County observed) but do not work, shall be compensated as follows. Holiday compensation will be provided on an hour for hour basis up to the number of regularly scheduled hours for that day.
- 3 Holiday on scheduled day off. Within the policy established in the section on holiday leave, whenever one of the designated holidays falls on an employee's scheduled day off, the employee shall be granted either holiday pay or holiday compensatory time in accordance with the rules governing hours and overtime. To receive holiday compensation on an actual holiday, an employee must be directed by his/her supervisor to work due to staff shortage or other operational necessity.
- 4 Holidays for merit part-time employees. Part-time merit employees shall be granted holiday time off with pay on a pro-rated basis regardless of the number of hours scheduled on the day a holiday falls computed at the rate of one-tenth of an hour times the employees bi-weekly scheduled hours.
- 5 Holidays during paid leave. A holiday falling within a period of paid leave shall not be counted as a workday in computing the amount of leave debited.
- 6 Holiday during unpaid leave. When a holiday falls within a period of leave without pay, the employee shall be granted either holiday pay or holiday compensatory time in accordance with the rules governing hours and overtime.
- 7 Appointment on a holiday. The appointment of a merit employee shall not be effected on a holiday except when the employee works that day.

#### 10.36 Administrative Leave

- 1 Administrative leave shall be any paid leave authorized by the County Executive, which is not otherwise classified by these Regulations.
- 2 Administrative leave will normally<sup>1</sup> be granted to any full-time or part-time employee by an appointing authority or the County Executive for any of the following reasons:
- Where an employee is required to appear before a public body, public agency, board or commission during normal working hours on matters relating to County business.
  - For the attendance in an official capacity during normal working hours as a representative of the County at meetings, symposiums, conferences, conventions or hearings.

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<sup>1</sup> Exceptions to be justified and made a matter of record.

- c. During the investigation of an alleged improper act by an employee which may result in formal disciplinary actions and/or when the retention of the employee on an active duty status may be detrimental to the interests of the County or injurious to the employee, his/her fellow workers or the general public, Administrative Leave for this purpose will not exceed ten business days without prior approval of the County Executive. A memorandum to the Human Resources Director will be submitted by the department head or designee giving details of the Administrative Leave for all situations covered by this paragraph. In lieu of the use of Administrative Leave for situations of this type, a department head or designee may temporarily assign the employee to other duties.
- d. For participation in the blood donor program for which purpose up to four hours may be granted, at the discretion of department head or designee, for each recuperative purpose.
- e. For the purpose of undergoing a medical examination as may be required by the employee's department head or designee.
- f. To recognize long term service to general county employees who earn length of service awards of 20, 25, 30, 35, 40 and 45 years or more shall be eligible for ~~one day~~ two days of administrative leave (~~12-24~~ hours for 24-hour shift firefighters) in the year after they have qualified for the length of service award.
- g. To recognize outstanding performance such as Outstanding Performance Awards or Team Excellence Awards. The number of hours received for Outstanding Performance Awards or Team Excellence Awards shall be equal to ~~two days~~ one day of administrative leave (~~24-12~~ hours for 24-hour shift firefighters).
- h. For officers of the Employees Advisory Council and employee organizations, who participate in payroll dues deduction to attend conventions and training related to employee relations. Administrative Leave for this purpose shall not exceed 30 workdays (240-hours) per year per employee organization. In the accrual of hours toward the 240-hour limit, one 24-hour shift shall equate to 16 hours of administrative leave. Employees must submit such leave requests as far in advance as possible and provide written verification upon return to duty of attendance at the convention or employee relations training. Respective employee group leaders are accountable for monitoring and ensuring compliance with this policy.
- i. When a non-Office of Elections employee volunteers to work for *Fairfax County's* Office of Elections on an election day or completes training for election volunteer workers.

- 3 In addition to the provisions of paragraph -2 above, Administrative Leave may be granted to any full-time or part-time employee by the County Executive or his/her

designee for any of the following reasons:

- a. Breakdown of essential facility services such as heating, air conditioning, or water or other problems wherein facilities must be closed and employees released early from work or not required to report to work.
- b. Breakdowns of equipment making it impossible to accomplish assigned tasks.

10.37 Leave for Inclement Weather or Other Emergency

- 1 When extreme inclement weather or other emergencies occur, the County Executive or his/her designee shall have the option to declare one of the following types of leave:
  - a. Unscheduled Leave - may be declared by the County Executive or his/her designee when it is deemed advisable to provide employees flexibility regarding reporting to work due to inclement weather or other emergency. Unscheduled leave authorizes all employees, except those designated as emergency service personnel, to use their own leave to remain home from work or to leave work early without obtaining prior approval from their supervisor. Employees, however, must notify their supervisors if they opt to stay home on unscheduled leave. Employees may only use annual leave, compensatory leave, or leave without pay for this purpose. Such leave is authorized only for the period of time designated by the County Executive or his/her designee.
  - b. Emergency Administrative Leave - may be declared by the County Executive or his/her designee when it is determined necessary to close the general County government due to extreme inclement weather or other emergency. Emergency administrative leave authorizes all merit County employees, except those designated as emergency service personnel, to remain home from work or to leave work early without prior approval of the supervisor and without the use of personal leave or leave without pay. Such leave shall be limited to the time periods designated by the County Executive or his/her designee. Employees required to work during a period of such emergency administrative leave shall receive extra compensation in accordance with provisions contained in Chapter 4.
- 2 When leave for inclement weather or other emergency is declared, emergency service personnel must report to work. Emergency service personnel are those employees, designated by the department head or designee, who due to the nature of the emergency, which has occurred, must report to work to ensure that public health and safety needs or critical departmental requirements are met.



## CHAPTER 17

## GRIEVANCE PROCEDURE

17.1 Purpose

The purpose of the grievance procedure is to provide a fair, detailed process whereby employees may voice complaints concerning issues related to their personal employment experience and/or circumstance with the County. The objective is to improve employee-management relations through a prompt and fair method of resolving problems.

17.2 Coverage of Personnel

- 1 All merit employees in the competitive service of the County who have satisfactorily completed their initial probationary period are eligible to file complaints under this procedure.
- 2 Excluded from the grievance procedure are the following:
  - a. Employees in the exempt service, except as specifically provided otherwise in the procedural directives for the administration of the exempt service issued by the County Executive with the approval of the Board of Supervisors pursuant to Fairfax County Code § 3-1-2(c);
  - b. Employees serving their initial probationary periods unless their complaints include allegations of discrimination as defined in Section 17.3-2d and 17.3-2e;
  - c. Sworn police employees who have elected to proceed under the "Law-Enforcement Officers Procedural Guarantee Act." Such employees shall be given written notification of their right to initiate a grievance under the County's Grievance Procedure. They may choose to file the grievance under either procedure, but not both

17.3 Types of Complaints

- 1 Employee complaints will be classified at the point of grievability determination (see Section 17.5-4) as one of the following:
  - a. Grievable, with a binding decision from a hearing panel of the Civil Service Commission;
  - b. Nongrievable but eligible for a hearing and an advisory decision from a hearing officer appointed by the Chair of the Civil Service Commission;

c. Nongrievable with no hearing.

-2 Grievable complaints which receive binding decisions from a three-member panel of the Civil Service Commission hearing the appeal include:

a. Dismissals, unsatisfactory service separations, demotions and suspensions;

b. The application of specific County personnel policies, procedures, rules and regulations;

c. Acts of retaliation as a result of utilization of this procedure, or for participation in the grievance of another county employee;

d. Discrimination against an employee, including a probationary employee, on the basis of race, color, creed, religion, age, disability, national origin, sex, political affiliation, marital status, union affiliation, genetic information, veterans status, or disabled veterans status;

fe. Discrimination or retaliation against an employee, including a probationary employee, because of participation in political activities permitted under state law and County ordinance, or failure to participate in political activities, whether permitted or not by state law or County ordinance;

gf. Acts of retaliation because the employee (i) has complied with any law of the United States or of the Commonwealth, (ii) has reported any violation of such law to a governmental authority, (iii) has sought any change in law before the Congress of the United States or the General Assembly (iv) has reported an incidence of fraud, abuse, or gross mismanagement to the Board of Supervisors, Audit Committee, the Auditor to the Board, his/her department head, or to any other federal, state, or County government authority, such as the Commonwealth's Attorney for the County of Fairfax, or the U.S. Attorney for the Eastern District of Virginia.

g. For the purpose of sub-paragraphs (c) and (f) of this section, there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

-3 Nongrievable complaints eligible to receive advisory decisions from a hearing officer appointed by the Chair of the Civil Service Commission include:

a. The physical plant;

b. The methods and conditions of the specific job;

- c. Relations with fellow employees;
- d. Performance appraisals;
- e. Written reprimands;
- f. 120-day Performance Improvement Plans (as defined in section 12.6-2(b) and provided for in 12.11-2 of these regulations).

#### 17.4 Nongrievable Complaints

- 1 Complaints that are not grievable under this procedure include:
  - a. The establishment and revision of wages or salaries, position classification, employee benefits;
  - b. Oral reprimands;
  - c. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
  - d. Failure to promote, except where the employee contends that established promotional policies or procedures were not followed or applied fairly;
  - e. Discharge, lay off or suspension from duties because of lack of work or reduction in work force, except where such actions affect an employee who has been reinstated within the previous six months by the Civil Service Commission as the result of the final determination of a grievance. In such cases, the department must show that there was a valid business reason for the action and that the employee was notified of such reason in writing prior to the effective date of the action;
  - f. Management of County employees including the right to make personnel appointments in accordance with adopted selection policies and techniques, to establish rules and regulations governing work performance and performance evaluations, to transfer and assign employees within the County, to determine the need for shift operation and rotation of the workweek, to assign overtime, to determine job training and career development, and to determine duties or actions in emergency situations.
- 2 Appeals of position classification are handled in accordance with the criteria set forth

in Section 3.6.

#### 17.5 Steps of the Procedure

-1 Step 1: Immediate Supervisor

An employee who has a complaint shall discuss the problem directly with his/her supervisor within twenty (20) business days of the date the employee should have reasonably gained knowledge of the event giving rise to the complaint.

A verbal reply by the Supervisor shall be made to the complaint during the discussion or within five business days following the meeting.

-2 Step 2: Division Supervisor

If the complaint is not resolved after the first step meeting and where there is a division supervisor, the employee may reduce the complaint to writing on "Complaint Form - Second Step." All grievance forms are obtainable from the Department of Human Resources.

The employee shall specify the relief sought through the use of this procedure. The fully completed Complaint Form shall be delivered by the employee to the division supervisor within five business days of the first step meeting or the supervisor's reply, if given at a later date. The division supervisor shall meet with the employee within five business days of receipt of the Complaint Form.

A written reply by the division supervisor shall be made to the complaint within five business days following the meeting.

-3 Step 3: Department Head

If the reply from the second step meeting is not acceptable to the employee, or where no division supervisor exists, the employee may appeal the last response to the department head.

"Complaint Form - Third Step" shall be completed by the employee and delivered to the department head within five business days of receipt of the last response. The department head shall meet with the employee within five business days of receipt of the Complaint Form.

A written reply by the department head shall be made to the complaint within five business days following the meeting.

When it is necessary for a department head to obtain relevant technical guidance from a centralized department director (i.e. human resources, budget, procurement) in order to respond to a grievance, a written request for assistance will be made to the alternate department head outlining the scope of the issue and assistance required. The complainant's department head retains responsibility for providing the written Step 3 response.

-4 Step 4: Grievability Determination

- a. When a complaint cannot be satisfactorily resolved pursuant to Steps 1 through 3 above, the employee shall request on the appropriate form a determination concerning the grievability of the complaint within ten business days of receipt of the third step reply.
- b. All requests for grievability determination shall be submitted to the County Executive. The County Executive will determine whether the employee is entitled to access to the grievance procedure and if the complaint is grievable, and if so, based upon the criteria set forth in Section 17.3, establish whether the grievant shall receive a binding or advisory decision. Grievability and access determinations by the County Executive shall be made within ten calendar days of receipt of such request.
- c. Decisions regarding grievability and access are appealable only to the Fairfax County Circuit Court. Such appeals shall be made by filing a notice of appeal with the County Executive within ten calendar days from the date of receipt of the decision. The County Executive, or his/her designee, shall transmit to the Clerk of the Circuit Court a copy of the County Executive's decision, a copy of the notice of appeal, and the exhibits constituting the record of the grievance within ten calendar days of receipt of the notice of appeal. A list of the evidence furnished to the County shall also be provided to the grievant.
- d. The Circuit Court shall have a hearing on the issue of grievability and/or access within thirty (30) days of receipt of the record of the grievance by the Circuit Court Clerk. The Court may affirm, reverse or modify the decision of the County Executive.
- e. The decision of the Circuit Court is final and is not appealable. Procedures governing the review by the Circuit Court are found in Virginia Code §15.2-1507(a)(9).
- f. In no case shall the County or Commonwealth's Attorney be authorized to decide the issue of grievability.

-5 Step 5: Appeal to the Civil Service Commission



- a. If the complaint has been determined to be grievable, with a binding decision or nongrievable with an advisory decision as provided herein, the employee may file a request for hearing on the appropriate form with the Fairfax County Civil Service Commission. The employee shall file the request within ten business days following the receipt of the determination that the complaint is grievable.
- b. Appeals of complaints that have been determined to be grievable shall be heard by a three-member panel of the Commission (hearing panel or panel) as soon as possible after receipt of the employee's appeal request. Appeals of complaints that have been determined to be non-grievable but entitled to an advisory and non-binding opinion shall be heard by a hearing officer or by the Executive Director of the Commission when the parties are not represented by counsel, as soon as possible after the receipt of the employee's appeal request. The Executive Director of the Commission in scheduling hearings on appeals shall give priority on its docket to dismissal and unsatisfactory service separation cases. The Executive Director of the Commission shall notify the employee and the department head in writing of the time and place of the appeal hearing.
- c. The jurisdiction and authority of the hearing panels of the Civil Service Commission shall be confined exclusively to those complaints previously determined to be grievable as provided herein. While a panel of the Commission hearing the appeal has authority to determine the appropriate application of an existing rule or policy, they do not have the authority to add to, detract from, alter, amend or modify in any way County or department policy or procedure, and its findings shall be consistent with all applicable laws and ordinances.
- d. No member of the Civil Service Commission or an appointed hearing officer shall hear a grievance if he/she has direct involvement with the grievance being heard, or with the complaint or dispute giving rise to the grievance. The following relatives of a participant in the grievance process or a participant's spouse are prohibited from hearing said grievance: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin.

#### 17.6 Remedies

- 1 The panel of the Commission hearing the appeal is empowered to uphold or reverse the action being grieved or, in appropriate circumstances, choose a modified remedy.
- 2 In grievances entitled to a binding decision the following guidelines pertaining to remedial action shall apply:

- a. Dismissals and Unsatisfactory Service Separations-The panel of the Commission hearing the appeal may deny relief, reinstate the employee while imposing lesser disciplinary actions such as demotion or suspension, or reinstate the employee.
- b. Disciplinary Demotions pursuant to Personnel Regulation 16.5-5 - The panel of the Commission hearing the appeal may deny relief, impose lesser disciplinary sanctions, or revoke the disciplinary demotion.
- c. Suspensions - The panel of the Commission hearing the appeal may deny relief, impose a lesser suspension, instruct that a written reprimand be substituted for the suspension, or revoke the disciplinary suspension.
- d. Back Pay and Restoration of Benefits in Appeals of Dismissals, Demotions, Suspensions, and Unsatisfactory Service Separations:
- i If an employee is reinstated, he/she shall be given back pay for the period of separation contingent upon his/her making full disclosure of all earnings he/she received during separation, which shall be an offset against back pay. In the event the employee fails to provide to the panel of the Commission hearing the appeal such evidence as it deems necessary to determine the amount of the offset, the employee shall forfeit his/her right to back pay.
  - ii In cases of suspension, the employee shall be entitled to back pay for the period of suspension revoked by the panel of the Commission hearing the appeal under the same conditions as sub-section (1).
  - iii A lesser sanction in dismissal cases shall include a suspension without pay covering some or all of the period of separation, notwithstanding any other provision of the Personnel Regulations.
  - iv In the event that the panel of the Commission hearing the appeal imposes a demotion in lieu of an unsatisfactory service separation or dismissal, back pay may be awarded, at the discretion of the panel of the Commission hearing the appeal, for the period of separation at the rate of pay for the lower level classification.
  - v Back pay shall be computed on the basis of the employee's regularly scheduled hours of work and shall not include any overtime that the employee might have earned.
  - vi For any period of time that an employee is entitled to receive back

pay, he/she shall be given service credit towards retirement and shall be reinstated in the appropriate retirement system with his/her previous plan election, provided that he/she repays into the system all contributions that he/she withdrew on separation. The employer shall ensure that all contributions and deductions attributable to such service are made.

vii Similarly, for purposes of accruing leave, the employee shall be given credit towards his/her total years of service for any period of time that he/she is entitled to back pay. The employee shall also be credited with any leave that he/she would have accrued during that period.

viii Upon reinstatement, the employee shall be placed in the health plan that he/she was in at the time of separation with the same options that he/she had previously elected. The effective date of coverage will be the first of the month following reinstatement. A reinstated employee may opt for retroactive coverage in the event that it would be to his or her advantage. The employee must pay his or her share of retroactive coverage premiums. Claims expenses incurred for the retroactive period will be adjusted upon payment of the premium and the employee will be reimbursed for out-of-pocket costs above those he or she will have incurred had the coverage been in effect. The employee may be reimbursed for monies expended by the employee to obtain medical insurance during the period of separation up to the amount of the employer's contribution that would have been incurred had the employee been in service during the period of separation. In no event shall the employee be entitled to reimbursement for medical costs incurred during the period of separation. In the event the employee elected to continue his or her County health insurance under COBRA during the period of separation, the employee shall be reimbursed the difference between the premium he or she paid under COBRA and what he or she would have paid had he or she continued to be employed during the period of separation. In no event shall the employee be entitled to reimbursement for medical costs during the period of separation, except as provided above.

ix. Upon reinstatement, an employee's salary shall be adjusted to reflect any performance pay increases that would have been received had the employee not been separated.

f. Promotions - The panel of the Commission hearing the appeal may deny relief, order the promotional procedure redone, order a retroactive promotion, order the grievant promoted immediately if there is an available vacancy or promoted to the next available vacancy.



- 3 In cases other than dismissals, unsatisfactory service separations, demotions, suspensions, or performance evaluations, the panel of the Commission hearing the appeal may deny the relief sought by the employee or grant such relief as is necessary to place the employee in the situation he/she would have been in had the Personnel Regulations or policies been properly interpreted and/or applied in the first instance. In no event shall the employee be awarded any damages, nor shall the relief granted by the panel of the Commission hearing the appeal affect the rights of other employees.
- 4 Acts of Reprisal and Discrimination - Where the panel of the Commission hearing the appeal determines that any act of reprisal or discrimination as defined in this chapter is the reason for the adverse employment action grieved by the employee, the panel of the Commission hearing the appeal shall have the authority to revoke the adverse employment action. In the event the adverse employment action is one of the actions described in Sections 2 or 3 of this section, the panel of the Commission hearing the appeal may apply the remedial actions provided under those subsections. The panel of the Commission hearing the appeal shall also affirm such adverse employment actions taken to the extent that they were not the result of reprisal or discrimination.
- 5 Damages, Attorney's Fee and Costs - The panel of the Commission hearing the appeal shall have no authority to order the payment of damages of the grievant's or the County's attorney's fees or costs.
- 6 Recommendations - Regardless of whether the panel of the Commission hearing the appeal grants the individual grievant any relief, such panel may make whatever recommendations to the Board of Supervisors or County Executive it deems appropriate.

#### 17.7 Conduct of Grievance Step Meetings

- 1 Personal face-to-face meetings are required at all steps. The employee and the County management may have a representative present at all steps. If the employee is represented by legal counsel, management likewise has the option of being represented by counsel. The parties to the grievance may by mutual agreement waive any or all intermediate steps or meetings, with the exception of the initial complaint, reducing the complaint to writing and the request for grievability determination.
- Upon written request from the grievant to the Department head, County management shall waive the first and second step grievance meetings in cases of termination, suspension, or demotion. Time spent attending grievance step meetings, Circuit Court hearings or a hearing before a panel of the Civil Service Commission during the grievant's regularly scheduled hours shall be considered work time and the use of personal leave is not required.

- 2 At all steps, appropriate witnesses also may be asked to provide information. Witnesses shall be present only while actually providing testimony.
- 3 In any complaint involving a charge of discrimination, at the request of any party to the grievance, the Director of the Office of Equity Programs, or his/her designee, may attend step meetings.

#### 17.8 Grievant's Expenses

- 1 The grievant must bear any cost involved in employing representation or in preparing or presenting his/her case.
- 2 Whenever possible, grievances will be handled during the regularly scheduled workhours of the parties involved. Civil Service Commission hearings are held during the County's business day whenever possible.
- 3 A panel of the Civil Service Commission has no authority to award legal fees or punitive damages.

#### 17.9 Extension of Time

- 1 The parties to the grievance, by mutual agreement, or the County Executive or his/her designee, upon the request of one of the parties and showing of just cause, may extend any or all of the time periods established in this procedure.

#### 17.10 Compliance with Procedural Requirements of this Procedure

- 1 After the initial filing of a written complaint, failure of either the employee or the respondent to comply with all substantial procedural requirements of the grievance procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the County Executive, or his/her designee.
- 2 The County Executive, or his/her designee, may require a clear written explanation of the basis for just cause extensions or exceptions to any of the substantial procedural requirements. The County Executive, or his/her designee, shall determine all compliance issues.
- 3 Any party aggrieved by the determination of the County Executive or his/her designee on a compliance issue may obtain judicial review of the determination by

filing a petition with the Fairfax County Circuit Court within thirty days of the compliance determination.

17.11 Resolution Prior to Hearing

Any grievance shall be considered settled at the completion of any step if all parties are satisfied. In fact, it is expected that the great majority of grievances will be settled at the first or second step. However, nothing in this procedure should be construed as limiting the employee's right to exhaust the remedies provided by this procedure.

17.12 Hearings

- 1 Hearings shall be conducted as described in Attachment 1 to Chapter 17.
- 2 Hearings shall be open to the public. However, upon request of either party, the hearing officer or the panel of the Commission hearing the appeal, by majority vote, may close a hearing to the public if the testimony about to be presented might impugn the personal reputation of a party or witness to said hearing, or if the right to privacy of such party or witness requires that the hearing be closed. Parties and their representatives shall be allowed to attend the hearing at all times. All witnesses shall be excluded from the hearing, except when testifying, at the request of either party.
- 3 Failure of either party without just cause to comply with all substantial procedural requirements at the hearing shall result in a decision in favor of the other party in accordance with the procedures under Pers. Reg. §17.10.
- 4 The decision of the panel of the Commission hearing the appeal shall be announced after the deliberations by that hearing panel at the conclusion of the hearing and shall be filed in writing by the Chairperson of that hearing panel of the Civil Service Commission or by the Hearing Officer with the parties not later than ten business days after the completion of the hearing. Copies of the decision shall be transmitted to the Human Resources Director, the employee, the employee's department head and the County Executive. The Hearing Officer also shall transmit a copy of the advisory decision to the Executive Director of the Civil Service Commission.
- 5 The majority decision of the panel of the Commission hearing the appeal shall be final and binding. Either party may petition the Fairfax County Circuit Court for an order requiring implementation of a binding decision from the panel of the Commission hearing the appeal. Notwithstanding any other provision of this chapter to the contrary, a final decision of a panel of the Civil Service Commission hearing

the appeal rendered under this procedure which would result in the reinstatement of any employee of the Sheriff's Department, who had been terminated for cause, may be reviewed by the Fairfax County Circuit Court upon the petition of the County. Such review by the Circuit Court shall be limited to the question of whether the decision of the panel of the Civil Service Commission hearing the appeal was consistent with the provisions of law and written policy.

- 6 The decision of the Hearing Officer shall be advisory to the County Executive.
- 7 All decisions in the grievance procedure shall be consistent with the provisions of law and written policy. Any challenge to the relief granted by the decision of a panel of Civil Service Commission hearing the appeal on the grounds of inconsistency with written policy shall be submitted by either party within five (5) workdays to the County Executive, or his/her designee, who is empowered to decide such questions and to direct reconsideration by the Commission where appropriate. If the County Executive or his/her designee has a direct involvement in the grievance the decision shall be made by the Commonwealth's Attorney. Notwithstanding the above, after receipt of a decision of a hearing panel of the Civil Service Commission the County Executive or his/her designee, may on his/her own action, within ten business days, remand to the panel of the Commission that heard the appeal for further consideration a decision in which the relief granted appears to be inconsistent with written policy.

#### 17.13 Severability

Should any article, section, subsection, sentence, clause, or phrase of these regulations, procedures and/or addenda, be held unconstitutional or invalid for any reason, such decision or holding shall have no effect on the validity of the remaining portions hereof. It is the intent of the Board of Supervisors to enact or have enacted each section and portion thereof, ~~individually~~ individually, and each such section shall stand alone, if necessary, and be in force regardless of the determined invalidity of any other section or provision.



## ADDENDUM NUMBER 1

### PROCEDURE FOR GRIEVANCE HEARINGS AND APPEALS

#### Preamble

The panel of the Commission hearing the appeal shall not be bound by Statutory or Common Law rules of pleading or evidence. Hearings will be conducted so as to ascertain the rights of the parties accurately and expeditiously.

#### The Commission

The Commission consists of twelve members who will sit in rotating panels of three to hear grievance appeals. The panel of three members will be selected as follows and will meet as needed to hear and decide those matters determined to be grievable under the grievance procedure.

Panels-Commissioners will be randomly assigned to a schedule as needed to conduct appeal hearings. When a hearing is scheduled, the next three Commissioners on the schedule will be contacted to participate in that hearing. If a Commissioner is unable to participate in a hearing for which he/she has been selected, a assigned hearing, the next available member on the schedule will fill in will be contacted. When the absence of a scheduled panel member cannot be avoided, as no hearing can be conducted by a panel unless all three members designated to hear that appeal are present throughout the hearing. In this situation, the next available member on the schedule will be contacted to serve on the panel. If an appeal is settled or withdrawn prior to the scheduled hearing, the panel members assigned to hear that appeal will be assigned to the next appeal scheduled. Once each Commissioner has been selected from the schedule to serve on a panel, the twelve Commissioners will again be randomly assigned to a new schedule. The schedule and the assigned panel members are considered confidential. The names of the panel members will not be released prior to a scheduled hearing.

The Commission consists of twelve members who will sit in panels of three to hear grievance appeals. Each of the four panels of three members will meet as needed to conduct appeal hearings. The member and chair of each hearing panel hearing the appeals will rotate on a monthly basis according to a set schedule. Three members of the Commission will be designated as "on call" each quarter to fill in when the absence of a scheduled panel member cannot be avoided as no hearing can be conducted by a panel unless all three members designated to hear that appeal are present throughout the hearing. The members designated as "on call" will rotate each quarter according to a set schedule. Each member of the Commission will receive his or her schedule in advance for a three-month period. The first Commissioner who is selected from the schedule and is able to participate in the hearing will serve as chair for that hearing.

Appeals of complaints that have been determined to be grievable shall be heard by a three-member

panel of the Commission (hearing panel or panel) as soon as possible after receipt of the employee's appeal request. Appeals of complaints that have been determined to be non-grievable but entitled to an advisory and non-binding opinion shall be heard by a hearing officer or, by the Executive Director of the Commission when the parties are not represented by counsel, as soon as possible after receipt of the employee's appeal request.

A simple majority of the hearing panel will prevail in any decision made by the panel. The panel hearings will be held during the County's normal business hours continuing until all evidence has been heard and arguments made. Upon the conclusion of the evidence and argument, the hearing panel will recess the hearing while it deliberates in closed session and makes its findings. Upon the conclusion of the panel's deliberations, the panel will come out of closed session and resume the hearing to cast the panel members' individual votes, state the findings of the panel, and conclude the hearing. A written decision prepared by the Hearing Officer and signed by the chair of the panel that heard the appeal will be filed with the Executive Director and distributed to the parties within ten business days of the conclusion of the hearing.

#### The Hearing Officer

The Hearing Officer is an independent attorney retained by the Commission to conduct hearings on grievances which receive advisory decisions and to advise the panel of the Commission hearing the appeal concerning legal and procedural matters in cases in which the parties are represented by counsel. The Hearing Officer does not vote on matters before the panel of the Commission hearing the appeal and participates in deliberations only to the extent of advising the panel of the Commission hearing the appeal concerning legal and procedural matters. The Hearing Officer is responsible for conducting hearings in an orderly and expeditious fashion; and makes rules on evidentiary and procedural questions. The findings are advisory and may be overturned by the panel of the Commission hearing the appeal.

In hearings before the panel of the Commission hearing the appeal in which the parties are not represented by counsel and at all prehearing conferences, the Executive Director of the Commission shall act as hearing officer.

#### A. Prehearing Requirements

- A. Prehearing Conference will be held by the Prehearing Officer prior to a panel hearing or the Hearing Officer. The following matters will be addressed:
  - 1. Definition of the scope of the case, the specific issues to be presented to the panel of the Commission hearing the appeal, and the specific regulations and/or ordinances allegedly violated.
  - 2. Stipulations and agreements which will expedite the hearing are greatly encouraged, including but not limited to (1) stipulations of fact; (2) stipulations as to evidence which will be admitted without objection; (3)

stipulations with respect to testimony which will be admitted in written form.

3. All exhibits and documents will be exchanged at or before the Prehearing Conference. Documents shall be marked for identification and tabbed for ease of reference. Any exhibit not provided at or before the Prehearing Conference will not be admitted as evidence, absent a showing of good cause. If as a result of the Prehearing Conference there is an outstanding request for the production of documents, such request must be complied with not later than ten business days prior to the date of the hearing, or the date set in the Prehearing Conference Report, whichever is sooner. Any objection to the admissibility of a proposed exhibit or document shall be raised no later than the date set at the Prehearing Conference and if not resolved, the issue will be clearly defined by the Prehearing Officer for consideration by the panel of the Commission hearing the appeal or the Hearing Officer.
4. Witness lists will be exchanged at or before the scheduled Prehearing Conference. Any witness not so designated will not be permitted to testify, absent a showing of good cause. If as a result of the Prehearing Conference, there are to be deletions or additions to the witness lists, such changes will be submitted no later than ten business days prior to the date of the hearing, or the Prehearing Conference Report, whichever is sooner. Witness lists shall include the name, address and telephone number of each witness identified and a brief statement of the substance of the expected testimony. If, upon the petition of a party, the County Executive finds that a witness who is listed by a party and who is a County employee has relevant, material, and non-cumulative testimony and that the party seeking to call the witness at the panel hearing has been unable to secure attendance of the witness before the hearing panel despite the party's reasonable and diligent efforts, the County Executive shall order the County employee witness to appear at the hearing to give testimony. Upon such order to appear being issued by the County Executive to a County employee, any County employee so ordered who fails to appear at the hearing may be subject to disciplinary action as provided in Chapter 16.
5. County management shall provide the Commission with copies of the grievance record as part of its exhibits submitted at the Prehearing Conference. A copy of the grievance record shall be provided to the grievant by County management at the same time but in no event any later than ten days prior to the hearing before the panel of the Commission hearing the appeal.
6. The hearing date(s) will be set at the Prehearing Conference in accordance with the time estimates provided by both parties.

B. Continuances

Requests for continuances shall be in writing with a copy to the opposing party and submitted to the panel of the Commission hearing the appeal and/or Hearing Officer at least five workdays prior to the hearing date. The panel of the Commission hearing the appeal and/or Hearing Officer may grant such requests only where good cause is shown.

C. Hearing Procedure

Hearings on appeals will be heard by the panel of the Commission hearing the appeal or the Hearing Officer in accordance with the following order and procedures:

1. Opening statement by the moving party. (The County shall be considered as the moving party in suspensions, demotions, dismissals and Unsatisfactory Service Separations. In all other cases, the employee is considered to be the moving party.)
2. Opening statement by the responding party.
3. Presentation of moving party's case by direct examination.
4. Cross-examination.
5. Questions, if any, by members of the hearing panel or the Hearing Officer.
6. Redirect and recross examination.
7. Presentation of responding party's case by direct examination.
8. Cross-examination.
9. Questions, if any, by members of the hearing panel or the Hearing Officer.
10. Redirect and recross examination.
11. Presentation of rebuttal witnesses, if any, by moving party by direct examination may be presented in documentary form. Rebuttal testimony should ordinarily be included in the party's original presentation. However, rebuttal evidence may be permitted where, in the judgment of the panel of the Commission hearing the appeal or the Hearing Officer, it is necessary to the party to rebut new material, which could not reasonably have been anticipated. The panel of the Commission hearing the appeal or the Hearing Officer will judge the necessity of rebuttal testimony on the basis of a proffer or statement by the party seeking to introduce the rebuttal.
12. Cross-examination, questions, if any, by members of the hearing panel or the Hearing



Officer, redirect and recross examination of rebuttal witnesses. If rebuttal evidence is in documentary form, provision shall be made for response by opposing party.

13. Closing statement by moving party. Proposed findings of fact and conclusions of law may be submitted at the party's option or at the request of the panel of the Commission hearing the appeal or the Hearing Officer.
14. Closing statement by responding party. Proposed findings of fact and conclusions of law may be submitted at the party's option or at the request of the panel of the Commission hearing the appeal or the Hearing Officer.
15. The hearing record may be held open upon request of either party or upon the panel of the Commission hearing the appeal or the Hearing Officer's own motion for the receipt of additional exhibits or documentary evidence which in the opinion of the panel of the Commission hearing the appeal or the Hearing Officer are necessary for a full and complete hearing. Any opposing party shall be allowed a period of ten calendar days after such receipt to respond thereto. If the panel of the Commission hearing the appeal or the Hearing Officer finds that additional oral testimony is necessary, a hearing may be recessed for scheduling of such testimony.
16. The panel of the Commission hearing the appeal may alter the foregoing procedures in a hearing if it deems it necessary to afford the parties a full and equal opportunity to all parties for the presentation of their evidence.

D. Record of Hearing

Recorded tapes will serve as the formal record of grievance hearings. Any party to the appeal may obtain a copy upon payment of reproduction and administrative costs.

E. Posthearing Procedures

1. Reopening Hearing

A hearing may be reopened by the panel of the Commission hearing the appeal or the Hearing Officer at any time prior to final decision on the ground of newly discovered evidence or for other good cause shown and if the panel of the Commission hearing the appeal or the Hearing Office finds that reopening the hearing is required for a full and true disclosure of facts or to assure that the parties receive a fair hearing in accordance with the relevant law and regulations. Petitions for reopening shall set forth the specific newly discovered evidence or other good cause, and will be granted only under exceptional circumstances. If a party files a petition for reopening the hearing, the opposing party shall file a response to said petition within five calendar days of service of the petition.

## 2. Reconsideration

The Hearing Officer or the panel of the Commission hearing the appeal, upon majority vote, may reconsider a Decision prior to the actual implementation of that decision. The panel of the Commission hearing the appeal or the Hearing Officer will only reconsider on the ground of newly discovered evidence or other good cause shown. Petitions for ~~reopening~~ reconsideration shall set forth the specific newly discovered evidence or other good cause, and will be granted only under exceptional circumstances. Petitions for reconsideration must be filed with the panel of the Commission hearing the appeal and or the Hearing Officer within five calendar days of receipt of the decision. The opposing party shall file a response to said petition within five calendar days of service of the petition.

DRAFT

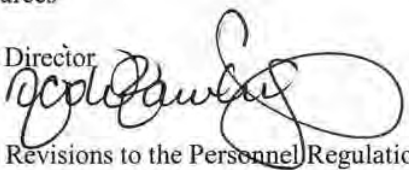


## County of Fairfax, Virginia

### MEMORANDUM

**DATE:** September 3, 2019

**TO:** Catherine Spage, Director  
Department of Human Resources

**FROM:** Nicole Rawlings, Executive Director  
Civil Service Commission 

**SUBJECT:** Public Hearing on Proposed Revisions to the Personnel Regulations - 2, 4, 5, 6, 7, 10, and 17

Following an advertised public hearing held on August 27, 2019, the Civil Service Commission considered the above referenced proposed revisions to the Personnel Regulations. Members of the Commission present at the public hearing included: Jason Fong, Thomas Garnett, John Harris, Herb Kemp, Nancy Rice, John Townes and Deborah Woolen.

Cathy Spage, Director, Department of Human Resources (DHR) gave an overview of the proposed changes for each chapter. During the discussion section, Ms. Spage was assisted by Shelley Scianna, Deputy Director, DHR; Toni Garcia, Employment Division Director, DHR; and Diane Roteman, Employee Relations Division Director, DHR.

No one requested to speak in advance of or during the public hearing. An additional DHR staff member not previously listed attended the public hearing. Approximately seven (7) representatives from employee groups also attended the public hearing.

Ms. Spage explained that DHR routinely requests updates to align the Personnel Regulations with changes in law, policy, classifications or other reasons.

#### Chapter 2

The proposed changes to Chapter 2 update the language for the definition of anniversary date and eligible list and expand the definition of extended family to include stepsister, stepbrother, stepchild and stepparent.

#### Chapter 4

The proposed changes to Chapter 4 remove language referencing Master Police Officer proficiency pay. The newly established Police Officer III level classification, also known as the Master Police Officer, eliminates the need for the current language.

#### Chapter 5

The proposed changes to Chapter 5 update the language from resume to application throughout; swap Section 5.1-2.c and Section 5.1-2.d; update the language in Section 5.1-2.d and include that the best qualified are certified for the position advertised; add language in Section 5.1-2.e to reflect that family members, members of household and extended family relationships, as defined in the proposed updated definition in Chapter 2, are prohibited from participating in the screening or selection process; create

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5.1-2.f with language moved from prior version of 5.1-2.e; add language to 5.2-1, 5.2-2 and 5.2-2.a to include "or designee" following Human Resources Director; add language in Section 5.2-1.a and Section 5.2-1.b codifying the requirement to review and update the class specification and position description prior to submitting a requisition to advertise the position; move language in prior version of 5.2-1.b regarding advertisement of the position prior to vacancy occurring to 5.2-1.c; add the language "supplemental questions" to Section 5.2-3; update the language in Section 5.2-4 to reflect the current manner in which positions are advertised; update and add language to 5.5.4 to codify consequences of noncompliance with the credit check requirements for selected candidates receiving conditional offers of employment in a position of trust; update the language in Section 5.7 regarding the security and retention of applications and related records; update language in Section 5.8 from category/categories to band/bands; delete the language "projected staffing needs" and add "validity" in Section 5.8-1; delete the language "if it is an initial hire opportunity for the veteran" in Section 5.8-2.a and 5.8-5.b; add Section 5.8-4 on Examination Security; switch bullets b and c in newly renumbered Section 5.8-5; update the language in newly renumbered Section 5.8-6. to make consistent with earlier changes in language from category/categories to band/bands; and move language "In the event of a tie in scores, veterans, shall be listed ahead of non-veterans, and veterans with a service connected disability rating shall be listed ahead of other veterans. Within each category all eligible applicants within the category will be considered tied" to newly created Section 5.8-6.b; and correct several typographical and numbering errors throughout.

#### Chapter 6

The proposed changes to Chapter 6 update the language throughout from resume to application and from jobs to positions.

#### Chapter 7

The proposed changes to Chapter 7 update the language throughout from resume to application; add language regarding the establishment of the certification list of the best qualified applicants in the revised Section 7.3-2; update and add language "and position description" and "applicant responses to supplemental questions under revised Section 7.3-2; add "or designee" language to Section 7.4-5; add "authorized" language to Section 7.6-2.c and 7.6-4.c; add bulleted item Section 7.6-2.d with language stating "a reclassification action changes the classification of the position and the incumbent does not meet minimum qualification"; add Section 7.6-4.d with language stating that the employee's pay shall revert to its pre-agreement level if the employee discontinues performance under the underfill agreement or takes a different position with the County than the one authorized under the agreement prior to satisfaction of all of the agreement terms; add language "without the Human Resources Director approval" to Section 7.6-3; add and update the language in Section 7.7-3 to reflect the proposed updated definition of extended family listed in Chapter 2; and add the language "the approval exception request shall be maintained in each employee's respective personnel file" in Section 7.7-5

#### Chapter 10

The proposed changes to Chapter 10 update the language in Sections 10.36-2.f and 10.36-2.g to accurately reflect the correct number of days of administrative leave employees receive for length of service awards, Outstanding Performance Awards and Team Excellence Awards;

#### Chapter 17

The proposed changes to Chapter 17 update the hearing panel selection process to reflect the random assignment of Commissioners to a schedule, and selection for a panel based on availability in order of assignment on the schedule; and correct several typographical errors.

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted and advertised for Chapters 2, 4, 5, 6, 7, 10, and 17. The Commission included in its motion the additional proposed typographical, grammatical and numerical corrections presented as follows:

- Chapter 5.2-1.b “tan” to “an”
- Chapter 5.2-2.c “an” to “a”
- Changing the numbering of for Chapter 5.8-4 Examination and Results to 5.8-5 and Chapter 5.8-5 Eligible List to 5.8-6.

If the Commission can be of further assistance in clarifying these proposed changes, please let me know.

cc: Board of Supervisors  
Commissioners, Civil Service Commission  
Bryan J. Hill, County Executive  
Karen Gibbons, Deputy County Attorney  
Vicki Kammerude, Chair, EAC  
Ron Kuley, President, Local 2068  
Joseph Abbate, President, Fairfax Deputy Sheriff's Union, SEIU  
Brad Carruthers, President, Fraternal Order of Police, Lodge 77  
Sean Corcoran, IUPA, Local 5000  
Tammie Wondong, President, FCEGU, SEIU  
Kirt Cleveland, Fairfax Workers Coalition  
Brenda C. Zwack, Esq., AFSCME Local 3001  
Karen Conchar, SEIU 512

ACTION - 17

Approval of Amendments and Revisions to Action Item 17, Establishment of a Police Civilian Review Panel, Approved by the Fairfax County Board of Supervisors on December 6, 2016

ISSUE:

To approve amendments and revisions to the December 6, 2016 Action Item 17, which established the Police Civilian Review Panel (Panel), to allow for greater transparency when the Panel issues public Review Reports; and, to approve a revision to clarify that the Panel cannot review an employee grievance or complaint made by a Fairfax County employee arising out of an incident or conduct occurring during the course and scope of that employee's employment.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve these amendments and revisions to the December 6, 2016, Action Item which established the Panel.

TIMING:

Board action is requested on September 24, 2019, so that, effective immediately, future public Review Reports issued by the Panel can contain more factual details and, therefore, provide more transparency to the public; and, so that no employee grievance or complaint will be reviewed by the Panel. The Panel will also amend and submit its Bylaws for approval by the Board as required.

BACKGROUND:

The Board approved the establishment of the Panel on December 6, 2016. The Board established the Panel for the purposes of building and maintaining public trust between the Fairfax County Police Department (FCPD), the Board, and the public, and to enhance police legitimacy. To help achieve these purposes, the Panel is required to complete a public written report of each review it conducts. However, the Action Item (c. Timing and Meetings (Recommendation 20)) establishing the Panel contains the following provision:

During the Panel's review of a completed FCPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting

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September 24, 2019

discipline or a Police Department internal administrative investigation case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and

case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia §16.1-301, or any successor provision.

The Panel has discovered that the limitation on disclosing any information in the administrative investigation case file severely limits its ability to provide relevant information in its public written reports. To increase transparency, thereby building and maintaining trust and enhancing police legitimacy, a revision should be made so that the aforementioned provision reads as follows:

~~During the Panel's review of a completed FCPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigation case file,~~  
Each Panel member who is provided the opportunity to review that an officer's personnel record or an investigative case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims, or witnesses, personal information including names, social security number, date of birth, driver's----- license number, agency-issued identification number, student identification number, criminal or employment record shall not be disclosed nor shall copies be provided to the public or disseminated, unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

In addition, portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.



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If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia §16.1-301, or any successor provision.

A second change to the December 6, 2016, Action Item creating the Panel is needed to clarify that the Panel cannot review an employee grievance or complaint made by a Fairfax County employee arising out of the course and scope of employment. Currently,

the Action Item (b. Jurisdiction and Process (Recommendation 19)) describing the Panel's authority to receive a complaint or conduct a review of a completed investigation reads as follows:

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

In addition, the Action Item also requires the Panel to defer their review of a matter if the matter is the subject of any pending criminal proceeding or any pending or anticipated civil proceeding. However, there is no similar explicit restriction on the Panel reviewing a matter that constitutes an employee complaint or grievance. When the Panel received a Complaint from an FCPD employee (an Animal Protection Police Officer) alleging an "abuse of authority" or "serious misconduct" by his supervisor, also a Fairfax County employee (an Animal Protection Police Officer), the FCPD advised that it considered the matter to be a personnel matter.

General Order 301, Internal Investigations, and Fairfax County Personnel Regulation Chapter 17, Grievance Procedure, state in part:

The purpose of the grievance procedure is to provide a fair, detailed process whereby employees may voice complaints concerning issues related to their personal employment experience and/or circumstance within the County. The

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objective is to improve employee-management relations through a prompt and fair method of resolving problems.

Based on these provisions and the grievance process already in place, language prohibiting the Panel from reviewing employment grievances should be added to the December 6, 2016, Action Item 17 (b. Jurisdiction and Process (Recommendation 19)), creating the Panel, so that it reads:

The Panel shall have jurisdiction to review complaints of “abuse of authority” or “serious misconduct” by a Fairfax County Police Officer. The Panel shall define “abuse of authority” and “serious misconduct” in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor. The Panel does not have the authority to hear any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.

FISCAL IMPACT:  
None.

ENCLOSED DOCUMENTS:  
Attachment 1: December 6, 2016, Board item - Action 17

STAFF:  
David M. Rohrer, Deputy County Executive  
Richard Schott, Independent Police Auditor, Office of the Independent Police Auditor

ASSIGNED COUNSEL:  
Julia Judkins, Panel Counsel

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ACTION – 17

Establishment of a Police Civilian Review Panel, as Recommended by the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission

ISSUE:

Board of Supervisors approval of the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish a Police Civilian Review Panel (“the Panel”), reporting to the Board of Supervisors (“Board”), for the purpose of building and maintaining public trust between the Police Department, the Board of the Supervisors and the public, and police legitimacy. The Civilian Review Panel will request and review completed Police Department internal administrative investigations of civilian complaints concerning allegations of abuse of authority and serious misconduct.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors establish a Civilian Review Panel based on recommendations of the Ad Hoc Police Practices Review Commission, as modified.

TIMING:

Board action is requested on December 6, 2016, so the Board can move forward with establishment and implementation.

BACKGROUND:

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Board on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes to help the Board and the Police Department achieve the goals of maintaining a safe community, ensuring a culture of public trust, providing for the fair and timely resolution of police-involved incidents and information release, and reviewing Crisis Intervention Training (CIT) and police responses for cases involving mental health.

On October 20, 2015, the Ad Hoc Police Practices Review Commission submitted its final report and recommendations to the Board of Supervisors. On November 17, 2015, the Board of Supervisors approved a process for assigning, prioritizing, reviewing, tracking, and considering the 202 Commission recommendations.

On November 17, 2015, the Board also directed an annual report and a final summary report on the status and implementation of all of the Commission's recommendations. The first annual report shall be presented to the Board by December 13, 2016.

This Action Item is specifically related to the implementation and furtherance of the recommendations of the Independent Oversight and Investigations Subcommittee for the establishment and scope of a police Civilian Review Panel, consistent with the presentations and discussion at the October 25, 2016, Public Safety Committee meeting and other meetings and presentations.

Fundamental to the recommendations of the Independent Oversight and Investigations Subcommittee is that the Board adopt recommended changes, consistent with the Code of the Commonwealth of Virginia and County policies, that will help the County achieve its goals of maintaining a safe community, enhancing a culture of public trust, and ensuring that policies provide for the fair and timely resolution of police-involved incidents. These recommendations are aimed at building and maintaining public trust in the Police Department and its officers by the establishment of a Police Civilian Review Panel, a function in line with the recommendations of the Final Report of the President's Task Force on 21st Century Policing, May 2015. Recommendation 2.8 of that report states, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

#### Commission Recommendation

In its final report, the Commission's Independent Oversight and Investigations Subcommittee made 24 overall recommendations. Seven of those recommendations, numbers 18 – 24 as in the Commission report, were specific to the establishment of the Police Civilian Review Panel and its scope and are listed below as presented in the report:

- 18) Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct.
  - a) Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
  - b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
  - c) Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or

criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).

d) The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.

19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

a) "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.

b) The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.

c) Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.

a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.

b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

- 21) The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review.
  - a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
- 22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.
- 23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.
- 24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.
- 25) The Board has the right to review the workload of the Citizen Review Panel and make any necessary adjustments.

These recommendations are also listed on the Ad Hoc Police Practices Review commission Report Recommendations Assignment and Tracking Spreadsheet (Attachment 1) as IOV&I (Independent Oversight & Investigations) 18 through 24, inclusive.

Recommended Action by the Board of Supervisors

Based on a review of the Commission recommendations, Board discussion, staff review, and legal review, it is recommended that the Board establish a Civilian Review Panel, based on the recommendations of the Ad Hoc Commission, with modifications as outlined in this Action Item.

a. Composition of the Panel (Recommendation 18)

Panel members shall be appointed by the Board of Supervisors for terms of three (3) years. Panel members will serve at the pleasure of the Board. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel, with the exception of the first Chair, who shall be appointed by the Board of Supervisors.

The Panel shall be composed of nine (9) members, and each should be a resident residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.

The Board of Supervisors shall seek to create an independent and fair body for the Panel. The Board of Supervisors shall consider the following factors, among others it may choose, in appointing members of the Panel: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current employee of Fairfax County, a current or former member of the Fairfax County Police Department or the Fairfax County Sheriff's Office, have a relative (i.e., an immediate or extended family member) who is a member of FCPD or FCSO, hold public office, or be a candidate for public office. At least one (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD or FSO).

In order to assist it in appointing a Panel representing the full diversity of Fairfax County, the Board of Supervisors shall invite organizations and individuals to nominate candidates for the Panel to the Board. The Board may ask business, civic, civil rights, legal, and other organizations to nominate candidates. The Board shall also accept into the pool of candidates self-nominated individuals.

The Board of Supervisors shall select Panel members from those nominated by considering those factors set forth in this Action Item, and any other factors that the Board deems appropriate.

The Office of the Police Auditor shall provide staff support to the Panel. Panel members shall complete recommended trainings to be determined.

b. Jurisdiction and Process (Recommendation 19)

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

- 1) "Abuse of authority" and "serious misconduct" shall be defined by the Panel in its bylaws and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
- 2) The Panel shall refer any Complaint within its scope that it receives to the FCPD for review and handling, including any necessary investigation.
- 3) Absent good cause, the Panel shall not consider any Complaint filed more than one (1) year after the date of the incident that is the subject of the Complaint, nor regarding any incident that occurred prior to the passage of this Action Item establishing the Panel. The Panel shall not consider any Request for Review of any investigation of any incident that occurred prior to the passage of this Action Item.
- 4) Any Request for Review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

All Complaints to and Requests for Review by the Panel of a completed FCPD investigation shall be in writing. Requests for Review shall state the specific reason(s) for the request. Upon receiving a Complaint or Request for Review, the Panel shall determine if the Complaint or Request concerns matters which are the subject of pending criminal proceedings or pending or anticipated civil proceedings. If it does, then the Panel shall defer the matter pending resolution of the criminal or civil proceedings. The Panel shall notify the Complainant and the Board of Supervisors, in writing, of any such deferrals. The Panel may request the assistance of Counsel, the Auditor, or the Chief of Police, or the County Attorney in making its determination. The Panel shall track any deferred matter and notify the complainant and the Board once the criminal or civil proceedings are closed and the request for review may proceed.

For any Complaint filed with the Panel and sent to the FCPD for investigation, the FCPD shall provide a report back to the Panel within sixty (60) days with respect to its review and handling of the complaint. The Panel shall provide an extension if requested by the Chief of Police in order to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice also provided to the complainant and the Board of Supervisors. Absent good cause provided by the Police Department for production of the report within a reasonable time period, the Panel may report any delay in the handling of the matter to the Board of Supervisors. The Board may direct the Chief of Police to ensure completion of the investigation, or to report on the reasons for delay and an expected completion date.



If the complainant is not satisfied with the Police Department's investigation or findings for any allegation made within the scope of the Panel, the complainant may then request a Panel review of the completed Police Department internal administrative investigation.

c. Timing and Meetings (Recommendation 20)

Absent good cause, for any request for review, within forty-five (45) days of receipt of the completed police department internal administrative investigation, the Panel may, at its discretion, schedule a public meeting to review the FCPD investigation. The Panel shall send notification of the date and time of the meeting to Panel members, Police Department Internal Affairs Office, the County Attorney's Office, and the complainant. The meeting shall be noticed on the County's Public Meetings Calendar and otherwise advertised as appropriate.

At any meeting held to review an investigation, the Panel shall not take testimony or receive factual evidence of the underlying matter that is the subject of the investigation. However, the complainant shall have the opportunity to state his or her reason(s) for the request for review, and the Panel may ask questions of the complainant as to those reasons. Upon completion of the complainant's statement, the Police Department representative(s) knowledgeable of the investigation shall review and answer questions from the Panel about its investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not, subject to the following limitations:

1. The statement of any police officer required by the Department to give a statement 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 the purpose of its review. The Police Department representative(s) presenting information to the Panel may publicly state only that the officer admitted or denied the allegation, unless the officer consents to the public release of the entire statement.
2. The Panel may convene in private to deliberate; however, any deliberations by the Panel which do not address the alleged improper conduct or performance of duties of an officer shall be conducted in an open public meeting. Neither the police department representative, nor any Panel member shall reveal the identity of any victim of sexual assault, unless authorized to do so by the victim, or of any juvenile.

The County Executive or his/her designee shall require the attendance of any County employee, other than the involved officer(s), whose appearance is requested by the Panel unless such required attendance violates any statutory or constitutional right of the employee. The County Executive shall also require the submission of any relevant documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived. At the Panel's discretion, further investigation by the Police Department may be requested and the Police Department shall conduct such further investigation and provide a supplemental public report to the Panel with respect to the further investigation.

During the Panel's review of a completed FDPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigative case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia § 16.1-301, or any successor provision.

Panel review meetings shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition schedule.

The Panel shall draft Bylaws to govern more specifically its functions. Such bylaws, and any amendments thereto, must be approved by the Board of Supervisors before taking effect.

d. Panel findings (Recommendation 21)

The Panel review of the investigation shall be completed and a public written report issued within 60 days of the filing of a request for review unless good cause exists for an extension, such as a delay due to a pending criminal or internal administrative investigation or the unavailability of a key witness. A delay and the cause shall be reported to the Board of Supervisors.

Upon completion of its review, the Panel, in its findings, may:

1. Concur with the findings and determination of the Police Department investigation.
2. Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the Police Department and recommend further review and consideration by the Chief of Police.
3. Advise the Board of Supervisors that in its judgment the investigation is incomplete and recommend additional investigation.
4. Conclude that the complaint is not appropriate for review by the Panel.

Upon a finding by the Panel under provisions 2 and 3, the Board may direct the Chief of Police to take further action as it deems appropriate.

e. Panel reports (Recommendation 22)

The Panel shall issue an annual written report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors, Auditor, and the Chief of Police, including any recommendations for revisions to FCPD policies, training, and practices that the Panel concludes are needed. These annual reports shall be delivered to the Board through the Auditor and the Chair of the Board's Public Safety Committee, and then released to the public.

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The Panel shall have the authority to conduct public meetings on issues within its jurisdiction and on law enforcement policies and practices to assist it in making recommendations for policy and practice changes to the Chief of Police and the Board of Supervisors. The Panel may meet periodically with the Independent Police Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide its view to the Board of Supervisors and the Chief of Police as to policy and practice changes that may be warranted.

The Board may conduct a review of the Civilian Review Panel at any time in the future, but to ensure a timely assessment of this important measure and to make any desired or needed procedural or other changes one shall be conducted within six months of receipt of the Panel's first annual report. This would allow sufficient time to select and train members, draft and approve bylaws, conduct some reviews, and present the first annual report.

FISCAL IMPACT:

The Civilian Review Panel will be supported primarily by staff of the Office of Independent Police Auditor. Other associated costs will primarily include as of yet undetermined Police Department and County Attorney's Office, independent counsel, staff time and any required materials and supplies for the Panel.

ENCLOSED:

Attachment 1: Ad Hoc Police Practices Review Commission Report Recommendations Assignment and Tracking Spreadsheet

STAFF:

David M. Rohrer, Deputy County Executive  
Colonel Edwin C. Roessler Jr., Chief of Police

AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
NUMBER (original or assigned)	TOPIC	REPORT PAGE	RECOMMENDATION NARRATIVE	LEAD AGENCY / ENTITY	OTHER AGENCIES / STAKEHOLDERS	LINK PERF REPORT / CALEA	POTENTIAL LEGAL REVIEW / LEGISLATIVE CHANGE REQUIRED	APPROVING AUTHORITY (i.e., BOS, PD, CSB, etc.)
<b>COMMUNICATIONS SUBCOMMITTEE</b>								
COMM - 1	Timely Info Disclosure	46	Provide accurate, timely and actionable information (good or bad) using redundant forms of communication.	Police Dept. (PD)	Office of Public Affairs (OPA)	PERF #70		Police Dept. (PD)
COMM - 2	Timely Info Disclosure	46	Adopt a "predisposition to disclose" approach with public records presumed to be public and exceptions strictly and narrowly construed.	PD	Co. Atty's Office, OPA	PERF #70		Board of Supervisors (BOS)
COMM - 3	Timely Info Disclosure	46	Share and regularly update details of all officer-involved shootings in multiple ways; disclose not only facts, but also procedures and timing.	PD	Co. Atty's Office, OPA	PERF #70		BOS
COMM - 3a	Timely Info Disclosure	46	Provide the name of the officer(s) as soon as possible but preferably within a week. If a decision is made not to release the name within a week, publicly share specific information that illustrates the reason the name is being withheld.	PD	Co. Atty's Office, Commonwealth's Attorney's Office (CWA)			PD
COMM - 3b	Timely Info Disclosure	47	In cases where a suspect is deceased as a result of an officer-involved shooting, make available immediately upon FOIA request all body-camera, in-dash camera or audio recordings of responding officers to an incident.	PD	Co. Atty's Office, CWA, OPA, Dept. of Information Technology (DIT)		Yes	BOS
COMM - 3c	Timely Info Disclosure	47	In officer-involved shootings where a suspect is shot but not deceased, provide a citizens' committee (a communications advisory committee appointed by either the Board of Supervisors or the Chief of Police to carry out this function) access to the recordings for a recommendation on release which should balance public and private interest. This committee's recommendation would be submitted to the Chief of Police who would factor it into a final decision.	PD	Co. Atty's Office, CWA, OPA		Yes	BOS
COMM - 3d	Timely Info Disclosure	47	All digital recordings in officer-involved shooting investigations should be carefully preserved, and investigations should end with the public release of all digital recordings within 6 months of the incident.	PD	Co. Atty's Office, CWA, OPA		Yes	BOS
COMM - 4	Timely Info Disclosure	47	Annually report on the demographics of the subjects in all use-of-force incidents including race, gender, age, whether mental health status was a factor, previous involvement with FCPD and any other data.	PD	OPA, CSB	PERF #70	Yes	PD
COMM - 5	Timely Info Disclosure	47	Devote more effort to sharing day-to-day information of police activity with the public. Facilitate unfettered access to blotter-type information, to include a list of every incident and call with the basic who/what/when/where/how information.	PD	OPA, DIT	PERF #70		PD
COMM - 6	Timely Info Disclosure	47	Include incident based reporting (IBR) categories of statistical crime information broken down by district stations and provided quarterly in accessible, comprehensive online reports. Provide quarterly information by district for all use-of-force and officer involved shootings, CIT calls for service, traffic and pedestrian accidents.	PD	OPA, DIT		Yes	PD
COMM - 7	Community Engagement	47	Embrace and practice increased, proactive community engagement.	PD	OPA			PD
COMM - 7a	Community Engagement	47	Communicate with key community leaders as soon as bad news breaks.	PD	OPA			PD
COMM - 7b	Community Engagement	47	Hold community meetings early and often.	PD	OPA			PD
COMM - 7c	Community Engagement	48	Continue cross-district command meetings to increase situational awareness, spot trends and provide a centralized forum to identify and coordinate responses to emerging community issues.	PD				PD
COMM - 7d	Community Engagement	48	Create a "Community Engagement Team" within FCPD to respond to community concerns and manage programs that create community trust and engagement. The team members should be fluent in the language and knowledgeable of the customs of the particular community they serve, and the team should reflect the diversity of Fairfax County in order to best serve as liaisons between the community and FCPD.	PD	DMB			BOS
COMM - 8	Community Engagement	48	Continue supporting Citizen Advisory Committees (CAC); Chief's Citizens Advisory Council; and Citizen's Police Academy (CPA) classes.	PD	Citizen Advisory Committees (CAC), Citizens Police Academy (CPA), OPA			PD
COMM - 8a	Community Engagement	48	Expand promotion of these valuable public forums.	PD	CACs, OPA			PD
COMM - 8b	Community Engagement	48	Improve and expand CAC and Chief's Citizens Advisory Council succession planning and online information.	PD	CACs, OPA			PD
COMM - 8c	Community Engagement	48	Increase the meeting frequency of the Chief's Citizens Advisory Council from four meetings per year to 10 monthly meetings to be in line with the 10 monthly CAC meetings.	PD	CACs			PD

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COMM - 8d	Community Engagement	48	The structure of the eight CACs and the Chief's Citizens Advisory Council should facilitate a two-way flow of information about police services.	PD	CACs			PD
COMM - 8e	Community Engagement	48	Expand the CPA program by offering a compact, three-hour version in addition to the current 10-session program and include in the CPA training the best practices and reports discussed at meetings of the Ad Hoc Police Practices Review Commission and subcommittee meetings.	PD	CPA			PD
COMM - 8f	Community Engagement	48	The CPA should be designed and structured to be understood by all in the diverse communities of Fairfax County.	PD	OPA			PD
COMM - 9	Policies, Procedures & Personnel	48	Hire a civilian public information officer (a professional communicator knowledgeable of best communication practices and experienced in the practice and ethics of media and journalism) to lead the FCPD public information office, and have that position and function report directly to the Police Chief.	PD	Dept. of Human Resources (DHR), OPA	PERF #70		PD
COMM - 10	Policies, Procedures & Personnel	48	Fund and employ 24/7 PIO staff in the central Public Information Office with additional PIO staff assigned to each district station.	PD	DMB	PERF #70		BOS
COMM - 11	Policies, Procedures & Personnel	48	The Chief of Police should be the official spokesperson for officer-involved shootings.	PD	Co. Atty's Office		Yes	PD
COMM - 12	Policies, Procedures & Personnel	48	Develop a policy statement regarding FCPD PIO release of information for critical events to include the relationship with the Office of Public Affairs (OPA) and the process for a hand-off to OPA in certain situations.	PD	OPA, Co. Atty's Office	PERF #70		PD
COMM - 13	Policies, Procedures & Personnel	49	FCPD should prioritize realignment of resources to ensure more transparency, and become the trusted and valued source of information for Fairfax County.	PD				PD
COMM-14	Policies, Procedures & Personnel	49	FCPD should develop a continuous process of information declassification, to ensure proactive information release for cases that are no longer active.	PD	Co. Atty's Office		Yes	PD
COMM - 15	Policies, Procedures & Personnel	49	Current FCPD policies overemphasize the media, FCPD should use its own platforms and tools to share information directly with the public. Policies should reflect the communications paradigm by promoting more community engagement and direct information dissemination to the community.	PD	OPA			PD
COMM - 16	Policies, Procedures & Personnel	49	Shorten the current 6-20 month timeframe to internally investigate and close officer-involved shooting cases; throughout the investigation be responsive to questions and concerns from the public, news media, and elected officials. <u>It is recommended the Board of Supervisors take an active approach throughout the investigative stage by periodically requesting and receiving updates on such incidents in a public forum.</u>	PD	Co. Atty's Office, CWA	PERF #70	Yes	BOS
COMM - 17	Policies, Procedures & Personnel	49	Update policies (with the assistance of FCPD Community Engagement Team members) and mandate usage of plain language that is culturally appropriate for the diverse communities in Fairfax County to eradicate any perceived biases.	PD	OPA			PD
COMM - 18	F.O.I.A.	49	The Board of Supervisors should publicly adopt a resolution (and forward it to the County's delegation in the General Assembly) to revisit FOIA laws with an eye toward expanding instead of limiting the public release of information related to police-involved shootings and other police practices and procedures.	BOS	PD, Co. Atty's Office, CWA, OPA		Yes	BOS
COMM - 19	F.O.I.A.	49	The County Executive should establish a countywide FOIA policy and procedure through issuance of a new procedural memorandum that would replace former County Executive Griffin's memo regarding FOIA compliance, which currently guides county staff. The new policy should encourage transparency and accountability by establishing a culture of disclosure. It should give guidance to all county staff custodians of public records to lean automatically toward releasing all public records upon request, changing the current practice of automatically withholding all exempt records.	Co. Atty's Office	County Executive's Office, OPA		Yes	Co. Exec.
COMM - 20	F.O.I.A.	49	Where possible, release police reports with redactions rather than creating a summary document.	PD	Co. Atty's Office, CWA, OPA		Yes	PD

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COMM - 21	F.O.I.A.	50	Develop FCPD administrative guidelines for FOIA, even in the absence of FOIA reform at the state level.	PD	Co. Atty's Office, OPA		Yes	PD
COMM - 22	F.O.I.A.	50	Move function and staff for responding to FOIA requests out of Internal Affairs and into the FCPD Public Information Office.	PD	Co. Atty's Office			PD
COMM - 23	F.O.I.A.	50	Cease the blanket approach to FOIA requests; when records are withheld, an explanation should be provided without merely claiming exemption.	PD	Co. Atty's Office		Yes	PD
COMM - 24	Transparency	50	With goal of becoming a transparent and highly accountable police department, the Department should make proactive statements to the community it serves, communicating with the public on all aspects of police procedure, policy, and actions, particularly in an officer-involved shooting or other high-profile incident involving use of force. The use of numerous communications channels should be utilized to explain what happened, what is known at the time, what is revealed over time, and lessons learned and perspective after the fact.	PD	Co. Atty's Office, OPA,			PD
COMM - 25	Transparency	50	Fairfax County should adopt the type of progressive release of information practices and policies that govern most states as FCPD's current practices on releasing information is not aligned with agencies located <u>outside</u> the Commonwealth of Virginia.	PD	Co. Atty's Office, all County agencies		Yes	BOS
COMM - 26	Transparency	50	Create and utilize written standards and criteria for the day-to-day release of information from FCPD PIO to standardize information flow/release, and to enhance professional communications, transparency, and accountability.	PD	Co. Atty's Office, OPA			PD
COMM - 27	Transparency	50	Get "buy-in" and cooperation from all levels of the FCPD to improve communications and expand information release.	PD				PD
COMM - 28	Transparency	50-51	Basic requests for information should be addressed in a timely manner by openly providing routine information about incidents, activities, calls, investigations (internal and external) with unfettered public access.	PD		PERF #70		PD
COMM - 29	Transparency	51	Endorse and implement the recommendations of the final report of The President's Task Force on 21st Century Policing, dated May 2015, that are related to communications, which call for such actions as making all Department policies available for public review, clearly stating what types of information will be released, when and in what situation after serious incidents; communicating swiftly, openly and neutrally while complying with legal requirements related to confidentiality.	PD	OPA			PD
COMM - 30	Transparency	51	Create a change management process to change the FCPD culture and facilitate the successful implementation of the improved policies.	PD	DHR	PERF #71		PD
COMM - 31	Transparency	51	Endorse and implement communications-related recommendations contained in the report of the U.S. Conference of Mayors' Working Group of Mayors and Police Chiefs, "Strengthening Police-Community Relations in America's Cities."	PD	OPA			PD
COMM - 32	Transparency	51	Endorse and implement communications-related recommendations from PERF's use-of-force policy and practice review of FCPD.	PD	OPA	PERF #70		PD
COMM - 33	Open Data	51	Develop an open data policy to improve transparency; this will reduce the cost of responding to FOIA requests, since data and reports will be published online making FCPD more efficient and serving community needs more effectively.	PD	Co. Atty's Office, OPA, DIT		Yes	PD
COMM - 34	Open Data	51	Provide more specificity and detail in crime stats and information released by the district stations.	PD	Co. Atty's Office, DIT	PERF #70		PD
COMM - 35	Open Data	51	Make all department policies and procedures available for public review online, updating them as needed.	PD	Co. Atty's Office	PERF #70	Yes	PD
COMM - 36	Moving Forward	52	The Board of Supervisors should publicly set dates for community forums to revisit the recommendations of the Ad Hoc Police Practices Review Commission and the progress made toward their implementation. These reviews should take place in April 2016, October 2016, April 2017 and annually thereafter. Other methods should also be used to update the public, possibly an online 'report card' that is continually updated.	Dep. Co. Exec. for Public Safety	PD, CSB, Sheriff's Office (SO), CWA, OPA			BOS

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COMM - 37	Moving Forward	52	Recommends that this subcommittee continue its service beyond presentation of its final report, in order to meet with the PERF contractors conducting an independent review of the county's communications practices and review and comment on the PERF report and recommendations when they are finally submitted.	Dep. Co. Exec. for Public Safety				Dep. Co. Exec. for Public Safety
COMM - 38	Moving Forward	52	Anticipating a proposal for an independent citizen oversight group emerging from the Investigations and Oversight Subcommittee, it is recommended that any group established be mandated to provide robust communications in a transparent process that keeps the community informed and ensures a culture of public trust.	Dep. Co. Exec. for Public Safety	PD, OPA		Yes	BOS
<b>RECRUITMENT, DIVERSITY AND VETTING SUBCOMMITTEE</b>								
RD&V - 1	Recruitment	58	Provide a referral incentive for employees who are successful in recruiting personnel into the Department.	PD	DHR, Co. Atty's Office, DMB			BOS
RD&V - 2	Recruitment	58	Develop and implement a marketing plan for all programs and vacancies to include e-mail blasts to interfaith organizations and School Career Centers.	PD	OPA, NCS/Community Interfaith Coordination, Faith Communities in Action (FCIA), Fairfax County Public Schools (FCPS)			PD
RD&V - 3	Recruitment	58	Expand the Explorer and Cadet programs to include a diverse pool of participants.	PD	DHR, FCPS			PD
RD&V - 4	Recruitment	58	Enter into a Recruitment Agreement with all Cadets to include reimbursement of educational expenses for breach of contract.	PD	Co. Atty's Office, DHR, DMB		Yes	BOS
RD&V - 5	Recruitment	58	Collaborate and build recruitment-oriented partnerships with key segments of the Fairfax County community to further diversify both the applicant pool and workforce to more closely reflect the community.	PD	DHR, FCPS, Faith Communities in Action (FCIA)			PD
RD&V - 6	Recruitment	58	Identify ways to reduce the time from application to hiring (includes staffing resources).	PD	DHR, DMB			BOS
RD&V - 7	Recruitment	58	Formalize the selection process by putting certain standards and processes into writing.	PD	DHR, Co. Atty's Office	PERF #1	Yes	PD
RD&V - 8	Recruitment	58	Ensure written directives are kept up to date.	PD		PERF #2		PD
RD&V - 9	Recruitment	58	Create a diverse Selection Review Committee that includes community leaders.	PD	DHR, Co. Atty's Office	PERF #3	Yes	PD
RD&V - 10	Diversity	59	Establish a diversity goal for each commander, making them responsible for enhancing the diversity within the department. The progress toward achieving that goal should be reflected in the performance management system.	PD	DHR			PD
RD&V - 11	Diversity	59	Educate and train recruiting and selecting officers about implicit bias, which the current neuroscience research shows can occur even in people with no-prejudiced attitudes, and the impact on both individual and organizational selection decision.	PD	DHR			PD
RD&V - 12	Vetting	61	Increase resources in order to reduce length of time it takes to conduct background investigations and polygraphs.	PD	DMB			BOS

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RD&V - 13	Vetting	61	Formalize the officer selection process.	PD	DHR	PERF #1		PD
RD&V - 14	Retention	62	The Board of Supervisors should continue to work with the Department's Pay and Benefits Committee to ensure competitive salaries and benefits to secure and maintain a diverse workforce.	PD	DHR, DMB			BOS
<b>MENTAL HEALTH AND CIT SUBCOMMITTEE</b>								
MH-CIT - 1	FCPD	81	Establish Memphis Model/Virginia CIT Essential Elements. FCPD should immediately establish the Memphis Model for Crisis Intervention Team training as adopted by the Virginia Essential Elements of CIT, ensuring each squad has a CIT trained officer and creating a specialty squad of selected CIT officers to work closely with CSB and Mobile Crisis units.	PD	CSB	PERF #58, 67, 68	Yes	PD & BOS
MH-CIT - 2	FCPD	82	Attract the right officers for CIT, FCPD should create incentives, such as flexible shift hours, to make serving on a Crisis Intervention Team attractive to potential volunteers	PD	DMB, CSB			PD
MH-CIT - 3	FCPD	82	The subcommittee recommends that the FCPD create a uniform pin to identify Crisis Intervention Team Trained officers to the public.	PD				PD
MH-CIT - 4	FCPD	82	Make CIT a requirement for selected command assignments. The subcommittee recommends that FCPD leadership consider CIT training and experience in selections to certain command positions, for instance in the patrol division.	PD	DHR	PERF #57		PD
MH-CIT - 5	FCPD	82	Form teams. The subcommittee recommends that officers detailed to Crisis Intervention Teams maintain their regular patrol duties, but also form partnerships with mental health workers and community partners trained and experienced in dealing with residents living with mental illness. These teams would be available to be dispatched to identified mental health calls.	PD	CSB	PERF #67		PD & Community Services Board (CSB)
MH-CIT - 6	FCPD	82	Be proactive. The subcommittee recommends that Crisis Intervention Teams be empowered to work proactively to help mentally ill persons obtain treatment and take other steps to manage their illness, diverting them from the criminal justice system and the courts.	PD	CSB, Courts, CWA			PD
MH-CIT - 7	FCPD	83	Integrate dispatch personnel. The subcommittee recommends 100% of all dispatchers continue to receive at least eight hours of CIT training.	Dept. of Public Safety Communications (DPSC)	PD, CSB	PERF #69		Dept. of Public Safety Communications (DPSC)
MH-CIT - 8	FCSO & CSB	84	Implement "Stepping Up." The Board of Supervisors, the CSB, the Judiciary, State legislators, and the Sheriff's Office should collaborate to implement a community-wide system of care overhaul using the BOS-endorsed, national initiative known as "Stepping Up."	CSB	Multiple			BOS
MH-CIT - 9	FCSO & CSB	84	Fully implement Diversion First. The subcommittee recommends Fairfax County develop a mechanism for oversight of systems of mental health/substance use/justice services — a diversion-oriented system of care collaborative stakeholder group now known as "Diversion First."	CSB	PD, SO		Yes	BOS
MH-CIT - 10	FCSO & CSB	84	Identify and collect pertinent data to establish metrics for success. The subcommittee strongly emphasizes the importance of data collection and its intimate linkage to measuring the progress and impact of CIT programs.	CSB	PD, SO, DIT			CSB
MH-CIT - 11	FCSO & CSB	85	Increase language and cultural competency. The subcommittee recommends that Fairfax County increase services to special populations to include cultural competency to better serve non-English-speaking justice-involved individuals, as de-escalation and diversion require the ability to effectively communicate with persons.	CSB	PD, SO			BOS



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MH-CIT - 12	FCSO & CSB	85	Provide CIT Training to jail and custodial personnel. The subcommittee recommends that the Sheriff's Office provide the forty-hour Crisis Intervention Team training course to deputies detailed to courtroom security and deputies working inside the Adult Detention Center.	SO	CSB, PD			SO
MH-CIT - 13	FCSO & CSB	85	Establish strategically located CIT assessment sites. The subcommittee recommends that Fairfax County establish strategically located 24-hour assessment sites staffed and operated by CSB, FCPD, and the Sheriff's Office collaboratively.	CSB	PD, SO, DMB			BOS
MH-CIT - 14	FCSO & CSB	86	Redeploy CSB to provide services when they are needed most. The subcommittee recommends that the CSB should redeploy both forensic and community-based teams to expand capacity to provide mental health services at each point in the criminal/community mental health continuum rather than incarcerate individuals.	CSB	PD, SO			CSB
MH-CIT - 15	FCSO & CSB	86	Expand Mobile Crisis Unit (MCU) program to strategic locations in Fairfax County. MCU is an emergency mental health program of the Fairfax-Falls Church Community Services Board that provides on-scene evaluation, treatment, and crisis intervention in the community. The recommendation is to have MCUs by Jan. 1, 2017.	CSB				BOS
MH-CIT - 16	FCSO & CSB	87	CSB and Sheriff's Office to consider increasing behavioral health clinician staff hour availability inside the Adult Detention Center (ADC), to include not only on-site, but through technology.	CSB	SO, DIT			CSB & Sheriff's Office (SO)
MH-CIT - 17	FCSO & CSB	87	Increase release planning to support successful reentry. The subcommittee recommends that more CSB staff resources be devoted to release planning inside the ADC. It is also recommended that Dept. of Family Services (DFS) make available resources to initiate benefit eligibility determination.	CSB	SO, Dept. of Family Services (DFS)			CSB
MH-CIT - 18	FCSO & CSB	87	Review pharmacy policies inside the ADC. The subcommittee recommends that the CSB and ADC medical staff review policies, especially for psychotropic medications, to ensure that inmates receive the most effective treatment relative to their conditions and medical histories by January 1, 2016.	SO	CSB		Yes	CSB & SO
MH-CIT - 19	Judiciary & Mental Health Dockets	88	Implement Mental Health dockets. The subcommittee recommends that Fairfax County work with judges and the Clerk of the Court to establish a Mental Health Docket for both adults and juveniles by January 1, 2016.	Dep. Co. Exec. for Public Safety (preliminary)	Courts, Clerk of the Court, CWA, CSB, PD, SO		Yes	BOS & Courts
MH-CIT - 20	Judiciary & Mental Health Dockets	88	Encourage Mental Health Awareness training for the judiciary. The subcommittee recommends that appropriate mental health awareness training be developed and deployed for judges, magistrates, probation and parole officers, and other officials who may come into contact with people who are living with mental illness by January 1, 2016.	CSB	Courts, Magistrates, Probation & Parole, Others			CSB
MH-CIT - 21	VA CIT Elements	89	Establish standing law enforcement Mental Health Units staffed by full-time police officers and deputies tasked with responding to individuals experiencing a mental health crisis.	PD & SO	CSB, DMB, Co. Atty's Office			BOS
MH-CIT - 22	VA CIT Elements	89	Institute plainclothes Mental Health Unit officers. Mental Health Unit officers in Bexar County wear civilian clothing and use unmarked vehicles during the course of their duties to avoid unintentionally escalating a mental health crisis.	PD & SO	PD, CSB			PD & SO
MH-CIT - 23	VA CIT Elements	89	Re-focus and develop a full range of mental health and disability awareness training at the Criminal Justice Academy. CIT is important, but other trainings are also vital.	PD	PD, CSB			PD & SO
MH-CIT - 24	VA CIT Elements	90	Clarify mental health response protocols for first responders. The Fairfax County Fire and Rescue responds to more than 50,000 calls annually, and must transport some individuals without a medical condition to emergency rooms rather than a mental health facility as this is required by the Code of Virginia. Subcommittee recommends the Board of Supervisors consider supporting a bill that would allow first responders to transport individuals whose primary condition is a mental health issue directly to a mental health facility once medically cleared by an EMT.	Fire and Rescue Dept. (FRD)	Govt. Relations, CSB, Co. Atty's Office		Yes	BOS

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MH-CIT - 25	VA CIT Elements	90	Involve peers whenever and wherever possible. According to Virginia's Essential Elements program guide for CIT, dynamic community involvement should reflect the composition of the local community, with particular emphasis on the inclusion of persons with mental illness.	CSB	PD, SO	PERF #67		CSB
MH-CIT - 26	Public Outreach	91	Develop a public outreach program. The subcommittee recommends that the FCPD work with the CSB to develop materials for delivery to the public, to increase awareness of steps that may be taken prior to the instance of a potential interaction.	CSB	PD, SO, OPA			CSB
<b>USE OF FORCE SUBCOMMITTEE</b>								
UOF - 1	Guiding Philosophy	107	Ensure that FCPD's philosophy, policies and orders promote treating persons respectfully and are protective of their dignity; maintain an appropriate balance between an officer's role as a guardian/warrior or peacemaker/fighter; reinforce a reverence for the sanctity of human life.	PD		PERF #4, 5		PD
UOF - 2a	Guiding Philosophy	107	Adopt policies, programs and practices that require officers to identify themselves by their full name, rank, and command (as applicable) and provide that information, when practicable, on a business card to individuals they have stopped.	PD				PD
UOF - 2b	Guiding Philosophy	107	Adopt policies, programs and practices that, for policing mass demonstrations, continue to employ a continuum of managed tactical resources designed to be protective of officer safety and promote de-escalation of tensions; minimize the appearance of a military operation; and avoid provocative tactics, equipment, and language that might heighten tensions.	PD				PD
UOF - 2c	Guiding Philosophy	108	Adopt policies, programs and practices that continue and strengthen opportunities for patrol officers to regularly interact with neighborhood residents, faith leaders, and business leaders.	PD				PD
UOF - 2d	Guiding Philosophy	108	Adopt policies, programs and practices that reward officers for their efforts to engage members of the community and the partnerships they build and make this part of the performance evaluation process, placing an increased value on developing such partnerships.	PD	DHR			PD
UOF - 2e	Guiding Philosophy	108	Adopt policies, programs and practices that ensure deployment schedules provide sufficient time for patrol officers to participate in problem solving and community engagement activities.	PD				PD
UOF - 2f	Guiding Philosophy	108	Adopt policies, programs and practices that infuse a renewed commitment to community policing throughout the FCPD culture and organizational structure.	PD				PD
UOF - 3	Guiding Philosophy	108	Commit and assure in G.O. 201.6 - PRESERVATION OF PEACE AND PROTECTION OF LIFE AND PROPERTY, that medical assistance will be provided to anyone who is injured, alleges an injury, or requests medical assistance, stating, as follows: <i>It shall be the duty of each sworn officer of the Department to: preserve the public peace; protect life and property; assure medical assistance; and enforce and uphold the laws of the Commonwealth of Virginia and the Ordinances of the County of Fairfax.</i>	PD	Co. Atty's Office		Yes	PD
UOF - 4	Guiding Philosophy	108	Review policies on use of physical control equipment and techniques to assure that they address any unique requirements of vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others deemed appropriate by the on-scene officer(s).	PD	Co. Atty's Office	PERF #7	Yes	PD
UOF - 5	PERF Recommended	109	Implement all PERF Use of Force report recommendations except #54, "termination of the use of PIT." FCPD should complete an analysis for approval by the Board of Supervisors on whether or not to maintain or restrict PIT use. Complete a publicly available and periodically updated action plan that assigns responsibility by name or position and target date for completion of all of the other recommendations.	PD	Co. Atty's Office	PERF #1 - 71 (except #54)	Yes	PD (BOS for PERF Recommendation #54)
UOF - 6	Use of Force Policies	110	Establish a comprehensive and integrated policy on use of force to include training, investigations, prosecutions, data collection and information sharing. This policy must be clear, concise, and openly available for public inspection.	PD	Co. Atty's Office	PERF #13,14,16	Yes	PD
UOF - 7	Use of Force Policies	110	Consistent with the PERF Use of Force report, replace the current Department definition of use of force with a more comprehensive definition. Proposed new language: "Force means the following actions by a member of the department; any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. Force includes the use of firearms, Electronic Control Weapons (ECWs), chemical spray, bean bag shotgun, PepperBall gun and hard empty hands; the taking of a person to the ground; the use of vehicles; or the deployment of a canine; and excludes escorting or handcuffing a person who is exhibiting minimal or no resistance."	PD	Co. Atty's Office	PERF #12, 13, 30, 45, 46, 47	Yes	PD

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UOF - 8a	Use of Force Policies	110	Amend General Order 540.1, USE OF FORCE, to Establish "sanctity of life" clearly and unambiguously as a philosophy and value system that remains paramount in the mind of every officer.	PD	Co. Atty's Office	PERF #4	Yes	PD
UOF - 8b	Use of Force Policies	110	Amend General Order 540.1, USE OF FORCE, to maintain "objectively reasonable" as the standard to be followed by an officer when determining whether to use force and all references to "reasonable" must therefore be understood to mean "objectively reasonable."	PD	Co. Atty's Office	PERF#8	Yes	PD
UOF - 8c	Use of Force Policies	110	Amend General Order 540.1, USE OF FORCE, to include as the definition of "reasonable: "...use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against his or her responsibility to protect public safety, as well as the suspect's civil liberties."	PD	Co. Atty's Office	PERF #8, 13	Yes	PD
UOF - 8d	Use of Force Policies	110	Amend General Order 540.1, USE OF FORCE, to reword, II. POLICY as follows: "A police officer shall employ only such force in discharge of his or her duty as is objectively reasonable in all circumstances. The use of force is to be generally considered by an officer as a last resort after discussion, negotiation or persuasion have been found to be ineffective or inappropriate in light of the situation. While the use of force is occasionally unavoidable, every police officer will refrain from unwarranted infliction of pain or suffering and will never engage in cruel, degrading or inhumane physical or verbal treatment of any person."	PD	Co. Atty's Office		Yes	PD
UOF - 8e	Use of Force Policies	111	In revising the General Order, and while first and foremost meeting the criteria specified by the Supreme Court, consider the Customs and Border Patrol's definition with regard to "Objectively Reasonable and the Totality of Circumstances," which is as follows: i. The reasonableness inquiry for an application of force is an objective one: the question is whether the officer's actions are objectively reasonable in light of the totality of facts and circumstances confronting him or her, without regard to underlying intent or motivation. ii. In determining whether a use of force is "objectively reasonable" an officer must give careful attention to the totality of facts and circumstances of each particular case, including: 1. Whether the suspect poses an imminent threat to the safety of the officer/agent or others; 2. The severity of the crime at issue; 3. Whether the suspect is actively resisting seizure or attempting to evade arrest by flight; 4. Whether the circumstances are tense, uncertain and rapidly evolving; and 5. The foreseeable risk of injury to involved suspects and others. iii. Totality of circumstances refers to all factors existing in each individual case. In addition to those listed in subsection e.ii., these factors may include (but are not limited to) the: 1. training, mental attitude, age, size and strength of the officer; 2. training, mental attitude, age, size and perceived strength of the suspect; 3. weapon(s) involved; 4. presence of other officers, suspects or bystanders; and 5. environmental conditions.	PD	Co. Atty's Office		Yes	PD
UOF - 8f	Use of Force Policies	111	Institute the following use of firearms requirements, by establishing or clarifying that: i. the act of a police officer placing his or her weapon "in a ready gun position" at a suspect will be a reportable action [NOTE: Un-holstering his or her weapon, pointing downward toward the ground next to an officer's leg, with finger on frame of weapon, is not to be a reportable action in the context of this policy as officers may do so when they reasonably believe or know suspects are nearby, i.e., entering a dark building, alley, other location of concern]; ii. the "ready gun" position is defined as pointing the weapon, with finger on the frame of the weapon, so the officer can see the suspect's hands and waist.; iii. the officer must announce "Police!" after and not before attaining the "ready gun" position and if feasible followed by simple, specific and clear direction to the suspect; iv. the "ready gun" position will be utilized in the specific circumstance where it is necessary to establish control and gain compliance through the pointing of a firearm; v. the pointing of the firearm will be considered non-deadly use of force in this circumstance if the weapon is not aimed at center of mass, which is normally the chest; and vi. an officer's finger should be moved from the frame to the trigger of a weapon only if the use of deadly force is authorized under the objectively reasonable standard, which would exclude pointing a weapon at center of mass simply for control and compliance under the "ready gun" position addressed in iv. above.	PD	Co. Atty's Office		Yes	PD
UOF - 8g	Use of Force Policies	112	Requirements for assuring medical assistance should be instituted consistent with the following: i. State in Section II that "[i]n all situations, medical assistance shall be provided promptly to any person who is obviously injured, alleges an injury, or requests medical assistance." ii. Incorporate a separate implementation section, including a requirement that an operational and implementation plan be created and incorporated in the General Order. iii. Assure that any such plan includes ECW (Taser) non-lethal incidents and specifies the officer's medical action requirements in the event that an ECW deployment is taken against a suspect.	PD	Co. Atty's Office		Yes	PD

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UOF - 8h	Use of Force Policies	112	A requirement should be established with regard to the state of the officer at the time of an officer involved death or serious injury per the following: Drug and steroid testing will be conducted on police officers involved in incidents that result in death or serious injury as soon as possible after the incident but not longer than an amount of time as determined by medical experts to detect whether drugs or steroids were present in the officers at the time of the incident.	PD	DHR, Co. Atty's Office		Yes	BOS
UOF - 9	Use of Force Policies	112	Benchmark FCPD Use of Force policies and practices with those of five urban jurisdictions that are comparable in their economic base, population density, and population demographics to Fairfax County.	PD				PD
UOF - 10	Use of Force Policies	112	Restrict vehicle pursuit to only those situations where there is a reasonable suspicion that a violent felony has been committed and that there is a potential for imminent risk to public safety and/or injury to individuals if pursuit is not initiated.	PD	DPSC	PERF #52, 53, 54, 55	Yes	PD
UOF - 11	Use of Force Reporting	113	Engage in robust public reporting on the demographics of the suspects in all use of force incidents and in-custody deaths, including for each incident: race, gender, age; any indicators of homelessness and of mental illness and CIT response; any previous involvement with FCPD; the type of weapon, if any, in the suspect's possession; police use of force; and resulting death/injury.	PD	PD, Co. Atty's Office	PERF # 65, 70	Yes	PD
UOF - 12	Use of Force Reporting	113	Collect and publicly report online all uses of force that result in death or serious injury; specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior instances of use of force by the officer(s) involved and determination of appropriateness; and (c) opportunities for officer, supervisor, and commander training. (Note: Release of use of force data does not necessarily have to include names of officers or victims until cases are concluded.)	PD	Co. Atty's Office, CWA	PERF # 65, 70	Yes	PD
UOF - 13	Use of Force Reporting	114	Annually report to the U.S. Department of Justice through the FBI's Uniform Crime Reporting System, all use of force and in-custody deaths, and disseminate such data to the public.	PD	OPA	PERF # 65, 70		PD
UOF - 14a	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include a narrative of the incidents and aftermath, updated in real time, including all UOF events that result in death or serious injury, not just shootings.	PD	OPA	PERF # 65, 70	Yes	PD
UOF - 14b	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include the details available in all press releases, updates and other public information should be integrated into the summaries, including names suspects and officers and links to press releases and their updates provided.	PD	Co. Atty's Office	PERF # 65, 70	Yes	PD
UOF - 14c	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include demographic information: race, age, gender, whether the call included concerns about a mental health crisis, whether the suspect was homeless.	PD	Co. Atty's Office	PERF # 65, 70	Yes	PD
UOF - 14d	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include information on what special teams were involved, if any.	PD		PERF # 65, 70	Yes	PD
UOF - 14e	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include appropriate information about whether/what discipline was administered in cases with policy violations.	PD	Co. Atty's Office, DHR	PERF # 65, 70	Yes	BOS
UOF - 14f	Use of Force Reporting	114	Assure timely and consistent information is presented for all officer involved shootings and lethal incidents within 72 hours, to include any changes of policy or training that result from review and lessons learned from the use of force incidents.	PD	Co. Atty's Office	PERF #65, 70	Yes	PD
UOF - 15a	Body Cameras	116	Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the enactment of laws, policies, and procedures that protect individual privacy.	PD	Co. Atty's Office, DIT, CWA, Govt. Relations		Yes	BOS
UOF - 15b	Body Cameras	116	Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the provision that police officers are consulted, with feedback provided as to how their concerns and recommendations were considered.	PD	Co. Atty's Office, DIT, CWA		Yes	BOS

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UOF - 15c	Body Cameras	116	Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the implementation of a training program not only for police officers, but the wide-ranging personnel who will oversee, process and manage the digital data, as well as for prosecutors who will use the data for criminal prosecutions.	PD	Co. Atty's Office, DIT, CWA		Yes	BOS
UOF - 16	Tasers / ECW	117	Reclassify Electronic Control Weapons as "less-lethal weapons" rather than "non-deadly weapons" per the recommendation by the 2011 Electronic Control Weapons Guidelines and the PERF Report.	PD	Co. Atty's Office	PERF #30	Yes	PD
UOF - 17	Tasers / ECW	117	Mandate that all uniformed officers in enforcement units carry an ECW on their duty belt (or elsewhere on their person if necessary) when on patrol. The recommendation is contingent on police officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.	PD	DMB	PERF #32		BOS
UOF - 18	Tasers / ECW	118	Mandate that all detectives and plainclothes officers, regardless of rank, carry an ECW in their vehicles when on duty; contingent on officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.	PD	DMB			BOS
UOF - 19	Tasers / ECW	118	General Order 540.1, USE OF FORCE - replace all use of the term "excited delirium" with a more medically and physiologically descriptive term.	PD	Co. Atty's Office, CWA	PERF #18	Yes	PD
UOF - 20	Tasers / ECW	118	Prohibit use of an ECW on a handcuffed, or otherwise restrained individual, who is actively resisting, unless an objectively reasonable officer concludes that the resistance could result in serious injury to him or herself or others and less severe force alternatives have been ineffective or are deemed unacceptable for the situation.	PD	Co. Atty's Office	PERF #27	Yes	PD
UOF - 21	Tasers / ECW	118	Prohibit use of an ECW on a frail or elderly person, child or a pregnant woman unless deadly force would otherwise be justified, since they face an elevated risk.	PD	Co. Atty's Office	PERF #28	Yes	PD
UOF - 22	Tasers / ECW	118	Absent exigent circumstances, require supervisory approval for ECW use on a suspect in excess of three cycles.	PD	Co. Atty's Office		Yes	PD
UOF -23	Tasers / ECW	118	Treat each ECW cycle as an independent application of the device, thus requiring its own justification, since multiple or prolonged ECW shocks may increase the risk of adverse effects on the heart or respiratory system.	PD	Co. Atty's Office	PERF #33	Yes	PD
UOF - 24	SWAT	119	Employ SWAT and the use of other advanced tactics only in situations where there is a high risk of violence, resistance, or harm to the officers involved, the public or the suspect as defined by set of "high risk" factors that are captured in the recent modifications to the Risk Assessment Matrix.	PD	Co. Atty's Office	PERF #62, 63, 64		PD
UOF - 25	SWAT	119	Consolidate FCPD policies and protocols, including threat assessment, supervisory approval, training and post-use review and lessons learned, for the use and documentation of SWAT and other advanced tactics.	PD		PERF #66	Yes	PD
UOF - 26	SWAT	119	Require that all police divisions, most notably the Narcotics Division, employ the same risk assessment procedures as SWAT for planning any high-risk operation.	PD				PD
UOF - 27	SWAT	119	Ensure broad community understanding of FCPD SWAT capabilities and how and when SWAT can be deployed.	PD		PERF #60		PD
UOF - 28	SWAT	119	Ensure that SWAT SOPs and the recently updated threat assessment process are clear in their requirement for approval by a single designated command officer who will bear overall responsibility for each use of SWAT.	PD		PERF #60, 62, 63, 64, 65, 66		PD
UOF - 29a	SWAT	119	Establish policies and practices that ensure SWAT is deployed proportional to the unique needs of each individual incident.	PD		PERF #60		PD

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UOF - 29b	SWAT	119	Include a trained crisis negotiator with every SWAT deployment.	PD				PD
UOF - 29c	SWAT	119	Require SWAT officers to wear body cams during every deployment.	PD	Co. Atty's Office		Yes	BOS
UOF - 29d	SWAT	119	Require that every SWAT deployment results in a post-deployment report that documents the following, in a manner that allows for the data to be readily compiled and analyzed for lessons learned: i. the purpose of the deployment; ii. the specific reason for believing that the situation for which the SWAT team was being deployed presented an imminent threat to the lives or safety of civilians and/or police personnel; iii. whether forcible entry or a breach was conducted and, if so, the equipment used and for what purpose; iv. whether a distraction device was used and, if so, what type and for what purpose; v. whether an armored personnel carrier was used and, if so, for what purpose; vi. the race, sex, ethnicity and age of each individual encountered during the deployment, whether as a suspect or bystander; vii. whether any civilians, officers, or domestic animals sustained any injury or death; viii. a list of any controlled substances, weapons, contraband, or evidence of crime that is found on the premises or any individuals; and ix. a brief narrative statement describing any unusual circumstances or important data elements not captured in the list above.	PD		PERF #66		PD
UOF - 30	Mobile Crisis	120	Establish as a budget priority the 24-hour staffing of three additional Mobile Crisis Units, by directing the immediate funding of a second Mobile Crisis Unit, in support of the Mental Health Subcommittee recommendation 15; and over the appropriate budget cycles, but no later than January 1, 2017, fund of two additional Mobile Crisis Units, for a total of four units, one for each human services district.	CSB	PD, DMB			BOS
UOF - 31	Oversight	122	Implement independent investigative oversight and civilian review of Use of Force incidents. Consistent with the findings of the White House Task Force and the recommendations of NACOLE, independent oversight and civilian review will provide public accountability, trust and confidence, education of both the public and the police, and a positive, ongoing feedback loop that would result in the reduction of both UOF incidents and complaints.	Dep. Co. Exec. for Public Safety	PD, Co. Atty's Office, CWA		Yes	BOS
UOF - 32	Oversight	122	Establish a police legal advisor position within FCPD who would not only advise the department on legal issues but also ensure implementation of recommendations and timely implementation of policy changes.	PD	Co. Atty's Office, DMB		Yes	BOS
UOF - 33	Oversight	122	Collect data, and publish an annual statistical report, covering all stops, frisks, citations, arrests, and use-of force by district station and magisterial district - include the race, gender, and ethnicity of the individual involved and note whether the suspect is homeless and/or if a mental health crisis is a factor. The data should also include the race, gender and ethnicity of the FCPD officer involved and whether the interaction was initiated by FCPD or by the suspect. Document the outcome of each incident and regularly report the collected data to the BOS and the public and post the data online.	PD	Co. Atty's Office	PERF #70	Yes	PD
UOF - 34	Oversight	122	Reconstitute the FCPD Use of Force Committee to review selective use of force events, to include the decision to employ UOF, use of de-escalation and alternatives, compliance with law and regulations, as well as administrative, training, supervisory and tactical issues.	PD	Co. Atty's Office			PD
UOF - 34a	Oversight	122	The Use of Force Committee should receive and consider after action reports (AARs) on each selected use of force event, identify lessons learned, and make recommendations as to any needed changes in policy or practice. The Committee should meet on a regular basis (no less than semi-annually) with the Independent Auditor and the Civilian Review Panel to identify and address issues of concern arising out of use of force incidents and FCPD policies and practices.	PD	Co. Atty's Office		Yes	BOS
UOF - 34b	Oversight	122	At least two members of the public should be appointed to the Use of Force Committee to ensure that the police and public can mutually benefit from their respective views about a use of force situation and contribute to any lessons that might be learned in the process. The policies and procedures guiding the appointment and role of the civilian appointees should be developed with public review and input and should protect against real or perceived conflicts of interest and assure that they are bound by the level of confidentiality that will protect candid and honest assessments, which is at the core of an effective continuous improvement process, as well as related criminal investigations.	PD	Co. Atty's Office		Yes	BOS
UOF - 34c	Oversight	123	Experts and representatives from other law enforcement agencies should be invited to attend Use of Force Committee meetings to provide critical external perspective, insight and expertise on a permanent or ad hoc basis.	PD				PD

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UOF - 35	Oversight	123	The Board of Supervisors should review the Police Chief's determination in all lethal UOF cases and go on record with approval or disapproval of the action.	Co. Atty's Office	PD		Yes	BOS
UOF - 36a	Workforce Practices	124	Give emphasis in police officer basic and in-service training to the distinction in the use of "ready gun" and muzzle pointing in the conduct of a building search and room clearing.	PD		PERF #58		PD
UOF - 36b	Workforce Practices	124	Give emphasis in police officer basic and in-service training to skill development in the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force.	PD		PERF #41, 57, 58		PD
UOF - 36c	Workforce Practices	124	Give emphasis in police officer basic and in-service training to the expected and effective use of Crisis Intervention Training.	PD		PERF #67		PD
UOF - 36d	Workforce Practices	124	Give emphasis in police officer basic and in-service training to tactical and operational training on lethal and nonlethal use of force, with emphasis on de-escalation and tactical retreat skills.	PD		PERF #56, 57, 58		PD
UOF - 37	Workforce Practices	124	Establish a "hire-to-retain" focus on officer fitness to serve, particularly in relation to any propensity for being overly aggressive in the conduct of duty. This focus should be a key component in: vetting and selection; ensuring that the Early Identification System is monitoring officer-involved shootings, excessive use of force incidents, and complaints of abuse of power; monitoring each officer's known and understood risk factors to ensure that they maintain the right personality and temperament for policing; reinforcing the "duty-to-intervene"; providing services to assist officers who may need attention or treatment.	PD	Co. Atty's Office, DHR	PERF #1	Yes	PD
UOF - 38	Workforce Practices	125	Conduct a study of the relationship of the supervisor to the patrol officers, including the current ratio as a potential factor in strengthening the leadership direction provided to patrol officers in non-routine situations, particularly as it relates to the potential for use of force.	PD	DHR, DMB			BOS
UOF - 39	Workforce Practices	125	Conduct a workforce climate survey and publish summary results on a biennial basis to monitor FCPD's operating culture, including officer attitudes about their work, leadership and equipment; or any perceived barriers to their ability to perform their duties consistent with FCPD's values, philosophy and policies. Use the detailed survey results broken down by organizational unit as a basis for dialogue between and among police officers, supervisors and the command structure.	PD	DHR			PD
UOF - 40	UOF Sub-Committee	126	The charter for the UOF subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to meet its charge to "...review the roles of and relationships between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses; follow up on open issues, such as the internal FCPD UOF Committee charter; and support implementation of any of the UOF recommendations for which UOF Subcommittee participation would be beneficial.	Dep. Co. Exec. for Public Safety	PD, Co. Atty's Office, CWA		Yes	BOS
INDEPENDENT OVERSIGHT AND INVESTIGATIONS COMMITTEE								
IOV&I - 1	Investigations	180	Criminal investigations of FCPD officers involved in incidents in which an individual is killed or seriously injured as defined in General Order 540.1 ("Death or Serious Injury Cases") should continue to be conducted by the FCPD Major Crimes Division. Exceptions could occur when the Chief of Police, in consultation with the Commonwealth's Attorney, determines that the criminal investigation should be conducted by investigators from another Northern Virginia jurisdiction police department or by the Virginia State Police.	PD & CWA	Co. Atty's Office		Yes	PD & CWA
IOV&I - 2	Investigations	180	Funds should be appropriated to the Commonwealth's Attorney's Office to allow for the fulltime employment of two independent criminal investigators who will report to and be used at the discretion of the Commonwealth's Attorney in connection with criminal investigations within the scope of the Independent Police Auditor.	CWA	Dep. Co. Exec. for Public Safety, DMB			BOS
IOV&I - 2a	Investigations	181	Such investigators shall participate in MCD criminal investigations of cases as the Commonwealth's Attorney may direct and may be used in connection with other criminal investigations, time permitting.	PD & CWA	Co. Atty's Office		Yes	PD & CWA
IOV&I - 2b	Investigations	181	The Independent Police Auditor shall monitor MCD criminal investigations of cases and other criminal investigations within the scope of the responsibilities of the Independent Police Auditor.	Dep. Co. Exec. for Public Safety	CWA, Co. Atty's Office, PD		Yes	BOS

AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
NUMBER (original or assigned)	TOPIC	REPORT PAGE	RECOMMENDATION NARRATIVE	LEAD AGENCY / ENTITY	OTHER AGENCIES / STAKEHOLDERS	LINK PERF REPORT / CALEA	POTENTIAL LEGAL REVIEW / LEGISLATIVE CHANGE REQUIRED	APPROVING AUTHORITY (i.e., BOS, PD, CSB, etc.)
IOV&I - 3	Investigations	181	FCPD Internal Affairs investigations should be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.	Dep. Co. Exec. for Public Safety	CWA, Co. Atty's Office		Yes	BOS & CWA
IOV&I - 4	Investigations	181	The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of Police.	Dep. Co. Exec. for Public Safety	CWA, Co. Atty's Office		Yes	BOS & CWA
IOV&I - 5	Investigations	181	All FCPD officers shall be required to abstain from speaking to other officers involved or having witnessed any conduct subject to a MCD or IAB investigation within the scope of the responsibilities of the Independent Police Auditor, or to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	PD
IOV&I - 6	Prosecution	181	The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a death or serious injury case, or other case within the scope of the responsibilities of the Independent Police Auditor, should continue to be handled by the Commonwealth's Attorney for Fairfax County unless the Commonwealth's Attorney determines that the prosecution, including the decision to charge, should be handled by another Virginia Commonwealth's Attorney.	CWA	Dep. Co. Exec. for Public Safety, PD, Co. Atty's Office		Yes	CWA
IOV&I - 7	Prosecution	181	The Commonwealth's Attorney should be requested to issue timely and comprehensive public reports in any case involving death or serious injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney.	CWA	Dep. Co. Exec. for Public Safety, Co. Atty's Office, PD, OPA		Yes	CWA
IOV&I - 8	Independent Auditor	183	The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor ("Auditor").	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 8a	Independent Auditor	183	The Auditor shall be appointed by and report directly to the Board of Supervisors.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 8b	Independent Auditor	183	The Auditor shall have experience in public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Independent Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 8c	Independent Auditor	183	The Auditor shall review (i) all investigations of death or serious injury cases conducted by the IAB; and (ii) all use of force investigations by IAB which are the subject of a public complaint made to the FCPD or the Auditor.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, CWA		Yes	BOS
IOV&I - 8d	Independent Auditor	183	The Auditor shall have full access to the MCD criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, CWA,		Yes	BOS
IOV&I - 8e	Independent Auditor	183	The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 8f	Independent Auditor	183	The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 9	Independent Auditor	183	The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 9a	Independent Auditor	184	The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, DHR		Yes	BOS
IOV&I - 10	Independent Auditor	184	If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 11	Independent Auditor	184	Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, OPA		Yes	BOS



AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
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IOV&I - 12	Independent Auditor	184	The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 13	Independent Auditor	184	An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a death or serious injury case, the use of force, or the death of an individual with the FCPD for investigation or the citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, which will report on the disposition of the complaint within 30 days..	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 14	Independent Auditor	184	If the Auditor disagrees with the results or conclusions of an IAB investigation in a death or serious injury case, the Auditor shall advise the Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 15	Independent Auditor	184	The Auditor shall make public recommendations to the Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, OPA		Yes	BOS
IOV&I - 16	Independent Auditor	184	The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 17	Independent Auditor	184	Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18	Civilian Review	186	Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18a	Civilian Review	186	Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18b	Civilian Review	186	The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18c	Civilian Review	186	Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 18d	Civilian Review	186	The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 19	Civilian Review	186	An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 19a	Civilian Review	186	"Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 19b	Civilian Review	186	The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 19c	Civilian Review	186	Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS

AD HOC POLICE PRACTICES REVIEW COMMISSION REPORT RECOMMENDATIONS ASSIGNMENT AND TRACKING SPREADSHEET								
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IOV&I - 20	Civilian Review	186	Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 20a	Civilian Review	186	The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 20b	Civilian Review	186	Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 21	Civilian Review	187	The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review. If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD		Yes	BOS
IOV&I - 22	Civilian Review	187	The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, OPA		Yes	BOS
IOV&I - 23	Civilian Review	187	The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.	Dep. Co. Exec. for Public Safety	Co. Atty's Office, PD, OPA		Yes	BOS
IOV&I - 24	Follow-Up	187	Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.	Dep. Co. Exec. for Public Safety	PD		Yes	BOS

ACTION - 18

Approval of a Resolution Endorsing Projects Being Submitted to the Northern Virginia Transportation Authority for Fiscal Year 2024 to Fiscal Year 2025 Regional Funding

ISSUE:

Board approval of a resolution (Attachment 1) authorizing the Fairfax County Department of Transportation (FCDOT) to apply to the Northern Virginia Transportation Authority (NVTA) for FY 2024 to FY2025 regional transportation funding, and supporting other projects submitted by other jurisdictions and agencies that benefit Fairfax County. Projects submitted by Fairfax County are either included in the Transportation Priorities Plan (TPP) adopted by the Board of Supervisors on January 28, 2014, or have been otherwise previously approved by the Board.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve a resolution (Attachment 1) endorsing Fairfax County's, and other localities and agencies, project submissions for NVTA's regional funding program.

TIMING:

Board of Supervisors' approval is requested on September 24, 2019, to meet the NVTA submission deadline of September 27, 2019. NVTA is expected to approve projects for its regional transportation funding in June 2020.

BACKGROUND:

At its meeting on June 7, 2019, NVTA approved the Call for Regional Transportation Projects for the FY 2024–25 Six Year Program Update. Funding for these capital projects is provided by NVTA's 70 percent share of regional revenues that NVTA retains. Project applications are due to NVTA on September 27, 2019, with Governing Body and any supporting resolutions due by November 26, 2019.

All projects considered for regional revenues are subject to a regional evaluation process that uses multiple inputs, including:

- Eligibility - Projects must be included in the TransAction, NVTA's long-range transportation plan (may be a subset) and must be wholly or substantially located in Northern Virginia;
- TransAction Analyses - Technical analyses from TransAction. These ratings

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have previously been referred to as HB599 project ratings. NVTa now has full autonomy over HB599 project ratings, following passage of SB1468 (2019);

- Congestion Reduction Relative to Cost (CRRC) – The Code of Virginia requires the Authority to give priority to projects expected to provide the greatest congestion relief relative to cost;
- Long Term Benefit (LTB) – The Code of Virginia provides that each locality's total long-term benefit shall be approximately equal to the proportion of the total of the fees and taxes received by the Authority that are generated by or attributable to the locality divided by the total of such fees and taxes received by the Authority. NVTa staff will apply the LTB Principles approved by the Authority in December 2014;
- Qualitative Considerations - Takes into account factors that cannot easily be considered in a formula, such as geographic and modal balance; leveraging of other funding sources, project readiness, and past performance;
- Public Comment - An NVTa Public Hearing/Open House will be held, with a period for public comment, Town Hall meetings, etc.

Projects recommended for NVTa consideration for FY 2024 – FY 2025 funding are included in Attachment 2. These projects are a subset of, and consistent with, the Board's TPP. The total amount of NVTa regional funding expected to be available during this time period is approximately \$400 million. Fairfax County's total request for funding from NVTa is over \$800 million. Many of these projects will require funding beyond FY 2025, and staff will actively seek funding for projects in need of additional funding through NVTa and other sources.

County staff recommends the following projects for submission to NVTa for regional funding consideration in an amount not to exceed the "Proposed Funding Request". While each project is scored and ranked based on several criteria, NVTa has also requested that each applicant prioritize their requests. Staff's suggested priority is indicated to the right of each project.

**Table 1 – List of Proposed Projects for NVTa Regional Funding**

<b>Project Title/TransAction ID</b>	<b>Current Cost Estimate In \$Millions</b>	<b>Proposed Funding Request In \$Millions</b>	<b>Priority</b>
Richmond Highway Widening (Mt Vernon Memorial Highway to Sherwood Hall Lane) /214	372.0	183.7	1
Richmond Highway Bus Rapid Transit (BRT, Huntington Metrorail Station to Fort Belvoir) / 39	730.0	71.0	2

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Rolling Road Widening (Old Keene Mill Road to Fairfax County Parkway) / 54	79.0	27.7	3
Soapstone Drive Extension (Dulles Toll Road (DTR) Overpass) / 7	214.0	69.0	4
Fairfax County Parkway Widening (1 mile south of Nomes Court to .6 miles north of Route 29) / 57	106.3	37.4	5
Route 7 Widening (Jarrett Valley Drive to Reston Avenue) / TransAction 2040 Project - Lewinsville Road to Dulles Toll Road	314.0	35.0	6
Braddock Road Improvements Phase 1 / 336	87.5	79.0	7
Frontier Drive Extension / 84	140.0	105.0	8
Seven Corners Ring Road (Phase 1A/Segment 1A) / 18	94.8	94.8	9
Davis Drive (also known as Rock Hill Road Extension (DTR Overpass) ) / 19	165.0	144.0	10
<b>TOTAL REQUEST</b>	<b>\$846.6</b>		

Other projects of local interest requesting Fairfax County endorsement for submission that benefit Fairfax County include:

- Town of Herndon –
  - Herndon Metrorail Multimodal Improvements - Construction of a cycle track and ADA accessible sidewalk along a 2,000-foot section of the south-side of Herndon Parkway from the Washington and Old Dominion Railroad Regional Park (W&OD Trail) southward to Fairbrook Drive to include a wide, enhanced bicycle and pedestrian crossing on the east approach of the Herndon Parkway / Spring Street intersection. The proposed bicycle and pedestrian improvements will provide improved access to two Fairfax Connector routes, as well as improved multimodal connectivity between the W&OD Trail, the future Herndon Metrorail Station, and future mixed-use development in the area known as the Herndon Transit-Oriented Core.
- City of Fairfax –
  - Government Center Parkway Extension - Construction of the missing link of the roadway from Stevenson Street in Fairfax County to Jermantown Road in the City of Fairfax. As part of the recommendation, County staff believes it is important that the City of Fairfax coordinate the implementation of this project with the County and affected Fairfax County Supervisors.

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- Prince William County
  - Route 28 Improvements: Improvements primarily south of Bull Run that are the subject of a current study to identify ways to ease congestion and improve traffic conditions. Staff recommends the Board supports advancing without endorsing a specific alternative.
  - Annapolis Way East with Annapolis Way West near I-95 on-ramp: Construct four-lane facility to connect Annapolis Way East with Annapolis Way West near I-95. This connection between I-95 and U.S. Route 1 in Prince William County near the Occoquan River, should improve traffic flow on these roadways in Prince William County and the segments of these roadways in southern Fairfax County.

These projects have also been included in the resolution for Board endorsement.

FISCAL IMPACT:

Requests for regional funding are shown by project in the table above. There is no local cash match associated with any of these revenues, and no impact to the General Fund.

CREATION OF POSITIONS:

No positions will be created through this action.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution of Endorsement of Projects Being Submitted for Regional Funding through the Northern Virginia Transportation Authority  
Attachment 2 – List of Projects with Brief Descriptions

STAFF:

Rachel Flynn, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT  
Todd Minnix, Chief, Transportation Design Division, FCDOT  
Michael Guarino, Section Chief, Capital Projects and Operations Division, FCDOT  
Ray Johnson, Section Chief, Coordination and Funding Division, FCDOT  
Noelle Dominguez, Section Chief, Coordination and Funding Division, FCDOT

## Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, September 24, 2019, at which meeting a quorum was present and voting, the following resolution was adopted.

### RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby approves the submission to the Northern Virginia Transportation Authority (NVTA) requests for regional funding for FY 2024 – FY 2025 for the following projects in amounts not to exceed:

- Richmond Highway Widening (Mount Vernon Memorial Highway to Sherwood Hall Lane) - \$183,700,000: TransAction ID 214 (Route 1 Widening: Route 235 North to Route 235 South)
- Richmond Highway Bus Rapid Transit (Huntington Metrorail Station to Fort Belvoir) - \$71,000,000: TransAction ID 39 (Route 1 BRT)
- Rolling Road Widening (Old Keene Mill Road to Fairfax County Parkway) - \$27,700,000: TransAction ID 54 (Rolling Road Widening: Hunter Village Drive to Old Keene Mill Road)
- Soapstone Drive Extension (Dulles Toll Road (DTR) Overpass) - \$69,000,000: TransAction ID 7 (Soapstone Drive Extension)
- Fairfax County Parkway Widening (1 mile south of Nomes Court to .6 miles north of Route 29) - \$37,400,000: TransAction ID 57 (Fairfax County Parkway Widening: Ox Road (Route 123) to Lee Highway (Route 29))
- Route 7 Widening (Jarrett Valley Drive to Reston Avenue) - \$35,000,000: TransAction 2040 Project - Lewinsville Road to Dulles Toll Road
- Braddock Road Improvements (Burke Lake Road to I-495) - \$79,000,000: TransAction ID 336 (Braddock Road Intersection Improvements: Guinea Road to Ravensworth Road)
- Frontier Drive Extension - \$105,000,000: TransAction ID 84 (Frontier Drive Extension and Intersection Improvements)
- Seven Corners Ring Road (Phase 1A/Segment 1A) - \$94,800,000: TransAction ID 18 (Seven Corners Ring Road Improvements)
- Davis Drive (previously known as Rock Hill Road Extension) - \$144,000,000: TransAction ID 19 (Davis Drive Extension and Dulles Toll Road: Rock Hill Overpass)

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby also supports the efforts of the Town of Herndon and Prince William County in submitting applications to the NVTa requests for regional funding for FY 2024 – FY 2025, for the following projects located in or near Fairfax County:

- Town of Herndon - Herndon Metrorail Multimodal Improvements
- Prince William County - Annapolis Way East with Annapolis Way West near I-95 on-ramp

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby supports advancing the following project without endorsing a specific alternative:

- Prince William County - Route 28 Improvements south of Bull Run that are the subject of a current alternatives analysis to identify ways to ease congestion and improve traffic conditions

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby supports the efforts of the City of Fairfax in submitting an application to the NVTa requests for regional funding for FY 2024 – FY 2025, for the following projects located in or near Fairfax County, and requests that the City of Fairfax coordinate the implementation of this project with Fairfax County and the affected Fairfax County Supervisors:

- City of Fairfax – Government Center Parkway Extension

Adopted this 24<sup>th</sup> day of September 2019, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Jill G. Cooper  
Clerk to the Board of Supervisors



**List of Recommended Projects for Northern Virginia Transportation Authority  
(NVTa) 70% Regional Consideration (FY2024-2025)**

<b>Project</b>	<b>Project Description</b>	<b>Current Cost Estimate in Millions</b>	<b>Requested Funding in Millions</b>
Richmond Highway Widening (Mt Vernon Memorial Highway to Sherwood Hall Lane)	The Richmond Highway widening project is approximately 3 miles in length and is located between Mt. Vernon Memorial Highway (south) and Sherwood Hall Lane. This project will provide a six-lane facility complementing the Richmond Highway project recently completed from Telegraph Road to Mt. Vernon Memorial Highway. This project includes both pedestrian and bicycle facilities and provision for future bus rapid transit in the median.	\$372.0	\$183.7
Richmond Highway Bus Rapid Transit (BRT, Huntington Metrorail Station to Fort Belvoir)	The BRT project includes median running BRT from the Huntington Metrorail Station to Fort Belvoir. The project will include: buses, new transit stations, facilities for bicycle, pedestrian and vehicle travel modes.	\$730.0	\$71.0
Rolling Road Widening (Old Keene Mill Road to Fairfax County Parkway)	Widen Rolling Road from two to four lanes from Old Keene Mill Road to Franconia Springfield Parkway and Fairfax County Parkway. The project will add or upgrade pedestrian and bicycle facilities.	\$79.0	\$27.7
Soapstone Drive Extension (Dulles Toll Road (DTR) Overpass)	The Soapstone Drive Extension is a new roadway, approximately one-half mile long between Sunrise Valley Drive and Sunset Hills Road. The project will include a new bridge crossing over the Dulles Toll Road. This project includes both pedestrian and bicycle facilities.	\$214.0	\$69.0

Fairfax County Parkway Widening (1 mile south of Nomes Court to .6 miles north of Route 29)	The project provides for the widening of Fairfax County Parkway (Route 286) from 1 mile south of Nomes Court to .6 miles north of Route 29 from four lanes (divided) to six lanes (divided). This improvement will provide or upgrade pedestrian and bicycle amenities.	\$106.3	\$37.4
Route 7 Widening (Jarrett Valley Drive to Reston Avenue) / TransAction 2040 Project - (Lewinsville Road to Dulles Toll Road	The project will widen almost seven miles of Route 7 between Reston Avenue and Jarrett Valley Drive from four to six lanes, add shared-use paths, and make substantial intersection and interchange improvements along the corridor. These improvements will increase capacity, improve safety and traffic flow, and enhance mobility for cyclists and pedestrians, in conformity with Fairfax County's Comprehensive Plan.	\$314.0	35.0
Braddock Road Improvements (Phase 1)	The project would include intersection, signalization, access management, pedestrian, and bicycle improvements.	\$87.5	\$79.0
Frontier Drive Extension	Extend Frontier Drive from Franconia-Springfield Parkway to Loisdale Road, including access to Franconia-Springfield Metrorail Station and braided ramps to and from the Parkway. Provide pedestrian and bicycle facilities along the proposed Frontier Drive extension and support relocation of the Transportation Security Administration Headquarters to Springfield.	\$140.0	\$105.0

Seven Corners Ring Road (Phase 1A/Segment 1A)	This project will design the first phase of the new interchange. This phase consists of a new road connecting Route 7, on the western side of the existing Seven Corners Interchange, with a bridge over Route 50, around the interchange to Sleepy Hollow Road, back to Route 7 on the eastern side of the interchange and terminating with a bridge that goes over Route 50. Project will also include new signalized crosswalks with VDOT Wilson Boulevard replacement bridge. The entire project includes bicycle and pedestrian accommodations.	\$94.8	\$94.8
Davis Drive (also known as Rock Hill Road Extension (DTR Overpass))	Extend Davis Drive (Route 868) from Glenn Drive (Route 864) to Fairfax County line at the future bridge over Dulles Toll Road (Route 267). Realign Rock Hill Road with Davis Drive. Construct a four-lane roadway over the Dulles Toll Road from Sunrise Valley Drive on the south side to Davis Drive extension in Loudoun County on the north side. The project would include pedestrian and bicycle facilities.	\$165.0	\$144.0

ACTION - 19

Approval of a FY 2020 Washington Metropolitan Area Transit Authority (WMATA)  
Capital Funding Agreement

ISSUE:

Board approval of a one-year extension of the Washington Metropolitan Area Transit Authority (WMATA) Capital Funding Agreement (CFA) for FY 2020. The current six year Capital Funding Agreement (CFA) addresses system rehabilitation, and the purchase of new rail cars and buses, and is designed to keep the system in a “state of good repair.” The current agreement expired June 30, 2019, and WMATA is requesting approval of a one-year agreement for FY 2020 that would extend the terms of the previous agreement for one more year.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors: (1) approve, in substantially the form of Attachment 1, the FY 2020 CFA which extends the terms of the previous 2010 CFA including amendments (Attachment 2) through FY 2020; (2) authorize the County Executive to sign the Amendment to the CFA.

TIMING:

Board action is requested on September 24, 2019, because the current CFA expired on June 30, 2019.

BACKGROUND:

The WMATA CFA began in FY 2011, and was in effect through June 30, 2016. It has been extended several times, and most recently expired on June 30, 2019. WMATA has requested that the regional partners sign a one-year CFA for FY 2020 which includes the implementation of the new Metro Funding Bills that provides \$500 million annually to WMATA for capital expenses, and proposes a new budget, CIP and multi-year CFA for FY 2021 through FY 2026. The Agreement, among other things: (1) extends the terms of the previous CFA through FY 2020; (2) defines long term debt and specifies the use of the dedicated funding as the source of debt service payments; and (3) sets the County's FY2020 contribution at not more than \$39.8 million. Since the FY 2020 Agreement leaves the current CFA largely unchanged, below is a discussion of the key provisions of the current CFA.

The CFA includes WMATA's Capital Improvement Program (CIP), which consists of capital projects to be funded over a six-year period, including useful life projections for

each project. The first six-year period of the CIP in the current CFA was from FY 2011 to FY 2016. The CIP is updated for each successive six year period through the Annual Work Plan (AWP) and annual budget approval at WMATA. Signatories of the WMATA CFA agree to use all reasonable efforts to secure funding for the CIP.

Under the CFA, WMATA bills its capital program on an expenditure basis, instead of an obligation basis. This allows the jurisdictions to fund projects as they progress versus fully funding a project before it begins. It also means that projects started near the end of the CFA term may require funding after the end of the agreement to complete them. The CFA commits all jurisdictions to completing all projects that are started within the current CFA term. Payment obligations on any debt financing incurred during the agreement period also continue after the agreement expires. The WMATA CFA includes the following major points:

- Supersedes the Metro Matters funding agreement and includes any capital expenditures carried over from the Metro Matters Agreement.
- Signatories of the WMATA CFA agree to use all reasonable efforts to secure funding for the CIP.
- The Board of Supervisors approved the original CFA on June 22, 2010.
- If there is a shortfall in revenue for the capital program, WMATA will develop a recovery plan, to be approved by the WMATA Board of Directors, which could include: use of interim funding; project redesign; project rescheduling; project deferrals; and, subject to agreement of the jurisdictions, increased contributions.
- If federal or other revenue is greater than anticipated, WMATA will use the excess revenue to fund any unfunded portions of the CIP or apply the funds to any outstanding indebtedness, thereby reducing the allocated contribution of the jurisdictions. This provision also applies to funds received under the Metro Matters Funding Agreement.
- WMATA will perform quarterly analysis and update the Annual Work Plan. The CIP will be reconciled annually and updated for the next six years.
- The jurisdictions have the ability to audit WMATA.
- Each jurisdiction's obligation is contingent on participation by all jurisdictions.

Lastly, the CFA gives each jurisdiction the option of paying cash, issuing its own debt, or having WMATA issue debt on the jurisdiction's behalf to fund its share of the WMATA CIP. In the past, the County has both issued its own debt to fund the County's share of

Board Agenda Item  
September 24, 2019

WMATA's CIP and allowed WMATA to issue debt on the County's behalf. These decisions are made at the time a long-term debt issuance is needed. The County is able to fund its entire capital contribution with local funds in FY 2020. Therefore, the County is opting out of any WMATA issued debt in FY 2020.

The County's total estimated FY 2020 capital costs for its share of the entire WMATA capital budget is approximately \$39.8 million. The County's approved fall 2016 bond referendum provided \$120 million to help fund the WMATA CFA requirements for several years. These local bonds give the Board of Supervisors the ability to pay the County's ongoing capital payments and opt-out of WMATA-issued long term debt in FY 2020.

FISCAL IMPACT:

This one-year WMATA CFA delineates the County's share of WMATA's capital budget in FY 2020 which is approximately \$39.8 million of a total FY 2020 WMATA Capital Budget of \$1,573.2 million, including the County opting out of any WMATA issued long-term debt for FY 2020. The County intends to use the proceeds of the \$120 million transportation bond referendum approved in 2016 and state funding as needed to meet the County's share of WMATA capital obligations. Debt service costs associated with the County's transportation bond referendum have been incorporated into the County's long-term debt ratio projections and are referenced in the FY 2020-FY 2024 Adopted Capital Improvement Program (With Future Fiscal Years to 2029) and in Fund 30000, Metro Operations and Construction.

ENCLOSED DOCUMENTS:

Attachment 1 – FY 2020 WMATA Capital Funding Agreement  
Attachment 2 – Previous 2010 WMATA Capital Funding Agreement

STAFF:

Rachel Flynn, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Joe LaHait, County Debt Coordinator, Department of Management and Budget  
Todd Wigglesworth, Chief, Coordination and Funding Section, FCDOT

ASSIGNED COUNCIL:

Corinne Lockett, Assistant County Attorney

**WMATA FISCAL YEAR 2020  
CAPITAL FUNDING AGREEMENT**

**Among**

**The State of Maryland;**

**The District of Columbia;**

**Arlington County, Virginia;**

**Fairfax County, Virginia;**

**The City of Alexandria, Virginia;**

**The City of Fairfax, Virginia;**

**The City of Falls Church, Virginia;**

**And**

**The Washington Metropolitan Area Transit Authority**

**Effective Date: \_\_\_\_\_**

**WMATA FISCAL YEAR 2020  
CAPITAL FUNDING AGREEMENT**

THIS WMATA FISCAL YEAR 2020 CAPITAL FUNDING AGREEMENT (2020 CFA) is made and entered into as of the last day signed by all of the Parties (Effective Date), by and among **the Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; **the State of Maryland, acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia (Contributing Jurisdictions and, collectively with WMATA, the Parties):**

**RECITALS**

1. The Parties to this 2020 CFA desire to adopt the terms and conditions, as modified herein, of that Capital Funding Agreement entered into by the Parties as of July 1, 2010 as amended and as extended to continue through WMATA Fiscal Year 2019 (2010 CFA).
2. The Parties to this 2020 CFA desire to continue the funding and work of WMATA on the same terms and conditions, as modified herein, in place under the 2010 CFA as amended by the First, Second, and Third Amendments to the 2010 CFA for WMATA's Fiscal Year 2020 (the Term).
3. The Parties will continue to negotiate in good faith toward a longer-term capital funding agreement during the Term of this 2020 CFA.



NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, and with the intent to be bound, the Parties hereby agree as follows:

**SEC. 1 DEFINITIONS**

Unless defined otherwise in this 2020 CFA all terms used herein shall have the same meaning as is found in the 2010 CFA.

- A. “Capital Program” means an on-going effort associated with maintaining a capital asset or assets in a state of good repair. Examples include, but are not limited to, rail tie and running rail replacements, and the bus rolling stock replacement and rehabilitation programs.
- B. “Capital Project” means any capital eligible expenditure taken over a period of time with a defined start and end date to build, replace, acquire, or repair a capital asset. Capital Projects are distinct from Capital Programs in that they do not recur on an annual basis. Examples include but are not limited to railcar purchases; bus facility construction or reconstruction.
- C. “Dedicated Funding Debt” means that debt that may be authorized by the Board of Directors as backed by a pledge of those funds committed to WMATA pursuant to the following legislative enactments: (a) from the District of Columbia under D.C. Official Code § 1-325.401 or any successor statute, as the same may be amended from time to time; (b) from the State of Maryland under Md. Transportation Code Ann. § 10-205(g) or any successor statute, as the same may be amended from time to time; and (c) from the Commonwealth of Virginia under the Va. Code §33.2-3401.B or any successor statute, as the same may be amended from time to time. Dedicated Funding shall also include funds paid by any of the District of Columbia, the State of Maryland, the Commonwealth of

Virginia or any other authorized person or entity in-lieu-of such amounts (“Dedicated Funding”).

- D. “Jurisdictional Capital Contribution Debt” means that debt issued by WMATA pursuant to the applicable CFA, which is backed by a pledge of gross revenues and used to fund Allocated Contributions of the Contributing Jurisdictions.

## **SEC. 2 ADOPTION OF TERMS AND CONDITIONS AND LONG-TERM DEBT**

- A. **Adoption of Terms and Conditions.** The Parties agree to incorporate the 2010 CFA by reference as if fully stated herein so as to apply those terms and conditions to the actions of the Parties for WMATA’s Fiscal Year 2020, from the Effective Date of this 2020 CFA through June 30, 2020.
- B. **Long Term Debt Obligations.** No Jurisdictional Capital Contribution Long-Term Debt is authorized for issuance in FY2020 at this time and specifically for the District of Columbia the authorized and anticipated amount of Jurisdictional Capital Contribution Long-Term Debt to be issued in FY2020 is \$0.00. In the event that WMATA or one or more Contributing Jurisdictions identifies a need to issue Jurisdictional Capital Contribution Debt during FY2020, the Parties shall follow the processes established for such issuance in the 2010 CFA.
- C. **Acknowledgement Of Dedicated Funding Debt.** The Parties acknowledge and agree that WMATA may issue Dedicated Funding Debt without additional approvals being required from the Contributing Jurisdictions. Dedicated Funding Debt issuance shall be approved in advance by the Board of Directors and be made in compliance with any agreement between WMATA and any of the Commonwealth of Virginia, the State of Maryland, and

the District of Columbia related to the provision and use of Dedicated Funding, prior to the issuance of Dedicated Funding Debt.

### **SEC. 3 CAPITAL IMPROVEMENT PROGRAM**

- A. As is contemplated by the 2010 CFA, the WMATA Board of Directors adopted a new Fiscal Year 2020 Capital Budget in March 2019. It is the intent of the Parties to incorporate the jurisdictional funding commitments of the FY2020 Capital Budget as adopted by the Board exclusive of funds to be used to repay the debt service on previously issued bonds, Dedicated Funding, Jurisdictional Reimbursable Projects, or PRIIA, as shown in Attachment A, which contains the FY2020 Capital Budget Financial Plan.
- B. The District of Columbia's Allocated Contribution to the FY2020 Capital Budget shall not exceed \$92,700,000 and this amount shall be added to the amounts contained in Section 4(b)(1)(C)(i) of the CFA and the First, Second, and Third Amendments to the CFA to constitute the new limitation on required Allocated Contributions for the District of Columbia in the total maximum amount not to exceed \$733,449,000 to be paid from the District of Columbia Capital Funds for the 2010 CFA and 2020 CFA combined.
- C. It is the intent of the Parties that to the extent that WMATA undertakes multi-year projects in the FY2020 Capital Budget, adopted by this 2020 CFA, such projects shall be continued in accordance with the provisions of Section 2(e) of the 2010 CFA.
- D. The following language shall be used for purposes of this FY2020 CFA and WMATA's FY2020 instead of incorporating section 5(g) of the 2010 CFA as provided for in section 2(a) of this 2020 CFA:
- “The Parties recognize that the scope, costs, scheduled completion date, or priority of some projects will change during the term of this 2020 CFA. To address these possibilities,

WMATA agrees to provide the Contributing Jurisdictions with monthly reports regarding reprogramming of project budgets into or out of Capital Projects or Capital Programs during the term of this Agreement where such reprogramming results in either 1) an increase of the total project budget as shown in the CIP; 2) revises the scope of a Capital Project; 3) a movement of \$5 Million or more; or 4) creates a new Capital Project. Each movement of budget between Capital Projects and/or Capital Programs for cash flow purposes or for schedule adjustments (that do not impact completion date) in an amount of \$1 Million to \$5 Million during the term of this Agreement shall be reported to the Contributing Jurisdictions on a quarterly basis. In no case shall WMATA request an increase in the Allocated Contributions for FY2020 funding requirements adopted by the Board of Directors and shown in Attachment A due to a reprogramming.”

#### **SEC. 4 TERMS AND CONDITIONS**

For the WMATA fiscal year addressed in this agreement, should there be any conflict between the terms and conditions in this 2020 CFA and the 2010 CFA; the terms and conditions of this 2020 CFA, and in the case of the District of Columbia the 2020 Local Capital Funding Agreement, shall control.

#### **SEC. 5 COUNTERPARTS**

This 2020 CFA may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement. The counterpart with the most recent date shall determine the Effective Date.

IN WITNESS WHEREOF, WMATA and the Contributing Jurisdictions have executed this Amendment by their representatives’ signatures on the following pages.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

Attest:

By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
[Seal]  
Paul J. Wiedefeld  
General Manager/Chief Executive Officer

Dated: \_\_\_\_\_

[signatures continued on following page]

STATE OF MARYLAND

acting by and through the Washington Suburban Transit District and the Department of  
Transportation

MARYLAND DEPARTMENT OF  
TRANSPORTATION

Attest:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [Seal]  
Secretary

and

WASHINGTON SUBURBAN  
TRANSIT DISTRICT

Attest:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [Seal]  
Chairman

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

[signatures continued on following page]

DISTRICT OF COLUMBIA

Attest:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [[Seal]]  
Mayor

Dated: \_\_\_\_\_

[signatures continued on following page]

ARLINGTON COUNTY, VIRGINIA

Attest:

\_\_\_\_\_  
Clerk to the County Board

By: \_\_\_\_\_ [Seal]  
County Manager

Dated: \_\_\_\_\_

[signatures continued on following page]



FAIRFAX COUNTY, VIRGINIA

Attest:

\_\_\_\_\_  
Clerk to the Board of Supervisors

By: \_\_\_\_\_ [Seal]  
County Executive

Dated: \_\_\_\_\_

[signatures continued on following page]

CITY OF ALEXANDRIA, VIRGINIA

Attest:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_ [Seal]  
City Manager

Dated: \_\_\_\_\_

[signatures continued on following page]

CITY OF FAIRFAX, VIRGINIA

Attest:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_ [Seal]  
City Manager

Dated: \_\_\_\_\_

[signatures continued on following page]

CITY OF FALLS CHURCH, VIRGINIA

Attest:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_ [Seal]  
City Manager

Dated: \_\_\_\_\_

DRAFT

## Financial Plan - Allocation of State &amp; Local Contributions

<i>(Dollars in Millions)</i>	FY2020 Budget	FY2021 Plan	FY2022 Plan	FY2023 Plan	FY2024 Plan	FY2025 Plan	6 Year Total
<b>Federal Funding</b>							
Federal Formula Programs	\$348.5	\$332.6	\$332.6	\$332.6	\$332.6	\$332.6	\$2,011.7
Federal PRIIA	148.5	148.5	148.5	148.5	148.5	148.5	891.0
Other Federal Grants	3.6	4.1	4.4	2.8	3.0	1.2	19.1
<b>Total - Federal Grants</b>	<b>\$500.6</b>	<b>\$485.3</b>	<b>\$485.6</b>	<b>\$483.9</b>	<b>\$484.1</b>	<b>\$482.3</b>	<b>\$2,921.8</b>
<b>State &amp; Local Funding Contribution</b>							
<b>District of Columbia</b>							
Formula Match & System Performance	\$92.7	\$93.8	\$96.5	\$98.9	\$101.6	\$103.9	\$587.5
PRIIA	49.5	49.5	49.5	49.5	49.5	49.5	297.0
Dedicated Funding	178.5	178.5	178.5	178.5	178.5	178.5	1,071.0
<b>Subtotal - District of Columbia</b>	<b>\$320.7</b>	<b>\$321.8</b>	<b>\$324.5</b>	<b>\$326.9</b>	<b>\$329.6</b>	<b>\$331.9</b>	<b>\$1,955.5</b>
<b>State of Maryland</b>							
Montgomery County	\$46.1	\$45.6	\$47.0	\$48.6	\$50.1	\$51.9	\$289.3
Prince George's County	45.1	45.3	46.6	48.0	49.4	50.7	285.2
MD PRIIA	49.5	49.5	49.5	49.5	49.5	49.5	297.0
MD Dedicated Funding	167.0	167.0	167.0	167.0	167.0	167.0	1,002.0
<b>Subtotal - Maryland</b>	<b>\$307.7</b>	<b>\$307.4</b>	<b>\$310.1</b>	<b>\$313.1</b>	<b>\$316.0</b>	<b>\$319.2</b>	<b>\$1,873.5</b>
<b>Commonwealth of Virginia</b>							
City of Alexandria	\$12.3	\$12.3	\$12.7	\$13.0	\$13.4	\$13.8	\$77.6
Arlington County	23.2	22.9	23.6	24.4	25.2	26.1	145.2
City of Fairfax	0.7	0.7	0.7	0.8	0.8	0.8	4.6
Fairfax County	39.8	41.2	42.5	44.0	45.4	47.0	260.0
City of Falls Church	0.7	0.8	0.8	0.8	0.8	0.8	4.7
Loudoun County	—	5.8	6.0	6.4	6.6	7.0	31.9
VA PRIIA	49.5	49.5	49.5	49.5	49.5	49.5	297.0
Dedicated Funding VA	154.5	154.5	154.5	154.5	154.5	154.5	927.0
CMAQ	0.9	1.0	1.1	0.7	0.7	0.3	4.8
<b>Virginia Subtotal</b>	<b>\$281.6</b>	<b>\$288.8</b>	<b>\$291.4</b>	<b>\$294.0</b>	<b>\$297.0</b>	<b>\$299.9</b>	<b>\$1,752.7</b>
<b>Subtotal, State &amp; Local</b>	<b>\$910.0</b>	<b>\$918.0</b>	<b>\$926.1</b>	<b>\$934.0</b>	<b>\$942.6</b>	<b>\$951.0</b>	<b>\$5,581.7</b>
Under/(Over) Funding	\$91.9	\$167.8	\$182.1	\$(32.5)	\$24.8	\$(123.3)	\$310.9
<b>Total, State &amp; Local</b>	<b>\$1,002.0</b>	<b>\$1,085.8</b>	<b>\$1,108.2</b>	<b>\$901.5</b>	<b>\$967.4</b>	<b>\$827.7</b>	<b>\$5,892.6</b>
Jurisdiction Reimbursable & Planning Projects	\$44.1	\$91.1	\$61.1	\$98.1	\$49.1	\$10.1	\$353.4
Metropolitan Washington Airports Authority	26.5	22.4	11.6	1.5	—	35.0	97.0
<b>Grand Total</b>	<b>\$1,573.2</b>	<b>\$1,684.6</b>	<b>\$1,666.4</b>	<b>\$1,485.0</b>	<b>\$1,500.5</b>	<b>\$1,355.1</b>	<b>\$9,264.8</b>



**CAPITAL FUNDING AGREEMENT**

**Among**

**The State of Maryland;**

**The District of Columbia;**

**Arlington County, Virginia;**

**Fairfax County, Virginia;**

**The City of Alexandria, Virginia;**

**The City of Fairfax, Virginia;**

**The City of Falls Church, Virginia;**

**And**

**The Washington Metropolitan Area Transit Authority**

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**ATTACHMENT 3 District of Columbia Local Capital Funding Agreement**

## CAPITAL FUNDING AGREEMENT

THIS CAPITAL FUNDING AGREEMENT (Agreement) is made and entered into this 15<sup>th</sup> day of July, 2010, by and among **the Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; **the State of Maryland, acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia (Contributing Jurisdictions):**

### RECITALS

1. The WMATA transit system has played a critical role in the growth and prosperity of the National Capital Region and environs, and WMATA's continued economic vitality is essential to the regional transportation system and the environmental quality, economic, educational and cultural life of the Washington region.
2. The WMATA system was built and is operated through the substantial investment of public funds by the Federal Government and by State and local governments in the region.
3. The lack of sufficient secure and reliable funding to rehabilitate and maintain the WMATA transit system and to replace rail cars, buses, and other key transit assets is creating a transportation crisis, threatening the continued health and vitality of the system and jeopardizing the public investment.
4. Previously, the Parties entered into an agreement covering specific capital projects for FY2005 through FY10 (Metro Matters Funding Agreement) along with associated financing arrangements to cover those capital projects. That agreement expires on July 1, 2010 and the

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Parties wish to create a follow-on agreement for both funding FY2011-2016 on an expenditure basis and to provide an ongoing master agreement for future support of WMATA's capital needs.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the Parties hereby agree as follows:

## **SEC. 1 DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings, unless the context otherwise requires:

- (1) "Agreement" means this Capital Funding Agreement.
- (2) "Allocated Contribution" means the financial share of the cost of the Capital Improvement Program to be contributed by a Contributing Jurisdiction, in accordance with the terms of this Agreement but shall not include funds to be provided to match the Dedicated Funding (PRIIA) funds.
- (3) "Annual Work Plan" means the annual plan developed by WMATA on both obligation and expenditure bases and submitted to the Contributing Jurisdictions which identifies the Capital Improvement Program projects and activities to be undertaken in the Capital Budget for a specific fiscal year and the estimated annual cash requirement of those projects and activities and the sources of funds expected to be used on an expenditure basis to meet that cash requirement.
- (4) "Authorized Representative" means the individual designated by the chief executive officer (or comparable official) of a Contributing Jurisdiction or WMATA to take actions on behalf of that Party regarding issues that arise in carrying out this Agreement.
- (5) "Capital Budget" is synonymous with the term Annual Work Plan.

(6) “Capital Improvement Program” (“CIP”) means the list of project elements including the useful life computations for each project contained therein for the period of July 1, 2010 through June 30, 2016 approved by the WMATA Board of Directors for the period of July 1, 2011 – June 30, 2016 as may subsequently be updated for this or each successive six-year period (for planning purposes only) and specific fund sources for use in supporting the specific scope, schedule, and budget (expressed in both obligation and expenditure terms) of projects that advance the Authority’s strategic objectives. See Attachment 1 for the FY2011-2016 CIP. The CIP is not considered a payment schedule. The CIP shall be updated annually as described in this Agreement.

(7) “Contributing Jurisdictions” means the State of Maryland acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia.

(8) “Days” means calendar days, unless otherwise specifically provided.

(9) “Debt” means any bond, security, debt issuance, certificate of participation, Grant Anticipation Debt, or other evidence of indebtedness issued by a public body, and includes commercial paper, lines of credit, and letters of credit to finance the program of projects to be completed under the terms of this Agreement. Debt shall be classified as either Short-Term Debt or Long-Term Debt.

(10) “Dedicated Funding” (PRIIA) means those federal funds provided to WMATA under the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432). The PRIIA matching funds will be made available to WMATA pursuant to the applicable laws of the District of Columbia, Maryland, and the Commonwealth of Virginia.

(11) “Discretionary Grant” means any award of discretionary Federal financial assistance for a new or existing fixed guideway system from the capital investment grant program authorized under Section 5309 of Title 49 of the U.S. Code, or from any other discretionary grant program from any federal agency under which funds are provided on other than a formula basis.

(12) “Federal grant” means an award of financial assistance, including formula grants, discretionary grants, and cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government through the Federal Transit Administration or any other federal agency to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

(13) “FTA” means the Federal Transit Administration.

(14) “Formula grant” means any award of Federal financial assistance from the urban formula program authorized under Section 5307 of Title 49 of the U.S. Code or the fixed guideway modernization program authorized under Section 5309 of Title 49 of the U.S. Code, or similar successor programs.

(15) “Funding Sources” shall be the various categories of funds to be used to pay for the projects covered in the CIP. These funds may be either from federal or non-federal sources. Where the Agreement requires a more detailed description of the funding source, then the following categories shall be used: Dedicated Funding, Dedicated Funding matching funds,

Formula Grants, Formula Grants matching funds, Other Federal Grants, Other Federal Grants matching funds, System Performance Funds, and Other funds.

(16) “Grant Anticipation Debt” means any debt issuance the principal and interest on which are to be paid with the proceeds of Federal grant funds.

(17) “Interim Funding Sources” means one or more letters of credit or lines of credit and related reimbursement agreements, standby bond purchase agreements, commercial paper, or similar agreements or obligations, or any combination of the foregoing, issued to or for WMATA or entered into with WMATA by a bank, insurance company, or other financial institution, or one or more resolutions, indentures, or other security agreements providing for bonds or other evidence of indebtedness of WMATA.

(18) “Long-Term Debt” means Debt with a maturity greater than 1 year.

(19) “Metro Matters Funding Agreement” means the capital funding agreement dated October 25, 2004 by and among the Washington Metropolitan Area Transit Authority; the State of Maryland acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia and covering projects in WMATA’s Fiscal Years 2005-2010.

(20) “Minimum Annual Allocated Contribution” means that annual amount of funds payable by a Contributing Jurisdiction sufficient to provide any required matching funds for (a) all federal formula and other federal grant funds awarded to WMATA and expected to be expended in the current Annual Work Plan excluding the local match to be provided by the District of Columbia, Virginia and Maryland for the Dedicated Funding (PRIIA) funds, and (b)

the System Performance Funds necessary to meet any maintenance of effort requirement for WMATA to receive Dedicated Funding.

(21) “Non-Federal funds” means funds provided by State and local sources and debt sources.

(22) “Party” or “Parties” means WMATA and the Contributing Jurisdictions.

(23) “Preventive Maintenance” means upgrades to, repairs to, and maintenance of, capital assets that provides additional value to the capital asset. The FTA definition of “preventive maintenance” is separate from and not connected to Preventive Maintenance as defined herein.

(24) “Reprogramming” means a change to an Annual Work Plan or Capital Budget that occurs outside of the Annual Work Plan process.

(25) “Short-Term Debt” means Debt with a maturity of 1 year or less.

(26) “System Performance Funds” means jurisdictional funds over and above those funds required to match any Federal grant and to be used for Capital Improvement Plan projects contained in the applicable Annual Work Plan.

(27) “WMATA” or “Authority” means the Washington Metropolitan Area Transit Authority.

## **SEC. 2 CAPITAL IMPROVEMENT PROGRAM**

(a) **Agreement of the Parties.** -- WMATA and the Contributing Jurisdictions hereby agree to and adopt the Capital Improvement Program attached as Attachment 1. The Parties further agree to comply with the terms and conditions of this Agreement and to fully and faithfully carry out their respective obligations under this Agreement. Any commitment or agreement of any Contributing Jurisdiction required by this Agreement shall be subject to the

annual appropriation of funds and other limitations on expenditures or obligations under the law of the Contributing Jurisdiction or under other applicable law as described in Section 4(b)(3)(B). This Agreement shall not constitute an indebtedness of the Contributing Jurisdictions until funds are duly appropriated and quarterly payments become due pursuant to Section 5(c)(3) of this Agreement, nor shall it constitute an obligation for which the Contributing Jurisdictions are obligated to levy or pledge any form of taxation or for which the Contributing Jurisdiction has levied or pledged any form of taxation. Nothing in this Agreement affects requirements placed on the District of Columbia, State of Maryland and Commonwealth of Virginia by the Passenger Rail Investment and Improvement Act of 2008.

**(b) Elements of Capital Improvement Program.**

(1) Program Elements. – The Capital Improvement Program proposed to be funded by this Agreement consists of those projects identified for funding along with the sources of that funding in the annually approved CIP as they are updated in accordance with this Agreement. The CIP may include any capital project or purchase eligible for capital funding and may include, for example, projects in any of the following categories:

- (A) Vehicles and Vehicle Parts, such as replacement or purchase of new rail cars, buses, paratransit vehicles and/or service vehicles, rehabilitation of rail cars and buses and replacement parts to maintain the rail fleet.
- (B) Rail System Infrastructure Rehabilitation, such as multiple systems and equipment within the rail stations and tunnels that enable safe, reliable Metrorail service.
- (C) Maintenance Facilities, such as rehabilitation, maintenance, replacement and/or new bus garages and rail yards to support repairs to vehicle fleet.
- (D) Systems and Technology, such as technology systems, software and equipment supporting transit operations and business functions.



- (E) Track and Structures, such as steel running rail that guides Metrorail trains, the cross ties and fasteners that hold the rail in place, the ballast bed that supports the cross ties and the third rail that provides power to the train. Structures include the retaining walls that protect the track bed and underground tunnels, the concrete pads that keep the track bed properly elevated and the bridges that span roads and bodies of water.
- (F) Passenger Facilities, such as facilities at Metrorail stations, including bus loops, bus stops, parking garages, surface lots, Kiss-and-Ride spaces, access roads and bus loops, bike racks and lockers.
- (G) Maintenance Equipment such as equipment to rehabilitate track and maintain the vehicle fleet (rail and bus).
- (H) Other Facilities, such as facilities that house administrative offices, training rooms, revenue processing activities, material storage, police work and a print shop.
- (I) Program Management and Support including Credit Facility and Other Financial Fees and Expenses and Program Contingencies.
- (J) Safety and Security Projects.
- (K) Preventive Maintenance as defined in this Agreement.

(2) **Description.** -- The specific projects and activities and the sources of funding to support those specific projects and activities will be set forth in the Annual Work Plan.

(c) **Cost.** -- The estimated program cost of the initial Capital Improvement Program is approximately \$5,000,000,000 in year of expenditure dollars and covering a six-year period. The initial CIP covering FY 2011-2016 is provided as Attachment 1.

(d) **Schedule.** -- The initial Capital Improvement Program will be implemented over the period beginning WMATA fiscal year 2011 and ending fiscal year 2016. There will be an

Annual Work Plan for each fiscal year, as more specifically described in Section 4 of this Agreement.

(e) **Agreement to Fund Capital Improvement Program.** -- WMATA and the Contributing Jurisdictions hereby concur in and agree to fund the Capital Improvement Program in accordance with 4(b)(1)(B) of this Agreement.

(f) **Authorized Representative.** -- Within 30 days after the Effective Date of this Agreement, WMATA and each of the Contributing Jurisdictions shall designate an Authorized Representative to act on that Party's behalf in implementing this Agreement.

### **SEC. 3 CAPITAL IMPROVEMENT PROGRAM FINANCIAL PLAN**

(a) **Funding Sources.**

The projects and activities in the Capital Improvement Program shall be funded in the most cost effective manner from one or more of the following sources: (A) Funding Sources; (B) the issuance of Debt by WMATA, with WMATA's debt service to be paid with funds received from the Contributing Jurisdictions unless a Contributing Jurisdiction has opted out of the Long-Term Debt issue in accordance with this Agreement; and (C) such other funding sources, cash management strategies or financing methods as the WMATA Board determines to be appropriate to accomplish the goals of the Capital Improvement Program. The specific amounts estimated from each Funding Source will be set forth in each Annual Work Plan.

(b) **Formula for Contributing Jurisdiction Funding.** -- The Allocated Contributions of the Contributing Jurisdictions for the Capital Improvement Program will be based on the Board-adopted FY 2010 Operations Allocation Formulas applied to each project as shown in the FY2011-2016 CIP applied to each element of the Capital Improvement Program as follows:

- (1) The Rail allocation formula will apply to Rail projects and debt issued for Rail projects.
- (2) The Bus allocation formula will apply to Bus projects and debt issued for Bus projects.
- (3) The Paratransit formula will apply to Paratransit projects and debt issued for Paratransit projects.
- (4) An average of the Rail and Bus allocation formulas will apply to General financing expenditures and for project expenditures that cannot be allocated to Rail, Bus, or Paratransit.
- (5) Dedicated Funding funded projects – Will be divided equally among the District of Columbia, State of Maryland, and Commonwealth of Virginia subject to the provisions of the various state laws establishing dedicated funding sources to match federal funds made available under the Passenger Rail Investment and Improvement Act of 2008.

The allocation formulas will be recalculated every three (3) years to reflect the then-current approved Operating Budget allocation and applied prospectively to the three subsequent Annual Work Plans.

(c) **Debt Service.** – Debt service on obligations agreed to by the Contributing Jurisdictions and issued under the Metro Matters Funding Agreement shall become obligations issued under this Agreement. The Contributing Jurisdictions shall continue to make any debt service payments as were required under the terms of the Metro Matters Funding Agreement. New debt service for obligations issued under the terms of this Agreement will be funded by the Contributing Jurisdictions as more fully set forth in Section 4(b)(2) of this Agreement.

(d) **FY 2010 Capital Projects.** -- WMATA and the Contributing Jurisdictions agree that all projects whose funding was obligated under the Metro Matters Funding Agreement but for which expenditures will occur during the scope of this Agreement will become projects under this Agreement and governed by the terms of this Agreement including the funding obligations

of the Contributing Jurisdictions thereto. It is the intent of the Parties to terminate the Metro Matters Funding Agreement and incorporate all its capital commitments into this Agreement.

#### **SEC. 4 IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM**

**(a) Programmatic Aspects.**

**(1) Long Term Programming** -- To assist in the prioritization of projects, each Contributing Jurisdiction will, at the execution of this Agreement, provide a schedule of funds expected to be made available to WMATA for the 2011-2016 period and successor periods (for planning purposes only) covered by this Agreement. The schedule for WMATA fiscal years 2012 - 2016 is subject to adjustment as the submitting Contributing Jurisdiction obtains more updated information. It is not binding on any Party and shall not be considered as a payment schedule. The Annual Work Plan will contain the actual funding requirements and sources of funds for the current year. The WMATA Board of Directors will approve a six-year capital program each year, with such program covering potential funding sources, a description of the project prioritization process, an explanation of how the CIP would further the strategic goals of WMATA, and an identification of the performance metrics by which the outcome of the CIP will be measured. The prioritization process shall rank and select projects based on the projects' support of WMATA's strategic goals and funding availability.

The annual documentation of the capital program will describe qualitatively and quantitatively the broad outlines of the proposed capital spending and sources for that spending for the forthcoming fiscal year and the outcomes expected to be achieved by the proposed program. The discussion of the proposed spending shall include at least the following: (i) the sources of funds for the proposed spending, (ii) expenditures by mode (e.g. bus, rail, paratransit), (iii) expenditures by project phase (e.g. planning, design, land acquisition, construction), (iv) the

indicators of the outcomes to be achieved by the proposed projects, and (v) projected spending compared to prior year actual spending rate.

(2) **Annual Work Plan.** -- WMATA shall, as a part of its annual budget process each year during this Agreement, develop and submit to the Contributing Jurisdictions a draft Annual Work Plan for the Capital Improvement Program which shall include the preliminary results of the Budget Reconciliation process contained in section 5 of this Agreement. The Annual Work Plan shall be based upon and be consistent with the updated Capital Improvement Program prepared pursuant to the reconciliation process under Section 5 of this Agreement. The Annual Work Plan along with the Capital Program will be approved by the WMATA Board of Directors prior to the start of the fiscal year covering the specific Annual Work Plan.

(3) **Contents of Plan.** -- The Annual Work Plan shall include --

(A) an identification of the projects and activities in the Capital Improvement Program for which funds will be obligated or expended during the next WMATA fiscal year;

(B) a budget for the Annual Work Plan that includes a cost estimate and source of funds for each project and activity in the Plan, by CIP category;

(C) a statement of each Contributing Jurisdiction's required Allocated Contribution for the Annual Work Plan, based on a schedule of projected quarterly cash needs including an identification of what portion of that contribution is a direct capital contribution, and what portion (if any) is to be used by WMATA to pay debt service on WMATA Long-Term Debt and WMATA Short-Term Debt (each to be stated separately in the Plan);

(D) a summary of the CIP projects and activities undertaken in the then-current WMATA fiscal year, together with the costs incurred to date and the estimated remaining costs for those projects and activities; and

(E) the preliminary results of the Budget Reconciliation process contained in section 5 of this Agreement and a revised proposed CIP.

(4) **Schedule for Approval of CIP and Annual Work Plan.** To ensure a coordinated program, the Parties agree that each annual program will be developed and approved under the following schedule:

(A) The updated 6-year CIP will be made available to the Contributing Jurisdictions no later than the 10th business day in October.

(B) A presentation will be offered to the Northern Virginia Transportation Commission at a scheduled meeting no later than the November meeting.

(C) A presentation will be offered to the Mayor and Council of the District of Columbia no later than the Wednesday immediately prior to Thanksgiving.

(D) Subject to consultation with the Maryland Department of Transportation, a public presentation will be offered in both Prince George's County and Montgomery County no later than the Wednesday immediately prior to Thanksgiving.

(E) WMATA will also present the capital program and the Annual Work Plan information to affected legislative bodies as requested.

(F) The draft Annual Work Plan shall be submitted to the Contributing Jurisdictions by December 15.

(G) Comments are due from the Contributing Jurisdictions no later than February 15th. WMATA may not be able to consider comments received after February 15<sup>th</sup> in the development of the proposed Annual Work Plan.

(H) The proposed Annual Work Plan shall be provided to the Contributing Jurisdictions immediately following the March WMATA Board meeting and shall be used by the staff of the Contributing Jurisdictions to consult with WMATA Board representatives. The amount included as the Minimum Allocated Contribution on this final Annual Work Plan will remain substantially the same for the upcoming fiscal year, subject to downward adjustment as provided in Section 4(b)(3)(B), or as otherwise requested by the WMATA Board and approved by the Contributing Jurisdictions. The final CIP and Annual Work Plan will be adopted by the WMATA Board no later than the June meeting.

**(5) WMATA Implementation Responsibilities.**

(A) General. -- WMATA will administer the Capital Improvement Program and carry out all necessary procurement actions and management oversight. All procurement actions will be undertaken in accordance with WMATA procurement policies and applicable law.

(B) Federal Grants. -- To the extent that Federal financial assistance is provided for any project or activity in the Capital Improvement Program, WMATA will develop the required Federal grant applications and/or other necessary documentation to meet FTA or other Federal program requirements, and will carry out the federally assisted project or activity in compliance with all applicable Federal requirements.

**(6) Funding Methodology For Projects in the Annual Work Plan.** New projects for the Annual Work Plan will be listed with their funding identified by both year and

Funding Source. A project may be funded by more than one type of funding. If a project is a multi-year project, then in the second and succeeding years, that project will have the first call on that funding source unless another funding source is identified. In every case, funds needed for debt service including Short Term Debt and Interim Financing and funds needed for annual “state of good repair” items shall have first claim on all funds that may legally be spent on such projects. Projects which are underway but which have remaining amounts budgeted for them in the CIP shall have the unexpended funds “rolled over” to the succeeding fiscal year. The unexpended funds shall be in addition to the succeeding year’s CIP funding requirements.

**(b) Financial Aspects.**

**(1) Cash Sources.**

(A) Federal Funds. -- WMATA commits to take all necessary and appropriate actions to secure Federal funding in the CIP (including Federal formula and discretionary grant funds under the Federal transit/highway program, the Passenger Rail Investment and Improvement Act of 2008, and such other Federal financial assistance as may be made available during the term of this Agreement) to assist in the funding of the Capital Improvement Program. WMATA will manage the Capital Improvement Program within the funding amounts agreed to by the Contributing Jurisdictions, except as otherwise provided in paragraph (C) of this subsection.

**(B) Jurisdictional Commitments.**

(i) To the extent applicable, each Contributing Jurisdiction agrees to make its Allocated Contribution to fund the Capital Budget component of the CIP and the CIP as a whole as adjusted annually in accordance with this Agreement; provided, however, that in no case will the Allocated Contribution be less than the Contributing Jurisdiction’s estimated



annual share of any required matching funds for (1) all federal formula and other federal grant funds awarded to WMATA and expected to be expended in the current Annual Work Plan, and (2) the System Performance Funds necessary to meet any maintenance of effort requirement for WMATA to receive Dedicated Funding (“Minimum Annual Allocated Contributions”). Such contributions shall be made in accordance with the requirements and procedures in subsection (3) of this Section. The source of funds for such capital contributions is in the discretion of each Contributing Jurisdiction; provided that such funds must qualify as local match under applicable FTA or other agency grant program requirements. WMATA agrees to provide each Contributing Jurisdiction with their estimated Allocated Contribution by the 10<sup>th</sup> business day in October each year.

(ii) If the expected amount of federal grant funds requiring a non-federal match increases by more than 20% over the previous year’s grant funds received by WMATA, then the Parties will confer within 30 days to determine if a change to the funding requirement contained in Section 4(b)(1)(B)(i) of this Agreement is appropriate.

(iii) Additionally, each Contributing Jurisdiction agrees to make its best efforts to provide necessary System Performance Funds to pursue the projects in the Annual Work Plan to be funded with System Performance Funds above those required to obtain Dedicated Funding. Each Contributing Jurisdiction shall inform WMATA of the amount of any such System Performance Funds to WMATA in sufficient time for WMATA staff to prepare the draft and final capital program and Annual Work Plan. The System Performance Funds will be programmed into the CIP and Annual Work Plan using the WMATA funding formulas described in Section 3(b) of this Agreement. Only those amounts which are balanced among the

Contributing Jurisdictions based on the aforementioned funding formulas will be programmed into the CIP and Annual Work Plan.

(C) Additional Limitations.

(i) As authorized in Section 4(b)(7) of this Agreement, WMATA and the District of Columbia have entered into a separate Local Capital Funding Agreement of even date herewith (“DCLCFA”) to address certain issues concerning the implementation of this Agreement that must be handled separately according to District of Columbia law. The implementation of District of Columbia obligations, representations, and warranties under this Agreement shall be controlled by the provisions of the DCLCFA set forth on Attachment 3 to the extent of any inconsistency between this Agreement and the provisions of the DCLCFA identified on Attachment 3. Section 4(b)(2)(D) of the DCLCFA provides that, if the District of Columbia exercises its prepayment rights for all long-term debt under 4(b)(2)(D) of this Agreement, then notwithstanding anything to the contrary herein, the Allocated Contribution of the District of Columbia, as shown on Table 1 of Attachment 1 of this Agreement, may not be increased above the aggregate amount of \$397,314,000 to be paid from District of Columbia capital funds, without written approval of the District of Columbia. Payments for Long Term Debt service on Metro Matters Funding Agreement debt and Long Term Debt service anticipated in this Agreement, are not included in the Allocated Contribution aggregate cap for the District of Columbia.. For informational purposes, only, the District of Columbia represents that payments for amounts such as Long Term Debt service under the Metro Matters Funding Agreement and funds associated with debt service for projects under this Agreement are funded through annual appropriations in its Operating Budget. For example, the District of Columbia has included in its proposed operating budget for FY 2011 the sum of

\$258,318,034 for payment to WMATA, which includes an amount sufficient to pay Long Term Debt service for FY 2011.

(ii) The District of Columbia agrees to review its Allocated Contributions annually to determine if any adjustments may be made. If the District of Columbia agrees to increase the District of Columbia Allocated Contributions cap by an amendment to the DCLCFA, then such increase will be incorporated into this Agreement pursuant to the Annual Work Plan process.

(iii) In the event that (i) WMATA proposes an increase that would cause the District of Columbia's Allocated Contribution to exceed an aggregate amount of \$397,314,000; and (ii) the District of Columbia denies or withholds approval of the increase in excess of that stated amount, all other Contributing Jurisdictions shall be relieved of any obligation to fund the increase proposed by WMATA in their Allocated Contributions.

(iv) In the event that the District of Columbia denies or withholds approval of such increase, all Parties shall cooperate to develop alternative solutions to any resulting revenue or program shortfalls.

**(2) Debt Sources.**

(A) General. -- In accordance with the Annual Work Plan, all or any portion of the Capital Improvement Program may be funded through short- or long-term debt financing as described in this subsection and in accordance with Section 21 and Articles IX and X of the WMATA Compact.

(B) WMATA Responsibility. -- WMATA may issue debt to assist in the financing of the Capital Improvement Program. The WMATA Board may authorize the issuance of such debt, in one or more issuances during the term of this Agreement, at such times

as it determines appropriate, in its discretion, taking into account factors such as the cash flow needs of the CIP, market conditions for financing, and WMATA's debt capacity. Any debt issued by WMATA under this subsection may be secured by a lien and pledge of WMATA's gross revenues, or (subject to any required FTA approval) of WMATA's capital assets. Any such debt secured by WMATA's gross revenues may be on parity with or subordinate to the 2003 Gross Revenue Transit Refunding Bonds, the Gross Revenue Transit Bonds Series 2009A, and the Gross Revenue Transit Bonds Series 2009B. For any such debt that is secured by WMATA's capital assets, WMATA will endeavor, consistent with the cash flow needs of the CIP and with market demands, to match the length of the debt financing to the useful life of the pledged assets, unless WMATA determines that market or other financial considerations make a different debt length more prudent. In addition to debt secured by gross revenues or capital assets as described in this paragraph, WMATA may issue debt in accordance with subsection (f) of this Section.

(C) Contributing Jurisdiction Responsibility. -- The Contributing Jurisdictions which have not elected to prepay pursuant to paragraph (D) of this subsection each commit, subject to annual appropriations, to make the annual contributions necessary in order that WMATA can make payments of debt service on debt issued by WMATA under paragraph (B) of this subsection. The amount of such contributions will be included in the respective Allocated Contribution amounts of the Contributing Jurisdictions set forth in the CIP. Such contributions shall be made in accordance with the requirements and procedures in subsection (3) of this Section. The obligation to make contributions to pay such debt service shall survive the term of this Agreement and shall remain in effect throughout the term of the WMATA debt issuance involved.

(D) Prepayment Alternative for Contributing Jurisdictions.

(1) Election. -- A Contributing Jurisdiction may elect to prepay its portion of the debt financing (other than commercial paper, letter of credit, or line of credit) needed to fund the Capital Improvement Program, as described in the CIP, in lieu of making annual contributions to pay WMATA debt service pursuant to paragraph (3) of this subsection. The elections and commitments of the Contributing Jurisdictions to make such prepayments, as of the Effective Date of this Agreement, are reflected in the CIP. If any update to the CIP during the term of this Agreement contemplates long-term debt issuances by WMATA, then the Contributing Jurisdictions shall have an opportunity to change their elections regarding prepayment, by notice to WMATA. Such notice shall be provided in writing no later than one hundred twenty (120) days after the date WMATA notifies the Contributing Jurisdictions of the need to make an election regarding such additional debt issuance.

(2) Responsibility for Repayment. -- If a Contributing Jurisdiction issues debt to make its prepayment under this paragraph, it shall pay the proceeds of such debt issuance directly to WMATA in accordance with its Allocated Contribution as set forth in the CIP and in accordance with the procedures set forth in Attachment 2. Such Contributing Jurisdiction shall be solely responsible for the repayment of the principal and interest of any debt it issues under this paragraph.

(3) Contributing Jurisdiction Commitment.

(A) General. -- The maximum amount of the Contributing Jurisdictions' Allocated Contribution of the costs of the CIP is subject to the provisions of Section 4(b)(1)(C) of this Agreement. Nothing in this Agreement shall be construed to obligate a Contributing Jurisdiction to have, as of the date that it enters into this Agreement, funding or an

appropriation in the full amount of its Allocated Contribution of the costs of the CIP. The Contributing Jurisdictions shall be solely responsible for their Allocated Contributions of the cost of the CIP. Each Contributing Jurisdiction commits, subject to its constitutional or legally equivalent provisions and throughout the term of this Agreement, to use all reasonable efforts including, but not limited to, a request by the responsible official to include the Minimum Annual Allocated Contribution as described in the draft Annual Work Plan in the Contributing Jurisdiction's annual proposed budget or other financial submission to its fiscal authority and to pursue all legally available means to secure the necessary and appropriate budget, legislative, and appropriations actions in order to obtain funding in the full amount of its Allocated Contribution of the costs of the Capital Improvement Program. Each Contributing Jurisdiction shall be solely responsible for providing its Allocated Contribution to the cost of the CIP, and in no circumstance shall one Contributing Jurisdiction be responsible for the Allocated Contribution or other obligations of any other Contributing Jurisdiction under this Agreement.

(B) Annual Commitment. -- Each Contributing Jurisdiction shall annually provide WMATA with written notice, concurrent with comments on WMATA's proposed budget, that funds have been, are intended to be, or will not be appropriated to cover its Allocated Contribution for WMATA's upcoming fiscal year, and committing to make payment of such Allocated Contribution to WMATA. No CIP or Annual Work Plan shall be approved without the certification of each Contributing Jurisdiction that the funding levels are reasonable and accurate reflections of funds to be made available. If a Contributing Jurisdiction's appropriations process is not completed by June 1, such Contributing Jurisdiction shall provide to WMATA: (i) a written explanation for the failure to make such submissions by June 1 and confirmation that amounts equal to its Allocated Contribution have been or will be included in

the next fiscal year budget to be considered by the Contributing Jurisdiction's fiscal authority; and (ii) written assurances that all reasonable efforts will be undertaken to secure the ultimate appropriation of funds in a prompt and timely fashion, or if funds will not be appropriated, then the Contributing Jurisdiction shall notify WMATA and all other Contributing Jurisdictions through their representatives listed in section 12 of this Agreement or as may be updated by each Contributing Jurisdiction in the future within five business days of the fiscal body's action. If there is a failure to appropriate the full annual Allocated Contribution, the Annual Work Plan shall be revised to conform to the available funds and submitted to the WMATA Board of Directors and the other Contributing Jurisdictions for approval.

(C) Quarterly Payments. -- Each Contributing Jurisdiction's Allocated Contribution shall be based on the approved Annual Work Plan and any subsequent adjustments derived from the Annual Budget Reconciliation Process for the quarter covered by the invoice, and paid to WMATA on a quarterly basis in advance, no later than the first day of each quarter, throughout the term of this Agreement. Any debt service included in the invoice for either Short-Term Debt or Long-term Debt shall be separately identified on the invoice. WMATA shall submit bills to the Contributing Jurisdictions for such quarterly payments forty-five (45) days prior to the date such payments are due. Thus, for example, for the July-September quarter WMATA will bill the amount in the Annual Work Plan as approved or adjusted for July-September and send each Contributing Jurisdiction an invoice for its Allocated Contribution no later than the immediately preceding May 15<sup>th</sup>. Contributing Jurisdiction payments must be received by WMATA no later than July 1. The sum of each Contributing Jurisdiction's quarterly invoices during a given fiscal year shall not exceed that Contributing Jurisdiction's Allocated Contribution in the approved Annual Work Plan.

**(4) Transitional System for FY2011 Billings** -- To transition to the billing system covered by this Agreement, WMATA shall:

(A) Bill the Contributing Jurisdictions  $\frac{1}{4}$  of the Allocated Contribution amounts for each of the first two quarters in FY2011 instead of the expected cash flow needs.

(B) Issue the final Annual Work Plan for FY2011 on or before July 1, 2010.

(C) Apply the Annual Budget Reconciliation Process to FY2011.

(D) Start the Quarterly Reporting required under the Agreement for the 1st quarter which closes on September 30, 2010, with the content of the report being progressively refined to meet the requirements of section 4(b)(5) and coming into full compliance with the report covering the 3<sup>rd</sup> quarter of FY2011.

**(5) Quarterly Reports.** At the conclusion of every quarter, WMATA shall prepare a report on the result of the preceding quarter for submittal to the Contributing Jurisdictions no later than forty five (45) days following the close of the quarter. Such report shall contain a review of capital project scope, cost, and schedule changes; the status of contracts necessary for the implementation of capital projects; the status of year-to-date expenditures relative to budget and the Annual Work Plan; the status of all cash and debt sources relative to budget and the Annual Work Plan; updated project cash flow projections and program cash requirements; and a comparison of the billed amount to amounts actually paid out for the preceding quarter. Such report shall be provided in a quarterly financial report to the WMATA Board.

**(6) Timeliness of Payment.**



(A) Treatment of Payments. -- Interest shall accrue on all payments made by a Contributing Jurisdiction until the funds are expended. WMATA shall place such funds so contributed into an interest earning account, with interest to be compounded monthly at WMATA's then current earnings rate for its short-term investments. Interest earned on funds contributed by a Contributing Jurisdiction shall be applied as a credit against future payments for Allocated Contributions due from that jurisdiction under this Agreement, unless otherwise directed in writing by that jurisdiction.

(B) Non-Payment or Late Payments. -- If a Contributing Jurisdiction fails to make a quarterly payment in full to WMATA when such payment is due after certification by the Contributing Jurisdiction as required under section 4(b)(3)(B), WMATA shall notify the other Contributing Jurisdictions and may issue debt or otherwise advance funds as deemed necessary by the WMATA General Manager to replace the amount of payment not timely received. In the event that WMATA issues debt, WMATA shall charge such Contributing Jurisdiction an amount equal to the sum of (i) the financing and interest costs and expenses (or lost interest earnings) incurred by or on behalf of WMATA in connection with such debt issuance or advance of funds; (ii) any administrative costs incurred by WMATA in connection with obtaining such replacement funding; and (iii) any penalties or losses incurred by WMATA assessed by a third party as a result of such late or non-payment. The total amount of the charges assessed under this paragraph, together with the unpaid quarterly payment, shall be due and payable to WMATA no later than thirty (30) days after the date of assessment by WMATA plus interest compounded monthly at the WMATA short-term investment earnings rate until the date of full payment.

(7) **Local Capital Funding Agreements.** -- WMATA, with the approval of the WMATA Board, may enter into Local Capital Funding Agreements with some or all of the Contributing Jurisdictions, consistent with this Agreement and the Attachments hereto, to establish arrangements to implement the Contributing Jurisdiction's commitment to pay its Allocated Contribution of the cost of the Capital Improvement Program, in the event that the budgetary process of a Contributing Jurisdiction makes such an agreement necessary or appropriate.

(8) **Interim Funding Sources and Security Interests.**

(A) **Interim Funding Authority.** -- The WMATA Board of Directors is authorized to use Interim Funding Sources, including borrowing, on behalf of WMATA in such amounts and at such times as, in the Board's sole judgment, are necessary and appropriate for the purpose of implementing the projects and activities in the Capital Improvement Program and any Annual Work Plan funded through direct capital contributions.

(B) **Security Interests.** -- WMATA may create security interests in its rights and interests in amounts paid or received as direct capital contributions from the Contributing Jurisdictions under this Agreement, as such amounts shall become available and are paid to or for the account of WMATA under the terms of this Agreement. Such amounts may be pledged as security for the costs of Interim Funding Sources. Each Contributing Jurisdiction shall comply with any reasonable and legal request of WMATA to execute, acknowledge, and deliver appropriate instruments and assurances as may be necessary or desirable to confirm and effectuate any such security interest created by WMATA in connection with Interim Funding Sources. Nothing in this subsection shall be construed as requiring any Contributing Jurisdiction to make any payment under this Agreement to anyone other than WMATA. For purposes of this

subsection, the “cost of Interim Funding Sources” includes payments of principal and interest thereunder and all fees, expenses, and other amounts incurred or payable under any Interim Funding Sources.

(C) Limitation. -- The borrowing authority authorized by this subsection may not be used by any Contributing Jurisdiction to satisfy its funding obligations under this Agreement.

(9) WMATA Risk Mitigation. -- Section 22 of the WMATA Compact prohibits WMATA from making any commitment or incurring any obligations with respect to the construction or acquisition of any transit facilities “until funds are available therefor.” The Parties acknowledge that the commitments of the Contributing Jurisdictions under this Agreement are intended to satisfy the requirements of Section 22 under an expenditure-based budget. In order to address the risk of non-appropriation or late payment of funds by a Contributing Jurisdiction or insufficient funding by the Federal Government, and to assure compliance with Section 22 of the WMATA Compact, WMATA intends to continue to maintain a risk mitigation credit facility using one or more of the following: a line of credit, letter of credit, commercial paper program, or other credit facility determined by WMATA in its discretion to be appropriate and feasible. Such risk mitigation credit facility shall be in addition to any other credit facility which may be put in place as a working capital or other cash flow aid.

(10) Annual Changes to the CIP -- In addition to making the funding commitments described in this Section and subject to the provisions of the District of Columbia Local Capital Funding Agreement (attached as Attachment 3), the Parties agree to adjust the program of projects included in the scope of this Agreement, each year within the term of this agreement on a rolling basis, in order to provide the funding required to meet WMATA’s

ongoing and updated CIP needs and other capital needs, and for planning WMATA's ongoing and updated CIP needs and other capital needs on a rolling basis for years beyond the term of this agreement.

## **SEC. 5 ANNUAL BUDGET RECONCILIATION PROCESS**

(a) **Reconciliation.** -- As part of its annual budget process in each year during the term of this Agreement, WMATA shall prepare a reconciliation of –

(1) the actual expenditures for projects and activities under the current Capital Improvement Program to date, and for that fiscal year, as compared to the planned expenditures for such projects and activities for the same fiscal year;

(2) the actual Allocated Contribution of each of the Contributing Jurisdictions to date, as compared to the scheduled Allocated Contribution of each Contributing Jurisdiction for the current CIP;

(3) the projected Allocated Contributions of each Contributing Jurisdiction for the current CIP;

(4) the actual amount of Federal grant funds received for the Capital Improvement Program, as compared to the budgeted or projected amount of Federal grant funds for the same fiscal year; and

(5) the current forecast of expenditures; and

(6) the estimated cost to complete the remaining projects and activities in the current Capital Improvement Program and expected sources of those funds.

(b) **Application of Reconciled Payment Amounts.** On or before October 15<sup>th</sup>, WMATA shall have performed the reconciliation described in the above section, including whether there is a surplus of funds paid in by the Contributing Jurisdictions. The results of this

reconciliation shall be used in the Annual Work Plan currently under development as well as to review the Annual Work Plan for the fiscal year then currently in effect at the time that the reconciliation is completed. If the results of the reconciliation indicate a need to adjust the then-current year's Annual Work Plan billing amounts, those adjustments shall become effective with the billing for the 3<sup>rd</sup> quarter, which begins on January 1. The surplus amount may be made available to the Contributing Jurisdictions only if there is no expectation that those funds will be needed within the next six succeeding quarters measured from WMATA's fiscal year 3<sup>rd</sup> quarter (beginning on January 1) and that the refund of the surplus will not result in WMATA receiving less funds (including the surplus funds) than is required to be needed to meet the expected costs of the program over the next six calendar quarters. If surplus funds are provided to the Contributing Jurisdictions, the funds will be made available prior to the 3<sup>rd</sup> or 4<sup>th</sup> quarter of the fiscal year in which the reconciliation was completed.

(c) **Revenue Shortfalls.** -- If the reconciliation process conducted under subsection (a) of this Section reveals that there are shortfalls in revenues for the Capital Improvement Program due to late or insufficient contributions by a Contributing Jurisdiction or to the receipt of less than the assumed level of Federal funds, or other funds that support the CIP, WMATA shall develop a recovery plan for addressing such shortfalls. Such recovery plan, as approved by the WMATA Board of Directors through its annual budget process, shall include one or more of the following alternatives: (1) utilization of Interim Funding Sources; (2) value engineering, project re-design, or other cost reduction measures for future projects or activities; (3) re-scheduling of projects or activities in the Capital Improvement Program; (4) subject to agreement of the Contributing Jurisdictions, increasing the levels of Allocated Contributions from the

Contributing Jurisdictions; and/or (5) the implementation of Project Deferrals under subsection (e) of this Section.

(d) **Revenue Increases.** If the reconciliation process conducted under subsection (a) of this Section reveals that Federal or other funds have been received which substantially exceed the assumed level of funding, such excess funds shall be applied to (1) to the unfunded priorities in the Capital Needs Inventory or to other needs identified by the WMATA Board; or (2) to any outstanding indebtedness, thereby reducing the Allocated Contributions of the Contributing Jurisdictions, as determined by the WMATA Board of Directors through its annual budget process.

(e) **Project Deferrals.** If WMATA is unable to satisfactorily address revenue shortfalls under subsection (c) of this Section, the WMATA Board may, through the next WMATA budget process, modify the Capital Improvement Program to defer certain projects or activities in order to assure that the Capital Improvement Program can be funded during the term of this Agreement within the amount of available financial resources.

(f) **Updated Capital Improvement Program.** The WMATA staff shall, as soon as practical after each annual reconciliation process conducted under this Section, develop an updated Capital Improvement Program. This updated document, if approved by the WMATA Board, will replace and supercede all previous versions of the Capital Improvement Program and.

(g) **Reprogramming of Funds and Projects During the Term of This Agreement.** The Parties recognize that the scope, pricing or desirability of some projects will change during the term of this Agreement. To address these possibilities, WMATA agrees to provide the

Contributing Jurisdictions with advance notice of any request to reprogram funds in an amount greater than \$1,000,000 per project.

(h) **Final Distribution.** In the event that this Agreement is terminated pursuant to section 8 of this Agreement, any amounts remaining at the expiration of this Agreement shall be first used to fund any remaining unfunded projects or activities in the Capital Improvement Program as indicated in the attached Capital Improvement Program, and then, if any funds remain, will be credited or refunded to the Contributing Jurisdictions, as directed by the Contributing Jurisdictions.

(i) **Financial Records.**

(1) **Maintenance of Records.** -- During the term of this Agreement, WMATA agrees to maintain separate and complete accounting records which are consistent with generally accepted governmental accounting procedures and which accurately reflect all income and expenditures of funds which may be provided under this Agreement. WMATA will retain all such CIP records for the same period that records are required to be kept for the FTA or other federal grants, unless there is an outstanding written Contributing Jurisdiction or FTA financial or audit question, which is not resolved by the Contributing Jurisdiction or FTA auditor. The records of WMATA must be in sufficient detail to determine the character and timing of fund items; and of contract obligation and expenditure transactions authorized by this Agreement.

(2) **Audits.**

(A) **Timing for Performance.** -- A Contributing Jurisdiction or its agent may perform an audit of WMATA's expenditures of funds and the sources of those funds provided by this Agreement for a period of up to three (3) fiscal years preceding a request for audit from the Contributing Jurisdiction provided that the request is received no later than one

hundred eighty (180) days after the release of the WMATA audit for the preceding year and transmittal of the audit to the Contributing Jurisdictions with a notice of their audit rights under this Agreement. Any such audit shall be commenced within sixty (60) days after the date of the request, and shall be completed (to the maximum extent practicable) within 180 days after the date it is commenced. The Contributing Jurisdiction will assume all financial responsibility for any costs associated with the performance of such audits. If more than one Contributing Jurisdiction initiates an audit on a timely basis under this paragraph, the audits shall be consolidated into a single audit for the applicable fiscal years and the Contributing Jurisdictions participating in the audit shall share in the cost of the audit. WMATA agrees to cooperate fully with a Contributing Jurisdiction or its authorized agent or designee in the conduct of any audit carried out in accordance with this paragraph. In addition to the foregoing, in the event that any Contributing Jurisdiction's bond, the proceeds of which were used to meet the funding obligation of the Agreement or any transaction pertaining to such Contributing Jurisdiction's bond, is the subject of any tax, securities or similar federal or state law investigation, inquiry or suit, WMATA shall promptly allow the Contributing Jurisdiction access, at the Contributing Jurisdiction's expense, to any record it may have relating to WMATA's use of the proceeds of such Contributing Jurisdiction's bond so that the Contributing Jurisdiction may participate and respond to any aspect of such investigation, inquiry or suit. In the event WMATA is notified that any Contributing Jurisdiction's bond, the proceeds of which were used to meet funding obligations of this Agreement or any transaction pertaining to any such Contributing Jurisdiction's bond, is the subject of any tax, securities or similar federal or state law investigation, inquiry or suit, WMATA shall promptly notify the Contributing Jurisdiction and



allow the Contributing Jurisdiction to participate in all aspects of the conduct or any response WMATA may make in such regard.

(B) Audit Results. -- If it is determined as a result of such an audit under this paragraph that the Contributing Jurisdiction has made payments in excess of or less than the amount(s) provided for pursuant to the terms and conditions of this Agreement and the CIP, WMATA will make appropriate adjustments in the amount due to WMATA from such Contributing Jurisdiction in the next fiscal year. The audit rights provided under this paragraph shall survive the termination date of this Agreement.

## **SEC. 6 DISPUTES**

(a) Informal Resolution -- The Parties agree to use all reasonable efforts to resolve any disputes, which arise under or otherwise relate to this Agreement. If the Parties, at staff level, cannot resolve such a dispute through initial discussions within thirty (30) days after the date it first arises, then the Party seeking a resolution shall, through its Authorized Representative, provide written notice of the nature of the dispute and the issues involved to the Authorized Representatives of each other Party involved. Such other Parties shall respond within thirty (30) days, stating their position on the issue presented and their proposal for resolution. The Authorized Representatives shall then meet within the next thirty (30) days in an attempt to resolve the dispute. If the dispute is not resolved within thirty (30) days following the date of the last meeting, any Party to the dispute may refer the matter to the WMATA Board for resolution.

(b) Alternative Resolution. -- If a dispute arising under this Agreement is not resolved pursuant to subsection (a) of this Section, the Parties thereto may agree to pursue a mutually acceptable alternative dispute resolution procedure. If such a procedure is not utilized

or does not result in a final and binding resolution of the dispute, any Party thereto may pursue a civil action for appropriate relief in a court of competent jurisdiction.

## **SEC. 7 REPRESENTATIONS AND WARRANTIES**

(a) **By WMATA.** -- WMATA makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement.

(1) WMATA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder;

(2) WMATA by proper WMATA Board action has duly authorized the execution and delivery of this Agreement;

(3) When executed and delivered by the Contributing Jurisdictions and by WMATA, this Agreement will constitute the legal, valid and binding obligation of WMATA enforceable in accordance with its terms, except as such enforceability is limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.

(4) No director, officer, or employee of WMATA who exercises or has exercised any functions or responsibilities over any procurement contract in connection with the Capital Improvement Program shall have or obtain a personal or financial interest or benefit from any activity in connection with the procurement contract or have an interest in any contract, subcontract, or agreement with respect thereto during the term of this Agreement.

(b) **By Contributing Jurisdictions.** -- Each Contributing Jurisdiction makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement.

(1) The Contributing Jurisdiction has all necessary power and authority to enter into the transactions contemplated by this Agreement and to carry out its individual obligations hereunder;

(2) Each Contributing Jurisdiction has individually duly authorized the execution and delivery of this Agreement;

(3) When executed and delivered by each Contributing Jurisdiction, this Agreement will constitute the legal, valid and binding obligation of the individual entity enforceable in accordance with its terms, except as such enforceability is limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally;

(4) No officer, or employee of any Contributing Jurisdiction who exercises or has exercised any functions or responsibilities over a procurement contract in connection with the Capital Improvement Program shall have or obtain a personal or financial interest or benefit from any activity in connection with the procurement contract or have an interest in any contract, subcontract, or agreement with respect therewith during the term of this Agreement.

## **SEC. 8 EFFECTIVE DATE AND TERM OF AGREEMENT**

(a) Effective Date. The Parties acknowledge and agree that this Agreement is in consideration of and contingent upon the execution of the Local Funding Agreement for Capital Funding by and between WMATA and the District of Columbia to be executed concurrently with the execution of this Agreement. Accordingly, this Agreement shall take effect on the date of execution by the last signatory to either this Agreement or the District of Columbia Local Funding Agreement for Capital Funding.

(b) Term. The term of this Agreement shall begin on the Effective Date and shall terminate on June 30, 2016. Where there are projects which have been started during the term of the Agreement or where bonds or other financial instruments have been issued pursuant to the Metro Matters Funding Agreement (for those Contributing Jurisdictions who did not opt out of the Long Term Debt issuance) or pursuant to this Agreement , the Contributing Jurisdictions, subject to annual appropriations, agree to continue to make their Allocated Contributions for those projects or debt service until the conclusion of the projects or the final maturity of the bonds or other financial instruments.

(c) Future Negotiations. No later than June 30, 2015, WMATA and the Contributing Jurisdictions agree to commence discussions for a successor capital funding agreement. WMATA will ask each Contributing Jurisdiction for an affirmative response to whether it wishes to participate in a successor agreement. Each Contributing Jurisdictions shall give an affirmative notice in accordance with Section 12 of this Agreement no later than October 1, 2015, either that: (1) it intends to continue under the Agreement, subject to amendment only of the projects included in the CIP and the cost of a new 6 year CIP and the renegotiation of the Local Funding Agreement with the District of Columbia (2) it requests negotiation of additional terms of the agreement in addition to those specified in the preceding clause or (3) it wishes to terminate the agreement as of June 30, 2016. It is the Parties' desire to limit negotiations only to the items listed in clause (1) if at all possible. A failure to timely respond will be deemed an election to terminate the Agreement. If a Contributing Jurisdiction gives or is deemed to give the required notice that it is terminating its participation in this Agreement, then the Agreement shall terminate as of June 30, 2016, except as covered by subsection (b), above.

## **SEC. 9 RECITALS**

The Recitals set forth in this Agreement are material parts of this Agreement and are binding on the Parties to the same extent as the other terms and conditions hereof.

## **SEC. 10 NO THIRD PARTY BENEFICIARIES**

The Parties to this Agreement do not intend any non-signatory to this Agreement or any other third Party to be a third Party beneficiary to this Agreement, nor do the Parties intend for any such third Party to have any rights or benefits under this Agreement or to have standing to bring an action or claim in any court or other forum to enforce any provision of this Agreement.

## **SEC. 11 AMENDMENTS**

This Agreement may be amended or modified only by written agreement duly executed by all the Parties.

## **SEC. 12 NOTICES**

All notices under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or sent by the U.S. Postal Service or by a courier service or national overnight delivery service, to any Party as follows:

To the State of Maryland:  
Department of Transportation:

Director, Washington Area Transit Programs  
Maryland Department of Transportation  
4351 Garden City Drive, Suite 305  
Hyattsville, MD 20785

with a copy to:

Chairman, Washington Suburban Transit District  
4351 Garden City Drive, Suite 305  
Hyattsville, MD 20785

To the District of Columbia:

Director  
District Department of Transportation  
2000 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20009

With copies to:

Chief Financial Officer for the District of Columbia  
John A. Wilson Building, Room 203  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Attorney General for the District of Columbia  
John A. Wilson Building, Room 409  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

To Arlington County, Virginia:

Director  
Department of Management and Finance  
2100 Clarendon Boulevard, Suite 501  
Arlington, VA 22201

with a copy to:

Director  
Department of Environmental Services  
2100 Clarendon Boulevard, Suite 900  
Arlington, VA 22201

To Fairfax County, Virginia:

Director  
Fairfax County Department of Transportation  
12055 Government Center Parkway, 10<sup>th</sup> Floor  
Fairfax, VA 22035-5511

To the City of Alexandria, Virginia:

City Manager  
City of Alexandria  
301 King Street  
Alexandria, VA 22314

To the City of Fairfax, Virginia:

Mayor  
City of Fairfax  
10455 Armstrong Street  
Fairfax, VA 22030

with a copy to:

Transportation Director  
City of Fairfax  
10455 Armstrong Street  
Fairfax, VA 22030

To the City of Falls Church, Virginia:

City Manager  
City of Falls Church  
300 Park Avenue  
Falls Church, VA 22046

To the Washington Metropolitan Area Transit Authority:

General Manager  
600 Fifth Street, N.W.,  
Washington, D.C. 20001

with a copy to:

The General Counsel  
Washington Metropolitan Area Transit Authority  
600 Fifth Street, N.W., Second Floor  
Washington, D.C. 20001

#### **SEC. 13    SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on the successors and assigns of the Contributing Jurisdictions and WMATA.

#### **SEC. 14    NO DEBT GUARANTEES**

No Contributing Jurisdiction guarantees the debt of WMATA or any other Contributing Jurisdiction, nor any obligation of WMATA or any other Contributing Jurisdiction.

## SEC. 15 REQUIREMENT FOR ANNUAL APPROPRIATIONS

Notwithstanding any other provisions of this Agreement, all obligations of the Contributing Jurisdictions are subject to discretionary annual appropriation of funds by the governing bodies thereof or other appropriate legislative bodies thereof and shall be consistent with the anti-deficiency laws applicable to each Contributing Jurisdiction.

## SEC. 16 COUNTERPARTS

This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement. The counterpart with the most recent date shall determine the date of entry of this Agreement by the Parties listed on page one.

IN WITNESS WHEREOF, WMATA and the Contributing Jurisdictions have executed this Agreement on this 1<sup>st</sup> day of July, 2010.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

Attest:

Secretary

By:

Richard Sarles  
Interim General Manager

[Seal]

Dated:

7/1/10

Approved as to Form and Legal Sufficiency:

By:

Office of General Counsel

[signatures continued on following page]

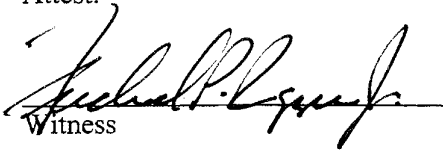


STATE OF MARYLAND

acting by and through the Washington Suburban Transit District and the Department of  
Transportation

MARYLAND DEPARTMENT OF  
TRANSPORTATION

Attest:

  
Witness

By:  [Seal]  
Secretary

and

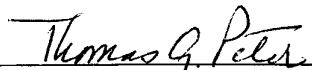
WASHINGTON SUBURBAN  
TRANSIT DISTRICT

Attest:

  
Witness

By:  [Seal]  
Chairman

Approved as to Form and Legal Sufficiency:

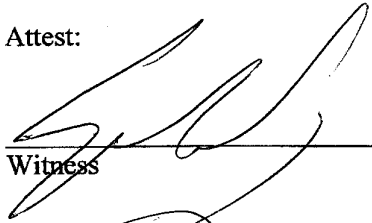
By:   
Assistant Attorney General


Date: June 16, 2010

[signatures continued on following page]

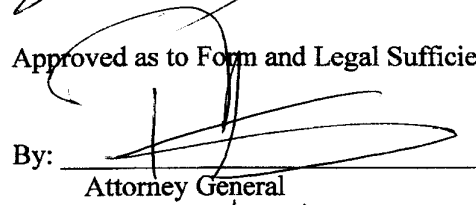
DISTRICT OF COLUMBIA

Attest:

  
\_\_\_\_\_  
Witness

 [Seal]  
\_\_\_\_\_  
By: Mayor

Approved as to Form and Legal Sufficiency:

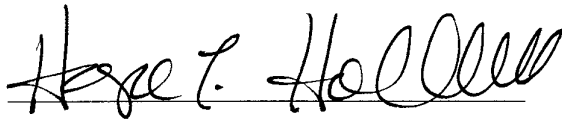
  
\_\_\_\_\_  
By: Attorney General

Dated: 6/30/10

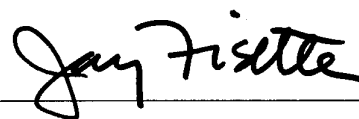
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COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

Attest:

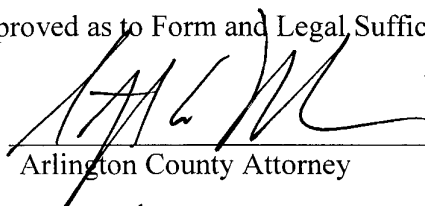


Clerk to the County Board

By:  [Seal]

Chair  
County Board  
Arlington County, Virginia

Approved as to Form and Legal Sufficiency:

By:   
Arlington County Attorney

Dated: 7/2/10

[signatures continued on following page]

FAIRFAX COUNTY, VIRGINIA

Attest:

Nancy Vekas  
Clerk to the Board of Supervisors

By: At Ginty [Seal]  
County Executive  
Fairfax County, Virginia

Approved as to Form and Legal Sufficiency:

By: David P. Bolger  
County Attorney

Dated: 6/30/10

[signatures continued on following page]

CITY OF ALEXANDRIA, VIRGINIA

Attest:

Jackie M. Henderson  
City Clerk

By: [Signature] [Seal]  
City Manager

Approved as to Form and Legal Sufficiency:

By: [Signature]  
Deputy City Attorney

APPROVED AS TO FORM:  
[Signature]  
DEPUTY CITY ATTORNEY

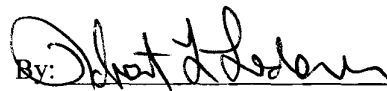
Dated: 7/22/10

[signatures continued on following page]


CITY OF FAIRFAX, VIRGINIA

Attest:

  
City Clerk

By:  [Seal]  
Mayor

Approved as to Form and Legal Sufficiency:

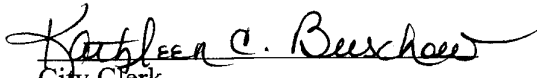
By:   
City Attorney

Dated: 7/14/2010

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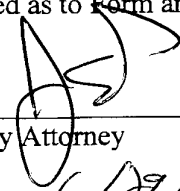
CITY OF FALLS CHURCH, VIRGINIA

Attest:

  
City Clerk

By:  [Seal]  
City Manager

Approved as to Form and Legal Sufficiency:

By:   
City Attorney

Dated: 6/29/10

ACTION - 20

Approval for the Implementation of a Body-Worn Camera Program for the Fairfax County Police Department

ISSUE:

Board approval for the implementation of a Body-Worn Camera program for the Fairfax County Police Department.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the funding and implementation of the BWC program for the Fairfax County Police Department (FCPD). One-time funding is included in the FY2020 budget and baseline funding will be included in the FY2021 budget and in future years, as required, for the implementation of a body-worn camera program.

TIMING:

Board action is requested on September 24, 2019. If approved, the body-worn camera program will be phased in over a three-year period.

BACKGROUND:

Included in the Ad Hoc Police Practices Review Commission Final report, issued on October 8, 2015, recommendations were made by the Commission that Fairfax County Police Department (FCPD) officers be issued and required to utilize body-worn cameras (BWC) in performance of their duties. Colonel Edwin C. Roessler Jr., Chief of Police, had previously recommended the implementation of BWCs in June 2015. As a result of these recommendations, the Police Department conducted a 180-day pilot, March 3 - September 1, 2018, as approved by the Board on November 21, 2017, at three police district stations - Mason, Mount Vernon, and Reston. The purpose of the pilot was to evaluate equipment, policy, effectiveness of the program, officers' assessments, workload impacts, staffing needs, technical requirements, and funding requirements in all program areas, to include, the Police Department, Office of the Commonwealth's Attorney, the courts, and the Department of Information Technology.

As part of the pilot, the Department of Justice, Law, and Criminology at American University conducted a comprehensive evaluation of the effects of the BWC pilot program on use of force statistics, the number of community member complaints, changes in policing activities and community members' assessment of police legitimacy.



Key findings of the study include:

- There was overwhelming support among community members for the widespread adoption of BWCs.
- The majority of community members who interacted with police officers during the pilot program reported feeling positive not only about the personal experience but also about FCPD as a whole.
- There was no evidence that the presence or absence of a BWC during a police interaction had an impact of the community member's satisfaction with FCPD.
- There was consensus among the officers involved in the pilot that BWCs will increase the gathering of evidence and help settle complaints against officers.
- Most officers believed that their behavior and that of community members did not change because of BWCs.

BWCs have many potential benefits, and have, therefore, been adopted by many other police departments and localities. Most importantly, BWCs are a tool intended to build and sustain trust between the community and police and enhance police legitimacy. Trust is the foundation of effective policing and has served the Police Department and the County well in creating a safe community through co-production of public safety and engagement. The goal of building trust has been the foundation upon which the philosophy of community policing as adopted by the Police Department more than two decades ago was built. It was also included as one of the six main pillars of policing in the 2015 *Final Report of the President's Task Force on 21st Century Policing*.

The Police Department has traditionally enjoyed respect and support in a broad sense, but it must be recognized and acknowledged that challenges in building and sustaining trust in some diverse communities exists, as do concerns of perceived disparate policing activities, and bridging those barriers must be an ongoing and intentional focus. Along with continued efforts in community policing and more effective recruiting and hiring of diverse police officers to better reflect the demographics of the County, an investment in BWCs is intended to provide a tool designed to enhance transparency and accountability and help bridge any lack of trust and confidence in the Police Department.

BWCs also accurately record police officer actions and capture and preserve evidentiary material for review, investigations, and prosecutions. This aspect provides video that may benefit prosecutors, the defense bar, public defenders, and the courts as a tool to help inform prosecutorial decisions and ensure fair trials. While the courts have reported little or no experience with BWC video in courtrooms as a result of the

pilot, they are familiar with in-car video, and are generally supportive of BWC technology or any technology that can help present factual evidence for a fair trial.

The Police Department investigates all complaints against police officers, as well as types of cases that require an automatic inquiry or administrative investigation. These latter types of cases include, but are not limited to, use of force cases and vehicle crashes involving police officers. Some complaints or cases are also reviewed by either the Independent Police Auditor or the Civilian Review Panel. The goal of any investigation or review is a fair, complete, comprehensive, accurate, and objective review of all available relevant evidence, facts, and circumstances. Just as provided by police cruiser in-car video, BWCs can provide additional evidence or information to aid in that goal, and to potentially also achieve more timely resolution of some cases.

As other potential benefits, BWCs may reduce the number of complaints against police officers, may reduce the number of use of force incidents, may enhance officer safety, and review of BWC video may provide information for the Police Department to evaluate any opportunities for improvement through training or policy revision or development.

Staff has also met with representatives of the Commonwealth's Attorney's Office, the courts, the Public Defender's Office, and the Department of Information Technology to discuss their perspectives of a BWC camera program, their experience during the pilot program, their requirements if a program were to be approved and implemented, and any concerns or questions. All key stakeholders are generally supportive of a BWC program, although, as stated previously, the courts have reported that any actual courtroom use of BWC video has been limited to date. The Commonwealth's Attorney's Office was engaged throughout in the pilot program to evaluate the BWCs, process, software, and staffing requirements. The courts require the appropriate IT equipment and expertise to show video in the courtrooms without delay during a trial, and they have some concern as to the potential impact BWC video could have on the length of trials based on the number of judges and courtrooms in session and the need to move through dockets in a timely, but fair, manner. To the courts' concerns as to courtroom technology, the County has made investments in courtroom technology through the Court's Courtroom Technology Management System (CTMS) which offers multimedia evidence presentation and audio/video conferencing capabilities. The CTMS enables users to present digital and electronic evidence simultaneously to judges, clerks, attorneys, jurors and spectators through an integrated audio/video network of microphones, monitors, assistive devices and flat screen displays. The Court Technology Officer was engaged in the planning and implementation of the BWC pilot program. The Department of Information Technology (DIT) will continue to work closely with and support the courts' technology needs.

The courts have also expressed the need for a process to be developed for pro se defendants to be able to access and view any video in advance, and to be able to

present in the courtroom. Finally, all key stakeholders have expressed the need for an enhanced training program on the BWC video processes for staff and the defense bar.

The results of the BWC pilot and the American University study, the perspectives and requirements of the key stakeholders, and the plan and cost estimates for a full BWC program implementation were presented and discussed at the July 9, 2019, Public Safety Committee meeting. Following that discussion, the Committee directed that staff prepare this Action Item for September 24, 2019, for Board consideration of a full BWC program.

As planned and recommended by the Police Department, a full BWC program would consist of 1,210 cameras issued to all district stations and other key operational staff. The planned implementation will require an additional 34/34.0 FTE positions, to include 5/5.0 FTE positions for the Police Department, 23/23.0 FTE positions for the Office of Commonwealth's Attorney (to include Assistant Commonwealth's Attorneys and support positions), and 6/6.0 FTE positions for the Department of Information Technology.

**BWC Implementation Plan**

<b>Equipment/Staffing/Funding</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Cameras	416	338	456
Positions	13	13	8
<i>Police Department</i>	3	2	0
<i>Office of the Commonwealth's Attorney<sup>1</sup></i>	8	9	6
<i>Department of Information Technology</i>	2	2	2
<i>Available Funding Reserve for Ad-Hoc Police Practices Review Commission</i>	\$4,312,614	\$0	\$0
<b>Baseline Funding Required</b>	<b>\$0</b>	<b>\$5,506,481</b>	<b>\$1,147,705</b>

<sup>1</sup> Includes a combination of Attorney and support positions.

<sup>2</sup> Full implementation by FY 2022 - 1,210 cameras, 34 personnel, \$6.65 million baseline funding. Remaining \$1.3 million in Reserve of Ad-Hoc Police Practices Review Commission to be used for one-time needs or other initiatives.

If approved, the County will begin the procurement process and enter into a five-year agreement with renewal options with the vendor with implementation to be phased in over a three-year period. The anticipated implementation would be on or about May 1, 2020. It is important to have funding in place in advance of May to provide for appropriate time for the procurement process; equipping and training of police officers; the transition of the Commonwealth's Attorney's Office; recruitment, hiring, and training of associated staff; expanded training, as requested, for the Commonwealth's Attorney's Office, the courts, the Public Defender's Office, and the defense bar; and the development of policy and practice for pro se defendants to access and view any

relevant BWC video, as requested by the courts. For the Police Department the first-year phase would include the three police district stations which participated in the pilot program so initial training needs would be reduced.

The full implementation plan includes cameras for School Resource Officer (SRO) positions, but, as noted in Public Safety Committee meeting discussions, decisions on any potential deployment within public schools would be made only in joint discussion with the Board of Supervisors and the Fairfax County School Board. SROs do at times work other assignments outside of the schools and would still require an assigned camera. The plan also includes the future South County police district station as those positions are being funded, hired, and trained in advance.

It is important to note the projected workload increase on the Office of the Commonwealth's Attorney for the retrieval, review, redaction, and dissemination of increased video footage. As this has been a concern in the Commonwealth of Virginia, the General Assembly, in the 2018 Special Session I, enacted language in the 2018 – 2020 Biennium Budget establishing a workgroup under the Compensation Board to study the workload and make recommendations. The workgroup issued a report titled, *Workgroup Study of the Impact of Body Worn Cameras on Workload in Commonwealth's Attorneys' Offices*, dated December 1, 2018, to the General Assembly, recommending a requirement that localities establish and fund one Assistant Commonwealth's Attorney for every 75 body-worn cameras unless the Commonwealth's Attorney and the respective locality can reach agreement as to a different funding formula. However, as the workgroup did not find the existing data to be conclusive for determining a definitive staffing ratio, it also recommended that the workload study be continued through December 2020 for more quantitative analysis. Local government representatives on the workgroup emphasized that the discussion of workload within Commonwealth's Attorneys' offices must include the state's failure to fund Compensation Board-approved staffing standards for many years, which has been mitigated in many localities by local funding of additional positions, as well as local salary supplements. The staffing recommendations included in the proposed BWC implementation plan reflect the 1:75 ratio, as well as additional support positions which the Office of Commonwealth's Attorney expressed would be required. If a BWC program is approved, staff will work closely with the next Commonwealth's Attorney to evaluate the workload associated with BWC and to determine if a different funding formula agreement can be reached.

During its 2019 Session, the General Assembly did adopt and enact the workgroup's staffing requirement for Commonwealth's Attorney's offices in amendments to the 2018 – 2020 biennium budget. It also directed that the workload study be continued, but placed the workgroup under the Secretary of Public Safety and Homeland Security, with a report due to the appropriate General Assembly committees by November 15, 2019. The scope of the workgroup has been expanded to look at the fiscal and policy

Board Agenda Item  
September 24, 2019

effects of the cameras on the public safety and judicial systems as a whole, in addition to the workload issues in Commonwealths' Attorneys' offices, which was the primary focus of the 2018 workgroup. Legislative staff will track the progress of this workgroup and update the Board as to any revised recommendations or requirements.

Prior to implementation of the second- and third-year program phases, staff will also work closely with all key stakeholders to assess and evaluate progress and any recommended or required modifications and provide an update at a scheduled Public Safety Committee meeting or in a memorandum to the Board.

FISCAL IMPACT:

In FY 2020, costs are estimated to be \$4.3 million, which includes recurring and one-time costs, can be accommodated through the redirection of a portion of the \$5.57 million balance in the Reserve for Ad-Hoc Police Practices Review Commission Recommendations. This amount will cover the initial cost of equipment, infrastructure enhancements and will allow for the immediate recruitment and hiring of personnel to ensure a seamless implementation on or about May 1<sup>st</sup>. In FY 2021, baseline recurring funding of \$5.5 million will be required and will be incorporated into the FY 2021 Advertised Budget Plan. In FY 2022, additional recurring baseline funding of \$1.1 million will be required. Remaining balances in the Reserve for Ad-Hoc Police Practices Review Commission Recommendations will be held to fund other one-time needs. A possible use for this funding could be the expansion of office space for the Office of the Commonwealth's Attorney in the second or third year of the program, as existing space is limited for the required additional staff.

ENCLOSED DOCUMENTS:

None.

STAFF:

David M. Rohrer, Deputy County Executive  
Joseph M. Mondoro, Chief Financial Officer  
Colonel Edwin C. Roessler Jr., Chief of Police  
Christina C. Jackson, Director, Department of Management and Budget  
Cathy Muse, Director, Department of Procurement and Material Management  
Gregory Scott, Acting Director, Department of Information Technology

CONSIDERATION - 1

Proffer Interpretation Appeal A-RZ 86-C-12, Related to the Planning Commission's Denial of Conceptual Plan CP 86-C-121-15, Filed by NS Reston LLC

ISSUE:

NS Reston, LLC ("Appellant"), has filed a conceptual plan application CP 86-C-121-15 (the "CP Application") concurrently with PRC Plan Application PRC 86-C-121-06 (the "PRC Plan Application") for the development of Tax Map 17-1 ((17)) 4. Pursuant to Proffer D1 of the proffers accepted by the Board with RZ 86-C-121, the Appellant submitted its CP Application to the Planning Commission for review and approval. The Planning Commission denied the CP Application, and the Appellant filed this appeal of the denial. There is no specific authority set forth in the Zoning Ordinance or in the proffers for an appeal of a CP Application; however, it is recommended that the Board review the CP Application along with the public hearing on the PRC Plan Application.

TIMING:

Board consideration is requested on September 24, 2019, at 5:30 PM concurrent with the scheduled public hearing for PRC 86-C-121-06.

BACKGROUND:

A detailed review of the CP Application and PRC Plan Application, including the staff report is provided in the link below.

<http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMMain.aspx?cde=PRCP&seq=4248194>

On March 9, 1987, the Board of Supervisors approved RZ 86-C-121 concurrent with RZ 85-C-0-88, RZ 86-C-119, and RZ 86-C-118 (Town Center rezonings) on a combined 353 acres of land with one set of combined proffers. Development Plans were proffered for each of the four Town Center rezonings. RZ 85-C-088, for the Reston Town Center Urban Core, was the only rezoning in which a detailed development plan was proffered. The approved proffers include a commitment to prepare conceptual plans for the remaining three Town Center rezonings. The conceptual plans were intended to provide additional detail of the development plan, as specifically stated in the proffers.

Relevant to this appeal, proffer D.1 states:

*“D. DEVELOPMENT PLAN FOR RZ 86-C-121*

1. *Property B will be developed in accordance with the Development Plans dated November, 1986 and revised January, 1987. Prior to submission of a preliminary site plan to DEM for any part of Property B (144.64 acres included in RZ-C-121) Applicant proffers to cause to be prepared a conceptual plan to include:*

*a vehicular traffic circulation plan including approximate location of entrances  
minor streets in approximate location  
pedestrian walkways and trails  
landscaping and screening  
open space  
recreation and community facilities  
location of a time-transfer transit hub  
floor area ratios  
height limits  
general location and type of housing units  
general location office and commercial buildings  
general location of parking structures*

*Applicant will afford members of the Reston community an opportunity to review and comment upon the conceptual plan prior to initial submission of the same to Fairfax County for review. Concurrent with the ongoing community input process, Applicant will submit the plan to the Fairfax County Office of Comprehensive Planning for review and the Fairfax County Planning Commission for review and approval. Once the overall preliminary site plan is approved, Applicant will submit preliminary and final site plans for review pursuant to Fairfax County Zoning Ordinances on a site by site basis.”*

A Master Conceptual Plan (Master CP) was submitted by Reston Land Corporation and approved by the Planning Commission on April 2, 1992. An excerpt of this Master CP is provided on page 5 of the Staff Report, which is available at the link below.

<http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMMain.aspx?cde=PRCP&seq=4248194>

The Appellant submitted the CP Application to propose development of a condominium building on its property. On June 19, 2019, the Planning Commission denied the CP Application, but also voted to recommend that the Board of Supervisors review (and

deny) the CP Application with its review of the PRC Plan Application. See PC verbatim, attached to appeal.

Citing to Par. 10 of Sect. 18-204 of the Zoning Ordinance, the Appellant filed this appeal. In its cover letter, the Appellant admits that “[p]roffer D.1 does not provide a process for appealing the Commission’s decision, and since this CP Application is not required nor addressed in any way in the Zoning Ordinance, there is no specific appeal process for an aggrieved party like NS Reston.” While staff does not concede that the Appellant is aggrieved, it does agree that there is no authority to appeal the Planning Commission’s denial of the CP Application.

DISCUSSION:

Par. 10 of Sect. 18-204 of the Zoning Ordinance permits appeals to the Board by “[a]ny person aggrieved by a decision of the Zoning Administrator regarding any proffered condition.” See Va. Code § 15.2-2301 (also allowing for an appeal to the Board from a decision by the Zoning Administrator regarding proffers). The Appellant relies on this provision in error, because it is not appealing from a decision of the Zoning Administrator. While the CP Application is a creature of proffers, the proffers also do not provide for an appeal.

The Appellant thus has no authority for its appeal to the Board. But it is not without a remedy, as the Planning Commission has already recommended that the Board consider the CP Application with its review of the PRC Plan Application. Staff concurs and recommends that the Board deny this appeal but accept the Planning Commission’s recommendation to consider the CP Application.<sup>1</sup> The CP Application is subsumed within the PRC Plan Application. In light of the Board’s ultimate authority over the PRC Plan Application, the Board necessarily has the authority to review the CP Application as part of its review of the PRC Plan Application.

---

<sup>1</sup> Staff notes that when the proffers were accepted in 1987, the PRC Plan Application process was an administrative process handled by the Department of Public Works and Environmental Services (now Department of Land Development Services). The Zoning Ordinance now requires the Board of Supervisors to approve a PRC Plan Application. Because the ultimate authority of the PRC Plan Application rests with the Board of Supervisors, staff has already recommended (as did the Planning Commission) that the CP Application be reviewed by the Board of Supervisors. Thus, Staff advertised the CP Application for public hearing.



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SUMMARY:

Staff requests that the Board of Supervisors deny the appeal but review the CP Application when it considers the PRC Plan Application.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Letter dated July 17, 2019, to Leslie Johnson, Zoning Administrator;  
Appeal of Planning Commission Decision on CP 86-C-121-15

STAFF:

Rachel Flynn, Deputy County Executive  
Barbara Byron, Director, Department of Planning and Development (DPD)  
Leslie Johnson, Zoning Administrator, DPD  
Tracy Strunk, Director, Zoning Evaluation Division (ZED), DPD  
Suzanne Wright, Chief, Substantial Conformance and Acceptance Branch, ZED, DPD  
William Mayland, Branch Chief/Staff Coordinator, ZED, DPD

ASSIGNED COUNSEL:

Laura S. Gori, Senior Assistant County Attorney

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JOHN C. MCGRANAHAN, JR.  
DIRECT DIAL: 703 • 714 • 7464  
EMAIL: jmcgranahan@HuntonAK.com

FILE NO: 067464.16

July 17, 2019

**BY HAND DELIVERY**

Leslie Johnson, Zoning Administrator  
Fairfax County Department of  
Planning and Zoning  
Zoning Administration Division  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035

RECEIVED  
Dept of Planning & Development

**JUL 17 2019**

Zoning Evaluation Division

**NS Reston LLC  
Reston Section 89, Block 4  
Tax Map Parcel: 017-1-((17))-4  
Zoning District: PRC  
Appeal of Planning Commission Decision on CP 86-C-121-15**

Dear Ms. Johnson:

On June 19, 2019, the Fairfax County Planning Commission voted to deny conceptual plan application CP 86-C-121-15 (the "CP Application") filed by NS Reston LLC ("NS Reston"). NS Reston submitted the CP Application concurrently with PRC plan application PRC 86-C-121-06 (the "PRC Plan Application"). At the June 19, 2019 meeting, the Planning Commission also voted to recommend to the Board of Supervisors that it deny the PRC Plan Application.

The Board is scheduled to hear the PRC Plan Application at its September 24, 2019 meeting. In his motion on these applications, Commissioner John A. Carter expressly recommended that the Board "consider the review of the Concept Plan [i.e., the CP Application] as part of their review of the PRC Plan."

The CP Application is a creature of the proffered conditions that apply to the subject property. Proffer D.1. of the proffers accepted by the Board with the approval of RZ 86-C-121 provides that a "conceptual plan" will be submitted to the Planning Commission for review and approval. Proffer D.1. does not provide a process for appealing the Commission's decision,

HUNTON  
ANDREWS KURTH

Leslie Johnson, Zoning Administrator  
July 17, 2019  
Page 2

and since this CP Application is not required nor addressed in any way in the Fairfax County Zoning Ordinance (the "Zoning Ordinance"), there is no specific appeal process for an aggrieved party like NS Reston. However, Sect. 18-204(10) of the Zoning Ordinance provides that "[a]ny person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal that decision to the Board [of Supervisors]." The Planning Commission's decision to deny the CP Application was made pursuant to the approved proffers for this property. NS Reston disagrees with that decision and is aggrieved by it. From an abundance of caution and to ensure the Board does in fact consider and act on both the PRC Plan Application and the CP Application as recommended by the Planning Commission, NS Reston hereby submits this appeal pursuant to Sect. 18-204(10) of the Zoning Ordinance.

Enclosed please find the following documents submitted on behalf of NS Reston:

- Application for Appeal (original and two copies);
- Notice of Appeal/Appellant Statement with exhibits; and
- Check in the amount of \$600.00 made payable to "County of Fairfax" for the filing fee.

Copies of the Application for Appeal form and the Notice of Appeal/Appellant Statement with exhibits are also hereby delivered to Ms. Catherine A. Chianese, Clerk to the Board of Supervisors.

If you have any questions or require additional information, please contact me.

With best regards,



John C. McGranahan, Jr.

Enclosures

cc: Catherine A. Chianese, Clerk to the Board of Supervisors  
William Mayland, AICP  
Norton Scott LLC



Please type or  
Print in Black Ink

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR APPEAL

APPLICATION NO. \_\_\_\_\_  
(Assigned by Staff)

NAME OF APPELLANT: NS Reston LLC

**NATURE OF THE APPEAL:**

Appeal of a decision by the Fairfax County Planning Commission on June 19, 2019 to deny CP 86-C-121-15. Appellant disagrees with all the reasons stated by the Planning Commission as the basis for its decision. The Planning Commission's decision was erroneous and should be reversed by the Board of Supervisors.

**DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL** Planning Commission decision on June 19, 2019

**HOW IS THE APPELLANT AN AGGRIEVED PERSON?:**

Appellant is the owner of the subject property and the applicant in CP 86-C-121-15 and the concurrent PRC application PRC 86-C-121-06. The denial of these applications would deny Appellant all reasonable and economically viable use of its property.

**IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:**

**POSTAL ADDRESS OF PROPERTY:** None

**TAX MAP DESCRIPTION:** 017-1-((17))-4

John C. McGranahan, Jr., Attorney/Agent for Appellant

Type or Print Name of Appellant or Agent

John C. McGranahan Jr.  
Signature of Appellant or Agent

Hunton Andrews Kurth LLP, 8405 Greensboro Drive, Suite 140, Tysons, VA 22102

Address

703-714-7464

Telephone No: Home

Work

Cell

Please type or print name, address, and phone number of contact person if different from above:

**DO NOT WRITE IN THIS SPACE**

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

Total Area (Acres/Square Feet): \_\_\_\_\_

Present Zoning: \_\_\_\_\_

Supervisor District: \_\_\_\_\_

Date application received: \_\_\_\_\_

Application Fee Paid: \$ \_\_\_\_\_

Date application accepted: \_\_\_\_\_

8/2013

## **NS RESTON LLC**

### **NOTICE OF APPEAL/APPELLANT STATEMENT**

#### **I. SUBJECT OF THIS APPEAL**

This is an appeal of a decision by the Fairfax County Planning Commission (the "Planning Commission") pursuant to implementation of Proffer D.1. for rezoning application RZ 86-C-121. On June 19, 2019, the Planning Commission voted to deny conceptual plan application CP 86-C-121-15 (the "CP Application") for certain property owned by NS Reston LLC ("Appellant") and identified on the Fairfax County Tax Map as parcel 17-1-((17))-4 (the "Subject Property"). Appellant filed the CP Application concurrently with PRC plan application PRC 86-C-121-06 (the "PRC Plan Application"). The Planning Commission also voted on June 19, 2019 to recommend to the Board of Supervisors (the "Board") that the Board deny the PRC Plan Application. In his motion on these applications, Planning Commissioner John A. Carter expressly recommended that the Board "consider the review of the Concept Plan as part of their review of the PRC Plan." Appellant respectfully submits this Notice of Appeal pursuant to Sect. 18-204(10) of the Fairfax County Zoning Ordinance (the "Zoning Ordinance") because (i) Appellant disagrees with the Planning Commission's decision and all the reasons identified by the Planning Commission as the basis for its decision, and (ii) Appellant wants to ensure that the Board considers both the CP Application and the PRC Plan Application together as recommended by the Planning Commission.

#### **II. DATE OF DECISION**

The decision contested by this appeal was made by the Planning Commission on June 19, 2019. A copy of the Planning Commission Clerk's denial letter dated June 24, 2019, which includes the verbatim of the Planning Commission's decision, is attached as **Exhibit A**.

#### **III. JURISDICTION – APPELLANT IS AN AGGRIEVED PARTY**

Section 18-204(10) of the Zoning Ordinance permits appeals to the Board by "[a]ny person aggrieved by a decision of the Zoning Administrator regarding any proffered condition." Since the CP Application is a creature of Proffer D.1. of the proffered conditions for RZ 86-C-121 which apply to the Subject Property and the Planning Commission's decision was pursuant to and implements Proffer D.1., the appeal of that decision is to the Board. Appellant is an aggrieved party as the owner of the Subject Property and the applicant for the CP Application and the PRC Plan Application. The decision by the Planning Commission to deny the CP Application is intended to prevent Appellant from developing the Subject Property for permitted residential uses, and thus, will deny Appellant significant property rights, i.e., by-right use of its property as permitted under the existing PRC District zoning. The denial of the CP Application by the Planning Commission and the concurrent PRC Plan Application by the Board would deny all reasonable and economically viable use of the Subject Property. Therefore, Appellant is aggrieved by the Planning Commission's decision, and this appeal is properly before the Board.

#### **IV. GROUND OF APPEAL AND REASONS THEREFOR**

The Subject Property contains approximately 0.839 acre and is located on the north side of New Dominion Parkway (Route 6363) approximately 300 feet west of Fountain Drive (Route 8502) in Reston, Virginia. It currently is vacant land. The Subject Property is zoned to the PRC, Planned Residential Community District (the "PRC District"). A tax map with the Subject Property outlined in red is attached as **Exhibit B**.

The approved Development Plan for the Subject Property is dated October 1986 and revised January 1987. The existing PRC District zoning and the approved Development Plan permit development of residential uses at a density not to exceed 50 dwelling units per acre ("du/ac"). The approved Development Plan does not designate the Subject Property as open space or a public park. Nor does the approved Development Plan identify any public street running through any portion of the Subject Property. Appellant filed the CP Application and the PRC Plan Application concurrently in order to implement the existing zoning of the Subject Property. The residential condominium building proposed with the CP Application and the PRC Plan Application is less than 50 du/ac and is consistent with the approved Development Plan. It meets all other requirements of the Zoning Ordinance. The Planning Commission's denial of the CP Application was erroneous and would deny Appellant all reasonable and economically viable use of the Subject Property. That decision must be reversed by the Board.

The explanations offered by the Planning Commission to justify its decision to deny the CP Application are wrong. Some of those justifications are inconsistent with Virginia law. The following points, among others, reflect the errors of the Planning Commission's decision:

1. The proposed residential condominium building is consistent with the approved Development Plan for the Subject Property, which does not designate the Subject Property as open space or a park and does not identify a public road through any portion of the Subject Property.
2. No owner of the Subject Property, including Appellant, ever has taken the steps required under Part 7 of Article 2 of the Zoning Ordinance to commit the Subject Property to permanent open space for the mutual benefit of persons residing in the Reston PRC District.
3. The proposed residential condominium building does not violate any of the applicable density limitations set forth in Sect. 6-308 of the Zoning Ordinance, namely the maximum 13 persons per acre for the overall PRC District, the maximum 60 persons per acre for the overall high density areas of the PRC District and the maximum 50 du/ac for the Subject Property.
4. While the Board has no legal authority to impose conditions on a PRC plan approval that require the provision of workforce dwelling units (WDUs), the Board has done so for other properties in Part 5 of Reston where the Subject Property is located. If those approved WDUs and the associated WDU bonus units are included in the total number of units previously approved for those other properties in Part 5 of Reston, then the Board already has approved more than 50 du/ac in Part 5 without the units proposed by Appellant (767 total units already approved including WDUs and WDU

bonus units v. 746 units at 50 du/ac). Either WDUs and bonus units **do not count** toward the 50 du/ac maximum limit, in which case there are 66 units remaining in Part 5, or the Board approved the PRC plans for those other properties by relying on available density from outside Part 5. Under either explanation for those prior approvals, there is sufficient density available for the Appellant's proposed 58 dwelling units on the Subject Property. Accordingly, the Appellant's 58 units can be approved without reducing the number of units previously approved for those other properties in Part 5. The Board must treat all properties in Part 5 of Reston consistently with respect to treatment of WDUs and WDU bonus units for density purposes. It cannot choose to treat them differently in order to deny all by-right use of Appellant's Subject Property.

5. The PRC plan is a successor to the preliminary site plan under the original PRC (formerly RPC) District provisions of the Zoning Ordinance. It does not involve the rezoning of a property nor does it request a change to the proffered development plan for a property, both of which would require legislative review and action by the Board. To the contrary, a PRC plan seeks to implement those legislative entitlements in order to construct by-right uses. Review of a PRC plan is administrative notwithstanding that the Board has reserved to itself the right to review and approve PRC plans since 2007. As such, the Board is constrained in its review of PRC plans to impose only conditions where there is an essential nexus to mitigating an actual impact of the proposed development and where the conditions are roughly proportional to those impacts. Comprehensive Plan policies and goals, such as provision of WDUs, construction of roads which are not needed to support the proposed development, and the requirement of consolidation with properties under separate ownership, can guide and inform the review of a PRC application, but they cannot be strictly imposed as conditions without the owner's agreement nor are they a legally permissible basis for denying a by-right use, or in this case all by-right use, of the Subject Property.
6. While the Board has no legal authority to require consolidation of the Subject Property with neighboring properties as a condition to approval of a PRC plan, Appellant tried for more than five (5) years to consolidate the Subject Property with the adjacent properties owned by the Board as recommended in the Comprehensive Plan. Appellant incurred significant expenses in pursuit of the PPEA Request for Proposal 2000001682 (Part 1) Reston Town Center North Redevelopment. The County ultimately rejected Appellant's proposal, thus precluding Appellant from providing the very consolidation the Comprehensive Plan recommends.
7. While the Board has no legal authority to require WDUs as a condition to approval of a PRC plan, Appellant has agreed to provide the same percentage of WDUs that other properties located in Part 5 of Reston have agreed to provide, by purchasing units off-site within the Reston Transit Station Area and subjecting those units to the legal requirements of the County's WDU program as provided in the County's approved Guidelines for Provision of Workforce Housing.
8. While the Board has no legal authority to require right-of-way dedication for and/or construction of a public street through the middle of the Subject Property as a

condition to approval of a PRC plan, when such a street is not shown on the approved Development Plan and when the need for such a street is not generated by the proposed residential condominium building, Appellant has agreed to provide interparcel access through the Subject Property to facilitate the redevelopment of the County-owned property north of the Subject Property. That interparcel access will align with an extension of existing Cameron Glen Road on which the North County Governmental Center is located, across Bowman Towne Drive to the Subject Property.

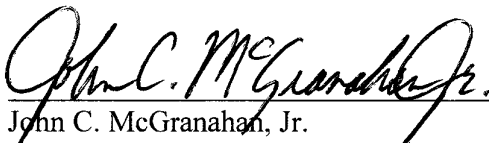
9. The proposed residential condominium building is consistent and compatible with surrounding uses and will be an attractive addition to the Reston Town Center environs. This proposed residential use will help address a demand for for-sale housing options in the Reston Town Center Transit Station Area.

**V. CONCLUSION**

For all the reasons stated by Appellant's representative at the June 19, 2019 Planning Commission meeting and in this Notice of Appeal/Appellant's Statement, as well as those reasons that will be provided at the Board's consideration of this appeal and the PRC Plan Application, the Board must reverse the Planning Commission's denial of the CP Application and approve both the CP Application and the PRC Plan Application.

Respectfully submitted,

Dated: July 17, 2019

  
\_\_\_\_\_  
John C. McGranahan, Jr.  
Attorney/Agent for the Appellant





# County of Fairfax, Virginia

EXHIBIT

A

June 24, 2019

RECEIVED  
JUN 26 2019

**2019 Planning  
Commission**

**Peter F. Murphy**  
Chairman  
*Springfield District*

**James R. Hart**  
Vice Chairman  
*At-Large*

**James T. Migliaccio**  
Secretary  
*Lee District*

**Timothy J. Sargeant**  
Parliamentarian  
*At-Large*

-----  
**Ellen J. "Nell" Hurley**  
*Braddock District*

**John C. Ulfelder**  
*Dranesville District*

**John A. Carter**  
*Hunter Mill District*

**Julie M. Strandlie**  
*Mason District*

**Walter C. Clarke**  
*Mount Vernon District*

**Phillip A. Niedzielski-  
Eichner**  
*Providence District*

**Donté Tanner**  
*Sully District*

**Mary D. Cortina**  
*At-Large*

-----  
**Jill G. Cooper**  
*Executive Director*

**Jacob L. Caporaletti**  
*Clerk to the Commission*

John C. McGranahan, Jr.  
Hunton Andrews Kurth, LLP  
8405 Greensboro Drive, Suite 140  
Tysons, VA 22102

BY: .....

**Re: Planned Residential Community and Conceptual Plan Applications  
PRC 86-C-121-06/CP 86-C-121-15 – NS RESTON LLC  
Hunter Mill District**

Dear Mr. McGranahan:

At a regular meeting held on June 19, 2019, the Planning Commission voted 7-0-1 (Commissioner Hurley abstained from the vote. Commissioners Clarke, Niedzielski-Eichner, Strandlie, and Cortina were absent from the meeting) to **RECOMMEND DENIAL** of PRC 86-C-121-06 and CP 86-C-121-15. A copy of the verbatim transcript is attached.

This letter serves as a record of the Planning Commission's recommendation to the Board of Supervisors and not as the final approval. The application is still subject to final decision by the Board of Supervisors.

Sincerely,

Jacob L. Caporaletti  
Clerk to the Planning Commission

**Attachments (a/s)**

cc: Catherine M. Hudgins, Supervisor, Hunter Mill District  
John A. Carter, Planning Commissioner, Hunter Mill District  
Catherine A. Chianese, Assistant County Executive, Clerk to the Board of Supervisors, County Executive Office  
William Mayland, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ)  
Robert Harrison, ZED, DPZ  
Case Date File June 19, 2019

To request special accommodations, call the Planning Commission office at 703-324-2865, TTY 703-324-7951. Please allow seven working days to make the appropriate arrangements.

**Fairfax County Planning Commission**  
12000 Government Center Parkway, Suite 552, Fairfax, VA 22035  
703-324-2865 (Voice) 703-324-7951 (TTY) 703-324-3948 (Fax)  
[www.fairfaxcounty.gov/planningcommission](http://www.fairfaxcounty.gov/planningcommission)



**County of Fairfax, Virginia  
Planning Commission Meeting  
June 19, 2019  
Verbatim Excerpt**

*PRC 86-C-121-06 – NS RESTON, LLC – Appl. to approve the PRC plan associated with RZ 86-C-121 to permit residential development. Located on the N. side of New Dominion Parkway approx. 300 ft. W. of Fountain Dr. on approx. 36,553 sq. ft. of land zoned PRC. Comp. Plan Rec: Mixed Use. Tax Map 17-1 ((17)) 4. (Concurrent with CP 86-C-121-15). (Hunter Mill District)*

*CP 86-C-121-15 – NS RESTON, LLC – Appl. to approve the Conceptual Plan for RZ 86-C-121 to permit residential development. Located on the N. side of New Dominion Parkway approx. 300 ft. W. of Fountain Dr. on approx. 36,553 sq. ft. of land zoned PRC. Tax Map 17-1 ((17)) 4. (Concurrent with PRC 86-C-121-06). (Hunter Mill District)*

After Close of Public Hearing

Commissioner Carter: Okay. This is an interesting case...

Chairman Murphy: Mic.

Commissioner Carter: It's on. I've got it on.

Chairman Murphy: Oh...

Commissioner Carter: How 'bout that...

Chairman Murphy: The next key word is closer.

Commissioner Carter: Okay. Alright. Alright. You know these – these cases. I've been enamored with our process over the last year or so. Our process is to – is to have the hearing, pull out sore thumbs, defer and work those out, and bring it back. That's – that's our general process. Some cases I – I think we can't do that and I – I think this is unfortunately one of these cases. There's a lot of back and forth, a lot of good comments on – on all sides of this. But I have six major concerns. One is the conformance with the development plan. And it's – some would question what the development plan is. But I think the development plan includes the zoning, it includes the park, it includes all of those features, and this project is not in conformance with requirements of the zoning case and development plan approved by the Board of Supervisors for Part 5 of the North Town Center District. This was approved in '87, it was reaffirmed in 2009. There is a table. We can argue about the WDUs. Were they counted? Were they not counted? The table is what it is. It – it has the data on it and it's – it's not – you can try to interpret it, but it has the numbers the way it is. And this project will take this above the fifty units per acre according to that table. So, I think it is not in conformance and I – I appreciated that box, the top and the bottom. I like that, but I can't imagine we just disregard the Comprehensive Plan in these cases in Reston. We have a lot of projects to go and particularly when the Zoning Ordinance is tied directly to – to the Comp Plan. And I think in those cases we can make a strong argument that – that there – whether you – whether you put in the top box or bottom box it – it does apply. So again, my point one is it's not in conformance with the development plan that I think includes the park. Number two. So, if you wanna put it in the bottom box there, I think it does not conform to the land use and density requirements of the Comprehensive Plan and the Zoning Ordinance. So

now I'm putting it in the bottom box. And – and I think this is a real problem in the way we do things and we have that case earlier tonight where the park is designated, but then somebody buys the park and then – well, maybe we can develop on this. I think this one is – is an open space. There's some density left, but not 58 units worth. I also think the – you're suppose to have a mix of – of land uses. You're suppose to have residential as well as least a little bit of commercial and I think that's inherent in the land use and density argument. Third. The location of WDUs on-site. The application's not in conformance with the recommendations to provide WDUs. The proposed development locates all that – the WDUs off-site with an unknown location. I don't know where you would buy the WDUs. Everybody is struggling to find them. But in the last year, we have had no cases that tried to do the WDUs off-site. And in most cases, we've even reduced the tiers for the WDUs from 70, 80 to 100 is – is been our standard procedure in Reston. So, I – I think this project is not in conformance with the – the WDU notion. Next, the consolidation. The plan clearly calls for the consolidation and I think the Zoning Ordinance backs that up. It – it says there's no density on this. It – let's see. From the plan it says the Comprehensive Plan recommends this underdevelopment parcel located south of the Regional Library and Winwood Children Center be considered for redevelopment only if consolidated with either or both of the adjacent parcels on which the library and shelter are located. It is unfortunate that that joint development didn't – didn't work out. I appreciated that – that comment. But undoubtedly that's coming back. We have money to rebuild the library so that's – that's gotta be resolved. So, I think you're no in conformance with that consolidation issue. And again, I think you can tie that both to the plan and the Comp Plan. The Comp Plan as well as the Zoning Ordinance. I think this project is not in conformance with the transportation recommendations in the Comp Plan and would not be in conformance with site plan kind of issues with transportation. First of all, Library Street is the only street that goes all the way through north Reston, goes through the existing Town Center, goes across the W&OD trail and connects directly to the – to the WMATA – the future WMATA Metro Station. So, I think this is a critical link in the transportation network. These things are important to have and this would certainly come in as part of the site plan. It's necessary to enhance the circulation and access to the area to help relieve congestion at key intersections. The – also, the extension of Library Street is intended to occur at the same time at the future development. And I won't go back to the site plan, but if you pull that up, I think regardless of the circuitous and I think that is a problem because you have Library Street both to the north and south of this. But the street that's proposed would probably not work well as a public street. I'm not sure the width is correct. You're supposed to have walks on both sides, the trees, the width of the sidewalks, that would be your main pedestrian bicycle and vehicular connection. It's not just the vehicular. This is your main connection to the – to the Metro. And if you don't provide that, I think that's problematic. Whether you use that, use the Comp Plan to back that up or whether it's the Zoning Ordinance in review of the site plan I – I think you can use both. The last one, perhaps not quite as important, but I – I think there is an issue about the placemaking. We've had a few of these cases recently where you show trees, and it looks very lush and then suddenly we find some utilities underground and we can't do quite as many trees. That's a problem here on this and I – I know – I think there are utilities in this case and the four street trees was not very much really, I think will be problematic. I also think that wall along New Dominion Parkway and along the street as well as the pathway. You have the wall from – from the parking garage is a problem. So, in conclusion, the application in my view does not conform to the requirements in the approved adopted plan that limits the site to open space, which I would argue is backed up with the Zoning Ordinance. The proposed development is also not in conformance with the recommendation in the Comprehensive Plan and Zoning Ordinance. For the land use intensity, the provision of

WDUs, consolidation of parcels, the important extension of Library Street, and the placemaking that is part of our normal review in terms of the site plan. So, I'm ready to make a motion.

Chairman Murphy: Okay.

Commissioner Carter: Okay. So, the motion is to deny. I MOVE THAT THE PLANNING COMMISSION DENY CP 86-C-121-15 AND RECOMMEND THAT THE BOARD OF SUPERVISORS CONSIDER THE REVIEW OF THE CONCEPT PLAN AS PART OF THEIR REVIEW OF THE PRC PLAN. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS TO DENY PRC 86-C-121-06.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion?

Commissioner Sargeant: Mr. Chairman?

Chairman Murphy: Mr. Sargeant.

Commissioner Sargeant: One concern here and I think this – this borders on the legal question and I don't think we've seen any legal input from County Attorney's Office, which might be clarifying. I'm wondering if that would be a ...

Commissioner Carter: I – I think we do have some...

William Mayland, Zoning Evaluation Division, Department of Planning and Zoning: May I ask what the legal question you have?

Commissioner Sargeant: I think it's the – the interpretation of – of – of Part 5 density issues related to who was there first so to speak and whether the – the applicant might have another – we're hearing different interpretations of that and I appreciate that position here. I just think it might be helpful if we heard from the County Attorney or have we?

Mr. Mayland: So, the – the applicant was suggested on numerous occasions throughout this application and before the application was accepted to consider to file an interpretation request unrelated – related to density, they chose not to do that. During the review of the application before the staff report was published, I did discuss this staff report and these questions directly with the Zoning Administrator and with the Office of the County Attorney. The Zoning Administrator has interpreted density question regards related to WDUs. The provision in Reston for WDUs is different than non-other P-Districts. PRC calculates differently. And a PDC or PRM District bonus units related to provision WDUs are excluded. It's always the bonus units never the WDU. In Reston, it's only proffered bonus units are excluded. So, if you do not have proffers, you're not excluded from the provision of the density calculations. So, it's very clear what is included in Reston. It's only the provision – it's only proffered of affordable units and the bonus units associate those WDUs that would be excluded.

Commissioner Sargeant: Okay. Thank you.

Chairman Murphy: Further discussion of the motion? All those – yeah, Ms. Hurley.

Commissioner Hurley: I think I followed what staff just explained. Maybe it's just I'm too tired or it's too late or something. I thought I knew what was going on until I listened to Mr. McGranahan. So, at this point, I'm going to have to abstain because I'm kind of confused still on this legal thing.

Chairman Murphy: Further discussion? All those in favor of the motion to deny these applications as articulated by Mr. Carter, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: I abstain.

Chairman Murphy: Ms. Hurley abstains.

The motion carried by a vote of 7-0-1. Commissioner Hurley abstained from the vote. Commissioners Clarke, Niedzielski-Eichner, Strandlie and Cortina were absent from the meeting.

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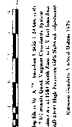
PROPERTY MAP  
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17-1

Revised to 02-20-20

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## GENERAL NOTES

1. This map is a representation of the zoning map of the Town of Herndon, Virginia, as of the date of its adoption by the Board of Supervisors.

2. The zoning map is subject to change by the Board of Supervisors at any time.

3. The zoning map is subject to change by the Board of Supervisors at any time.

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Board Agenda Item  
September 24, 2019

INFORMATION - 1

County Holiday Schedule – Calendar Year 2020

A proposed calendar year 2020 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 2020 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 2020.

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed Holiday Schedule – 2020

STAFF:

Bryan J. Hill, County Executive  
Catherine M. Spage, Human Resources Director

### Proposed Holiday Schedule – Calendar Year 2020

HOLIDAY	OBSERVED DAY - DATE	FAIRFAX COUNTY GOVERNMENT	FAIRFAX COUNTY PUBLIC SCHOOLS *	COMMONWEALTH OF VIRGINIA	FEDERAL GOVERNMENT
New Year's Day	Wednesday Jan 1, 2020	X	X	X	X
Lee Jackson Day	Friday Jan 17	regular work day	regular work day	X	regular work day
Martin Luther King, Jr.'s Day	Monday Jan 20	X	X	X	X
George Washington's Day	Monday Feb 17	X	X	X	X
Memorial Day	Monday May 25	X	X	X	X
Independence Day	Friday July 3	X	X	X	X
Labor Day	Monday Sept 7	X	X	X	X
Columbus Day	Monday Oct 12	X	regular work day	X	X
Veterans Day	Wednesday Nov 11	X	regular work day	X	X
Additional Time Off	Wednesday Nov 25	regular work day	regular work day	4.0 hours additional time off	regular work day
Thanksgiving Day	Thursday Nov 26	X	X	X	X
Day After Thanksgiving	Friday Nov 27	X	X	X	regular work day
Christmas Eve Day	Thursday Dec 24	X (half day)	X	8.0 hours additional time off	regular work day
Christmas Day	Friday 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  
September 24, 2019

10:50 a.m.

Matters Presented by Board Members

11:40 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. Petition for Review of Federal Communications Commission's Third Report and Order adopted August 1, 2019, in MB Docket No. 05-311, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*.
  - 2. Contractual Dispute with Coxcom, LLC, d/b/a Cox Communication Regarding Underpayment of Public, Educational, and Governmental Access Grants
  - 3. *Violeta Peith v. Commonwealth of Virginia, Department of Game and Inland Fisheries, Fairfax County Park Authority, Fairfax County, and Andrew Shaker*, Case No. CL-2019-0011752 (Fx. Co. Cir. Ct.)
  - 4. *Mateusz Fijalkowski v. M. Wheeler, S. Adcock, S. Blakely, R. Bronte-Tinkew, C. Clark, J. Grande, R. Jakowicz, L. Labarca, L. McNaught, W. Mulhern, M. Zesk, Sean Brooks, and American Pool, Inc.*, Case No. 19-1262 (U.S. Ct. of App. for the Fourth Cir.)
  - 5. *Fairfax County Police Department and Colonel Edwin C. Roessler Jr. v. Harrison Neal*, Record No. 191129; *Harrison Neal v. Fairfax County Police Department and Colonel Edwin C. Roessler Jr.*, Record No. 191127 (Va. Sup. Ct.)
  - 6. *Louella F. Benson v. Penelope A. Gross, et al.*, Record No. 190641 (Va. Sup. Ct.)
  - 7. *Farid Saleh and Miraj Bibi v. Officer Imran Farooq and Fairfax County*, Case No. CL-2019-001638 (City of Alexandria Cir. Ct.)
  - 8. *Matthew Mwendwa Soroko v. Fairfax County Court, Commonwealth of Virginia, United States of America, and the Fairfax County Police Department*, Case No. CL-2018-0008391 (Fx. Co. Cir. Ct.)

9. *Robin Yolanda McMillan v. Blake Vaught, T.L. Hulse, George Davenport, and Fairfax County Police Department*, Case No. 1:19-cv-591 (E.D. Va.)
10. *Jonathan L. Kaminski v. Fairfax County, Virginia, and William E. Hauda, II, M.D.*, Case No. CL-2018-0013581(Fx. Co. Cir. Ct.)
11. *Jennie Klenner v. Fairfax County Government*, Case No. CL-2019-0005281 (Fx. Co. Cir. Ct.)
12. *Edgar Ayala v. Fairfax County*, Case No. 1:18-cv-1350 (E.D. Va.)
13. *Mitchell Harris v. Gartlan Mental Health*, Case No. CL-2018–0016818 (Fx. Co. Cir. Ct.)
14. *Glenn Myer v. Ralph Northam, Sharon Bulova, Michael I. Elliott, Sheila K.W. Elliott, Rafael Saenz, Cynthia Warriner, Jody H. Allen, Melvin L. Boone, Sr., James L. Jenkins, Jr., Rebecca Thornbury, Allen R. Jones, Jr., Sarah Schmidt, Susan Szasz Palmer, Elizabeth Locke, Arena L. Dailey, Tracey Alder, Mira Mariano, Jay Douglas, Huong Vu, Brenda Krohn, Jodi Power, Robin Hills, Paula Saxby, Stephanie Willinger, Linda Kleiner, Charlotte Ridout, Fairfax County, Prosperity Pharmacy, Pharmacist of Prosperity Pharmacy, John Does Pharmacist and Technicians at Prosperity Pharmacy, Inova Pharmacy, Jane Doe (Pharmacy Director), Several Pharmacist [sic] at Inova, Walgreen Pharmacies, Bodies in Motion, Michael Mastrostefano, Aetna Insurance, Fairfax Adult Detention Center Employees, Jane and Joe Does Nurses, Haas Doe Medical Records at ADC, Stacie Kincaid, Omar “The Butch Mercedes” [sic]*, Case No. 1:18-cv-723 (E.D. Va.)
15. *Linda Owens v. Jennifer Svites and the County of Fairfax, Virginia*, Case No. CL-2018-0011036 (Fx. Co. Cir. Ct.)
16. *Modesta Flores v. Isaiah Brooks and Fairfax County*, Case No. GV19-001152 (Fx. Co. Gen. Dist. Ct.)
17. *Panajot M. Ilias, Laureta Ilias, Julia Ilias, Alex Ilias v. Stephen H. Souder and County of Fairfax, Virginia*, Case No. C 02-CV-18-002006 (Anne Arundel County, Maryland, Circuit Court)
18. *Ethan Nguyen, a minor by his mother and next friend, Jea Shin v. Eddie L. Price*, Case No. GV19-020675 (Fx. Co. Gen. Dist. Ct.)
19. *Jea Shin v. Eddie L. Price*, Case No. GV19-020674 (Fx. Co. Gen. Dist. Ct.)
20. *Jerry Mobley v. John Schmalenberg*, Case No. CL-2018-0012130 (Fx. Co. Cir. Ct.)
21. *Valerie Ney v. Anthony Enendu and Kelly A. Loss*, Case No. GV19-018571 (Fx. Co. Gen. Dist. Ct.)

22. *Dilia Martinez Alvarado v. Anthony Enendu and Kelly A. Loss*, Case No. GV19-018572 (Fx. Co. Gen. Dist. Ct.)
23. *Zhihua He v. George Robbins*, Case No. CL-2018-0011920 (Fx. Co. Cir. Ct.)
24. *Shahrzad S. Nahid v. Tess Layer*, Case No. CL-2019-0008686 (Fx. Co. Cir. Ct.)
25. *Andrew Cooper, Rebecca Cooper, Blake Ratcliff, Sara Ratcliff, Cecilia Gonzalez, Cindy Reese, Donald Walker, Debra Walker, Carmen Giselle Huamani Ober, Amjad Arnous, John A. McEwan, Mary Lou McEwan, Kevin Holley, Laura Quirk Niswander, Lori Marsengill, Gary Marsengill, Margaret Wiegenstein, Melinda Norton, Nagla Abdelhalim, Nhung Nina Luong, Quan Nguyen, Robert Ross, Helen Ross, Sanjeev Anand, Anju Anand, Sarah Teagle, Sofia Zapata, Svetla Borisova, Nickolas Ploutis, Melinda Galey, Travis Galey, and Victoria Spellman v. Board of Supervisors of Fairfax County, Virginia*, Case No. CL-2018-0012818 (Fx. Co. Cir. Ct.)
26. *Eileen M. McLane, Fairfax County Zoning Administrator v. Harry F. Kendall, III, and Laura P. Kendall*, Case No. CL-2008-0003244 (Fx. Co. Cir. Ct.) (Braddock District)
27. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Dinos, LLC*, Case No. CL-2019-0008283 (Fx. Co. Cir. Ct.) (Dranesville District)
28. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Ester F. Lopes*, Case No. GV19-019797 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
29. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Natalie S. Wozniak*, Case No. CL-2019-0009693 (Fx. Co. Cir. Ct.) (Hunter Mill District)
30. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. 10614 Hunter Station Road, LLC*, Case No. GV19-018694 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
31. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Brian K. Mason*, Case No. CL-2019-0002542 (Fx. Co. Cir. Ct.) (Lee District)
32. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Borislav Bulatovic*, Case No. GV19-018336 (Fx. Co. Gen. Dist. Ct.) (Lee District)
33. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Suwarti Ishak and Rahmad B. Ishak*, Case No. GV19-014866 (Fx. Co. Gen. Dist. Ct.) (Lee District)
34. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Satish Amin*, Case No. GV19-021295 (Fx. Co. Gen. Dist. Ct.) (Lee District)

35. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Barbara J. Vereen and David Vereen*, Case Nos. GV19-023082 and GV19-023096 (Fx. Co. Gen. Dist. Ct.) (Lee District)
36. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Iftikhar Khan*, Case No. CL-2019-0003971 (Fx. Co. Cir. Ct.) (Mason District)
37. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Yasmin Khoshnevis and Arlington Motors, Inc.*, Case No. CL-2019-0000701 (Fx. Co. Cir. Ct.) (Mason District)
38. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Juan Carlos Cadima*, Case No. CL-2018-0012765 (Fx. Co. Cir. Ct.) (Mason District)
39. *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)
40. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Saul Garcia-Ramirez*, Case No. CL-2019-0010619 (Fx. Co. Cir. Ct.) (Mason District)
41. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Oscar Maravilla*; Case No. CL-2019-0003395 (Fx. Co. Cir. Ct.) (Mason District)
42. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Khanh Nguyen*, Case No. GV19-020710 (Fx. Co. Gen. Dist. Ct.) (Mason District)
43. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Richard R. Stone*, Case No. CL-2019-0009487 (Fx. Co. Cir. Ct.) (Mount Vernon District)
44. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Denise Hayden*, Case No. CL-2018-0011819 (Fx. Co. Cir. Ct.) (Mount Vernon District)
45. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Conrad Grundlehner, Marietta F. Grundlehner, and Marietta K. Grundlehner*, Case No. CL-2019-0011294 (Fx. Co. Cir. Ct.) (Mount Vernon District)
46. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Mount Vernon Internal Medicine, P.C.*, Case No. CL-2019-0011331 (Fx. Co. Cir. Ct.) (Mount Vernon District)
47. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Tina Tafoya*, Case No. CL-2019-0001753 (Fx. Co. Cir. Ct.) (Mount Vernon District)

48. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Nickolas A. Ploutis*, Case No. CL-2019-0007336 (Fx. Co. Cir. Ct.) (Mount Vernon District)
49. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John A. McEwan and Mary Lou McEwan*, Case No. CL-2019-0008365 (Fx. Co. Cir. Ct.) (Mount Vernon District)
50. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Patricia Joyce Saltess*, Case No. CL-2019-0001906 (Fx. Co. Cir. Ct.) (Mount Vernon District)
51. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Richard A. Cauthers, Jr.*, Case Nos. GV19-000920 and GV19-000921 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
52. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Jeffrey D. Holt*, Case Nos. GV19-016988 and GV19-016989 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
53. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Haiyun Ratliff*, Case No. GV19-003966 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
54. *Elizabeth Perry, Property Maintenance Code Official v. Michael Hausenfleck and Susan Brassfield-Hausenfleck*, Case No. GV18-029106 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
55. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ingrid Teasdale*, Case No. CL-2019-0011634 (Fx. Co. Cir. Ct.) (Providence District)
56. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Nagla A. Abdelhalim*, Case No. CL-2019-0009486 (Fx. Co. Cir. Ct.) (Providence District)
57. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Conrad D. Kiser and Nancy C. Kiser*, Case No. GV19-002143 (Fx. Co. Gen. Dist. Ct.) (Providence District)
58. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Mazen Baroudi and Monique Baroudi*, Case No. GV18-020849 (Fx. Co. Gen. Dist. Ct.) (Providence District)
59. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jaime Rolando Quintanilla and Rafael Hernandez Quintanilla*, Case No. CL-2019-0006932 (Fx. Co. Cir. Ct.) (Springfield District)
60. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Gary S. Pisner*, Case No. CL-2013-0018994 (Fx. Co. Cir. Ct.) (Springfield District)

61. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Yung Chi Yung*, Case No. CL-2017-0004961 (Fx. Co. Cir. Ct.) (Springfield District)
62. *Board of Supervisors of Fairfax County v. Debbie Dogrul Associates, LLC*, Case No. CL-2016-0017436 (Fx. Co. Cir. Ct.) (Braddock, Lee, Mason, Providence, and Springfield Districts)
63. *Board of Supervisors of Fairfax County v. Keri Shull Team, LLC*, Case No. CL 2019-0006213 (Fx. Co. Cir. Ct.) (Braddock, Dranesville, Hunter Mill, Lee, Mason, Mount Vernon, Providence, Springfield, and Sully Districts)

Board Action Item  
September 24, 2019



3:00 p.m.

ACTION - 21

Board Approval of a Minor Variation Request for PCA 2003-MV-033, the Fairfax County Board of Supervisors, to add Craft Beverage Production Establishment and Small-Scale Production Establishment as Permitted Secondary Uses under Proffer 6(a) at the Workhouse Arts Center (Mount Vernon District)

The Board of Supervisors deferred this item at the July 30, 2019 meeting until September 24, 2019 at 3:00 p.m.

ISSUE:

Board consideration of a request for a minor variation to PCA 2003-MV-033, under Zoning Ordinance Section 18-204(5), to add Craft Beverage Production Establishment and Small-Scale Production Establishment as permitted secondary uses under Proffer 6(a).

RECOMMENDATION:

The County Executive recommends that the Board, in accordance with Zoning Ordinance Sect. 18-204(5) and Virginia Code Sect. 15.2-2302, waive the requirement of a public hearing and approve the request to add Craft Beverage Production Establishment and Small-Scale Production Establishment as permitted secondary uses under Proffer 6(a) of PCA 2003-MV-033.

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 and the associated conceptual development plan and final development plan without a public hearing 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.



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The subject property is zoned PDC and is located at 9518 Workhouse Way, on the east side of Ox Road and south of its intersection with Workhouse Road, on approximately 52.39 acres of land, Tax Map 106-4 ((1)) 58 (see Locator Map in Attachment 1) ("the Property"). The Property, known as Workhouse Arts Center, is owned by the Board and is governed by PCA/CDPA 2003-MV-033, which was approved, subject to proffers, by the Board of Supervisors on August 3, 2009. On January 28, 2010, the Planning Commission approved FDPA 2003-MV-033-02, to correct errors on the previously approved FDPA and clarify existing conditions. The approval of PCA 2003-MV-033 amended the proffers for RZ 2003-MV-033, which had originally permitted the establishment of a mixed-use development arts center, to include artists' studios, cultural facilities, eating establishments, and multi-family dwellings in order to permit additional uses and offer flexibility in certain building layouts onsite.

The accepted proffers governing the subject property, PCA 2003-MV-033 are available through the Zoning Evaluation Division or at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ZAPSMMain.aspx?cde=PCA&seq=4114806>

On May 21, 2019, the Board concurred in the filing of a minor variation request to add craft beverage production establishment and small-scale production establishment to the list of permitted uses within the existing or proposed buildings on the Property.

The Department of Planning and Zoning (now, the Department of Planning and Development) received a letter from the Workhouse Arts Center, that was both dated and received on May 31, 2019, requesting a minor variation to add the Craft Beverage Production Establishment and Small-Scale Production Establishment uses as permitted secondary uses under Proffer 6(a) of PCA 2003-MV-033 (see Attachments 2 and 4). This property was approved to permit the adaptive reuse of a portion of the former Lorton Reformatory complex as an arts center. The Workhouse Arts Center currently houses artist studio spaces, gallery spaces, the Lucy Burns Museum, arts education programming, visual arts presentations, performing arts events, large-scale annual community events, and other activities in buildings onsite, and continues to seek to maximize the activation of the site. Therefore, this request for a minor variation to add craft beverage production establishment and small-scale production establishment uses as permitted secondary uses on the site is sought to support and advance the adaptive reuse of this site.

Proffer 6(a) states:

**6. PERMITTED USES/HOURS OF OPERATION**

*(a) Permitted Uses. As described on the CDPA/FDPA, the Property may be developed with the following permitted principal and secondary uses.*

Board Action Item  
September 24, 2019

- *Museum/Cultural Center and Similar Facilities to include Gallery, Demonstration and Exhibit Areas (generally, W-2 - W- 11, W- 16 and W-29 if retained)\**
- *Theater (W-12),*
- *Music Barn (W-22) with outdoor grassed seating area*
- *Performing Arts Center (W-17, W-18, W-18A)*
- *Events Center (W-01)*
- *Office uses in support of or affiliated with Workhouse functions or activities*
- *Residential-multifamily (N-1, N-2)*
- *Eating Establishments, (N-3, N-4, W-13)*
- *Commercial Recreational Use (Events Center, W-01) to consist of meetings, receptions, exhibitions and similar functions/uses*
- *Ballfields*
- *School of Special Education to include classes in the visual, performing, movement, and culinary arts and which may include select college level courses (to be restricted per Proffer 6g)*
- *Accessory retail and other accessory services uses limited to 20% of total gross square footage on site (Gross square footage of gallery space shall not be included in the 20% calculation.).*
- *Outdoor retail display in the horticultural area, limited to a total of 2,700 square feet*

*This proffer shall not preclude establishment of accessory and accessory service uses. Such accessory uses may include, but shall not be limited to the incorporation of certain food service and eating establishments within otherwise permitted uses.*

On February 28, 2017, the Board of Supervisors approved a Zoning Ordinance Amendment to permit craft beverage production establishments in selected planned development districts, including PDC, with proposed use limitations. On December 4, 2018, the Board of Supervisors approved a Zoning Ordinance Amendment to permit small-scale production establishments in selected planned development districts including PDC, with proposed use limitations. Therefore, while the craft beverage production establishment and the small-scale production establishment uses are permitted secondary uses in the PDC District by the Zoning Ordinance, neither existed as secondary uses at the time of approval of PCA 2003-MV-033.

As described above in Proffer 6(a), and in keeping with the overall character and historic nature of the facility, the proffers limited not only the uses permitted onsite, but also limited their specific locations onsite. Therefore, in evaluating these requests, staff analyzed the character and impacts of these added uses to determine where they might be appropriate given the limitations already imposed by the proffer. At this time, specific onsite locations (i.e. exact buildings) for the craft beverage production establishment and

the small-scale production establishment uses have not been proposed.

With regard to the small-scale production establishment use, staff notes that this use is very similar to the art and cultural uses already permitted onsite in most buildings. Therefore, staff believe that this use could be located generally in the footprints of any of the approved yet not constructed buildings and existing buildings so as long as it is in conformance with the approved proffers.

Staff has also determined that since a craft beverage production establishment is most similar to a restaurant, a minor variation could be used to permit it only in buildings already approved for restaurant uses. Specifically, this use must be limited to buildings W-13, N-3, and N-4. Proffer 6(a) specifically references eating establishments; however, a Zoning Ordinance Amendment was approved on January 23, 2018, which deleted the terms “eating establishment” and “fast food restaurant” and staff therefore refers to this use by the new terminology, i.e. restaurant.

The addition of the craft beverage production establishment and the small-scale production establishment uses will not impact parking since there is adequate parking onsite. Furthermore, there will be no change to the existing vehicular circulation that serves the site and the hours of operation will remain the same. The minor variation request was reviewed by the Heritage Resources Division of the Department of Planning and Development as well as the Architectural Review Board (ARB) who oversees uses within the Historic Overlay District. The proposal to add these secondary uses was presented to the ARB on June 13, 2019, which was generally in support of the addition of these secondary uses and was told that any detailed plans would be presented to the ARB at a later date. The ARB will provide a formal recommendation on July 11, 2019. Since the site is located within the Memorandum of Agreement (MOA) National Register District, the applicant must follow the process laid out in the MOA to alter structures within the district and address concerns from the Virginia Department of Historic Resources and the Lorton Heritage Society as well as obtain approval from the ARB. As of this writing, the Lorton Heritage Society supports the additional secondary uses at this site.

Staff has reviewed PCA 2003-MV-033 and the request to add Craft Beverage Production Establishment and Small-Scale Production Establishment as permitted secondary uses under Proffer 6(a), noting that the craft beverage production establishment will be subject to the same proffer location limitations as restaurants (referred to as eating establishments in the proffers) and has determined that the proposal would have no materially greater land use impacts than the approved uses, based on factors such as parking, trip generation, vehicular circulation, and 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.

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FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Locator Map

Attachment 2: Excerpt of Approved Proffers for PCA 2003-MV-033

Attachment 3: Minor Variation Statement

Attachment 4: Letter dated May 31, 2019, to Zoning Evaluation Division

Attachment 5: Affidavit available online at:

(<https://www.fairfaxcounty.gov/planning-development/zoning/minor-variations>)

STAFF:

Rachel Flynn, Deputy County Executive

Barbara Byron, Director, Department of Planning and Development (DPD)

Tracy D. Strunk, Director, Zoning Evaluation Division (ZED), DPD

Suzanne Wright, Chief, Conformance Review and Acceptance Branch, ZED, DPD

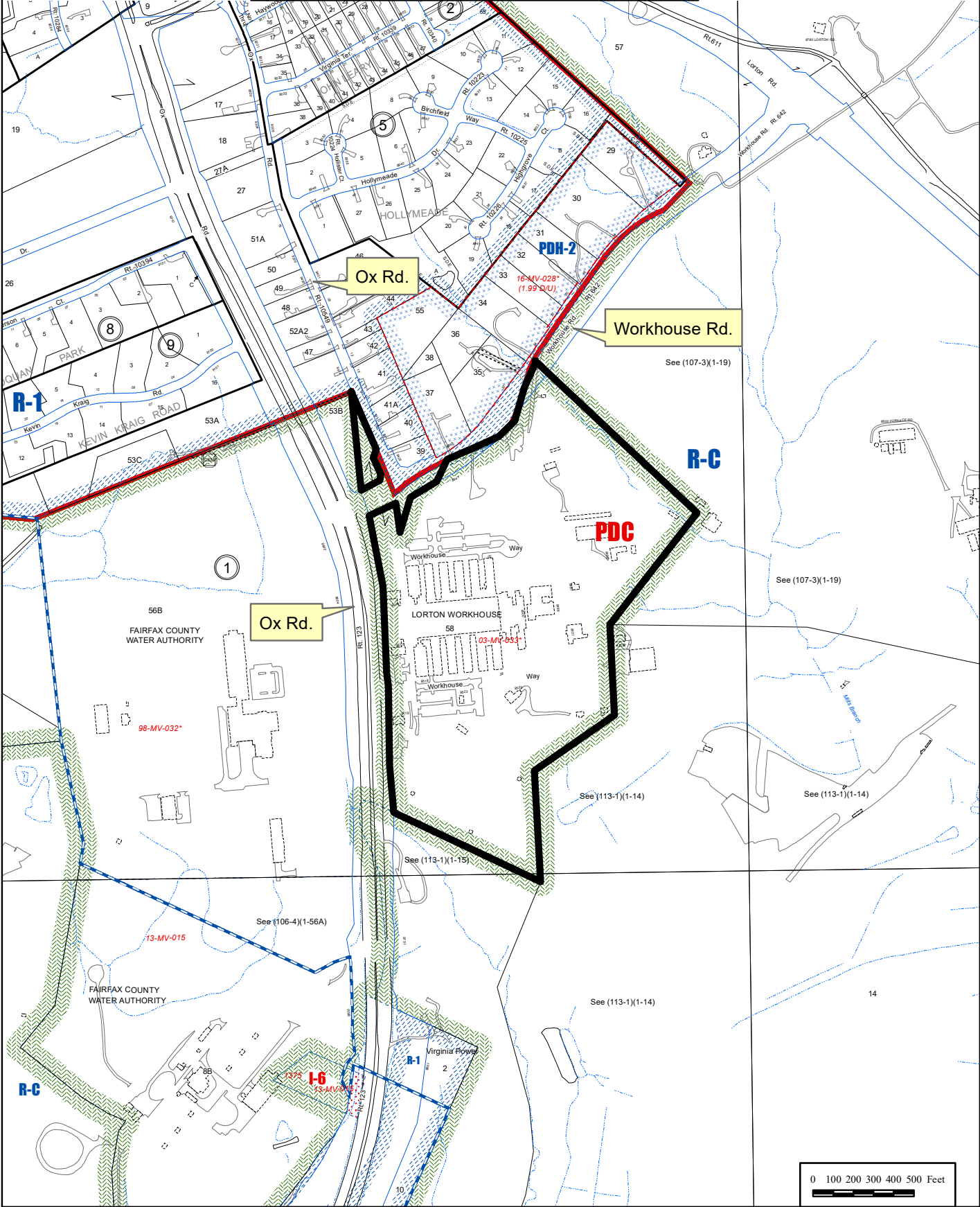
Laura O'Leary, Staff Coordinator, ZED, DPD

ASSIGNED COUNSEL:

Laura Gori, Senior Assistant County Attorney

# Request for Minor Variation

ATTACHMENT 1



design of any Phase I, II or III archaeological study, the Applicant or consultant shall consult with the Manager of the Section as to the scope and schedule of the studies.

## 6. PERMITTED USES/HOURS OF OPERATION

(a) Permitted Uses. As described on the CDPA/FDPA, the Property may be developed with the following permitted principal and secondary uses.

- Museum/Cultural Center and Similar Facilities to include Gallery, Demonstration and Exhibit Areas (generally, W-2 – W-11, W-16 and W-29 if retained)\*
- Theater (W-12),
- Music Barn (W-22) with outdoor grassed seating area
- Performing Arts Center (W-17, W-18, W-18A)
- Events Center (W-01)
- Office uses in support of or affiliated with Workhouse functions or activities
- Residential-multifamily (N-1, N-2)
- Eating Establishments, (N-3, N-4, W-13)
- Commercial Recreational Use (Events Center, W-01) to consist of meetings, receptions, exhibitions and similar functions/uses
- Ballfields
- School of Special Education to include classes in the visual, performing, movement, and culinary arts and which may include select college level courses (to be restricted per Proffer 6g)

- Accessory retail and other accessory services uses limited to 20% of total gross square footage on site (Gross square footage of gallery space shall not be included in the 20% calculation.).
- Outdoor retail display in the horticultural area, limited to a total of 2,700 square feet

This proffer shall not preclude establishment of accessory and accessory service uses. Such accessory uses may include, but shall not be limited to the incorporation of certain food service and eating establishments within otherwise permitted uses.

(b) Location of Certain Uses. The Artists Colony, Freestanding Eating Establishments, Music Barn, Theater, Events Center and Performing Arts Center shall be located in the buildings so designated on the CDPA/FDPA. Other permitted uses may be located within varying locations, subject to conformance with these proffered conditions.

(c) Occupancy of Artists Colony. Occupancy of those residential units identified as the “Artists Colony” (N-1, N-2) shall be limited to persons directly involved with an activity of the Workhouse, including, but not limited to, artists, producers, directors, interns, fellowship recipients, educators, apprentices, paid and volunteer staff of the Workhouse, enrollees in Workhouse classes and other members of the Lorton Arts Foundation. Preference in leasing shall be given to visual and performing artists. The units in N-1 and N-2 shall be designed as live/work apartments to include all the elements of a dwelling unit as defined by the Zoning Ordinance in addition to studio workspace. The first floor shall be designed to include gallery/exhibition space. Additionally, twice a year, the Artist Colony (N-1 and N-2) shall be open to the public as part of a program to educate the community about the live/work apartment concept.

MINOR VARIATION STATEMENT

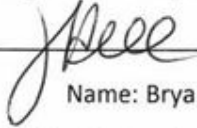
Workhouse Arts Campus

August 21, 2019

Pursuant to Section 18-204 of the Zoning Ordinance, the Fairfax County Board of Supervisors, (the property owner), hereby requests approval of a Minor Variation to the proffers governing Tax Map Parcel 106-4 ((1)) 58 to permit craft beverage production and small-scale production establishments as permitted secondary uses in Proffer 6 (a) of PCA 2003-MV-033. These uses will be generally located within the approved building footprints shown on the CDPA/FDPA, will meet the use limitations contained in the Zoning Ordinance, and will be developed in substantial conformance with the governing proffers. In particular, the craft beverage production establishment use will be subject to the same proffer limitations regarding location as restaurants (referred to as eating establishments in the proffers).

TITLE OWNER OF TAX MAP 106-4 ((1)) 58:

Fairfax County Board of Supervisors

BY: 

Name: Bryan J. Hill

Title: Fairfax County Executive





RECEIVED  
Department of Planning & Zoning

MAY 31 2019

Zoning Evaluation Division

May 31, 2019

Tracy Strunk, Director Zoning Evaluation Division  
Fairfax County Department of Planning & Zoning  
12055 Government Center Parkway, Suite 801  
Fairfax, Virginia 22035

Re: Workhouse Arts Center – Minor Variation Request

**Request for Minor Variation**

**PCA 2003-MV-033**

**Fairfax County Tax Map Parcel 106-4 ((1)) 58, located in the PDC zoning district known as the Workhouse Arts Center (the "Property")**

Dear Ms. Strunk:

Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, on behalf of the Workhouse Arts Foundation, Inc. (WAF), the licensee and the Fairfax County Board of Supervisors, the owner/licensor, this letter requests a minor variation of the approved proffers to add craft beverage production and small scale production uses to Proffer 6 (a) as permitted secondary uses within the existing and proposed building footprints shown on the previously approved CDP/FDP for the site.

The application property was rezoned to the PDC District in 2004 pursuant to the approval of RZ 2003-MV-033 and is subject to proffers dated August 9, 2009 pursuant to the approval of PCA 2003-MV-033. The site was approved to permit the adaptive reuse of this portion of the former Lorton Reformatory complex as an arts center. Eleven of the historic buildings on site are open to the public and operated as the Workhouse Arts Center by the Workhouse Arts Foundation pursuant to a license agreement and a lease agreement with Fairfax County. The Workhouse Arts Center currently supports more than 65 artist studio spaces; 12 gallery spaces; the Lucy Burns Museum (opening summer 2019); arts education programming; visual arts presentations; performing arts events; large-scale annual community events and other activities.

A total of approximately 95,000 square feet of approximately 275,000 total square feet approved for the site is occupied. Complementary uses previously approved such as eating establishments, multi-family artist residences, outdoor recreation and others have not yet been established at the site. The



Workhouse Arts Foundation, Inc.

9518 Workhouse Way, Lorton, VA 22079 | [www.WorkhouseArts.org](http://www.WorkhouseArts.org) | 703-584-2900

Ms. Tracy Strunk

May 31, 2019

Page 2 of 3

Workhouse Arts Foundation is working in cooperation with Fairfax County to actively promote the continued adaptive reuse of the site. The goal is for the site to achieve its full potential as an economically viable arts destination offering a mix of complementary uses that attract people to the site and cause them to remain on site for an extended period of time. Establishing craft beverage production and small-scale production uses as permitted secondary uses on the site support these goals.

Par. 5 of Sect. 18-204 of the Zoning Ordinance permits the Board of Supervisors to approve a minor variation "to add or modify a use, provided that the proffered conditions do not 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." Craft beverage production and small-scale production uses are newly created uses that have been added to the Fairfax County Zoning Ordinance as permitted uses within the PDC District.

The proposed additional uses are defined as follows:

**CRAFT BEVERAGE PRODUCTION ESTABLISHMENT:** *A facility, licensed in accordance with Title 4.1 of the Code of Virginia, as amended, in which beer, cider, mead, wine, distilled spirits, or other similar beverages are brewed, fermented, or distilled in quantities not to exceed 15,000 barrels of beer, 36,000 gallons of distilled spirits, or 5,000 gallons of wine, cider, or mead annually. Establishments exceeding the production quantities stated in this definition shall be deemed a food and beverage manufacturing, production and processing establishment.*

**SMALL-SCALE PRODUCTION ESTABLISHMENT:** *An establishment where shared or individual tools, equipment, or machinery are used to make or grow products on a small scale, including the design, production, processing, printing, assembly, treatment, testing, repair, and packaging, as well as any incidental storage, retail or wholesale sales and distribution of such products. Typical small-scale production establishments include, but are not limited to, vertical farming or the making of electronics, food products, non-alcoholic beverages, prints, household appliances, leather products, jewelry and clothing/apparel, metal work, furniture, glass, ceramic or paper, together with accessory uses such as training or educational programs. AGRICULTURE, CRAFT BEVERAGE PRODUCTION ESTABLISHMENT, RESTAURANT, RESTAURANT WITH DRIVE-THROUGH, or CARRYOUT RESTAURANT are not small-scale production establishments.*

The approved proffers for the Workhouse Arts Center, specifically proffer 6, list a number of permitted uses including: eating establishments and artist studios which are similar in land use impact to the proposed craft beverage and small-scale production uses. The current proffers do not specifically preclude the additional uses proposed with this minor variation request. Craft beverage and small-scale

Ms. Tracy Strunk

May 31, 2019

Page 3 of 3

production uses are proposed as secondary uses on site to be located within the approved building footprints shown on the CDP/FDP. Further, the applicable use limitations within the Zoning Ordinance limit the size and scope of the proposed uses. No change to the approved hours of operation is proposed. Adequate parking is available on site. More than 800 parking spaces exist to serve approximately 95,000 active (indoor) square feet of the more than 275,000 square feet previously approved for the site. There is no change proposed to the existing vehicular circulation that serves the site. For these reasons, the proposed craft beverage and small-scale production uses will not have a materially greater land use impact than approved uses.

Enclosed, please find the following documents:

1. Minor Variation Statement;
2. Approved proffers dated July 29, 2009, PCA 2003-MV-033 (the "PCA Proffers");
3. Fairfax County Zoning Section Sheet and Property Sheet for Tax Map Parcel 106-4 ((1)) 58;
4. Affidavit;
5. Authorization of Agents (Board Matter from Fairfax County Board of Supervisors and Resolution from Workhouse Arts Foundation, Inc. Board of Directors); and
6. Application fee in the amount of \$520.00.

Additional documents for informational purposes are included:

1. Approved Final Development Plan Amendment associated with FDPA 2003-MV-033;
2. Approved development conditions associated with the FDPA (the "FDPA Conditions")

If you have any questions or need any additional information, please don't not hesitate to contact me at my direct line, 703-584-2903 or my email address [avaspece@workhousearts.org](mailto:avaspece@workhousearts.org). We would very much appreciate your favorable consideration of this important request.

Sincerely,

  
Ava Spece  
President and CEO

*enclosures*

cc: Chairman Sharon Bulova, Fairfax County Board of Supervisors  
Daniel Storck, Supervisor, Mount Vernon District  
Walter Clarke, Planning Commissioner, Mount Vernon District  
Jill Cooper, Executive Director, Planning Commission  
Laura Arseneau, Senior Historic Preservation Planner/ARB Administrator, DPZ  
Board of Directors, Workhouse Arts Foundation  
Workhouse Campus Steering Committee Members  
Katayoon Shaya, DPWES, Capital Facilities  
Larry Clark, Lorton Heritage Society

3:00 p.m.

Public Hearing on RZ 2016-PR-023 (Robert H. Pearson, Jr., R.H. Pearson, Inc. and Howard Wallach, Trustee for the Wallach Living Trust) to Rezone from R-1 to PDH-4 to Permit Residential Use with an Overall Density of 3.21 Dwelling Units per Acre and Approval of the Conceptual Development Plan, Located on Approximately 3.42 Acres of Land (Providence District)

This property is located on the N. side of Haney Ln., N. of its intersection with Wolftrap Rd. Tax Map 39-2 ((1)) 28, 28A, 28B, 29, and 32.

PLANNING COMMISSION RECOMMENDATION:

On September 19, 2019, the Planning Commission voted 9-0-2 (Commissioners Migliaccio and Tanner abstained from the vote. Commissioner Cortina was absent from the meeting) to recommend to the Board of Supervisors the following actions:

- Approval of RZ 2016-PR-023, subject to the execution of proffered conditions consistent with those dated September 19, 2019; and
- Waiver of Sect. 11-302 of the Zoning Ordinance to permit a private street that exceeds 600 feet in length.

In a related action, the Planning Commission voted 9-0-2 (Commissioners Migliaccio and Tanner abstained from the vote. Commissioner Cortina was absent from the meeting) to approve FDP 2016-PR-023, subject to the development conditions dated August 29, 2019.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Katelyn Antonucci, Planner, DPD

3:00 p.m.

Public Hearing on SE 2018-PR-023 (Fairfax County Water Authority) to Permit a Heavy Public Utility Office and Maintenance Facilities in the I-5 Zoned District and Parking in a Residential Zoned District, Located on Approximately 4.27 Acres of Land Zoned R-1, I-5, CRA and HC (Providence District)

This property is located at 8505 Lee Hwy., Fairfax, 22031. Tax Map 49-3 ((1)) 50A.

PLANNING COMMISSION RECOMMENDATION:

On September 18, 2019, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of SE 2018-PR-023, subject to the development conditions dated September 16, 2019;
- Modification of Par. 2(A) of Sect. 5-507 of the Zoning Ordinance to reduce the 40-foot front yard setback required in the I-5 District in favor of that shown on the SE Plat;
- Modification of Par. 3(D) of Sect. 10-104 of the Zoning Ordinance to increase the 8-foot height maximum of solid wood/masonry fence heights in favor of that shown on the SE Plat;
- Modification of the peripheral parking lot landscaping along the eastern property boundary in accordance with Par. 3(B) of Sect. 13-203 to allow shrubs in lieu of trees as shown on the SE Plat;
- Modification of transitional screening and barrier requirements, in accordance with Par. 3 of Sect. 13-305 of the Zoning Ordinance; and
- Waiver of the service drive requirement along Route 29 (Lee Highway) per Par. 3(A) of Sect. 17-201 of the Zoning Ordinance.

In a related action, on September 18, 2019, the Planning Commission voted 12-0 to find that 2232-P18-26 is substantially in accord with the provisions of the adopted

Board Agenda Item  
September 24, 2019

**REVISED**

Comprehensive Plan and satisfies the criteria of location, character, and extent of Section 15.2-2232 of the Code of Virginia, as amended.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:

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

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Katelyn Antonucci, Planner, DPD



Board Agenda Item  
September 24, 2019

3:00 p.m.

Public Hearing on RZ 2018-BR-025 (One University Development Partners, LLC) to Rezone from PDH-5, R-1 and WS to PRM and WS to Permit Residential Development with an Overall Floor Area Ratio up to 1.56 and Approval of the Conceptual Development Plan, Located on Approximately 10.84 Acres of Land (Braddock District) (Concurrent with PCA C-058)

and

Public Hearing on PCA C-058 (One University Development Partners, LLC) to Amend the Proffers for RZ-C-058 Previously Approved for Residential and Office Uses to Permit Deletion of Land Area, Located on Approximately 8.44 Acres of Land Zoned PDH-5 and WS (Braddock District) (Concurrent with RZ 2018-BR-025)

This property is located on the N. side of University Dr. and W. side of Ox Rd. Tax Map 57-3 ((1)) 11A, 11B and 57-4 ((1)) 2B.

This property is located on the N. side of University Dr. and W. side of Ox Rd. Tax Map 57-3 ((1)) 11A and 11B.

PLANNING COMMISSION RECOMMENDATION:

On September 12, 2019, the Planning Commission voted 9-0 (Commissioner Hart recused himself from the vote. Commissioners Niedzielski-Eichner and Migliaccio were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2018-BR-025, subject to the execution of proffered conditions consistent with those dated September 5, 2019;
- Approval of PCA-C-058;
- A modification of Section 11-203 of the Zoning Ordinance requiring loading spaces to permit four loading spaces in lieu of the 10 required spaces;
- A waiver of Section 11-302 of the Zoning Ordinance to allow private streets to be in excess of 600 feet; and

Board Agenda Item  
September 24, 2019

- That staff be directed to create a task force to review and study the intersection of University Drive and Route 123, as well as feeder streets and intersections and potential traffic cutting through neighborhood streets, to determine if additional multimodal improvements could be made in the future and, if so, make appropriate recommendations and identify funding mechanisms and implementation strategies. To be inclusive and effective, the task force should include at a minimum one representative each from the City of Fairfax, George Mason University, the Virginia Department of Transportation, and Fairfax County Department of Transportation, as well as a Braddock District resident and a Fairfax City resident from communities adjacent to this intersection.

In a related action, the Planning Commission voted 9-0 (Commissioner Hart recused himself from the vote. Commissioners Niedzielski-Eichner and Migliaccio were absent from the meeting) to approve FDP 2018-BR-025, subject to the development conditions dated July 10, 2019.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
Sharon Williams, Planner, DPD



Board Agenda Item  
September 24, 2019

3:00 p.m.

Public Hearing on PCA 1998-HM-036 (Srinivas Akella & Krishna N. Kidambi; Mayur H. Maniar & Sonal B. Maniar; Na Ayuttaya Anuchit Suthus & Piyawannarat Benjawan; Paul D. Fauser & Kristine K. Fauser; Azaad Salena & Khan-Ramprashad Zalena) to Amend the Proffers for RZ 1998-HM-036 Previously Approved for Residential Development at a Density of 3.0 Dwelling Units per Acre with Associated Modifications to Proffers and Site Design, Located on Approximately 1.5 Acres of Land Zoned R-3 (Hunter Mill District)

This property is located at 2721, 2723, 2719, 2725 and 2727 Robaleed Way, Oak Hill, 20171. Tax Map 25-4 ((21)) 1, 2, 3, 25 and 26.

PLANNING COMMISSION RECOMMENDATION:

On September 12, 2019, the Planning Commission voted 10-0 (Commissioners Niedzielski-Eichner and Migliaccio were absent from the meeting) to recommend to the Board of Supervisors approval of PCA 1998-HM-036, subject to the execution of proffered conditions consistent with those dated August 29, 2019.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Brandon McCadden, Planner, DPD

Board Agenda Item  
September 24, 2019

3:30 p.m.

Public Hearing on PCA 78-C-098-04 (AP Reston Campus LLC) to Amend the Proffers for RZ 78-C-098 Previously Approved for Office Uses with an Option for Residential Uses to Permit Office Uses and Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.64, Located on Approximately 5.19 Acres of Land Zoned PDC (Hunter Mill District)

This property is located on the W. side of Old Reston Ave., N. side of Washington and Old Dominion Trail and south of Temporary Rd. Tax Map 17-4 ((1)) 1.

PLANNING COMMISSION RECOMMENDATION:

On July 31, 2019, the Planning Commission voted 9-0 (Commissioners Clarke, Hurley, and Tanner were absent from the meeting) to recommend to the Board of Supervisors the following actions:

- Approval of PCA 78-C-098-04, subject to the execution of proffered conditions consistent with those dated July 9, 2019, with modifications regarding signage for the four parking spaces and the sidewalk extension;
- Modification of Section 11-202 of the Zoning Ordinance to permit a reduction of the number of required loading spaces from five to two; and
- Modification of Sections 13-303 and 13-304 of the Zoning Ordinance for the transitional screening and barrier requirements to that shown on the CDPA/FDPA.

In a related action, the Planning Commission voted 9-0 (Commissioners Clarke, Hurley, and Tanner were absent from the meeting) to approve FDPA 78-C-098-05, subject to the development conditions dated July 17, 2019 and subject to the Board of Supervisors' approval of PCA 78-C-098-04.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
Mary Ann Tsai, Planner, DPD

3:30 p.m.

Public Hearing on PCA-C-597-05 (PS Business Parks, L.P.) to Amend the Proffers for RZ C-597 Previously Approved for a Hotel to Permit an Athletic Field and Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.72, Located on Approximately 2.50 Acres of Land Zoned C-3, SC and HC (Providence District) (Concurrent with SEA 2007-PR-014)

and

Public Hearing on SEA 2007-PR-014 (PS Business Parks, L.P.) to Amend SE 2007-PR-014 Previously Approved for a Hotel to Permit a Quasi-Public Athletic Field in C-3 District and Associated Modifications to Site Design and Development Conditions, Located on Approximately 4.95 Acres of Land Zoned C-3, SC and HC (Providence District) (Concurrent with PCA-C-597-05)

This property is located on the S. side of Boone Blvd., W. of its intersection with Gallows Rd. Tax Map 39-1 ((6)) 69A (pt.).

This property is located at 8229 Boone Blvd., Tysons, 22182. Tax Map 39-1 ((6)) 69A.

PLANNING COMMISSION RECOMMENDATION:

On September 18, 2019, the Planning Commission voted 12-0 to recommend the following actions to the Board of Supervisors:

- Approval of PCA-C-597-05, subject to the execution of proffered conditions consistent with those dated August 6, 2019 with updated language regarding synthetic fields;
- Approval of SEA 2007-PR-014, subject to the development conditions dated September 5, 2019;
- Waiver of Par. 5 of Sect. 9-624 of the Zoning Ordinance to permit signs on the proposed containment structure;
- Modification of the transitional screening and barrier requirements to that shown on the GDP/SEA Plat;

- Waiver of Par. 3B of Sect. 17-201 of the Zoning Ordinance, requiring additional interparcel access to adjoining parcels (other than those shown on the GDP/SEA Plat) and as proffered; and
- Waiver of Par. 4 of Sect. 17-201 of the Zoning Ordinance requiring further dedication and construction of widening for existing roads beyond that which is indicated on the GDP/SEA Plat.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:

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

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Katelyn Antonucci, Planner, DPD

Board Agenda Item  
September 24, 2019

3:30 p.m.

Public Hearing on SE 2019-PR-011 (Reston Hospital Center, LLC) to Permit a Medical Care Facility, Located on Approximately 24,299 Square Feet of Land Zoned PDC, HC and SC (Providence District)

This property is located at 8240 Leesburg Pike, Vienna, 22182. Tax Map 29-3 ((1)) 80.

PLANNING COMMISSION RECOMMENDATION:

On September 11, 2019, the Planning Commission voted 9-0 (Commissioners Migliaccio and Tanner were absent from the meeting. Commissioner Hart recused himself from the vote) to recommend to the Board of Supervisors the following actions:

- Approval of SE 2019-PR-011, subject to the development conditions dated August 29, 2019;
- Modification of Par. 5 of Sect. 9-308 of the Zoning Ordinance requiring a minimum distance of 45 feet to any street line to permit the existing building to remain 23 feet away from an adjacent street;
- Modification of Par. 4 of Sect. 11-202 of the Zoning Ordinance to permit a loading space to be located within 40 feet of the nearest point of intersection to the edges of the travel way, as shown on the SE plat;
- Waiver of Par. 5 of Sect. 11-202 of the Zoning Ordinance to allow a loading space in the front yard;
- Modification of the interior parking lot landscaping requirements of Sect. 13-202 of the Zoning Ordinance to permit the use of existing mature trees to fulfill the landscaping requirements for the existing surface and garage parking;
- Waiver of the peripheral parking lot landscaping requirements of Sect. 13-203 of the Zoning Ordinance along the northeastern and southeastern property lines; and
- Modification of the transitional screening and waiver of the barrier requirement of Sect. 13-300 of the Zoning Ordinance along the northern property line in favor of the existing vegetation as shown on the SE Plat.

Board Agenda Item  
September 24, 2019

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
Katelyn Antonucci, Planner, DPD

3:30 p.m.

Public Hearing on AR 85-V-002-04 (Martin B. Jarvis, Jr. TR) to Permit the Renewal of a Previously Approved Agricultural and Forestal District, Located on Approximately 41.5 Acres of Land Zoned R-E, A&F District (Mount Vernon District)

This property is located at 10808 and 10816 Harley Rd., Lorton, 22079. Tax Map 118-2 ((1)) 11Z and 118-2 ((2)) 1Z.

PLANNING COMMISSION RECOMMENDATION:

On September 19, 2019, the Planning Commission voted 11-0 (Commissioner Cortina was absent from the meeting) to recommend to the Board of Supervisors approval of AR 85-V-002-04 to amend Appendix F of the Fairfax County Code to renew the Jarvis Local Agricultural and Forestal District, subject to proposed ordinance provisions dated July 10, 2019.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Erin Haley, Planner, DPD

3:30 p.m.

Public Hearing on AR 89-D-001-03 (The Eagle Family LLC; Charlotte Fredette Smith Eagle; Frederick Smith Trust Under Will for the Benefit of Charlotte Fredette Smith Eagle; Cumberland Trust, Trustee) to Permit the Renewal of a Previously Approved Agricultural and Forestal District, Located on Approximately 85.98 Acres of Land Zoned R-E, A&F District (Dranesville District)

This property is located at 8008 Georgetown Pike, McLean, 22102. Tax Map 20-2 ((1)) 8Z, 13Z, 14Z, 16Z, 48Z and 20-2 ((13)) 4Z and 5Z.

PLANNING COMMISSION RECOMMENDATION:

On September 19, 2019, the Planning Commission voted 11-0 (Commissioner Cortina was absent from the meeting) to recommend to the Board of Supervisors approval of AR 89-D-001-03 to amend Appendix F of the Fairfax County Code to renew the Eagle Local Agricultural and Forestal District, subject to proposed ordinance provisions dated August 29, 2019.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
Erin Haley, Planner, DPD



Board Agenda Item  
September 24, 2019

3:30 p.m.

Public Hearing on RZ 2016-HM-016 (Golf Course Overlook, LLC) to Rezone from R-E and I-5 to PRM to Permit Residential and Secondary Uses with an Overall Floor Area Ratio of 2.28 and Approval of the Conceptual Development Plan, Located on Approximately 3.0 Acres of Land (Hunter Mill District)

This property is located on the N. side of Sunset Hills Rd. between American Dream Way and Isaac Newton Square. Tax Map 17-4 ((5)) S6.

PLANNING COMMISSION RECOMMENDATION:

On September 12, 2019, the Planning Commission voted 9-0 (Commissioner Sargeant recused himself from the vote. Commissioners Niedzielski-Eichner and Migliaccio were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2016-HM-016 and the associated Conceptual Development Plan, subject to the execution of proffered conditions consistent with those dated September 11, 2019; and
- A modification of Paragraph 4 of Section 11-203 of the Zoning Ordinance to reduce the number of required loading spaces from four to two.

In a related action, the Planning Commission voted 9-0 (Commissioner Sargeant recused himself from the vote. Commissioners Niedzielski-Eichner and Migliaccio were absent from the meeting) to approve FDP 2016-HM-016, subject to the development conditions dated September 3, 2019, and subject to the Board of Supervisors' approval of RZ 2016-HM-016.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
Wanda Suder, Planner, DPD

4:00 p.m.

Public Hearing on Proposed Plan Amendment 2019-IV-RH1, Oakwood Road Senior Housing, Located at the Southeast Quadrant of the Intersection of Oakwood Road and South Van Dorn Street (Lee District)

ISSUE:

Plan Amendment (PA) 2019-IV-RH1 proposes to amend the Comprehensive Plan guidance for Tax Map Parcels 81-2 ((1))17C and 81-4 ((1))32, 33 and 34 located at the southeast quadrant of the intersection of Oakwood Road and South Van Dorn Street in the Lee Supervisor District. The site is planned for open space in the Bush Hill Community Planning Sector of the Rose Hill Planning District. The plan amendment considers adding an option for affordable senior housing and limited community space. The amendment is being considered concurrently with Proffer Condition Amendment and Special Exception applications PCA 85-L-006 & SE 2019-LE-013.

PLANNING COMMISSION RECOMMENDATION:

On September 19, 2019 the Planning Commission voted 9-0-1 (Commissioner Tanner abstained, Commissioner Cortina was absent) to recommend to the Board of Supervisors the adoption of the staff recommendation for Plan Amendment 2019-IV-RH1, found on page 11 of the Staff Report dated August 22, 2019. The amendment would add an option for a maximum of 150 multifamily senior housing units on the subject area that would be affordable to households earning up to 60 percent of the Area Median Income and a limited amount of community-serving space. Conditions related to buffering, architecture, and stormwater management are recommended.

RECOMMENDATION:

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

TIMING:

Planning Commission public hearing – September 12, 2019  
Planning Commission decision – September 19, 2019  
Board of Supervisors' public hearing – September 24, 2019

BACKGROUND:

On January 22, 2019, the Board of Supervisors authorized the consideration of a Comprehensive Plan amendment for the approximately 6.2-acre subject area at the

southeast quadrant of the intersection of South Van Dorn Street and Oakwood Road for up to 150 units of affordable senior housing and limited community space as may be appropriate . The Plan amendment is related to a Public-Private Education and Infrastructure Act (PPEA) proposal from the Arlington Partnership for Affordable Housing (APAH) for affordable housing for older adults. The APAH development proposal consists of 150 units of independent living units affordable to households earning up to 60% of the area median income.

The review of the Plan amendment is concurrent with a Proffer Condition Amendment and Special Exception application PCA 85-L-006 & SE 2019-LE-013 submitted by APAH for the subject property to the county which requests amending the adopted proffers to allow up to 150 units of affordable senior housing with associated community space. Consult <http://ldsnet.fairfaxcounty.gov/ldsnet/CurrentInProcessBOS.aspx> for a description and information on the status of the proffer condition amendment/special exception application.

FISCAL IMPACT:  
None.

ENCLOSED DOCUMENTS:

The Planning Commission verbatim excerpt will be accessible when available at:  
<https://www.fairfaxcounty.gov/planningcommission/verbatim-2019>

The Staff Report for PA 2019-IV-RH1 has been previously furnished and is available online at: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/compplanamend/oakwoodrdseniorhsing/staff-report-2019-iv-rh1.pdf>

STAFF:

Barbara Byron, Director, Department of Planning and Development (DPD)  
Leanna H. O'Donnell, Acting Director, Planning Division (PD), DPD  
Meghan Van Dam, Branch Chief, Policy & Plan Development Branch (PPDB), PD, DPD  
Sophia Fisher, Planner III, PPDB, PD, DPD

Board Agenda Item  
September 24, 2019

4:00 p.m.

Public Hearing on Proposed Amendments to Chapter 101 (Subdivision Ordinance) and Chapter 112 (Zoning Ordinance) of *The Code of the County of Fairfax, Virginia* (County Code) and the Public Facilities Manual (PFM) Re: Development in Dam Break Inundation Zones, Construction of State-Regulated Impounding Structures, Plan Submissions, and Minor Editorial Changes

ISSUE:

Board of Supervisors' (Board) adoption of proposed amendments to the Subdivision Ordinance, Zoning Ordinance, and PFM related to development in dam break inundation zones and construction of state-regulated impounding structures. The proposed amendments also include revisions to the provisions for plan submissions, and minor editorial changes. The proposed amendments are necessary to align county ordinances and the PFM with the Code of Virginia and current practice.

PLANNING COMMISSION RECOMMENDATION:

On July 24, 2019, the Planning Commission voted 12-0 to recommend adoption of the proposed amendments to the Subdivision Ordinance, Zoning Ordinance, and PFM as set forth in the Staff Report dated June 25, 2019.

RECOMMENDATION:

The County Executive recommends that the Board adopt the proposed amendments to the Subdivision Ordinance, Zoning Ordinance, and PFM as set forth in the Staff Report dated June 25, 2019, as recommended by the Planning Commission.

TIMING:

Board action is requested on September 24, 2019. On June 25, 2019, the Board authorized advertising the public hearings. The Planning Commission held a public hearing on July 24, 2019. If adopted, the proposed amendments will become effective on September 25, 2019, at 12:01 a.m.

BACKGROUND:

In 2008, the Virginia Legislature adopted requirements for proposed developments in the dam break inundation zone of a state-regulated impounding structure and for notifications of the proposed construction of a new state-regulated impounding structure. The inundation zone is the area below an impoundment that would be flooded if the dam failed

completely. The intent of the legislation was to ensure that all parties that might be impacted by dam failures, including the state, the county, property owners, and dam owners, are aware of the impacts and that the impacts are mitigated.

Impounding structures regulated by the state are defined in the Virginia Impounding Structure Regulations (4VAC 50-20). State-regulated impounding structures include: dams that are 25 feet or greater in height and have an impounding capacity of 15 acre-feet or greater; and dams that are six feet or greater in height and have an impounding capacity of 50 acre-feet or greater. A list of [state-regulated impounding structures](#) with available dam break inundation zone maps is posted on the county's website. Dam break inundation zone maps for 34 state-regulated impounding structures are on file with the county (Based on a recent update after the Staff Report was published, the number of facilities with maps on file has increased from 31 to 34.). This is important because the state requirements for development in a dam break inundation zone only apply to proposed development in the inundation zone of a state-regulated impounding structure for which maps are on file with the county.

Under the Virginia Impounding Structure Regulations, each dam is classified based on potential loss of human life and property damage if it were to fail. Classification is based on a determination of the effects that a dam failure would likely have on people and property in the downstream inundation zone. Hazard classifications in descending order are high, significant, and low. This classification is unrelated to the physical condition of the dam or the probability of its failure. It is related to the number and type of structures in the inundation zone. Therefore, hazard classifications can change when development is proposed in the inundation zone.

In 2009, the Department of Public Works and Environmental Services implemented the new requirements through a Letter to Industry and changes to plan cover sheets requiring identification of developments in dam break inundation zones. Submission of site and subdivision plans subject to the requirements is infrequent and a resulting change in hazard classification would be rare because the majority of the dams are already classified as high hazard. The proposed amendments incorporate the requirements previously implemented, through the Letter to Industry, into the County Code and PFM. The proposed amendments to the Zoning Ordinance are listed as Priority 2 Item #54 on the adopted 2018 Zoning Ordinance Amendment Work Program.

In addition to the amendments related to the requirements in the Code of Virginia, amendments are being proposed to update the Subdivision and Zoning Ordinances to provide flexibility to the Director in the plan submission process.

#### PROPOSED AMENDMENTS:

The proposed amendments require that developments in dam break inundation zones of state-regulated impounding structures that are mapped and on file with the county be

identified on site plans, subdivision plans, and development plans. Once identified, the county is required to send copies of the site and subdivision plans (not development plans) to the Virginia Department of Conservation and Recreation (DCR) for review and a determination of whether the proposed development will change the hazard classification of the impounding structure. If the hazard classification does not change, the only subsequent requirements are that the as-built drawings be forwarded to the dam owner to be used in updating the emergency action plan for the facility and that the inundation zone be shown and appropriately notated on the record plat of the subdivision. If the hazard classification would change, the developer must either redesign the development to avoid the change in classification or prepare an engineering study and a cost estimate for any necessary upgrades to the impounding structure. Following DCR approval of the cost estimate and prior to final plan approval, the developer would pay one-half the cost of the upgrades into a state administered fund for eventual distribution to the dam owner. The proposed amendments to the Subdivision and Zoning Ordinances also address plan submission requirements and make minor editorial changes. The PFM amendment incorporates notification requirements for developers constructing new state-regulated impounding structures. The proposed amendments are discussed in more detail in the Staff Report.

REGULATORY IMPACT:

There is no significant regulatory impact for the amendments related to state-regulated impoundments. The amendments codify requirements currently in place that are required by state law. As previously noted, the submission of site and subdivision plans in dam break inundation zones is infrequent and a change in hazard classification is unlikely. Also, the requirements don't apply to simple subdivisions creating two lots and residential development on existing single-family residential lots. The proposed amendments related to plan submission requirements align the requirements with current business practices and the requirements for state-regulated impoundments.

FISCAL IMPACT:

There is no fiscal impact to the county.

ENCLOSED DOCUMENTS:

Attachment 1 – The Planning Commission Verbatim excerpt is available online at:

<https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2019%20verbatims/verbatim72419codeamendmentchapters101subdivisionordinanceand112.pdf>

Attachment 2 – The Staff Report dated June 25, 2019, is available online at:

<https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/pdf/pfm/staff-report-dam-break-inundation-zones.pdf>

Board Agenda Item  
September 24, 2019

STAFF:

Rachel Flynn, Deputy County Executive

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

Barbara Byron, Director, Department of Planning and Development

Leslie B. Johnson, Zoning Administrator, Department of Planning and Development

ASSIGNED COUNSEL:

Hayden Coddington, Assistant County Attorney

Board Agenda Item  
September 24, 2019

4:00 p.m.

Public Hearing on Submission DSC-D1-2 (Jackson Property) of the Dulles Suburban Center Study (PA 2013-III-DS1), Located South and East of the Sunrise Valley Drive and Frying Pan Road Intersection (Dranesville District)

ISSUE:

Submission DSC-D1-2 proposes to amend the Comprehensive Plan guidance for the eastern portion of Land Unit D-1 of the Dulles Suburban Center [Tax Map Parcels 24-2 ((1)) 2, 3, and 4]. The subject property is currently planned for office use at an intensity up to 0.15 floor area ratio (FAR) and public park. As an option, with full consolidation with the adjacent property [Tax Map Parcels 24-2 ((1)) 1 and 10], the development potential is recommended be transferred to the Tax Map Parcels 24-2 ((1)) 1 and 10 with the subject property dedicated for parks and open space. The amendment proposes adding an option for residential use at a density up to 5 dwelling units per acre (du/ac) for the subject property.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing was held on July 17, 2019 with the decision-only deferred to July 24, 2019. On July 24, 2019, the Planning Commission voted 11-0-1 (Commissioner Cortina abstained from the vote) to recommend that the Board of Supervisors adopt the staff recommendation for Submission DSC-D1-2 as found on pages 13 and 14 of the staff report dated June 26, 2019. The recommendation supports adding an option for residential use up to 5 du/ac on the subject property, with conditions relating to vehicular and pedestrian access, the Horsepen Run environmental quality corridor, and trail connections.

RECOMMENDATION:

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

TIMING:

Planning Commission public hearing — July 17, 2019  
Planning Commission decision — July 24, 2019  
Board of Supervisors public hearing — September 24, 2019



BACKGROUND:

On July 9, 2013, the Dulles Suburban Center Study (Plan Amendment 2013-III-DS1) was authorized through the Board of Supervisors approval of the 2013 Comprehensive Plan Work Program. The Dulles Suburban Center Study Plan Amendment was adopted on May 15, 2018. Submissions proposing changes to the Comprehensive Plan guidance for the Dulles Suburban Center (DSC) were accepted as part of the study process. The county received submissions for properties known as Middleton Farms [Tax Map Parcels 24-2 ((1)) 1 and 10] and Jackson Property [Tax Map Parcels 24-2 ((1)) 2, 3, and 4]. The submissions were evaluated jointly in the staff report published on February 1, 2018. At the Planning Commission public hearing on February 15, 2018, the Planning Commission recommended separating their consideration of Jackson Property from the Middleton Farms submission due to transportation access concerns with the Jackson Property submission. The proposed Jackson Property Plan amendment is currently under review with rezoning and final development plan application RZ/FDP 2018-DR-018. The application requests rezoning the property from R-1 to PDH-5 to develop 35 townhomes.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

The Planning Commission Verbatim excerpt is available online at:

[https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2019%20verbatim/verbatim72419submissiondsc-d1-2\(pa2013-iii-ds1\)jacksonproperty\(deconly\).pdf](https://www.fairfaxcounty.gov/planningcommission/sites/planningcommission/files/assets/documents/pdf/2019%20verbatim/verbatim72419submissiondsc-d1-2(pa2013-iii-ds1)jacksonproperty(deconly).pdf)

The staff report for Submission DSC-D1-2 has been previously furnished and is available online at: [www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/compplanamend/dullessuburbancenter/submissions/staff-report-dsc-d1-2.pdf](http://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/compplanamend/dullessuburbancenter/submissions/staff-report-dsc-d1-2.pdf)

STAFF:

Barbara A. Byron, Director, Department of Planning and Development (DPD)  
Leanna H. O'Donnell, Acting Director, Planning Division (PD), DPD  
Clara Johnson, Branch Chief, PD, DPD  
Jennifer Garcia, Planner IV, PD, DPD

Board Agenda Item  
September 24, 2019

4:00 p.m.

Public Hearing to Sell Board-Owned Property South of Spring Hill Road to Dominion Energy for an Electric Substation (Hunter Mill District)

ISSUE:

The Board of Supervisors is the recipient of two proffered parcels of land associated with two rezoning applications by CARS (RZ 2011-HM-013) and Sunburst (RZ 2011-HM-027); Tax Map Nos. 29-3 ((1)) 3B, and 29-3 ((1)) 2G, respectively. The two proffered parcels are dedicated for the construction of a Dominion Energy electric substation adjacent to an existing Dominion transmission line right-of-way. The Board of Supervisors is also the owner of the land under the existing transmission line. Virginia Dominion Energy has applied and received approval for the proposed substation (FDP 2011-HM-013 and FDP 2011-HM-027).

The parcels are currently vacant with an overhead utility improvement. Because the parcels are not needed for right-of-way purposes, and since the parcels' small size and its isolation from other public land make it unsuitable for any other public use, the County will serve the greater public benefit by conveying the parcel to Dominion Energy for redevelopment.

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 Spring Hill substation property to Virginia Dominion Energy at a price established by the third-party appraisal of \$3,875,520.00.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the sale of the subject parcels to Dominion Energy at the established price.

BACKGROUND:

Per the proffer requirements, the County made written requests for the subject properties, in June 2018. CARS DB1, LLC, was notified that Proffer 64 of RZ 2011-HM-013 obligates the owner of the property to dedicate, in fee simple, an approximate 15,718 square foot area of the property for public use as a Dominion Energy substation. Likewise, 1587 Springhill Holdings, Inc., was notified that Proffer 65 of RZ 2011-HM-027 obligates the owner of the property to dedicate, in fee simple, an approximate 12,286 square foot area on the southern portion of the property for public use as a Dominion Energy substation.

Board Agenda Item  
September 24, 2019

A deed of dedication and a Boundary Line Adjustment submission was made to the County and approved, creating a new subject parcel of approximately 0.95 acres, and to be shown as Tax Map No. 293 ((1)) 5A. Fairfax County staff and Virginia Dominion Energy have previously agreed to obtain a third-party appraisal that determined the value of the subject parcel to be \$3,875,520.00.

FISCAL IMPACT:

Proceeds from the sale to Dominion Energy of \$3,875,520 will be deposited into Fund 30010, General Construction and Contributions, and allocated to a project designated for public facilities in Tysons Corner.

ENCLOSED DOCUMENTS:

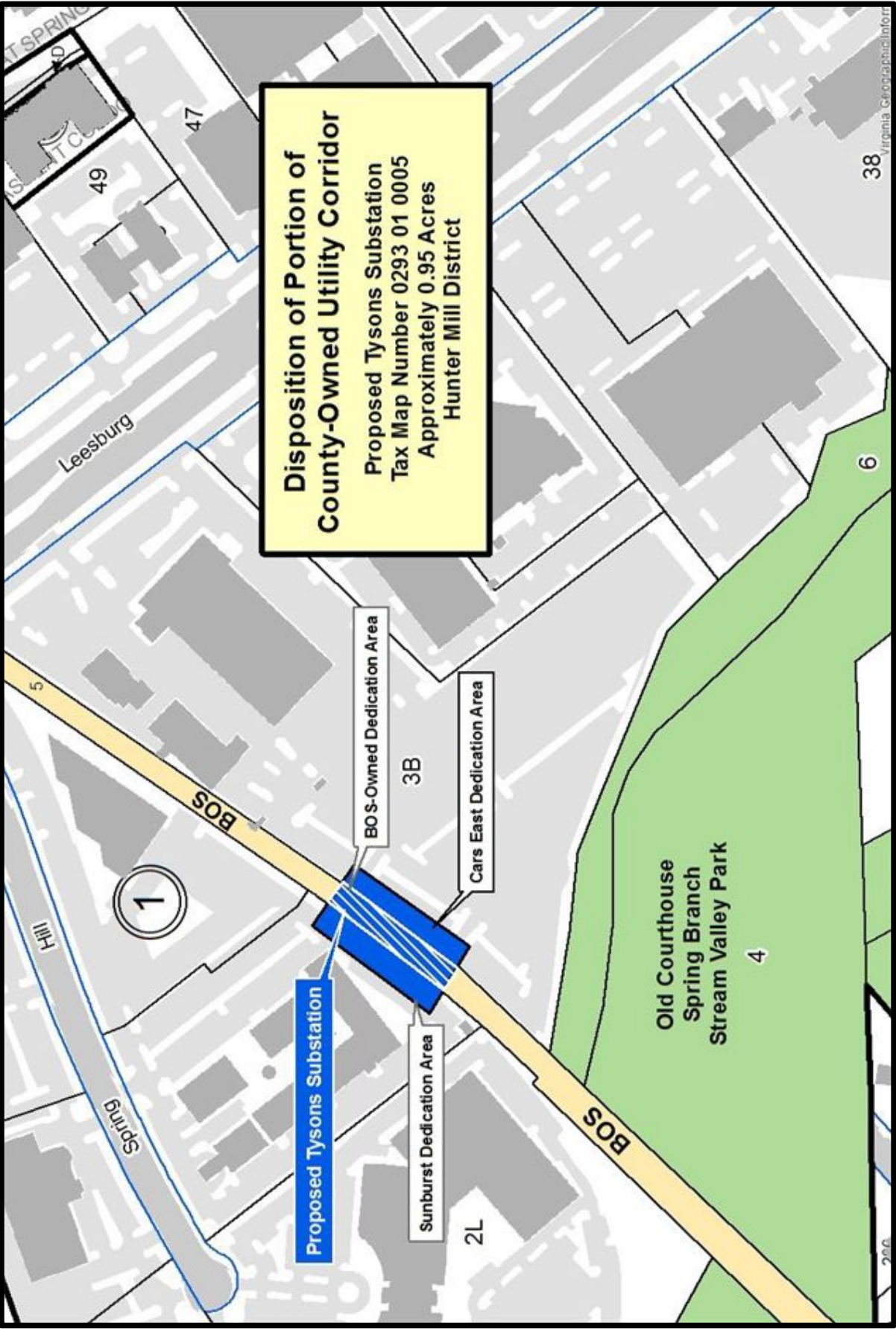
Attachment 1 – Location Map  
Attachment 2 – Resolution

STAFF:

Barbara Byron, Director, Department of Planning and Development (DPD)  
Chris Caperton, Director, Urban Centers Section, DPD

ASSIGNED COUNSEL:

Alan Weiss, Deputy County Attorney  
Pam Pelto, Deputy County Attorney



**ATTACHMENT 2  
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 at Fairfax, Virginia, on Tuesday, September 24, 2019, at which a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, the Board of Supervisors owns approximately 0.95 acres of land near south of Spring Hill Road and west of Route 7, to be identified as Tax Map Parcel 293 ((1)) 5A, in Hunter Mill District,

**WHEREAS**, the County-owned property is not usable for County public use, and the County has no current or planned use for this parcel,

**WHEREAS**, the County and Purchaser have previously agreed to obtain a third-party appraisal that determined the value of the subject parcel to be \$3,875,520.00,

**WHEREAS**, the Board of Supervisors finds that it would be in the best interest of the residents of Fairfax County to convey in consideration of the appraised value the real property as described above to Purchaser.

**NOW, THEREFORE**, upon public hearing duly advertised according to law, it is **RESOLVED** that, in consideration of the agreed-upon third-party appraisal of the subject parcel of \$3,875,520.00, the County Executive is hereby authorized to execute all necessary documents to convey the real property described above to Purchaser.

A Copy Teste:

\_\_\_\_\_  
Jill G. Cooper  
Clerk to the Board of Supervisors

Board Agenda Item  
September 24, 2019

4:30 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Peyton Run at Longwood Knolls Stream Restoration (Springfield District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project SD-000031, Stream and Water Quality Improvements, Peyton Run at Longwood Knolls Stream Restoration, Fund 40100, Stormwater Services.

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 July 30, 2019, the Board authorized advertisement of a public hearing to be held on September 24, 2019, at 4:30 p.m.

BACKGROUND:

This project consists of the restoration of approximately 4,200 linear feet of stream channel in the Pohick Creek Watershed. Restoration of this channel will prevent further damage to property and prevent significant tree loss due to stream erosion. The proposed project will also reduce the heavy sediment flow in the stream which impacts water quality downstream.

Land rights for these improvements are required on two properties, one of which has been acquired by the Land Acquisition Division (LAD). The construction of this project requires the acquisition of Flood Plain and Storm Drainage Easements.

The remaining property is in the name of a now-defunct homeowners association; therefore, it is 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  
September 24, 2019

FISCAL IMPACT:

Funding is available in Project SD-000031, Stream and Water Quality Improvements, Peyton Run at Longwood Knolls Stream Restoration, Fund 40100, Stormwater Services. This project is included in the FY 2020 – 2024 Adopted Capital Improvement Program (With Future Fiscal Years to 2029). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

Attachment A and A1 – Project Location Maps  
Attachment B – Resolution with Fact Sheets on the affected parcels with plats showing interests to be acquired (Attachments 1 through 1-A).

STAFF:

Randolph W. Bartlett, 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





**PEYTON RUN AT LONGWOOD KNOLLS  
STREAM RESTORATION  
PROJECT: SD-000031-182**

**SPRINGFIELD DISTRICT**

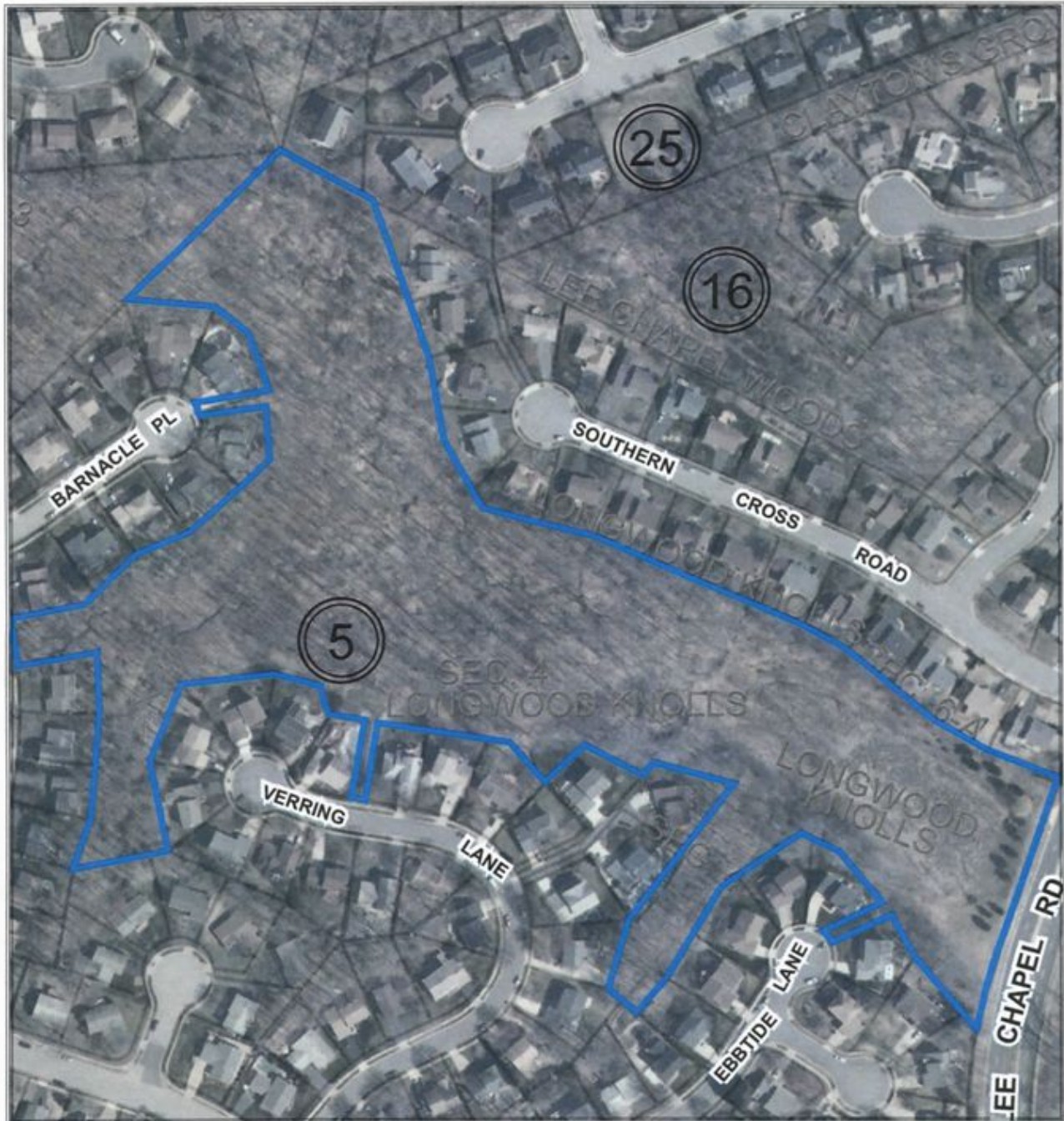
**TAX MAP #: 088-1**

**AFFECTED PROPERTIES:** [Redacted]

0 0.0225 0.045 0.09  
Miles







**PEYTON RUN AT LONGWOOD KNOLLS  
STREAM RESTORATION  
PROJECT: SD-000031-182**

**SPRINGFIELD DISTRICT**

**TAX MAP #: 088-1**

**AFFECTED PROPERTIES:**

0 0.0225 0.045 0.09  
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, September 24, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, certain Project SD-000031-182 - Peyton Run at Longwood Knolls Stream Restoration 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 October 31, 2019.

**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 the restoration of approximately 4,200 linear feet of stream channel in the Pohick Creek Watershed. Restoration of this channel will prevent further damage to property and prevent significant tree loss due to stream erosion. The proposed project will also reduce the heavy sediment flow in the stream which impacts water quality downstream as shown and described in the

plans of Project SD-000031-182 - Peyton Run at Longwood Knolls Stream Restoration 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 after October 24, 2019, 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 SD-000031-182 – Peyton Run at Longwood Knolls Stream Restoration  
(Springfield District)

#### PROPERTY OWNER(S)

#### TAX MAP NUMBER

- |    |   |                 |
|----|---|-----------------|
| 1. | Edgemore Woods Homeowners Association, Inc.,<br>and/or Unknown Owners | 088-1-07-0000-G |
|----|---|-----------------|

Address:  
Parcel G, Common Area

A Copy – Teste:

---

Jill G. Cooper  
Clerk to the Board of Supervisors

AFFECTED PROPERTY

Tax Map Number: 088-1-07-0000-G

Street Address: Parcel G, Common Area

OWNER(S): Edgemore Woods Homeowners Association, Inc.,  
and/or Unknown Owners

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Storm Drainage and Flood Plain Easement – 16,665 sq. ft.

VALUE

Estimated value of interests and damages:

THREE THOUSAND THREE HUNDRED FORTY DOLLARS (\$3,340.00)



CURVE TABLE

CURVE	TRANSIT	CHORD	CHORD BEARING	CHORD LENGTH	ASCENT
1	10.00	10.00	N 89°15'00" E	10.00	5.00
2	10.00	10.00	N 89°15'00" E	10.00	5.00
3	10.00	10.00	N 89°15'00" E	10.00	5.00
4	10.00	10.00	N 89°15'00" E	10.00	5.00
5	10.00	10.00	N 89°15'00" E	10.00	5.00
6	10.00	10.00	N 89°15'00" E	10.00	5.00
7	10.00	10.00	N 89°15'00" E	10.00	5.00
8	10.00	10.00	N 89°15'00" E	10.00	5.00
9	10.00	10.00	N 89°15'00" E	10.00	5.00
10	10.00	10.00	N 89°15'00" E	10.00	5.00

EASEMENT AREA

- 1,801 S.F. OR 0.04130 AC.
- 1,845 S.F. OR 0.03776 AC.
- 795 S.F. OR 0.01820 AC.
- 1,472 S.F. OR 0.03379 AC.
- 348 S.F. OR 0.00799 AC.
- 191 S.F. OR 0.00438 AC.
- 1,768 S.F. OR 0.04059 AC.
- 46 S.F. OR 0.00106 AC.
- 4,871 S.F. OR 0.11182 AC.
- 3,728 S.F. OR 0.08568 AC.
- 16,865 S.F. OR 0.38257 AC.

TOTAL FLOODPLAIN AND STORM DRAINAGE EASEMENT AREA

NOTES

1. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAYS, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
2. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE NECESSARILY SHOWN HEREON.
3. THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND THIS PLAT IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION SHOWN. THE FIELD RUN BOUNDARY SURVEY.
4. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON TAX ASSESSMENT MAP 0081-07-G.
5. THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED ALONG WITH THE LAND RECORDS OF FAIRFAX COUNTY. THE EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.
6. PROJECT COORDINATES WERE PROVIDED BY FAIRFAX COUNTY VIA WESL, INC. FILES DATED JULY 10, 2017. PENNONI CONFIRMS THE PROJECT WAS ON VIRGINIA STATE GRID NORTH NAD 83. THE PLAT IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION SHOWN. THE FIELD RUN BOUNDARY SURVEY.

315 BE NORTH ZONE

LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
1	N 89°15'00" E	10.00	11	N 89°15'00" E	10.00
2	N 89°15'00" E	10.00	12	N 89°15'00" E	10.00
3	N 89°15'00" E	10.00	13	N 89°15'00" E	10.00
4	N 89°15'00" E	10.00	14	N 89°15'00" E	10.00
5	N 89°15'00" E	10.00	15	N 89°15'00" E	10.00
6	N 89°15'00" E	10.00	16	N 89°15'00" E	10.00
7	N 89°15'00" E	10.00	17	N 89°15'00" E	10.00
8	N 89°15'00" E	10.00	18	N 89°15'00" E	10.00
9	N 89°15'00" E	10.00	19	N 89°15'00" E	10.00
10	N 89°15'00" E	10.00	20	N 89°15'00" E	10.00



**Pennonni**

COMMONWEALTH OF VIRGINIA  
JULIE E. HANSEN  
LAND SURVEYOR  
10/09/2018

**PENNONI ASSOCIATES INC.**  
208 Church Street, SE  
Leesburg, VA 20175  
T 703.777.3616 F 703.777.3725

DATE: 09/19/2018 REVISED: 10/09/2018  
SCALE: 1" = 60'  
DRAWN BY: CV SHEET 1 OF 1

PLAT SHOWING  
FLOOD PLAIN AND STORM  
DRAINAGE EASEMENTS  
ON THE PROPERTY OF  
PARCEL "G" - SECTION 3  
CHERRY RUN  
D.B. 5248, PG. 502  
BEING IN THE NAME OF  
EDGEMOORE WOODS  
HOMEOWNERS ASSOCIATION,  
INCORPORATED  
AND/OR UNKNOWN OWNERS  
D.B. 5248, PG. 502

FAIRFAX COUNTY, VA  
DEPARTMENT OF PUBLIC WORKS &  
ENVIRONMENTAL SERVICES  
PROJECT SD-000031-12  
12000 GOVERNMENT CENTER PARKWAY  
FAIRFAX, VIRGINIA

Board Agenda Item  
September 24, 2019

4:30 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive (Hunter Mill District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project 2G40-088-007, Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive, Fund 40010, County and Regional Transportation Projects.

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 July 30, 2019, the Board authorized advertisement of a public hearing to be held on September 24, 2019, at 4:30 p.m.

BACKGROUND:

The County is planning to construct a five-foot wide concrete sidewalk with ADA (Americans with Disabilities Act) ramps and curb and gutter along the north side of Glade Drive from Colts Neck Road to Reston Parkway and then along the south side of Glade Drive from Reston Parkway to Freedom Drive. The total project length is approximately 1,200 feet.

Land rights for these improvements are required on five properties, four of which have been acquired by the Land Acquisition Division (LAD). The construction of the project requires the acquisition of Deeds of Dedication and Conveyance and Grading Agreement and Temporary Construction Easements.

Negotiations are in progress with the final affected property owner; however, because resolution of these acquisitions 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  
September 24, 2019

FISCAL IMPACT:

Funding is available in Project 2G40-088-007, Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive, Fund 40010, County and Regional Transportation Projects. This project is included in the Adopted FY 2020 – FY 2024 Capital Improvement Program (with future Fiscal Years to FY 2029). 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 1A)

STAFF:

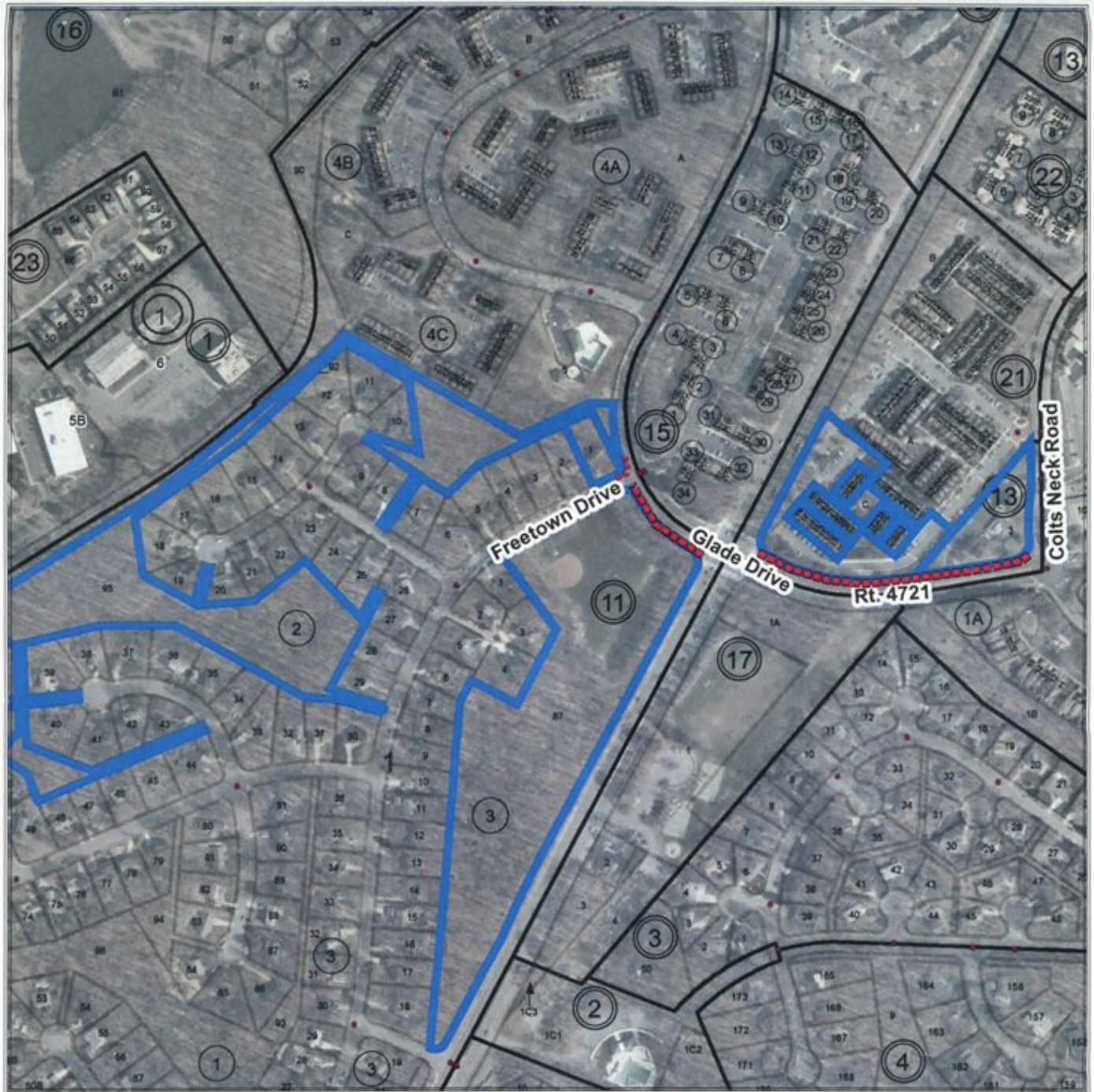
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)

Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:

Pamela K. Peltó, Assistant County Attorney





# GLADE DR WALKWAY - COLTS NECK RD. TO FREETOWN DRIVE

Tax Map: 26-1

Project 2G40-088-007  
Hunter Mill

Affected Properties:

Proposed Improvements:

0 0.0475 0.095 0.19  
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, September 24, 2019, at which meeting a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, certain Project 2G40-088-007, Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive 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 October 30, 2019.

**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 A 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 constructing a five-foot wide concrete sidewalk with ADA (Americans with Disabilities Act) ramps and curb and gutter along the north side of Glade Drive from Colts Neck Road to Reston Parkway and then along the south side of Glade Drive from Reston Parkway to Freedom Drive. The total project length is approximately 1,200 feet long as shown and described in the plans of Project 2G40-088-007, Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive 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 after October 24, 2019, 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 2G40-088-007 – Glade Dr. Walkway – Colts Neck Rd. to Freetown Drive  
(Hunter Mill District)

#### PROPERTY OWNER(S)

#### TAX MAP NUMBER

1. Hunters Square Homeowners Association

026-1-21-0000-C

Address:

Common Area situated on northeast corner of Glade Drive and Reston Parkway

A Copy – Teste:

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Jill G. Cooper  
Clerk to the Board of Supervisors

AFFECTED PROPERTY

Tax Map Number: 026-1-21-0000-C

Street Address: Common Area situated on northeast corner of Glade Drive and Reston Parkway

OWNER(S): Hunters Square Homeowners Association

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

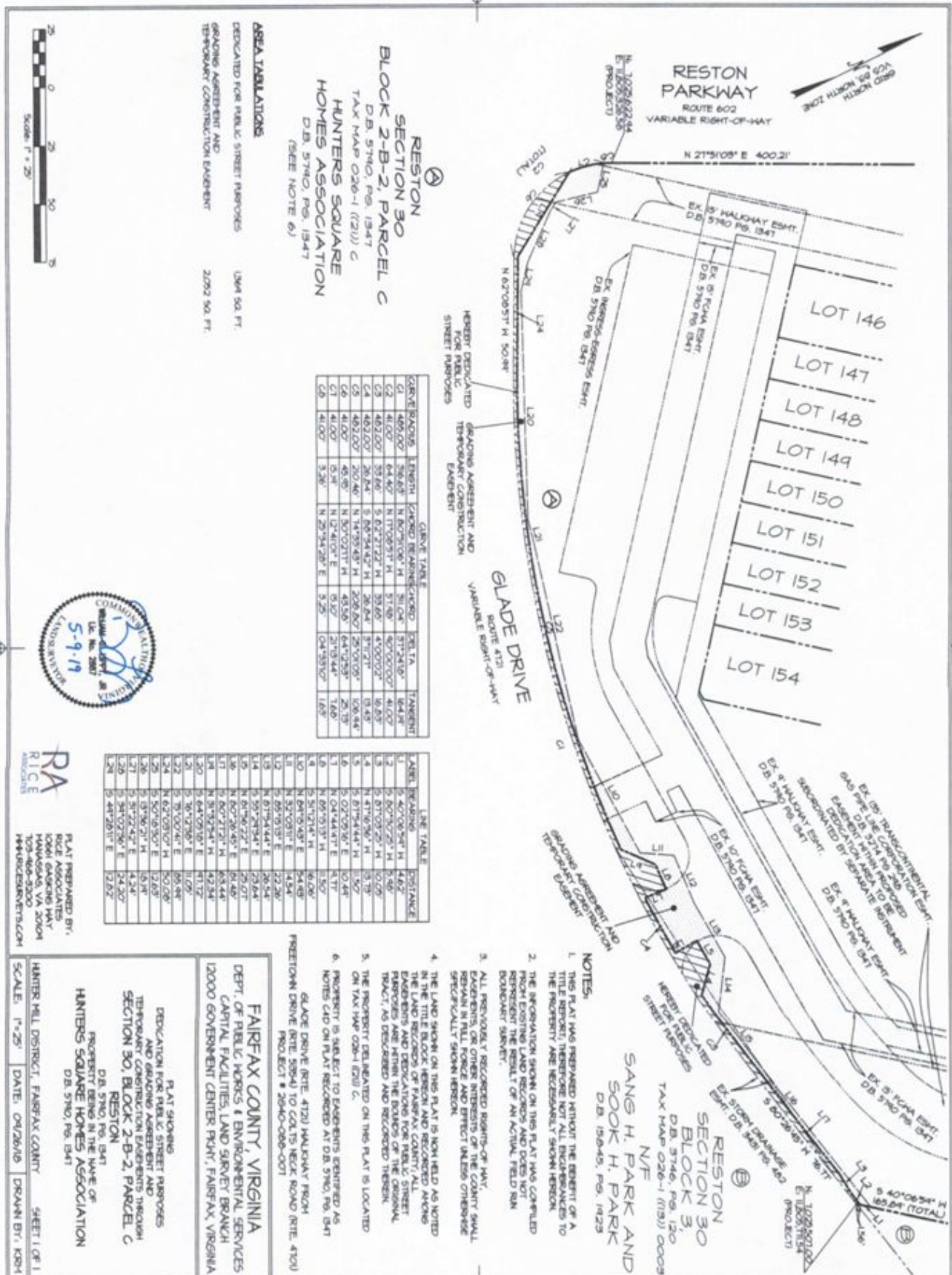
Deed of Dedication and Conveyance – 1,369 sq. ft.

Grading Agreement and Temporary Construction Easement – 2,052 sq. ft.

VALUE

Estimated value of interests and damages:

SIX THOUSAND ONE HUNDRED FIFTY DOLLARS (\$6,150.00)



Board Agenda Item  
September 24, 2019

4:30 p.m.

Public Hearing on RZ 2007-SP-013 (E. James and Anne R. Souvaxis) to Rezone from R-1 and WS to PDH-2 and WS to Permit Residential Development with an Overall Density of 1.94 Dwelling Units Per Acre and Approval of the Conceptual Development Plan, Located on Approximately 5.17 Acres of Land (Springfield District)

This property is located on the N. side of Westbrook Dr., E. of its intersection with Lincoln Dr. Tax Map 55-2 ((3)) E2 and E3.

PLANNING COMMISSION RECOMMENDATION:

On July 31, 2019, the Planning Commission voted 9-0 (Commissioners Clarke, Hurley, and Tanner were absent from the meeting) to recommend to the Board of Supervisors approval of RZ 2007-SP-013, subject to the execution of proffered conditions dated July 17, 2019.

In a related action, the Planning Commission voted 9-0 (Commissioners Clarke, Hurley, and Tanner were absent from the meeting) to approve FDP 2007-SP-013, subject to the development conditions dated July 17, 2019 and subject to the Board of Supervisors' approval of the associated Rezoning and Conceptual Development Plan.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
Zachary Fountain, Planner, DPD

Board Agenda Item  
September 24, 2019

**To Be Deferred**

4:30 p.m.

Public Hearing on PCA 2002-LE-005 (Alwadi, LLC) to Amend the Proffers for RZ 2002-LE-005 Previously Approved for Commercial Development to Permit a Shopping Center and Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.18, Located on Approximately 1.23 Acres of Land Zoned C-8, CRD and HC (Lee District)

This property is located on the N. side of Richmond Hwy., E. of Martha St. Tax Map 101-4 ((1)) 11A and 12.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing for this application is scheduled for October 17, 2019. The Planning Commission recommendation will be forwarded following decision.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
William Mayland, Planner, DPD

Board Agenda Item  
September 24, 2019

5:00 p.m.

Public Hearing to Consider Adopting an Ordinance to Establish the Westford Landing Community Parking District (Providence District)

ISSUE:

Proposed amendment to Appendix M, of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish the Westford Landing Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board adopt the amendment to the Fairfax County Code shown in Attachment I to establish the Westford Landing CPD.

TIMING:

On July 30, 2019, the Board authorized advertisement of a Public Hearing to consider the proposed amendment to Appendix M, of the *Fairfax County Code* to take place on September 24, 2019, at 5:00 p.m.

BACKGROUND:

Fairfax County Code Section 82-5B-2 authorizes the Board to establish a CPD for the purpose of prohibiting or restricting the parking of the following vehicles on the streets in the CPD: watercraft; boat trailers; motor homes; camping trailers; and any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds, except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4.

No such CPD shall apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location, (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power, (iii) restricted vehicles temporarily parked on a public street within any such CPD for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip, or (iv) restricted vehicles that are temporarily

Board Agenda Item  
September 24, 2019

parked on a public street within any such CPD for use by federal, state, or local public agencies to provide services.

Pursuant to Fairfax County Code Section 82-5B-3, the Board may establish a CPD if: (1) the Board receives a petition requesting establishment and such petition contains the names, addresses, and signatures of petitioners who represent at least 60 percent of the addresses within the proposed CPD, and represent more than 50 percent of the eligible addresses on each block of the proposed CPD, (2) the proposed CPD includes an area in which 75 percent of each block within the proposed CPD is zoned, planned, or developed as a residential area, (3) the Board receives an application fee of \$10 for each petitioning property address in the proposed CPD, and (4) the proposed CPD must contain the lesser of (i) a minimum of five block faces or (ii) any number of blocks that front a minimum of 2,000 linear feet of street as measured by the centerline of each street within the CPD.

Staff has verified that the requirements for a petition-based CPD have been satisfied.

The parking prohibition identified above for the Westford Landing CPD is proposed to be in effect seven days per week, 24 hours per day.

FISCAL IMPACT:

The cost of sign installation is estimated to be \$250. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to the *Fairfax County Code*, Appendix M (CPD Restrictions)  
Attachment II: Area Map of Proposed Westford Landing CPD

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  
Henri Stein McCartney, Sr. Transportation Planner, FCDOT  
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Marc E. Gori, Assistant County Attorney



PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX M

M-91 Westford Landing Community Parking District

(a) *District Designation.*

- (1) The restricted parking area is designated as the Westford Landing Community Parking District.
- (2) Blocks included in the Westford Landing Community Parking District are described below:

*Landing Lane (Route 4012)*

From Pioneer Lane to Westford Court.

*Pioneer Lane (Route 2631)*

From Shreve Road to the end.

*Westford Court (Route 4013)*

From the northern cul-de-sac to the southern cul-de-sac.

(b) *District Provisions.*

- (1) This District is established in accordance with and is subject to the provisions set forth in Article 5B of Chapter 82.
- (2) Parking of watercraft; boat trailers; motor homes; camping trailers; any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 is prohibited at all times on the above-described streets within the Westford Landing Community Parking District.
- (3) No such Community Parking District shall apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers

and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within any such District for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily parked on a public street within any such District for use by federal, state, or local public agencies to provide services.

- (c) *Signs.* Signs delineating the Westford Landing Community Parking District shall indicate community specific identification and/or directional information in addition to the following:

NO PARKING  
Watercraft  
Trailers, Motor Homes  
Vehicles  $\geq 3$  Axles  
Vehicles GVWR  $\geq 12,000$  lbs.  
Vehicles  $\geq 16$  Passengers

FAIRFAX COUNTY CODE §82-5B

Fairfax County Department of Transportation  
Westford Landing  
Community Parking District  
Providence District



Tax Map: 49-2

Proposed CPD Restriction

Board Agenda Item  
September 24, 2019

5:00 p.m.

Public Hearing to Consider Adopting an Ordinance to Establish the Fair Oaks Farms Community Parking District (Sully District)

ISSUE:

Proposed amendment to Appendix M, of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish the Fair Oaks Farms Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board adopt the amendment to the Fairfax County Code shown in Attachment I to establish the Fair Oaks Farms CPD.

TIMING:

On July 30, 2019, the Board authorized advertisement of a Public Hearing to consider the proposed amendment to Appendix M, of the *Fairfax County Code* to take place on September 24, 2019, at 5:00 p.m.

BACKGROUND:

Fairfax County Code Section 82-5B-2 authorizes the Board to establish a CPD for the purpose of prohibiting or restricting the parking of the following vehicles on the streets in the CPD: watercraft; boat trailers; motor homes; camping trailers; and any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds, except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4.

No such CPD shall apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location, (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power, (iii) restricted vehicles temporarily parked on a public street within any such CPD for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip, or (iv) restricted vehicles that are temporarily

Board Agenda Item  
September 24, 2019

parked on a public street within any such CPD for use by federal, state, or local public agencies to provide services.

Pursuant to Fairfax County Code Section 82-5B-3, the Board may establish a CPD if: (1) the Board receives a petition requesting establishment and such petition contains the names, addresses, and signatures of petitioners who represent at least 60 percent of the addresses within the proposed CPD, and represent more than 50 percent of the eligible addresses on each block of the proposed CPD, (2) the proposed CPD includes an area in which 75 percent of each block within the proposed CPD is zoned, planned, or developed as a residential area, (3) the Board receives an application fee of \$10 for each petitioning property address in the proposed CPD, and (4) the proposed CPD must contain the lesser of (i) a minimum of five block faces or (ii) any number of blocks that front a minimum of 2,000 linear feet of street as measured by the centerline of each street within the CPD.

Staff has verified that the requirements for a petition-based CPD have been satisfied.

The parking prohibition identified above for the Fair Oaks Farms CPD is proposed to be in effect seven days per week, 24 hours per day.

FISCAL IMPACT:

The cost of sign installation is estimated to be \$250. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to the *Fairfax County Code*, Appendix M (CPD Restrictions)  
Attachment II: Area Map of Proposed Fair Oaks Farms CPD

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  
Henri Stein McCartney, Sr. Transportation Planner, FCDOT  
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Marc E. Gori, Assistant County Attorney

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX M

M-90 Fair Oaks Farms Community Parking District

(a) *District Designation.*

- (1) The restricted parking area is designated as the Fair Oaks Farms Community Parking District.
- (2) Blocks included in the Fair Oaks Farms Community Parking District are described below:

*Carroll Court (Route 7769)*

From Chevy Chase Lane to the cul-de-sac.

*Chevy Chase Court (Route 7154)*

From King Charles Drive to the cul-de-sac.

*Chevy Chase Lane (Route 7154)*

From King Charles Drive to the cul-de-sac.

*King Charles Drive (Route 7153)*

From Lees Corner Road to the cul-de-sac.

(b) *District Provisions.*

- (1) This District is established in accordance with and is subject to the provisions set forth in Article 5B of Chapter 82.
- (2) Parking of watercraft; boat trailers; motor homes; camping trailers; any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 is prohibited at all times on the above-described streets within the Fair Oaks Farms Community Parking District.
- (3) No such Community Parking District shall apply to (i) any

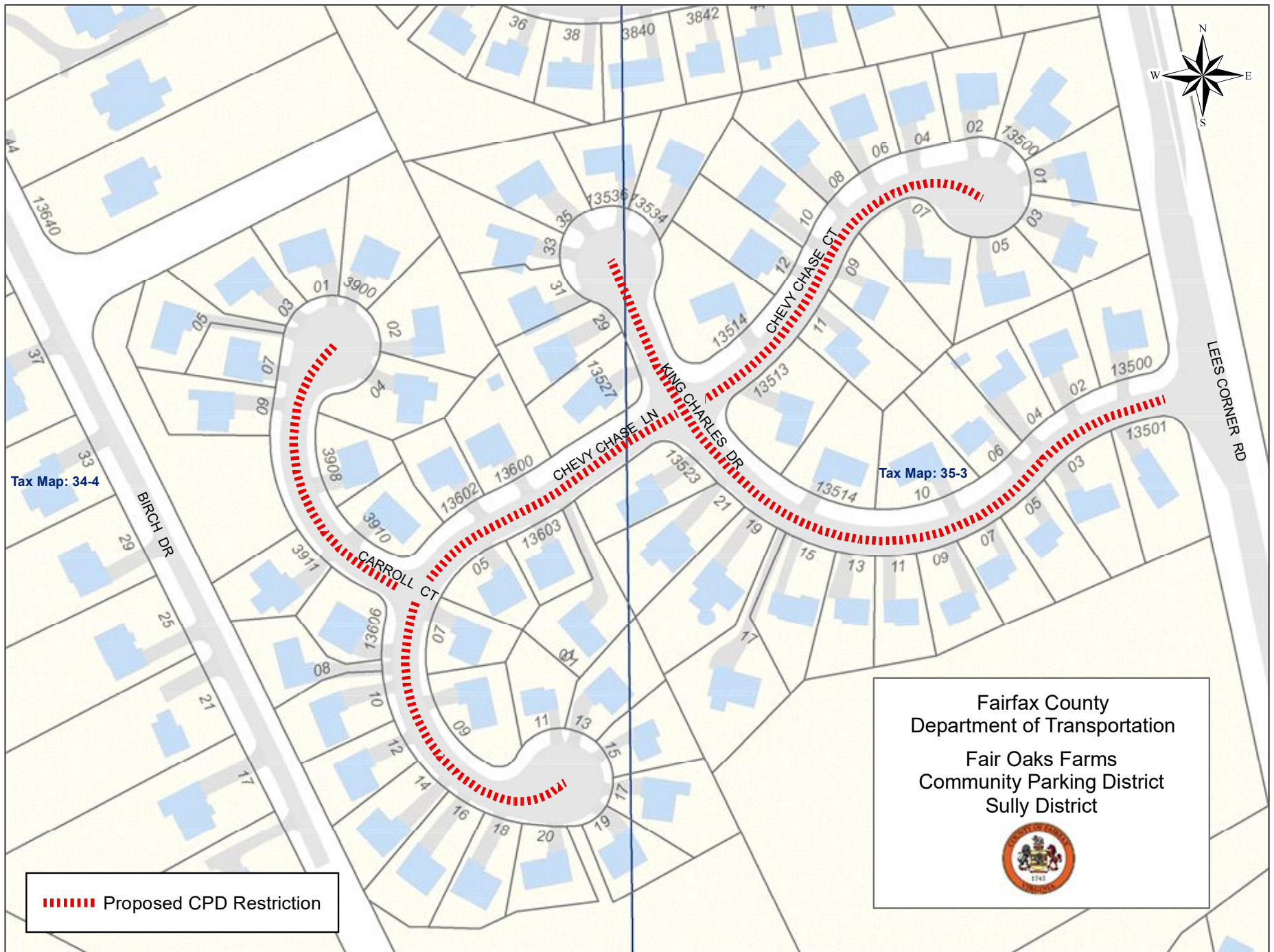
commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within any such District for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily parked on a public street within any such District for use by federal, state, or local public agencies to provide services.

- (c) *Signs.* Signs delineating the Fair Oaks Farms Community Parking District shall indicate community specific identification and/or directional information in addition to the following:

NO PARKING  
Watercraft  
Trailers, Motor Homes  
Vehicles  $\geq 3$  Axles  
Vehicles GVWR  $\geq 12,000$  lbs.  
Vehicles  $\geq 16$  Passengers

FAIRFAX COUNTY CODE §82-5B







5:00 p.m.

Public Hearing on Proposed Site-Specific Plan Amendment (SSPA) 2018-I-1MS,  
Merrifield Suburban Center Study, Located South of Lee Highway, North and South of  
Arlington Boulevard, and East of Gallows Road (Providence District)

ISSUE:

Site-Specific Plan Amendment (SSPA) 2018-I-1MS consists of two nominated subject areas within the Merrifield Suburban Center: (a) Fairview Park (portions of Sub-unit I1 and Land Unit J), located east of Interstate-495 (I-495) and north and south of Arlington Boulevard and (b) The Inova Center for Personalized Health (ICPH) (Land Unit K) located west of I-495 and south of Arlington Boulevard. As authorized by the Board of Supervisors, the Fairview Park nomination considers increasing the economic sustainability of an existing office park by adding a residential mixed-use development option at an intensity between 0.8-1.0 floor area ratio (FAR). The nomination was refined over the course of the evaluation to a maximum of 0.65 FAR, or up to 2.4 million square feet. The ICPH nomination considers an academic and research campus centered on health and innovation with office, hotel, and residential mixed-use development, as authorized by the Board, at an intensity of up to 1.0 FAR, or 5 million square feet. The ICPH was refined over the course of the evaluation as a multi-tiered development approach with a maximum of 0.7 FAR and a future expansion up to 1.0 FAR. SSPA 2018-I-1MS is concurrently under review with Proffer Condition Amendment/Conceptual Development Plan Amendment/Final Development Plan Amendment application PCA/CDPA/FDPA #74-7-047-02-02 for the ICPH nomination site.

PLANNING COMMISSION RECOMMENDATION:

On September 19, 2019 the Planning Commission voted 9-0-1 (Commissioner Tanner abstained; Commissioner Clarke was not present for the vote; Commissioner Cortina was absent from the meeting) to recommend that the Board approve the Planning Commission alternative for SSPA 2018-I-1MS based on the Task Force and staff-recommended language contained in the Staff Report Addendum dated September 10, 2019, and contained in Attachment I. The Planning Commission alternative plan language for Fairview Park supported the addition of a Plan option for mixed-use development up to 1.6 million square feet with a maximum residential component of up to 840 units. The recommended plan language for ICPH supported an option for an academic and research campus up to an intensity of 0.7 FAR and a future expansion up to 1.0 FAR, if certain conditions are met. Recommendations for both sites address such

elements as urban design, multimodal transportation improvements, stormwater management, urban parks, open spaces, and tree preservation.

The Planning Commission also recommended five follow-on motions to the Board to direct staff to address issues raised in the review process, which are summarized as follows:

1. Conduct a study of multimodal transportation opportunities in and around the Merrifield Suburban Center, with a focus on Gallows Road from Tysons to the greater Annandale area and parallel roadways. [The Planning Commission voted 9-0-1 (Commissioner Tanner abstained; Commissioner Clarke was not present for the vote; Commissioner Cortina was absent from the meeting.)]
2. Study the barriers to connectivity in the Merrifield Suburban Center created by I-495. [The Planning Commission voted 9-0-1 (Commissioner Tanner abstained; Commissioner Clarke was not present for the vote; Commissioner Cortina was absent from the meeting.)]
3. Develop a funding plan for the transportation infrastructure improvements recommended in the Merrifield Suburban Center Comprehensive Plan, in an effort to expeditiously advance the projects. [The Planning Commission voted 9-0-1 (Commissioner Tanner abstained; Commissioner Clarke was not present for the vote; Commissioner Cortina was absent from the meeting.)]
4. Work with the nominators, other property owners, and the surrounding commercial, retail, and residential communities to form a transportation management association to facilitate strategies to reduce single-occupancy auto trip demand within the Merrifield Suburban Center, including the implementation of a circulator system in the Merrifield Suburban Center and other destinations in the surrounding area. [The Planning Commission voted 9-0-1 (Commissioner Tanner abstained; Commissioner Clarke was not present for the vote; Commissioner Cortina was absent from the meeting.)]
5. Coordinate with staff from Fairfax County Public Schools Office of Facilities Planning Services on an evaluation of future build-out in the Merrifield Suburban Center Plan that would determine anticipated student membership and school capacity needs, and whether the recommendations in the Plan would adequately address the capacity need in the future or whether alternative guidance is needed. [The Planning Commission voted 8-0-2 (Commissioners Tanner and Hurley abstained; Commissioner Clarke was not present for the vote; Commissioner Cortina was absent from the meeting.)]

RECOMMENDATION:

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

TIMING:

Planning Commission public hearing – September 11, 2019

Planning Commission decision-only – September 19, 2019

Board of Supervisors' public hearing – September 24, 2019

BACKGROUND:

On July 31, 2018 the Board authorized the consideration of SSPA 2018-I-1MS for approximately 203 acres within the Merrifield Suburban Center. The amendment consists of two sites: Fairview Park (Tax Map Parcels 49-4 ((1)) 49-4 ((1)) 71, 73, 73A1, 73A2, 74A and 74B within Sub-Unit I1 and Land Unit J) and ICPH (Tax Map Parcel 49-4 ((1)) 57 on Land Unit K). The proposed plan amendment and impacts analysis were reviewed by staff and a community task force, which was comprised of representatives from homeowners' associations and the Greater Merrifield Business Association appointed by the Providence District Supervisor, over the course of 26 meetings from October 2018 to September 2018.

The 86-acre Fairview Park site is planned for office, accessory retail and public park uses. The amendment originally proposed a development option for mixed-use office, hotel, residential, and other uses between 3 million square feet and 3.7 million square feet of total development (0.8-1.0 FAR). Over the course of the review, the proposal was revised to include office, multifamily residential use with a maximum of 1,060 units, ground floor retail and other uses and new publicly accessible parks and pedestrian and bicycle facilities up to 2.1 million square feet on Tax Map Parcels 73, 73A1, 73A2, 74A and 74B and new ground floor retail use on Tax Map Parcel 71. In the Staff Report Addendum published on September 10, 2019, staff recommended support for the revised proposal with conditions related to such elements as design, transportation, stormwater management, and the environment. The task force recommended a reduced development option with a residential component not to exceed 840 units and a total development potential of 1.42 million square feet, as well as additional revisions to urban parks and other amenities.

The 117-acre ICPH site is planned for office use up to 0.35 FAR. The Board authorization directed staff to consider mixed-use development up to an intensity of 1.0 FAR. Over the course of the review, the proposal was refined to include a multi-tiered development approach for office, research, institutional, multifamily residential, hotel and other uses up to 0.7 FAR, or 3.57 million square feet, with a future expansion of up

to 1.0 FAR, or 5 million square feet. In the Staff Report Addendum, staff and the task force supported the proposed amendment with conditions related to the phasing of development with transportation improvements and public facilities; new publicly accessible parks; pedestrian and bicycle facilities; the preservation of 55 acres of open space; among other recommendations. Related modifications to the Merrifield Suburban Center Areawide recommendations including such elements as areawide planning objectives and guidance pertaining to affordable housing, open space and transportation were also recommended.

Much of the task force deliberations and resulting recommendations contained in the proposed plan amendment focused on multimodal approaches to mitigating the number of vehicle trips associated with the proposals by providing infrastructure for cyclists and pedestrians, Transportation Demand Management (TDM) strategies, and shuttle services. Environmental issues were similarly critical to the discussions. On the ICPH site, the task force advocated strongly for the preservation of the eastern portion of the site as a publicly accessible, wooded open space as an integral element of the plan, both as a recreational opportunity and as a means of limiting future expansion of the campus on the site. A multimodal focus on site circulation greatly informed the proposed streetscape design of the Gallows Road frontage, which would include a mode-separated cycle track to accommodate cyclists and pedestrians. This multimodal orientation also led to concerns among the task force about the necessary road improvements to Gallows Road to accommodate the trips associated with the proposal and background growth in Merrifield, and how to best manage these needs while also enhancing non-auto connections to the surrounding destinations throughout Merrifield and beyond.

For the Fairview Park proposal, the preservation of the land area adjacent to Fairview Lake and east of Fairview Park Drive (Tax Map Parcel 49-4 ((1)) 74A), referred to as the “peninsula”, was valued by the task force as an environmentally sensitive asset and buffer to the adjacent Lakeford community. The overall residential density of the proposal was paramount to the discussion of the nomination due to concerns from the adjacent Lakeford community about increased traffic over the existing condition, the additional activity that such a change would generate, and the potential impacts to area schools. Other concerns, including stormwater management, flooding, and context-sensitive design, garnered much task force discussion and significantly shaped the proposed amendment.

The review of the Plan amendment is concurrent with a Proffer Condition Amendment/Conceptual Development Plan Amendment/Final Development Plan Amendment application PCA/CDPA/FDPA #74-7-047-02-02 for the ICPH site submitted by Inova Health Care Services that proposes to develop the ICPH site at a maximum intensity of 0.7 FAR, or approximately 3.6 million square feet. Consult

<http://ldsnet.fairfaxcounty.gov/ldsnet/CurrentInProcessBOS.aspx> for a description and information on the status of the proffer condition amendment application.

FISCAL IMPACT:  
None.

ENCLOSED DOCUMENTS:  
Attachment I - The Planning Commission Handout, dated September 19, 2019.

The Planning Commission verbatim excerpt will be accessible when available at:  
<https://www.fairfaxcounty.gov/planningcommission/verbatim-2019>

The Staff Report for SSPA 2018-I-1MS, dated August 22, 2019, has been previously furnished and is available online at: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/compplanamend/merrifieldsubctr/staff-report-sspa-2018-i-1ms.pdf>

The Staff Report Addendum for SSPA 2018-I-1MS, dated September 10, 2019, containing the Merrifield Suburban Center Task Force and Staff recommendation is available online at: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/compplanamend/merrifieldsubctr/staff-report-addendum-2018-i-1ms.pdf>

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## Site Specific Plan Amendment (SSPA) 2018-I-1MS – Merrifield Suburban Center

Commissioner Phillip Niedzielski-Eichner, Providence District  
Planning Commission Decision Only

September 19, 2019

The following modifications to the Comprehensive Plan are proposed based on the task force recommendation described in the SSPA 2019-I-1MS Staff Report Addendum, dated September 10, 2019. Text that is proposed to be deleted is shown as ~~striketrough~~, and text proposed to be added is shown as underlined. Additional modifications to the task force recommendation in the addendum are identified below in **bold font** and **yellow highlight**.

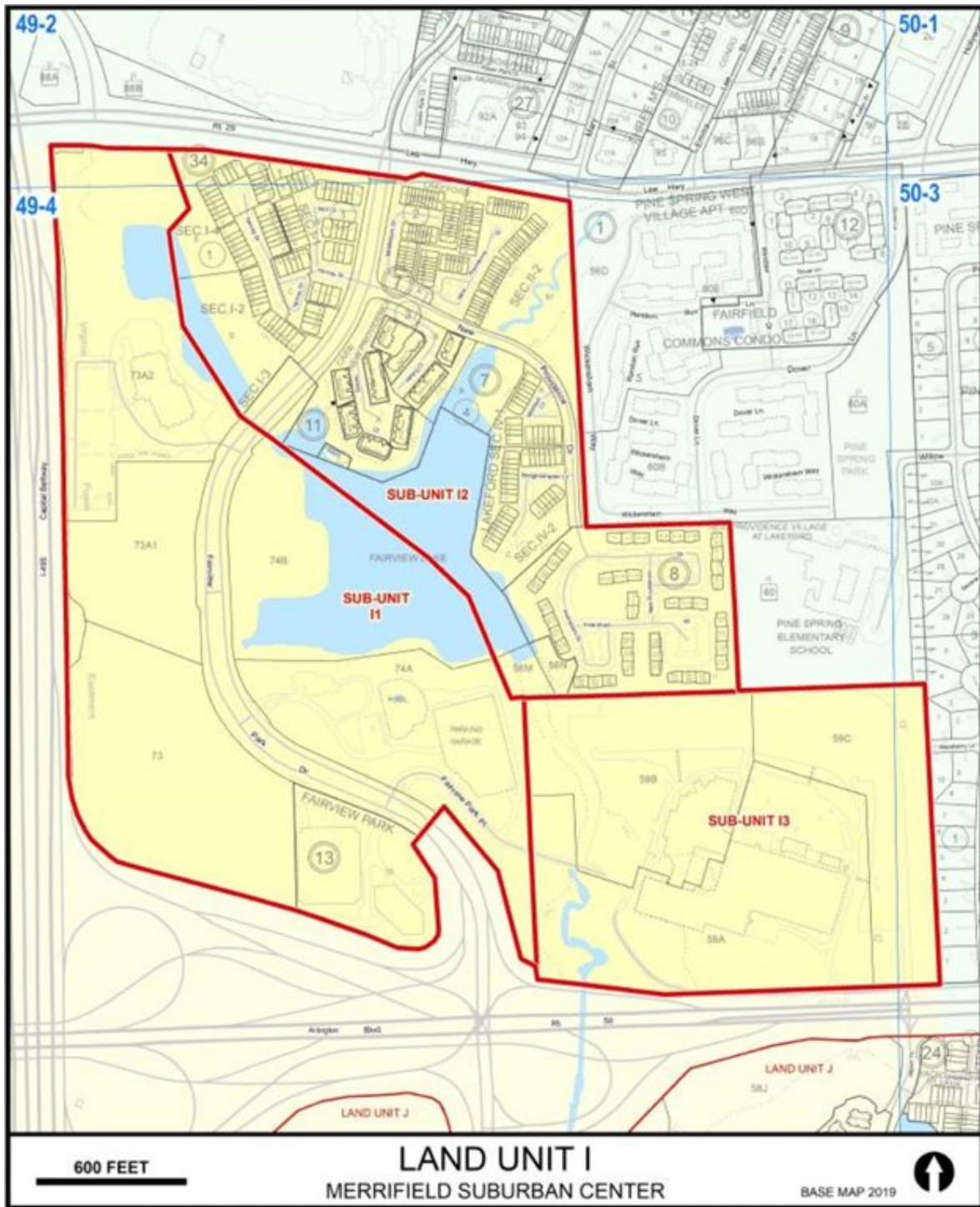
MODIFY: Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield Suburban Center, as amended through July 31, 2018, Recommendations, Land Use, pages 91-98:

**“LAND UNIT I**

Land Unit I, consisting of three sub-units, is comprised of approximately 186 acres and is located east of I-495, bounded by Lee Highway and Arlington Boulevard (see Figure 28). Existing development consists of residential use in the northern and eastern portion, office and industrial uses in the southern portion and undeveloped land and office in the western portion, abutting I-495. This land unit includes the Holmes Run Environmental Quality Corridor (EQC) which is preserved as permanent private open space.

This land unit’s developed portions are envisioned to remain in their current uses, with the undeveloped portion to infill primarily with office or mixed-use development designed to strengthen the sense of community within the land unit~~buildings~~. Major road improvements such as the construction of Fairview Park Drive, interchanges with Arlington Boulevard and I-495, and intersection improvements at Lee Highway and Arlington Boulevard were completed with the first phase of development within this ~~Land u~~nit.

Guidance for evaluating development proposals is provided in the Area-Wide Recommendations under the Land Use, Urban Design, Transportation, and Public Facilities/Infrastructure sections, as well as in the following specific sub-unit recommendations.



*[This figure has been revised to remove an incorrect street label of Lakeford Drive.]*

**FIGURE 28**

## Sub-Unit I1

Sub-Unit I1, which is bounded by Fairview Lake on the east and I-495 on the west, is characterized by substantial mature tree stands within and outside of the EQC area. The sub-unit is planned and approved for as an office park with use and support retail uses at the baseline level. The office component is limited to 1.7 million square feet. The retail and accessory uses are limited to 50,000 square feet. Any modification, expansion, and/or reuse of the existing buildings should be consistent with guidelines for Existing Uses and Buildings under the Area-Wide Land Use section and any new construction should address the following guidance:

- The retail and accessory uses, such as day care, restaurant, and service uses, may be integrated within the office buildings, or a portion of the retail and accessory uses could be developed as a small retail center. The retail center should be located adjacent to the western side of Fairview Lake between the lake and Fairview Park Drive and should have a minimum of 25,000 square feet. If a retail center is developed, institutional uses are encouraged to be located in this center. Drive-through uses that are low traffic generators, such as financial institutions and drug stores, may be considered provided that the drive-through facility is integrated within a multi-tenant building and is designed in a manner that does not impact pedestrian access. Other drive-through uses are inappropriate.
- If institutional/governmental uses are incorporated into the development, additional intensity may be appropriate if the institutional/governmental use generates no more peak-hour traffic than the planned office development and if development is consistent with the Area-Wide guidance.
- Office buildings should provide structured parking in order to preserve the maximum amount of undisturbed open space. Any surface parking should be buffered through berms and/or landscaping.
- A trail circulation system should be constructed through the office park.
- The area immediately adjacent to Sub-unit I2 is part of the Holmes Run EQC and Fairview Lake, which should remain as permanent private open space.
- Building heights are envisioned to decrease toward the northern and eastern edges of the sub-unit to provide a transition to the nearby developed residential neighborhoods. Heights should be no more than 7 to 8 stories or 130 feet for the area adjacent to the western side of Fairview Lake and the Holmes Run EQC. In the remainder of the sub-unit, the maximum building height is 15 stories or 180 feet. If a retail center is located adjacent to the west side of Fairview Lake, office buildings located in the southwestern portion of this sub-unit, between I-495, Fairview Park Drive and Arlington Boulevard, may be considered for a height of up to 18 stories or approximately 230 feet provided that the parking is an integral part of the office development and additional open space above the current approved development plan is provided. See the Building Heights Map, Figure 8, and the Building Height Guidelines under the Area-Wide Urban Design section.



Mixed-Use Option: As an alternative to the baseline plan, Tax Map Parcels 49-4 ((1)) 73, 73A1, 73A2, 74A, and 74B are envisioned to develop as an economically and environmentally sustainable mixed-use neighborhood that complements the adjacent office buildings and townhouse and multifamily communities, honors the natural setting, promotes healthy lifestyles and positive social interactions, and respects the surrounding residential communities through appropriate transitions in use, scale and buffering. This option infills the existing development pattern with new, architecturally distinctive buildings in a park-like setting that integrate with, and respond to, natural features in form, orientation, and materials. The site design is expected to provide an interconnected network of paths and bridges into a new neighborhood main street and central plaza. Walking and biking to daily activities and optimizing relationships to the area's natural assets (Fairview Lake, Holmes Run Stream Valley, and the additional wooded areas) are central to this vision. Development under the Mixed-Use Option is recommended only if neither the previously approved office building nor the retail center recommended under the baseline plan on Tax Map Parcel 49-4((1))74B is constructed.

Development under this option should conform to the applicable Area-Wide and baseline plan guidance (including recommendations for Alternative Uses) and achieve the following:

Land Use:

- Development under the Mixed-Use Option should not exceed a total of approximately **1.42 1.6 million square feet** to include a mixture of multifamily residential, office, support retail and service uses, and cultural and recreational amenities.
- Existing office development located on Parcel 73A2 and 74A should remain as a non-residential use.
- The new residential component should consist of multifamily residential uses and should not exceed 840 units, inclusive of affordable housing and bonus density per the county's affordable dwelling unit program and workforce housing policy.
- Non-residential uses should comprise no less than 40% of the total square feet of development within the sub-unit.
- Community-serving retail and service uses are expected to comprise approximately 5% (up to approximately 90,000 SF) of the total development's square footage. These uses are envisioned as an essential place-making element of the development, particularly in the creation of a pedestrian-oriented "main street" central plaza, which would serve as a lively community gathering place located in the southwest portion of the sub-unit between I-495, Arlington Boulevard, and Fairview Park Drive, as shown in the illustrative rendering (Figure 29). Retail uses are envisioned to be located in the ground floor of buildings that frame a central plaza, activating the plaza with storefronts and amenities such as outdoor café areas. As an essential amenity for the development, the central plaza is expected to be constructed in the initial phase of the new development, prior to the construction of development elsewhere within the sub-unit. Retail and service uses may include such uses as health clubs, day care and food services, as recommended in the Merrifield Suburban Center Alternative Use Guidelines. Drive-through

uses, as well as standalone retail uses not otherwise connected with other uses or site amenities, are not appropriate.

**Figure 29. Sub-Unit I1 Mixed Use Option - Illustrative Rendering**

*(Depiction intended to help visualize development, but does not represent the sole means of achieving the plan option.)*



- Tax Map Parcel 49-4((1))74B comprises a man-made peninsula of land east of Fairview Park Drive and west of Fairview Lake that was created with the construction of Fairview Lake. Under the Mixed-Use Option, neither the approved office building in this area nor the planned retail center is appropriate as they are not consistent with Objective 9 of the Environment section of the Policy Plan. Under this option, the area is planned for permanent, passive open space and may be counted towards meeting the Open Space and Pedestrian System Guidelines and the countywide Urban Parks Framework, depending on the design and programming. Tree Preservation as described in the subsequent guidance for the sub-unit is expected. Trails are expected to be generally located outside of the Resource Protection Area (RPA).

Design and Connectivity:

- Development proposals should demonstrate high quality in terms of site and building design, architecture, materials, and urban park spaces, referencing the iconic office buildings and natural features of Fairview Park, and emphasizing the pedestrian experience. Building design should utilize architectural variation and sculptural elements that contribute to the pedestrian experience and should provide bird-friendly elements consistent with the countywide Urban Design Guidelines Volume 1 (countywide UDG).
- The siting and design of buildings should engage the natural setting through such features as natural materials, building orientation, and breaks within the building massing. Building heights are envisioned to decrease toward the northern and eastern edges of the sub-unit. Heights of five stories and greater have the design flexibility necessary for integrating with the natural environment and providing a scale of development compatible with the existing office park setting. The maximum building height for new buildings is 15 stories or 180 feet, with the tallest buildings located near Arlington Boulevard and I-495. However, buildings located in the southwestern portion of this sub-unit, between I-495, Fairview Park Drive, and Arlington Boulevard, may be considered for a maximum height of 18 stories or 230 feet provided that the taller height does not negatively affect the form of the development. See the Building Heights Map, Figure 8, and the Building Height Guidelines under the Area-Wide Urban Design section.
- A network of well-connected, usable, publicly accessible urban parks should complement the natural places to create a variety of areas for active and passive recreation at each phase of development. A central plaza on the southern portion of the sub-unit, constructed as part of the initial phase, is expected to be built as an essential element of the development program. This central plaza should be designed as a lively community gathering place with multiple outdoor activities, which may include an indoor, publicly accessible community space that will complement the retail and service uses that surround it. The plaza and/or may extend east of Fairview Park Drive on Parcel 49-4((1)) 74A to promote pedestrian activity and improve public access and visibility to the lakefront. The intersection of the plaza and Fairview Park Drive should place modal emphasis on pedestrians by providing design elements, such as signal priority, special paving, and curb extensions, to enhance this connection. Retail, service, and/or cultural uses of two stories or less may be located on this parcel if well-integrated into the design.
- Lighting impacts should be minimized, and shared and/or valet parking in nearby parking structures may be utilized to serve this retail area. Publicly accessible urban parks, recreational facilities, and natural spaces that are well-connected through trails and sidewalks, such as athletic fields, sports courts, outdoor fitness, and/or children's play equipment, should be provided to create a network of places for recreation, respite, and social interaction. These spaces should meet the Open Space and Pedestrian System Guidelines and the countywide Urban Parks Framework and be designed in a manner to accommodate informal and programmed activities.

- A network of pedestrian trails and sidewalks should connect workers, residents, and visitors to the amenities within the sub-unit, including the central plaza, Fairview Lake, the Holmes Run Stream Valley, urban parks, and the development. Proposals are expected to provide connections to the planned pedestrian/bike bridge across I-495 to the west and enhance connections to Land Unit J south of Route 50. Consideration should be given to designing the connections with enhanced security features. Features such as naturalized landscaping, shade trees, seating areas, and other urban park amenities can offer attractive resting places and other recreational opportunities along the trails.
- Development under the Mixed-Use Option is expected to provide a streetscape along Fairview Park Drive that retains the qualities of the park-like setting and creates seamless transitions between existing and new development and the natural areas. The streetscape is expected to incorporate wide landscape panels with a variety of trees and plantings between the street and sidewalk and trails. The streetscape should incorporate a variety of elements, such as meandering trails, shade trees, pocket parks, street furniture, and natural vistas, to provide an interesting and pleasant pedestrian experience. Tree preservation is expected to be optimized and used to create groupings of mature trees within the streetscape.
- Underground parking structures are encouraged to the extent feasible as they allow for compact design that enhances opportunities for open space and for active uses on the ground and upper levels of buildings while minimizing noise and visual impacts, including those from lighting, on surrounding uses. Where underground structures are determined not to be feasible, parking structures should be integrated with an associated building through compatible façade treatment and designed to minimize noise and visual impacts. Architectural and landscape screens are encouraged on the façade of parking structures when visible from the public realm, including during interim conditions. Stand-alone, free-standing parking structures are discouraged. Surface parking should be limited to appropriate on-street parking locations. Existing parking lots with minor expansions may remain as development builds out and should include appropriate pedestrian connections.

#### Transportation:

A range of high-quality transportation facilities including roads, mass transit (such as a dedicated circulator, and bus or shuttle services), sidewalks, bike facilities, and trails, are expected to be provided to improve internal and external connectivity throughout the development and to destinations within Merrifield, including the portion of Fairview Park south of Arlington Boulevard, the Dunn Loring-Merrifield Metrorail station, the Town Center, the Fairfax Inova Hospital, and the Inova Center for Personalized Health (ICPH), and to provide health and environmental benefits.

- Improvements to the transit system, expanded pedestrian and bicycle networks, participation in a future Transportation Management Association, and other transportation demand management strategies are expected to be employed to reduce reliance on single occupancy vehicles while increasing mobility.

- Development proposals should provide enhancements to make trails and sidewalk facilities that are publicly accessible and encouraging for people to safely walk or bike for some or all of their daily needs. Lighting and other amenities should be provided where deemed appropriate by the county.
- New development is expected to accommodate the construction of the planned I-495 pedestrian and bicycle crossing, which should be publicly accessible and located south of Lee Highway and north of Arlington Boulevard, as depicted in the county Bike Master Plan Map.
- Strategies are expected to be identified and implemented with the initial phase of development to improve the operation of the intersection of Yancey and New Providence Drives to a level of service “D” or better. This may include new signage and striping at the approaches to the intersection, as well as the provision of a roundabout, stop light, or another suitable device at the entranceway of Parcel 74B that would improve turning movements onto and off of Fairview Park Drive, or potentially a secondary access from the Lakeford community.

Environment:

- Tree Preservation: The sub-unit is characterized by intact stands of mature tree cover on the western portion of the sub-unit, including resource protection areas (RPA) around tributaries of Holmes Run and Fairview Lake. The wooded areas of the site located within the RPA are expected to be preserved as an environmental resource and natural amenity consistent with Objective 9 of the Environmental section of the Policy Plan. Additional areas of the site to be preserved are expected to be identified with the initial phase of site development and carried forward throughout the development of the neighborhood. Within areas of tree preservation, removal of invasive species and regeneration of the vegetated understory should be implemented as deemed appropriate in coordination with the county in connection with new development. Restoration plantings should consist of non-invasive, native plantings capable of enhancing the ecological functions of the forest and deterring pest species.
- Stormwater Management: Holmes Run downstream of this land unit has been designated by the Virginia Department of Environmental Quality as being impaired for aquatic life, largely resulting from the volume and velocity of stormwater runoff from impervious areas within the watershed. Fairview Lake, designed as a regional stormwater pond to detain and treat runoff from the approved office park at a rate equivalent to good forested conditions and not impact downstream water quality, will continue to function for stormwater management and volume reduction. The existing wooded areas within this land unit provide stormwater benefits in support of the Area-Wide guidance and recommendations by capturing rainwater and minimizing runoff through infiltration and evapotranspiration. As these areas are converted to impervious cover (e.g., rooftops, road surfaces) through development, stormwater best management practices that meet on-site requirements and help improve downstream drainage and water quality conditions are expected to be implemented.

As a goal, development on the site should retain rainfall from the peak 1-hour, 1-year storm through infiltration, evapotranspiration and reuse in order to adapt to the increased intensity, duration, and frequency of storm events and resulting rainfall volumes. At a minimum, new

development is expected to retain the first inch of rainfall. Also, detention measures that reduce the volume, peak flow, and velocity of runoff into Holmes Run to a rate equivalent to good forested conditions are expected to be pursued to the maximum extent practicable as determined by Land Development Services. Flexibility should be afforded in the application of specific stormwater management approaches that achieve these recommendations, minimize impervious cover, retain the benefits of the existing forested conditions, and protect and restore downstream water resources in furtherance of watershed management plan goals. If retaining the first inch of rainfall is demonstrated not to be fully achievable in coordination with Land Development Services, alternative stormwater management measures that retain as much of the first inch as possible and result in at least equivalent benefits to the one-inch recommendation may be pursued. Design considerations may be given to other stormwater runoff-related factors such as downstream flooding, drainage complaints, character and condition of downstream channels, and identified stream impairments.

The retention and detention targets for the land unit are considered the highest standards by the county. However, it is understood that with changes in conditions, best practices and technology, higher standards may be developed in the future. As stormwater management policies evolve countywide, the land unit is expected to adhere to the targets listed above or any superior standards that may be developed in the future at the time of development review.

The use of appropriate native plant materials in stormwater facility design is encouraged to enhance biodiversity and habitat value and improve environmental quality. The use of pesticides, herbicides and fertilizers for maintenance should be minimized to the maximum extent practical. The use of non-native plant materials should be generally avoided unless it is demonstrated that these plantings would better achieve these goals.

#### Noise:

The sub-unit is located adjacent to I-495, Arlington Boulevard and Lee Highway, all of which are major elements of the county circulation system and generate transportation-related noise. Adequate measures should be provided to prevent negative impacts on noise sensitive uses, consistent with Objective 4 of the Environment element of the Policy Plan.

#### Phasing and Public Facilities:

Development is expected to be phased to ensure the adequate and timely provision of supporting infrastructure and public facilities capacity. Parks and open space, stormwater management, schools or additional school capacity, and other public facilities will need to be available to meet the demands generated by new development. If Fairfax County Public Schools (FCPS) determines that a school site is required to serve the increased population in this area, a fair share commitment toward site acquisition or building repurposing should be identified in collaboration with FCPS preferably in advance of approval of any application for residential development that generates additional student demand. Innovative approaches, such as locating school facilities with parks to allow for the sharing of recreation facilities, or within buildings serving the other uses, may also be considered.



~~Height Limit: The area immediately adjacent to I-2 is part of the Holmes Run Environmental Quality Corridor and Fairview Lake, which should remain as permanent private open space. For the area immediately to the west of the permanent open space, heights should be no more than 7 to 8 stories or 130 feet. In the remainder of the sub-unit, the maximum building height is 15 stories or approximately 180 feet, with tallest buildings oriented to Arlington Boulevard and I-495. The height concept for this area is to have height decrease toward the northern and eastern edges of the sub-unit.~~

## **Sub-Unit I2**

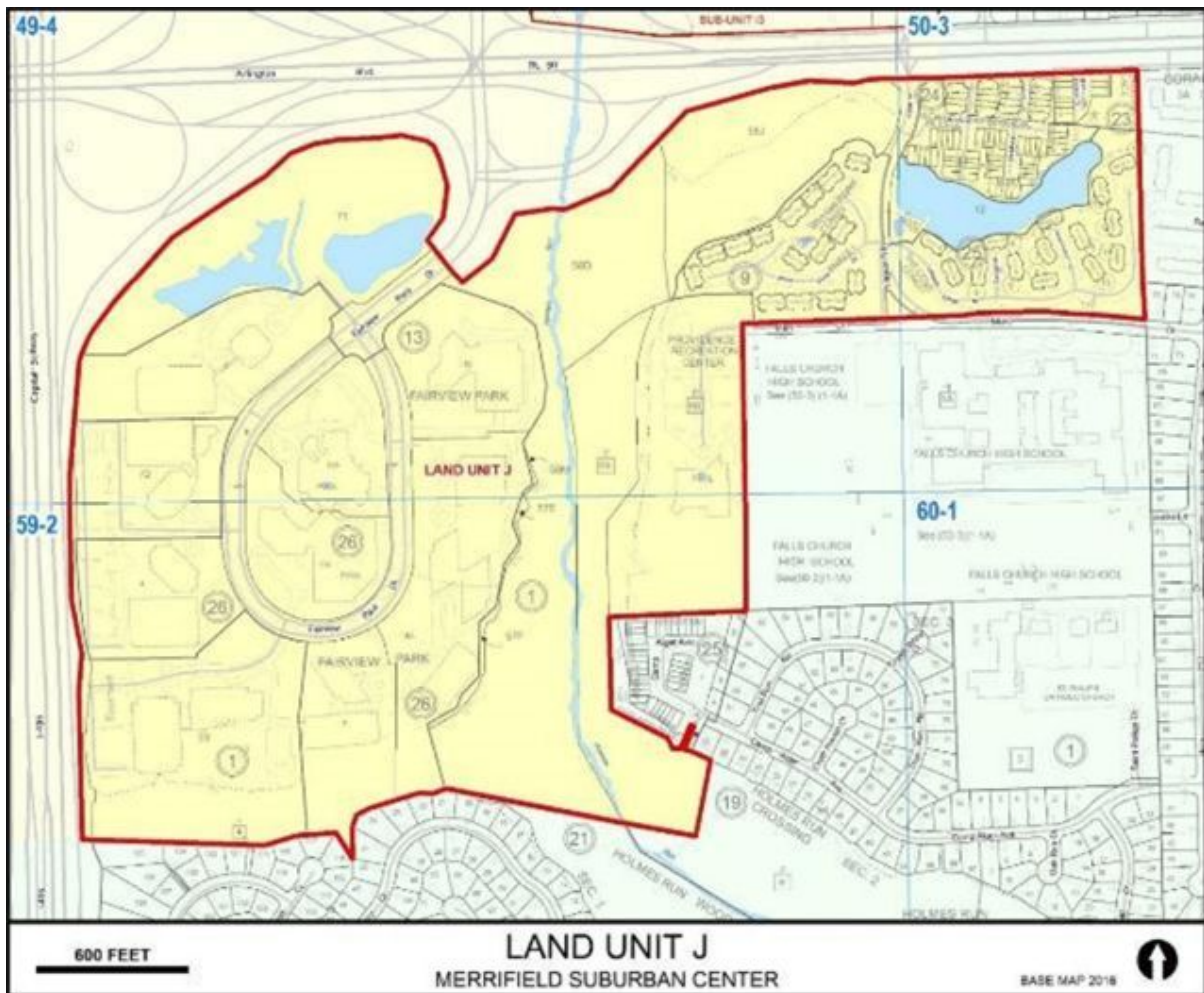
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## **LAND UNIT J**

Land Unit J is approximately 178 acres and is located at the southeastern quadrant of Arlington Boulevard and I-495 (see Figure 30). Existing development consists of a mix of office, hotel and support retail uses on the western portion of the land unit and residential and institutional uses located on the eastern portion of the land unit. In addition, the Holmes Run Environmental Quality Corridor, which runs through the middle of this land unit, is preserved as private and public open space.

This land unit is envisioned to remain as developed, with the remaining undeveloped parcels to develop with office uses. Retail uses may be included in the ground floor in the planned office use on Tax Map Parcel 49-4((1)) 71 provided that the design and environmental recommendations in Sub-unit I2 can be achieved in this development. The southern and eastern portions of this land unit provide a transition between the more intense uses and adjacent low intensity single-family development. This transition is provided along the southern perimeter of the site through the retention of a substantial open space buffer of no less than 250 feet which consists of existing tree cover and additional landscaping, a portion of which may be needed for stormwater management. Parkland associated with the Holmes Run stream valley and the Providence District Recreation Center provides the transition area along the eastern perimeter of the land unit.

Major transportation improvements, such as the construction of Fairview Park Drive and intersection improvements at Arlington Boulevard, have been completed with the development of this land unit.



371

FIGURE 30



Guidance for evaluating development proposals is provided in the Area-Wide Recommendations under the Land Use, Urban Design, Transportation, and Public Facilities/Infrastructure sections, as well as in the following specific Land Use recommendations.

Land Use

- The 178-acre southeastern quadrant of the I-495/Route 50 interchange should be consolidated for the purpose of development of an employment center and related uses, and for residential development.
- Nonresidential uses should be limited to that portion of the site west of Holmes Run stream valley. The site design of the nonresidential portion of the quadrant should have substantial landscaped open space provided throughout the site and particularly to the south to eliminate any impact upon nearby stable residential communities. At least 35 percent of the area west of the Holmes Run stream valley should be preserved as landscaped open space.
- Underground or multilevel structured parking is encouraged to preserve the maximum amount of undisturbed open space.
- The Holmes Run stream valley should be preserved as a stream valley park in accordance with the county's adopted stream valley policy.
- In order to limit its impact on the surrounding residential communities acknowledging the capacity of the Arlington Boulevard /I-495 road network with improvements as noted in the transportation section which follows, any proposal for an employment center on the southeastern quadrant of the I-495/Arlington Boulevard interchange should have no more than 2.25 million square feet of nonresidential development on the area west of Holmes Run stream valley. The nonresidential development should consist of 1.9 million square feet of office space, 50,000 square feet of retail commercial space and a hotel. As an option, residential space for up to 250 dwelling units may be substituted for approved nonresidential gross floor area.
- That portion of the quadrant east of Holmes Run, north and northwest of Falls Church High School is planned for residential development not to exceed 400 dwelling units. Residential uses in this area should be limited to three stories in height.
- Approximately 3 to 5 acres of parkland should be provided (preferably contiguous to the Providence District Recreation Center) to serve the future residents of this site.
- Hotel/motel uses should be internal to the site and be integrated with the design and layout of the site.
- Retail commercial uses should be provided to service primarily the demand for other nonresidential uses on the site and integrated with the overall design and layout of the site.

- A substantial open space buffer of no less than 250 feet, with 300 feet desirable, consisting of the existing tree cover and supplemented with additional landscaping should be provided along the southern perimeter of the site to eliminate an adverse visual impact upon the detached single-family residences to the south of the site. This buffer should be dedicated to the county, if appropriate, and maintained in its natural state. It is understood that a portion of this area may be needed for stormwater management.
- The height of all structures in the southern portion of the site should be limited to six stories so as to be visually unobtrusive to the stable low density residential communities to the south and east of the site.
- The provision of lighting on the site and its structures should be visually unobtrusive to and compatible with all nearby residences and adjacent communities. As a general rule, parking lot lighting should not exceed 13 feet in height.
- The small tract immediately south of the Route 50 corridor located off of Black Hickory Drive is recommended for residential development to occur at the lower end of the proposed density range (8 dwelling units per acre) and development should be buffered from Arlington Boulevard. No direct access should be provided to Arlington Boulevard.

#### Transportation

- Development on Tax Map Parcel 49-4((1)) 71 is expected to follow the transportation recommendations for Sub-Unit II, and should accommodate and provide a fair share commitment towards the construction of a publicly accessible I-495 pedestrian and bicycle crossing in coordination with the development of Land Unit K, located immediately across I-495 from the land unit, and as depicted in the county Bike Master Plan Map. The design and location of the bridge should consider the needs of pedestrians and cyclists of a variety of abilities, and should be located near but separated from Arlington Boulevard in order to provide a safe, comfortable, and direct path of travel. Other locations for the planned crossing in Land Unit J may be considered if deemed an appropriate location for the bridge by the county.
- Vehicular access for planned nonresidential uses should be separate from access provided for residential uses to the east of the Holmes Run stream valley. Specifically, nonresidential uses should access the site from Route 50 only, and such access should be located west of Holmes Run stream valley. Vehicular access to residential uses in the northern portion of the site (north and northwest of the Falls Church High School) should be via Jaguar Trail, while vehicular access to residential uses in the southeastern portion of the site should all be via Camp Alger Avenue. Jaguar Trail, Marc Drive and Camp Alger Avenue should be improved as necessary to accommodate the additional residential traffic from this site. Camp Alger Avenue should not connect with Marc Drive to the north; nor cross the Holmes Run stream valley.
- No on-site vehicular circulation across the Holmes Run stream valley should be permitted.

- Any developer under this option should abide by existing covenants running with the land to neighboring civic associations, which covenants prohibit vehicular access to residential communities south and east of the site.
- In addition to the conditions stated above, all proposals for vehicular access to this site should meet with the approval of Fairfax County and the Virginia Department of Transportation and the Federal Highway Administration, as appropriate. It is imperative that any vehicular access design for this land unit should be compatible with a solution for vehicular access to both the northeastern and the southeastern quadrants. The primary basis of review should be the impact of the proposal on (a) the safe and efficient operation of Arlington Boulevard and I-495, and (b) the level of service on Arlington Boulevard, I-495, and the ramps of the Arlington Boulevard/I-495 interchange. In particular, the level of land use activity planned under this option is conditional upon the provision by the developer(s) of all transportation improvements and transportation strategies (e.g., carpools, van pools, mass transit use) deemed necessary by Fairfax County, and the Virginia Department of Transportation and the Federal Highway Administration, as appropriate, to accommodate the level of traffic generated by each phase of the development of this site. A traffic-monitoring program should be undertaken and maintained by the developer to ensure the effectiveness of the transportation strategies.
- The implementation of these transportation improvements and strategies is to be phased such that the site is adequately served during all stages of development without adversely affecting the safe and efficient operation of Arlington Boulevard and I-495.
- Arlington Boulevard should not be designed to exceed six through lanes east of Jaguar Trail.

#### Environment

- The Holmes Run stream valley should all be preserved as a stream valley park under the provisions of the county's adopted stream valley policy and protected from adverse impact both during and after the development of the site.
- Non-vehicular access to and through the Holmes Run stream valley should be provided via this site.
- A substantial portion of the existing tree cover should be preserved as a natural open space screen and buffer, particularly along the periphery with I-495 and Arlington Boulevard.
- In order to control stormwater runoff from this site, any development proposal must include a stormwater management plan, which meets the requirements and objectives of Fairfax County for stormwater management in the Upper Holmes Run watershed. The prospective developer(s) should provide for the control of any post-development peak discharge in excess of the pre-development peak discharge. In addition, the utilization of Best Management Practices (BMP) is strongly encouraged.
- All federal, state and local air and noise standards should be strictly complied with as a result of development on this site.

507  
508 Height Limit: For the northern and western portions this land unit, the maximum building height  
509 should be 15 stories or approximately 180 feet. For the area to the east and south of Fairview Park  
510 Drive, heights should be no more than 7 to 8 stories or 130 feet. To the south of the 130-foot area,  
511 building heights should vary with buildings no more than 75 feet or 6 stories. Along the  
512 southernmost perimeter of this land unit, a substantial open space buffer should be provided of no  
513 less than 250 feet, with 300 feet desirable. In addition to permanently preserving this open space  
514 buffer area, the Holmes Run Stream Valley, which runs between the office development on the  
515 west and the residential development on the east, should be preserved as permanent open space.  
516 The eastern portion of this land unit, which has developed with residential use, the maximum  
517 building height is 40 feet (or 3 stories). See the Building Heights Map, Figure 8, and the Building  
518 Height Guidelines under the Area-Wide Urban Design section.”

MERRIFIELD SUBURBAN CENTER – LAND UNIT K  
PROPOSED MODIFICATIONS

MODIFY: Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield Suburban Center, as amended through July 31, 2018, Recommendations, Land Unit Recommendations, pages 98-100:

**“LAND UNIT K**

Land Unit K, approximately 117 acres in size, located at the southwestern quadrant of Arlington Boulevard and I-495, ~~and is planned for office use up to 1.75 million square feet (see Figure 30).~~ is the location of the Inova Center for Personalized Health (ICPH) on what was formerly the site of a headquarters of the ExxonMobil Corporation. This land unit is envisioned to remain as developed, with some additional office potential yet to be built. This land unit includes tributaries to Holmes Run as part of the Holmes Run watershed, and large ~~tree~~ wooded areas adjacent to I-495, both of which are preserved as private open space. A small portion of the land unit is located within the Accotink watershed.

Guidance for evaluating development proposals is provided in the Area-Wide Recommendations under Land Use, Urban Design, Transportation, and Public Facilities/Infrastructure sections, as well as in the following specific land unit recommendations.

Land Unit K is planned ~~and developed for office use~~ at an intensity of up to .35 FAR at the baseline level. The former ExxonMobil headquarters buildings are located along Innovation Park Drive (see Figure 31). Development is limited to planned and approved for 1.75 million square feet of approved office, research, clinical, and education uses and may include supporting uses such as hotel, day care, restaurants and services to primarily serve the buildings’ users. Any modification, expansion, and/or reuse of the existing buildings should be consistent with guidelines for Existing Uses and Buildings and Heritage Resource guidance under the Area-Wide Land Use section, with any new office structures retaining the substantial vegetative buffer and screening areas. The mature wooded areas are expected to be preserved on the site, to include the environmentally sensitive areas associated with the tributaries of Holmes Run. The mature stands of trees along Gallows Road and Arlington Boulevard which screen and buffer the development from the Amberleigh community are also expected to be preserved. The maximum building height is planned for 180 feet. See the Building Heights Map, Figure 8, and the Building Height Guidelines under the Area-Wide Urban Design section.

~~Height Limit: The maximum building height is 180 feet. Open space should be preserved on this site to include the environmentally sensitive areas associated with branches of Holmes Run, as well as mature stands of trees along Gallows Road and Arlington Boulevard which screen and buffer the office development from Bedford Village. See the Building Heights Map, Figure 8, and the Building Height Guidelines under the Area Wide Urban Design section.~~



FIGURE 31

Option:

As an Option, the site is envisioned to expand into a world-class, mixed-use, academic, research, office, and clinical campus that strategically balances new development in a concentrated urban form of taller buildings on compact footprints and the preservation of the mature woods in the eastern and southern portions (as shown on Figure 32) of the land unit as an environmental resource. With the development of the campus, the wooded areas are envisioned to contribute to the health and wellness of the Merrifield community by providing much-needed green and recreation spaces for public use that also solidify the significant, natural buffer to the areas outside of the Merrifield Suburban Center. As the core vision for the campus, development in this manner will promote ground-breaking innovation, environmental stewardship, and whole health (physical, social, and mental well-being) for those people who live in, work on, and visit the campus. Development should capitalize on the proximity to the neighboring Inova healthcare facilities, the core areas within Merrifield, and access to major regional roadways. The design and programming of the campus are expected to strengthen multimodal connections to the Dunn Loring-Merrifield Metrorail station and other destinations within Merrifield, including the land units east of I-495, and contribute to the well-being of the residents in the surrounding Merrifield communities through new amenities, infrastructure improvements, and health and wellness facilities and programs.

The campus is planned up to an overall intensity of 0.70 FAR (up to 3,570,000 square feet of development, inclusive of new cellar spaces), with the potential for a future campus expansion to 1.0 FAR, as described in the recommendations below. It is expected that the development will occur incrementally over time, along with the supporting infrastructure and public facilities that are to be completed commensurate with development.

The site design, including trails and open spaces on the campus, should be planned to facilitate synergies and connections among the mix of uses on site, the nearby Inova Health facilities, and the neighboring land units and communities. The research, academic, office, and clinical functions are envisioned to be core components of the campus. These functions may be complemented by new housing and supported by retail, hospitality, and other commercial uses which may include medical care and/or continuing care facilities. This design is envisioned to foster an innovative, collaborative, and thriving economic environment where ideas and best practices can be exchanged quickly; entrepreneurship can be cultivated; and, institutional assets and natural areas on the site can be leveraged to the benefit of the multiple users of the overall development and the larger Merrifield community.

The mature wooded areas shown on Figure 32, including the areas around the central and southern tributaries of Holmes Run and the stormwater management pond, are expected to be preserved as an integral environmental and recreational resource on the campus, to contribute to the supply of publicly accessible, natural spaces in the Merrifield community, and to buffer the development from noise and emissions from I-495. Tree preservation is a priority. Improvements should offer opportunities for respite, renewal, and inspiration to allow people of a variety of ages and abilities to safely engage in activities while surrounded by nature, whether they are residents, employees, students, patients, or members of the general public visiting the site. Together, the built form integrated with the natural, wooded area should promote mobility, health, and well-being.

Proposals should conform to the applicable countywide and Area-Wide Recommendations and achieve the following:

Land Use

- The majority of the land uses on the campus should consist of a mix of scientific and medical research, higher education, clinical, and commercial uses anchored by established institutions (e.g., Inova Health System, one or more universities, and other private or governmental research institutions). Medical office space used for the regular provision of office-based, out-patient care by physicians should be limited to a portion of the former ExxonMobil headquarters buildings.
- Under this Option, approximately 1.45 million square feet of the new development is envisioned to be generally balanced between (i) the Inova research, office, and healthcare facilities, and (ii) academic and research partners. These partnerships are integral to the collaborative nature of the development.
- Retail and service uses up to approximately 90,000 square feet should be provided. The retail and service uses should meet the needs of building tenants, visitors, and the surrounding communities. These uses should be designed as an integral part of the overall new development and should be phased with the development of other uses within the respective buildings in order to provide amenities for employees, residents, and visitors. Drive-through or standalone retail uses are not appropriate.
- Hotel use of approximately 120,000 square feet may be provided.
- Multifamily residential uses and other housing accommodations (independent living facilities, assisted living facilities, and continuing care facilities) may be appropriate. Residents within these accommodations should have convenient access to a variety of on-site open and recreational spaces, community-serving retail uses, and other services, as guided by the Merrifield Suburban Center's Area-Wide Pedestrian and Open Space System Guidelines commensurate with development. In total, these uses should not exceed 705,000 square feet. It is anticipated that, within that amount, there will be a maximum of 640 to 705 residential units (depending on unit size), inclusive of affordable housing and bonus density, but exclusive of housing accommodations regulated as medical care facilities (such as assisted living facilities) and continuing care facilities. The number of units may be adjusted if transportation and public facilities impacts are shown to be sufficiently addressed. These uses should be allocated as follows:

<u>Accommodation Type</u>	<u>Square Feet (SF)</u>
<u>Housing to serve the university student population*</u>	<u>150,000 - 268,000 SF</u>
<u>Age- or Ability-restricted uses**</u>	<u>100,000 - 385,000 SF</u>
<u>Additional multifamily residential units</u>	<u>Up to 455,000 SF</u>



\* This housing type should conform with all applicable local, state and federal laws, including Fair Housing regulations.

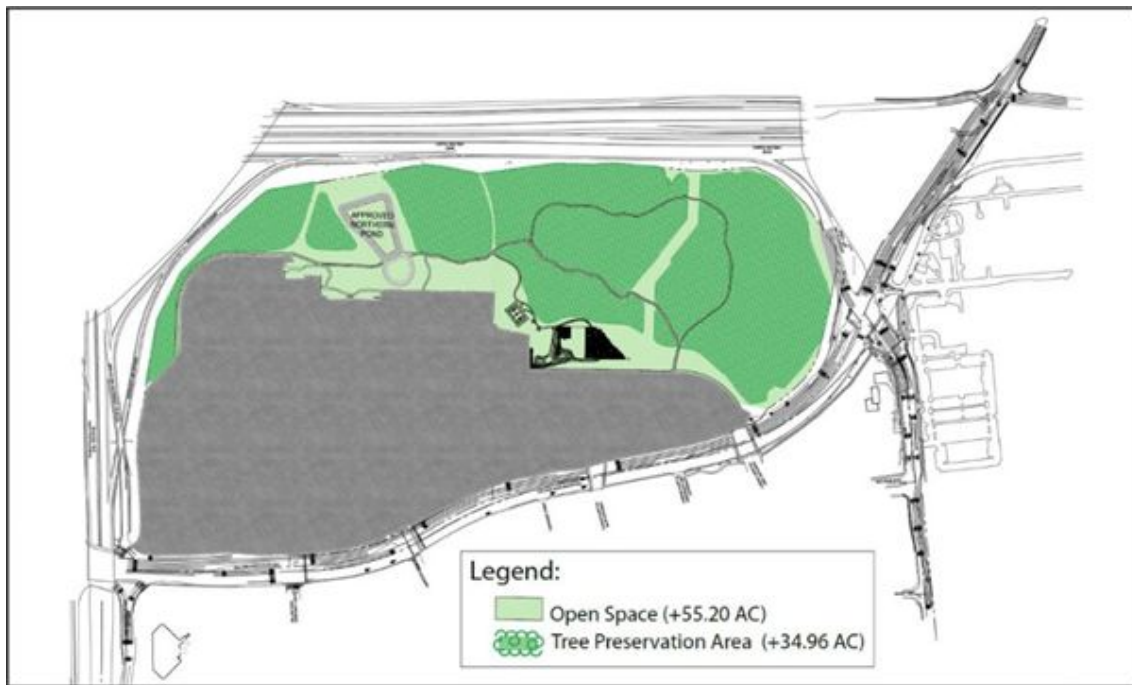
\*\* Age- or Ability-restricted uses include multifamily residential units restricted by age; independent living facilities; housing accommodations regulated as medical care facilities (such as assisted living facilities); continuing care facilities, and other similar uses.

At a minimum, the greater of 20% of the non-university serving residential units or 12% of the total number of residential units should be provided as affordable housing per the county's affordable dwelling unit program and workforce housing policy. Assisted Living and Independent Living Facilities should provide affordable accommodations consistent with the requirements of the Zoning Ordinance for such uses. Continuing Care Facilities should meet the policies established in Appendix 14 of the Land Use Element of the Policy Plan.

#### Parks and Open Space

- Integral to development under this Option, the heavily wooded area generally to the south and east of Innovation Park Drive and the former ExxonMobil headquarters buildings is expected to be retained as publicly accessible, private open space with tree preservation as an essential element in the design. As shown in Figure 32 below, approximately 55 acres in the southern and eastern portions of the site are expected to remain as open space (including approximately 34 acres of preserved wooded areas), while recognizing the need to accommodate amenities, the approved stormwater pond, trails, utilities, and potential future right-of-way dedication for road improvements.

**Figure 32. ICPH Eastern Open Space and Tree Preservation Area**



- Active and passive recreational spaces should be provided to promote whole health (physical, mental, and social well-being), such as wellness parks, meditation gardens, fitness stations, or other spaces that are centered around environmental management and health benefits from natural settings. Pedestrian and bicycle circulation trails in the area should connect to the development in the land unit, including via the planned bicycle/pedestrian bridge across I-495 to Land Unit J (Fairview Park South), and the bicycle and pedestrian trails on Gallows Road. Consideration should be given to designing the on-site stormwater pond within this area as a site amenity. Commitments should be made to the maintenance of the stormwater pond and landscaping and to other measures, such as lighting in appropriate locations and clear lines of sight, to promote safety in the area. Open space and recreational amenities should be accessible to users of a variety of ages and abilities and should be provided commensurate with new development above the existing 1.2 million square feet (as of September 2019).
- A network of publicly accessible, privately maintained urban parks should be provided commensurate with the needs of the users, connecting the benefits of the wooded area to the development and creating opportunities for social interaction. A local park of 3-4 acres in size that contains several recreational facilities, such as sport courts, adult outdoor fitness, children's play equipment, picnic areas and/or a pavilion, trail heads, wayfinding signage, and/or other complementary uses should be a component of this network and function as a gateway to the wooded area, and is expected to be provided with the first residential building. The urban parks should be well-connected through sidewalks and trails. The park spaces and trail system should be visually evident (through methods such as design and signage) and accessible from Gallows Road and internal streets. The trail system should include urban plazas and pedestrian facilities at certain site intersections with Gallows Road. Features such

as naturalized landscaping, shade trees, seating areas, hardscape plazas, public art, play and fitness elements, and other urban park amenities and facilities can offer attractive community gathering and event spaces, such as farmer's markets, outdoor concerts or classes, and recreational opportunities. These spaces should meet the Merrifield Suburban Center's Area-Wide Pedestrian and Open Space System Guidelines and, as needed to advance the campus' health and wellness vision, be provided consistent with the countywide Urban Parks Framework.

#### *Design and Connectivity*

- Proposals should effectively integrate existing and new development through site layout and design, landscaping, materials, and access. A new system of well-connected internal streets should create a series of compact blocks that support the development and encourage walking, biking, and transit ridership. The street network should generally expand westward from Innovation Park Drive, which serves as a spine road through the land unit.
- Development proposals should demonstrate high quality in terms of site and building design, landscaping, materials, and urban park spaces, to define a sense of place and enhance the health and wellness of the residents, employees, patients, and visitors. The design of the physical environment has significant impacts on day-to-day quality of life and can enhance or detract from the overall wellness of the users of a building or a site. Buildings and site amenities should be designed to be comfortable and accessible for a variety of ages and abilities and incorporate amenities to promote healthy indoor air-quality, abundant natural light, connections to natural areas, as well as other features that may be refined over time to support health.
- Buildings should be aligned with and oriented to internal streets, and attention should be given to the treatment and expression of buildings toward Gallows Road. The streetscape area should include amenities such as sidewalks, plazas, street furniture, shade trees, and landscaping. Further guidance for building and streetscape design, including bird-friendly design, is provided in the Urban Design Guidelines for Fairfax County Commercial Revitalization Districts and Areas, Volume I.
- Underground parking structures are encouraged to the extent feasible as they allow for compact design that enhances opportunities for open space and for active uses on the ground and upper levels of buildings while minimizing noise and visual impacts, including those from lighting, on surrounding uses. Where underground structures are determined not to be feasible, parking structures should be integrated with an associated building through compatible façade treatment and designed to minimize noise and visual impacts. Architectural and landscape screens are encouraged on the façade of parking structures, including during interim conditions. Stand-alone, free-standing parking structures are discouraged. Surface parking should be limited to appropriate on-street parking locations. Existing parking lots with minor expansions may remain as development builds out and should include appropriate pedestrian connections.
- Building heights should vary across the site to create visual interest. Buildings that are five stories and greater have the design flexibility necessary for successfully integrating the proposed buildings with the existing nonresidential buildings on and surrounding the site and

would provide a comparable and compatible scale of development. Building heights in general are limited to 180 feet; however, the incorporation of one taller building on the northern end of the land unit and internal to the site that contributes to the Merrifield skyline may warrant a building height increase to a maximum of 230 feet provided that the taller building does not negatively affect the urban form. Compatibility with the adjacent Amberleigh community should be addressed through the building placement and design, and by tapering building heights along Gallows Road. See the Building Heights Map, Figure 8, and the Building Height Guidelines under the Area-Wide Urban Design section.

- The streetscape design should generally adhere to the Urban Design Guidelines for County Revitalization Districts and Areas. Consistent with the Urban Design Guidelines, innovative design approaches that respond to the site-specific context are encouraged.
- A variety of urban design strategies are expected to be pursued to ensure that the campus is functionally and visually compatible with the surrounding residential, commercial, and institutional uses across Gallows Road. Tree preservation areas should be utilized to buffer new buildings and structures, particularly in areas directly across from the Amberleigh community (approximately south of Willow Oaks Corporate Drive and north of Townsend Drive). Where tree preservation areas are not practical, building heights along Gallows Road should gradually taper down toward the adjacent residential uses across the roadway. Other design strategies, such as natural and architectural screens, building orientation, and supplementary landscaping, should be considered as well. Buildings should stimulate interest through varied architectural form and relief, and provide ground floor elements, such as entryways, that create an attractive and interesting pedestrian experience. The primary site entrances opposite Willow Oaks Corporate Drive and at Peterson Discovery Drive should be designed to invite pedestrians, cyclists, and motorists into the campus. Buildings located near the primary site entrances should be brought close to the Gallows Road frontage and interior roads and sidewalks to activate the street and create varied activity areas. Buildings located directly across Gallows Road from the Inova Fairfax Hospital should be designed to contribute to the planned southern gateway into the Merrifield Suburban Center.

#### Transportation

High-quality pedestrian and bicycle facilities and transit services are expected to be implemented with and supportive of each phase of development to provide multiple transportation options for people who live in, work on, and/or visit the campus, and to advance health and wellness goals of the campus.

To support development under this Option, bicycle and pedestrian improvements, as described below, are expected to be implemented to ensure appropriate, comfortable, safe, and convenient methods for bicyclists and pedestrians to travel:

- Construction of a minimum 10-foot-wide, bi-directional cycle track on the east side of Gallows Road, as part of the Gallows Road improvements.
- Construction of a minimum 8-foot wide sidewalk on the east side of Gallows Road, as part of the Gallows Road improvements.

- Provision at the northern end of the site for the planned pedestrian and bicycle bridge across I-495 that connects the site with Land Unit J (Fairview Park South), along with a fair share commitment towards bridge construction.
- Development of a publicly accessible internal pedestrian and bicycle network that connects to the planned I-495 pedestrian/bicycle bridge, to Gallows Road, and to future development within the site.
- Development of a coordinated pedestrian and bicycle circulation system plan that demonstrates how the site will connect to nearby destinations, including the Dunn Loring-Merrifield Metrorail Station, the Town Center, Inova Fairfax Hospital, and Annandale, as well as the land units east of I-495. Opportunities to improve the connectivity of the pedestrian and bicycle network in the area serving the site, including across Arlington Boulevard towards Dunn Loring-Merrifield Metrorail Station and the Town Center to the north, and across I-495 towards Annandale and the land units to the east, are expected to be identified. The plan should analyze interim conditions and the improvements necessary to provide enhanced multimodal connectivity at all phases of development.
- Provision of refuge areas and clear markings, where appropriate, at pedestrian crossings.
- Provision of bicycle parking in accordance with the County's Bicycle Parking Guidelines.
- Provision of public bike share stations.

Transit service is vital to the success of this land unit, whether it is integrated into existing or future public service or is provided as a separate supplemental service. To support development under this Option, development proposals are expected to coordinate and ensure the provision of transit service that supports activity to and from the land unit. The transit service should circulate in the Merrifield area and connect the site to other major destinations, such as the Inova Fairfax Hospital, the Town Center the Dunn Loring-Merrifield Metrorail Station, and the land units to the east. The service could be provided privately or through support of expanded public services. Partnerships are expected to be pursued with other stakeholders in the Merrifield Area to coordinate transportation and trip reduction services, including through the formation of a Transportation Management Association.

- Transportation demand management (TDM) measures that allow the site to exceed the single occupancy vehicle minimum trip reduction targets established in the Merrifield Areawide Guidance should be implemented. Such measures could include, but are not limited to, hiring a TDM coordinator, providing transit passes for employees and residents, and providing shuttle services.

Use of emerging technology is recommended to improve the efficiency of all modes of transportation to and from the site. This could include the following:

- Autonomous vehicles,
- Innovative transit solutions, such as retrofitting turning lanes for bus rapid transit, grid-based and express transit systems, and public-private partnerships
- Real-time travel and parking information,
- Dynamic messaging, or,

- Other improvements that can be shown to improve the efficiency of the site and improve travel along Gallows Road.

An improved multimodal transportation network should be implemented, commensurate with development phases and predicated on the following roadway improvements, or suitable alternatives (that achieve similar mitigation levels), as deemed acceptable by the county:

- Ramp and bridge improvements to increase capacity and improve traffic operations at the Gallows Road and I-495 interchange.
- Intersection improvements on Gallows Road between Route 50 and Woodburn Road to improve northbound, eastbound, and westbound movements.
- Ramp improvements from/to eastbound Route 50 at the Gallows Road interchange.
- Creation of a fourth southbound lane on Gallows Road with the conversion of the existing right-turn lane to a shared through/right lane. This improvement can be done as either an interim or permanent solution to support this development level, with the lane potentially being repurposed for transit, streetscape, or other uses in the future.

#### Environment

- Tree Preservation: Commitments to the preservation and restoration of the mature wooded area as shown on Figure 32 are a priority, and are expected to be provided at the initial phase of the development above the existing 1.2 million square feet (as of September 2019) and carried forward throughout the development of the campus while recognizing the need to accommodate amenities, the approved stormwater pond, trails, utilities, and potential future right-of-way dedication for road improvements. Removal of invasive species, regeneration of the vegetated understory, and restoration of the stream tributaries should be implemented as deemed appropriate in coordination with the county in connection with new development. Restoration plantings should consist of non-invasive, native plantings capable of enhancing the ecological functions of the forest and deterring pest species. In the western portion of the land unit, efforts should be made to preserve portions of the mature stands of trees along Gallows Road as may be appropriate and practical, consistent with the health and wellness goals for the campus.

- Stormwater Management: Both Holmes Run and Accotink Creek downstream of this land unit have been designated by the Virginia Department of Environmental Quality as being impaired for aquatic life, largely resulting from the volume and velocity of stormwater runoff from impervious areas within these watersheds. The existing wooded areas within this land unit provide stormwater benefits in support of the Area-Wide guidance and recommendations by capturing rainwater and minimizing runoff through infiltration and evapotranspiration. As these areas are converted to impervious cover (e.g., rooftops, road surfaces) through development, stormwater best management practices that meet on-site requirements and help improve downstream drainage and water quality conditions are expected to be implemented.

As a goal, development on the site should retain rainfall from the peak 1-hour, 1-year storm through infiltration, evapotranspiration and reuse in order to adapt to the increased intensity, duration, and frequency of storm events and resulting rainfall volumes. At a minimum, new development above the existing 1.2 million square feet (as of September 2019) is expected to retain the first inch of rainfall. Additionally, major renovations of existing buildings should

consider methods for implementing the one-inch retention standard. For all development on the site with inadequate outfalls, detention measures are expected to be implemented that reduce the volume, peak flow, and velocity of runoff into Holmes Run and Accotink Creek to a rate equivalent to good forested conditions to the maximum extent practicable as determined by Land Development Services.

Flexibility should be afforded in the application of specific stormwater management approaches that achieve these recommendations, minimize impervious cover, retain the benefits of the existing forested conditions, and protect and restore downstream water resources in furtherance of watershed management plan goals. If retaining the first inch of rainfall is demonstrated not to be fully achievable in coordination with Land Development Services, alternative stormwater management measures that retain as much of the first inch as possible and result in at least equivalent benefits to the one-inch recommendation may be pursued. Design considerations may be given to other stormwater runoff-related factors such as downstream flooding, drainage complaints, character and condition of downstream channels, and identified stream impairments.

The retention and detention targets for the land unit are considered among the highest standards by the county. However, it is understood that with changes in conditions, best practices, and technology, even higher standards may be developed in the future. As storm water management policies evolve, the land unit is expected to adhere to the targets listed previously or any superior standards that may be developed in the future at the time of development review.

The use of appropriate native plant materials in stormwater facility design is encouraged to enhance biodiversity and habitat value and improve environmental quality. The use of pesticides, herbicides and fertilizers should be minimized to the maximum extent practical for maintenance. The use of non-native plant materials should be generally avoided unless it is demonstrated that these plantings would be consistent with these goals.

- Stream Evaluation: An evaluation of the central and southern streams that flow within the southern portion of this land unit should be conducted prior to development in coordination with the Department of Public Works and Environmental Services, the Department of Planning and Development, and Land Development Services. Appropriate measures that are needed in order to mitigate on-site impacts and thereby support the goals of the Holmes Run Watershed Management Plan, should be identified in the evaluation and implemented in connection with development of new stormwater management improvements in the southern watershed.

#### Phasing and Public Facilities:

- Development is expected to be phased to ensure the adequate and timely provision of supporting infrastructure and public facilities capacity. Parks and open space, stormwater management, schools or additional school capacity, and other public facilities should be sufficient to address the demands generated by new development. If Fairfax County Public Schools (FCPS) determines that a school site is required to serve the increased population from the development, a fair share commitment toward site acquisition or building repurposing should be identified. This commitment should be based on a contribution formula determined by FCPS and Fairfax County, and should be identified in advance of approval of an application

for residential development. Innovative approaches, such as locating school facilities with parks to allow for the sharing of recreation facilities, or within buildings serving the other uses, may also be considered.

- Proposals that develop portions of the land unit in phases should demonstrate how future development can occur in conformance with the land unit recommendations.

#### Heritage Resources

The former ExxonMobil headquarters buildings on the site have been repurposed and are planned to remain with the development of the campus. Should the buildings be proposed for redevelopment, the buildings should be evaluated for potential historic and architectural significance consistent with Merrifield Area-Wide Guidance and the countywide policies for Heritage Resources. Further, the land unit contains substantial undeveloped areas that may contain archeological resources. Archeological survey work should be conducted consistent with the Merrifield Area-Wide Guidance.

#### Future Campus Expansion

The campus may be expanded up to a maximum ultimate intensity of 1.0 FAR (up to 5,000,000 square feet of development) on the land unit, predicated on the achievement of and continued commitment to all of the previous conditions set forth above for the 0.7 FAR development level, including the preservation and enhancement of the wooded area as shown on Figure 32. This ultimate intensity would be consistent with the Merrifield Area-wide Guidance and the planned intensity of the development Option on the adjacent Inova Fairfax Hospital within Sub-Unit M1, and the continued preservation of the wooded areas on the eastern portion of the site will provide well-defined transition areas and buffering to the communities outside of the Merrifield Suburban Center. Development above 1.0 FAR is not appropriate under this option.

The majority of the development should remain dedicated to scientific and medical research, higher education, clinical and office uses and should be supported by a lesser amount of housing, hospitality, and other commercial uses. The office, clinical, research, and education components may be increased up to a total of 2.43 million square feet, above the baseline. Hotel use may be increased up to a total of 340,000 square feet. In total, multifamily residential uses, independent living, assisted living, and continuing care facilities should not exceed a total of 940,000 square feet. It is anticipated that, within that amount, there will be a maximum of 850 to 1,000 residential units (depending on unit size), inclusive of affordable housing and bonus density, but exclusive of housing accommodations regulated as medical care facilities (such as assisted living facilities) and continuing care facilities. The number of units may be adjusted if transportation and public facilities impacts are shown to be sufficiently addressed. These uses should be allocated as follows:

<u>Accommodation Type</u>	<u>Square Feet (SF)</u>
<u>Housing to serve the university student population*</u>	<u>310,000 - 380,000 SF</u>
<u>Age- or Ability-restricted uses**</u>	<u>100,000 - 460,000 SF</u>



<u>Additional multifamily residential units</u>	<u>Up to 530,000 SF</u>
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\* This housing type should conform with all applicable local, state and federal laws, including Fair Housing regulations.

\*\* Age- or Ability-restricted uses include multifamily residential units restricted by age; independent living facilities; housing accommodations regulated as medical care facilities, (such as assisted living facilities); continuing care facilities, and other similar uses.

Site design features and amenities should be expanded, if not already implemented, to address the needs of the additional residents, employees, and visitors. One additional building up to 230 feet may be appropriate, provided that the taller building is located at the northern end of the land unit and internal to the site and does not negatively affect the urban form by taking away from the pedestrian experience. A continued emphasis should be placed on implementing high-quality pedestrian, bicycle, and transit facilities supporting each phase of development to provide multiple transportation options for people who live in, work on, and/or visit the campus, such as the following:

- Increased shuttle services.
- Additional fair share commitments towards construction of the bicycle and pedestrian bridge across I-495.
- Additional TDM commitments to reduce single-occupant vehicle trips.
- Expansion of the trail system.
- Commitments towards construction of a bicycle and pedestrian bridge over Gallows Road to connect the site with the Inova Fairfax Hospital.
- Showers, lockers, and other facilities to support non-automotive modes of travel.
- Study alternatives to improve bicycle and pedestrian connectivity and safety at the Route 50 and Gallows Road intersection, including through a potential parallel and/or grade-separated crossing.

A study of transportation conditions at the maximum ultimate development level of 1.0 FAR is expected to be conducted in coordination with the County's Department of Transportation to determine the development's transportation impacts, and the improvements necessary to mitigate the impacts above a 0.7 FAR to an acceptable level. The study is expected to analyze the development's transportation impacts both with and without planned regional transportation improvements, such as the planned widening of Lee Highway and Arlington Boulevard. Mitigation measures should be implemented commensurate with development phases and with sensitivity to environmental needs. This includes having each of the improvements listed above under a 0.70 FAR plus each of the necessary following improvements (or suitable alternatives that achieve similar mitigations levels) in place:

- Removal of the I-495 Outer loop weave/merge between Route 50 and Gallows Road.
- Completion of the auxiliary lane between Gallows Road and Little River Turnpike on the I-495 Outer loop.

Other transportation improvements in the area may be considered as suitable alternatives, or if necessary, supplements, to those listed above for implementation above 0.7 FAR. Such improvements may include:

- 1026 • Improvements on Wellness Boulevard, from Woodburn Road to Willow Oaks  
1027 Corporate Drive, to create a continuous north-south road parallel to Gallows Road  
1028 (provision of additional access to this road for developments that also have access to  
1029 Gallows Road could be considered).
- 1030 • Extension of Wellness Boulevard over Route 50 from Willow Oaks Corporate Drive  
1031 to Gatehouse Road.
- 1032 • Realignment of Gatehouse Road between Wellness Boulevard extension and Williams  
1033 Drive.
- 1034 • Extension of Williams Drive from Javier Road to Prosperity Avenue.
- 1035 • Access modification on Route 50 between Gallows Road and Prosperity Avenue.
- 1036 • Intersection improvements at Prosperity Avenue and Route 50.
- 1037

MERRIFIELD SUBURBAN CENTER – AREA-WIDE  
PROPOSED MODIFICATIONS

MODIFY: Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield Suburban Center, as amended through July 31, 2018, Concept for Future Development: A Vision for the Merrifield Suburban Center, pages 4-5:

**“Planning Objectives**

The following objectives for the Merrifield Suburban Center provide a general framework to achieve this future vision.

- Encourage revitalization and redevelopment of portions of the Merrifield Suburban Center to create more attractive and functionally efficient commercial and residential areas with pedestrian and bicycle-friendly transit-oriented environments.
- Ensure a pattern of land uses that promotes stability in the adjacent residential areas by establishing transitional areas to prevent commercial encroachment on these adjacent areas.
- Create focal point(s) within the Town Center and the Transit Station Area where development should be more intense and have a more urban form through the use of appropriate building heights, setbacks, building bulk, and site design.
- Strengthen the employment base by transforming key office campuses into vibrant, mixed-use places that complement the focal points, leverage innovative technology and strategic partnerships, and promote public access to privately-owned natural areas, while ensuring appropriate transitions to established residential communities.
- Encourage mixed-use development that includes pedestrian, bicycle, transit and auto circulation systems that integrate the development both internally and externally, resulting in transit-oriented and pedestrian-friendly environments.
- Encourage the development of additional housing (including affordable dwelling units) in the Merrifield Suburban Center so that employees may live near their workplace and transit services, in order to reduce the number and length of commuter auto trips.
- Capitalize on the concentration and mixture of land uses and the proximity to Dunn Loring-Merrifield Metrorail station to enrich the identity of the place and promote collaboration in the implementation of the vision, through such strategies as an area-wide Transportation Management Association, transit service, and cross-marketing among employers, housing providers, and services.
- Develop a cohesive roadway system that provides a more extensive grid of streets to serve the Town Center, Transit Station Area, and the area between.

- 1084 • Establish a streetscape hierarchy along the roadways that will visually unify the Merrifield  
1085 Suburban Center and increase connectivity for all modes.  
1086
- 1087 • Develop a cohesive pedestrian and bicycle circulation system linked to open spaces such as  
1088 plazas, courtyards, greenways, and parkland in order to facilitate walking and reduce reliance  
1089 on private automobiles.  
1090
- 1091 • Develop mass transit options, transportation strategies and planned highway improvements to  
1092 mitigate traffic impacts in the Merrifield Suburban Center and in adjacent residential  
1093 neighborhoods and to promote connectivity among all land units, including those east of I-495.  
1094
- 1095 • Ensure that many of the community-serving commercial uses are retained and that new uses  
1096 are encouraged to develop, such as a grocery store, pharmacy, book store, and a variety of  
1097 small retail shops, as well as automotive and home service repair shops.  
1098
- 1099 • Encourage the provision of additional community-serving institutional uses, as well as public  
1100 uses that will serve the Merrifield Suburban Center and the surrounding neighborhoods. These  
1101 uses may include a library, museum(s), theater, childcare, housing for the elderly, as well as  
1102 religious, healthcare, and educational institutions.  
1103
- 1104 • Encourage high-quality development in terms of site design, building design and materials,  
1105 provision of recreation and park facilities, and open space, and amenities throughout the  
1106 Merrifield Suburban Center. A more urban and pedestrian-oriented environment should be  
1107 provided in the Transit Station Area and the Town Center; and, a suburban character should  
1108 be provided throughout the remainder of the Merrifield Suburban Center.  
1109
- 1110 • The environmentally sensitive areas of the Holmes Run and Long Branch stream valleys and  
1111 their tributaries should be retained as permanent open space. In addition, measures should be  
1112 taken to ensure that runoff from new development will not deteriorate the environmental  
1113 quality of these streams.  
1114

1115 The attainment of the above objectives for the Merrifield Suburban Center, as well as the area-  
1116 wide and specific land unit recommendations presented in this Plan will encourage a more urban  
1117 character in a portion of the Merrifield Suburban Center. As mentioned previously, the areas  
1118 encouraged to be more urban in character are the two core areas and the area connecting the core  
1119 areas. Encouraging some areas to become more urban should result in a reduced dependence on  
1120 the private automobile for local travel by linking future more urban development to significantly  
1121 improved pedestrian, bicycle and transit facilities. The area primarily outside of the core areas,  
1122 which includes most of the Merrifield Suburban Center, will remain suburban in character, with  
1123 its edges providing compatible transitions in intensity and scale to the nearby residential  
1124 neighborhoods. However, even in the suburban areas, additional pedestrian, bicycle and transit  
1125 facilities and links are planned to help improve circulation and access throughout the entire  
1126 Merrifield Suburban Center, including the assurance that those land units east of I-495 are  
1127 integrated into and contributory to the Merrifield Suburban Center.”  
1128

MODIFY: Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield Suburban Center, Area-wide Guidance, as amended through July 31, 2018, Land Use Guidelines, pages 9-10:

***“Affordable Housing*** – Generally, affordable housing can include Affordable Dwelling Units (ADUs), Workforce Dwelling Units (WDUs), and other local, state, or federal programs. County policies include promoting the development of multi-family housing in mixed-use centers in an effort to diversify the county’s housing stock and to encourage lower cost housing options near employment opportunities. In order to implement these policies within the Merrifield Suburban Center, development proposals having a residential component should provide for ADUs and/or WDUs. While less preferable, affordable housing can also occur through the provision of units elsewhere within the Merrifield Suburban Center. Only if the provision of affordable housing is not feasible, a contribution to the Fairfax County Housing Trust Fund could be made, as indicated below.

- For those areas planned for residential development, the provision of ADUs/WDUs should be a condition for attaining the high end of the development range. Developments below the high end of the range should also provide ADUs/WDUs or contribute to the Trust Fund, as indicated below.

- Affordable housing should be provided for those areas planned for mixed-use with residential units, such as the Town Center and the Transit Station Area. The provision of affordable housing should be a condition for attaining the high end of the area’s mixed-use potential. If the affordable housing to be provided will be in accordance with the ADU program set forth in the Zoning Ordinance, the applicable density range should be determined as follows: for an area planned for office use at .8 FAR under Option 1 and up to 1.2 FAR under Option 2, the intensity range would be considered .8 FAR to 1.2 FAR, which is equivalent to 35 to 50 dwelling units per acre (assuming approximately 1000 square feet per unit). In this example, the high end would be considered the top 60% of the range, or intensities above .96 FAR.

The calculation of ADUs/WDUs and bonus units to be provided should be based on the formula in the ADU/WDU programs. In general, the maximum FAR listed within the Land Unit Recommendations does not include the FAR bonus that is granted for ADUs/WDUs, except for Sub-Unit I1 and Land Unit K. See land unit guidance for specific recommendations. In cases where ADUs/WDUs are not provided, development proposals within the Plan’s density/intensity range are to contribute to the Housing Trust Fund at an amount of 1% of the development’s residential value. If the proposed development is below the low end of the Plan’s development potential, then ½% of the development’s residential value should be contributed, which is consistent with county policy.”

MODIFY: Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield Suburban Center, Area-wide Guidance, as amended through July 31, 2018, Buildings Heights, page 20:

**“Building Heights**

Throughout the Merrifield Suburban Center, a variety of building heights and building articulation, as well as varied roof forms are encouraged to create an interesting skyline. Building heights adjacent to single-family residential neighborhoods, in general, are planned not to exceed 40 feet to provide an appropriate scale of development. Figure 8 shows the maximum building heights planned for the Merrifield Suburban Center. It should be noted, however, to achieve many of the maximum building heights, various conditions should be met as indicated within the sub-unit recommendations.

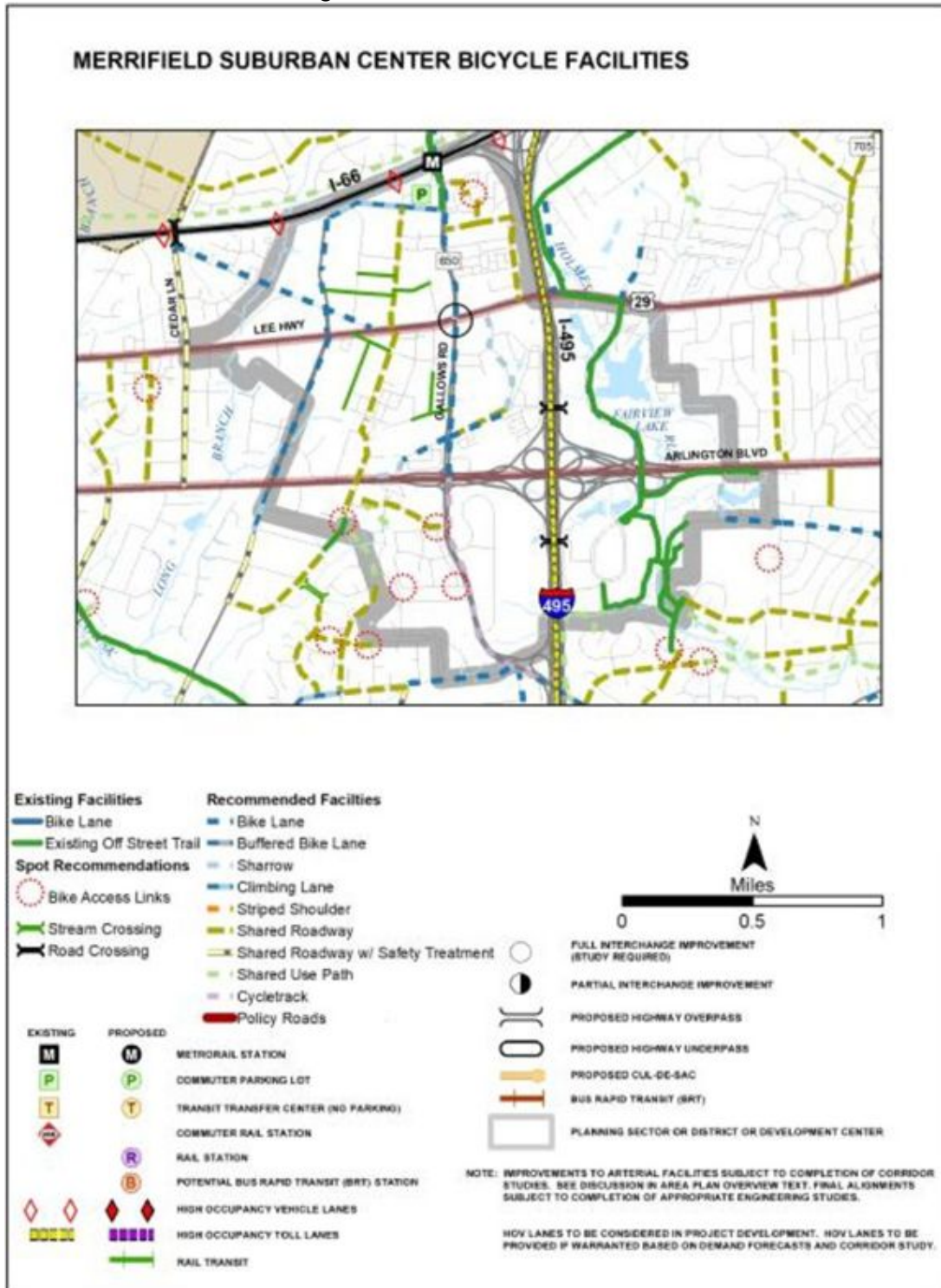
***Building Height Guidelines***

- One fundamental element of achieving maximum building heights should be the provision of usable open space that is in addition to providing the streetscape. This additional open space should include plazas, courtyards or other open space amenities as indicated under the following Pedestrian and Open Space System section.
- Throughout the Merrifield Suburban Center, a variety of building heights, façade articulation, and rooflines are encouraged to enhance the Merrifield skyline. The Transit Station Area, ~~and Fairview Park,~~ and the Inova Center for Personalized Health are intended to be visually and architecturally prominent, with building heights outside these areas stepping down to the periphery of the Merrifield Suburban Center.

**COMPREHENSIVE LAND USE PLAN MAP:** The Comprehensive Land Use Plan Map will not change.

**TRANSPORTATION PLAN MAP:** The Countywide Transportation Plan Map will not change.

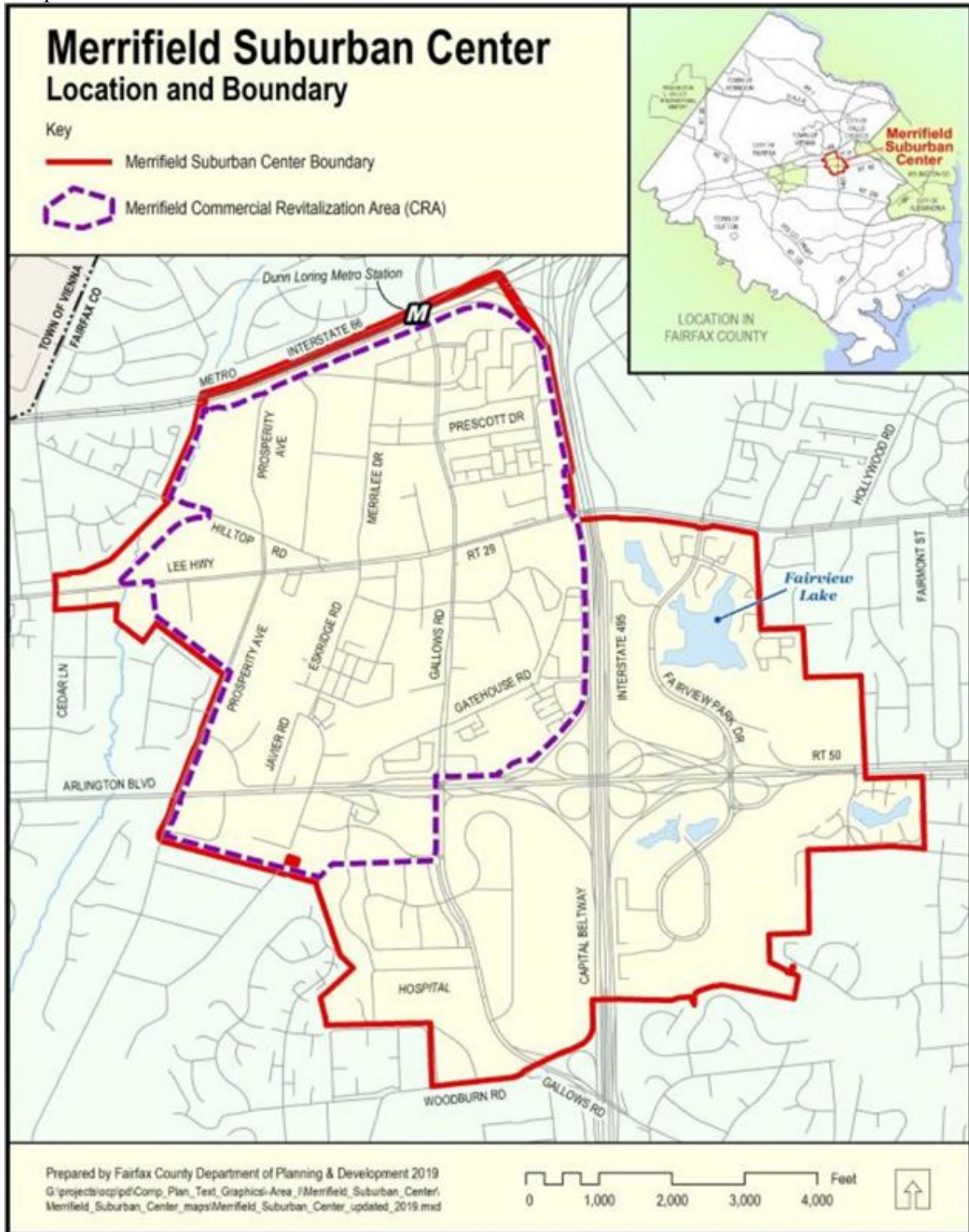
1217 **BICYCLE MASTER PLAN MAP:** Update the elements of the Northeast Quadrant Map for the  
1218 Merrifield Suburban Center to reflect a cycle-track on the east side of Gallows Road between the  
1219 Gallows Road I-495 interchange and the intersection of Gallows Road and Route 50.



1220



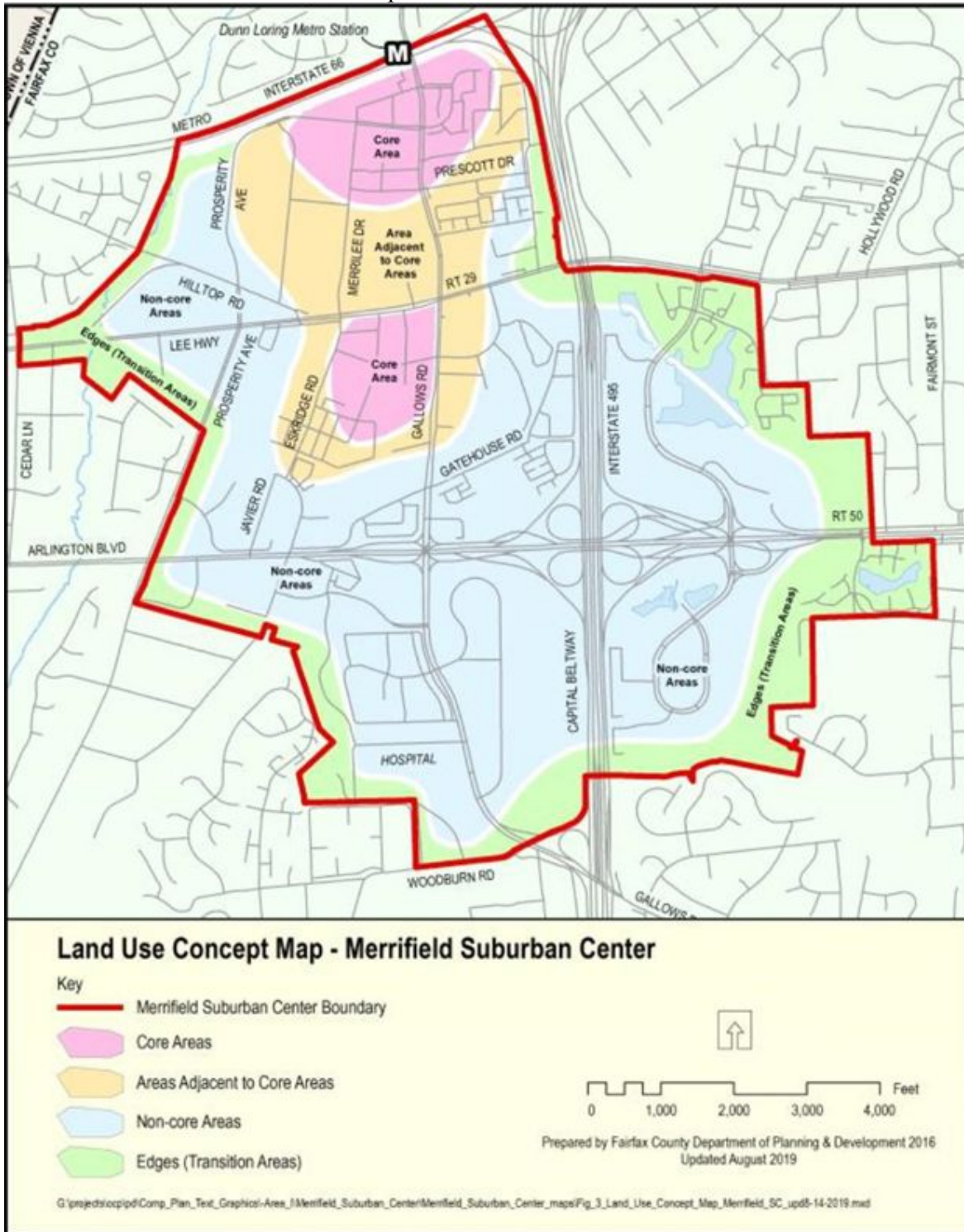
1221 **MODIFY FIGURE:** Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield  
1222 Suburban Center, Area-wide Guidance, as amended through July 31, 2018, Figure 1, page 2 to  
1223 move the word “HOSPITAL” further south to reflect the accurate location of Inova Fairfax  
1224 Hospital.



1225

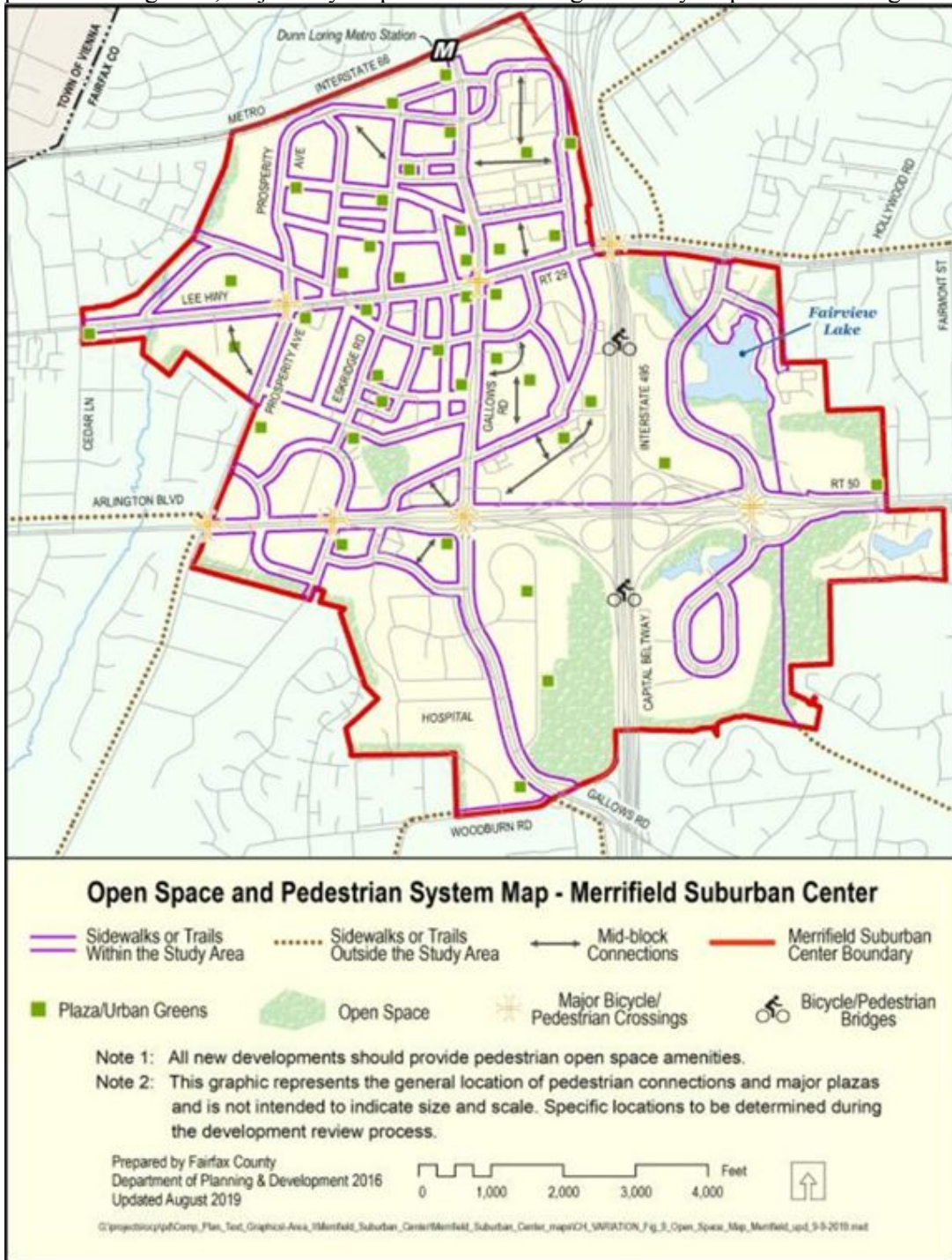


1226 **MODIFY FIGURE:** Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield  
1227 Suburban Center, Area-wide Guidance, as amended through July 31, 2018, Figure 1, page 2;  
1228 Figure 3, page 9; Figure 10, page 28 to move the word “HOSPITAL” further south to reflect the  
1229 accurate location of Inova Fairfax Hospital.



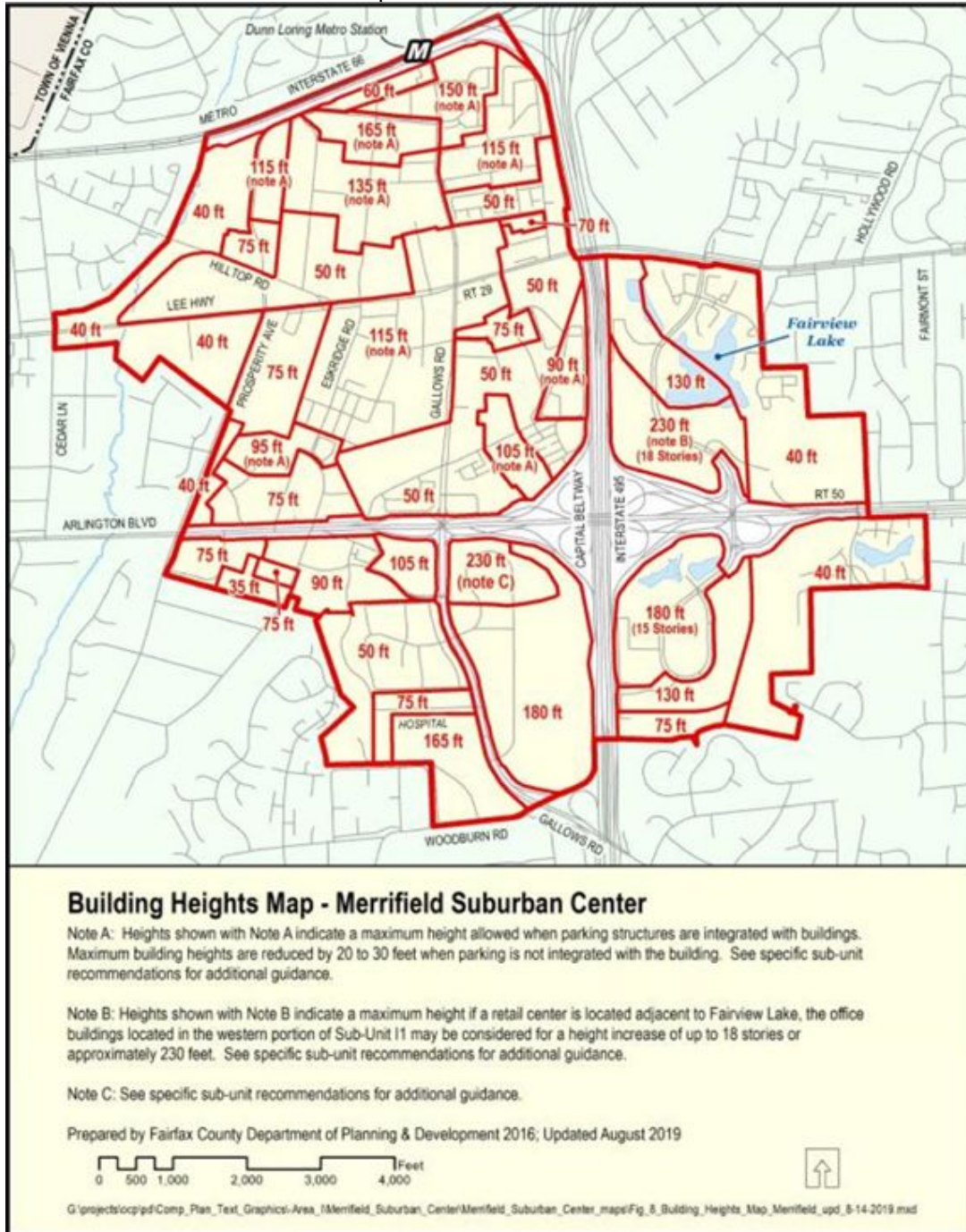
1230

REPLACE FIGURE: Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield Suburban Center, Area-wide Guidance, as amended through July 31, 2018, Figure 9, page 24 to modify open space areas and add green squares in Land Unit K and Subunit II to reflect new plazas/urban greens, major bicycle/pedestrian crossings and bicycle/pedestrian bridges.



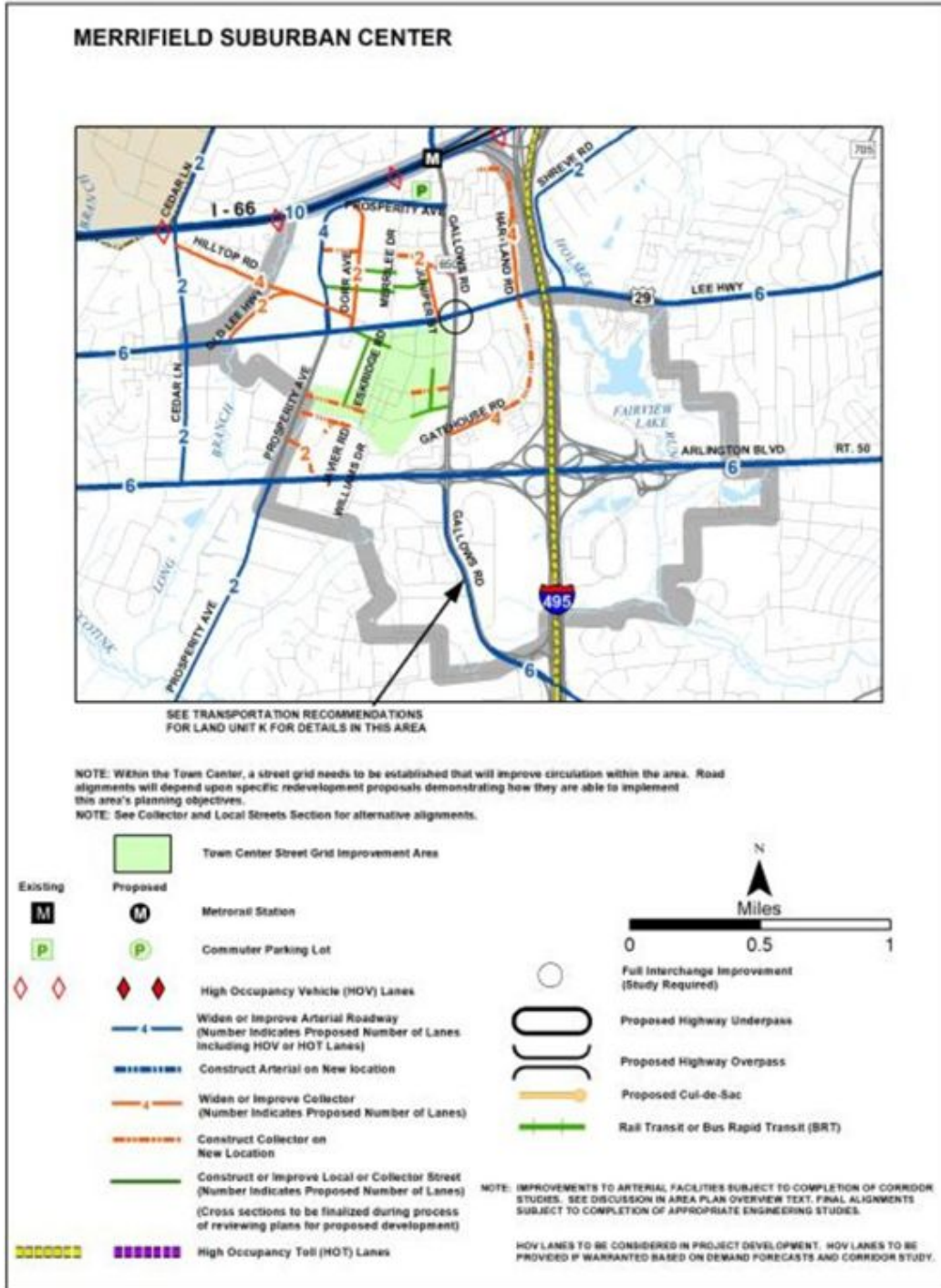


1238 REPLACE FIGURE: Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield  
1239 Suburban Center, Area-wide Guidance, as amended through July 31, 2018, Figure 8, Building  
1240 Heights Map to increase maximum building height shown on Land Unit K (in certain areas) from  
1241 180 feet to 230 feet, areas and to move the word “HOSPITAL” further south to reflect the  
1242 accurate location of Inova Fairfax Hospital.



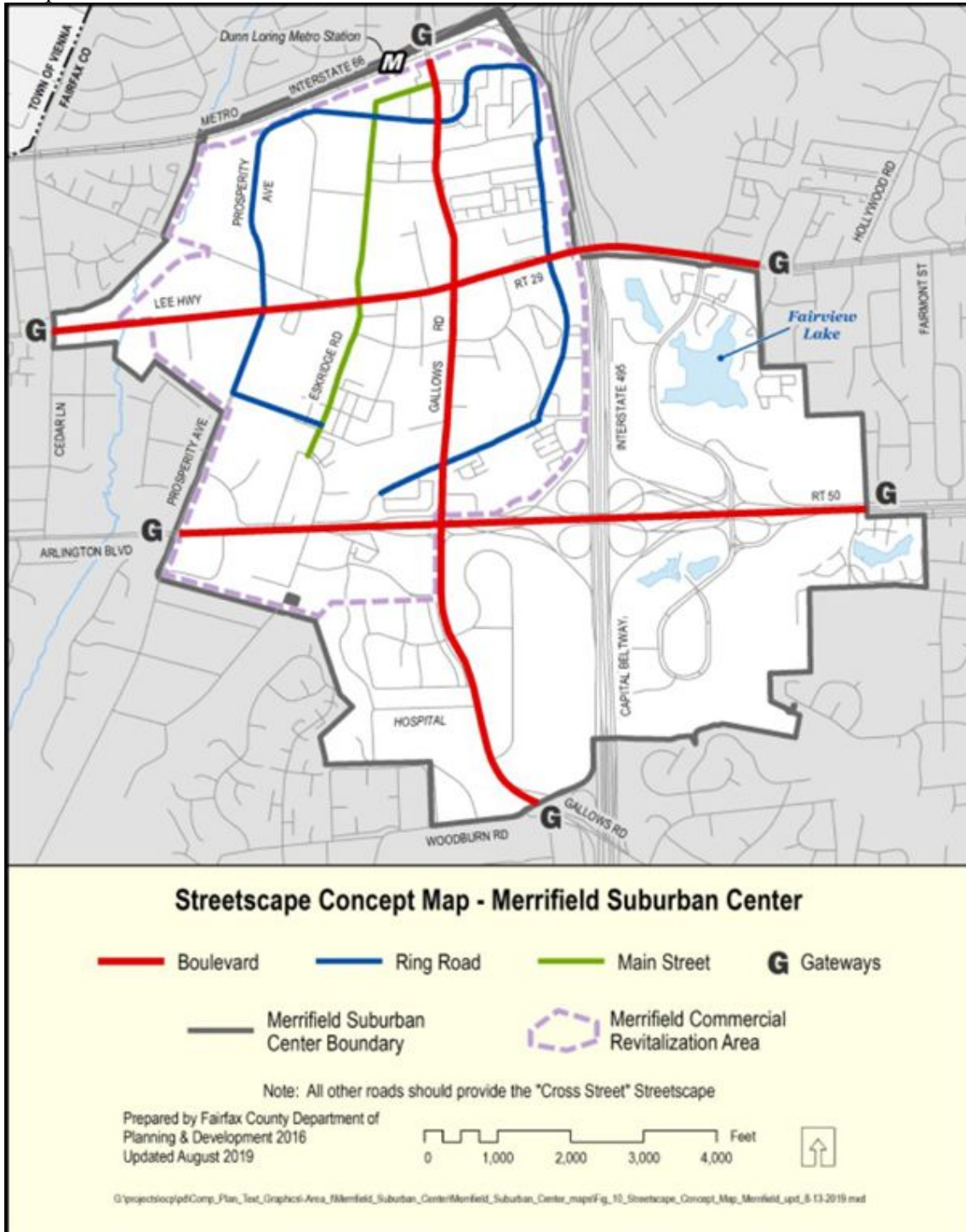
1243

1244 MODIFY FIGURE: Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield  
1245 Suburban Center, Area-Wide Guidance, as amended through July 31, 2018, Figure 16,  
1246 Transportation Recommendations, page 43, to add a note that references additional  
1247 transportation recommendations in Land Unit K.



1248  
1249

1250 **MODIFY FIGURE:** Fairfax County Comprehensive Plan, 2017 Edition, Area I, Merrifield  
1251 Suburban Center, Area-wide Guidance, as amended through July 31, 2018, Figure 10, page 28 to  
1252 move the word “HOSPITAL” further south to reflect the accurate location of Inova Fairfax  
1253 Hospital.



1254



Board Agenda Item  
September 24, 2019

5:30 p.m.

Public Hearing to Consider an Ordinance to Amend the Fairfax County Code by Adding a New Chapter 9.2 and Repealing Chapter 9.1, Relating to Cable Regulation and Franchising

ISSUE:

Public hearing to consider the adoption of an ordinance that amends the Fairfax County Code by adding a new Chapter 9.2 and repealing Chapter 9.1, relating to cable regulation and franchising.

RECOMMENDATION:

The County Executive recommends that the Board conduct a public hearing and adopt the proposed ordinance effective January 1, 2020.

TIMING:

The Board should take action on September 24, 2019. This will allow sufficient lead time for the County's three cable operators to implement the requirements of the new ordinance by January 1, 2020.

BACKGROUND:

The chapter of the County Code dealing with cable television, Chapter 9.1 (the "Cable Ordinance"), provides the regulatory framework for all cable companies operating in Fairfax County. The County grants each individual cable operator a franchise, subject to a negotiated cable franchise agreement specific to that company. Such franchise agreements are typically renegotiated at ten- or fifteen-year intervals. The Cable Ordinance, however, remains in effect throughout franchise renewals. It establishes the baseline rules that apply to all cable companies, and sets up procedures to accept new cable franchise applications.

The Cable Ordinance and the cable franchise agreements are subject to conditions imposed by federal and state laws and regulations. These external laws limit the County's authority, both in its general lawmaking power (the Cable Ordinance) and in the individual franchise agreements. For example, the rate regulation prohibition in federal law must be taken into account in any requirement for free or reduced-cost cable service to subscribers. Similarly, Virginia law controls the extent to which localities can

Board Agenda Item  
September 24, 2019

impose construction requirements on certificated providers of telecommunications services. See Va. Code Ann. [§ 15.2-2108.24](#).

The Cable Ordinance was last amended in 2001. Since that time, many changes have occurred in cable technology, the relevant markets, and applicable law. In addition, the entry of a competitive cable provider, Verizon, in 2005 changed the structure of the market and expanded the range of entities regulated by the Cable Ordinance. At present, Comcast provides cable service in Reston and Cox Communications provides cable service in the rest of the County, while Verizon provides competitive cable service in both areas.

Over a period of several years, and in preparation for upcoming franchise renewals, County staff carried out a detailed technical analysis of how the existing provisions have worked and what changes are needed to meet conditions that have changed since 2001. Consumer issues are the primary concern, based on staff's work with County residents on consumer complaints and inquiries since the last amendments to the Ordinance. At the same time, given the significant capital investment that cable companies make in building out infrastructure in the County's rights-of-way, changes in the Ordinance should also be reviewed with the cable operators. Moreover, these interests must be integrated with the overlapping and changing sets of limitations in applicable federal and state law. In this highly technical effort, County staff has worked closely with the Consumer Protection Commission (CPC) and the local cable operators to develop a revised Cable Ordinance that provides for fair use of the County's rights-of-way, looks out for the interests of County residents, and ensures a stable regulatory environment for the three cable providers.

The proposed Ordinance will replace Chapter 9.1 with a new Chapter 9.2. In Chapter 9.2, the Code has been reorganized in a more logical order, corresponding where applicable to the organization of the franchise agreements. Substantive changes in the new Ordinance include those described below.

Chapter 9.2 creates a new Article on consumer protection, Article 9, expanding the current § 9.1-7-6. Among the new issues addressed by Article 9 are clear and accurate disclosure of price terms (§ 9.2-9-9(g)-(h)); installation times and deadlines, including special provisions for multiple dwelling units (§ 9.2-9-3(c)(1)-(4)); placement of equipment in homeowners' yards (§ 9.2-9-10); interruptions of service (§ 9.2-9-3(c)(5)-(8)); and cable operators' terms of service (§ 9.2-9-7). Existing provisions, such as those dealing with telephone answering (§ 9.2-9-2) and local offices (§ 9.2-9-3(a)), have been updated to address changes in the way companies today meet customers' needs, such as the use of automatic telephone response units and the use of third parties to receive payments and ship equipment. Additional consumer protections in Chapter 9.2

include the provisions dealing with the restoration of damaged property (§ 9.2-6-4(c)) and expanded provisions regarding notice of planned construction (§ 9.2-6-4(o)).

The updated Cable Ordinance also removes provisions that are obsolete or incompatible with changes in the law since 2001. For example, language regarding rate regulation (former § 9.1-6-1) has been deleted, since federal law currently forbids rate regulation. Similarly, the provisions dealing with franchise fees (which have been replaced by the communications sales and use tax in Virginia), former § 9.1-5-8, have been adapted into general requirements regarding payments to the County (see Article 7).

Chapter 9.2 has been designed to avoid redundancies and potential conflicts. The existing Cable Ordinance contains a number of provisions that parallel those in the franchise agreements: for instance, those covering the provision of free cable service to County and school sites (former § 9.1-7-2(d)); annual and quarterly reports (former § 9.1-6-3); insurance and bonding requirements (former § 9.1-5-9); and legal penalties (former § 9.1-9-9) comparable to the liquidated damages already provided for in franchise agreements. This sort of overlap is generally duplicative and may result in conflicts between the agreements and the Ordinance, since such requirements in the agreements are generally updated to ensure the most effective ways to meet the County's needs and interests (for example, by providing video service over the County's institutional network or I-Net). Provisions of this kind are more appropriate to the franchise agreements so that each agreement can take into account how that particular provider fulfills these requirements.

Chapter 9.2 is drafted to eliminate such redundancies as far as possible, so that the Ordinance and agreements mesh with each other to cover all necessary issues without inconsistency. State laws regarding the adoption of one company's terms and conditions by another (see Va. Code Ann. § 15.2-2108.26) ensure that the County will not reduce franchise requirements arbitrarily for any cable operator.

It is unlikely that additional competitors will seek to provide cable service in the County, given the size of the capital investment required to build out a system in comparison to the progressively smaller market share a new entrant can expect to gain. However, Chapter 9.2 also updates the application process for a new franchise in Article 4 to ensure that no unnecessary barriers are placed in the way of potential competitors – for example, allowing electronic submissions and focusing on essential financial, legal, and technical qualifications as opposed to matters such as the proposed rate structure (now deregulated) and pro forma financial projections (more applicable to small startup companies than to today's cable providers).



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County staff discussed the draft ordinance in detail with all three cable operators to obtain their input, to ensure that the ordinance provisions are effective in serving the interests of consumers without unnecessarily burdening the operators or complicating compliance.

On May 21, 2019, staff from the Department of Cable and Consumer Services (DCCS) requested approval to advertise a public hearing to be held during the CPC meeting on Tuesday, June 18, 2019. The CPC voted to advertise the public hearing.

On June 18, 2019, the CPC held the public hearing on the proposed ordinance revisions, with representatives from all three cable operators present. During the public hearing, staff reviewed the draft ordinance with the CPC. After deliberation, the CPC voted to recommend that the Board approve adding a new Chapter 9.2 and repealing Chapter 9.1, Relating to Cable Regulation and Franchising, with two changes that have been incorporated into the attached draft of the proposed Chapter 9.2. In § 9.2-9-1, the word "Section" was changed to "Article" to reflect the fact that the entire Article represents minimum customer service standards. In § 9.2-9-9(f), the final version removes an earlier condition that would have limited the scope of the paragraph to termination for nonpayment, while adding an exception for cases where public safety is at issue (for example, if signal leakage could affect aircraft electronics).

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed ordinance

Attachment 2 – Redlined version of proposed ordinance showing changes to existing Chapter 9.1

STAFF:

Joseph M. Mondoro, Chief Financial Officer

Michael S. Liberman, Director, Department of Cable and Consumer Services

Frederick E. Ellrod III, Director, Communications Policy and Regulation Division, DCCS

ASSIGNED COUNSEL:

Erin C. Ward, Deputy County Attorney

Joanna L. Faust, Assistant County Attorney

**CHAPTER 9.2 OF THE FAIRFAX COUNTY CODE  
RELATING TO CABLE TELEVISION**

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**CHAPTER 9.2 OF THE FAIRFAX COUNTY CODE  
RELATING TO CABLE TELEVISION**

AN ORDINANCE to amend the Fairfax County Code by adding a new chapter numbered 9.2  
and by repealing Chapter 9.1, relating generally to cable regulation and franchising.

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

1. That the Fairfax County Code is amended by adding a new chapter number 9.2 as follows:



## ARTICLE 2.

## Definitions.

## Section 9.2-2-1. Definitions.

The following words and phrases when used in this Chapter shall, for the purpose of this Chapter, have the meanings respectively ascribed to them in this Section except in those instances where the context clearly indicates a different meaning. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in the Cable Act, Title 47 U.S.C. §§ 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning.

[Formerly Sec. 9.1-2-1; new Sec. 9.2-2-1]

(a) *Affiliate* means any person who owns or controls, is owned or controlled by, or is under common ownership or control with, a Grantee. For purposes of this definition, “owns” means an ownership interest of more than five percent.

(b) *Board* means the Board of Supervisors of the County of Fairfax, Virginia.

(c) *Cable Act* means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended from time to time.

(d) *Cable service* means: (i) the one-way transmission to subscribers of video programming or other programming services; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) *Cable system* or *system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple

1 subscribers within the County, except that this definition does not include: (i) a system that  
2 serves fewer than twenty subscribers; (ii) a facility that serves only to retransmit the television  
3 signals of one or more television broadcast stations; (iii) a facility that serves subscribers without  
4 using any public ways; (iv) a facility of a common carrier that is subject, in whole or in part, to  
5 the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201, et seq., except  
6 that such facility shall be considered a cable system (other than for purposes of 47 U.S.C.  
7 § 541(c)) to the extent the facility is used in the transmission of video programming directly to  
8 subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v)  
9 an open video system that complies with 47 U.S.C. § 573; (vi) any facilities of any electric utility  
10 used solely for operating its electric systems; or (vii) any portion of a system that serves fewer  
11 than fifty subscribers in the County where such portion is a part of a larger system franchised in  
12 an adjacent county, city or town. The foregoing definition of “cable system” does not  
13 circumscribe or limit the valid authority of the County to regulate or franchise the activities of  
14 any other communications system or provider of communications services to the full extent  
15 permitted by law.

16 (f) *Cable Television Administrator* means the present or succeeding employee of  
17 Fairfax County designated by the County as the Cable Television Administrator, who may be  
18 referred to in a franchise agreement as the Communications Administrator, and who shall have  
19 the duties and authority prescribed in this Chapter and otherwise prescribed by the Board.

20 (g) *County or Fairfax County* means the County of Fairfax, Virginia, excluding the  
21 Towns of Clifton, Herndon, and Vienna.

22 (h) *Days* means calendar days unless otherwise specified.

[New in Chapter 9.2]

(i) *Department* means the Department of Cable and Consumer Services or any successor agency.

[New in Chapter 9.2]

(j) *Equitable price* means fair market value adjusted downward for the harm to the County or subscribers, if any, resulting from a Grantee's breach of its franchise agreement or violation of this Chapter, and further adjusted to account for other equitable factors that may be considered consistent with 47 U.S.C. § 547.

(k) *Fair market value* means the price which property will bring when it is offered for sale by one who desires, but is not obligated, to sell it, and is bought by one who is under no necessity of having it.

(l) *Federal Communications Commission* or *FCC* means that Federal agency as presently constituted by the Communications Act of 1934, as amended, its designee, or any successor agency.

(m) *Force majeure* has the meaning specified in a Grantee's franchise agreement.

(n) *Franchise* means a nonexclusive initial authorization, or renewal thereof, issued by the County which authorizes the construction, maintenance, and operation of a cable system along the public ways within a specified franchise area of the County. A franchise does not include any general license or grant of permission for the privilege of transacting and carrying on a business within the County that may be required by other ordinances and laws, or for attaching devices to poles or structures, whether owned by the County or a private entity, or for excavating



1 or performing other work in or along public ways, unless otherwise provided in a Grantee's  
2 franchise agreement.

3 (o) *Franchise agreement* means a contract entered into pursuant to this Chapter  
4 between the County and a Grantee that sets forth, subject to this Chapter, the terms and  
5 conditions under which a franchise will be granted and exercised.

6 (p) *Franchise area* means each of the North County, South County, or Reston  
7 franchise areas of the County, with boundaries as more fully described in Section 9.2-3-3, that a  
8 Grantee is authorized to serve by its franchise agreement.

9 (q) *Grantee* means a natural person, domestic or foreign corporation, partnership,  
10 limited liability company, association, joint venture, or organization of any kind granted a  
11 franchise to provide cable service by the Board, and any lawful successor thereto, or transferee  
12 or assignee thereof.

13 (r) *Gross revenues* has the meaning assigned to it in a Grantee's franchise agreement.

14 (s) *Institutional network or I-Net* means an institutional network, as that term is  
15 defined in 47 U.S.C. § 531(f), constructed for the County's use, which is not generally available  
16 to the public.

17 [New in Chapter 9.2]

18 (t) *Multiple dwelling unit or MDU* means a residential building containing three or  
19 more separate dwelling units located on a single lot or parcel of ground, generally with a  
20 common outside entrance(s) for all the dwelling units, where "dwelling unit" means one or more

rooms that are arranged, designed, used, or intended for use as a complete, independent living facility, including provisions for living, sleeping, eating, cooking, and sanitation.

[New in Chapter 9.2]

(u) *Normal business hours* means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

[New in Chapter 9.2]

(v) *Normal operating conditions* means those conditions that are within the control of a Grantee, i.e., not force majeure conditions. Conditions that are within the control of a Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a Grantee’s cable system.

(w) *PEG* means public, educational, and governmental.

(x) *Person* means an individual, partnership, association, joint stock company, organization, corporation, joint venture, limited liability company, or any lawful successor thereto or transferee thereof, but such term does not include the County.

(y) *Public way* means the surface, the air space above the surface, and area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, concourse, bridge, tunnel, parkway, waterway, dock, bulkhead, wharf, pier, easement dedicated for public use, or other public way within the County, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system.

(z) *Service interruption* means the loss of picture or sound on one or more cable channels.

(aa) *Service tier* means a category of cable service or other services provided by a Grantee for which a separate rate is charged by the Grantee.

(bb) *Subscriber* means any person who legally receives or contracts with a Grantee to receive cable service.

(cc) *Video programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(dd) *Written or in writing* means, unless otherwise specified, communication in written form, which may be made via hardcopy, e-mail to a verified e-mail address, or other similar medium that the recipient can reasonably be expected to read. Such communication may direct the recipient to clearly specified Web pages containing the complete details.

[New in Chapter 9.2]

1                                   **ARTICLE 3.**

2                                   **Grant of Franchise.**

3   **Section 9.2-3-1. Requirement of a franchise.**

4           No person shall construct, install, maintain, or operate a cable system or part of a cable  
5   system on, over, through, or within a public way in the County, or on, over, through, or within  
6   any other public property of the County, unless that person has been granted a franchise by the  
7   Board and its franchise is in full force and effect.

8           [Formerly Sec. 9.1-3-1; new Sec. 9.2-3-1]

9   **Section 9.2-3-2. Grant of franchise.**

10          (a)    The Board may grant one or more non-exclusive cable franchises, and each such  
11   franchise shall be awarded by ordinance in accordance with and subject to the provisions of this  
12   Chapter.

13          (b)    This Chapter may be amended from time to time, and in no event shall this  
14   Chapter be considered a contract between the County and a Grantee such that the County would  
15   be prohibited from amending any provision hereof.

16          (c)    A franchise agreement may only be amended by mutual written consent of the  
17   Board and Grantee.

18          [Formerly Sec. 9.1-3-2; new Sec. 9.2-3-2]

19   **Section 9.2-3-3. Franchise areas.**

20          (a)    *Reston Franchise Area:* That portion of Fairfax County beginning at the  
21   intersection of Fox Mill Road, Route No. 665, and Stuart Mill Road, Route No. 671; thence

1 proceeding in a northwesterly direction on Fox Mill Road, Route No. 665, to a point where Fox  
2 Mill Road crosses the Columbia Gas Transmission Corporation pipeline easement; thence  
3 following said pipeline easement in a northeasterly direction to the Dulles Airport Access Road;  
4 thence westerly on the Dulles Airport Access Road to the easterly limits of the Town of  
5 Herndon; thence northeasterly along the boundary of the Town of Herndon to Elden Street,  
6 Route No. 606, said point also being at the intersection of Stuart Road, Route No. 680; thence  
7 northeasterly on Stuart Road, Route No. 680, to Sugarland Road, Route No. 604; thence  
8 northeasterly on Sugarland Road, Route No. 604, to Leesburg Pike, Route No. 7; thence  
9 southeasterly on Leesburg Pike, Route No. 7, to Baron Cameron Avenue, Route No. 606; thence  
10 southwesterly on Baron Cameron Avenue, Route No. 606, to Hunter Mill Road, Route No. 674;  
11 thence following Hunter Mill Road, Route No. 674, thence southerly to the northeastern corner  
12 of that parcel identified by Fairfax County Tax Map Reference No. 18-3, 001, parcel 1; thence  
13 following southwesterly along the northern boundary of parcel 1 to the northern boundary of the  
14 Equestrian Park subdivision; thence following the northern and western boundaries of the  
15 Equestrian Park subdivision to the intersection of Sunset Hills Road, Route No. 675; thence  
16 following Sunset Hills Road easterly to the intersection of Hunter Mill Road, Route No. 674;  
17 thence following Hunter Mill Road southerly to the intersection of Sunrise Valley Drive, Route  
18 No. 5320; thence proceeding southeasterly along the eastern boundary of Reston, Section 22, to  
19 the eastern corner of that parcel identified by Fairfax County Tax Map Reference No. 27-2, 005,  
20 parcel 57; thence following southwesterly along the eastern border of Reston, Section 22, and  
21 Reston, Section 24; thence following the southern boundary of Reston, Section 24 and Reston,  
22 Section 24A; thence proceeding southeasterly along the eastern boundary of that parcel identified

1 by Fairfax County Tax Map Reference No. 27-1, 0012, parcel 3; thence following southeasterly  
2 along the eastern boundary of Reston, Section 10, to the intersection of Lawyers Road, Route  
3 No. 673, and Hunter Station Road, Route No. 677; thence proceeding westerly on Lawyers  
4 Road, Route No. 673, past the intersection of Birdfoot Lane, Route No. 671, to the northeast  
5 corner of the Lawyer's Glen subdivision; thence proceeding southwesterly along the southern  
6 and eastern boundaries of the Lawyer's Glen subdivision; thence following northwesterly along  
7 the western boundary of the Lawyer's Glen subdivision to a point of intersection with the  
8 southeast corner of the Lawyer's Ridge subdivision; thence proceeding southwesterly along the  
9 southern boundary of the Lawyer's Ridge subdivision to a point of intersection with the eastern  
10 boundary of Reston, Section 18; thence following southeasterly to a point of intersection with the  
11 eastern corner of the Stoneledge subdivision; thence proceeding in a southerly direction along  
12 the eastern boundary of the Stoneledge subdivision ; thence following in a westerly direction  
13 along the northern boundary of five parcels identified by Fairfax County Tax Map Reference  
14 Nos. 36-2, 001, parcel 2A, 13A, 13, 12A and 11, to a point of intersection with the southernmost  
15 corner of Reston, Section 18; thence proceeding in a westerly direction along the southern  
16 boundary of Reston; Section 18, to a point of intersection with the eastern boundary of Reston,  
17 Section 16; thence following southwesterly from said intersection along the eastern boundary of  
18 Reston, Section 16, to the northeastern boundary of that parcel identified by Fairfax County Tax  
19 Map Reference No. 36-2, 009, parcel 2; thence proceeding northerly along the northeastern  
20 boundary of that parcel identified by Fairfax County Tax Map Reference No. 36-2, 009, parcel 2,  
21 to the border of that parcel identified by Fairfax County Tax Map Reference No. 36-2, 009,  
22 parcel 1; thence following southwesterly on the southeastern boundary of those two parcels

1 identified by Fairfax County Tax Map Reference Nos. 36-2, 009, parcel 1 and 3, to the  
2 intersection of the southeastern boundary of Fox Mill District Park; thence following the eastern  
3 and northern boundaries of Fox Mill District Park northwesterly to Fox Mill Road, Route No.  
4 665; thence northwesterly on Fox Mill Road, Route No. 665, to the intersection of Fox Mill  
5 Road, Route No. 665, and Reston Avenue, Route No. 602; thence following Reston Avenue,  
6 Route No. 602, northeasterly to the intersection of Fox Mill Road, Route No. 665; thence  
7 northwesterly on Fox Mill Road, Route No. 665, to the point where Fox Mill Road, Route No.  
8 665, crosses the Columbia Gas Transmission Corporation pipeline easement, being the point of  
9 beginning.

10 Whenever the Reston franchise area is described by reference to the Columbia Gas  
11 Transmission Corporation pipeline easement or to roads, the franchise area shall be delineated by  
12 the line following the middle of the aforementioned pipeline easement or roads. However, if  
13 construction of a franchise for the Reston Franchise Area reasonably requires a Grantee to use  
14 poles or easements along any roadway which serves as a border for that franchise area, and if  
15 such poles or easements are located beyond the centerline of any such roadway, and if the  
16 Grantee obtains proper permission for the use of such poles or easements and pays any  
17 applicable usage or attachment fees, then the Grantee may use such poles or easements to  
18 construct and operate its system in the Reston Franchise Area so long as the Grantee does not  
19 provide cable service to an area for which it does not hold a franchise. The map which shows the  
20 above-described boundaries and which is dated May 18, 1988, is incorporated herein and is  
21 designated as the official map of the Reston Franchise Area. That map shall be kept by the Clerk  
22 to the Board among the official records of the Board of Supervisors, and to the extent that the

1 boundaries of the map and the boundaries described by the text of this subsection are in conflict  
2 either by realignment of a road or otherwise, and where it cannot be determined clearly where  
3 the boundary may lie, then the boundaries shown on the official map shall take precedence over  
4 the text of this subsection.

5 (b) *North County Franchise Area:* The area of the County north of a line beginning at  
6 the intersection of Little River Turnpike, Route No. 236, and westerly city limits of the City of  
7 Alexandria; thence westerly along Little River Turnpike, Route No. 236, to the eastern boundary  
8 of the City of Fairfax; thence along the eastern and northern boundary of the City of Fairfax to  
9 Jermantown Road, Route No. 665; thence northeasterly on Jermantown Road to Oakton Road,  
10 Route No. 644; thence westerly on Oakton Road, Route No. 644, to Waples Mill Road, Route  
11 No. 664; thence westerly on Waples Mill Road to West Ox Road, Route No. 608; thence  
12 northwesterly on West Ox Road, Route No. 608, to Centreville Road, Route No. 657; thence  
13 northerly on Centreville Road to Frying Pan Road, Route No. 608; thence northwesterly on  
14 Frying Pan Road to the end of said road; thence due west to point in the center of Sully Road,  
15 Route No. 28; thence north on Sully Road to the County line, for the point of ending; excluding  
16 the Reston Franchise Area as defined herein, the Town of Herndon, and the Town of Vienna.

17 Whenever the North County Franchise Area is described by reference to the Columbia  
18 Gas Transmission Corporation pipeline easement or to roads, the franchise area shall be  
19 delineated by the line following the middle of the aforementioned pipeline easement or roads.  
20 However, if construction of the North County Franchise Area reasonably requires a Grantee to  
21 use poles or easements along any roadway which serves as a border for that franchise area, and if  
22 such poles or easements are located beyond the centerline of any such roadway, and if the



1 Grantee obtains proper permission for the use of such poles or easements, then the Grantee may  
2 use such poles or easements to construct and operate its system in the North County Franchise  
3 Area so long as a Grantee does not provide cable service to an area for which it does not hold a  
4 franchise.

5 (c) *South County Franchise Area:* That area of the County lying south of the  
6 southern border of the North County Franchise Area.

7 [Formerly Sec. 9.1-7-1; new Sec. 9.2-3-3]

8 **Section 9.2-3-4. Franchise term.**

9 The term of a franchise shall not exceed fifteen years from the date the franchise is  
10 accepted by a Grantee. This provision shall not be construed to prohibit or restrict the extension  
11 of an existing franchise term pending renewal proceedings pursuant to applicable law.

12 [Formerly Sec. 9.1-5-1; new Sec. 9.2-3-4]

13 **Section 9.2-3-5. Continuity of service.**

14 A Grantee shall operate its cable system pursuant to its franchise requirements without  
15 interruption, except as otherwise provided in this Chapter or its franchise agreement. If the  
16 Grantee's system is transferred to another party, the Grantee shall ensure an orderly transfer of  
17 operations so that subscribers' service is not interrupted.

18 [Formerly Sec. 9.1-5-7; new Sec. 9.2-3-5]

19 **Section 9.2-3-6. Service availability.**

20 Pursuant to the conditions in its franchise agreement, a Grantee shall make its cable  
21 services available at all residences, businesses, and other structures within its franchise area or

1 areas as long as the current or potential subscriber's financial and other obligations to the Grantee  
2 are satisfied. A Grantee may refuse to provide cable service: (i) when it is unable pursuant to  
3 normal industry practice after reasonable efforts to obtain necessary programming, real property  
4 or access rights; (ii) when its prior service, payment, or theft of service history with a person has  
5 been unfavorable; or, (iii) for other grave causes, such as threats to the Grantee's employees,  
6 subject to the right of the Cable Television Administrator or designee to review and approve  
7 such refusal.

8 [Formerly Sec. 9.1-7-2(a); new Sec. 9.2-3-6]

9 **Section 9.2-3-7. Line extension requirements.**

10 (a) Subject to the requirements established in Section 9.2-3-6, a Grantee may  
11 condition the extension of its cable service to lower-density areas of the County on the potential  
12 subscriber's payment of a line extension surcharge. Such surcharge shall be no more than the  
13 amount necessary to recover the Grantee's additional actual costs of construction from the  
14 subscribers paying the surcharge.

15 (b) If a resident or the County requests a cost estimate for a line extension or drop  
16 installation to a particular potential subscriber, a Grantee shall provide such estimate within 45  
17 days, without charge to the resident or the County. Such time period may be extended by the  
18 Cable Television Administrator. Such an estimate shall include the Grantee's calculation of  
19 density, a design, and a breakdown of the cost, including but not limited to materials and labor,  
20 as worked out by the Grantee. A Grantee may include reasonable site survey costs in its  
21 estimate, but may not charge the resident or the County for such site survey costs unless the  
22 resident or the County agrees to pay for the extension. Upon its request, the County may review

1 such cost estimate, which review may include, without limitation, investigation of alternative  
2 routes; however, the Grantee shall have sole discretion as to the use of any alternative route. If a  
3 resident signs an agreement to pay the Grantee for costs relating to a line extension or drop  
4 installation, the agreement shall include the specific amount the resident is obliged to pay.

5 [New in Chapter 9.2]

6 (c) To the extent that may be allowed by a Grantee's franchise agreement or by  
7 federal or state law, the County may require a Grantee to interconnect its cable system with other  
8 cable systems or other broadband communications facilities (e.g., a television communication  
9 network connecting public institutions or facilities) located adjacent to or within the County.  
10 Interconnection shall be made within 180 days from the date of a request by the County, or  
11 within a longer period of time as may be specified by the County in its request. All signals to be  
12 interconnected shall comply with FCC technical standards for all classes of signals. This  
13 Chapter does not grant any retransmission rights.

14 [Formerly Sec. 9.1-7-3; new Sec. 9.2-3-7]

15 **Section 9.2-3-8. Franchise validity.**

16 A Grantee agrees, by its acceptance of a franchise, to accept the validity of the terms and  
17 conditions of its franchise agreement, and of this Chapter as it stands at the time of acceptance,  
18 in their entirety and that it will not, at any time, proceed against the County in any claim or  
19 proceeding challenging any term or provision of this Chapter or its franchise as unreasonable,  
20 arbitrary, or void, or that the County did not have the authority to impose such term or condition.

21 [Formerly Sec. 9.1-9-3; new Sec. 9.2-3-8]

**Section 9.2-3-9. Acts at Grantee's expense.**

Any act that a Grantee is or may be required to perform under this Chapter, a franchise agreement, or applicable law shall be performed at the Grantee's expense, unless expressly provided to the contrary in this Chapter, a franchise agreement, or applicable law.

[Formerly Sec. 9.1-3-3; new Sec. 9.2-3-9]

**Section 9.2-3-10. Eminent domain.**

Nothing in this Chapter shall be deemed or construed to impair or affect, in any way or to any extent, the County's rights of eminent domain.

[Formerly Sec. 9.1-3-4; new Sec. 9.2-3-10]

**Section 9.2-3-11. Notice to Grantee.**

The Board shall not grant a renewal, approve a transfer, or shorten or revoke a franchise unless the County has given the Grantee at least 30 days' advance written notice of the initial meeting at which the Board will consider such action. The notice shall advise the Grantee of the time, place, and purpose of the meeting. The Board's consideration or decision may be carried over to a later date with oral notice to the Grantee.

[Formerly Sec. 9.1-5-2; new Sec. 9.2-3-11]

**Section 9.2-3-12. Acceptance.**

A franchise and all of its terms and conditions shall be accepted by a Grantee by written instrument filed in hardcopy with the County Executive within 30 days after the granting of the franchise.

[Formerly Sec. 9.1-9-8; new Sec. 9.2-3-12]

1                                   **ARTICLE 4.**

2                                   **Franchise Applications.**

3   **Section 9.2-4-1. Application for grant of an initial franchise.**

4           (a)    An application for an initial cable franchise shall be submitted to the Cable  
5   Television Administrator in writing.

6           (b)    To be acceptable for filing, a signed original of the application shall be submitted  
7   together with an electronic copy of the application in searchable PDF format or other searchable  
8   electronic format acceptable to the County. The application must contain all information  
9   required in this Section or pursuant to applicable federal or state law.

10          (c)    The application for a grant of an initial franchise shall provide, at a minimum, the  
11   following information, and shall clearly identify, by Code section, where each item of  
12   information required by this Section appears in the application:

- 13                   (1)    the name and address of the applicant;
- 14                   (2)    identification of the ownership and control of the applicant, including all  
15   persons with five percent or more ownership interest in the applicant and any person that  
16   controls the applicant, repeating such disclosure for any persons that control or own more than  
17   five percent of those persons, and so on until the ultimate owners and controllers of the applicant  
18   are reached; provided, however, that if a person with five percent or more ownership interest at  
19   any stage is a publicly traded company, no further information on that publicly traded company's  
20   ownership is required;
- 21                   (3)    a demonstration of the applicant's technical ability to construct and operate  
22   the proposed cable system;

1                   (4)     a demonstration of the applicant's legal qualifications to construct and  
2     operate the proposed cable system;

3                   (5)     whether, at any time during the ten years preceding the submission of the  
4     application, the applicant was convicted of any act or omission of such character that the  
5     applicant cannot be relied upon to deal truthfully with the County and the subscribers of the  
6     cable system, or to substantially comply with its lawful obligations under applicable law,  
7     including but not limited to obligations under consumer protection laws and laws prohibiting  
8     anticompetitive acts, fraud, racketeering, or other similar conduct. This same criterion shall be  
9     applied to each person owning an interest of five percent or more in the applicant;

10                  (6)     a demonstration of the applicant's financial qualifications to construct and  
11     operate the proposed cable system;

12                  (7)     a description of the applicant's prior experience in cable system  
13     ownership, construction, and operation;

14                  (8)     a description of the physical facilities proposed, which shall include at  
15     least the following:

16                         (A)     a description of the proposed system's capacity, technical design,  
17     performance characteristics, headend, and PEG access (including institutional network) facilities  
18     and equipment;

19                         (B)     a description of the proposed system design, including but not  
20     limited to a description of the miles of plant to be installed, and a description of the size of  
21     equipment cabinets and other facilities that will be installed along the plant route, the power

1 sources that will be used and a description of the noise, exhaust, and pollutants, if any, that will  
2 be generated by the operation of the same;

3 (C) a general description of the construction techniques that the  
4 operator proposes to use in installing the system above-ground and underground;

5 (D) a schedule for construction of the system that describes where and  
6 when construction will begin, how it will proceed, and when it will be completed, and the  
7 expected effect on right-of-way usage, including information on the ability of the public ways to  
8 accommodate the proposed system; and

9 (E) a description, where appropriate, of how services will be  
10 converted from existing facilities to new facilities, and what will be done with existing facilities;

11 (9) a demonstration of how the applicant will reasonably meet the future  
12 cable-related needs and interests of the community;

13 (10) any additional information that the County may have requested of the  
14 applicant in writing prior to application that is relevant to the County's consideration of the  
15 application;

16 (11) an affidavit or declaration of an authorized officer of the applicant  
17 certifying the truth and accuracy of the information in the application;

18 (12) the names, addresses, phone numbers, and e-mail addresses of all persons  
19 authorized to act on behalf of the applicant with respect to the application, pursuant to Section  
20 9.2-4-3;

1                   (13)    a cover letter prominently describing any deadline by which the applicant  
2 believes the County must act on the application pursuant to federal or state law, including but not  
3 limited to 47 C.F.R. § 76.41 and Virginia Code § 15.2-2108.21.

4                   (d)    The Cable Television Administrator shall review any application received by the  
5 County to determine whether it is complete. The Cable Television Administrator may waive in  
6 writing the provision of any of the information required by this Section. The Cable Television  
7 Administrator may reject any application that the Cable Television Administrator deems  
8 incomplete with respect to the information required in subsection (c), specifying in such rejection  
9 what additional information must be supplied to complete the application, and such rejection  
10 shall constitute denial of the application without prejudice for purposes of federal and state law.

11                  (e)    An application pursuant to subsections (a)-(d) shall not be required to the extent  
12 that an entity submits a request to negotiate a franchise pursuant to Virginia Code § 15.2-  
13 2108.21.

14                  (f)    The Cable Television Administrator may reasonably request further information  
15 from any entity seeking a cable franchise. The entity seeking a franchise shall provide such  
16 information in full cooperation with the County, pursuant to such reasonable deadlines as the  
17 Cable Television Administrator may establish.

18                  (g)    In evaluating a potential franchise, the County may consider, without limitation,  
19 the following factors:

20                       (1)    The extent to which the potential Grantee has substantially complied with  
21 applicable law and the material terms of any existing cable franchise in the County;



1                   (2)     Whether the quality of the potential Grantee's service under any existing  
2 franchise, including but not limited to signal quality, response to subscriber or former subscriber  
3 complaints, and billing practices has been reasonable in light of the needs and interests of the  
4 communities served;

5                   (3)     Whether the potential Grantee has the financial, technical, and legal  
6 qualifications to provide cable service;

7                   (4)     Whether the potential Grantee's proposal is reasonable to meet the future  
8 cable-related needs and interests of the community, taking into account the cost of meeting such  
9 needs and interests;

10                  (5)     Whether the potential Grantee will provide adequate PEG access capacity,  
11 facilities, and financial support;

12                  (6)     Whether the potential Grantee files materially misleading information in  
13 its application or intentionally withholds material information that the potential Grantee lawfully  
14 is required to provide;

15                  (7)     Whether there is any reason why issuance of a franchise to the potential  
16 Grantee under the applicable circumstances would not be in the public interest.

17                  (h)     The Consumer Protection Commission may hold one or more public hearings for  
18 purposes of public input.

19                  (i)     Any franchise granted by the Board shall be granted by adoption of an ordinance.

20                  (j)     If the Board decides not to grant a franchise, it will adopt a resolution stating why  
21 the franchise was not granted.

(k) This Chapter does not grant any existing Grantee or other third party standing to challenge either (1) the denial of any other person's application or request, or (2) the issuance of a franchise to any other person.

[Formerly Sec. 9.1-3-5; new Sec. 9.2-4-1]

**Section 9.2-4-2. Application for grant of renewal franchise.**

(a) The renewal of any franchise to provide cable service shall be conducted in a manner consistent with applicable federal and state law.

(b) Misrepresentation or fraud by the applicant shall be grounds for denial of an application.

(c) If a renewal of a franchise is denied, the Board may acquire ownership of the cable system or effect a transfer of ownership of the system to another person, subject to applicable law and the Grantee's franchise agreement. Any such acquisition or transfer shall be at fair market value of the system as of the expiration date of the franchise valued as a going concern but with no value allocated to the franchise itself.

[Formerly Sec. 9.1-3-6; new Sec. 9.2-4-2]

**Section 9.2-4-3. Applicant representatives.**

Any person who seeks an initial or renewal franchise with the County shall forthwith, at all times, disclose to the County, in writing, the names, addresses, phone numbers, and e-mail addresses of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the proposed franchise. This disclosure shall specifically identify at least one individual who has authority to make negotiating decisions on behalf of the applicant and

1 will participate in negotiations. The requirement to make the disclosure described in this Section  
2 shall continue until the County has granted or denied an application, or until an entity withdraws  
3 its application or ceases to seek a franchise with the County.

4 [Formerly Sec. 9.1-3-7; new Sec. 9.2-4-3]

5 **Section 9.2-4-4. Franchise modification.**

6 (a) No franchise agreement shall be modified without approval by the Board and the  
7 Grantee.

8 (b) A Grantee may request a modification of its franchise agreement by submitting a  
9 written application to the Cable Television Administrator. To be acceptable for filing, a signed  
10 original of the application shall be submitted together with an electronic copy of the application  
11 in searchable PDF format or other searchable electronic format acceptable to the County. The  
12 application must contain all information required in this Section or pursuant to applicable federal  
13 or state law.

14 (c) An application for modification shall provide, at a minimum, the following  
15 information, and shall clearly identify, by Code section, where each item of information required  
16 by this Section appears in the application:

- 17 (1) the specific modification requested;
- 18 (2) the justification for the requested modification, including but not limited  
19 to the impact of the requested modification on subscribers and others, and the financial impact on  
20 the applicant if the modification is approved or disapproved, demonstrated through, inter alia,  
21 submission of pro forma financial statements;

1                   (3)     a statement indicating whether the modification is sought pursuant to  
2     47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards  
3     set forth in 47 U.S.C. § 545;

4                   (4)     any additional information that the County may have requested of the  
5     applicant in writing prior to application that is relevant to the County's consideration of the  
6     application;

7                   (5)     any other information that the applicant believes is necessary for the  
8     County to make an informed determination on the application for modification;

9                   (6)     a cover letter prominently describing any deadline by which the applicant  
10    believes the County must act on the application pursuant to federal or state law; and

11                  (7)     an affidavit or declaration of an authorized officer of the applicant  
12    certifying the truth and accuracy of the information.

13                   [Formerly Sec. 9.1-5-3; new Sec. 9.2-4-4, reversing (a) and (b)]

14                  (d)     An application for modification shall be reviewed as indicated in Section 9.2-4-  
15    1(d). The Cable Television Administrator may request further information as provided in  
16    Section 9.2-4-1(f).

17                   [New in Chapter 9.2]

**ARTICLE 5.**

**Transfers.**

**Section 9.2-5-1. Transfer of Franchise.**

(a) A franchise is a privilege that is in the public trust and personal to a Grantee. A Grantee's obligations under its franchise involve personal services, the performance of which involves personal credit, trust, and confidence in the Grantee.

(b) No transfer shall occur without prior written notice to and approval of the Board. For purposes of this Section, written approval shall be expressed by ordinance. A transfer without the prior written approval of the Board shall be considered to impair the County's assurance of due performance. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

(c) A Grantee shall promptly notify the County of any proposed transfer. If any ostensible transfer takes place without prior notice to the County, the Grantee shall promptly notify the County that the transaction has occurred.

(d) At least 120 days prior to the contemplated effective date of a transfer, a Grantee shall submit to the County an application for approval of a transfer. The application shall provide complete information on the proposed transaction, including but not limited to details on the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

- (1) all information and forms required under federal law;
- (2) any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;

1                   (3)     other information sufficient to provide a complete and accurate  
2 understanding of the financial position of the cable system before and after the proposed transfer;

3                   (4)     complete information regarding any potential impact of the transfer on  
4 subscriber rates and service;

5                   (5)     information sufficient to show the proposed transferee's legal, technical,  
6 and financial qualifications to operate the cable system and satisfy the franchise obligations; and

7                   (6)     any contracts or other documents that relate to the proposed transaction,  
8 and all documents, schedules, exhibits, or information referred to therein, that the County  
9 requests in writing prior to the submission of the application.

10               (e)     To the extent consistent with federal law, the County may waive in writing any  
11 requirement that information be submitted as part of the transfer application, without thereby  
12 waiving any rights the County may have to request such information after the application is filed.

13               (f)     For the purposes of determining whether the Board should approve a transfer, the  
14 County or its agents may inquire into all qualifications of the prospective transferee and such  
15 other matters as the County may deem necessary to determine whether the transfer is in the  
16 public interest and should be approved, denied, or conditioned as provided under subsection (g).

17 A Grantee and any prospective transferees shall assist the County in any such inquiry, and if they  
18 fail to do so, the request for a transfer may be denied.

19               (g)     In making a determination as to whether to approve, deny, or approve subject to  
20 conditions, an application for a transfer of a franchise, the Board may consider, by way of  
21 example and not limitation, the legal, financial, and technical qualifications of the transferee to  
22 operate the cable system; any potential impact of the transfer on subscriber rates or services;

1 whether a Grantee is in compliance with its franchise agreement and this Chapter and, if not, the  
2 proposed transferee's commitment to cure such noncompliance; whether the transferee owns or  
3 controls any other cable system in the County, and whether operation by the transferee may  
4 eliminate or reduce competition in the delivery of cable service in the County; and whether  
5 operation by the transferee or approval of the transfer would adversely affect subscribers, the  
6 public, or the County's interest under this Chapter, a franchise, or other applicable law. The  
7 Board shall not withhold its approval unreasonably.

8 (h) Any franchise transfer without the Board's prior written approval shall be  
9 ineffective, shall make the franchise subject to revocation at the County's sole discretion, and  
10 shall subject the Grantee and/or transferee to any other remedies available under a franchise  
11 agreement, this Chapter, or other applicable law.

12 (i) No application for a transfer of a franchise shall be approved unless the transferee  
13 agrees in writing that it will abide by and accept all terms of this Chapter, the franchise  
14 agreement, and any terms the Board requires as a condition of the transfer pursuant to subsection  
15 (g), and that it will assume the obligations, liabilities, and responsibility for all acts and  
16 omissions, known and unknown, of the previous Grantee(s) under this Chapter and the franchise  
17 agreement, for all purposes, including renewal, unless the County, in its sole discretion,  
18 expressly waives these requirements in whole or in part.

19 (j) Approval by the Board of a transfer shall not constitute a waiver or release of any  
20 of the rights of the County under this Chapter and a franchise agreement, whether arising before  
21 or after the date of the transfer.

22 (k) For the purposes of this Section, a transfer means any transaction for which the

- 1 County's approval is required pursuant to the Grantee's franchise agreement.
- 2 [Formerly Sec. 9.1-5-10; new Sec. 9.2-5-1]



### Design, Construction, and Operation.

1 however, apply to any such providers to the extent that their activities occur on public or private  
2 property outside the public rights-of-way.

3 (b) A Grantee shall construct, operate, and maintain its cable system subject to the  
4 supervision of the County or its designees, and in compliance with all applicable laws,  
5 ordinances, rules, and regulations, including any amendments thereto. The cable system and all  
6 its parts shall be subject to inspection by the County. The County may upon request review a  
7 Grantee's plans for any construction project prior to commencement of construction.

8 (c) No construction, reconstruction, or relocation of a system or any part thereof  
9 within the public ways shall be commenced until all applicable permits have been obtained. The  
10 County may impose such conditions and regulations as are necessary for the purpose of  
11 protecting any structures in the public ways and for the proper restoration of such public ways  
12 and structures, and for the protection of the public and the continuity of pedestrian and vehicular  
13 traffic.

14 (d) A Grantee shall perform maintenance on its system so that activities likely to  
15 result in an interruption of service are performed during periods of minimum subscriber use of  
16 the system. A Grantee shall provide reasonable notice to subscribers and the County before  
17 interrupting service for planned maintenance or construction that is expected to take four hours  
18 or more, except that no such notice shall be necessary for planned maintenance or construction  
19 taking place between 12 midnight and 6 a.m. Notice shall be provided by a method reasonably  
20 calculated to give subscribers actual notice of the planned interruption.

21 (e) Maintenance of a system shall be performed in accordance with technical  
22 performance and operating standards established pursuant to FCC rules and regulations. The

County may monitor a Grantee's maintenance practices and, to the extent permitted by applicable law, may waive requirements or adopt additional requirements as reasonable to ensure the system remains capable of providing high-quality service.

[Formerly Sec. 9.1-7-4(a)-(e); new Sec. 9.2-6-3]

(f) A Grantee shall have the authority to trim trees and shrubs on County property at its own expense as may be necessary to protect its wires and facilities, subject to the regulation, supervision, and direction of the County.

[Formerly Sec. 9.1-7-7(l); new Sec. 9.2-6-3(f)]

(g) In the event of an emergency, or where a cable system creates or is contributing to an imminent danger to health, safety, or property, or is an unauthorized use of property, a Grantee, at its own expense, shall remove, replace, or relocate any or all parts of its system at the request of the County. If the Grantee fails to comply with the County's request, the County may remove or relocate any or all parts of the Grantee's cable system without prior notice, at the sole expense of the Grantee. A Grantee shall not be responsible under this Chapter or its franchise agreement if such County action results in a breach of any applicable obligation of a Grantee. The County shall not be liable to the Grantee for any damages arising from such removal or relocation.

[Formerly Sec. 9.1-7-7(j); new Sec. 9.2-6-3(g)]

#### **Section 9.2-6-4. Construction standards and procedures.**

(a) A Grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities comprising its cable system in good condition, order, and repair.

1           (b)     No construction, upgrade, rebuild, reconstruction, or relocation of a cable system,  
2     or any part thereof, within any public way shall be commenced unless valid permits have been  
3     obtained. Failure to obtain required permits or other approvals shall in no way relieve a Grantee  
4     of its obligations under this Chapter and/or a franchise agreement, except that in case of  
5     emergency, a Grantee may carry out work to the extent necessary pending the issuance of such  
6     permits, as long as the Grantee acts to secure the permits as soon as possible.

7           (c)     In the event of disturbance of any public way or public or private property by a  
8     Grantee, it shall, at its own expense and in a manner approved by the County, repair, restore, and  
9     replace any property disturbed, damaged, or in any way injured by or on account of its activities  
10    substantially to its condition immediately prior to the disturbance, damage, or injury. Under  
11    normal operating conditions, such repair, restoration, or replacement shall be completed at the later  
12    of 30 days from the date the damage is incurred or 30 days from when the work causing such  
13    damage is completed, weather permitting. In the event the Grantee fails to timely perform such  
14    repair, restoration, or replacement, the County shall have the right to do so at the sole expense of the  
15    Grantee. Payment to the County for such repair, restoration or replacement shall be upon demand.  
16    Nothing in this Section shall impair any rights of the owners of such private property to assert any  
17    claim against a Grantee arising out of such disturbance.

18          (d)     A Grantee shall cooperate with all gas, electric, telephone, water, sewer, and other  
19    utilities in the placement of its facilities, equipment, or fixtures, so as to minimize the costs and  
20    disruption caused by any construction activities.

21          (e)     A Grantee shall maintain the service of, shore up, sling, support, protect, and  
22    make good, as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections,

1 conduits, ducts, manholes, drains, vaults, buildings, tracks or other structures, sub-structures of  
2 public utility companies, and all service lines and structures, including sub-structures of private  
3 abutting owners, that are located within the lines of system construction and may be subject to  
4 disturbance or injury during the progress of the construction. A Grantee shall provide at its own  
5 cost and expense all supports and all labor and material necessary to reconnect and restore to  
6 substantially their original condition all such structures that become disturbed or damaged.

7 (f) Upon reasonable notice, a Grantee shall, by a time specified by the County,  
8 protect, support, temporarily disconnect, relocate, or remove any of its property when required  
9 by the County by reason of traffic conditions; public safety; construction, maintenance, repair  
10 (including resurfacing or widening), or change of grade in public ways or on other public  
11 property; or construction, installation or repair of sewers, drains, water pipes, power lines, signal  
12 lines, tracks, or any other type of government-owned communications system, public work or  
13 improvement or any government-owned utility; provided, however, that a Grantee shall, in all  
14 such cases, with the County's consent, have the option of abandoning any property in place.

15 (g) If any person that is authorized to place facilities in the public ways requests a  
16 Grantee to protect, support, temporarily disconnect, remove, or relocate its facilities to  
17 accommodate the construction, installation, operation, maintenance, or repair of the facilities of  
18 such other person, the Grantee shall, after 30 days' advance written notice, take action to effect  
19 the necessary changes requested. Unless the matter is governed by a valid contract between the  
20 parties, a pole attachment agreement, or federal law or regulation or state law, or in any cases  
21 where the cable system that is being requested to move was not lawfully located in the public  
22 ways, then the reasonable cost of the same shall be borne by the person requesting the protection,

1 support, temporary disconnection, removal, or relocation and performed at no charge to the  
2 County.

3 (h) A Grantee shall, on the request of any person holding a valid building moving  
4 permit issued by the County, or on request of the County, temporarily raise or lower its wires to  
5 permit the moving of buildings. The expense of such temporary removal or raising or lowering  
6 of wires shall be paid by the requesting party. If the requesting party is the County, the Grantee  
7 will invoice the County, and the County will pay, following completion of work. If the  
8 requesting party is not the County, the Grantee shall have the authority to require payment in  
9 advance. The Grantee shall be given reasonable advance notice in writing to arrange for such  
10 temporary wire changes.

11 (i) A Grantee shall utilize existing poles, conduits, and other facilities whenever  
12 possible. However, no location of any pole or wire-holding structure of a Grantee shall be a  
13 vested interest. A Grantee shall remove, replace, or modify such poles, structures, or facilities at  
14 its own expense whenever the Board determines that doing so would enhance the public  
15 convenience. A Grantee shall file copies of agreements for use of conduits or other facilities  
16 with the County upon County request.

17 (j) Where the County desires to make use of the poles or other wire-holding structures  
18 of a Grantee, but cannot reach agreement with the Grantee, the Board may require the Grantee to  
19 permit such use if the Board determines that the use would enhance the public convenience and  
20 would not unduly interfere with the Grantee's operations.

21 (k) Unless otherwise regulated, all transmission lines, equipment, and structures shall be  
22 installed and located to cause minimum interference with the rights and reasonable convenience of

1 owners of property that adjoins or abuts a street, way, or other property upon which a Grantee has  
2 placed its facilities, and at all times such facilities shall be kept and maintained in a safe, functional  
3 condition, and in good order. A Grantee shall at all times employ reasonable care and shall install  
4 and maintain commonly accepted methods and devices for preventing failures and accidents that  
5 are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights,  
6 flares, or other devices shall be used at such times and places as are reasonably required for the  
7 safety of all members of the public. Any poles or other fixtures placed in any public way by a  
8 Grantee shall be placed in such a manner as not to interfere with the usual travel on such public  
9 way.

10 (l) New buried plant shall be capable of location using generally-available locating  
11 devices.

12 (m) A Grantee shall be a member of the regional notification center for subsurface  
13 installations (Miss Utility) and shall field mark the locations of its underground facilities upon  
14 request. A Grantee shall locate its facilities for the County or other governmental authority at no  
15 charge.

16 (n) Any contractor or subcontractor used for work or construction, installation,  
17 operation, maintenance, or repair of system equipment must be properly licensed under state and  
18 local law, where applicable, and each contractor or subcontractor shall have the same obligations  
19 with respect to its work as a Grantee would have if the work were performed by the Grantee. A  
20 Grantee must ensure that contractors, subcontractors, and all employees who perform work for it  
21 are trained and experienced, and that one member of each work crew is responsible for  
22 communicating in the official language of the Commonwealth with County and other

1 governmental personnel at the work site. A Grantee shall be responsible for ensuring that the  
2 work of contractors and subcontractors is performed consistent with its franchise agreement and  
3 applicable laws, regulations, policies, and procedures; for all acts or omissions of contractors or  
4 subcontractors; and for promptly correcting acts or omissions by any contractor or subcontractor.

5 A Grantee shall have a quality control program to ensure that the work is properly performed.

6 (o) A Grantee shall notify affected parties prior to commencing any proposed  
7 construction, repair, or general preventive maintenance, except for emergency maintenance or  
8 repair, that will significantly disturb or disrupt private property, public property, or public ways,  
9 or have the potential to present a danger or affect the safety of the public generally. Where  
10 possible, a Grantee shall publicize proposed construction work at least five days prior to  
11 commencement of that work by notifying those residents and others in the immediate vicinity of  
12 where work is to be done and most likely to be affected by the work in at least one of the  
13 following ways: by print or electronic mail, by distribution of door hangers or flyers to  
14 residences, or in any other manner reasonably designed to provide adequate notice. Notice to  
15 affected Persons must include the local telephone number of a Grantee representative who is  
16 qualified to answer questions concerning proposed construction, repair, or general preventive  
17 maintenance.

18 (p) A Grantee shall provide the Cable Television Administrator a daily report  
19 identifying the location and time of any scheduled maintenance and/or construction. The  
20 Grantee shall send the report in such a manner to insure delivery to the Cable Television  
21 Administrator no later than 7:30 a.m. on the day the maintenance and/or construction is  
22 scheduled.



1 [Formerly Sec. 9.1-7-7; new Sec. 9.2-6-4]

2 **Section 9.2-6-5. Construction schedule and reports.**

3 (a) Before accepting a franchise, a Grantee shall obtain all necessary federal, state, and  
4 local licenses, permits, and authorizations required for the conduct of its business and its initial  
5 construction, installation, operation, maintenance, and repair of its facilities.

6 (b) Every franchise agreement shall specify the construction schedule that will apply to  
7 any required initial construction or franchise-wide upgrade of a cable system. The schedule shall  
8 provide for timely completion of the project, considering the amount and type of construction  
9 required, and shall show areas of the County that will be affected. For the purposes of this Section,  
10 construction shall be deemed to have commenced when the first aerial strands of coaxial or fiber  
11 optic cable have been attached to a pole, or the first underground trench has been opened. The  
12 failure of a Grantee to secure the necessary federal, state, and local licenses, permits, and  
13 authorizations required for the conduct of its business shall in no way relieve the Grantee from the  
14 obligations of this Section. The failure to meet the construction schedule specified in a franchise  
15 agreement shall, among other rights and remedies available to the County under a franchise  
16 agreement or applicable law, constitute grounds for shortening or revocation of the franchise, as a  
17 failure to construct its cable system in accordance with its franchise agreement pursuant to  
18 Section 9.2-10-6(a).

19 (c) Litigation instituted by a third party shall not suspend the Grantee's obligation to  
20 construct, install, and operate its cable system in accordance with the construction or upgrade  
21 schedule set forth in its franchise agreement.

(d) An initial franchise shall include a timetable showing the percentage of occupied dwelling units within the applicable franchise area that will be capable of receiving cable service at the end of each year following the beginning of construction.

(e) Within three months after accepting an initial franchise, a Grantee shall furnish the Cable Television Administrator a construction schedule and map setting forth target dates consistent with paragraphs (b) and (d) of this Section, for commencement of service to subscribers, and identifying the areas to be served. The schedule and map shall be updated whenever substantial changes become necessary.

(f) Every three months after the start of initial construction, a Grantee shall furnish the Cable Television Administrator a map that clearly defines the areas where cable service is available, until the construction scheduled pursuant to subsection (e) is complete.

(g) The Cable Television Administrator may waive any provision of this Section for good cause.

[Formerly Sec. 9.1-7-8; new Sec. 9.2-6-5]

#### **Section 9.2-6-6. Tests and inspections.**

(a) A Grantee shall perform all tests necessary to ensure compliance with the requirements of a franchise agreement and other performance and technical standards established by applicable law or regulation, and to ensure that system components are operating as expected. All tests shall be conducted in accordance with federal rules and applicable technical standards, such as the most recent edition of the *SCTE Measurement Recommended Practices for Cable System* and the ANSI/SCTE 40 2011 Digital Interface Standard. In the event that such technical performance standards are repealed or are no longer specified in applicable law, such standards

1 shall remain in force and effect until the County, to the extent permitted by applicable law,  
2 imposes standards as it shall deem necessary for the operation of the cable system in accordance  
3 with good engineering practices.

4 (b) A Grantee shall conduct tests as follows:

5 (1) A Grantee shall conduct semiannual system tests to determine compliance  
6 with applicable standards and rules if so directed by the Cable Television  
7 Administrator; and

8 (2) If a subscriber is affected by repeated signal problems, the County may  
9 require the Grantee to conduct additional reasonable tests, including full or  
10 partial repeat tests, different test procedures, or tests involving the specific  
11 subscriber's terminal, at a Grantee's expense, to the extent such tests are in  
12 accordance with FCC rules and may be performed by the Grantee's  
13 employees utilizing its existing facilities and equipment. The County, or a  
14 consultant designated by the County, may observe any tests conducted by  
15 the Grantee for this purpose, and the Grantee will cooperate with the  
16 County or its consultant. The County may, if the signal problems  
17 continue, and if permitted by the subscriber, conduct independent tests  
18 within the subscriber's premises. The County will coordinate in writing  
19 with the Grantee the timing of such tests so that Grantee's personnel may  
20 observe the tests. The County and the Grantee will cooperate to ensure  
21 that such tests do not interfere with Grantee's cable system, do not cause

1 damage to subscriber's equipment, and are conducted in accordance with  
2 applicable technical standards.

3 (c) Tests conducted pursuant to subsection (b) shall be supervised by a Grantee's  
4 engineer, who shall sign all records of tests provided to the County.

5 (d) The County shall have the right to witness and/or review tests of a cable system  
6 conducted pursuant to subsection (b), and any tests that affect the I-Net, or affect service to  
7 County or Fairfax County Public School sites. A Grantee shall provide the County with  
8 reasonable advance notice of tests the County has the right to witness pursuant to this paragraph.

9 (e) A Grantee shall file a written report of test results under subsection (b) with the  
10 County within seven days of each test. Such reports shall, at a minimum, describe test results,  
11 instrumentation, calibration, and test procedures. In addition, the Grantee shall retain written  
12 reports of the results of any tests required by the FCC, and such reports shall be submitted to the  
13 County upon the County's request. The County shall have the same rights the FCC has to inspect  
14 a Grantee's performance test data.

15 (f) If any test under subsection (b) indicates that any part or component of a system  
16 fails to meet applicable requirements, the Grantee, without requirement of additional notice or  
17 request from the County, shall take corrective action, retest, advise the County of the action  
18 taken and results achieved, and supply the County with a copy of the results within 30 days from  
19 the date corrective action was completed.

20 (g) The County may inspect construction areas and subscriber installations, including  
21 but not limited to inspections to assess compliance with a Grantee's construction and installation  
22 requirements. The County shall notify a Grantee of any violations found during the course of

1 inspections, identifying the locations with particularity and stating the specific nature of the  
2 violation. The Grantee shall bring violations specified in the notice that are within Grantee's  
3 control into compliance as follows: (i) safety violations shall be made safe within 48 hours of  
4 receiving notice of the violation; (ii) Virginia Department of Transportation violations shall be  
5 brought into compliance within five days of receiving notice of the violation; and (iii) all other  
6 violations shall be brought into compliance within 30 days of receiving notice of the violation.  
7 After the specified time period, the Grantee shall submit a written response, describing the steps  
8 it has taken to bring itself into compliance. Inspection does not relieve a Grantee of its  
9 obligation to build in compliance with all provisions of its franchise.

10 [Formerly Sec. 9.1-7-5; new Sec. 9.2-6-6]

11 **Section 9.2-6-7. Connections to the cable system.**

12 To the extent consistent with federal law, subscribers shall have the right to attach  
13 devices to a Grantee's cable system to allow them to transmit signals or service to video  
14 recorders, receivers, and other terminal equipment, and to use their own remote control devices  
15 and converters, and other similar equipment, so long as such devices do not interfere with the  
16 operation of a Grantee's cable system, or the reception of any cable subscriber, nor serve to  
17 circumvent a Grantee's security procedures, nor for any purpose to obtain services illegally. A  
18 Grantee shall make information available to consumers to assist them in adjusting such devices  
19 so that they may be used with a Grantee's cable system.

20 [Formerly Sec. 9.1-9-12; new Sec. 9.2-6-7]

### Payments.

(c) A Grantee shall be responsible for making available to the County all records

1 necessary to confirm the accurate payment of amounts payable under a franchise agreement or  
2 applicable law, without regard to by whom such records are held. Such records shall be made  
3 available pursuant to the requirements of this Chapter and the franchise agreement.

4 (d) The County's audit expenses shall be borne by the County unless the audit  
5 discloses an underpayment of more than three percent of any quarterly payment, in which case  
6 the County's out-of-pocket costs of the audit shall be borne by a Grantee as a cost incidental to  
7 the enforcement of its franchise. Any additional undisputed amounts due to the County as a  
8 result of the audit shall be paid within 30 days following written notice to a Grantee by the  
9 County of the underpayment, which notice shall include a copy of the audit report. If  
10 recomputation results in additional revenue to be paid to the County, interest will be due as  
11 specified in this Section.

12 (e) In the event that any payment or recomputation amount less than Five Thousand  
13 Dollars is not made on or before the required date, interest shall be charged from the due date at  
14 an annual rate equal to the commercial prime interest rate of the County's primary depository  
15 bank, compounded annually, during the period the unpaid amount is due. In the event that any  
16 payment (or payments) or any recomputation amount totaling Five Thousand Dollars or more is  
17 not paid by the due date, then interest shall accrue to the County from the due date at a rate equal  
18 to the interest rate then chargeable for unpaid federal income taxes for large corporate  
19 underpayments (26 U.S.C. § 6621), compounded annually. In addition to the foregoing, the  
20 failure of a Grantee to make a timely payment (as defined by Virginia Code § 6.1-330.80) of any  
21 amount required or recomputed under this Section shall subject a Grantee to an additional late  
22 charge of five percent of the amount of such payment. However, for good cause, the Cable

1 Television Administrator may waive the provisions of this Subsection for a period not to exceed  
2 five business days.

3 [Formerly Sec. 9.1-5-8(c)-(g); new Sec. 9.2-7-2]

4 **Section 9.2-7-3. Termination, acceptance, and methodology.**

5 (a) In the event a franchise is shortened or revoked prior to its expiration date, a  
6 Grantee shall file with the County, within 90 days of the effective date of termination, a financial  
7 statement certified by an independent certified public accountant that clearly shows the gross  
8 revenues received by the Grantee from the end of the previous fiscal quarter through the  
9 effective date of termination and any other information required to support the computation of  
10 Grantee's payments, and shall pay within that time any fees or other financial obligations  
11 accrued or accruing as of the effective date of termination.

12 (b) The County's acceptance of any payment shall not be construed as an  
13 acknowledgment or an accord and satisfaction that the amount paid is the correct amount due,  
14 nor shall such acceptance of payment be construed as a release or waiver of any claim that the  
15 County may have for additional sums due and payable. However, the County's acceptance of  
16 full payment of the amount determined to be due by the County through an audit shall be  
17 construed as an accord and satisfaction.

18 (c) If a Grantee proposes to change (i) its methodology for calculating or paying any  
19 amounts payable under a franchise agreement, (ii) its methodology for calculating or paying the  
20 state Communications Sales and Use Tax amounts attributable to the County, or (iii) its  
21 methodology for itemizing or passing any through to Subscribers any such amounts (where  
22 applicable), the Grantee shall first provide written notice to the Cable Television Administrator



- 1 explaining the nature of the change, the reason for the change, and the effect of the change on the
- 2 amounts paid to the County.
- 3 [Formerly Sec. 9.1-5-8(j)-(k); new Sec. 9.2-7-3]

## Reports and Records.

(a) Access to information.

(2) In lieu of the terms specified in subsection (1), if so provided in a Grantee's franchise agreement, or if a Grantee subsequently agrees in writing: upon written request, which shall include a reasonable time to respond, a Grantee shall expeditiously provide the County with information contained in any books, maps, records, or other documents, in whatever form maintained, including electronic media ("books and records") held by the Grantee or an Affiliate, to the extent such books and records relate to the Grantee's cable system or to the Grantee's provision of cable service. Such a request shall specify the purpose of the request.

(B) The County may require the Grantee to provide copies of documents containing the requested information.

1                   (C)     If any books, records, maps, plans, or other documents requested  
2     pursuant to this subsection (a) are too voluminous, or for security reasons cannot be copied and  
3     moved, then a Grantee may request that the inspection take place at a location mutually agreed to  
4     by the County and the Grantee, provided that (i) the Grantee must make necessary arrangements  
5     for copying documents selected by the County after its review; and (ii) the Grantee must pay all  
6     travel and additional copying expenses incurred by the County (above those that would have  
7     been incurred had the documents been produced in the County) in inspecting those documents or  
8     having those documents inspected by its designee.

9           (b)     A Grantee shall keep complete and accurate books of account and records of its  
10    business and operations under and in connection with its franchise agreement.

11          (c)     For the time period specified in its franchise agreement, a Grantee shall maintain:

12               (1)     Financial records sufficient to provide full support for the calculation of  
13    any payments to the County or any PEG programmer, or of any state tax that is distributed to the  
14    County in whole or in part, and for any audit and recomputation thereof, including but not  
15    limited to records sufficient to enable County review of all allocation of gross revenues among  
16    bundled services.

17               (2)     Records of complaints. The term "complaints" as used herein and  
18    throughout this Chapter refers to complaints recorded through a Grantee's normal procedures  
19    about any aspect of the Grantee's cable system or its operations, including but not limited to  
20    complaints about employee courtesy. This paragraph does not apply to service calls, which are  
21    treated under paragraph (4) below.

1                   (3)     Records of outages, indicating date, estimated duration, estimated area,  
2     and the estimated number of Subscribers affected, type of outage, and cause.

3                   (4)     Records of service calls for repair and maintenance indicating the date and  
4     time service was required, the date and time service was scheduled (if it was scheduled), and the  
5     date and time service was provided.

6                   (5)     Records of installation/reconnection and evaluation of line extension  
7     requests, indicating date of request, and the date and time service was extended.

8           (d)     The County may require additional information, records, and documents from  
9     time to time.

10          (e)     A Grantee shall maintain a file of records open to public inspection in accordance  
11     with applicable FCC rules and regulations.

12          (f)     Each Grantee shall take all reasonable steps required to ensure that it is able to  
13     provide the County with all information that must be provided or may be requested under this  
14     Chapter, a franchise agreement, or applicable law. Each Grantee shall be responsible for  
15     redacting any data that applicable law prevents it from providing to the County. Nothing in this  
16     Section shall be read to require a Grantee to violate federal or state law protecting subscriber  
17     privacy.

18          (g)     Subject to the requirements of the Virginia Freedom of Information Act, Virginia  
19     Code § 2.2-3700, et seq., and the disclosure requirements of any other applicable law, the County  
20     shall take reasonable steps to protect the proprietary and confidential nature of any books,  
21     records, maps, plans, or other County-requested documents that are provided pursuant to this

1 Chapter or a franchise agreement to the extent they are reasonably designated as such by a  
2 Grantee.

3 (h) The Cable Television Administrator may, for good cause, waive in writing any of  
4 the reporting provisions in a franchise agreement or this Chapter.

5 [Formerly Sec. 9.1-6-2; new Sec. 9.2-8-1]

## ARTICLE 9.

## Consumer Protection.

**Section 9.2-9-1. Customer service standards generally.**

This Article sets forth the minimum customer service standards that a Grantee must satisfy. In addition, a Grantee shall at all times satisfy any additional or stricter minimum requirements established by a franchise agreement or other applicable federal, state, or local law or regulation, as the same may be amended from time to time, including, but not limited to consumer protection laws.

[Formerly Sec. 9.1-7-6 (preamble); new Sec. 9.2-9-1]

(a) A Grantee shall comply with the customer service standards set forth in 47 C.F.R. § 76.309(c), 76.1602, 76.1603, and 76.1619, or any successor provisions, and with the Virginia Consumer Protection Act of 1977, as such standards may be amended from time to time.

[Formerly Sec. 9.1-7-6(a); new Sec. 9.2-9-1(a)]

(b) The failure of a Grantee to hire sufficient staff or to properly train its staff shall not justify a Grantee's failure to comply with the provisions in this ARTICLE 9.

[Formerly Sec. 9.1-7-6(h); new Sec. 9.2-9-1(b)]

(c) The Cable Television Administrator may waive any provision of this Section for good cause.

[New in Chapter 9.2]

**Section 9.2-9-2. Telephone answering.**

(a) A Grantee shall maintain a publicly-listed, toll-free telephone number, answered by a customer service representative or automated answering system, that shall be available to subscribers 24 hours per day, each day of the year. A customer service representative shall be available at this number to respond to service calls 24 hours per day, each day of the year, and to respond to other inquiries at least during normal business hours.

[Formerly Sec. 9.1-7-6(b) (subparagraphs are new); new Sec. 9.2-9-2]

(1) Measurement of the standards in 47 C.F.R. § 76.309(c)(1)(ii) shall include all calls received by the Grantee at all call centers receiving calls from subscribers or former subscribers in the County, whether they are answered by a customer service representative, answered by an automated system, or abandoned by the caller while waiting.

(2) Upon the County's request, a Grantee shall provide the full calculation for its call percentages, including but not limited to a full explanation of any adjustment or normalization of call data by the Grantee.

(3) A Grantee shall make it possible for subscribers who are deaf or hard of hearing to communicate with the Grantee by telephone.

[New in Chapter 9.2]

**Section 9.2-9-3. Offices and service.**

(a) A Grantee shall maintain a location within the County that shall be open and accessible to the public during normal business hours to make payments and to pick up or drop off equipment; provided, however, that a Grantee may satisfy the pick-up and drop-off

1 requirement by having a representative go to the subscriber's or former subscriber's residence or  
2 by using a prepaid mailer rather than by performing that function at a location in the County; and  
3 that a Grantee may satisfy the payment requirement by providing other locations within the  
4 franchise area where such payments can be made. A Grantee shall maintain a convenient  
5 location that shall be open and accessible to the public to make inquiries during normal business  
6 hours.

7 [Formerly Sec. 9.1-7-6(c); new Sec. 9.2-9-3(a)]

8 (b) A Grantee shall provide maintenance service capable of promptly locating and  
9 correcting system malfunctions. This maintenance service shall respond at all hours to correct  
10 system malfunctions affecting one or more percent of a Grantee's total number of subscribers or  
11 500 or more homes, whichever is less, for more than one hour.

12 [Formerly Sec. 9.1-7-6(d); new Sec. 9.2-9-3(b)]

13 (c) A Grantee shall use its best efforts to comply with the following standards;  
14 however, a Grantee shall not be subject to enforcement measures for noncompliance with these  
15 standards if, under normal operating conditions, the standards are met at least 95 percent of the  
16 time, measured quarterly. Calculation of the 95 percent standard for installations shall exclude  
17 any installation that requires a line extension.

18 (1) For purposes of this Section 9.2-9-3, "standard installation" means one  
19 where the potential subscriber's premises are within 200 feet of the existing distribution system.

20 (2) A Grantee shall complete all standard installations within seven business  
21 days after the order is placed; except that where a Grantee is installing fiber to the premises, the



1     Grantee shall complete all standard installations within 14 business days after the order is placed.

2                     (3)     A Grantee shall complete all installations other than standard installations  
3     within 30 days after the order is placed, unless, for reasons beyond the Grantee's control, the  
4     work could not be completed in that time period even with the exercise of all due diligence, in  
5     which case the Grantee shall complete the work in the shortest time possible.

6                     (4)     If the management or builder of a multiple dwelling unit (MDU) contacts  
7     a Grantee to inquire as to service, the Grantee shall respond to the initial inquiry and any  
8     subsequent communications from the MDU within 14 days of each such communication. If a  
9     site visit is required, the Grantee shall schedule the site visit at a mutually convenient time no  
10    later than 30 days after the MDU signs an access agreement with the Grantee. In an occupied  
11    MDU, the Grantee shall commence construction no later than 120 days after the MDU and the  
12    Grantee have approved a site design. The Cable Television Administrator may waive the  
13    deadlines in this paragraph for good cause.

14                    (5)     A Grantee shall commence work on service interruptions affecting more  
15    than 100 subscribers within four hours after the Grantee becomes aware of the interruption,  
16    including Saturdays, Sundays, and legal holidays.

17                    (6)     A Grantee shall commence work on service interruptions affecting 100 or  
18    fewer subscribers within 24 hours after the Grantee becomes aware of the interruption, including  
19    Saturdays, Sundays, and legal holidays. If the Grantee needs to arrange a subscriber  
20    appointment to do such work, this requirement shall be satisfied if, within that 24-hour period,  
21    the Grantee offers the subscriber an appointment time convenient for the subscriber, and Grantee  
22    commences work at that time. If a total interruption of all channels is not repaired at the time of

1 the scheduled appointment, the subscriber will receive a pro-rated credit for each 24-hour period,  
2 or segment thereof, that the service interruption continues beyond the scheduled repair call.

3 (7) A Grantee shall commence work on all requests for service other than  
4 service interruptions by the next business day after it receives the request for service or otherwise  
5 becomes aware of the need for service. If the Grantee needs to arrange a subscriber appointment  
6 to do such work, this requirement shall be satisfied if the Grantee offers the subscriber an  
7 appointment time convenient for the subscriber, and Grantee shall commence work at that time.

8 (8) All service for which a completion time is not otherwise specified in this  
9 subsection (c) must be completed within five business days from the date work must commence  
10 pursuant to paragraphs (5) through (7) above, unless, for reasons beyond the Grantee's control,  
11 the work could not be completed in five business days even with the exercise of all due  
12 diligence, in which case the Grantee shall complete the work in the shortest time possible.

13 [New in Chapter 9.2]

14 (d) A Grantee shall maintain records of service calls showing when and what  
15 corrective action was completed.

16 [Formerly Sec. 9.1-7-6(e); new Sec. 9.2-9-3(d)]

17 (e) A Grantee shall arrange for pickup and/or replacement of Grantee equipment at  
18 the subscriber's or former subscriber's address, or by a satisfactory equivalent (such as the  
19 provision of a postage-prepaid mailer) if requested by a subscriber or former subscriber with a  
20 disability that limits mobility.

21 [Formerly Sec. 9.1-7-6(f); new Sec. 9.2-9-3(e)]

**Section 9.2-9-4. Outages.**

(a) In the event that service to a subscriber is totally interrupted for more than 24 hours, then if the Grantee is reasonably able to identify the affected subscriber, the Grantee shall provide the affected subscriber, whether or not the subscriber requests it, with a pro rata credit or rebate of the subscriber's fees paid or payable (unless the Grantee's policy is to provide a greater credit or rebate, in which case the credit or rebate with the greater benefit to the subscriber shall have effect).

[Formerly Sec. 9.1-7-6(g); new Sec. 9.2-9-4]

(b) In the event of an unplanned outage of all channels lasting more than four hours and affecting ten percent or more of a Grantee's total number of subscribers, a Grantee shall take reasonable steps to keep subscribers and the Department informed of the outage and the estimated time for restoring service. Such information may be provided via the Grantee's Web site, social media, or other reasonable means. The Grantee's customer service representatives shall be reasonably kept up to date with such information so that they can respond effectively to subscriber calls.

[New in Chapter 9.2]

**Section 9.2-9-5. Complaint procedures.**

(a) A Grantee shall establish a clear procedure for resolving complaints. Complaints may be made orally or in writing, at the complainant's option.

[Formerly Sec. 9.1-7-6(j); new Sec. 9.2-9-5(a)]

(b) A Grantee shall provide an initial response to a complaint within five days of its

1 receipt and a final written response within 30 days after a written complaint is received. The  
2 response shall include a complaint number by which the complaint can be tracked. The final  
3 written response shall include a notice stating that if the complaint has not been resolved to the  
4 complainant's satisfaction, the matter may be referred to the Department.

5 [Formerly Sec. 9.1-7-6(k); new Sec. 9.2-9-5(b)]

6 **Section 9.2-9-6. Opt-out.**

7 If a Grantee offers subscribers or potential subscribers an opportunity to opt out of a term  
8 or condition of service, the opt-out period shall not be less than 30 days, and the Grantee shall be  
9 responsible for ensuring that the subscribers are given clear and evident notice that alerts a  
10 reasonable subscriber to the nature of the option and its deadline.

11 [New in Chapter 9.2]

12 **Section 9.2-9-7. Terms of service.**

13 (a) If a Grantee changes the terms or conditions of service that bind subscribers, it  
14 shall be responsible for ensuring that the subscribers are given written notice of such change,  
15 indicating what provisions have changed. A general instruction to subscribers to consult the  
16 Grantee's Web site periodically, for example, shall not constitute such notice.

17 [New in Chapter 9.2]

18 (b) A Grantee shall make available to a subscriber at any time complete written  
19 copies of all agreements and terms of service to which the subscriber is subject, in such a way  
20 that a reasonable subscriber can readily identify all the agreements and terms of service that  
21 apply to that subscriber.

[New in Chapter 9.2]

**Section 9.2-9-8. Signal quality issues.**

If a subscriber experiences a signal problem documented by pictures or recordings that have not been resolved by a Grantee by thirty days after the problem was first reported to the Grantee, the County may require the Grantee to prove that the subscriber is consistently receiving a signal that meets technical standards as defined in FCC regulations or other applicable law.

[New in Chapter 9.2]

**Section 9.2-9-9. Subscriber rates and notice.**

(a) The County reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

(b) A Grantee shall maintain a publicly available schedule of all rates and charges for all services offered over its cable system.

(c) A Grantee shall not implement an increase in rates or charges unless the Cable Television Administrator and each subscriber subject to the increase in rates and charges has been notified of the change in writing at least 60 days in advance of the change. In lieu of such written notice, a Grantee may provide notification to subscribers in an alternative manner approved by the Cable Television Administrator in each such case. In the event a cablecast notice is approved by the Cable Television Administrator, a Grantee also shall give each subscriber subject to the increase written notice of the increase no less than 30 days before the increase is implemented.

1           (d)     A Grantee shall notify each subscriber in writing of all applicable fees and  
2     charges for providing cable service prior to executing a contract of service with such subscriber  
3     or installing any equipment to serve such subscriber.

4           (e)     Except as may be otherwise provided in a franchise agreement, a subscriber shall  
5     have the right to have cable service terminated without charge. A subscriber or former  
6     subscriber shall not be charged for cable service for more than two business days following the  
7     notice of termination to the Grantee. No Grantee shall enter into any agreement with a  
8     subscriber that imposes any charge for a time period after disconnection of service, except to the  
9     extent an early termination fee may apply.

10          (f)     A Grantee shall, at least 30 days prior to the date it intends to terminate service to  
11     any subscriber, notify the subscriber in writing of such intention, the reason therefor and the date  
12     termination is to be effective, except for reasons of public safety.

13                 [Formerly Sec. 9.1-6-1(e); new Sec. 9.2-9-9]

14          (g)     All Grantee promotional materials, announcements, and advertising of residential  
15     cable service to subscribers and the general public that include price information shall clearly  
16     and accurately disclose price terms. In the case of telephone orders, the Grantee shall take  
17     appropriate steps to ensure that price terms are clearly and accurately disclosed to subscribers or  
18     potential subscribers before the order is accepted. Such price terms shall include all taxes and  
19     fees (to the extent the Grantee can determine the amount of the taxes and fees at the time of  
20     order), surcharges, necessary equipment, and other charges that may result from the subscriber's  
21     acceptance of the offered product. Services and equipment shall be described in promotions or

1 conversations in such a way that the subscriber or potential subscriber can readily identify the  
2 corresponding line items on bills. Once the order has been completed, the Grantee shall  
3 promptly, before the subscriber's next bill is generated, provide the subscriber with a complete  
4 written description of the order as implemented by the Grantee, fully itemized and showing the  
5 actual cost to the subscriber as it will be reflected on the Grantee's bills. Such written  
6 description shall be provided in a way that allows the subscriber to confirm that the order is what  
7 the subscriber intended.

8 [New in Chapter 9.2]

9 (h) Bills shall be clear, concise, and understandable, and shall not be such as to  
10 mislead a reasonable subscriber as to any matter reflected on the bill. In particular, all line items  
11 on a bill shall be explained on the bill in such a way that a reasonable subscriber can understand  
12 the general nature of the charge or other entry without reference to information outside the bill.

13 (1) All descriptions in the bill shall be correct, truthful, and not misleading.

14 (2) The bill shall clearly delineate all activity during the billing period,  
15 including but not limited to optional charges, rebates, credits, and late charges.

16 (3) Bills shall be fully itemized, with itemizations including but not limited to  
17 basic and premium service charges and equipment charges.

18 (4) A Grantee may itemize charges that a subscriber must pay in connection  
19 with a service or item of equipment as permitted by applicable law, as long as such included  
20 charges are not represented in such a way as to mislead the subscriber as to the full cost of the  
21 service or equipment.

(5) A Grantee may itemize line items relating to costs imposed by governmental entities or pursuant to a franchise agreement, including but not limited to those specified in 47 U.S.C. § 542(c), as permitted by applicable law, as long as such included charges are not represented in such a way as to mislead the subscriber as to the full amount the Grantee charges the subscriber.

[New in Chapter 9.2]

#### **Section 9.2-9-10. Placement of equipment.**

If requested by a property owner and to the extent practicable, a Grantee shall take into consideration the property owner's preferences as to the location of the Grantee's above-ground pedestals or other above-ground equipment placed on private property. A Grantee may require a property owner to pay the cost of any request by the property owner to move an existing pedestal or other above-ground equipment, and the Grantee shall provide the property owner with an estimate of such cost at the property owner's request.

[New in Chapter 9.2]

#### **Section 9.2-9-11. Protection of subscriber privacy.**

(a) A Grantee shall at all times protect the privacy rights of all subscribers and former subscribers in accordance with applicable law, including but not limited to those rights secured by 47 U.S.C. § 551.

(b) A subscriber or former subscriber may at any time revoke any written or electronic consent to release information by delivering to a Grantee in writing, by mail, or otherwise, the subscriber's or former subscriber's decision to revoke the authorization. Any such



1 revocation shall be effective upon receipt by the Grantee. Any subscriber's prior written or  
2 electronic consent to release information shall be revoked upon termination of a Grantee's  
3 service to that subscriber.

4 [Formerly Sec. 9.1-7-9; new Sec. 9.2-9-11]

5 **Section 9.2-9-12. Methodology for standards.**

6 A Grantee shall, upon the County's request, disclose the Grantee's methodology for  
7 calculating and determining compliance with each standard in this ARTICLE 9. Upon the  
8 County's request, the Grantee shall also provide a calculation based on a common methodology  
9 specified by the County for all Grantees. A Grantee shall not calculate its performance with  
10 respect to any such standard in a way that has the purpose or effect of evading applicable  
11 standards or obscuring Grantee's actual performance.

12 [New in Chapter 9.2]

ARTICLE 10.

Performance Guarantees and Remedies.

Section 9.2-10-1. Insurance.

A Grantee shall maintain, and by its acceptance of a franchise specifically agrees that it will maintain, throughout the entire length of a franchise period, insurance as required by its franchise agreement.

[Formerly Sec. 9.1-5-9; new Sec. 9.2-10-1]

Section 9.2-10-2. Indemnity.

(a) A Grantee shall, at its sole cost and expense, fully indemnify, hold harmless, and defend the County and its boards, authorities, commissions, and committees, and, in their capacity as such, the elected and appointed officials, officers, commissioners, agents, and employees thereof (collectively referred to in this Section as “indemnitees”), as provided in subsection (b).

(b) The Grantee shall provide the defense and indemnification specified in subsection (a) against any and all claims, suits, actions, proceedings, liability, and judgments, whether for damages or equitable relief or otherwise arising out of or alleged to arise out of the installation, construction, maintenance, or operation of a Grantee's cable system, or the conduct of a Grantee's cable service business in the County, or in any way arising out of a Grantee's enjoyment or exercise of its franchise (collectively referred to in this Section as a “claim”), subject to 47 U.S.C. § 558.

(c) Grantee’s obligations specified in subsections (a) and (b) shall include, but are not limited to, indemnification against claims for infringements of any copyright, trade mark, trade

1 name, service mark, or patent; failure by a Grantee to secure consents from the owners or  
2 authorized distributors of programs to be delivered by a Grantee's cable system; invasion of the  
3 right of privacy; or defamation of any person, firm or corporation.

4 (d) Grantee's obligations specified in subsections (a) through (c) shall not apply if the  
5 specific act or omission that gives rise to the claim has been authorized by indemnitees. A  
6 general statement of authorization pursuant to this Chapter or a franchise agreement shall not be  
7 construed to be such an authorization.

8 (e) Grantee's obligations specified in subsections (a) through (c) shall not apply if the  
9 events that give rise to the claim are the direct result of any act or omission by indemnitees that  
10 results in personal injury or property damage.

11 (f) This indemnity does not apply to PEG programming to the extent it is provided by  
12 a person other than a Grantee or its agent, or programming carried on channels leased pursuant to  
13 47 U.S.C. § 532, or any content on the I-Net.

14 (g) The County shall provide a Grantee with timely written notice, sufficient to allow  
15 the Grantee to respond, of any obligation to indemnify and defend the County. The County shall  
16 take action to avoid entry of a default judgment. The County will reasonably cooperate with the  
17 Grantee in the Grantee's defense of such a claim or action.

18 (h) In the event that a Grantee fails, after notice, to undertake indemnitees' defense  
19 pursuant to this Section, a Grantee's indemnification shall include, but is not limited to,  
20 indemnitees' reasonable attorneys' fees incurred in such defense, any associated interest charges,  
21 indemnitees' out-of-pocket expenses, and the reasonable value of any services rendered by the  
22 County Attorney or other County staff.

(i) Neither the provisions of this Section nor any damages recovered by indemnitees shall be construed to limit the liability of a Grantee or its agents for damages under this Chapter or its franchise agreement or to excuse the faithful performance of obligations required by this Chapter and its franchise agreement, except to the extent that any monetary damages suffered by indemnitees have been satisfied by a financial recovery under this Section or other provisions of this Chapter or the franchise agreement.

(j) Indemnitees shall at no time be liable for any injury or damage occurring to any person or property from any acts or omissions of a Grantee in the construction, maintenance, use, operation, or condition of a Grantee's cable system. Indemnitees shall not and do not assume any liability whatsoever of a Grantee for injury to persons or damage to property.

[Formerly Sec. 9.1-5-9; new Sec. 9.2-10-2]

### **Section 9.2-10-3. Security Instruments.**

(a) A Grantee shall obtain and maintain during the entire term of a franchise, and any renewal or extensions thereof, a performance bond in the County's favor in the amount provided in its franchise agreement to ensure a Grantee's faithful performance of its obligations under its franchise agreement, this Chapter, and other applicable law. The County may, at its sole discretion, reduce the amount of the bond upon written application by a Grantee. Reductions granted or denied upon application by a Grantee shall be without prejudice to the Grantee's subsequent applications or to the County's right to require the full bond at any time thereafter. However, no application for a reduction of bond shall be submitted by a Grantee within one year of any prior application. In no event shall such performance bond or bonds be reduced to less than fifty thousand dollars.

1           (b)     No Grantee shall permit any insurance policy or performance bond to expire or  
2     approach less than 30 days prior to expiration without securing and delivering to the County a  
3     substitute, renewal, or replacement policy or bond in conformance with the provisions of this  
4     Chapter.

5           (c)     The County may require performance bonds described in this Section to run to the  
6     benefit of the County.

7           (d)     The following procedures shall apply to drawing on any bond or letter of credit  
8     provided by a Grantee:

9                   (1)     If the County notifies a Grantee of any amounts due pursuant to its  
10    franchise agreement or applicable law, and the Grantee does not make such payment within 30  
11    business days, the County may draw the amount in question, with any applicable interest and  
12    penalties, from the bond or letter of credit after providing written notice to the Grantee and the  
13    issuing financial institution, specifying the amount and purpose of such draw.

14                   (2)     Within three business days of a draw on the bond or letter of credit, the  
15    County shall mail to the Grantee, by certified mail, return receipt requested, written notification  
16    of the amount, date, and purpose of such draw.

17                   (3)     If at the time of a draw on the bond or letter of credit by the County, the  
18    amount available is insufficient to provide the total payment of the claim asserted in the  
19    County's draw notice, the balance of such claim shall not be discharged or waived, but the  
20    County may continue to assert the same as an obligation of the Grantee to the County.

21                   (4)     No later than 30 days after the County mails notice to the Grantee by  
22    certified mail, return receipt requested, of a draw on the bond or letter of credit, the Grantee shall

1 restore the amount of the bond or letter of credit to its original amount as specified in the  
2 franchise agreement. However, if the Grantee has initiated a legal action contesting the alleged  
3 default or amount owed, the County shall not further draw on the bond or letter of credit for the  
4 issue disputed in the legal action or subsequent cases arising out of the same facts and  
5 circumstances, pending final resolution. The County may, however, continue to draw on the  
6 bond or letter of credit for other violations.

7 (5) Upon termination of the Grantee's franchise and satisfaction of all its  
8 outstanding obligations under the franchise and applicable law, the bond may be canceled by the  
9 Grantee and the County shall release the issuing bank of its obligations under the letter of credit,  
10 provided that there is then no outstanding default on the part of the Grantee. Upon renewal of  
11 the franchise, the bond and letter of credit may be canceled and replaced, as applicable, by any  
12 similar instrument that may be required upon such renewal.

13 [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-3]

14 **Section 9.2-10-4. Remedies.**

15 Violation of this Chapter shall be subject to such remedies as shall be prescribed by  
16 federal, state, or local law, or by franchise agreement.

17 [Formerly Sec. 9.1-9-9; new Sec. 9.2-10-2]

18 **Section 9.2-10-5. Force majeure.**

19 Notwithstanding any other provision of this Chapter, a Grantee shall not be liable for  
20 delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this  
21 Chapter due, directly or indirectly, to force majeure as defined in the Grantee's franchise

1 agreement. In the event that any such delay in performance or failure to perform affects only  
2 part of a Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is  
3 able to perform and shall take all reasonable steps within its power to correct such cause(s) in as  
4 expeditious a manner as possible.

5 [New in Chapter 9.2]

6 **Section 9.2-10-6. Franchise revocation.**

7 (a) The Board shall have the right, by ordinance, to revoke a franchise or to shorten  
8 the term of a franchise to a term not less than 36 months from the date of the action shortening  
9 the franchise term, for a Grantee's failure to construct, operate, or maintain its cable system in  
10 accordance with this Chapter and its franchise agreement; for failing to comply with the  
11 conditions of occupancy for any public lands; for failing to make required extensions of service;  
12 for willfully or knowingly making false statements on or in connection with an initial or renewal  
13 franchise application; for willfully or knowingly making false statements on or in connection  
14 with any application for a transfer or a franchise modification; for defrauding or attempting to  
15 defraud the County or subscribers; for any substantial violation of the Virginia Consumer  
16 Protection Act of 1977; for any substantial violation of the Cable Act or any regulations  
17 promulgated pursuant thereto; or for any other material breach of a franchise agreement or  
18 violation of this Chapter. Board actions pursuant to this Subsection shall be taken in accordance  
19 with any other terms or conditions regarding revocation or shortening of the term that may be  
20 established in that Grantee's franchise agreement.

21 (b) A Grantee shall not be subject to the sanctions of this Section for any act or  
22 omission caused by force majeure as defined in the Grantee's franchise agreement.

(c) Any franchise shall be deemed revoked 120 days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a Grantee, whether in a receivership, reorganization, bankruptcy, assignment for the benefit of creditors, or other action or proceeding. However, a Franchise may be reinstated at the Board's sole discretion if, within that 120 day period:

- (1) Such assignment, receivership, or trusteeship has been vacated; or
- (2) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this Chapter and the applicable franchise agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this Chapter and the applicable franchise agreement, and such other conditions as may be established or as are required by applicable law; or
- (3) If the Board determines that reinstatement is in the public interest for other reasons.

(d) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Grantee, the Board may revoke the franchise by serving notice on the Grantee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate on a date established by the Board, but not less than 30 days after serving such notice, unless:

- (1) The Board has approved the transfer of the franchise to the successful bidder; and
- (2) The successful bidder has covenanted and agreed with the Board to assume and be bound by the terms and conditions of the franchise agreement and this Chapter,



1 and such other conditions as may be established or as are required pursuant to this Chapter or a  
2 franchise agreement.

3 (e) If the Board revokes a franchise, or if for any reason not constituting force  
4 majeure a Grantee terminates service to its subscribers, or fails to provide service to all its  
5 subscribers for 72 consecutive hours, abandons its system, or fails to operate its system, the  
6 following rights are effective:

7 (1) the Board may acquire ownership of or effect a transfer of the cable  
8 system at an equitable price, subject to applicable provisions of the Grantee's franchise  
9 agreement and applicable law; and

10 (2) if a cable system is abandoned by a Grantee, the Board may sell, assign or  
11 transfer all or part of the assets of the system, subject to applicable provisions of the Grantee's  
12 franchise agreement and applicable law.

13 (f) The termination of a Grantee's franchise shall in no way affect the validity of any  
14 act or violation done or committed before that termination; or any liquidated damage, penalty,  
15 sanction, or forfeiture incurred, or any right established, accrued, or accruing under the franchise  
16 before that termination; or any notice of violation or enforcement action initiated pursuant to the  
17 franchise before that termination.

18 [Formerly Sec. 9.1-5-4; new Sec. 9.2-10-4]

19 **Section 9.2-10-7. Termination of Franchise.**

20 Upon termination of a franchise, by action of the Board, a Grantee shall cease using its  
21 system for the purposes authorized by the franchise except to the extent required by Section 9.2-  
22 3-5.

1 [Formerly Sec. 9.1-5-12; new Sec. 9.2-10-5]

2 **Section 9.2-10-8. Transfer of ownership to County.**

3 (a) If the County has the right under applicable law and the Grantee's franchise  
4 agreement to acquire ownership of a Grantee's cable system or substantially all of its assets, and  
5 the County and the Grantee agree upon the price pursuant to this Chapter, then the County shall  
6 give written notice to the Grantee whether it elects to exercise such right. The County shall give  
7 such notice within 60 days after agreement on the price, unless the County and the Grantee agree  
8 to a different time period. The County's written notice shall indicate whether the entire system  
9 or substantially all of Grantee's assets will be purchased. Ownership of the system or the  
10 identified assets will transfer to the County at the time the County tenders the purchase price for  
11 the system or assets, which shall not be later than 180 days after the County's notice of its  
12 exercise of a right of purchase, unless the County and the Grantee agree to a different time  
13 period.

14 (b) In the event the Board elects to purchase or transfer a Grantee's cable system, or  
15 any of its assets, pursuant to the terms of a franchise agreement and/or this Chapter, and the price  
16 cannot be agreed upon, the price shall be determined by a panel of arbitrators. The panel shall be  
17 composed of one arbitrator chosen by the County, one arbitrator chosen by the Grantee, and a  
18 third arbitrator chosen by the first two. The expenses of the arbitration, including the fees of the  
19 arbitrators, shall be borne by the parties in such a manner as the arbitrators provide in their  
20 award, but in no event will the County be responsible for more than one-half of the expenses.  
21 The arbitrators shall follow the rules and procedures of the American Arbitration Association,  
22 except where such procedures conflict with an express provision of this Chapter. The arbitration

1 hearing shall take place in Fairfax County, Virginia, unless otherwise agreed to by the parties in  
2 writing.

3 (c) Where the purchase price of a cable system has been submitted to arbitration, the  
4 County may accept the price determined by the arbitrators within 60 days after the rendering of the  
5 arbitrators' decision, and make payment of such price in full to the Grantee within 180 days after  
6 the rendering of the arbitrators' price, in which case the system or any assets shall be transferred to  
7 the County. If the County fails to accept the arbitrators' price within the aforesaid 60-day period  
8 and tender the purchase price in full to the Grantee within 180 days after the rendering of the  
9 arbitrators' price, the right of the County to acquire shall expire.

10 (d) No matter or dispute between the County and a Grantee relating to this Chapter or  
11 a franchise agreement shall be arbitrable unless specifically provided for in this Chapter or a  
12 franchise agreement.

13  
14 [Formerly Sec. 9.1-5-5; new Sec. 9.2-10-6]

ARTICLE 11.

Open Video Systems.

Section 9.2-11-1. Applicability of Chapter.

(a) This Chapter shall apply to open video systems that comply with 47 U.S.C. § 573, except as prohibited in U.S.C. § 573 or 47 CFR Part 76 Subpart S, as may be amended from time to time.

(b) In applying this Chapter to an open video system, "Grantee" shall be taken to refer to the open video system operator, "cable system" to the open video system, and similar terms shall apply similarly.

[Formerly Sec. 9.1-8-1; new Sec. 9.2-11-1]

Section 9.2-11-2. Application for open video system authorization.

(a) A person proposing to use public ways for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of an open video system shall first obtain authorization from the Board for such use.

(1) A person may apply for such authorization by submitting an application containing the information required in Section 9.2-4-1 (Application for grant of an initial franchise), with those information requirements referring to the open video system rather than a cable system.

(2) The Cable Television Administrator may waive in writing the provision of any of the information required by this Section.

[Formerly Sec. 9.1-8-2; new Sec. 9.2-11-2]

**Section 9.2-11-3. Fee in lieu of franchise fee.**

An open video system operator shall pay to the County a fee of five percent of gross revenues in lieu of a franchise fee, unless cable service provided by the open video system operator is subject to the Virginia Communications Sales and Use Tax levied under Virginia Code § 58.1-648 or any successor provision, in which case the open video system operator shall be responsible for such Communications Sales and Use Tax in lieu of a franchise fee.

[Formerly Sec. 9.1-8-3; new Sec. 9.2-11-3]

**Section 9.2-11-4. Public, educational, and governmental access obligations.**

An open video system operator shall be subject to obligations pertaining to public, educational, and governmental access pursuant to 47 C.F.R. § 76.1505.

[Formerly Sec. 9.1-8-4; new Sec. 9.2-11-4]

**Section 9.2-11-5. Usage of public ways.**

(a) An open video system operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the public ways, except to the extent specifically prohibited by federal law. FCC approval of an open video system operator's certification pursuant to 47 U.S.C. § 573 shall not confer upon such operator any authority to use or occupy the public ways that the operator would not otherwise possess.

(b) No person shall construct, install, maintain, or operate an open video system or part of an open video system on, over, through, or within a public way in the County, or on, over, through, or within any other public property of the County, unless an agreement has first been

1     obtained pursuant to the provisions of this Article, and unless such open video system agreement  
2     is in full force and effect.

3             [Formerly Sec. 9.1-8-5; new Sec. 9.2-11-5]

1                                   **ARTICLE 12.**

2                                   **Administration.**

3   **Section 9.2-12-1. Powers and responsibilities.**

4           (a)     The Board delegates the performance of any act, duty, obligation, or exercise of  
5   any power under this Chapter or any franchise agreement to the Cable Television Administrator,  
6   except where this Chapter specifies that the Board shall take an action or federal or state law  
7   requires action by the franchising authority.

8           (b)     Day-to-day administration of this Chapter and franchises within the County shall  
9   be assigned to the Cable Television Administrator. The Cable Television Administrator's  
10 powers and responsibilities include, but are not limited to, the following functions:

11                   (1)     Reviewing and evaluating applications for franchises and making  
12 recommendations to the Board;

13                   (2)     Monitoring the timely performance of Grantees in fulfilling their  
14 obligations under their franchise agreements and this Chapter;

15                   (3)     Advising and making recommendations to the Board on technical,  
16 engineering, and police power regulations of cable and other communications systems within the  
17 County;

18                   (4)     Cooperating with other cable and other communications systems, system  
19 operators and governmental units in the development and supervision of the interconnection of  
20 systems;

21                   (5)     Reviewing books, records, and reports a Grantee is required to provide  
22 pursuant to this Chapter or a franchise agreement, as well as reports filed with the FCC or any

1 other regulatory agencies, and, at the Cable Television Administrator's discretion, requiring the  
2 preparation and filing of information in addition to that otherwise required by this Chapter or  
3 applicable law pursuant to Section 9.2-8-1 of this Chapter;

4 (6) Monitoring a Grantee's performance under and compliance with the terms  
5 of an applicable franchise agreement and this Chapter and making recommendations to the  
6 Board to ensure such compliance or advising and making recommendations on matters that may  
7 constitute grounds for revoking or shortening the term of a Franchise;

8 (7) Receiving and investigating complaints against a Grantee and advising a  
9 Grantee of the receipt of subscriber complaints affecting a Grantee's system;

10 (8) Seeking recovery of liquidated damages provided for in a franchise  
11 agreement, including but not limited to withdrawing money from security instruments pursuant  
12 to a franchise agreement;

13 (9) Advising the Board with regard to the County's authority to regulate,  
14 franchise, or authorize cable and other communications systems in the County;

15 (10) Developing policies to encourage growth and competition in  
16 communications, and evaluating the impact of cable and other communications systems on the  
17 County, for review and implementation by the Board;

18 (11) Executing agreements with Grantees and other third parties as appropriate  
19 to (A) establish safeguards, subject to the requirements of the Virginia Freedom of Information  
20 Act, Virginia Code § 2.2-3700, et seq., and the disclosure requirements of any other applicable  
21 law, to protect proprietary and confidential documents that Grantees provide pursuant to this  
22 Chapter or a cable franchise; and (B) toll the running of statutes of limitation, contractual



1 limitations periods, or other deadlines when doing so will protect the County's rights and  
2 interests under this Chapter or a cable franchise agreement; and

3 (12) Other duties as assigned by the Board and the County Executive.

4 (c) The Board shall have the sole authority to: (i) grant franchises; (ii) authorize the  
5 entering into of franchise agreements; (iii) renew franchises; (iv) revoke or shorten the term of a  
6 franchise; (v) modify a franchise; and (vi) authorize the transfer of a franchise.

7 [Formerly Sec. 9.1-4-1; new Sec. 9.2-12-1]

8 **Section 9.2-12-2. Advisory bodies to the Board of Supervisors.**

9 The Consumer Protection Commission (as defined in Chapter 10, Article 3 of the Code of  
10 the County of Fairfax) may, as directed by the Board or requested by the Cable Television  
11 Administrator, advise and inform the Board on issues relating to cable systems.

12 [Formerly Sec. 9.1-4-2; new Sec. 9.2-12-2]

## General Provisions.

[Formerly Sec. 9.1-9-2; new Sec. 9.2-13-2]

**Section 9.2-13-3. Failure to enforce franchise.**

A Grantee shall not be excused from complying with any of the terms and conditions of this Chapter or its franchise by any failure of the County, upon any one or more occasions, to insist upon a Grantee's performance or to seek a Grantee's compliance with any one or more of such terms or conditions.

[Formerly Sec. 9.1-9-4; new Sec. 9.2-13-3]

**Section 9.2-13-4. Rights reserved to the County.**

The County hereby expressly reserves the following rights:

1. To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the County.

2. To adopt, in addition to the provisions contained herein, in a franchise agreement and in ordinances, such additional regulations as it shall find necessary in the exercise of its police power.

3. The right to amend this Chapter.

[Formerly Sec. 9.1-9-5; new Sec. 9.2-13-4]

**Section 9.2-13-5. Employment requirement.**

A Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, state, and local laws and executive orders pertaining to discrimination, equal employment opportunity, and affirmative action that are applicable to a Grantee.

[Formerly Sec. 9.1-9-6; new Sec. 9.2-13-5]

**Section 9.2-13-6. Time of essence.**

(a) Whenever this Chapter or a franchise agreement sets forth any time for any act to be performed by or on the behalf of a Grantee, such time shall be deemed of the essence and the Grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the County to invoke the remedies available under the terms and conditions of this Chapter and its franchise agreement.

(b) Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Chapter or any franchise agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein or in a franchise agreement, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

[Formerly Sec. 9.1-9-7; new Sec. 9.2-13-6]

**Section 9.2-13-7. Preemption.**

In the event that federal or state laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Chapter, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision herein that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on all Grantees, without the requirement of further action on the part of the County.

[Formerly Sec. 9.1-9-11; new Sec. 9.2-13-7]

1

2 2. That Chapter 9.1 of the Fairfax County Code is repealed, except as set forth in enactment  
3 clause 3 below.

4 3. The repeal of Chapter 9.1 shall not affect the validity of any act or violation done or  
5 committed before the repeal of that Chapter; or any liquidated damage, penalty, sanction, or  
6 forfeiture incurred, or any right established, accrued, or accruing, under that Chapter before the  
7 repeal; or any notice of violation or enforcement action initiated pursuant to that Chapter before  
8 the repeal. Any such acts, violations, liquidated damages, penalties, sanctions, forfeitures, rights,  
9 or enforcement actions shall be governed by Chapter 9.1, which is continued in effect for that  
10 purpose.

11 4. With respect to occurrences after the repeal of Chapter 9.1, any references to Chapter 9.1  
12 in cable franchise agreements shall be construed to refer to the corresponding provisions of  
13 Chapter 9.2.

14 5. That this ordinance shall become effective on January 1, 2020.

15

16 GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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\_\_\_\_\_

Jill G. Cooper

Clerk to the Board of Supervisors

## CHAPTER 9.2 AMENDMENTS TO CHAPTER 9.1 OF THE FAIRFAX COUNTY CODE RELATING TO CABLE TELEVISION

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1

2 **CHAPTER 9.2 AMENDMENTS TO CHAPTER 9.1 OF THE FAIRFAX COUNTY CODE**  
3 **RELATING TO CABLE TELEVISION**

4

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[Amendments to previous text are indicated by ~~strikeout~~ and underline.]

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9

AN ORDINANCE to amend the Fairfax County Code by adding a new chapter numbered ~~9.1~~ 9.2  
and by repealing Chapter 9.1, relating generally to cable regulation and franchising.

10

11

12

13

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

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16

1. That the Fairfax County Code is amended by adding a new chapter number ~~9.1~~ 9.2 as follows:

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## ARTICLE 2.

## Definitions.

## Section 9.2-2-1. Definitions.

The following words and phrases when used in this Chapter shall, for the purpose of this Chapter, have the meanings respectively ascribed to them in this Section except in those instances where the context clearly indicates a different meaning. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in the Cable Act, Title 47 U.S.C. §§ 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning.

[Formerly Sec. 9.1-2-1; new Sec. 9.2-2-1]

~~Access channel means any channel on a Cable system set aside by a Grantee for public, educational, or governmental use.~~

(a) ~~Affiliate~~ means any ~~P~~person who owns or controls, is owned or controlled by, or is under common ownership or control with, a Grantee. For purposes of this definition, “owns” means an ownership interest of more than five percent.

~~Basic service means (i) any service tier that includes the retransmission of local television broadcast signals; (ii) any public, educational, and governmental access programming required by a Franchise agreement to be provided to Subscribers as basic service; and (iii) any additional video programming signals or services added to basic service by a Grantee.~~

(b) ~~Board~~ means the Board of Supervisors of the County of Fairfax, Virginia.

(c) ~~Cable Act~~ means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended from time to time.

1       (d) Cable service means: (i) the one-way transmission to Subscribers of video  
2 programming or other programming services; and (ii) Subscriber interaction, if any, which is  
3 required for the selection or use of such video programming or other programming service.

4       (e) Cable system ~~or~~ or system means a facility, consisting of a set of closed  
5 transmission paths and associated signal generation, reception, and control equipment that is  
6 designed to provide Cable service which includes video programming and which is provided to  
7 multiple Subscribers within the County, except that ~~such~~ this definition ~~shall~~ does not include: (i)  
8 a system ~~which~~ that serves fewer than twenty Subscribers; (ii) a facility that serves only to  
9 retransmit the television signals of one or more television broadcast stations; (iii) a facility ~~which~~  
10 that serves Subscribers without using any public ways; (iv) a facility of a common carrier ~~which~~  
11 that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934,  
12 47 U.S.C. § 201, et seq., except that such facility shall be considered a Cable system (other than  
13 for purposes of 47 U.S.C. § 541(c)) to the extent ~~such~~ the facility is used in the transmission of  
14 video programming directly to Subscribers, unless the extent of such use is solely to provide  
15 interactive on-demand services; (v) an open video system that complies with 47 U.S.C. § 573; (vi)  
16 any facilities of any electric utility used solely for operating its electric systems; or (vii) any portion  
17 of a system that serves fewer than fifty Subscribers in the County where such portion is a part of  
18 a larger system franchised in an adjacent county, city or town. The foregoing definition of “cable  
19 system” ~~shall not be deemed to~~ does not circumscribe or limit the valid authority of the County to  
20 regulate or franchise the activities of any other communications system or provider of  
21 communications services to the full extent permitted by law.

22       (f) ~~Communications Administrator~~ Cable Television Administrator means the present  
23 or succeeding employee of Fairfax County designated by the County as the Cable Television

Administrator, who may be referred to in a franchise agreement ~~or~~ as the Communications Administrator, and who shall have the duties and authority prescribed in this Chapter and otherwise prescribed by the Board.

(g) County or Fairfax County means the County of Fairfax, Virginia, excluding the Towns of Clifton, Herndon, and Vienna.

~~Customer means "Subscriber" or "former Subscriber".~~

(h) Days means calendar days unless otherwise specified.

[New in Chapter 9.2]

(i) Department means the Department of Cable and Consumer Services or any successor agency.

[New in Chapter 9.2]

~~Educational Access Channel or Educational Channel means any Channel required by a Franchise agreement to be provided by a Grantee on its Basic service tier to the County for educational use.~~

(j) Equitable Pprice means fair market value adjusted downward for the harm to the County or Ssubscribers, if any, resulting from a Grantee's breach of its Ffranchise agreement or violation of this Chapter, and as further adjusted to account for other equitable factors that may be considered consistent with 47 U.S.C. § 547.

(k) Fair market value means the price which property will bring when it is offered for sale by one who desires, but is not obligated, to sell it, and is bought by one who is under no necessity of having it.

1       (l) Federal Communications Commission or *FCC* means that Federal agency as  
2 presently constituted by the Communications Act of 1934, as amended, its designee, or any  
3 successor agency.

4       (m) Force Majeure has the meaning specified in a Grantee's franchise agreement.  
5 ~~means, notwithstanding any other provision of this Chapter or a Franchise agreement, that a~~  
6 ~~Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part,~~  
7 ~~its obligations pursuant to this Chapter or a Franchise agreement due, directly or indirectly, to~~  
8 ~~severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether~~  
9 ~~an actual declaration of war is made or not), insurrection, riot, act of public enemy, action or~~  
10 ~~inaction of any government instrumentality or public utility including condemnation, accidents for~~  
11 ~~which a Grantee is not primarily responsible, fire, flood or other act of God, sabotage or other~~  
12 ~~events to the extent that such causes or other events are beyond the reasonable control of a Grantee.~~  
13 ~~In the event that any such delay in performance or failure to perform affects only part of a Grantee's~~  
14 ~~capacity to perform, a Grantee shall perform to the maximum extent it is able to perform and shall~~  
15 ~~take all reasonable steps within its power to correct such cause(s) in as expeditious a manner as~~  
16 ~~possible.~~

17       (n) Franchise means a nonexclusive initial authorization, or renewal thereof, issued by  
18 the County which authorizes the construction, maintenance, ~~or~~ and operation of a Cable system  
19 along the public ways within ~~one or more~~ a specified Franchise areas area of the County ~~with~~  
20 ~~boundaries as described in Section 9.1-7-1. A Franchise shall not be construed to~~ does not include  
21 any general license or grant of permission ~~required~~ for the privilege of transacting and carrying on  
22 a business within the County ~~as that~~ that may be required by other ordinances and laws ~~of the County,~~  
23 or for attaching devices to poles or structures, whether owned by the County or a private entity, or

1 for excavating or performing other work in or along public ways, unless otherwise provided in a  
2 Grantee's Franchise agreement.

3 (o) Franchise agreement means a contract entered into pursuant to this Chapter  
4 between the County and a Grantee that sets forth, subject to this Chapter, the terms and conditions  
5 under which a Franchise will be granted and exercised.

6 (p) Franchise area means each of the North County, South County, or Reston  
7 Franchise areas of the County, with boundaries as more fully described in ~~Section 9.1-7-1~~ Section  
8 9.2-3-3, that a Grantee is authorized to serve by its Franchise agreement.

9 ~~Governmental Access Channel or Government Channel means any Channel required by a~~  
10 ~~Franchise agreement to be provided by a Grantee on its Basic service tier to the County for~~  
11 ~~government use.~~

12 (q) Grantee means a natural Person, domestic or foreign corporation, partnership,  
13 limited liability company, association, joint venture, or organization of any kind granted a  
14 Franchise to provide cable service by the Board ~~under this ordinance~~, and any lawful successor  
15 thereto, or transferee or assignee thereof.

16 (r) Gross revenues has the meaning assigned to it in a Grantee's franchise agreement.  
17 ~~means any and all cash, credits, property or consideration of any kind or nature from the operation~~  
18 ~~of the Cable system to provide Cable services as specified in a Franchise agreement arising from,~~  
19 ~~attributable to, or in any way derived directly or indirectly by a Grantee, its affiliates, or any Person~~  
20 ~~in which a Grantee has a financial interest, or by any other entity that is a cable operator of the~~  
21 ~~system. Gross revenues shall not include any taxes on services furnished by a Grantee which are~~  
22 ~~imposed directly on any Subscriber or user by the Commonwealth of Virginia, the County, or other~~  
23 ~~governmental unit and which are collected by a Grantee on behalf of said governmental unit or as~~

1 ~~specified in a Franchise agreement. A franchise fee is not such a tax. Gross revenues shall not~~  
2 ~~include any revenues specifically excluded in a Grantee's Franchise agreement.~~

3 (s) *Institutional network or I-Net* means an institutional network, as that term is defined  
4 in 47 U.S.C. § 531(f), constructed for the County's use, which is not generally available to the  
5 public.

6 [New in Chapter 9.2]

7 ~~—— *Leased access channel* means any channel on a cable system designated or dedicated for~~  
8 ~~use by a person unaffiliated with a Grantee pursuant to 47 U.S.C. § 532.~~

9 (t) *Multiple dwelling unit or MDU* means a residential building containing three or  
10 more separate dwelling units located on a single lot or parcel of ground, generally with a common  
11 outside entrance(s) for all the dwelling units, where "dwelling unit" means one or more rooms that  
12 are arranged, designed, used, or intended for use as a complete, independent living facility,  
13 including provisions for living, sleeping, eating, cooking, and sanitation.

14 [New in Chapter 9.2]

15 (u) *Normal business hours* means those hours during which most similar businesses in  
16 the community are open to serve customers. In all cases, "normal business hours" must include  
17 some evening hours at least one night per week and/or some weekend hours.

18 [New in Chapter 9.2]

19 (v) *Normal operating conditions* means those conditions that are within the control of  
20 the a Grantee, i.e., not force majeure conditions. Conditions that are not within the control of the  
21 Grantee include, but are not limited to, natural disasters, civil disturbances, power outages,  
22 telephone network outages, weather or traffic conditions impairing construction or normal

1 operation activities, vandalism, accidents for which Grantee is not primarily responsible, sabotage,  
2 and the action or inaction of any governmental unit. Consistent with the foregoing, ~~e~~ Conditions  
3 that are within the control of a Grantee include, but are not limited to, special promotions, pay-  
4 per-view events, rate increases, regular ~~or reasonably anticipatable~~ peak or seasonal demand  
5 periods, and ~~construction~~, maintenance or upgrade of a Grantee's ~~C~~able system.

6 (w) PEG means public, educational, and governmental.

7 (x) Person means an individual, partnership, association, joint stock company,  
8 organization, corporation, joint venture, limited liability company, or any lawful successor thereto  
9 or transferee thereof, but such term does not include the County.

10 ~~Public access channel means any channel required by a Franchise agreement to be~~  
11 ~~provided by a Grantee on its Basic service tier to the County or set aside by a Grantee for use by~~  
12 ~~the general public, including groups and individuals, and which is available for such use on a non-~~  
13 ~~discriminatory basis.~~

14 (y) Public way or Public Rights of Way means the surface, the air space above the  
15 surface, and area below the surface of any public street, highway, lane, path, alley, sidewalk,  
16 boulevard, drive, concourse, bridge, tunnel, ~~park~~, parkway, waterway, dock, bulkhead, wharf, pier,  
17 ~~public water or public easements~~, easement dedicated for public use, or other public way within  
18 the County, which, consistent with the purposes for which it was dedicated, may be used for the  
19 purpose of installing and maintaining a ~~C~~able system.

20 ~~Rate regulated services means all services, including related equipment and installation~~  
21 ~~fees, subject to rate regulation by the County pursuant to applicable federal and Virginia law.~~

22 ~~Regular subscriber service means the distribution to Subscribers of signals over a Cable~~  
23 ~~system on all channels except those for which a per program or per channel charge is made, two-~~



way services, and those services intended for reception by equipment other than a television receiver.

(z) *Service interruption* means the loss of picture or sound on one or more cable channels.

(aa) *Service tier* means a category of Cable service or other services provided by a Grantee and for which a separate rate is charged by the Grantee.

(bb) *Subscriber* means any Person who legally receives or contracts with a Grantee to receive Cable service(s) and does not further distribute such Cable service(s).

~~\_\_\_\_\_ *User* means any Person or organization using a PEG or leased access channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.~~

(cc) *Video programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(dd) *Written or in writing* means, unless otherwise specified, communication in written form, which may be made via hardcopy, e-mail to a verified e-mail address, or other similar medium that the recipient can reasonably be expected to read. Such communication may direct the recipient to clearly specified Web pages containing the complete details.

[New in Chapter 9.2]

ARTICLE 3.

Grant of Franchises.

**Section 9.2-3-1. Requirement of a Franchise.**

No person shall construct, install, maintain, or operate a cable system or part of a cable system on, over, through, or within a public way in the County, or on, over, through, or within any other public property of the County, unless that person has been granted a franchise by the Board and its franchise agreement is in full force and effect.

[Formerly Sec. 9.1-3-1; new Sec. 9.2-3-1]

**Section 9.2-3-2. Grant of Franchise.**

(a) The Board may grant one or more non-exclusive cable franchises, and each such franchise shall be awarded by ordinance in accordance with and subject to the provisions of this Chapter.

(b) This Chapter may be amended from time to time, and in no event shall this Chapter be considered a contract between the County and a Grantee such that the County would be prohibited from amending any provision hereof.

(c) A franchise agreement may only be amended by mutual written consent of the Board and Grantee.

[Formerly Sec. 9.1-3-2; new Sec. 9.2-3-2]

**Section 9.2-3-3. Franchise areas.**

~~Applications for a Franchise will be accepted for one or more of the following Franchise areas:~~

(a) *Reston Franchise Area:* That portion of Fairfax County beginning at the intersection of Fox Mill Road, Route No. 665, and Stuart Mill Road, Route No. 671; thence proceeding in a northwesterly direction on Fox Mill Road, Route No. 665, to a point where Fox Mill Road crosses the Columbia Gas Transmission Corporation pipeline easement; thence following said pipeline easement in a northeasterly direction to the Dulles Airport Access Road; thence westerly on the Dulles Airport Access Road to the easterly limits of the Town of Herndon; thence northeasterly along the boundary of the Town of Herndon to Elden Street, Route No. 606, said point also being at the intersection of Stuart Road, Route No. 680; thence northeasterly on Stuart Road, Route No. 680, to Sugarland Road, Route No. 604; thence northeasterly on Sugarland Road, Route No. 604, to Leesburg Pike, Route No. 7; thence southeasterly on Leesburg Pike, Route No. 7, to Baron Cameron Avenue, Route No. 606; thence southwesterly on Baron Cameron Avenue, Route No. 606, to Hunter Mill Road, Route No. 674; thence following Hunter Mill Road, Route No. 674, thence southerly to the northeastern corner of that parcel identified by Fairfax County Tax Map Reference No. 18-3, 001, parcel 1; thence following southwesterly along the northern boundary of parcel 1 to the northern boundary of the Equestrian Park subdivision; thence following the northern and western boundaries of the Equestrian Park subdivision to the intersection of Sunset Hills Road, Route No. 675; thence following Sunset Hills Road easterly to the intersection of Hunter Mill Road, Route No. 674; thence following Hunter Mill Road southerly to the intersection of Sunrise Valley Drive, Route No. 5320; thence proceeding southeasterly along the eastern boundary of Reston, Section 22, to the eastern corner of that parcel identified by Fairfax County Tax Map Reference No. 27-2, 005, parcel 57; thence following southwesterly along the eastern border of Reston, Section 22, and Reston, Section 24; thence following the southern boundary of Reston, Section 24 and Reston, Section 24A; thence proceeding southeasterly along

1 the eastern boundary of that parcel identified by Fairfax County Tax Map Reference No. 27-1,  
2 0012, parcel 3; thence following southeasterly along the eastern boundary of Reston, Section 10,  
3 to the intersection of Lawyers Road, Route No. 673, and Hunter Station Road, Route No. 677;  
4 thence proceeding westerly on Lawyers Road, Route No. 673, past the intersection of Birdfoot  
5 Lane, Route No. 671, to the northeast corner of the Lawyer's Glen subdivision; thence proceeding  
6 southwesterly along the southern and eastern boundaries of the Lawyer's Glen subdivision; thence  
7 following northwesterly along the western boundary of the Lawyer's Glen subdivision to a point  
8 of intersection with the southeast corner of the Lawyer's Ridge subdivision; thence proceeding  
9 southwesterly along the southern boundary of the Lawyer's Ridge subdivision to a point of  
10 intersection with the eastern boundary of Reston, Section 18; thence following southeasterly to a  
11 point of intersection with the eastern corner of the Stoneledge subdivision; thence proceeding in a  
12 southerly direction along the eastern boundary of the Stoneledge subdivision ; thence following in  
13 a westerly direction along the northern boundary of five parcels identified by Fairfax County Tax  
14 Map Reference Nos. 36-2, 001, parcel 2A, 13A, 13, 12A and 11, to a point of intersection with the  
15 southernmost corner of Reston, Section 18<sub>2</sub>; thence proceeding in a westerly direction along the  
16 southern boundary of Reston; Section 18, to a point of intersection with the eastern boundary of  
17 Reston, Section 16; thence following southwesterly from said intersection along the eastern  
18 boundary of Reston, Section 16<sub>2</sub> to the northeastern boundary of that parcel identified by Fairfax  
19 County Tax Map Reference No. 36-2, 009, parcel 2; thence proceeding northerly along the  
20 northeastern boundary of that parcel identified by Fairfax County Tax Map Reference No. 36-2,  
21 009, parcel 2, to the border of that parcel identified by Fairfax County Tax Map Reference No. 36-  
22 2, 009, parcel 1; thence following southwesterly on the southeastern boundary of those two parcels  
23 identified by Fairfax County Tax Map Reference Nos. 36-2, 009, parcel 1 and 3, to the intersection

1 of the southeastern boundary of Fox Mill District Park; thence following the eastern and northern  
2 boundaries of Fox Mill District Park northwesterly to Fox Mill Road, Route No. 665; thence  
3 northwesterly on Fox Mill Road, Route No. 665, to the intersection of Fox Mill Road, Route No.  
4 665, and Reston Avenue, Route No. 602; thence following Reston Avenue, Route No. 602,  
5 northeasterly to the intersection of Fox Mill Road, Route No. 665; thence northwesterly on Fox  
6 Mill Road, Route No. 665, to the point where Fox Mill Road, Route No. 665, crosses the Columbia  
7 Gas Transmission Corporation pipeline easement, being the point of beginning.

8 Whenever the Reston ~~F~~franchise area is described by reference to the Columbia Gas  
9 Transmission Corporation pipeline easement or to roads, the ~~F~~franchise area shall be delineated  
10 by the line following the middle of the aforementioned pipeline easement or roads. However, if  
11 construction of a franchise for the Reston Franchise Area reasonably requires a Grantee to use  
12 poles or easements along any roadway which serves as a border for that ~~F~~franchise area, and if  
13 such poles or easements are located beyond the centerline of any such roadway, and if the Grantee  
14 obtains proper permission for the use of such poles or easements and pays any applicable usage or  
15 attachment fees, then the Grantee may use such poles or easements to construct and operate its  
16 system in the Reston Franchise ~~a~~Area so long as the Grantee does not provide ~~C~~cable service to  
17 an area for which it does not hold a ~~F~~franchise. The map which shows the above-described  
18 boundaries and which is dated May 18, 1988, is incorporated herein and is designated as the official  
19 map of the Reston Franchise ~~a~~Area. That map shall be kept by the Clerk to the Board among the  
20 official records of the Board of Supervisors, and to the extent that the boundaries of the map and  
21 the boundaries described by the text of this ~~S~~subsection are in conflict either by realignment of a  
22 road or otherwise, and where it cannot be determined clearly where the boundary may lie, then the  
23 boundaries shown on the official map shall take precedence over the text of this ~~S~~subsection.

(b) *North County Franchise Area*: The area of the County north of a line beginning at the intersection of Little River Turnpike, Route No. 236, and westerly city limits of the City of Alexandria; thence westerly along Little River Turnpike, Route No. 236, to the eastern boundary of the City of Fairfax; thence along the eastern and northern boundary of the City of Fairfax to Jermantown Road, Route No. 665; thence northeasterly on Jermantown Road to Oakton Road, Route No. 644; thence westerly on Oakton Road, Route No. 644, to Waples Mill Road, Route No. 664; thence westerly on Waples Mill Road to West Ox Road, Route No. 608; thence northwesterly on West Ox Road, Route No. 608, to Centreville Road, Route No. 657; thence northerly on Centreville Road to Frying Pan Road, Route No. 608; thence northwesterly on Frying Pan Road to the end of said road; thence due west to point in the center of Sully Road, Route No. 28; thence north on Sully Road to the County line, for the point of ending; excluding the Reston Franchise Area as defined herein, the Town of Herndon, and the Town of Vienna.

Whenever the North County Franchise ~~a~~Area is described by reference to the Columbia Gas Transmission Corporation pipeline easement or to roads, the ~~F~~franchise area shall be delineated by the line following the middle of the aforementioned pipeline easement or roads. However, if construction of the North County Franchise ~~a~~Area reasonably requires a Grantee to use poles or easements along any roadway which serves as a border for that ~~F~~franchise area, and if such poles or easements are located beyond the centerline of any such roadway, and if the Grantee obtains proper permission for the use of such poles or easements, then the Grantee may use such poles or easements to construct and operate its system in the North County Franchise ~~a~~Area so long as a Grantee does not provide cable service to an area for which it does not hold a ~~F~~franchise.

1       The map which shows the boundaries of the Reston Franchise Area is designated above as  
2   the official map of the Reston Franchise aArea. To the extent that the boundaries of that map and  
3   the boundaries described by the text of this subsection are in conflict, either by realignment of a  
4   road or otherwise, and where it cannot be determined clearly where the boundary may lie, then the  
5   boundary between the Reston Franchise aArea and the North County Franchise aArea, as shown  
6   on the official map, shall take precedence over the text of this subsection.

7       (c)     *South County Franchise Area*: That area of the County lying south of the southern  
8   border of the North County Franchise aArea.

9       [Formerly Sec. 9.1-7-1; new Sec. 9.2-3-3]

#### 10   **Section 9.2-3-4. Franchise term.**

11       The term of ~~an original F~~a franchise shall not exceed fifteen years from the date the  
12   Ffranchise is accepted by a Grantee. ~~The term of a renewed Ffranchise shall be no more than~~  
13   ~~fifteen years.~~ This provision shall not be construed to prohibit or restrict the extension of an  
14   existing Ffranchise term pending renewal proceedings pursuant to applicable law.

15       [Formerly Sec. 9.1-5-1; new Sec. 9.2-3-4]

#### 16   **Section 9.2-3-5. Continuity of service.**

17       ~~— (a) — A Grantee shall operate its Ccable system pursuant to this Chapter and its~~  
18   ~~Ffranchise agreement without interruption, except as otherwise provided by this Chapter or its~~  
19   ~~Ffranchise agreement. Following the expiration or revocation of its Ffranchise, a Grantee shall, at~~  
20   ~~the County's request, as trustee for its successor in interest, operate its Ccable system for a~~  
21   ~~temporary period (the "Transition Period") as necessary to maintain service to Subscribers, and~~  
22   ~~shall cooperate with the County to assure an orderly transition from it to the County or another~~

~~Ffranchise holder.~~ A Grantee shall operate its cable system pursuant to its franchise requirements without interruption, except as otherwise provided in this Chapter or its franchise agreement. If the Grantee's system is transferred to another party, the Grantee shall ensure an orderly transfer of operations so that subscribers' service is not interrupted.

~~(b) — During the Transition Period, a Grantee shall not sell any of its Ccable system assets, nor make any physical, material, administrative or operational change that would tend to degrade the quality of service to Subscribers, decrease Gross Revenues, or materially increase expenses without the express permission, in writing, of the County or its assigns.~~

~~—— (c) — The County may seek legal and/or equitable relief to enforce the provisions of this Section.~~

~~—— (d) — The Transition Period shall be no longer than the reasonable period required to arrange for an orderly transfer of the Ccable system to the County or to another Ffranchise holder, unless mutually agreed to by a Grantee and the County. During the Transition Period, a Grantee will continue to be obligated to comply with the terms and conditions of this Chapter, its Ffranchise agreement, and applicable laws and regulations.~~

~~—— (e) — If a Grantee abandons its Ccable system during the Ffranchise term, or fails to operate its Ccable system in accordance with the terms of this Chapter and its Ffranchise agreement during any Transition Period, the County, at its option, may operate a Grantee's Ccable system, designate another entity to operate the Grantee's Ccable system temporarily until the Grantee restores service under conditions acceptable to the County or until a Grantee's Ffranchise agreement is revoked and a new Grantee selected by the County is providing service, or obtain an injunction requiring a Grantee to continue operations.~~



~~(f) For its management services during the Transition Period, the Grantee shall be entitled to receive as compensation the "Net Income" generated during the Transition Period. For the purposes of this Subsection, "Net Income" means the amount remaining after deducting from Gross revenues all of the actual, direct and indirect, expenses associated with operating the Grantee's Cable system, including the Franchise Fee, interest, depreciation and all taxes, all as determined in accordance with generally accepted accounting principles.~~

[Formerly Sec. 9.1-5-7; new Sec. 9.2-3-5]

#### **Section 9.2-3-6. Service availability.**

Pursuant to the conditions in its franchise agreement, ~~Aa~~ Grantee shall make its ~~C~~cable services available at all residences, businesses, and other structures within its ~~F~~franchise area or areas as long as the current or potential ~~S~~subscriber's financial and other obligations to the Grantee are satisfied. ~~A Grantee shall make Ccable service available without line extension surcharges to at least 85% of the total occupied dwelling units in its Ffranchise area or areas pursuant to the terms and conditions specified in its Ffranchise agreement.~~ A Grantee may refuse to provide ~~C~~cable service ~~when:~~ (i) when it is unable pursuant to normal industry practice after reasonable efforts to obtain necessary programming, real property or access rights; (ii) when its prior service, payment, or theft of service history with a ~~P~~person has been unfavorable; or, (iii) ~~pursuant to written waiver by the Communications Administrator~~ for other grave causes, such as threats to the Grantee's employees, subject to the right of the Cable Television Administrator or designee to review and approve such refusal.

[Formerly Sec. 9.1-7-2(a); new Sec. 9.2-3-6]

1   **Section 9.2-3-7. Line extension requirements.**

2           (a)     Subject to the requirements established in ~~§subsection 9.1-7-2(a), Section 9.2-3-6,~~  
3   a Grantee may condition the extension of its ~~C~~cable service to lower-density areas of the County  
4   on the potential ~~S~~subscriber's payment of a line extension surcharge. ~~Such extensions shall be~~  
5   ~~subject to the least burdensome of: (i) the line extension requirements of its Franchise agreement;~~  
6   ~~or, (ii) the line extension requirements in any other Franchise agreement then in effect for the same~~  
7   ~~Franchise area. For the purposes of this Subsection, "least burdensome" means those requirements~~  
8   ~~for line extension that take effect at the highest densities of occupied dwelling units per mile~~  
9   ~~passed at which line extension surcharges could be applied. Such surcharge shall be no more than~~  
10   ~~the amount necessary to recover the Grantee's additional actual costs of construction from the~~  
11   ~~subscribers paying the surcharge.~~

12           (b)     If a resident or the County requests a cost estimate for a line extension or drop  
13   installation to a particular potential subscriber, a Grantee shall provide such estimate within 45  
14   days, without charge to the resident or the County. Such time period may be extended by the Cable  
15   Television Administrator. Such an estimate shall include the Grantee's calculation of density, a  
16   design, and a breakdown of the cost, including but not limited to materials and labor, as worked  
17   out by the Grantee. A Grantee may include reasonable site survey costs in its estimate, but may  
18   not charge the resident or the County for such site survey costs unless the resident or the County  
19   agrees to pay for the extension. Upon its request, the County may review such cost estimate, which  
20   review may include, without limitation, investigation of alternative routes; however, the Grantee  
21   shall have sole discretion as to the use of any alternative route. If a resident signs an agreement to  
22   pay the Grantee for costs relating to a line extension or drop installation, the agreement shall  
23   include the specific amount the resident is obliged to pay.

[New in Chapter 9.2]

~~(b)~~(c) To the extent that may be allowed by a Grantee's Ffranchise agreement or by federal or state law, tThe County may require such a Grantee to interconnect its Ccable system with other cable systems or other broadband communications facilities (e.g., a television communication network connecting public institutions or facilities) located adjacent to or within the County. Interconnection shall be made at such time as provided by applicable Franchise agreement or within ~~one hundred eighty~~ 180 days from the effective date of a request by the County, or within a longer period of time as may be specified by the County in its request. ~~No interconnection shall take place without the prior approval of the County.~~ All signals to be interconnected shall comply with FCC technical standards for all classes of signals. This Ordinance Chapter does not grant any retransmission rights.

~~(c) — Each Grantee shall make every reasonable effort to cooperate with cable Ffranchise holders in contiguous communities in order to provide Ccable service in areas within the County.~~

~~(d) — The County shall make every reasonable effort to cooperate with the franchising authorities in contiguous communities, and with each Grantee, in order to provide Ccable service in areas outside the County.~~

[Formerly Sec. 9.1-7-3; new Sec. 9.2-3-7]

#### **Section 9.2-3-8. Franchise validity.**

A Grantee agrees, by its acceptance of a Ffranchise, to accept the validity of the terms and conditions of ~~this Chapter and its Ffranchise agreement, and of this Chapter as it stands at the time of acceptance,~~ in their entirety and that it will not, at any time, proceed against the County in any claim or proceeding challenging any term or provision of this Chapter or its Ffranchise as

unreasonable, arbitrary, or void, or that the County did not have the authority to impose such term or condition.

[Formerly Sec. 9.1-9-3; new Sec. 9.2-3-8]

**Section 9.2-3-9. Acts at Grantee's expense.**

Any act that a Grantee is or may be required to perform under this Chapter, a franchise agreement, or applicable law shall be performed at the Grantee's expense, unless expressly provided to the contrary in this Chapter, a franchise agreement, or applicable law.

[Formerly Sec. 9.1-3-3; new Sec. 9.2-3-9]

**Section 9.2-3-10. Eminent Domain.**

Nothing in this Chapter shall be deemed or construed to impair or affect, in any way or to any extent, the County's rights of eminent domain.

[Formerly Sec. 9.1-3-4; new Sec. 9.2-3-10]

**Section 9.2-3-11. Notice to Grantee.**

The Board shall not grant a renewal, approve a transfer, or shorten or revoke a franchise unless the County has given the Grantee at least ~~thirty~~ 30 days' advance written notice of the initial meeting at which the Board will consider such action. The notice shall advise the Grantee of the time, place, and purpose of the meeting. The Board's consideration or decision may be carried over to a later date with oral notice to the Grantee.

[Formerly Sec. 9.1-5-2; new Sec. 9.2-3-11]

**Section 9.2-3-12. Acceptance.**

~~(a) — An applicant or Grantee to whom the Board grants one or more non-exclusive Franchises shall, in addition to the non-refundable application fee specified herein, pay to the~~

1 County at the time the Grantee files its Franchise agreement acceptance, Seventy five Thousand  
2 Dollars per Franchise area. The payment shall be non-refundable, shall be made payable to the  
3 order of the "County of Fairfax" and may be used to offset in whole or in part any direct costs  
4 incurred by the County in granting the Franchise.

5 (b) A Grantee acknowledges by its acceptance of a Franchise that it has not been induced  
6 to accept the same by any promise, oral or written, by or on behalf of the County or by any third  
7 person regarding any term or condition of this Chapter or a Franchise agreement which is not  
8 expressed therein, and that no promise or inducement, oral or written, has been made to any County  
9 employee or official regarding receipt of a cable Franchise.

10 (c)(b) A Grantee acknowledges by its acceptance of a Franchise that it has carefully read  
11 the terms and conditions of this Chapter and the Franchise agreement and accepts all of the terms  
12 and conditions imposed by this Chapter and the Franchise agreement and agrees to abide by the  
13 same.

14 (d)(a) A Franchise and all of its terms and conditions shall be accepted by a Grantee by  
15 written instrument filed in hardcopy with the County Executive within ~~thirty calendar~~ 30 days after  
16 the granting of the Franchise.

17 [Formerly Sec. 9.1-9-8; new Sec. 9.2-3-12]

## ARTICLE 4.

Franchise Applications.**Section 9.2-4-1. Application for grant of an initial Franchise.**

(a) An application for an initial cable Franchise shall be submitted to the ~~Communications Administrator~~ Cable Television Administrator in writing. ~~Applications for one or more Franchise areas shall be accompanied by a non-refundable application fee of Six Thousand Dollars payable to the order of the "County of Fairfax," which amount may be used by the County to offset, in whole or in part, direct expenses incurred in the franchising and evaluation procedures, including but not limited to staff time and consulting assistance. Payments made by an applicant under this Section are not franchise fees.~~

(b) To be acceptable for filing, a signed original of the application shall be submitted together with ~~twelve copies~~ an electronic copy of the application in searchable PDF format or other searchable electronic format acceptable to the County. The application must ~~conform to any applicable request for proposals, and~~ contain all required information required in this Section or pursuant to applicable federal or state law. ~~All applications shall include the names and addresses of Persons authorized to act on behalf of all applicants with respect to the application, in accordance with this Chapter.~~

(b) — At the time of filing an application for a Franchise area or areas pursuant to this Section, an applicant shall obtain, pay all premiums for, and deliver to the County written evidence of payment of premiums and originals of a bond or bonds running to the County with good and sufficient surety in the amount of Five Hundred Thousand Dollars.

(1) — Such bond(s) shall be in a form acceptable to the County and shall protect the County from all damages or losses arising from the failure of the Grantee to accept the

1 Franchise awarded in conformity with this Chapter, or to strictly adhere to the substance  
2 of its Franchise proposal.

3 ~~\_\_\_\_\_ (2) Such bond or bonds shall be maintained for a period of two years from the~~  
4 ~~time of a Grantee's acceptance of a Franchise.~~

5 (c) The application for a grant of an initial Franchise shall provide, at a minimum, the  
6 following information, and shall clearly identify, by Code section, where each item of information  
7 required by this Section appears in the application:

8 (1) ~~The~~ the name and address of the applicant;

9 ~~\_\_\_\_\_ (2) and an~~ identification of the ownership and control of the applicant,  
10 including: ~~the names and addresses of the ten largest holders of an ownership interest in the~~  
11 ~~applicant and affiliates of the applicant, and all Persons with five percent or more ownership~~  
12 ~~interest in the applicant and any person that controls the applicant, repeating such disclosure for~~  
13 ~~any persons that control or own more than five percent of those persons, and so on until the ultimate~~  
14 ~~owners and controllers of the applicant are reached and its affiliates; the Persons who control the~~  
15 ~~applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other~~  
16 ~~business affiliation and cable system ownership interest of each named Person.; provided,~~  
17 ~~however, that if a person with five percent or more ownership interest at any stage is a publicly~~  
18 ~~traded company, no further information on that publicly traded company's ownership is required;~~

19 ~~(2)(3) A~~ a demonstration of the applicant's technical ability to construct and/or  
20 operate the proposed Ccable system; ~~including identification of key personnel;~~

21 ~~(3)(4) A~~ a demonstration of the applicant's legal qualifications to construct and/or  
22 operate the proposed Ccable system; ~~including but not limited to a demonstration that the applicant~~  
23 ~~meets the following criteria:~~

1 ~~\_\_\_\_\_ (A) The applicant shall have the necessary authority under Virginia law~~  
2 ~~to operate a Cable system;~~

3 ~~\_\_\_\_\_ (B) The applicant shall have the necessary authority under federal law~~  
4 ~~to hold the Franchise and to operate a Cable system. An applicant must have, or show that it is~~  
5 ~~qualified to obtain, any necessary federal licenses or authorizations required to operate the system~~  
6 ~~proposed;~~

7 ~~\_\_\_\_\_ (C)(5) The applicant shall report if, whether, at any time during the ten years~~  
8 ~~preceding the submission of the application, the applicant was convicted of any act or omission of~~  
9 ~~such character that the applicant cannot be relied upon to deal truthfully with the County and the~~  
10 ~~Subscribers of the C~~able system, or to substantially comply with its lawful obligations under~~~~  
11 ~~applicable law, including but not limited to obligations under consumer protection laws and laws~~  
12 ~~prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct. This same criterion~~  
13 ~~shall be applied to each party-person owning an interest of five percent or more in the applicant;~~

14 ~~(4)(6) A a demonstration of the applicant's financial qualifications ~~of the~~~~  
15 ~~applicant, including at least the following: to construct and operate the proposed cable system;~~

16 ~~\_\_\_\_\_ (A) The applicant's proposed rate structure, including projected charges~~  
17 ~~for each service tier, installation, converters and other proposed equipment or services;~~

18 ~~\_\_\_\_\_ (B) A statement prepared by a certified public accountant regarding the~~  
19 ~~applicant's financial ability to complete the construction proposed, to meet the time frame~~  
20 ~~proposed, and to operate the Cable system proposed; and~~

21 ~~\_\_\_\_\_ (C) Pro forma financial projections for the proposed franchise term,~~  
22 ~~including a statement of projected income, and a schedule of planned capital expenditures, with~~  
23 ~~all significant assumptions explained in notes or supporting schedules.~~



1           ~~(5)(7)~~ A a description of the applicant's prior experience in ~~C~~cable system  
2 ownership, construction, and operation, ~~and a listing of communities in which the applicant has a~~  
3 ~~cable franchise. For each community identified pursuant to this provision, the applicant shall~~  
4 ~~provide the name, address and telephone number of the local franchising authority.;~~

5           ~~(6)(8)~~ A a ~~detailed~~ description of the physical facilities proposed, which shall  
6 include at least the following:

7                   (A) ~~A~~a description of the proposed system's ~~channel~~ capacity, technical  
8 design, performance characteristics, headend, and PEG access (~~and including~~ institutional  
9 network) facilities and equipment;

10                   (B) ~~The~~a description of the proposed ~~system and~~ system design,  
11 including but not limited to a description of the miles of plant to be installed, and a description of  
12 the size of equipment cabinets, ~~shielding and electronics~~ and other facilities that will be installed  
13 along the plant route, the power sources that will be used and a description of the noise, exhaust,  
14 and pollutants, if any, that will be generated by the operation of the same;

15                   (C) A a general description of the construction techniques that the  
16 operator proposes to use in installing the system above-ground and underground;

17                   (D); a schedule for construction of the system that describes where and  
18 when construction will begin, how it will proceed, and when it will be completed, and the expected  
19 effect on right-of-way usage, including information on the ability of the public ways to  
20 accommodate the proposed system; and

21                   ~~(D)(E)~~ A a description, where appropriate, of how services will be  
22 converted from existing facilities to new facilities, and what will be done with existing facilities.

~~\_\_\_\_\_ (7) Information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.~~

~~(8)(9) A a demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any community needs assessment conducted by or for the County, and how the applicant will provide adequate PEG or other access channel capacity, facilities, or financial support to meet the community's needs and interests as authorized by 47 U.S.C. § 531, and will provide leased access channels as required by 47 U.S.C. § 532..~~

~~(9) A demonstration to support the findings required by Virginia Code § 15.2-2108(B), as amended.~~

~~(10) A proposed Franchise agreement with supporting analysis that demonstrates that the terms and conditions of the proposed Franchise agreement are not more favorable or less burdensome than those in any existing Franchise agreement within the Franchise area.~~

~~(11) Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this Chapter.~~

~~(12)(10) Aany additional information that the County may have requested of the applicant in writing prior to application that is relevant to the County's consideration of the application;~~

~~(13)(11) Aan affidavit or declaration of the applicant or an authorized officer of the applicant certifying the truth and accuracy of the information in the application;~~

~~\_\_\_\_\_ (12) the names, addresses, phone numbers, and e-mail addresses of all persons authorized to act on behalf of the applicant with respect to the application, pursuant to Section 9.1-3-7 Section 9.2-4-3;~~

1       (13) a cover letter prominently describing any deadline by which the applicant  
2       believes the County must act on the application pursuant to federal or state law, including but not  
3       limited to 47 C.F.R. § 76.41 and Virginia Code § 15.2-2108.21.

4       ~~(d)(14) The Communications Administrator~~ Cable Television Administrator shall review  
5       any application received by the County to determine whether it is complete. ~~The County~~  
6       ~~Communications Administrator~~ Cable Television Administrator may, ~~at its discretion and upon~~  
7       ~~request of an applicant,~~ waive in writing the provision of any of the information required by this  
8       Section. ~~The Communications Administrator~~ Cable Television Administrator may reject any  
9       application that the ~~Communications Administrator~~ Cable Television Administrator deems  
10      incomplete with respect to the information required in subsection (c), specifying in such rejection  
11      what additional information must be supplied to complete the application, and such rejection shall  
12      constitute denial of the application without prejudice for purposes of federal and state law.

13      ~~(d) — All Franchise applications for a Franchise area or areas described in this Chapter~~  
14      ~~shall include a map of suitable scale showing all federal, state, and County roads that identifies the~~  
15      ~~schedule pursuant to which the applicant proposes to construct its Cable system, which shall be~~  
16      ~~incorporated into a Franchise granted pursuant to this Chapter.~~

17      (e) An application pursuant to subsections (a)-(d) shall not be required to the extent  
18      that an entity submits a request to negotiate a franchise pursuant to Virginia Code § 15.2-2108.21.

19      ~~(e)(f)~~ The ~~Communications Administrator~~ Cable Television Administrator may  
20      reasonably request further information in addition to the information provided in the application  
21      from any entity seeking a cable franchise. The ~~applicant~~ entity seeking a franchise shall provide  
22      such information in full cooperation with the County, pursuant to such reasonable deadlines as the  
23      ~~Communications Administrator~~ Cable Television Administrator may establish.

1       (g) In evaluating ~~an application for a~~ potential fFranchise, the County may consider,  
2       ~~but not be limited to, without limitation,~~ the following factors:

3               (1) The extent to which the ~~applicant~~ potential Grantee has substantially  
4       complied with applicable law and the material terms of any existing cable ~~f~~Franchise ~~for in~~ the  
5       County;

6               (2) Whether the quality of the ~~applicant's~~ potential Grantee's service under any  
7       existing ~~f~~Franchise ~~in the County~~, including but not limited to signal quality, response to ~~customer~~  
8       subscriber or former subscriber complaints, and billing practices, ~~and the like~~, has been reasonable  
9       in light of the needs and interests of the communities served;

10              (3) Whether the ~~applicant~~ potential Grantee has the financial, technical, and  
11       legal qualifications to provide ~~C~~cable service;

12              (4) Whether the ~~application satisfies any minimum requirements established by~~  
13       ~~the County and is otherwise~~ applicant's potential Grantee's proposal is reasonable to meet the  
14       future cable-related needs and interests of the community, taking into account the cost of meeting  
15       such needs and interests;

16              (5) Whether the ~~applicant~~ potential Grantee will provide adequate PEG ~~or other~~  
17       access ~~channel~~ capacity, facilities, and financial support ~~and leased access; and;~~

18              (6) Whether the potential Grantee files materially misleading information in its  
19       application or intentionally withholds material information that the potential Grantee lawfully is  
20       required to provide;

21              (6) Whether there is any reason why issuance of a ~~f~~Franchise to the potential  
22       Grantee under the applicable circumstances would not be ~~is~~ in the public interest.

1       (h)     The Consumer Protection Commission may hold one or more public hearings for  
2       purposes of public input.

3       (i)     Any franchise granted by the Board shall be granted by adoption of an ordinance.

4       (j)     If the Board decides not to grant a franchise, it will adopt a resolution stating why  
5       the franchise was not granted.

6       (k)     This Chapter does not grant any existing Grantee or other third party standing to  
7       challenge either (1) the denial of any other person's application or request, or (2) the issuance of a  
8       franchise to any other person.

9             [Formerly Sec. 9.1-3-5; new Sec. 9.2-4-1]

10    **Section 9.2-4-2. Application for grant of renewal franchise.**

11       (a)     ~~If the provisions of 47 U.S.C. § 546(a) (g) are properly invoked, the County shall~~  
12       ~~issue a Request for Renewal Proposal ("RFRP") after conducting a proceeding to: (i) review the~~  
13       ~~renewal applicant's past performance; and (ii) identify the County's future cable-related~~  
14       ~~community needs and interests. The County shall establish deadlines and procedures for~~  
15       ~~responding to the RFRP, may seek additional information from the applicant, and shall establish~~  
16       ~~deadlines for the submission of that additional information. Following receipt of the application~~  
17       ~~responding to the RFRP (and such additional information as may be provided in response to~~  
18       ~~requests), the Board shall determine that the Franchise should be renewed or make a preliminary~~  
19       ~~assessment that the Franchise should not be renewed. If the Board makes a preliminary assessment~~  
20       ~~that the Franchise should not be renewed, and the applicant that submitted the renewal application~~  
21       ~~notifies the County, either in its RFRP response or within ten working days of the preliminary~~  
22       ~~assessment, that it wishes to pursue any rights to an administrative proceeding it has under the~~  
23       ~~Cable Act, then the County shall commence an administrative proceeding after providing prompt~~

1 ~~public notice thereof, in accordance with the Cable Act.~~The renewal of any franchise to provide  
2 cable service shall be conducted in a manner consistent with applicable federal and state law.

3 ~~(b) — If an administrative hearing is commenced pursuant to 47 U.S.C. § 546(e), the~~  
4 ~~applicant's renewal application shall be evaluated pursuant to federal law.~~

5 ~~(e) — If the County decides to grant renewal, it shall prepare a final Franchise agreement~~  
6 ~~that incorporates, as appropriate, the commitments made by the applicant in the renewal~~  
7 ~~application. If the applicant accepts the Franchise agreement, the Franchise shall be renewed. If~~  
8 ~~the Franchise agreement is not accepted within the time limits established by 47 U.S.C.~~  
9 ~~§ 546(e)(1), renewal shall be deemed preliminarily denied, and an administrative proceeding~~  
10 ~~commenced if the applicant that submitted the renewal application requests it within ten days of~~  
11 ~~the expiration of the time limit established by 47 U.S.C. § 546(e)(1).~~

12 ~~(d) — Notwithstanding the preceding subsections, a cable operator may submit an~~  
13 ~~application for renewal of a Franchise pursuant to 47 U.S.C. § 546(h). Such a proposal may be~~  
14 ~~submitted at any time and the Board may, after affording the public adequate notice and~~  
15 ~~opportunity for comment, grant or deny such proposal at any time. An informal renewal~~  
16 ~~application may be denied for any reason. If an informal renewal application is granted, then the~~  
17 ~~steps specified in this Subsection pursuant to 47 U.S.C. § 546(a) (g) need not be taken.~~

18 ~~(f)(b)~~ Misrepresentation or fraud by the applicant shall be grounds for denial of an  
19 application.

20 ~~(e)(c)~~ If a renewal of a Ffranchise is denied, the Board may acquire ownership of the  
21 Ccable system or effect a transfer of ownership of the system to another Pperson, subject to  
22 applicable law and the Grantee's franchise agreement. Any such acquisition or transfer shall be at

1 fair market value of the system as of the expiration date of the Ffranchise valued as a going concern  
2 but with no value allocated to the Ffranchise itself.

3 ~~(g) The provisions of this Section shall be read and applied so that they are consistent~~  
4 ~~with 47 U.S.C. §§ 546 and 547.~~

5 [Formerly Sec. 9.1-3-6; new Sec. 9.2-4-2]

6 **Section 9.2-4-3. Applicant representatives.**

7 Any Pperson who ~~files~~ seeks an initial or renewal Ffranchise ~~application~~ with the County  
8 shall forthwith, at all times, disclose to the County, in writing, the names, addresses~~—and~~  
9 ~~occupations,~~ phone numbers, and e-mail addresses of all Ppersons who are authorized to represent  
10 or act on behalf of the applicant in those matters pertaining to the ~~application~~ proposed franchise.  
11 This disclosure shall specifically identify at least one individual who has authority to make  
12 negotiating decisions on behalf of the applicant and will participate in negotiations. The  
13 requirement to make the disclosure described in this Section shall continue until the County has  
14 granted or ~~rejected~~ denied an ~~applicant's~~ application, or until an ~~applicant~~ entity withdraws its  
15 application or ceases to seek a franchise with the County.

16 [Formerly Sec. 9.1-3-7; new Sec. 9.2-4-3]

17 **Section 9.2-4-4. Franchise modification.**

18 ~~(b)(a) No franchise agreement shall be modified without approval by Fthe Board and the~~  
19 ~~Grantee. shall consider requests for a Franchise modification upon request by the County or~~  
20 ~~Grantee. The Franchise modification request shall include a review and recommendation by the~~  
21 ~~Communications Administrator.~~

1        ~~(a)~~(b) A Grantee may request a ~~Franchise~~ modification of its franchise agreement by  
2        submitting a written application to the Cable Television Administrator. To be acceptable for filing,  
3        a signed original of the application shall be submitted together with ~~twelve copies~~ an electronic  
4        copy of the application in searchable PDF format or other searchable electronic format acceptable  
5        to the County. The application must ~~conform to any applicable request for proposals, and~~ contain  
6        all ~~required~~ information required in this Section or pursuant to applicable federal or state  
7        law. ~~Communications Administrator for any modification of a Franchise agreement requested in~~  
8        ~~accordance with~~ to 47 U.S.C. § 545;

9        (c) An application for modification shall provide, at a minimum, the following  
10       information, and shall clearly identify, by Code section, where each item of information required  
11       by this Section appears in the application:

12                (1)     the specific modification requested;

13                (2) the justification for the requested modification, including but not limited to the  
14       impact of the requested modification on subscribers and others, and the financial impact on the  
15       applicant if the modification is approved or disapproved, demonstrated through, inter alia,  
16       submission of pro forma financial statements;

17                (3) a statement indicating ~~that~~ whether the modification is sought pursuant to  
18       47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards  
19       set forth in 47 U.S.C. § 545;

20                (4)     any additional information that the County may have requested of the  
21       applicant in writing prior to application that is relevant to the County's consideration of the  
22       application;



\_\_\_\_\_ (5) any other information that the applicant believes is necessary for the County to make an informed determination on the application for modification;

\_\_\_\_\_ (6) a cover letter prominently describing any deadline by which the applicant believes the County must act on the application pursuant to federal or state law; and

(7) an affidavit or declaration of ~~the applicant or~~ an authorized officer of the applicant certifying the truth and accuracy of the information.

[Formerly Sec. 9.1-5-3; new Sec. 9.2-4-4, reversing (a) and (b)]

(d) An application for modification shall be reviewed as indicated in Section 9.2-4-1(d). The Cable Television Administrator may request further information as provided in Section 9.2-4-1(f).

[New in Chapter 9.2]

## ARTICLE 5.

Transfers.

## Section 9.2-5-1. Transfer of Franchise.

(a) A ~~F~~franchise is a privilege that is in the public trust and personal to a Grantee. A Grantee's obligations under its ~~F~~franchise involve personal services, the performance of which involves personal credit, trust, and confidence in the Grantee.

(b) No transfer shall occur without prior written notice to and approval of the Board. For purposes of this Section, written approval shall be expressed by ordinance. A transfer without the prior written approval of the Board shall be considered to impair the County's assurance of due performance. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

(c) A Grantee shall promptly notify the County of any proposed transfer. If any ostensible transfer takes place without prior notice to the County, the Grantee shall promptly notify the County that the ~~transfer~~ transaction has occurred.

(d) At least ~~one hundred twenty calendar~~ 120 days prior to the contemplated effective date of a transfer, a Grantee shall submit to the County an application for approval of a transfer. The application shall provide complete information on the proposed transaction, including but not limited to details on the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

- (1) all information and forms required under federal law;
- (2) any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;

(3) other information ~~necessary~~ sufficient to provide a complete and accurate understanding of the financial position of the ~~C~~cable system before and after the proposed transfer;

(4) complete information regarding any potential impact of the transfer on ~~S~~subscriber rates and service;

(5) information sufficient to show the proposed transferee's legal, technical, and financial qualifications to operate the cable system and satisfy the franchise obligations; and

~~(5)(6)~~ any contracts or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or information referred to therein ~~as the County may request,~~ that the County requests in writing prior to the submission of the application.

(e) To the extent consistent with federal law, the County may waive in writing any requirement that information be submitted as part of the transfer application, without thereby waiving any rights the County may have to request such information after the application is filed.

(f) For the purposes of determining whether the Board should ~~consent to~~ approve a transfer, the County or its agents may inquire into all qualifications of the prospective transferee and such other matters as the County may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned as provided under subsection

(g). A Grantee and any prospective transferees shall assist the County in any such inquiry, and if they fail to do so, the request for a transfer may be denied.

(g) In making a determination as to whether to ~~grant, approve, deny, or grant approve~~ subject to conditions, an application for a transfer of a ~~F~~franchise, the Board may consider, by way of example and not limitation, the legal, financial, and technical qualifications of the transferee to operate the ~~C~~cable system; any potential impact of the transfer on ~~S~~subscriber rates or services; whether a Grantee is in compliance with its ~~F~~franchise agreement and this Chapter and, if not, the

1 proposed transferee's commitment to cure such noncompliance; whether the transferee owns or  
2 controls any other ~~C~~cable system in the County, and whether operation by the transferee may  
3 eliminate or reduce competition in the delivery of ~~C~~cable service in the County; and whether  
4 operation by the transferee or approval of the transfer would adversely affect ~~S~~subscribers, the  
5 public, or the County's interest under this Chapter, a ~~F~~franchise, or other applicable law. The  
6 Board shall not withhold its ~~consent~~ approval unreasonably.

7 (h) Any ~~F~~franchise transfer without the Board's prior written approval shall be  
8 ineffective, shall make the ~~F~~franchise subject to revocation at the County's sole discretion, and  
9 shall subject the Grantee and/or ~~transferee~~ transferee to any other remedies available under a  
10 ~~F~~franchise agreement, this Chapter, or other applicable law.

11 (i) No application for a transfer of a ~~F~~franchise shall be ~~granted~~ approved unless the  
12 transferee agrees in writing that it will abide by and accept all terms of this Chapter, ~~and~~ the  
13 ~~F~~franchise agreement, and any terms the Board requires as a condition of the transfer pursuant to  
14 subsection (g), and that it will assume the obligations, liabilities, and responsibility for all acts and  
15 omissions, known and unknown, of the previous Grantee(s) under this Chapter and the ~~F~~franchise  
16 agreement, for all purposes, including renewal, unless the County, in its sole discretion, expressly  
17 waives ~~this~~ these requirements in whole or in part.

18 (j) Approval by the Board of a transfer shall not constitute a waiver or release of any  
19 of the rights of the County under this Chapter and a ~~F~~franchise agreement, whether arising before  
20 or after the date of the transfer.

21 (k) For the purposes of this Section, a transfer means ~~any assignment of a Franchise~~  
22 ~~that requires FCC Form 394 or equivalent~~ any transaction for which the County's approval is  
23 required pursuant to the Grantee's franchise agreement.

1 [Formerly Sec. 9.1-5-10; new Sec. 9.2-5-1]

2 **~~Section 9.1-5-11. Change in ownership control of a Franchise.~~**

3 ~~Approval by an action of the Board shall be required for any transfer of control that requires~~  
4 ~~FCC Form 394 or equivalent. By its acceptance of a Franchise agreement a Grantee shall~~  
5 ~~specifically grant and agree that any such transfer of control without approval of the Board~~  
6 ~~constitutes a violation of this Chapter and its Franchise.~~

7 [Formerly Sec. 9.1-5-11]

## ARTICLE 6.

**System Design, Construction, and Operations.****Section 9.2-6-1. Cable service and system description characteristics.**

~~(b)(a)~~ A ~~C~~cable system to be installed by a Grantee shall meet or exceed ~~the~~all applicable technical standards specified by the FCC and any other applicable technical standards (to the extent permitted by law). If the FCC should delete these standards, or otherwise fail to preempt this area of regulation, the County may prescribe technical standards, to the extent permitted by applicable law.

~~(e)(b)~~ As authorized by 47 U.S.C. § 531, a Grantee shall provide PEG access. ~~Such PEG access channel capacity, facilities, and financial support shall be provided~~ as specified in its Franchise agreement.

~~———— (d) ——— A Grantee shall provide without charge within its Franchise area(s), one activated service outlet and free regular subscriber service to each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the County; provided, however, that if it is necessary to extend a Grantee's trunk or feeder lines more than three hundred feet solely to provide service to any such school or public building, the County shall have the option of paying the Grantee's direct costs for such extension in excess of three hundred feet, or of releasing the Grantee from or postponing the Grantee's obligation to provide service to such building. Furthermore, a Grantee shall not be permitted to recover, from any public building owner entitled to free service, more than the Grantee's actual cost for any additional converters required and the direct cost of installing, when requested so to do, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred fifty feet of drop cable; provided, however, that the Grantee shall not charge for the provision of regular subscriber service to the~~

~~additional service outlets so installed in public schools, police stations, fire stations, public libraries, and County offices in addition to any such other public facilities as are specified in the Grantee's Franchise agreement. The Grantee shall provide full operational capability to the service outlets in its Franchise area. The County, at its sole discretion, may waive the provisions of this Subsection in exchange for goods and/or services of equal value to the County.~~

[Formerly Sec. 9.1-7-2(b)-(c); new Sec. 9.2-6-1]

**Section 9.2-6-2. Emergency Alert System.**

~~——(f) A Grantee shall install and thereafter maintain for use by the County an Emergency Alert System ("EAS") comply with the federal Emergency Alert System ("EAS") regulations, 47 C.F.R. Part 11.~~

[Formerly Sec. 9.1-7-4(f); new Sec. 9.2-6-2]

~~(1) This EAS shall at all times be operated in compliance with FCC requirements. Subject to the foregoing, the EAS shall be remotely activated by telephone and shall allow a representative of the County to override the audio and video on all channels on a Grantee's Cable system that may lawfully be overridden (subject to any contractual or other rights of local broadcasters) without the assistance of the Grantee, for emergency broadcasts from a location designated by the County in the event of a civil emergency or for reasonable tests.~~

~~————(2) The County will provide reasonable notice to a Grantee prior to any test use of the EAS. A Grantee shall cooperate with the County in any such test to the maximum extent feasible.~~

1   **Section 9.2-6-3. Operational requirements~~and construction~~.**

2       (a)     ~~Sections 9.2-6-3 and 9.2-6-4 shall not apply to certificated providers of~~  
3   ~~telecommunications service to the extent they would impose on them any restrictions or~~  
4   ~~requirements concerning the use of the public rights-of-way that are any greater than those imposed~~  
5   ~~on all providers of telecommunications services and nonpublic providers of cable television,~~  
6   ~~electric, natural gas, water, and sanitary sewer services. These Sections shall, however, apply to~~  
7   ~~any such providers to the extent that their activities occur on public or private property outside the~~  
8   ~~public rights-of-way.~~

9       (b)     A Grantee shall construct, operate, and maintain its ~~C~~cable system subject to the  
10 supervision of the County or its designees, and in compliance with all applicable laws, ordinances,  
11 rules, and regulations, including any amendments thereto. The ~~C~~cable system and all its parts shall  
12 be subject to inspection by the County. The County may upon request review a Grantee's  
13 ~~construction plans~~ for any construction project prior to commencement of construction.

14       ~~(b) — A Grantee shall design, construct, operate, and maintain the system at all times so~~  
15 ~~that signals carried are delivered to Ssubscribers with the minimum material degradation in quality.~~

16       (c)     No construction, reconstruction, or relocation of a system or any part thereof within  
17 the public ways shall be commenced until all applicable ~~written~~ permits have been obtained. The  
18 County may impose such conditions and regulations as are necessary for the purpose of protecting  
19 any structures in the public ways and for the proper restoration of such public ways and structures,  
20 and for the protection of the public and the continuity of pedestrian and vehicular traffic.

21       (d)     A Grantee shall perform maintenance on its system so that activities likely to result  
22 in an interruption of service are performed during periods of minimum Ssubscriber use of the  
23 system. A Grantee shall provide reasonable notice to Ssubscribers and the County before



1 interrupting service for planned maintenance or construction that is expected to take ~~one~~ four hours  
2 or more, except that no such notice shall be necessary for planned maintenance or construction  
3 taking place between 12 midnight and 6 a.m. Notice shall be provided by a method reasonably  
4 calculated to give ~~S~~subscribers actual notice of the planned interruption.

5 (e) Maintenance of a system shall be performed in accordance with technical  
6 performance and operating standards established pursuant to FCC rules and regulations. The  
7 County may monitor a Grantee's maintenance practices and, to the extent permitted by applicable  
8 law, may waive requirements or adopt additional requirements as reasonable to ensure the system  
9 remains capable of providing high-quality service.

10 [Formerly Sec. 9.1-7-4(a)-(e); new Sec. 9.2-6-3]

11 ~~(f)~~ (f) A Grantee shall have the authority to trim trees and shrubs on ~~public~~ County  
12 property at its own expense as may be necessary to protect its wires and facilities, subject to the  
13 regulation, supervision, and/or direction of the County ~~or other local government authority~~.

14 [Formerly Sec. 9.1-7-7(l); new Sec. 9.2-6-3(f)]

15 (g) In the event of an emergency, or where a ~~C~~cable system creates or is contributing  
16 to an imminent danger to health, safety, or property, or is an unauthorized use of property, a  
17 Grantee, at its own expense, shall remove, replace, or relocate any or all parts of its system at the  
18 request of the County. If the Grantee fails to comply with the County's request, the County may  
19 remove, ~~relay~~, or relocate any or all parts of the Grantee's ~~C~~cable system without prior notice, at  
20 the sole expense of the Grantee. A Grantee shall not be responsible under this Chapter or its  
21 ~~F~~franchise agreement if such County action results in a breach of any applicable obligation of a

1 Grantee. The County shall not be ~~held~~ liable to the Grantee for any damages arising from such  
2 removal or relocation.

3 [Formerly Sec. 9.1-7-7(j); new Sec. 9.2-6-3(g)]

4 **Section 9.2-6-4. ~~Street occupancy~~; Construction standards and procedures.**

5 ~~—— (a) All installation of electronic equipment shall be of a permanent nature, using~~  
6 ~~durable components.~~

7 (a) A Grantee shall maintain all wires, conduits, cables, and other real and personal  
8 property and facilities comprising its ~~C~~cable system in good condition, order, and repair.

9 (b) No construction, upgrade, rebuild, reconstruction, or relocation of a ~~C~~cable system,  
10 or any part thereof, within any public way shall be commenced unless valid permits have been  
11 obtained. ~~A Grantee assumes the full burden of risk in securing the required permits. Failure to~~  
12 ~~obtain required permits or other approvals shall in no way relieve a Grantee of its obligations under~~  
13 ~~this Chapter and/or a F~~franchise agreement, except that in case of emergency, a Grantee may carry  
14 out work to the extent necessary pending the issuance of such permits, as long as the Grantee acts  
15 to secure the permits as soon as possible.

16 (c) In the event of disturbance of any ~~road~~ public way or public or private property by a  
17 Grantee, it shall, at its own expense and in a manner approved by the County, ~~replace and restore such~~  
18 ~~road or private property in as good a condition as before the work causing the disturbance was done,~~  
19 repair, restore, and replace any property disturbed, damaged, or in any way injured by or on  
20 account of its activities substantially to its condition immediately prior to the disturbance, damage,  
21 or injury. Under normal operating conditions, such repair, restoration, or replacement shall be  
22 completed at the later of 30 days from the date the damage is incurred or 30 days from when the work  
23 causing such damage is completed, weather permitting. In the event the Grantee fails to timely

1 perform such repair, restoration, or replacement~~or restoration~~, the County shall have the right to do  
2 so at the sole expense of the Grantee. Payment to the County for such repair, restoration or  
3 replacement~~or restoration~~ shall be upon demand. Nothing in this Section shall ~~be construed to~~ impair  
4 any rights of the owners of such private property to assert any claim against a Grantee arising out of  
5 such disturbance.

6 (d) A Grantee shall cooperate with all gas, electric, telephone, water, sewer, and other  
7 utilities in the placement of its facilities, equipment, or fixtures, so as to minimize the costs and  
8 disruption caused by ~~its~~ any construction ~~or maintenance~~ activities.

9 (e) A Grantee shall maintain the service of, shore up, sling, support, protect, and make  
10 good, as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections, conduits,  
11 ducts, manholes, drains, vaults, buildings, tracks or other structures, sub-structures of public utility  
12 companies, and all service lines and structures, including sub-structures of private abutting owners,  
13 that are located within the lines of system construction ~~that~~ and may be ~~liable~~ subject to disturbance  
14 or injury during the progress of the construction; ~~and all~~ A Grantee shall provide at its own cost  
15 and expense all supports, and all labor, and material necessary to reconnect and restore to  
16 substantially their original condition all such structures that become disturbed or damaged ~~to their~~  
17 ~~original condition shall be provided by the Grantee at its own cost and expense.~~

18 (g) ~~Any and all public ways, public property, or private property that are disturbed or~~  
19 ~~damaged during the construction, installation, operation, maintenance, repair, replacement, or~~  
20 ~~relocation of a Cable system shall be promptly repaired by a Grantee within thirty days after the~~  
21 ~~disturbance or damage, at the Grantee's sole cost and expense. The Communications~~  
22 ~~Administrator may extend this thirty-day period for good cause shown.~~

(h)(f) Upon reasonable notice, a Grantee shall, by a time specified by the County, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the County by reason of traffic conditions; public safety; construction, maintenance, repair (including resurfacing or widening), or change of grade in public ways or on other public property; public way construction; public way maintenance or repair (including resurfacing or widening); change of public way grade; or construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; provided, however, that a Grantee shall, in all such cases, with the County's consent, have the option of abandoning any property in place.

(i)(g) If any Pperson that is authorized to place facilities in the public ways requests a Grantee to protect, support, temporarily disconnect, remove, or relocate its facilities to accommodate the construction, installation, operation, maintenance, or repair of the facilities of such other Pperson, the Grantee shall, after ~~thirty~~ 30 days' advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract between the parties, a pole attachment agreement, or federal law or regulation or ~~Virginia~~ state law, or in any cases where the ~~Cable~~ system that is being requested to move was not lawfully located in the public ways, then the reasonable cost of the same shall be borne by the Pperson requesting the protection, support, temporary disconnection, removal, or relocation and performed at no charge to the County.

~~(j) In the event of an emergency, or where a Ccable system creates or is contributing to an imminent danger to health, safety, or property, or is an unauthorized use of property, a Grantee, at its own expense, shall remove, replace, or relocate any or all parts of its system at the request of the County. If the Grantee fails to comply with the County's request, the County may~~

1 ~~remove, relay, or relocate any or all parts of the Grantee's Cable system without prior notice, at~~  
2 ~~the sole expense of the Grantee. A Grantee shall not be responsible under this Chapter or its~~  
3 ~~Franchise agreement if such County action results in a breach of any applicable obligation of a~~  
4 ~~Grantee. The County shall not be held liable to the Grantee for any damages arising from such~~  
5 ~~removal or relocation.~~

6 ~~(k)(h)~~ A Grantee shall, on the request of any ~~P~~person holding a valid building moving  
7 permit issued by the County, or on request of the County, temporarily raise or lower its wires to  
8 permit the moving of buildings. The expense of such temporary removal or raising or lowering of  
9 wires shall be paid by the requesting party. ~~Person requesting the same. If and the Grantee shall~~  
10 ~~have the authority to require payment in advance, except in the case where the requesting Person~~  
11 ~~party is the County, in which case the Grantee will invoice the County, and the County will pay,~~  
12 ~~following completion of work. If the requesting party is not the County, the Grantee shall have~~  
13 ~~the authority to require payment in advance.~~ The Grantee shall be given reasonable advance notice  
14 in writing to arrange for such temporary wire changes.

15 ~~(m)(i)~~ A Grantee shall utilize existing poles, conduits, and other facilities whenever  
16 possible. However, no location of any pole or wire-holding structure of a Grantee shall be a vested  
17 interest, ~~and A Grantee shall remove, replace, or modify such poles, structures, or facilities shall~~  
18 ~~be removed, replaced or modified by a Grantee at its own expense whenever the Board County or~~  
19 ~~other governmental authority determines that doing so would enhance the public convenience~~  
20 ~~would be enhanced thereby. A Grantee shall file c~~Copies of agreements for use of conduits or  
21 other facilities ~~shall be filed~~ with the County upon County request.

22 ~~(n)(j)~~ Where the County, ~~other unit of government, or a public utility serving the County~~  
23 desires to make use of the poles or other wire-holding structures of a Grantee, but cannot reach

1 agreement ~~therefor~~ with the Grantee ~~cannot be reached~~, the Board may require the Grantee to permit  
2 such use if the Board determines that the use would enhance the public convenience and would not  
3 unduly interfere with the Grantee's operations.

4 ~~(k)~~ Unless otherwise regulated, all transmission lines, equipment, and structures shall be  
5 installed and located to cause minimum interference with the rights and reasonable convenience of  
6 owners of property ~~which that~~ adjoins or abuts a street, way, or other property upon which a Grantee  
7 has placed its facilities, and at all times such facilities shall be kept and maintained in a safe, ~~adequate~~  
8 functional condition, and in good order. A Grantee shall at all times employ reasonable care and  
9 shall install and maintain commonly accepted methods and devices for preventing failures and  
10 accidents that are likely to cause damage, injuries, or nuisances to the public. Suitable barricades,  
11 flags, lights, flares, or other devices shall be used at such times and places as are reasonably required  
12 for the safety of all members of the public. Any poles or other fixtures placed in any public way by  
13 a Grantee shall be placed in such a manner as not to interfere with the usual travel on such public  
14 way.

15 ~~(l)~~ New buried plant shall be capable of location using ~~currently~~ generally-available  
16 locating devices.

17 ~~(m)~~ A Grantee shall be a member of the regional notification center for subsurface  
18 installations (Miss Utility) and shall field mark the locations of its underground facilities upon  
19 request. A Grantee shall locate its facilities for the County or other governmental authority at no  
20 charge.

21 ~~(r)~~ No Grantee shall erect or place any towers, poles, or conduits, or construct,  
22 upgrade, or rebuild a Cable system without first obtaining County approval of a complete  
23 description of the Cable system facilities proposed to be erected or installed, including engineering

1 drawings, if required by the County, together with a map and plans indicating the proposed location  
2 of all such facilities.

3 ~~(s)(n)~~ Any contractor or subcontractor used for work or construction, installation,  
4 operation, maintenance, or repair of system equipment must be properly licensed under ~~the laws~~  
5 ~~of the Commonwealth of Virginia and all local ordinances~~ state and local law, where applicable,  
6 and each contractor or subcontractor shall have the same obligations with respect to its work as a  
7 Grantee would have if the work were performed by the Grantee. A Grantee must ensure that  
8 contractors, subcontractors, and all employees who ~~will~~ perform work for it are trained and  
9 experienced, and that one member of each work crew is responsible for communicating in the  
10 official language of the Commonwealth with County and other governmental personnel at the  
11 work site. A Grantee shall ~~be~~ responsible for ensuring that the work of contractors and  
12 subcontractors is performed consistent with its ~~F~~franchise agreement and applicable laws,  
13 regulations, policies, and procedures; ~~be responsible~~ for all acts or omissions of contractors or  
14 subcontractors; ~~be responsible and for~~ promptly correcting acts or omissions by any contractor or  
15 subcontractor; A Grantee shall and have a quality control program to ensure that the work is  
16 properly performed.

17 ~~(t)(o)~~ A Grantee shall notify ~~the general public~~ affected parties prior to commencing any  
18 proposed construction, repair, or general preventive maintenance, except for emergency  
19 maintenance or repair, that will significantly disturb or disrupt private property, public property,  
20 or public ways, or have the potential to present a danger or affect the safety of the public generally.  
21 ~~Except for emergency maintenance or repair, Where possible,~~ a Grantee shall publicize proposed  
22 construction work at least ~~one week~~ five days prior to commencement of that work ~~by causing~~  
23 ~~written notice of the construction work to be delivered to the County and by notifying those~~

1 ~~Persons~~ residents and others in the immediate vicinity of where work is to be done and most likely  
2 to be affected by the work in at least one of the following ways: ~~by telephone, in person, by print~~  
3 ~~or electronic~~ mail, by distribution of door hangers or flyers to residences, ~~by publication in local~~  
4 ~~newspapers,~~ or in any other manner reasonably ~~calculated~~ designed to provide adequate notice.  
5 Notice to affected Persons must include the ~~name and~~ local telephone number of a Grantee  
6 representative who is qualified to answer questions concerning ~~the~~ proposed construction, repair,  
7 or general preventive maintenance. ~~In addition, except for emergency maintenance or repair,~~  
8 ~~before entering onto any Person's property, a Grantee shall provide reasonable notice to the~~  
9 ~~resident or tenant. The Grantee shall provide affected residents or tenants with a local name and~~  
10 ~~phone number they can call to discuss the Grantee's actions.~~

11 ~~(u)(p)~~ A Grantee shall provide the ~~Communications Administrator~~ Cable Television  
12 Administrator a daily report identifying the location and time of any scheduled maintenance and/or  
13 construction. The Grantee shall send the report in such a manner ~~reasonably calculated~~ to insure  
14 delivery to the ~~Communications Administrator~~ Cable Television Administrator no later than ~~8:00~~  
15 ~~7:30 a.m.~~ on the day the maintenance and/or construction is scheduled.

16 [Formerly Sec. 9.1-7-7; new Sec. 9.2-6-4]

#### 17 **Section 9.2-6-5. Construction schedule and reports.**

18 (a) ~~Upon~~ Before accepting a Ffranchise, a Grantee shall obtain all necessary federal,  
19 ~~Virginia,~~ state, and local licenses, permits, and authorizations required for the conduct of its business  
20 and its initial construction, installation, operation, maintenance, and repair of its facilities. ~~A Grantee~~  
21 ~~shall submit a report to the Communications Administrator documenting its compliance with this~~  
22 ~~requirement.~~



(b) Every ~~F~~franchise agreement shall specify the construction schedule that will apply to any required initial construction ~~or County franchise-wide~~ upgrade of a ~~C~~cable system. The schedule shall provide for timely completion of the project, considering the amount and type of construction required, and shall show areas of the County that will be affected. For the purposes of this Section, construction shall be deemed to have commenced when the first aerial strands of coaxial or fiber optic cable have been attached to a pole, or the first underground trench has been opened. The failure of a Grantee to secure the necessary federal, ~~Virginia state,~~ and local licenses, permits, and authorizations required for the conduct of its business shall in no way relieve the Grantee from the obligations of this Section. The failure to meet the construction schedule specified in a ~~F~~franchise agreement shall, among other rights and remedies available to the County under a ~~F~~franchise agreement or applicable law, constitute grounds for ~~termination or~~ shortening or revocation of the ~~F~~franchise, as a failure to construct its cable system in accordance with its franchise agreement pursuant to Section 9.2-10-6(a).

(c) Litigation instituted by a third party shall not suspend the Grantee's obligation to construct, install, and operate its ~~C~~cable system in accordance with the construction or upgrade schedule set forth in its ~~F~~franchise agreement.

(d) An initial ~~F~~franchise shall include a timetable showing the percentage of occupied dwelling units within the applicable ~~F~~franchise area ~~or areas~~ that will be capable of receiving ~~C~~cable service at the end of each year following the beginning of construction.

(e) Within three months after accepting an initial ~~F~~franchise, a Grantee shall furnish the ~~Communications Administrator~~ Cable Television Administrator a construction schedule and map setting forth target dates consistent with paragraphs (b) and (d) of this Section, for commencement of

1 service to ~~S~~subscribers, and identifying the areas to be served. The schedule and map shall be updated  
2 whenever substantial changes become necessary.

3 (f) Every three months after the start of initial construction, a Grantee shall furnish the  
4 ~~Communications Administrator~~ Cable Television Administrator a map that clearly defines the areas  
5 ~~wherein where regular Subscriber cable service is available, until the construction scheduled pursuant~~  
6 to subsection (e) is complete.

7 (g) The ~~Communications Administrator~~ Cable Television Administrator may waive any  
8 provision of this Section for ~~just~~ good cause shown.

9 [Formerly Sec. 9.1-7-8; new Sec. 9.2-6-5]

10 **Section 9.2-6-6. Tests and ~~performance monitoring~~ inspections.**

11 (a) A Grantee shall perform all tests necessary to ~~demonstrate~~ ensure compliance with  
12 the requirements of a ~~F~~franchise agreement and other performance and technical standards  
13 established by applicable law or regulation, and to ensure that system components are operating  
14 as expected. All tests shall be conducted in accordance with federal rules and applicable technical  
15 standards, such as the most recent ~~and relevant~~ edition of the ~~National Cable Television~~  
16 ~~Association's "Recommended Practices for Measurements on Cable Television Systems,"~~ SCTE  
17 Measurement Recommended Practices for Cable System and the ANSI/SCTE 40 2011 Digital  
18 Interface Standard ~~or if no recent or relevant edition exists, such other appropriate manual as a~~  
19 ~~Grantee proposes and the County approves.~~ In the event that such technical performance standards  
20 ~~pursuant to Federal law~~ are repealed or are no longer ~~applicable to a Cable system~~ specified in  
21 applicable law, such standards shall remain in force and effect until the County, to the extent  
22 permitted by applicable law, imposes standards as it shall deem necessary for the operation of the

1 ~~Cable system in accordance with good engineering practices.—The words "good engineering~~  
2 ~~practices" shall have the meaning specified in Title 47 of the Code of Federal Regulations.~~

3 (b) A Grantee shall conduct tests as follows:

4 ~~————— (1) — acceptance tests on each newly constructed or rebuilt segment prior to~~  
5 ~~Subscriber connection or activation, but not later than ninety days after any~~  
6 ~~newly constructed or substantially rebuilt segment is made available for~~  
7 ~~service to Subscribers;~~

8 ~~————— (2) — proof of performance tests on the system at least once every six months or~~  
9 ~~as required by FCC rules, whichever is more often, except as federal law~~  
10 ~~otherwise limits a Grantee's obligation; and~~

11 ~~————— (3) — special tests at the direction of the Communications Administrator;~~

12 ~~————— (1) A Grantee shall conduct semiannual system tests to determine compliance~~  
13 ~~with applicable standards and rules if so directed by the Cable Television~~  
14 ~~Administrator; and~~

15 ~~(e)(2) At any time after commencement of a Grantee commences service to~~  
16 ~~Subscribers, If a subscriber is affected by repeated signal problems, the~~  
17 ~~County may require the Grantee to conduct additional reasonable tests,~~  
18 ~~including full or partial repeat tests, different test procedures, or tests~~  
19 ~~involving a the specific Subscriber's terminal, at a Grantee's expense, to~~  
20 ~~the extent such tests are in accordance with FCC rules and may be~~  
21 ~~performed by the Grantee's employees utilizing its existing facilities and~~  
22 ~~equipment. The County, or a consultant designated by the County, may~~  
23 ~~observe any tests conducted by the Grantee for this purpose, and the Grantee~~

1                    will cooperate with the County or its consultant. The County may conduct  
2                    independent tests upon reasonable notice to the Grantee and if  
3                    noncompliance is found, the expense thereof shall be borne by the Grantee  
4                    within the subscriber's premises. The County will endeavor to arrange its  
5                    request for such tests so as to minimize hardship or inconvenience to a  
6                    Grantee or to Subscribers. The County may, if the signal problems continue,  
7                    and if permitted by the subscriber, conduct independent tests within the  
8                    subscriber's premises. The County will coordinate in writing with the  
9                    Grantee the timing of such tests so that Grantee's personnel may observe  
10                  the tests. The County and the Grantee will cooperate to ensure that such  
11                  tests do not interfere with Grantee's cable system, do not cause damage to  
12                  subscriber's equipment, and are conducted in accordance with applicable  
13                  technical standards.

14                  ~~—— (d) System monitor test points shall be established in accordance with good~~  
15                  ~~engineering practices and shall be approved in advance by the County.~~

16                  (c) Tests conducted pursuant to subsection (b) shall be supervised by a Grantee's ~~senior~~  
17                  engineer, who shall sign all records of tests provided to the County.

18                  (d) The County shall have the right to witness and/or review ~~all tests on newly~~  
19                  ~~constructed or rebuilt segments of a Grantee's C~~cable system conducted pursuant to subsection (b),  
20                  and any tests that affect the I-Net, or affect service to County or Fairfax County Public School  
21                  sites. A Grantee shall provide the County with at least two business days' notice of, and an  
22                  ~~opportunity to observe, any such tests performed on the Grantee's System~~ reasonable advance  
23                  notice of tests the County has the right to witness pursuant to this paragraph.

(e) A Grantee shall file a ~~A~~ written report of ~~all~~ test results under subsection (b) ~~shall be filed~~ with the County within seven days of each test. Such reports shall, at a minimum, describe test results, instrumentation, calibration, and test procedures. In addition, the Grantee shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the County upon the County's request. The County shall have the same rights the FCC has to inspect a Grantee's performance test data.

(f) If any test under subsection (b) indicates that any part or component of a system fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the County, shall take corrective action, ~~retest the locations, and~~ advise the County of the action taken and results achieved, and supply the County with a copy of the results within ~~thirty~~ 30 days from the date corrective action was completed.

(g) The County may ~~also conduct inspections of~~ inspect construction areas and ~~S~~subscriber installations, including but not limited to inspections to assess compliance with a Grantee's construction and installation requirements. The County shall notify a Grantee of any violations found during the course of inspections, identifying the locations with particularity and stating the specific nature of the violation. The Grantee ~~must~~ shall bring violations specified in the notice that are within Grantee's control into compliance as follows: (i) safety violations ~~must~~ shall be made safe within ~~forty-eight~~ 48 hours of receiving notice of the violation; (ii) Virginia Department of Transportation violations ~~must~~ shall be brought into compliance within five days of receiving notice of the violation; and (iii) all other violations ~~must~~ shall be brought into compliance within ~~thirty~~ 30 days of receiving notice of the violation. After the specified time period, the Grantee ~~must~~ shall submit a ~~report to the County~~ written response, describing the steps

1 it has taken to bring itself into compliance. Inspection does not relieve a Grantee of its obligation  
2 to build in compliance with all provisions of a ~~Fit~~franchise.

3 [Formerly Sec. 9.1-7-5; new Sec. 9.2-6-6]

4 **Section 9.2-6-7. Connections to the ~~C~~cable system; ~~Use of Antennas~~.**

5 To the extent consistent with federal law, ~~S~~subscribers shall have the right to attach devices  
6 to a Grantee's ~~C~~cable system to allow them to transmit signals or service to video ~~cassette~~  
7 recorders, receivers, and other terminal equipment, and to use their own remote control devices  
8 and converters, and other similar equipment, so long as such devices do not interfere with the  
9 operation of a Grantee's ~~C~~cable system, or the reception of any cable ~~S~~subscriber, nor serve to  
10 circumvent a Grantee's security procedures, nor for any purpose to obtain services illegally. A  
11 Grantee shall ~~provide~~ make information available to consumers ~~that will allow them to~~ to assist  
12 them in-adjusting such devices so that they may be used with a Grantee's ~~C~~cable system.

13 [Formerly Sec. 9.1-9-12; new Sec. 9.2-6-7]

## ARTICLE 7.

## Payments.

**Section 9.2-7-1. ~~Franchise fee~~ Payments by Grantees.**

~~———— (a) ——— Every Grantee shall pay a franchise fee of five percent of Gross revenues, as provided in federal law and consistent with Virginia law.~~

~~———— (b) ——— Each year during a Franchise term, as compensation for use of Public Rights of Way and public land, a Grantee shall pay to the County, on a quarterly basis, a franchise fee. The payments shall be made no later than thirty days following the end of each quarter.~~

———— (a) A Grantee shall comply with the provisions of the Virginia Communications Sales and Use Tax.

———— (b) If at any time state law allows the imposition of a franchise fee on cable operators in Virginia, the County may, to the extent allowable under applicable law, upon 60 days' written notice, or as otherwise provided by law, require all Grantees to pay to the County, on a quarterly basis, a franchise fee of five percent of gross revenues, or such other sum as permitted under law. Such payments shall be made no later than 30 days following the end of each quarter.

[Formerly Sec. 9.1-5-8(a)-(b); new Sec. 9.2-7-1]

**Section 9.2-7-2. Audits.**

~~(c)(a) Each franchise fee payment by a Grantee pursuant to its franchise agreement, or by the Grantee to the County under applicable law, shall be submitted with supporting detail and a statement certified by a the Grantee's chief financial officer or an independent certified public accountant.~~ Where the payment is based on gross revenues, the statement shall reflecting show the total amount of monthly Gross revenues for the payment period and a breakdown by major revenue categories (such as basic cable service, cable programming service, and premium service).

1 The County shall have the right to reasonably require further supporting information.

2 ~~(d)~~(b) The County shall have the right to inspect books and records and to audit and  
3 recompute any amounts ~~determined to be payable under this Chapter or a Ffranchise agreement or~~  
4 applicable law, whether the records are held by a Grantee, an Affiliate, or any other agent of a  
5 Grantee.

6 ~~(e)~~(c) A Grantee shall be responsible for making available to the County all records  
7 necessary to confirm the accurate payment of ~~franchise fees~~ amounts payable under a franchise  
8 agreement or applicable law, without regard to by whom ~~they~~ such records are held. Such records  
9 shall be made available pursuant to the requirements of this Chapter and the franchise agreement.

10 ~~(f)~~(d) The County's audit expenses shall be borne by the County unless the audit discloses  
11 an underpayment of more than three percent of any quarterly payment, in which case the County's  
12 out-of-pocket costs of the audit shall be borne by a Grantee as a cost incidental to the enforcement  
13 of its Ffranchise. Any additional undisputed amounts due to the County as a result of the audit  
14 shall be paid within ~~thirty~~ 30 days following written notice to a Grantee by the County of the  
15 underpayment, which notice shall include a copy of the audit report. If recomputation results in  
16 additional revenue to be paid to the County, interest will be due as specified in this Section.

17 ~~——(g)—— The County shall have three years from the time a Grantee delivers a franchise fee~~  
18 ~~payment to question that payment, and if the County fails to question the payment within that time~~  
19 ~~period, the Grantee shall not be liable for adjustment to that payment. If the County gives written~~  
20 ~~notice to a Grantee within that three year period, the three year period shall be tolled for one year,~~  
21 ~~to allow the County to conduct an audit. Any legal action by either party relating to a franchise~~  
22 ~~fee payment will toll the remaining term, if any, of the three-year time period and the one-year~~  
23 ~~audit period with respect to that payment.~~



1       ~~—— (h) ——~~ The franchise fee payments required by this section shall be in addition to any and  
2       all taxes of a general nature or other fees or charges which a Grantee shall be required to pay to  
3       the County or to any state or federal agency or authority, as required herein or by law, all of which  
4       shall be separate and distinct obligations of a Grantee. A Grantee shall not have or make any claim  
5       for any deduction or other credit of all or any part of the amount of the franchise fee payments  
6       from or against any of said County taxes or other fees or charges which a Grantee is required to  
7       pay to the County, except as required by law, this Chapter, or a Franchise agreement. A Grantee  
8       shall not apply nor seek to apply all or any part of the amount of the franchise fee payments as a  
9       deduction or other credit from or against any of said County taxes or other fees or charges, each  
10      of which shall be deemed to be separate and distinct obligations of a Grantee. Nor shall a Grantee  
11      apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges as  
12      a deduction or other credit from or against any of its Franchise obligations, each of which shall be  
13      deemed to be separate and distinct obligations of a Grantee. Notwithstanding the above provisions  
14      of this paragraph, however, a Grantee shall have the right to a credit, in the amount of its franchise  
15      fee payments under its Franchise agreement, against any general utility tax on Cable services that  
16      may be imposed by the County, to the extent such a tax is applicable to a Grantee or its Subscribers.  
17      A Grantee shall not designate or characterize its franchise fee as a tax.

18           ~~(i)~~(e) In the event that any franchise fee payment or recomputation amount less than Five  
19      Thousand Dollars is not made on or before the required date, interest shall be charged from the  
20      due date at an annual rate equal to the commercial prime interest rate of the County's primary  
21      depository bank, compounded annually, during the period the unpaid amount is due. In the event  
22      that any franchise fee payment (or payments) or any recomputation amount totaling Five Thousand  
23      Dollars or more is not paid by the due date, then interest shall accrue to the County from the due

1 date at a rate equal to the interest rate then chargeable for unpaid federal income taxes for large  
2 corporate underpayments (26 U.S.C. § 6621), compounded annually. In addition to the foregoing,  
3 the failure of a Grantee to make a timely payment (as defined by ~~Va. Code~~ Virginia Code § 6.1-  
4 330.80) of any amount required or recomputed under this Section shall subject a Grantee to an  
5 additional late charge of five percent of the amount of such payment. However, for good cause  
6 ~~shown~~, the ~~Communications Administrator~~ Cable Television Administrator may waive the  
7 provisions of this Subsection for a period not to exceed five business days.

8 [Formerly Sec. 9.1-5-8(c)-(g); new Sec. 9.2-7-2]

9 **Section 9.2-7-3. Termination, acceptance, and methodology.**

10 ~~(j)(a)~~ (a) In the event a Franchise is shortened or revoked prior to its expiration date, a  
11 Grantee shall file with the County, within ~~ninety~~ 90 days of the effective date of  
12 ~~revocation~~ termination, a financial statement certified by an independent certified public  
13 accountant that clearly shows the ~~G~~gross revenues received by ~~a~~ the Grantee from the end of the  
14 previous fiscal quarter through the effective date of ~~revocation~~ termination and any other  
15 information required to support the computation of Grantee's payments, and shall pay within that  
16 time ~~the franchise fees~~ any fees or other financial obligations accrued or accruing as of the effective  
17 date of revocation termination.

18 ~~(k)(b)~~ (b) The County's acceptance of any payment ~~required herein by the County~~ shall not  
19 be construed as an acknowledgment or an accord and satisfaction that the amount paid is the correct  
20 amount due, nor shall such acceptance of payment be construed as a release or waiver of any claim  
21 that the County may have for additional sums due and payable. However, the County's acceptance  
22 of full payment of the amount determined to be due by the County through an audit shall be  
23 construed as an accord and satisfaction.

1       (c)     If a Grantee proposes to change (i) its methodology for calculating or paying any  
2     amounts payable under a franchise agreement, (ii) its methodology for calculating or paying the  
3     state Communications Sales and Use Tax amounts attributable to the County, or (iii) its  
4     methodology for itemizing or passing any through to Subscribers any such amounts (where  
5     applicable), the Grantee shall first provide written notice to the Cable Television Administrator  
6     explaining the nature of the change, the reason for the change, and the effect of the change on the  
7     amounts paid to the County.

8       [Formerly Sec. 9.1-5-8(j)-(k); new Sec. 9.2-7-3]

ARTICLE 8.

Reports and Records.

Section 9.2-8-1. Books and records.

(a) Access to information.

(1) Subject to applicable law, The County shall have the right to inspect and copy at any time during normal business hours at a Grantee's office, or at another mutually agreed location, all books and records, including all documents in whatever form maintained, including electronic media ("books and records") to the extent that such books and records relate to a Grantee's ~~C~~cable system or to a Grantee's provision of ~~C~~cable service.

(2) In lieu of the terms specified in subsection (1), if so provided in a Grantee's franchise agreement, or if a Grantee subsequently agrees in writing: upon written request, which shall include a reasonable time to respond, a Grantee shall expeditiously provide the County with information contained in any books, maps, records, or other documents, in whatever form maintained, including electronic media ("books and records") held by the Grantee or an Affiliate, to the extent such books and records relate to the Grantee's cable system or to the Grantee's provision of cable service. Such a request shall specify the purpose of the request.

(A) "Reasonable time to respond" will normally be within 30 days from receipt of the request depending on the complexity of the response, but (1) shall be extended to 45 days upon written request by the Grantee, and (2) may be further extended by the Cable Television Administrator.

(B) The County may require the Grantee to provide copies of documents containing the requested information.

1        \_\_\_\_\_ (C) If any books, records, maps, plans, or other ~~requested~~ documents  
2        requested pursuant to this subsection (a) are too voluminous, or for security reasons cannot be  
3        copied and moved, then a Grantee may request that the inspection take place at a location mutually  
4        agreed to by the County and the Grantee, provided that (i) the Grantee must make necessary  
5        arrangements for copying documents selected by the County after its review; and (ii) the Grantee  
6        must pay all travel and additional copying expenses incurred by the County (above those that  
7        would have been incurred had the documents been produced in the County) in inspecting those  
8        documents or having those documents inspected by its designee.

9        ~~\_\_\_\_\_ (b) To the extent permitted by law, the County shall take reasonable steps to protect~~  
10       ~~the proprietary and confidential nature of any such documents to the extent they are designated as~~  
11       ~~such by a Grantee. The County shall have the right to copy any such books and records, except to~~  
12       ~~the extent that such books and records are proprietary and/or confidential pursuant to the Virginia~~  
13       ~~Uniform Trade Secrets Act or other applicable law.~~

14        (b) A Grantee shall keep complete and accurate books of account and records of its  
15        business and operations under and in connection with its Ffranchise agreement.

16        ~~\_\_\_\_\_ (c) Unless otherwise provided in this Chapter, all materials and information specified~~  
17       ~~in this Chapter shall be maintained for a period of three years or until the Franchise expires, which~~  
18       ~~ever is longer.~~

19        (c) For the time period specified in its franchise agreement, a Grantee shall maintain:

20        (1) Financial records sufficient to provide full support for the calculation of any  
21       payments to the County or any PEG programmer, or of any state tax that is distributed to the  
22       County in whole or in part, and for any audit and recomputation thereof, including but not limited

1 to records sufficient to enable County review of all allocation of gross revenues among bundled  
2 services.

3 (2) Records of complaints. The term "complaints" as used herein and  
4 throughout this Chapter refers to complaints recorded through a Grantee's normal procedures  
5 about any aspect of the Grantee's cable system or its operations, including but not limited to  
6 complaints about employee courtesy. This paragraph does not apply to service calls, which are  
7 treated under paragraph (4) below.

8 (3) Records of outages, indicating date, estimated duration, estimated area, and  
9 the estimated number of Subscribers affected, type of outage, and cause.

10 (4) Records of service calls for repair and maintenance indicating the date and  
11 time service was required, the date and time service was scheduled (if it was scheduled), and the  
12 date and time service was provided.

13 (5) Records of installation/reconnection and evaluation of line extension  
14 requests, indicating date of request, and the date and time service was extended.

15 ~~(d) — A Grantee shall at all times maintain:~~

16 ~~(1) — Complete and accurate books of account and records of its business and~~  
17 ~~operations under and in connection with this Chapter and a Franchise agreement. At a minimum,~~  
18 ~~a Grantee's financial books and records shall be maintained in accordance with generally accepted~~  
19 ~~accounting principles, and shall identify:~~

20 ~~————— (A) — gross revenues, by service category;~~

21 ~~————— (B) — operating expenses, categorized by general and administrative~~  
22 ~~expenses, technical expenses, programming expenses, and overhead, if any;~~

1 ~~\_\_\_\_\_ (C) capital expenditures, including capitalized interest and overhead, if~~  
2 ~~any; and~~

3 ~~\_\_\_\_\_ (D) depreciation expenses, by category.~~

4 ~~(2) Records of all written complaints received. The term "complaints" as used~~  
5 ~~herein and throughout this Chapter refers to complaints about any aspect of the Cable system or a~~  
6 ~~Grantee's operations, including, without limitation, complaints about employee courtesy.~~  
7 ~~Complaints recorded may not be limited to complaints requiring an employee service call.~~

8 ~~(3) A full and complete set of plans, records, and "as built" maps showing the~~  
9 ~~exact location of all system equipment installed or in use in the County, exclusive of Subscriber~~  
10 ~~service drops.~~

11 ~~(4) Records of outages, indicating date, estimated duration, estimated area, and~~  
12 ~~the estimated number of Subscribers affected, type of outage, and cause.~~

13 ~~(5) Records of service calls for repair and maintenance indicating the date and~~  
14 ~~time service was requested, the date of acknowledgment and date and time service was scheduled~~  
15 ~~(if it was scheduled), and the date and time service was provided, and (if different) the date and~~  
16 ~~time the problem was solved.~~

17 ~~(6) Records of installation/reconnection and requests for service extension,~~  
18 ~~indicating date of request, date of acknowledgment, and the date and time service was extended.~~

19 ~~(7) A general plan and schedule for construction of its Cable system available~~  
20 ~~to the public upon request.~~

21 (d) The County may require additional information, records, and documents from time  
22 to time.

(e) A Grantee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

~~———— (f) ——— Each Grantee shall maintain accurate maps and improvement plans which show the location, size and a general description of all facilities installed in the public ways and any power supply sources, including voltages and connections. Maps shall be based on post construction inspection to verify location. Each Grantee shall provide a map to the County showing the location of its facilities, in such detail and scale as may be directed by the Communications Administrator. New maps shall be promptly submitted to the County when a Cable system expands or is relocated. Copies of maps shall be provided in hardcopy and in any CAD or other electronic format used by a Grantee.~~

(f) Each Grantee shall take all reasonable steps required to ensure that it is able to provide the County with all information that must be provided or may be requested under this Chapter, a Franchise agreement, or applicable law, ~~including the issuance of appropriate subscriber privacy notices.~~ Each Grantee shall be responsible for redacting any data that applicable law prevents it from providing to the County. Nothing in this Section shall be read to require a Grantee to violate federal or state law protecting subscriber privacy.

~~———— (i) ——— If any books, records, maps, plans, or other requested documents requested pursuant to subsection (a)(1) are too voluminous, or for security reasons cannot be copied and moved, then a Grantee may request that the inspection take place at a location mutually agreed to by the County and the Grantee, provided that (i) the Grantee must make necessary arrangements for copying documents selected by the County after its review; and (ii) the Grantee must pay all travel and additional copying expenses incurred by the County (above those that would have been~~



1 incurred had the documents been produced in the County) in inspecting those documents or having  
2 those documents inspected by its designee.

3 ~~(j)(g)~~ Subject to the requirements of the Virginia Freedom of Information Act, ~~Va. Code~~  
4 ~~Ann. Virginia Code~~ § 2.2-3700, et seq., and the disclosure requirements of any other applicable  
5 law, ~~the~~ County shall take reasonable steps to protect the proprietary and confidential nature of  
6 any books, records, maps, plans, or other County-requested documents that are provided pursuant  
7 to this Chapter or a ~~franchise~~ agreement to the extent they are reasonably designated as such by  
8 a Grantee.

9 ~~(k)(h)~~ The ~~Communications Administrator~~ Cable Television Administrator may, for good  
10 cause ~~shown~~, waive in writing any of the reporting provisions in this Section a franchise agreement  
11 or this Chapter.

12 [Formerly Sec. 9.1-6-2; new Sec. 9.2-8-1]

13 **~~9.1-6-3. Communications with regulatory agencies; Reports.~~**

14 (a) ~~A Grantee shall file with the County a copy of communications with regulatory~~  
15 ~~agencies, as follows:~~

16 ~~———— (1) — any document (other than routine, publicly available agency mailings or~~  
17 ~~publications) the Grantee files with or receives from the FCC, the United States Securities and~~  
18 ~~Exchange Commission, or the Virginia State Corporation Commission, or any successor agency~~  
19 ~~of any of these agencies, that relates to its Cable system and/or the provision of Cable services~~  
20 ~~under this Chapter or its Franchise agreement, within five working days of such filing or receipt;~~

21 ~~———— (2) — any document a Grantee files with or receives from other agencies, upon the~~  
22 ~~County's request;~~

1 ~~\_\_\_\_\_ (3) any document that any parent of a Grantee files with or receives from any~~  
2 ~~agency that directly and materially relates to a Grantee's Cable system and/or the provision of~~  
3 ~~Cable services under this Chapter or its Franchise agreement, within five working days of such~~  
4 ~~filing or receipt.~~

5 ~~\_\_\_\_\_ (4) For purposes of this Subsection, documents filed by a Grantee or a parent~~  
6 ~~shall include all documents filed by or on behalf of a Grantee or its parent, but shall not include~~  
7 ~~documents filed by trade associations to which a Grantee or its parent belong unless a Grantee or~~  
8 ~~a parent has authorized the use of its name by such trade association among the filing parties and~~  
9 ~~its name is used.~~

10 ~~\_\_\_\_\_ (b) To the extent that such documents contain, to the satisfaction of the~~  
11 ~~Communications Administrator, the information required by other reports hereunder, the~~  
12 ~~Communications Administrator may suspend the requirement to file such other reports with the~~  
13 ~~County so as to avoid duplication and the administrative costs attendant thereto.~~

14 ~~\_\_\_\_\_ (c) Unless this requirement is waived in whole or in part by the County, a Grantee shall~~  
15 ~~submit a written report to the County no later than April 30<sup>th</sup> of each year during the term of its~~  
16 ~~Franchise agreement, in a form reasonably satisfactory to the County, which shall include:~~

17 ~~\_\_\_\_\_ (1) a summary of the previous calendar year's activities in development of a~~  
18 ~~Grantee's Cable system, including but not limited to descriptions of services begun or dropped;~~

19 ~~\_\_\_\_\_ (2) a summary of complaints, identifying both the number and nature of the~~  
20 ~~complaints received and an explanation of their dispositions, as such records are kept by a Grantee.~~

21 ~~Where a Grantee has identified recurrent Cable system problems, the nature of any such problems~~  
22 ~~and the corrective measures taken or to be taken shall be identified;~~

1 ~~————— (3) — A copy of a Grantee's rules, regulations and policies available to Subscribers~~  
2 ~~of a Grantee's Cable system, including but not limited to (i) all Subscriber rates, fees and charges,~~  
3 ~~including promotional offers made to potential or current Subscribers; (ii) copies of a Grantee's~~  
4 ~~contract or application forms for Cable services; and (iii) a detailed summary of a Grantee's~~  
5 ~~policies concerning the processing of Subscriber complaints; delinquent Subscriber disconnect and~~  
6 ~~reconnect procedures; A/B switches; Subscriber privacy; and any other terms and conditions~~  
7 ~~adopted by a Grantee in connection with the provision of Cable service to Subscribers;~~

8 ~~————— (4) — An annual financial report for the previous calendar or fiscal year, certified~~  
9 ~~by a Grantee's chief financial officer or, upon ninety days notice by the County, an independent~~  
10 ~~certified public accountant, including a year end balance sheet; an income statement showing~~  
11 ~~Subscriber revenue and every material category of non-Subscriber revenue, operating expenses by~~  
12 ~~category, depreciation expenses, interest expenses, taxes paid and a statement of sources and~~  
13 ~~applications of funds;~~

14 ~~————— (5) — A current statement of costs of construction by component categories;~~

15 ~~————— (6) — A projected income statement, balance sheet, statement of sources and~~  
16 ~~applications of funds and statement of projected construction for the next two years;~~

17 ~~————— (7) — A reconciliation between previously projected construction and/or financial~~  
18 ~~estimates, as the case may be, and actual results;~~

19 ~~————— (8) — A list of Persons, including all entities controlling such Persons, holding~~  
20 ~~five percent or more of the voting stock or interests of Grantee, or its parents or partners, or~~  
21 ~~Grantee's subsidiaries, if any;~~

1 ~~————— (9) — A list of officers and members of the Board of Directors of a Grantee and~~  
2 ~~its parents or partners and Grantee's subsidiaries, if any, or similar officers if a Grantee is not a~~  
3 ~~corporation; and~~

4 ~~————— (10) — A copy of any annual reports issued by Grantee, its parents or partners and~~  
5 ~~subsidiaries.~~

6 ~~———— (d) — Unless this requirement is waived in whole or in part by the County, no later than~~  
7 ~~thirty days after the end of each calendar quarter during the term of its Franchise agreement, a~~  
8 ~~Grantee shall submit a written report to the County, in a form reasonably satisfactory to the County,~~  
9 ~~which shall include:~~

10 ~~————— (1) — A report showing the number of service calls received by type during that~~  
11 ~~quarter, including any property damage to the extent such information is available to a Grantee,~~  
12 ~~and any line extension requests received during that quarter;~~

13 ~~————— (2) — A report showing the number of outages for that quarter, and identifying~~  
14 ~~separately each planned outage of one or more nodes for more than one hour at a time, the time it~~  
15 ~~occurred, its duration, the tax map area and, when available to a Grantee, the number of homes~~  
16 ~~affected; and, when a Grantee can reasonably determine that at least 500 homes were affected,~~  
17 ~~each unplanned outage affecting more than 500 homes for more than one hour, the time it occurred,~~  
18 ~~the reason for the disruption and its causes, its estimated duration, the tax map area and, when~~  
19 ~~available to a Grantee, the number of homes affected; and~~

20 ~~————— (3) — A report showing a Grantee's performance with respect to all applicable~~  
21 ~~customer service standards established in 47 C.F.R. 576.309(e), this Chapter, and its Franchise~~  
22 ~~agreement, signed by an officer or employee certifying its performance with these customer~~  
23 ~~service standards. If a Grantee is unable to certify full compliance for any calendar quarter, it must~~

1 ~~indicate in its filing each standard with which it is in compliance and in noncompliance, the dates~~  
2 ~~of noncompliance, the reason for the noncompliance and a remedial plan. A Grantee that fails to~~  
3 ~~file a compliance certificate or noncompliance statement as required herein shall be liable for the~~  
4 ~~penalty specified for violation of customer service standards in this Chapter. A Grantee shall keep~~  
5 ~~such records as are reasonably required to enable the County to determine whether a Grantee is~~  
6 ~~substantially complying with all such customer service standards, and shall maintain adequate~~  
7 ~~procedures to demonstrate substantial compliance.~~

8 ~~—— (e) —— Unless this requirement is waived in whole or in part by the County, a Grantee shall~~  
9 ~~deliver to the County the following special reports:~~

10 ~~—— (1) —— A Grantee shall submit monthly construction reports and weekly status~~  
11 ~~reports after the effective date for any construction undertaken during the term of a Franchise~~  
12 ~~agreement until such construction is complete, including any rebuild that may be specified in a~~  
13 ~~Franchise agreement. If consistent with a Grantee's Franchise agreement, a Grantee shall provide~~  
14 ~~the County, free of charge, twenty four hour/seven day a week remote read only access to a~~  
15 ~~Grantee's as built system design maps (which the County may print by section, but not in their~~  
16 ~~entirety), including any physical connections and software necessary to provide such access,~~  
17 ~~subject to the County's signing any requisite software license agreement;~~

18 ~~—— (2) —— A Grantee shall submit a full explanation and copy of any notice of~~  
19 ~~deficiency, forfeiture, or other document relating to the Grantee issued by any state or federal~~  
20 ~~agency if the notice or other document would require Securities and Exchange Commission Form~~  
21 ~~8(k) disclosure or would require footnote disclosure in the annual financial statements of the~~  
22 ~~Grantee or a parent or partner. This material shall be submitted in accordance with deadlines~~  
23 ~~specified by the Communications Administrator;~~

~~————— (3) — A Grantee shall submit a copy and an explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or by any partnership or corporation that owns or controls the Grantee directly or indirectly. This material shall be submitted in accordance with deadlines specified by the Communications Administrator;~~

~~————— (4) — A Grantee shall submit a full description and explanation within thirty days of any change or acquisition of control of a Grantee that would be cognizable pursuant to 47 C.F.R. § 73.3555 (Notes 1, 2, and 3) or any change or substitution in the managing general partners of a Grantee, where applicable. “Control” for purposes of this definition is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.~~

~~————— (5) — A Grantee shall summarize the results of any annual opinion surveys it conducts as part of its annual report provided that, if a Grantee considers such results to be proprietary, it shall make such results available at its offices for the County’s review.~~

~~(f) — The County may, upon reasonable written notice, require such additional information with respect to the reports to be submitted pursuant to this Chapter or a Franchise agreement as may be reasonably necessary for the performance of any of the Communications Administrator’s or any other County official’s duties.~~

~~(g)~~

[Formerly Sec. 9.1-6-3]

## ARTICLE 9.

## Consumer Protection.

**Section 9.2-9-1. Customer service standards and consumer protection generally.**

This ~~Section~~ Article sets forth the minimum customer service standards that a Grantee must satisfy. In addition, a Grantee shall at all times satisfy any additional or stricter minimum requirements established by a Franchise agreement or other applicable federal, state, or local law or regulation, as the same may be amended from time to time, including, ~~without limitation, but~~ not limited to consumer protection laws.

[Formerly Sec. 9.1-7-6 (preamble); new Sec. 9.2-9-1]

(a) A Grantee shall comply with the customer service standards set forth in 47 C.F.R. § 76.309-(c), 76.1602, 76.1603, and 76.1619, or any successor provisions, and with the Virginia Consumer Protection Act of 1977, as such standards may be amended from time to time.

[Formerly Sec. 9.1-7-6(a); new Sec. 9.2-9-1(a)]

~~(h)(b)~~ The failure of a Grantee to hire sufficient staff or to properly train its staff shall not justify a Grantee's failure to comply with the provisions in this ~~Section 9.1-7-6~~ ARTICLE 9.

[Formerly Sec. 9.1-7-6(h); new Sec. 9.2-9-1(b)]

(c) The Cable Television Administrator may waive any provision of this Section for good cause.

[New in Chapter 9.2]

**Section 9.2-9-2. Telephone answering.**

~~(b)(a)~~ A Grantee shall maintain a publicly-listed, toll-free telephone number, answered by a customer service representative or automated answering system, that shall be available to

1 subscribers 24 hours per day, each day of the year. A customer service representative shall be  
2 available at this number to respond to service calls 24 hours per day, each day of the year, and to  
3 respond to other inquiries at least during normal business hours.~~A Grantee shall employ an~~  
4 ~~operator or maintain a telephone answering device twenty-four hours per day, each day of the year,~~  
5 ~~to receive Subscriber complaints.~~

6 [Formerly Sec. 9.1-7-6(b) (subparagraphs are new); new Sec. 9.2-9-2]

7 (1) Measurement of the standards in 47 C.F.R. § 76.309(c)(1)(ii) shall include  
8 all calls received by the Grantee at all call centers receiving calls from subscribers or former  
9 subscribers in the County, whether they are answered by a customer service representative,  
10 answered by an automated system, or abandoned by the caller while waiting.

11 (2) Upon the County's request, a Grantee shall provide the full calculation for  
12 its call percentages, including but not limited to a full explanation of any adjustment or  
13 normalization of call data by the Grantee.

14 (3) A Grantee shall make it possible for subscribers who are deaf or hard of  
15 hearing to communicate with the Grantee by telephone.

16 [New in Chapter 9.2]

17 **Section 9.2-9-3. Offices and service.**

18 ~~(e)(a)~~ A Grantee shall maintain an office a location within the County that shall be open  
19 and accessible to the public with adequate telephone service during normal business hours to make  
20 payments and to pick up or drop off equipment; provided, however, that a Grantee may satisfy the  
21 pick-up and drop-off requirement by having a representative go to the subscriber's or former  
22 subscriber's residence or by using a prepaid mailer rather than by performing that function at a



1 location in the County; and that a Grantee may satisfy the payment requirement by providing other  
2 locations within the franchise area where such payments can be made. A Grantee shall maintain  
3 a convenient location that shall be open and accessible to the public to make inquiries during  
4 normal business hours.

5 [Formerly Sec. 9.1-7-6(c); new Sec. 9.2-9-3(a)]

6 ~~(d)~~(b) A Grantee shall ~~establish~~ provide maintenance service capable of promptly locating  
7 and correcting system malfunctions. ~~Said~~ This maintenance service shall respond at all hours to  
8 correct system malfunctions affecting one or more percent of a Grantee's total number of  
9 Ssubscribers or 500 or more homes, whichever is less, for more than one hour.

10 [Formerly Sec. 9.1-7-6(d); new Sec. 9.2-9-3(b)]

11 (c) A Grantee shall use its best efforts to comply with the following standards;  
12 however, a Grantee shall not be subject to enforcement measures for noncompliance with these  
13 standards if, under normal operating conditions, the standards are met at least 95 percent of the  
14 time, measured quarterly. Calculation of the 95 percent standard for installations shall exclude  
15 any installation that requires a line extension.

16 (1) For purposes of this ~~Section 9.1-7-6~~ Section 9.2-9-3, "standard installation"  
17 means one where the potential subscriber's premises are within 200 feet of the existing distribution  
18 system.

19 (2) A Grantee shall complete all standard installations within seven business  
20 days after the order is placed; except that where a Grantee is installing fiber to the premises, the  
21 Grantee shall complete all standard installations within 14 business days after the order is placed.

22 (3) A Grantee shall complete all installations other than standard installations

1 within 30 days after the order is placed, unless, for reasons beyond the Grantee's control, the work  
2 could not be completed in that time period even with the exercise of all due diligence, in which  
3 case the Grantee shall complete the work in the shortest time possible.

4 (4) If the management or builder of a multiple dwelling unit (MDU) contacts a  
5 Grantee to inquire as to service, the Grantee shall respond to the initial inquiry and any subsequent  
6 communications from the MDU within 14 days of each such communication. If a site visit is  
7 required, the Grantee shall schedule the site visit at a mutually convenient time no later than 30  
8 days after the MDU signs an access agreement with the Grantee. In an occupied MDU, the Grantee  
9 shall commence construction no later than 120 days after the MDU and the Grantee have approved  
10 a site design. The Cable Television Administrator may waive the deadlines in this paragraph for  
11 good cause.

12 (5) A Grantee shall commence work on service interruptions affecting more  
13 than 100 subscribers within four hours after the Grantee becomes aware of the interruption,  
14 including Saturdays, Sundays, and legal holidays.

15 (6) A Grantee shall commence work on service interruptions affecting 100 or  
16 fewer subscribers within 24 hours after the Grantee becomes aware of the interruption, including  
17 Saturdays, Sundays, and legal holidays. If the Grantee needs to arrange a subscriber appointment  
18 to do such work, this requirement shall be satisfied if, within that 24-hour period, the Grantee  
19 offers the subscriber an appointment time convenient for the subscriber, and Grantee commences  
20 work at that time. If a total interruption of all channels is not repaired at the time of the scheduled  
21 appointment, the subscriber will receive a pro-rated credit for each 24-hour period, or segment  
22 thereof, that the service interruption continues beyond the scheduled repair call.

23 (7) A Grantee shall commence work on all requests for service other than

1 service interruptions by the next business day after it receives the request for service or otherwise  
2 becomes aware of the need for service. If the Grantee needs to arrange a subscriber appointment  
3 to do such work, this requirement shall be satisfied if the Grantee offers the subscriber an  
4 appointment time convenient for the subscriber, and Grantee shall commence work at that time.

5 (8) All service for which a completion time is not otherwise specified in this  
6 subsection (c) must be completed within five business days from the date work must commence  
7 pursuant to paragraphs (5) through (7) above, unless, for reasons beyond the Grantee's control, the  
8 work could not be completed in five business days even with the exercise of all due diligence, in  
9 which case the Grantee shall complete the work in the shortest time possible.

10 [New in Chapter 9.2]

11 ~~(e)(d)~~ ~~A Grantee shall maintain a publicly listed, local toll free telephone number that~~  
12 ~~shall be available to Ssubscribers to request service calls, twenty four hours per day, each day of~~  
13 ~~the year. Under Normal operating conditions, corrective action shall be initiated by a Grantee not~~  
14 ~~later than the next business day after a service call is received, and corrective action shall be~~  
15 ~~completed as promptly as practicable. Appropriate records shall be made~~ A Grantee shall maintain  
16 records of service calls; showing when and what corrective action was completed.

17 [Formerly Sec. 9.1-7-6(e); new Sec. 9.2-9-3(d)]

18 ~~(f)(e)~~ A Grantee shall arrange for pickup and/or replacement of converters or other  
19 Grantee equipment at the Ssubscriber's or former subscriber's address, or by a satisfactory  
20 equivalent (such as the provision of a postage-prepaid mailer) if requested by a subscriber or  
21 former subscriber with a disability that limits mobility~~mobility limited customer.~~

22 [Formerly Sec. 9.1-7-6(f); new Sec. 9.2-9-3(e)]

1   **Section 9.2-9-4. Outages.**

2           (a)     In the event that service to a sSubscribers is totally interrupted for more than 24  
3   hours, then if the Grantee is reasonably able to identify the affected subscriber, the Grantee shall  
4   provide the affected Ssubscribers, whether or not the subscriber requests it, with a pro rata credit  
5   or rebate of the Ssubscriber's fees paid or payable (unless the Grantee's policy is to provide a  
6   greater credit or rebate, in which case the credit or rebate with the greater benefit to the subscriber  
7   shall have effect).

8           [Formerly Sec. 9.1-7-6(g); new Sec. 9.2-9-4]

9           **(b)     In the event of an unplanned outage of all channels lasting more than four hours**  
10   and affecting ten percent or more of a Grantee's total number of subscribers, a Grantee shall take  
11   reasonable steps to keep subscribers and the Department informed of the outage and the estimated  
12   time for restoring service. Such information may be provided via the Grantee's Web site, social  
13   media, or other reasonable means. The Grantee's customer service representatives shall be  
14   reasonably kept up to date with such information so that they can respond effectively to subscriber  
15   calls.

16           [New in Chapter 9.2]

17           ~~—— (i) — A Grantee shall maintain a public file containing all notices provided to~~  
18   ~~S~~subscribers under these customer service standards. ~~The notices shall be placed immediately in~~  
19   ~~the public file and maintained for at least one year from the date of the notice.~~

20           [Formerly Sec. 9.1-7-6(i); omitted in Sec. 9.2-9]

21   **Section 9.2-9-5. Complaint procedures.**

22           ~~(i)(a)~~ A Grantee shall establish a clear procedure for resolving complaints ~~filed by~~

1 ~~Subscribers.~~ Complaints may be made orally or in writing, at the complainant's option.

2 [Formerly Sec. 9.1-7-6(j); new Sec. 9.2-9-5(a)]

3 ~~(k)(b)~~ A Grantee shall provide an initial response to a complaint within five days of its  
4 receipt and a final written response within ~~thirty~~ 30 days after a written complaint is received. The  
5 response shall include a complaint number by which the complaint can be tracked. The final  
6 written response shall include a notice stating that if the complaint has not been resolved to the  
7 complainant's satisfaction, the matter may be referred to the ~~Communications Administrator~~  
8 Department.

9 [Formerly Sec. 9.1-7-6(k); new Sec. 9.2-9-5(b)]

10 [New in Chapter 9.2]

11 **Section 9.2-9-6. Opt-out.**

12 If a Grantee offers subscribers or potential subscribers an opportunity to opt out of a term  
13 or condition of service, the opt-out period shall not be less than 30 days, and the Grantee shall be  
14 responsible for ensuring that the subscribers are given clear and evident notice that alerts a  
15 reasonable subscriber to the nature of the option and its deadline.

16 [New in Chapter 9.2]

17 **Section 9.2-9-7. Terms of service.**

18 (a) If a Grantee changes the terms or conditions of service that bind subscribers, it shall  
19 be responsible for ensuring that the subscribers are given written notice of such change, indicating  
20 what provisions have changed. A general instruction to subscribers to consult the Grantee's Web  
21 site periodically, for example, shall not constitute such notice.

22 [New in Chapter 9.2]

(b) A Grantee shall make available to a subscriber at any time complete written copies of all agreements and terms of service to which the subscriber is subject, in such a way that a reasonable subscriber can readily identify all the agreements and terms of service that apply to that subscriber.

[New in Chapter 9.2]

#### Section 9.2-9-8. Signal quality issues.

If a subscriber experiences a signal problem documented by pictures or recordings that have not been resolved by a Grantee by thirty days after the problem was first reported to the Grantee, the County may require the Grantee to prove that the subscriber is consistently receiving a signal that meets technical standards as defined in FCC regulations or other applicable law.

[New in Chapter 9.2]

#### Section 9.2-9-9. ~~Regulation of rates~~Subscriber rates and notice.

(a) ~~To the extent allowed by law, the Board shall regulate Subscriber rates and charges for Rate regulated services. Except as otherwise provided herein, all rates and charges for Rate regulated services shall be approved by the Board. In establishing such rates and charges, the Board shall comply with the rate regulatory rules and procedures adopted by the Federal Communications Commission pursuant to 47 U.S.C. § 543(b). Provided, however, proposals for automatic adjustments that are in compliance with 47 C.F.R. §§ 76.922 and 76.923 may be implemented after review and approval by the Communications Administrator. The County reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.~~

1           (b) ~~All charges to Subscribers shall be consistent with a schedule of rates and charges~~  
2 ~~for all services offered by a Grantee. Except as otherwise provided by the Board, any increase in~~  
3 ~~the schedule of rates and charges shall not take effect until at least sixty days after approval. A~~  
4 Grantee shall maintain a publicly available schedule of all rates and charges for all services offered  
5 over its cable system.

6           (c) ~~In addition, no A Grantee shall not implement an increase in rates or charges shall~~  
7 ~~be implemented unless the Cable Television Administrator and each Ssubscriber subject to the~~  
8 ~~increase in rates and charges has been notified of the change in writing at least sixty 60 days in~~  
9 ~~advance of the change. In lieu of a Grantee providing sixty days such written notice to each~~  
10 ~~Subscriber subject to the increase, a Grantee may provide notification may be cablecast to~~  
11 ~~Ssubscribers by a Grantee in a an alternative manner approved by the Communications~~  
12 ~~AdministratorCable Television Administrator in each such case. but iIn the event a cablecast~~  
13 ~~notice is provided to Subscribers approved by the Cable Television Administrator, a Grantee also~~  
14 ~~shall give each Ssubscriber subject to the increase written notice of the increase no less than thirty~~  
15 ~~30 days before the increase is implemented. In addition, the Grantee shall provide oral or written~~  
16 ~~notification of any pending increases to rates and charges to any Person who requests Cable service~~  
17 ~~or becomes a Subscriber after any approval of increases to rates and charges but before the rate~~  
18 ~~increase becomes effective.~~

19           ~~(e)(d)~~ (d) A Grantee shall notify in writing each Ssubscriber of all applicable fees and charges  
20 for providing Ccable service prior to executing a contract of service with such Ssubscriber or  
21 installing any equipment to serve such Ssubscriber.

22           ~~(d)(c)~~ (c) Except as may be otherwise provided in a Ffranchise agreement, a Ssubscriber shall  
23 have the right to have Ccable service terminated without charge. A Ssubscriber or former

1 subscriber shall not be charged for ~~C~~cable service for more than two business days following the  
2 ~~Subscriber's~~ notice of termination to the Grantee. No Grantee shall enter into any agreement with  
3 a ~~S~~subscriber ~~which that~~ imposes any charge ~~following for a time period after~~ disconnection of  
4 service, except to the extent an early termination fee may apply for reconnection and subsequent  
5 ~~monthly or periodic charges, and those charges shall be no greater than charges for new customers.~~

6 ~~(e)(f)~~ A Grantee shall, at least ~~thirty~~ 30 days prior to the date it intends to terminate  
7 service to any ~~S~~subscriber ~~for reason(s) of nonpayment of Ssubscriber fees~~, notify the ~~S~~subscriber  
8 in writing of such intention, the reason therefor and the date termination is to be effective, except  
9 for reasons of public safety.

10 [Formerly Sec. 9.1-6-1(e); new Sec. 9.2-9-9]

11 (g) All Grantee promotional materials, announcements, and advertising of residential  
12 cable service to subscribers and the general public that include price information shall clearly and  
13 accurately disclose price terms. In the case of telephone orders, the Grantee shall take appropriate  
14 steps to ensure that price terms are clearly and accurately disclosed to subscribers or potential  
15 subscribers before the order is accepted. Such price terms shall include all taxes and fees (to the  
16 extent the Grantee can determine the amount of the taxes and fees at the time of order), surcharges,  
17 necessary equipment, and other charges that may result from the subscriber's acceptance of the  
18 offered product. Services and equipment shall be described in promotions or conversations in such  
19 a way that the subscriber or potential subscriber can readily identify the corresponding line items  
20 on bills. Once the order has been completed, the Grantee shall promptly, before the subscriber's  
21 next bill is generated, provide the subscriber with a complete written description of the order as  
22 implemented by the Grantee, fully itemized and showing the actual cost to the subscriber as it will



1 be reflected on the Grantee's bills. Such written description shall be provided in a way that allows  
2 the subscriber to confirm that the order is what the subscriber intended.

3 [New in Chapter 9.2]

4 (h) Bills shall be clear, concise, and understandable, and shall not be such as to mislead  
5 a reasonable subscriber as to any matter reflected on the bill. In particular, all line items on a bill  
6 shall be explained on the bill in such a way that a reasonable subscriber can understand the general  
7 nature of the charge or other entry without reference to information outside the bill.

8 (1) All descriptions in the bill shall be correct, truthful, and not misleading.

9 (2) The bill shall clearly delineate all activity during the billing period,  
10 including but not limited to optional charges, rebates, credits, and late charges.

11 (3) Bills shall be fully itemized, with itemizations including but not limited to  
12 basic and premium service charges and equipment charges.

13 (4) A Grantee may itemize charges that a subscriber must pay in connection  
14 with a service or item of equipment as permitted by applicable law, as long as such included  
15 charges are not represented in such a way as to mislead the subscriber as to the full cost of the  
16 service or equipment.

17 (5) A Grantee may itemize line items relating to costs imposed by governmental  
18 entities or pursuant to a franchise agreement, including but not limited to those specified in 47  
19 U.S.C. § 542(c), as permitted by applicable law, as long as such included charges are not  
20 represented in such a way as to mislead the subscriber as to the full amount the Grantee charges  
21 the subscriber.

22 [New in Chapter 9.2]

**Section 9.2-9-10. Placement of equipment.**

If requested by a property owner and to the extent practicable, a Grantee shall take into consideration the property owner's preferences as to the location of the Grantee's above-ground pedestals or other above-ground equipment placed on private property. A Grantee may require a property owner to pay the cost of any request by the property owner to move an existing pedestal or other above-ground equipment, and the Grantee shall provide the property owner with an estimate of such cost at the property owner's request.

[New in Chapter 9.2]

**Section 9.2-9-11. Protection of subscriber privacy.**

(a) A Grantee shall at all times protect the privacy rights of all Subscribers and former subscribers in accordance with applicable law, including but not limited to those rights secured by 47 U.S.C. § 551.

(b) A Subscriber or former subscriber may at any time revoke any written or electronic consent to release information by delivering to a Grantee in writing, by mail, or otherwise, the Subscriber's or former subscriber's decision to revoke the authorization. Any such revocation shall be effective upon receipt by the Grantee. Any Subscriber's prior written or electronic consent to release information shall be revoked upon termination of a Grantee's service to that Subscriber.

[Formerly Sec. 9.1-7-9; new Sec. 9.2-9-11]

**Section 9.2-9-12. Methodology for standards.**

A Grantee shall, upon the County's request, disclose the Grantee's methodology for calculating and determining compliance with each standard in this ARTICLE 9. Upon the

1 County's request, the Grantee shall also provide a calculation based on a common methodology  
2 specified by the County for all Grantees. A Grantee shall not calculate its performance with respect  
3 to any such standard in a way that has the purpose or effect of evading applicable standards or  
4 obscuring Grantee's actual performance.

5 [New in Chapter 9.2]

6 ~~—— (1) — The customer service standards set forth herein shall be in addition to the rights and~~  
7 ~~remedies provided by the Virginia Consumer Protection Act of 1977, as amended.~~

8 [Formerly Sec. 9.1-7-6(l); combined with 9.2-7-6(a)]

## ARTICLE 10.

Performance Guarantees and Remedies.

## Section 9.2-10-1. Insurance.

(a) — A Grantee shall maintain, and by its acceptance of a Franchise specifically agrees that it will maintain, throughout the entire length of a Franchise period, insurance as required by its franchise agreement, at least the following liability insurance coverage insuring the County and a Grantee: (i) commercial general liability insurance with respect to the construction, operation, and maintenance a Grantee's Cable system, and the conduct of a Grantee's business in the County, in the minimum amounts of \$2,000,000 per occurrence; \$2,000,000 aggregate for each occurrence; and (ii) copyright infringement insurance in the minimum amount of \$2,000,000 for copyright infringement occasioned by the operation of a Grantee's Cable system.

— (b) — Such commercial general liability insurance must include coverage for all of the following: comprehensive form, premises operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

— (c) — The County may review these amounts and shall have the right to require reasonable adjustments to them consistent with the public interest.

— (d) — A Grantee shall be solely responsible for the payment of premiums due for each policy of insurance required pursuant to this Chapter and its Franchise agreement.

(e) — All insurance policies and certificates maintained pursuant to this Chapter or a Franchise agreement shall contain the following endorsement:

It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance

1        company until at least 30 days after receipt by the County Communications  
2        Administrator, by registered mail, of a written notice of such intention to cancel or  
3        not to renew.

4        ~~(f) All insurance policies shall be with insurers qualified to do business in the~~  
5        Commonwealth of Virginia, with an A-1 or better rating of insurance by Best's Key Rating Guide,  
6        ~~Property/Casualty Edition.~~

7        ~~(g) All insurance policies shall be available for review by the County, and a Grantee~~  
8        shall submit to the County certificates of insurance for each policy required herein.

9        ~~(h) All commercial general liability insurance policies shall name the County, its~~  
10        elected and appointed officials, officers, boards, commissions, commissioners, agents, and  
11        employees as additional insureds.

12        [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-1]

### 13        **Section 9.2-10-2. Indemnity.**

14        ~~(i)(a)~~ (a) A Grantee shall, at its sole cost and expense, fully indemnify, hold harmless, and  
15        defend the County and its boards, authorities, commissions, and committees, and, in their capacity  
16        as such, the elected and appointed officials, officers, commissioners, agents, and employees  
17        thereof (collectively referred to in this Section as "indemnitees"), as provided in subsection (b).

18        (b) The Grantee shall provide the defense and indemnification specified in subsection  
19        (a) against any and all claims, suits, causes of actions, proceedings, liability, and judgments,  
20        whether for damages or equitable relief or otherwise arising out of or alleged to arise out of the  
21        installation, construction, maintenance, or operation of a Grantee's cable system (to the extent  
22        that a Grantee has operation or maintenance responsibilities pursuant to this Chapter, its  
23        franchise agreement, or applicable law); or the conduct of a Grantee's cable service business in

1 the County; or in any way arising out of a Grantee's enjoyment or exercise of its Franchise  
2 (collectively referred to in this Section as a "claim"), subject to 47 U.S.C. § 558. agreement

3 (c) Grantee's obligations specified in subsections (a) and (b) shall include, but are not  
4 limited to, indemnification against claims for infringements of any copyright, trade mark, trade  
5 name, service mark, or patent; failure by a Grantee to secure consents from the owners or  
6 authorized distributors of programs to be delivered by a Grantee's cable system; invasion of the  
7 right of privacy; or defamation of any person, firm or corporation.

8 (d) Grantee's obligations specified in subsections (a) through (c) shall not apply unless  
9 that if the specific act or omission that gives rise to the claim has been authorized by indemnitees.

10 A general statement of authorization pursuant to this Chapter or a Franchise agreement shall not  
11 be construed to be such an authorization.

12 (e) Grantee's obligations specified in subsections (a) through (c) shall not apply if the  
13 events that give rise to the claim are the direct result of any act or omission by indemnitees that  
14 results in personal injury or property damage.

15 (f) This indemnity does not apply to PEG programming to the extent it is provided by  
16 a person other than a Grantee or its agent, or programming carried on channels leased pursuant to  
17 47 U.S.C. § 532, or any content on the I-Net.

18 (g) The County shall provide a Grantee with timely written notice, sufficient to allow  
19 the Grantee to respond, of any obligation to indemnify and defend the County. The County shall  
20 take action to avoid entry of a default judgment. The County will reasonably cooperate with the  
21 Grantee in the Grantee's defense of such a claim or action.

22 ~~Specifically, a Grantee shall fully indemnify, defend, and hold harmless the County~~  
23 ~~and, in their capacity as such, the its elected and appointed officials, officers, agents, commissions,~~

1 commissioners, and employees thereof, from and against any and all claims, suits, actions, liability,  
2 and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or  
3 alleged to arise out of the installation, construction, operation, or maintenance of a Grantee's Cable  
4 system, including but not limited to any claim against a Grantee for invasion of the right of privacy,  
5 defamation of any Person, firm or corporation, or the violation or infringement of any copyright,  
6 trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or  
7 corporation. This indemnity does not apply to programming carried on any Channel set aside for  
8 PEG use, or Channels leased pursuant to 47 U.S.C. § 532, <sup>1</sup> or to operations of the PEG Channels  
9 to the extent such operations are carried out by a Person other than a Grantee or its agents.

10 (k)(h) In the event that a Grantee fails, after notice, to undertake the County's  
11 indemnitees' defense of any claims pursuant to this Section, a Grantee's indemnification shall  
12 include, but is not limited to, the County's indemnitees' reasonable attorneys' fees incurred in such  
13 defensedefending against any such action, claim, suit, or proceeding, any associated interest  
14 charges arising from any action, claim, suit or proceeding arising under this Chapter or its  
15 Franchise agreement, the County's indemnitees' out-of-pocket expenses, and the reasonable value  
16 of any services rendered by the County Attorney or other County staff.

17 ——— (l) ——— In addition to the other insurance policies required by this Chapter, a Grantee shall  
18 obtain and keep in force and effect during the entire term of its Franchise agreement, including  
19 any extension thereof, commercial general liability insurance coverage (owner's protection policy)  
20 in a minimum amount of two million dollars covering bodily injury and property damage, subject  
21 to exclusions, for the benefit of the County, its elected and appointed officials, boards,  
22 commissions, commissioners, agents, employees, and officers. A Grantee shall deliver to the  
23 County on or before the date of execution of a Franchise agreement an indemnification insurance

1 ~~policy duly executed by the officers or authorized representatives of a responsible and non-~~  
2 ~~assessable insurance company, evidencing this coverage for the benefit of the County, its elected~~  
3 ~~and appointed officials, agents, boards, commissions, commissioners, employees, and officers,~~  
4 ~~which policy of insurance shall provide for at least 30 days' prior written notice to the County of~~  
5 ~~the insurer's intention to cancel or not to renew said policy.~~

6 ~~(m)~~(i) Neither the provisions of this Section nor any damages recovered by ~~the County~~  
7 indemnitees shall be construed to limit the liability of a Grantee or its ~~subcontractors~~ agents for  
8 damages under this Chapter or its ~~F~~franchise agreement or to excuse the faithful performance of  
9 obligations required by this Chapter and its ~~F~~franchise agreement, except to the extent that any  
10 monetary damages suffered by ~~the County~~ indemnitees have been satisfied by a financial recovery  
11 under this Section or other provisions of this Chapter or the fFranchise agreement.

12 ~~(n)~~(j) ~~The County~~ Indemnitees shall at no time be liable for any injury or damage  
13 occurring to any ~~P~~person or property from any acts or omissions of a Grantee in the construction,  
14 maintenance, use, operation, or condition of a Grantee's ~~C~~cable system, ~~to the extent that a Grantee~~  
15 ~~has responsibilities for such maintenance, use, operation or condition pursuant to this Chapter, its~~  
16 ~~Franchise agreement, or applicable law. The County~~ Indemnitees shall not and ~~does~~ do not assume  
17 any liability whatsoever of a Grantee for injury to ~~P~~persons or damage to property.

18 ~~(o)~~—~~The provisions of this Section constitute the minimum requirements of a Grantee~~  
19 ~~under this Chapter and its Franchise agreement, but shall not be additional requirements to those~~  
20 ~~identified in a Grantee's Franchise agreement.~~

21 [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-2]



1   **Section 9.2-10-3. Security Instruments.**

2       ~~(p)~~(a) A Grantee shall obtain and maintain during the entire term of a ~~F~~franchise, and any  
3   renewal or extensions thereof, a performance bond in the County's favor in the amount ~~not less~~  
4   ~~than \$500,000~~ provided in its franchise agreement to ensure a Grantee's faithful performance of  
5   its obligations under its ~~F~~franchise agreement, this Chapter, and other applicable law. The County  
6   may, at its sole discretion, reduce the amount of the bond upon written application by a Grantee.  
7   Reductions granted or denied upon application by a Grantee shall be without prejudice to the  
8   Grantee's subsequent applications or to the County's right to require the full bond at any time  
9   thereafter. However, no application for a reduction of bond shall be submitted by a Grantee within  
10   one year of any prior application. In no event shall such performance bond or bonds be reduced  
11   to less than ~~F~~fifty Thousand ~~D~~ollars.

12   ~~—— (q)~~(h) A performance bond shall provide the following conditions:

13   ~~—— (1) — There shall be recoverable by the County from the principal and surety, any~~  
14   ~~and all fines and penalties due to the County and any and all damages, losses, costs, and expenses~~  
15   ~~suffered or incurred by the County resulting from the failure of a Grantee to faithfully comply with~~  
16   ~~the material provisions of a Franchise agreement, this Chapter, and other applicable law, to comply~~  
17   ~~with all orders, permits and directives of any County agency or body having jurisdiction over a~~  
18   ~~Grantee's acts or defaults, to pay fees due to the County, or to pay any claims, taxes or liens due~~  
19   ~~the County. Such losses, costs and expenses shall include, but not be limited to, reasonable~~  
20   ~~attorney's fees and other associated expenses.~~

21   ~~—— (2) — The total amount of the performance bond required by this Chapter shall be~~  
22   ~~forfeited in favor of the County in the event:~~

1 ~~\_\_\_\_\_ (A) a Grantee abandons its system at any time during the term of its~~  
2 ~~Franchise or any extension thereto; or~~

3 ~~\_\_\_\_\_ (B) a Grantee carries out a transfer without the express written approval~~  
4 ~~of the Board as required in this Chapter.~~

5 ~~\_\_\_\_\_ (r)(i) All performance bonds shall be issued by a surety with an A-1 or better rating of~~  
6 ~~insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be in a form satisfactory~~  
7 ~~to the County Attorney; and shall be subject to the approval of the County; and shall contain the~~  
8 ~~following endorsement:~~

9 ~~This bond may not be allowed to lapse until at least ninety days after receipt by the~~  
10 ~~County, by certified mail, return receipt requested, of a written notice from the~~  
11 ~~issuer of the bond of intent not to renew.~~

12 ~~\_\_\_\_\_ (s)(i) All performance bonds and insurance policies required herein shall be in a form~~  
13 ~~satisfactory to the County. The County may, at any time, increase the amount of the required~~  
14 ~~performance bond to reflect increased risks to the County and the public and/or require a Grantee~~  
15 ~~to provide additional sureties to any and all bonds or to replace existing bonds with new bonds that~~  
16 ~~satisfy the criteria in this Section. No bond or insurance policy shall be cancelable. Insurance~~  
17 ~~policies written for a period less than the term of a Franchise shall be renewed at least thirty days~~  
18 ~~before the policy's expiration, and the renewed policies and evidence of premium payments shall~~  
19 ~~be promptly delivered to the County.~~

20 ~~(t)(b) No Grantee shall permit any insurance policy or performance bond to expire or~~  
21 ~~approach less than ~~thirty~~ 30 days prior to expiration without securing and delivering to the County~~

1 a substitute, renewal, or replacement policy or bond in conformance with the provisions of this  
2 Chapter.

3 ~~(a)(c)~~ The County may require performance bonds ~~and insurance policies~~ described in  
4 this Section to run to the benefit of the County.

5 (d) The following procedures shall apply to drawing on any bond or letter of credit  
6 provided by a Grantee:

7 (1) If the County notifies a Grantee of any amounts due pursuant to its franchise  
8 agreement or applicable law, and the Grantee does not make such payment within 30 business  
9 days, the County may draw the amount in question, with any applicable interest and penalties,  
10 from the bond or letter of credit after providing written notice to the Grantee and the issuing  
11 financial institution, specifying the amount and purpose of such draw.

12 (2) Within three business days of a draw on the bond or letter of credit, the  
13 County shall mail to the Grantee, by certified mail, return receipt requested, written notification of  
14 the amount, date, and purpose of such draw.

15 (3) If at the time of a draw on the bond or letter of credit by the County, the  
16 amount available is insufficient to provide the total payment of the claim asserted in the County's  
17 draw notice, the balance of such claim shall not be discharged or waived, but the County may  
18 continue to assert the same as an obligation of the Grantee to the County.

19 (4) No later than 30 days after the County mails notice to the Grantee by  
20 certified mail, return receipt requested, of a draw on the bond or letter of credit, the Grantee shall  
21 restore the amount of the bond or letter of credit to its original amount as specified in the franchise  
22 agreement. However, if the Grantee has initiated a legal action contesting the alleged default or  
23 amount owed, the County shall not further draw on the bond or letter of credit for the issue disputed

1 in the legal action or subsequent cases arising out of the same facts and circumstances, pending  
2 final resolution. The County may, however, continue to draw on the bond or letter of credit for  
3 other violations.

4 (5) Upon termination of the Grantee's franchise and satisfaction of all its  
5 outstanding obligations under the franchise and applicable law, the bond may be canceled by the  
6 Grantee and the County shall release the issuing bank of its obligations under the letter of credit,  
7 provided that there is then no outstanding default on the part of the Grantee. Upon renewal of the  
8 franchise, the bond and letter of credit may be canceled and replaced, as applicable, by any similar  
9 instrument that may be required upon such renewal.

10 [Formerly Sec. 9.1-5-9; new Sec. 9.2-10-3]

11 **Section 9.2-10-4. Remedies~~Financial penalties.~~**

12 ~~(a) — For violation of this Chapter or a Franchise agreement entered into pursuant to this~~  
13 ~~Chapter, penalties shall be assessable against a Grantee. Such penalties shall: (i) be chargeable to~~  
14 ~~the Grantee, its performance bond, or any other security fund of the Grantee, in any amount up to~~  
15 ~~the limits specified below, at the County's discretion; (ii) be subject to cure periods, to the extent~~  
16 ~~listed below, that begin to run at the time the Grantee is notified in writing of a penalty by the~~  
17 ~~County; and, (iii) not be deemed cured without written evidence from a Grantee and acceptance~~  
18 ~~thereof by the County for those violations that are subject to a cure period. The County may waive~~  
19 ~~or reduce the penalties specified in this Section for good cause shown.~~

20 ~~———— (1) — For failure to submit any required plans indicating expected dates of~~  
21 ~~installation of various parts of the system: a penalty of \$400 per day for each day the plans are not~~  
22 ~~submitted beyond a seven-day cure period;~~

1           ~~————— (2) — For failure to commence operations in accordance with the~~  
2 ~~requirements of a Ffranchise agreement: a penalty of \$1,000 per day for each day commencement~~  
3 ~~of operations in accordance with such requirements is delayed beyond a thirty \_day cure period;~~

4           ~~————— (3) — For failure to substantially complete construction and installation of~~  
5 ~~a system in accordance with this Chapter and/or a Ffranchise agreement: a penalty of \$2,000 per~~  
6 ~~day for each day the construction or installation is delayed beyond a thirty \_day cure period;~~

7           ~~————— (4) — For a transfer without approval: a penalty of \$2,000 per day for each~~  
8 ~~day the transfer remains in effect without the County's approval;~~

9           ~~————— (5) — For failure to comply with requirements for PEG use of the system:~~  
10 ~~a penalty of \$1,000 per day for each day compliance is delayed beyond a fourteen \_day cure period;~~

11           ~~————— (6) — For failure to provide complete and accurate information, reports, or~~  
12 ~~filings lawfully required under a Franchise agreement or applicable law or by the County: a~~  
13 ~~penalty of \$200 per day for each day that each such filing is delayed beyond a thirty \_day cure~~  
14 ~~period;~~

15           ~~————— (7) — For violation of a customer service standard as set forth in Section~~  
16 ~~9.1 7-6: a penalty of \$200 per violation, treating each failure to comply as a separate violation;~~

17           ~~————— (8) — For failure to render payment for reimbursement of any franchise~~  
18 ~~expenses, or failure to pay franchise fees or liquidated damages or any payment due and owing to~~  
19 ~~the County: a penalty of \$100 for each day each such payment is delayed;~~

20           ~~————— (9) — For failure to file, obtain or maintain any required performance bond~~  
21 ~~or other security fund in a timely fashion: a penalty of \$200 per day for each day compliance is~~  
22 ~~delayed;~~

~~————— (10) For failure to restore damaged property: a penalty of \$50 per day for each day such property is not replaced beyond a ten-day cure period, in addition to the cost of the restoration as required in this Chapter or a Franchise agreement;~~

~~————— (11) For failure to bring into compliance any violation of applicable construction standards: \$200 per day for each day such violation is not remedied beyond a ten-day cure period, in addition to the cost of the remedy;~~

~~————— (11)(12) For violation of applicable technical standards pursuant to federal law: a penalty of \$100 per day for each day the violation is not remedied beyond a seven-day cure period;~~

~~————— (12)(13) For rate regulation violations or failure to conform to County orders or resolutions, for each day that the same violation occurs or continues: a penalty of \$200 for each day the violation is not remedied;~~

~~————— (13)(14) For violation of federal, Virginia, or local privacy requirements: a penalty of \$1,000 per incident; and~~

~~————— (14)(15) For any other violations of this Chapter, a Franchise agreement or other applicable law: a penalty of \$200 per day for each violation for each day the violation is not remedied beyond a seven-day cure period.~~

~~————— (b) A Grantee shall pay any penalty assessed in accordance with this Chapter within thirty days after receipt of notice from the Communications Administrator.~~

~~————— (b)(c) To the extent that financial penalties are applied to a Grantee under this Section, the Grantee shall not be subject to liquidated damages established in a Franchise agreement for the same violation.~~

(~~e~~)(~~d~~)—Violation of this Chapter shall be subject to such ~~other remedies and penalties as~~ shall be prescribed by federal, state, or local law or ordinance, or by franchise agreement.

[Formerly Sec. 9.1-9-9; new Sec. 9.2-10-2]

**Section 9.2-10-5. Force majeure.**

Notwithstanding any other provision of this Chapter, a Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Chapter due, directly or indirectly, to force majeure as defined in the Grantee's franchise agreement. In the event that any such delay in performance or failure to perform affects only part of a Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible.

[New in Chapter 9.2]

**Section 9.2-10-6. Franchise revocation.**

(a) The Board shall have the right, by ordinance, to revoke a ~~F~~franchise or to shorten the term of a ~~F~~franchise to a term not less than ~~thirty-six~~ 36 months from the date of the action shortening the ~~F~~franchise term, for a Grantee's failure to construct, operate, or maintain its ~~C~~cable system in accordance with this Chapter and its ~~F~~franchise agreement; for failing to comply with the conditions of occupancy for any public lands; for failing to make required extensions of service; for willfully or knowingly making false statements on or in connection with an initial or renewal ~~F~~franchise application; for willfully or knowingly making false statements on or in connection with any application for a transfer or a ~~F~~franchise modification; for defrauding or attempting to defraud the County or ~~S~~subscribers; for any substantial violation of the Virginia

1 Consumer Protection Act of 1977; for any substantial violation of the Cable Act or any regulations  
2 promulgated pursuant thereto; or for any other material breach of a Ffranchise agreement or  
3 violation of this Chapter. Board actions ~~taken~~ pursuant to this Subsection shall be taken in  
4 accordance with ~~such any~~ other terms ~~and or~~ conditions ~~to revoke a Franchise regarding revocation~~  
5 ~~or to shorten the term of a Franchise agreement or shortening of the term to the extent established~~  
6 that may be established in that Grantee's Ffranchise agreement.

7 (b) A Grantee shall not be subject to the sanctions of this Section for any act or  
8 omission ~~wherein such act or omission was beyond the Grantee's control. An act or omission shall~~  
9 ~~not be deemed to be beyond a Grantee's control if committed, omitted, or caused by a corporation~~  
10 ~~or other business entity that holds a controlling interest in the Grantee, whether held directly or~~  
11 ~~indirectly. Further, the inability of a Grantee to obtain financing, for whatever reason, shall not be~~  
12 ~~an act or omission that is "beyond the Grantee's control."~~ caused by force majeure as defined in  
13 the Grantee's franchise agreement.

14 (c) Any Ffranchise shall be deemed revoked ~~one hundred twenty calendar~~ 120 days  
15 after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take  
16 over the business of a Grantee, whether in a receivership, reorganization, bankruptcy, assignment  
17 for the benefit of creditors, or other action or proceeding. ~~Provided, h~~ However, that a Franchise  
18 may be reinstated at the Board's sole discretion if, within that ~~one hundred twenty~~ 120 day period:

19 (1) Such assignment, receivership, or trusteeship has been vacated; or

20 (2) Such assignee, receiver, or trustee has fully complied with the terms and  
21 conditions of this Chapter and the applicable Ffranchise agreement and has executed an agreement,  
22 approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by



the terms and conditions of this Chapter and the applicable Ffranchise agreement, and such other conditions as may be established or as are required by applicable law; or

(3) If the Board determines that reinstatement is in the public interest for other reasons.

(d) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Grantee, the Board may revoke the Ffranchise by serving notice on the Grantee and the successful bidder, in which event the Ffranchise and all rights and privileges of the Ffranchise will be revoked and will terminate ~~thirty calendar~~ on a date established by the Board, but not less than 30 days after serving such notice, unless:

(1) The Board has approved the transfer of the Ffranchise to the successful bidder; and

(2) The successful bidder has covenanted and agreed with the Board to assume and be bound by the terms and conditions of the Ffranchise agreement and this Chapter, and such other conditions as may be established or as are required pursuant to this Chapter or a Ffranchise agreement.

(e) If the Board revokes a Ffranchise, or if for any reason not constituting force majeure a Grantee terminates service to its subscribers, or fails to provide service to all its Ssubscribers for 72 consecutive hours, ~~or~~ abandons its system, ~~forfeits~~ or fails to operate its system, the following rights are effective:

(1) the Board may acquire ownership of or effect a transfer of the Ccable system at an equitable price, subject to applicable provisions of the Grantee's franchise agreement and applicable law; and

(2) if a ~~C~~cable system is abandoned by a Grantee, the Board may sell, assign or transfer all or part of the assets of the system, subject to applicable provisions of the Grantee's franchise agreement and applicable law.

~~—— (f) — To the extent permitted by applicable law, The Board may acquire ownership of and operate a Cable system, regardless of whether such ownership is acquired following revocation or forfeiture of a Franchise.~~

~~(g)(f)~~ The termination of a Grantee's ~~F~~franchise shall in no way affect, ~~limit, or foreclose~~ any rights or remedies the County may have under the ~~F~~franchise or under any provision of law the validity of any act or violation done or committed before that termination; or any liquidated damage, penalty, sanction, or forfeiture incurred, or any right established, accrued, or accruing under the franchise before that termination; or any notice of violation or enforcement action initiated pursuant to the franchise before that termination.

[Formerly Sec. 9.1-5-4; new Sec. 9.2-10-4]

#### Section 9.2-10-7. Termination of Franchise.

Upon termination of a ~~F~~franchise, ~~whether by action of the Board, as provided above, or upon expiration of a Ffranchise term without extension or renewal,~~ a Grantee shall be obligated to cease using its system for the purposes authorized by the ~~F~~franchise ~~unless the Board requires the Grantee to operate its system pursuant to Section 9.1-5-6~~ except to the extent required by Section 9.2-3-5.

[Formerly Sec. 9.1-5-12; new Sec. 9.2-10-5]

1   **Section 9.2-10-8. Transfer of ownership to County; Arbitration.**

2           (a)   ~~In those circumstances provided for in this Chapter wherein~~ If the County shall  
3   ~~have~~ has the right under applicable law and the Grantee's franchise agreement to acquire  
4   ownership of a Grantee's ~~C~~cable system or substantially all of its assets, and ~~the~~ County and the  
5   Grantee agree upon the price for the Cable system pursuant to this Chapter, shall have been  
6   ~~mutually agreed upon, within sixty days after such agreement, then~~ the County shall give written  
7   notice to the Grantee ~~if whether~~ it elects to exercise such right, The County shall give such notice  
8   within 60 days after agreement on the price, unless the County and the Grantee agree to a different  
9   time period. The County's written notice shall indicate whether the entire system or substantially  
10   all of ~~its~~ Grantee's assets will be purchased. Ownership of the system or the identified assets will  
11   transfer to the County at the time the County tenders the purchase price for the system or assets,  
12   which shall not be later than 180 days after the County's notice of its exercise of a right of purchase,  
13   unless the County and the Grantee agree to a different time period.

14           (b)   In the event the Board ~~considers the~~ elects to purchase or transfer of a Grantee's  
15   ~~C~~cable system, or any of its assets, pursuant to the terms of a ~~F~~ranchise agreement and/or this  
16   Chapter, and the ~~final~~ price cannot be agreed upon, the price shall be determined by a panel of  
17   arbitrators. The panel shall be composed of one arbitrator chosen by the County, one arbitrator  
18   chosen by the Grantee, and a third arbitrator chosen by the first two. The expenses of the  
19   arbitration, including the fees of the arbitrators, shall be borne by the parties in such a manner as  
20   the arbitrators provide in their award, but in no event will the County be responsible for more than  
21   one-half of the expenses. The arbitrators shall follow the rules and procedures of the American  
22   Arbitration Association, except where such procedures conflict with an express provision of this

Chapter. The arbitration hearing shall take place in Fairfax County, Virginia, unless otherwise agreed to by the parties in writing.

(c) Where the purchase price of a ~~C~~cable system has been submitted to arbitration, the County may ~~affirmatively~~ accept the price determined by the arbitrators within ~~sixty~~ 60 days after the rendering of the arbitrators' decision, and make payment of such price in full to the Grantee within 180 days after the rendering of the arbitrators' price, ~~at which time~~ in which case the system or any assets shall ~~automatically~~ be transferred to the County. If the County fails to accept the arbitrators' price within the aforesaid ~~sixty~~60-day period, and tender the purchase price in full to the Grantee within 180 days after the rendering of the arbitrators' price, the rights of the County to acquire shall expire.

(d) No matter or dispute between the County and a Grantee relating to this Chapter or a ~~F~~franchise agreement shall be arbitrable unless specifically provided for in this Chapter or a ~~F~~franchise agreement.  
~~County's right to assign.~~

~~A Franchise agreement shall not limit the right of the County to assign its rights to acquire any or all of the assets of a Grantee's Cable system.~~

[Formerly Sec. 9.1-5-5; new Sec. 9.2-10-6]

**~~Section 9.1-5-6. — County's right to assign.~~**

~~A Franchise agreement shall not limit the right of the County to assign its rights to acquire any or all of the assets of a Grantee's Cable system.~~

[Formerly Sec. 9.1-5-6; omitted in Ch. 9.2]

ARTICLE 11.

Open Video Systems.

Section 9.2-11-1. Applicability of Chapter.

(a) This Chapter shall apply to open video systems that comply with 47 U.S.C. § 573, except as prohibited in U.S.C. § 573 or 47 CFR Part 76 Subpart S, as may be amended from time to time.

(b) In applying this Chapter to an open video system, "Grantee" shall be taken to refer to the open video system operator, "cable system" to the open video system, and similar terms shall apply similarly.

[Formerly Sec. 9.1-8-1; new Sec. 9.2-11-1]

Section 9.2-11-2. Application for open video system authorization.

(a) A Person proposing to use public ways for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of an open video system shall first obtain authorization from the Board for such use.

(1) A Person may apply for such authorization by submitting an application containing the information required in Section 9.2-4-1(Application for grant of an initial franchise), with those information requirements referring to the open video system rather than a cable system.

~~(1) The name and address of the applicant and an identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and affiliates of the applicant, and all Persons with five percent or more ownership interest in the applicant and its affiliates; the Persons who~~

1 ~~control the applicant and its affiliates; all officers and directors of the applicant and its affiliates;~~  
2 ~~and any other business affiliation and cable system ownership interest of each named Pperson.~~

3 ~~————— (2) — A detailed description of the physical facilities the applicant proposes to~~  
4 ~~place in public ways.~~

5 ~~(3) — Any information that may be reasonably necessary to demonstrate~~  
6 ~~compliance with the requirements of federal law, including without limitation, all applicable FCC~~  
7 ~~regulations and orders.~~

8 ~~(4) — Any information that may be reasonably necessary to demonstrate~~  
9 ~~compliance with the requirements of this Article.~~

10 ~~————— (5) — An affidavit or declaration of the applicant or authorized officer certifying~~  
11 ~~the truth and accuracy of the information in the application and certifying that the application~~  
12 ~~meets all federal, and state, and local law requirements.~~

13 ~~(6)(2) The County Cable Television Administrator may, at its discretion and upon~~  
14 ~~request of an applicant, waive in writing the provision of any of the information required by this~~  
15 ~~Section.~~

16 ~~———— (b) — Upon the Board's grant of open video system authorization, the applicant shall pay~~  
17 ~~to the County an amount of Seventy five Thousand Dollars per Franchise area. The payment shall~~  
18 ~~be non-refundable, shall be made payable to the order of the "County of Fairfax" and may be used~~  
19 ~~to offset in whole or in part any direct costs incurred by the County in granting the~~  
20 ~~authorization.~~

21 [Formerly Sec. 9.1-8-2; new Sec. 9.2-11-2]

**Section 9.2-11-3. Fee in lieu of franchise fee.**

An open video system operator shall pay to the County a fee of five percent of gross revenues in lieu of the a franchise fee required in this Chapter, pursuant to the terms, procedures and conditions specified in this Chapter for franchise fees, unless cable service provided by the open video system operator is subject to the Virginia Communications Sales and Use Tax levied under Virginia Code § 58.1-648 or any successor provision, in which case the open video system operator shall be responsible for such Communications Sales and Use Tax in lieu of a franchise fee.

[Formerly Sec. 9.1-8-3; new Sec. 9.2-11-3]

**Section 9.2-11-4. Public, educational, and governmental access obligations.**

An open video system operator shall be subject to obligations pertaining to public, educational, and governmental access pursuant to 47 C.F.R. § 76.1505.

[Formerly Sec. 9.1-8-4; new Sec. 9.2-11-4]

**Section 9.2-11-5. Usage of public ways.**

(a) An open video system operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the public ways, except to the extent specifically prohibited by federal law. FCC approval of an open video system operator's certification pursuant to 47 U.S.C. § 573 shall not confer upon such operator any authority to use or occupy the public ways that the operator would not otherwise possess.

(b) No person shall construct, install, maintain, or operate an open video system or part of an open video system on, over, through, or within a public way in the County, or on, over, through, or within any other public property of the County, unless an agreement has first been

1     obtained pursuant to the provisions of this Article, and unless such open video system agreement  
2     is in full force and effect.

3             [Formerly Sec. 9.1-8-5; new Sec. 9.2-11-5]



## ARTICLE 12.

~~Administration and Advisory Bodies to the Board of Supervisors.~~

## Section 9.2-12-1. Powers and responsibilities.

(a) The Board delegates the performance of any act, duty, or obligation, or exercise of any power under this Chapter or any Franchise agreement to the ~~Communications Administrator~~ Cable Television Administrator, except where this Chapter specifies that the Board shall take an action or federal or ~~Virginia~~ state law requires action by the ~~Franchising Authority~~.

(b) Day-to-day administration of ~~cable communications operations this Chapter and~~ Franchises within the County shall be assigned to the ~~Communications Administrator~~ Cable Television Administrator. The ~~Communications Administrator's~~ Cable Television Administrator's powers and responsibilities include, but are not limited to, the following functions:

(1) ~~Preparing invitations to bid for a Franchise; establishing criteria for review and ranking of Franchise applications; r~~Reviewing and evaluating applications for Franchises and making ~~selection~~ recommendations to the Board;

(2) Monitoring the timely performance of Grantees ~~Grantee(s) in submitting applications for and obtaining all certificates, permits and agreements required by this Chapter and applicable law and the performance of Grantee(s) in meeting applicable construction timetables in~~ fulfilling their obligations under their franchise agreements and this Chapter;

~~(3) Monitoring and reviewing changes in, additions to, or reductions of Subscriber fees and rates for conformity with the requirements of this Chapter and federal law; advising and making recommendations to the Board on the regulation of rates in accordance with this Chapter; administering and enforcing the rate regulation provisions of the Cable Act and~~

~~federal law; promulgating rules and procedures concerning rate regulation; and exercising any authority granted by the Board under this Chapter;~~

(4)(3) Advising and making recommendations to the Board on technical, engineering, and police power regulations of cable and other communications systems within the County;

(5)(4) Cooperating with other cable and other communications systems, system operators and governmental units in the development and supervision of the interconnection of systems;

(6)(5) Reviewing books, records, and reports a Grantee is required to provide pursuant to this Chapter ~~and or a Franchise agreement, as well as all franchise reports filed with the FCC or any other regulatory agencies with jurisdiction over any cable or communications system in the County, and, at the Communications Administrator's~~ Cable Television Administrator's discretion, requiring the preparation and filing of information in addition to that otherwise required by this Chapter or applicable law, ~~as may reasonably be required to accomplish the purposes pursuant to Section 9.1-6-2~~ Section 9.2-8-1 of this Chapter;

(7)(6) Monitoring a Grantee's performance under and compliance with the terms of an applicable ~~Franchise~~ agreement and this Chapter and making recommendations to the Board to ensure such compliance or advising and making recommendations on matters that may constitute grounds for revoking or shortening the term of a Franchise;

(8)(7) Receiving and investigating complaints against a Grantee and advising a Grantee of the receipt of ~~S~~subscriber complaints affecting a Grantee's system;

(9)(8) Seeking recovery of ~~penalties or~~ liquidated damages provided for in this Chapter or a Ffranchise agreement, including but not limited to withdrawing money from a security fund instruments pursuant to a Ffranchise agreement;

(10)(9) Advising the Board with regard to the County's authority to regulate, Ffranchise, or authorize cable and other communications systems in the County;

(11)(10) Developing policies to encourage growth and competition in communications, and evaluating the impact of cable and other communications systems on the County, for review and implementation by the Board;

(12)(11) Executing agreements with Grantees and other third parties as appropriate to (A) establish safeguards, subject to the requirements of the Virginia Freedom of Information Act, Virginia Code § 2.2-3700, et seq., and the disclosure requirements of any other applicable law, to protect proprietary and confidential documents that Grantees provide pursuant to this Chapter or a cable franchise; and (B) toll the running of statutes of limitation, contractual limitations periods, or other deadlines when doing so will protect the County's rights and interests under this Chapter or a cable franchise agreement; and

(12) Other duties as assigned by the Board and the County Executive.

(c) The Board shall have the sole authority to: (i) ~~regulate rates for rate-regulated services, except to the extent such authority is delegated to the Communications Administrator in this Chapter;~~ (ii) grant Ffranchises; (iii) (ii) authorize the entering into of Ffranchise agreements; (iv) (iii) renew Ffranchises; (v) (iv) revoke or shorten the term of a Ffranchise; (v) modify a franchise; and (vi) authorize the transfer of a Ffranchise; ~~and, (vii) authorize a change of ownership control of a Grantee.~~

[Formerly Sec. 9.1-4-1; new Sec. 9.2-12-1]

1   **Section 9.2-12-2. Advisory bodies to the Board of Supervisors.**

2           The Consumer Protection Commission (as defined in Chapter 10, Article 3 of the Code of  
3   the County of Fairfax) may, as directed by the Board or requested by the ~~Communications~~  
4   ~~Administrator~~ Cable Television Administrator, advise and inform the Board on issues relating to  
5   Cable systems.

6           [Formerly Sec. 9.1-4-2; new Sec. 9.2-12-2]

1                                   **ARTICLE 13.**

2                                   **General Provisions.**

3   **Section 9.2-13-1. Limits on Grantee's recourse.**

4           Except as expressly provided in this Chapter or a ~~F~~franchise agreement, a Grantee shall  
5   have no recourse against the County for any loss, expense, or damage resulting from the terms and  
6   conditions of this Chapter or the ~~F~~franchise or because of the County's enforcement thereof nor  
7   the County's failure to have the authority to grant the ~~F~~franchise. A Grantee expressly agrees upon  
8   its acceptance of a ~~F~~franchise that it does so relying upon its own investigation and understanding  
9   of the power and authority of the County to grant ~~thesaid~~ ~~F~~franchise.

10                   [Formerly Sec. 9.1-9-1; new Sec. 9.2-13-1]

11   **Section 9.2-13-2. Special license.**

12           The County reserves the right to issue a license, easement, or other permit to anyone other  
13   than a Grantee to permit that ~~P~~person to traverse any portion of a Grantee's ~~F~~franchise area within  
14   the County in order to provide service within or outside the County. Such license, ~~or~~ easement, or  
15   other permit, absent a grant of a ~~F~~franchise in accordance with this Chapter, shall not authorize or  
16   permit ~~said~~ such ~~P~~person to use the County's public ways to provide ~~C~~cable service of any nature  
17   to any home or place of business within the County, or to render any service or connect any  
18   ~~S~~subscriber within the County to the Grantee's ~~C~~cable system.

19                   [Formerly Sec. 9.1-9-2; new Sec. 9.2-13-2]

20   **Section 9.2-13-3. Failure to enforce ~~F~~franchise.**

21           A Grantee shall not be excused from complying with any of the terms and conditions of  
22   this Chapter or its ~~F~~franchise by any failure of the County, upon any one or more occasions, to

insist upon a Grantee's performance or to seek a Grantee's compliance with any one or more of such terms or conditions.

[Formerly Sec. 9.1-9-4; new Sec. 9.2-13-3]

**Section 9.2-13-4. Rights reserved to the County.**

The County hereby expressly reserves the following rights:

1. To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the County.

2. To adopt, in addition to the provisions contained herein, in a franchise agreement and in ordinances, such additional regulations as it shall find necessary in the exercise of its police power.

3. The right to amend this Chapter.

[Formerly Sec. 9.1-9-5; new Sec. 9.2-13-4]

**Section 9.2-13-5. Employment requirement.**

A Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, ~~Virginia~~ state, and local laws and executive orders pertaining to discrimination, equal employment opportunity, and affirmative action that are applicable to a Grantee.

[Formerly Sec. 9.1-9-6; new Sec. 9.2-13-5]

**Section 9.2-13-6. Time of essence.**

(a) Whenever this Chapter or a franchise agreement sets forth any time for any act to be performed by or on the behalf of a Grantee, such time shall be deemed of the essence and the Grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the

County to invoke the remedies available under the terms and conditions of this Chapter and its Franchise agreement.

(b) Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Chapter or any franchise agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein or in a franchise agreement, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

[Formerly Sec. 9.1-9-7; new Sec. 9.2-13-6]

~~9.1-9-10. Severability.~~

~~If any section of this Chapter or a Franchise agreement, or any portion thereof, is held invalid or unconstitutional by any court of competent jurisdiction or administrative agency, such decision shall not affect the validity of the remaining portions.~~

[Formerly Sec. 9.1-9-10]

#### **Section 9.2-13-7. Preemption.**

In the event that federal or state laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Chapter, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision herein that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on all Grantees, without the requirement of further action on the part of the County.

[Formerly Sec. 9.1-9-11; new Sec. 9.2-13-7]

1

2 2. That Chapter 9.1 of the Fairfax County Code is repealed, except as set forth in enactment  
3 clause 3 below.

4 [Formerly § 2 of ordinance amending Chapter 9]

5

6 ~~3. That any person providing cable service within the County on the effective date of this~~  
7 ~~ordinance pursuant to a cable Franchise previously granted by the Board, who was in full~~  
8 ~~compliance with Fairfax County Code Section 9-5-12 and that cable Franchise prior to the~~  
9 ~~effective date of this ordinance and who continues to meet the requirements established therein,~~  
10 ~~shall be deemed to be in compliance with Fairfax County Code Section 9.1-5-9 while that cable~~  
11 ~~Franchise remains in force and effect.~~

12 [Formerly § 3 of ordinance amending Chapter 9]

13

14 4.3. ~~That the provisions of this ordinance are severable, and if any provision of this ordinance~~  
15 ~~or any application thereof is held invalid, that invalidity shall not affect the other provisions or~~  
16 ~~applications of this ordinance which can be given effect without the invalid provision or~~  
17 ~~application. The repeal of Chapter 9.1 shall not affect the validity of any act or violation done or~~  
18 ~~committed before the repeal of that Chapter; or any liquidated damage, penalty, sanction, or~~  
19 ~~forfeiture incurred, or any right established, accrued, or accruing, under that Chapter before the~~  
20 ~~repeal; or any notice of violation or enforcement action initiated pursuant to that Chapter before~~  
21 ~~the repeal. Any such acts, violations, liquidated damages, penalties, sanctions, forfeitures, rights,~~



1 or enforcement actions shall be governed by Chapter 9.1, which is continued in effect for that  
2 purpose.

3 [Formerly § 4 of ordinance amending Chapter 9]

4  
5 4. With respect to occurrences after the repeal of Chapter 9.1, any references to Chapter 9.1  
6 in cable franchise agreements shall be construed to refer to the corresponding provisions of  
7 Chapter 9.2.

8 [Not included in Chapter 9.1]

9  
10 5. That this ordinance shall become effective ~~on adoption~~ on January 1, 2020.

11 [Formerly § 5 of ordinance amending Chapter 9]

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Board Agenda Item  
September 24, 2019

5:30 p.m.

Public Hearing on SE 2018-SU-027 (Stonebridge Investments, LLC) to Permit Development of a New Limited Brewery in the R-C District and a Modification of Limitations on the Number of Events Defined in Article 20 of the Zoning Ordinance for Limited Brewery, Located on Approximately 40.62 Acres of Land Zoned R-C and WS (Sully District)

This property is located at 6780 Bull Run Post Office Rd., Centreville, 20120. Tax Map 53-3 ((7)) 32Z, 33Z (pt.); 64-1 ((7)) 31Z (pt.), 34Z, 35Z (pt.); 38Z (pt.), 39Z, 40Z, 41Z and 42Z.

The Board of Supervisors deferred this public hearing at the July 30, 2019 meeting until September 24, 2019 at 5:30 p.m.

PLANNING COMMISSION RECOMMENDATION:

On July 31, 2019, the Planning Commission voted 9-0 (Commissioners Clarke, Hurley, and Tanner were absent from the meeting) to defer the decision only to a date certain of September 12, 2019. On September 12, 2019, the Planning Commission voted 10-0 (Commissioners Niedzielski-Eichner and Migliaccio were absent from the meeting) to defer the decision only to a date certain of October 2, 2019, and recommended that the Board of Supervisors defer its public hearing to a date following Planning Commission decision. The Planning Commission recommendation will be forwarded following decision.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
Emma Estes, Planner, DPD

Board Agenda Item  
September 24, 2019

5:30 p.m.

Public Hearing on PRC 86-C-121-06 (NS Reston LLC) to Approve the PRC Plan Associated with RZ 86-C-121 to Permit Residential Development, Located on Approximately 36,553 Square Feet of Land Zoned PRC (Hunter Mill District) (Concurrent with CP 86-C-121-15)

and

Public Hearing on CP 86-C-121-15 (NS Reston LLC) to Approve the Conceptual Plan for RZ 86-C-121 to Permit Residential Development, Located on Approximately 36,553 Square Feet of Land Zoned PRC (Hunter Mill District) (Concurrent with PRC 86-C-121-06)

This property is located on the N. side of New Dominion Parkway, W. of Fountain Dr. Tax Map 17-1 ((17)) 4.

This property is located on the N. side of New Dominion Parkway, W. of Fountain Dr. Tax Map 17-1 ((17)) 4.

PLANNING COMMISSION RECOMMENDATION:

On June 19, 2019, the Planning Commission voted 7-0-1 (Commissioner Hurley abstained from the vote. Commissioners Clarke, Niedzielski-Eichner, Strandlie and Cortina were absent from the meeting) to recommend to the Board of Supervisors denial of CP 86-C-121-15 and that the Concept Plan be considered as part of the review of the PRC plan, and denial of PRC 86-C-121-06.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-development/board-packages>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)  
William Mayland, Planner, DPD