

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 28, 2020**

AGENDA

- 3:00 Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
- 3:00 Matters Presented by Board Members
- 3:00 Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

- 1 Authorization to Advertise a Public Hearing to Amend Chapter 11 of the County Code to Reflect Amendments to State Anti-Discrimination and Fair Housing Statutes Enacted During the 2020 Session of the General Assembly to Add Sexual Orientation, Gender Identity, Status as a Veteran, and, Regarding Fair Housing, Source of Funds as Protected Classes; to Revise Chapter 11, Article 1 of the County Code (Human Rights Ordinance) to Conform to Federal and State Law Counterparts; to Amend Chapter 11, Article 2 of the County Code (Fairfax County Fair Housing Act) to Conform to State Law by Adding Additional Provisions Regarding Reasonable Accommodations and By Clarifying the Scope of Certain Exemptions; and to Recodify Chapter 11 as Chapter 11.1 to Improve Structure and Clarity, and to Remove Obsolete and Duplicative Provisions
- 2 Additional Time to Commence Construction for Special Exception SE 2015-HM-013, Singh Properties II, LLC (Hunter Mill District)
- 3 Authorization to Advertise a Public Hearing on the County and Schools' FY 2020 Carryover Review to Amend the Appropriation Level in the FY 2021 Revised Budget Plan
- 4 Authorization to Advertise Public Hearings on Proposed Amendments to the Public Facilities Manual (PFM) Regarding the "PFM Flexibility Project," a Fairfax First Initiative to Improve the Speed, Consistency and Predictability of the County's Land Development Review Process
- 5 Approval of Escrow Agreement Between Fairfax County and Subsidiaries of Cityline Partners, LLC for Proffered Funds for Design and Construction of Scotts Run Fire Station (Providence District)

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 28, 2020**

**ADMINISTRATIVE
ITEMS
(continued)**

- 6 Authorization to Advertise a Public Hearing on a Proposal to Abandon and Convey a Portion of a Frontage Road (FR 953) (Dranesville District)
- 7 Supplemental Appropriation Resolution AS 21013 for the Department of Housing and Community Development to Accept Grant Funding from the U.S. Department of Housing and Urban Development as a Result of Additional Funding Made Available Through the Emergency Solutions Grants to Address the COVID-19 Pandemic as Part of the CARES Act
- 8 Authorization to Advertise a Public Hearing on a Proposal to Prohibit Through Truck Traffic on Bull Run Post Office Road (Sully District)
- 9 Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance to Establish an Economic Incentive Program (Dranesville, Hunter Mill, Lee, Mason and Mount Vernon Districts)
- 10 Authorization for the Department of Neighborhood and Community Services to Apply for and Accept Supplemental COVID-19 (CARES Act) Grant Funding from the U.S. Department of Health and Human Services Associated with the Head Start, Early Head Start, and Early Head Start Child Care Partnership and Expansion Grants
- 11 Authorization to Advertise a Public Hearing to Consider the Adoption of Amendments to Chapter 6 of the Fairfax County Code Relating to Weapons

ACTION ITEMS

- 1 Approval of a Plain Language Explanation for the 2020 Bond Referenda for Transportation, Parks and Park Facilities, Libraries, and Community Health and Human Services Facilities
- 2 Approval of Head Start Transportation Waiver Request for the Continuation of Fairfax County Public Schools 2020-2021 Transportation Services
- 3 Approval of Head Start/Early Head Start Policy Council Bylaws, Self-Assessment Report and Memorandum of Understanding between Policy Council and Board of Supervisors

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 28, 2020**

**ACTION ITEMS
(continued)**

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|----|---|
| 4 | Approval of Changes to the Fairfax County Purchasing Resolution |
| 5 | Authorization to: 1) Approve Issuance by the Fairfax County Redevelopment and Housing Authority (FCRHA) of Tax-Exempt Bonds in an Amount not to Exceed \$22,500,000; and 2) For FCRHA to Submit an Application to Virginia Department of Housing and Community Development for Tax-Exempt Bond Allocation for Ovation at Arrowbrook Apartments (Dranesville District) |
| 6 | Approval of a Board of Supervisors' Draft Regular Meeting Schedule for Calendar Year 2021 |
| 7 | Approval of Memorandum of Agreement Between Fairfax County and Fairfax County Public Schools for the Free Student Bus Pass Program |
| 8 | Approval of Memorandum of Agreement Between the Central Intelligence Agency and Fairfax County to Provide Fairfax Connector Bus Service to the Agency's Facility in Langley, Virginia (Dranesville District) |
| 9 | Endorsement of the Residential Traffic Administration Program (RTAP) Revised Traffic Calming General Operating Procedures |
| 10 | Approval of Fairfax Connector August 29, 2020, Service Changes (Dranesville, Lee, Mount Vernon, Providence, and Springfield Districts) |
| 11 | Approval of a Resolution Endorsing Projects Being Submitted for State Funding Through the Commonwealth Transportation Board's FY2022-2027 Smart Scale Program |
| 12 | Approval of the Master Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Use of Commonwealth Transportation Funds |

**PUBLIC
HEARINGS**

- | | |
|------|---|
| 3:30 | Public Hearing on PCA-C-052-09/CDPA-C-052-02 (KIW SKYLINE 1, LLC, KIW SKYLINE 2, LLC and KIW SKYLINE 3, LLC) (Mason District) |
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**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 28, 2020**

**PUBLIC
HEARINGS
(continued)**

3:30	Public Hearing on RZ 2019-MA-018 (Christopher Land, LLC) (Mason District)
3:30	Public Hearing on PCA 2011-PR-011-03 (Cityline Partners LLC) (Providence District)
3:30	Public Hearing on PCA/CDPA 2000-MV-046 (Aventon Holdings I, LLC) (Mount Vernon District)
4:00	Public Hearing on RZ 2019-SU-021 and SE 2019-SU-022 (Blue Knob Investors, LLC) (Sully District)
4:00	Public Hearing on the Use of Eminent Domain Proceedings for the Acquisition of Certain Land Rights Necessary for the Construction of the Proposed Patrick Henry Place (Mason District)
4:00	Public Comment
4:00	Closed Session

Board Agenda Item
July 28, 2020

3:00 p.m.

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

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard July 28, 2020

STAFF:

Jill G. Cooper, Clerk for the Board of Supervisors

July 28, 2020

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

APPOINTMENTS TO BE HEARD JULY 28, 2020
(ENCOMPASSING VACANCIES PROJECTED THROUGH **AUGUST 31, 2020)**
(Unless otherwise noted, members are eligible for reappointment)

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Joseph W. Blackwell (Appointed 1/06-1/08 by Kauffman; 1/09- 1/19 by McKay) Term exp. 1/20	Lee District Representative		Lusk	Lee
Eileen J. Garnett (Appointed 1/03-2/17 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ryan Kerr; appointed 6/18 by Smyth) Term exp. 9/21 Resigned	Providence District Representative		Palchik	Providence

AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kenneth Heyman (Appointed 2/17 by Storck) Term exp. 5/20	Builder (Single Family) Representative		By Any Supervisor	At-Large
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)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Andrew Martin Concannon; appointed 9/15-1/17 by Gross) Term exp. 1/20 <i>Resigned</i>	Mason District Representative		Gross	Mason

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</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

ANIMAL SERVICES ADVISORY COMMISSION (2 years)

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Chester J. Freedenthal (Appointed 6/19 by McKay) Term exp. 2/20	Lee District Representative		Lusk	Lee
Jennifer Christiansen (Appointed 5/18 by Smith) Term exp. 2/20	Sully District Representative		Smith	Sully

ARCHITECTURAL REVIEW BOARD (3 years)

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Jason D. Sutphin; appointed 9/09-10/15 by Frey; 9/18 by Smith) Term exp. 9/21	Related Professional Group #6 Representative		By Any Supervisor	At-Large

ATHLETIC COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</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 Terry Adams; appointed 11/11-7/13 by Gross) Term exp. 6/15 Resigned	Mason District Alternate Representative		Gross	Mason
Jon K. Samson (Appointed 9/18 by Bulova) Term exp. 10/19	Member-At-Large Alternate Representative		McKay	At-Large Chairman's
Katherine E. Quinn (Appointed 6/16-3/18 by Bulova) Term exp. 3/20	Member-At-Large Principal Representative		McKay	At-Large Chairman's

continued

ATHLETIC COUNCIL (2 years)
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Jane Dawber; appointed 3/13-9/16 by Hudgins) Term exp. 6/18 <i>Resigned</i>	Women's Sports Alternate Representative		By Any Supervisor	At-Large

BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Ken Balbuena (Appointed 9/11-7/19 by Bulova) Term exp. 6/20	At-Large Chairman's Representative		McKay	At-Large Chairman's
Jon S. Aldridge (Appointed 9/18-6/19 by Cook) Term exp. 6/20	Braddock District Representative		Walkinshaw	Braddock
Barbara Glakas (Appointed 1/12-6/19 by Foust) Term exp. 6/20	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Linda J. Waller; appointed 9/16-6/18 by McKay) Term exp. 6/19 <i>Resigned</i>	Lee District Representative		Lusk	Lee

continued

BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</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
Emilie F. Miller (Appointed 7/05-7/19 by Smyth) Term exp. 6/20	Providence District Representative		Palchik	Providence

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Thomas J. Schroeder; appointed 06/92-2/17 by Bulova) Term exp. 2/21 <i>Resigned</i>	Design Professional #1 Representative		By Any Supervisor	At-Large
Daren Shumate (Appointed 2/16 by Gross) Term exp. 2/20	Design Professional #5 Representative		By Any Supervisor	At-Large

BOARD OF EQUALIZATION OF REAL ESTATE ASSESSMENTS (BOE)
(2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joseph W. Blackwell; appointed 2/05-1/08 by Kauffman; 12/09-12/17 by McKay) Term exp. 12/19 <i>Resigned</i>	At-Large #2 Representative		By Any Supervisor	At-Large

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Monica Billger; appointed 1/18 by McKay) Term exp. 9/19 <i>Resigned</i>	Lee District Representative		Lusk	Lee
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

CITIZEN CORPS COUNCIL, FAIRFAX COUNTY (2 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jade Harberg (Appointed 7/16-6/18 by Bulova) Term exp. 5/20	At-Large Chairman's Representative		McKay	At-Large Chairman's
James Sobecke (Appointed 6/14-5/18 by Cook) Term exp. 5/20	Braddock District Representative		Walkinshaw	Braddock
VACANT (Formerly held by William J. McKenna; appointed 6/16-5/18 by Foust) Term exp. 5/20 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville
Linda J. Waller (Appointed 9/14-5/18 by McKay) Term exp. 5/20	Lee District Representative		Lusk	Lee
Jonathan Kiell (Appointed 4/15 by Hyland; 7/16-5/18 by Storck) Term exp. 5/20	Mount Vernon District Representative		Storck	Mount Vernon
VACANT (Formerly held by Nicholas Ludlum; appointed 1/17 by L. Smyth) Term exp. 5/18 <i>Resigned</i>	Providence District Representative		Palchik	Providence
Caitlin Hutchison (Appointed 12/16- 5/18 by Smith) Term exp. 5/20	Sully District Representative		Smith	Sully

CIVIL SERVICE COMMISSION (2 years)

[NOTE: The Commission shall include at least 3 members who are male, 3 members who are female, and 3 members who are from a member of a minority group.]

Current Membership: Males: 7 Females: 3 Minorities: 4

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Lee Ellen Helfrich; appointed 2/14-1/20 by Gross) Term exp. 12/21 <i>Resigned</i>	At-Large #9 Representative		By Any Supervisor	At-Large

COMMISSION FOR WOMEN (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Barbara Lipka; appointed 10/13 by Frey; 10/16 by Smith) Term exp. 10/19 <i>Deceased</i>	Sully District Representative		Smith	Sully

COMMISSION ON AGING (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Sharron Dreyer (Appointed 9/14-5/18 by McKay) Term exp. 5/20	Lee District Representative		Lusk	Lee
Kathleen Hoyt (Appointed 12/16-5/18 by Gross) Term exp. 5/20	Mason District Representative		Gross	Mason
Diane R. Watson (Appointed 7/18 by Storck) Term exp. 5/20	Mount Vernon District Representative		Storck	Mount Vernon

COMMUNITY ACTION ADVISORY BOARD (CAAB) (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Donita Hines; appointed 4/16-2/19 by Smyth) Term exp. 2/22 <i>Resigned</i>	Providence District Representative		Palchik	Providence

CONFIRMATION NEEDED:

- Ms. Walewska Watkins as the Fairfax Bar Association Representative

CONSUMER PROTECTION COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Michael J. Roark (Appointed 1/08-11/14 by Hyland; 10/17 by Storck) Term exp. 7/20	Fairfax County Resident #2	Michael J. Roark (Storck)	By Any Supervisor	At-Large
Dirck A. Hargraves (Appointed 2/06 by Kauffman; 10/08-7/17 by McKay) Term exp. 7/20	Fairfax County Resident #5 Representative		By Any Supervisor	At-Large

DULLES RAIL TRANSPORTATION IMPROVEMENT DISTRICT ADVISORY BOARD, PHASE I - (4 years)
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
James D. Policaro (Appointed 3/10-3/16 by Smyth) Term exp. 3/20	At-Large Representative #1		By Any Supervisor	At-Large

continued

**DULLES RAIL TRANSPORTATION IMPROVEMENT DISTRICT
ADVISORY BOARD, PHASE I - (4 years)**
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Peter M. Rosen (Appointed 3/04-3/16 by Smyth) Term exp. 3/20	At-Large Representative #2		By Any Supervisor	At-Large
Jeffrey L. Kovach (Appointed 6/12-3/16 by Smyth) Term exp. 3/20	At-Large Representative #3		By Any Supervisor	At-Large

**DULLES RAIL TRANSPORTATION IMPROVEMENT
DISTRICT ADVISORY BOARD, PHASE II (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Gregory W. Trimmer (Appointed 1/12-1/16 by Bulova) Term exp. 1/20	BOS At-Large #6 Representative		By Any Supervisor	At-Large

ECONOMIC DEVELOPMENT AUTHORITY (EDA) (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Roderick Mitchell (Appointed 6/18 by Bulova) Term exp. 7/1/2020	At-Large #1 Citizen Representative		By Any Supervisor	At-Large

ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</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>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</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		Alcorn	Hunter Mill

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Robert C. Carlson (Appointed 10/17 by Bulova) Term exp. 7/20	At-Large #3 Representative		By Any Supervisor	At-Large

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

[NOTE: In accordance with *Virginia Code* Section 37.2-501, "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.]

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Gary A. Ambrose; appointed 3/13-6/17 by Bulova) Term exp. 6/20 Resigned	At-Large #3 Representative	Andrew Scalise (McKay) <i>(Will be confirmed on July 28, 2020)</i>	By Any Supervisor	At-Large
Willard Kenneth Garnes (Appointed 11/12-6/17 by Bulova) Term exp. 6/20	At-Large #4 Representative	Willard Kenneth Garnes (McKay) <i>(Will be confirmed on July 28, 2020)</i>	By Any Supervisor	At-Large
Jennifer Adeli (Appointed 6/17 by Foust) Term exp. 6/20	Dranesville District Representative	Jennifer Adeli <i>(Will be confirmed on July 28, 2020)</i>	Foust	Dranesville
VACANT (Formerly held by Nancy Cromwell Scott; appointed 12/17 by L. Smyth) Term exp. 6/20 Resigned	Providence District Representative	Robert Bartolotta <i>(Will be confirmed on July 28, 2020)</i>	Palchik	Providence
Srilekha Reddy Palle (Appointed 2/20 by Herrity) Term exp. 6/20	Springfield District Representative	Srilekha Reddy Palle <i>(Will be confirmed on July 28, 2020)</i>	Herrity	Springfield

HEALTH CARE ADVISORY BOARD (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Michael Christ Trahos (Appointed 7/12-5/16 by Bulova) Term exp. 6/20	At-Large Chairman's Representative		McKay	At-Large Chairman's
VACANT (Formerly held by Ann Zuvekas; appointed 9/10-5/16 by Cook) Term exp. 6/20 <i>Resigned</i>	Braddock District Representative		Walkinshaw	Braddock
Maia Cecire (Appointed 7/19 by McKay) Term exp. 6/20	Lee District Representative		Lusk	Lee

HEALTH SYSTEMS AGENCY BOARD

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Linda Shealey Cook (Appointed 6/18 by Bulova) Term exp. 6/20	Consumer #1 Representative		By Any Supervisor	At-Large
Jacqueline Hixson (Appointed 6/17 by Hudgins) Term exp. 6/20	Consumer #2 Representative		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	MountVernon - 3	Sully - 2

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Naomi D. Zeavin; appointed 1/95 by Trapnell; 1/96-11/13 by Gross) Term exp. 12/16 <i>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>
VACANT (Formerly held by Kimberley Alton; appointed 3/19 by McKay) Term exp. 9/19 <i>Resigned</i>	At-Large #7 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

HUMAN SERVICES COUNCIL (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Martin Machowsky (Appointed 3/16-9/16 by Bulova) Term exp. 7/20	At-Large Chairman's Representative		McKay	At-Large Chairman
Fatima Y. Mirza (Appointed 12/16 by Foust) Term exp. 7/20	Dranesville District #2 Representative		Foust	Dranesville
Gerald V. Poje (Appointed 3/11-7/16 by Hudgins) Term exp. 7/20	Hunter Mill District #2 Representative		Alcorn	Hunter Mill
Lanita R. Thweatt (Appointed 6/19 by Storck) Term exp. 7/20	Mount Vernon District #1 Representative	Lanita R. Thweatt	Storck	Mount Vernon
William Kogler (Appointed 4/05-9/16 by Herrity) Term exp. 7/20	Springfield District #1 Representative		Herrity	Springfield

INDUSTRIAL DEVELOPMENT AUTHORITY (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Charles Watson; appointed 3/05-10/16 by Smith) Term exp. 10/20	At-Large #7 Representative		By Any Supervisor	At-Large

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Michael Berger; appointed 1/17-1/18 by McKay) Term exp. 1/20 <i>Resigned</i>	Lee District Representative		Lusk	Lee
VACANT (Formerly held by Melissa Smarr; appointed 7/09-1/18 by Herrity) Term exp. 1/20 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield

LIBRARY BOARD (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Willard O. Jasper; Appointed 3/04-5/06 by Kauffman; 5/10-5/18 by McKay) Term exp. 5/22 <i>Resigned</i>	Lee District Representative		Lusk	Lee

OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Annette Koklauner (Appointed 1/16 by Bulova) Term exp. 6/19	At-Large Chairman's Representative		McKay	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		Walkinshaw	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
Bob Tallman (Appointed 1/17 by McKay) Term exp. 6/19	Lee District Representative		Lusk	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

Continued

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Tina Montgomery; appointed 9/10-6/11 by L. Smyth) Term exp. 6/14 <i>Resigned</i>	Providence District Representative		Palchik	Providence
Peyton Smith (Appointed 10/17 by Smith) Term exp. 6/20	Sully District Representative		Smith	Sully

REDEVELOPMENT AND HOUSING AUTHORITY (4 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Ezra Rosser (Appointed 9/18 by Bulova) Term exp. 4/20	At-Large #1 Representative		By Any Supervisor	At-Large
Albert J. McAloon (Appointed 7/95 by Alexander; 3/96-3/00 by Kauffman; 4/04- 4/16 by McKay) Term exp. 4/20	Lee District Representative		Lusk	Lee
Lenore S. Kelly (Appointed 5/19 by Smith) Term exp. 4/20	Sully District Representative		Smith	Sully

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

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
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 Alcorn	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #2 Representative		Foust or Alcorn	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #3 Representative		Foust or Alcorn	At-Large

ROAD VIEWERS BOARD (1 year)

<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

ROAD VIEWERS BOARD (1 year)
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
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

SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Luis Ortiz Lopez (Appointed 10/16- 3/18 by Hudgins) Term exp. 3/20	Fairfax County #9 (Youth) Representative		By Any Supervisor	At-Large

TENANT LANDLORD COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
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 <i>Deceased</i>	Landlord Member #2 Representative		By Any Supervisor	At-Large

Continued

TENANT LANDLORD COMMISSION (3 years)
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
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
Amy Purnell (Appointed 9/16-1/17 by Bulova) Term exp. 1/20	Tenant Member #2 Representative		By Any Supervisor	At-Large

TRAILS, SIDEWALKS AND BIKEWAYS COMMITTEE (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Robert W. Michie (Appointed 1/02- 1/08 by Kauffman; 1/10-1/18 by McKay) Term exp. 1/20	Lee District Representative		Lusk	Lee

TRANSPORTATION ADVISORY COMMISSION (2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Kevin Morse (Appointed 6/10- 6/18 by Cook) Term exp. 6/20	Braddock District Representative		Walkinshaw	Braddock
VACANT (Formerly held by Jenifer Joy Madden; appointed 9/06-6/18 by Hudgins) Term exp. 6/20 <i>Resigned</i>	Hunter Mill District Representative		Alcorn	Hunter Mill

Continued

TRANSPORTATION ADVISORY COMMISSION (2 years)
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Lewis C. Brodsky; appointed 9/18 by McKay) Term exp. 6/20 <i>Resigned</i>	Lee District Representative		Lusk	Lee
JD Walter (Appointed 9/19 by Smyth) Term exp. 6/20	Providence District Representative		Palchik	Providence

TREE COMMISSION (3 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Dragan Momcilovic; appointed 1/14-10/18 by Hudgins) Term exp. 10/21 <i>Resigned</i>	Hunter Mill District Representative		Alcorn	Hunter Mill

TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD (2 YEARS)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</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 #3 Representative		McKay	At-Large

<p align="center">UNIFORMED RETIREMENT SYSTEM BOARD OF TRUSTEES (4 years)</p>
--

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Hank H. Kim (Appointed 4/11-7/12 by Hyland; 9/16 by Storck) Term exp. 8/20	Citizen appointed by BOS #3 Representative	Hank H. Kim (Storck)	By Any Supervisor	At-Large

NEW BOARD

<p align="center">YOUNG ADULTS ADVISORY COUNCIL (YAAC) (2 YEARS) The Board of Supervisors established the Council on January 28, 2020 (There will be a total of 15 members. The appointees must be 20-34 years and would serve for 2-year terms limited to 2 full consecutive terms)</p>

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
NEW POSITION	At-Large #2 Representative		By Any Supervisor	At-Large
NEW POSITION	Braddock District Representative		Walkinshaw	Braddock
NEW POSITION	Dranesville District Representative		Foust	Dranesville
NEW POSITION	Lee District Representative		Lusk	Lee
NEW POSITION	Mason District Representative		Gross	Mason
NEW POSITION	Mount Vernon District Representative	Diego Rodriguez Cabrera	Storck	Mount Vernon
NEW POSITION	George Mason University Representative		Confirmed by the Board	Confirmation

Board Agenda Item
July 28, 2020

3:00 p.m.

Matters Presented by Board Members

Board Agenda Item
July 28, 2020

3:00 p.m.

Items Presented by the County Executive

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Amend Chapter 11 of the County Code to Reflect Amendments to State Anti-Discrimination and Fair Housing Statutes Enacted During the 2020 Session of the General Assembly to Add Sexual Orientation, Gender Identity, Status as a Veteran, and, Regarding Fair Housing, Source of Funds as Protected Classes; to Revise Chapter 11, Article 1 of the County Code (Human Rights Ordinance) to Conform to Federal and State Law Counterparts; to Amend Chapter 11, Article 2 of the County Code (Fairfax County Fair Housing Act) to Conform to State Law by Adding Additional Provisions Regarding Reasonable Accommodations and By Clarifying the Scope of Certain Exemptions; and to Recodify Chapter 11 as Chapter 11.1 to Improve Structure and Clarity, and to Remove Obsolete and Duplicative Provisions

ISSUE:

Board of Supervisors authorization to advertise a public hearing to consider: (1) amending Chapter 11 of the County Code to reflect amendments to state anti-discrimination and fair housing statutes enacted during the 2020 Session of the General Assembly to add sexual orientation, gender identity, status as a veteran, and, regarding fair housing, source of funds as protected classes; (2) revising the Human Rights Ordinance to conform to federal and state law counterparts; (3) amending the Fairfax County Fair Housing Act to conform to state law by adding additional provisions regarding reasonable accommodations and by clarifying the scope of certain exemptions, and (4) recodifying Chapter 11 as Chapter 11.1 to improve structure and clarity, and to remove obsolete and duplicative provisions. Proposed amendments shall be effective retroactive to July 1, 2020.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of a public hearing to consider: (1) amending Chapter 11 of the County Code to reflect amendments to state anti-discrimination and fair housing Statutes enacted during the 2020 Session of the General Assembly to add sexual orientation, gender identity, status as a veteran, and, regarding fair housing, source of funds as protected classes; (2) revising the Human Rights Ordinance to conform to federal and state law counterparts; (3) amending the Fairfax County Fair Housing Act to conform to state law by adding additional provisions regarding reasonable accommodations and by clarifying the scope of certain exemptions, and (4) recodifying Chapter 11 as Chapter 11.1 to improve structure and clarity, and to remove obsolete and duplicative provisions.

Board Agenda Item
July 28, 2020

TIMING:

Board action is requested on July 28, 2020, to advertise the public hearing before the Board on September 15, 2020, at 4:00 p.m.

BACKGROUND:

The Office of Human Rights and Equity Programs (OHREP) recently decided to undertake full-scale review of Chapter 11 of the County Code, which consists of the Human Rights Ordinance (HRO) and Fairfax County Fair Housing Act (FCFHA). The HRO may “not [be] inconsistent with nor more stringent than” any state anti-discrimination law. Likewise, the FCFHA may be amended “provided the amendment is not inconsistent” with the Virginia Fair Housing Law (VFHL). The County long has chosen, as permitted under state law, to maintain separate ordinances governing human rights and fair housing within its jurisdiction. The HRO and FCFHA were last amended in 2010.

OHREP placed its review of Chapter 11 on hold when it learned that the Virginia General Assembly intended to make increasing the protections provided under the state statute a priority of its 2020 session. The General Assembly subsequently passed SB 868, which was signed by the Governor on April 11, 2020, and HB 6, which was signed by the Governor on March 27, 2020. Both these measures took effect on July 1, 2020.

SB 868 explicitly prohibits discrimination in private employment on the basis of sexual orientation and gender identity. Additionally, the bill (a) prohibits discrimination in public accommodations on the basis of sexual orientation, gender identity, or status as a veteran; (b) prohibits discrimination in credit on the basis of sexual orientation, gender identity, pregnancy, childbirth or related medical conditions, disability, and status as a veteran; and (c) adds discrimination on the basis of an individual's sexual orientation, gender identity, or status as a veteran as an unlawful housing practice.

HB 6 adds discrimination on the basis of a person's source of funds to the list of unlawful discriminatory housing practices. The bill defines "source of funds" as any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

OHREP proposes amendments to Chapter 11 of the County Code that incorporate all further protections against discrimination provided under SB 868 and HB 6. As to the HRO, it also proposes: (1) revision of procedural provisions to track requirements for the administrative processing of complaints added to the Virginia Human Rights Act (the state statutory counterpart to the HRO) by SB 868 and/or procedural regulations of the U.S. Equal Employment Opportunity Commission, with which OHREP has a work-sharing agreement; and (2) repeal obsolete provisions on County enforcement.

As to the FCFHA, OHREP proposes additional amendments to Chapter 11 to bring the FCFHA into fuller conformity with the VFHL. These include:

- Reasonable Accommodations and Assistance Animals. In 2017, the General Assembly passed a series of revisions to the VFHL adding detail regarding the reasonable accommodation process generally consistent with federal regulations and guidance, with a particular emphasis on the use of “assistance animals” that provide assistance or emotional support to persons with a disability. The VFHL and FCFHA already prohibited housing discrimination based on disability and generally required reasonable accommodations, but the 2017 amendments to the VFHL provide further clarity as to the process by which reasonable accommodation requests are to be made and reviewed. OHREP proposes to incorporate these provisions into the FCFHA.
- Certain Exemptions. The FCFHA, like the VFHL and federal Fair Housing Act (FHA), contains certain exemptions to its general prohibition against housing discrimination. For example, the current FCFHA generally exempts a single-family house sold or rented by an owner, so long as the owner does not own more than three single-family houses. However, in both the FCFHA and the VFHL, this exemption does not apply to the prohibition against the making or publishing of discriminatory statements or advertisements in connection with the sale or rental of housing. The VFHL also provides that this exemption does not apply to restrictive covenants that purport to discriminate based on a protected class. OHREP proposes to similarly limit this exemption in the FCFHA.

Further, the FCFHA, consistent the VFHL and federal FHA, contains an exemption from the prohibition on discrimination on the basis of familial status for “housing for older persons”. To qualify for this exemption, the housing provider must satisfy one of three statutorily-specified thresholds. In the VFHL, one of these thresholds requires, among other things, that at least eighty percent of occupied units be occupied by at least one person fifty-five years of age or older. OHREP proposes to add the word “occupied” to the analogous provision in the FCFHA.

Beyond these amendments and revisions, OHREP proposes that the Board recodify Chapter 11 as Chapter 11.1. Such a recodification seeks to improve the Chapter’s structure and clarity. To this end, it reorganizes sections concerning the Human Rights Commission generally into a separate Article. This reorganization eliminates duplicative sections in the current Chapter. Insofar as sections of Chapter 11.1 are substantively the same as sections of Chapter 11, they are intended as a continuation of the earlier sections and not as new enactments. If adopted, the recodification shall be effective retroactive to July 1, 2020, to ensure full compliance with SB 868 and HB 6.

Board Agenda Item
July 28, 2020

A chart comparing Chapter 11's sections with the Chapter 11.1's sections is attached, in lieu of a markup.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENT:
Attachment 1 – Proposed Fairfax County Code, Chapter 11.1
Attachment 2 – Comparison of Fairfax County Code, Chapter 11, to Proposed Chapter 11.1.

STAFF:
Kenneth Saunders, Director, Office of Human Rights and Equity Programs

ASSIGNED COUNSEL:
Benjamin R. Jacewicz, Assistant County Attorney
Ryan Wolf, Assistant County Attorney

Human Rights and Fair Housing

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Article 1.1. In General.

Section 11.1-1-1. Purpose.

This Chapter codifies the Fairfax County Human Rights Ordinance and the Fairfax County Fair Housing Act. As such, it reflects the following decision the Board of Supervisors to:

- (a) Continue to enforce and amend the County Fair Housing Act in effect on January 1, 1991, as authorized by Virginia Code § 36.1-96.21, rather than merge the County's rules and regulations on housing discrimination into the Human Rights Ordinance; and
- (b) Designate the Fairfax County Human Rights Commission as responsible for furthering compliance with the Human Rights Ordinance and the Fair Housing Act, as authorized by Virginia Code §§ 15.2-823, 15.2-853, 15.2-965, and 36.1-96.21.

Section 11.1-1-2. Definitions.

The following definitions shall apply to this Chapter:

- (a) *Case file* shall mean the OHREP file on a complaint, including but not limited to, the complaint, any answer filed by the respondent, and information gathered during any investigation of the complaint.
- (b) *Commission* shall mean the Human Rights Commission, as established herein.
- (c) *County Attorney* shall mean the County Attorney for Fairfax County.
- (d) *Director* shall mean the Director of OHREP, or the Director's designated representative.
- (e) *OHREP* shall mean the Fairfax County Office of Human Rights and Equity Programs.

Section 11.1-1-3. Human Rights Commission established.

The Board of Supervisors establishes the Fairfax County Human Rights Commission.

Section 11.1-1-4. Membership; compensation; terms of office; chairperson and vice chairperson; bylaws.

- (a) The Commission shall consist of twelve (12) members who shall be residents of the County and broadly representative of the County's population.
- (b) The members of the Commission shall be appointed by the Board of Supervisors and shall be entitled to receive such compensation as the Board of Supervisors shall direct.

(c) Of the members of the Commission first appointed, four (4) shall be appointed for terms of three (3) years, four (4) shall be appointed for terms of two (2) years, and three (3) shall be appointed for terms of one (1) year. Thereafter, members shall be appointed for terms of three (3) years each. Any vacancy shall be filled by the Board of Supervisors for the unexpired portion of the term.

(d) The Commission shall establish bylaws, and make any subsequent amendments to such bylaws, in accordance with County policies and procedures.

Section 11.1-1-5. Legal counsel.

The County Attorney shall act as legal counsel to the Commission and shall authorize retention of outside legal counsel for the Commission where deemed appropriate for a particular complaint.

Section 11.1.1-6. Office of Human Rights and Equity Programs.

(a) OHREP shall have the following functions:

- (1) To provide administrative support for the Commission's activities;
- (2) To make studies to effectuate the purposes and policies of this Article and to make the results thereof available to the public;
- (3) To accept public grants or private gifts, bequests, or other payments, as appropriate under the law; and
- (4) To furnish technical assistance, upon request, to persons subject to this Article to further compliance with this Article or a recommendation made thereunder.

OHREP also may perform any other function as provided by this Chapter.

(b) The Board of Supervisors shall appoint the Director of OHREP upon the recommendation of the County Executive. The Director shall serve full time and be responsible for overseeing the day-to-day operations of OHREP.

Section 11.1-1-7. Right to representation.

A complainant and respondent each are entitled to be represented by counsel or by an authorized representative in any matter before the Commission.

Section 11.1-1-8. Effective date.

This Chapter shall take effect retroactive to July 1, 2020, and shall apply to all matters pending before the Commission on that date and to all matters arising before the Commission thereafter.

Article 2.1. Human Rights Ordinance.

Section 11.1-2-1. Authorization; short title.

(a) Under the authority of Virginia Code §§ 15.2-853 and 15.2-965, the Board of Supervisors enacts this Article prohibiting discrimination in employment, public accommodations, credit, and education on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, status as a veteran, age, marital status, sexual orientation, gender identity, or disability.¹

(b) This Article shall be known and cited as the Fairfax County Human Rights Ordinance.

Section 11.1-2-2. Definitions.

The following definitions shall apply to this Article:

(a) *Complainant* shall mean a person who claims to have been injured by an unlawful discriminatory practice.

(b) *Complaint* shall mean a written statement by a person, a member of the Commission, or the Commission alleging an act of discrimination prohibited by this Article.

(c) *Conciliation* shall mean the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the Director.

(d) *Party* shall mean a complainant or respondent.

(e) *Person* shall mean one or more individuals, labor unions, partnerships, corporations, associations, legal representatives, mutual companies, joint-stock companies, trusts or unincorporated organizations.

(f) *Respondent* shall mean a person against whom a complaint of violation of this Article is filed.

Section 11.1-2-3. Declaration of policy.

It is the policy of the County to:

- Safeguard all individuals within the County from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical

¹ As explained in Article 1 of this Chapter, Virginia Code 15.2-853 also authorizes the Board of Supervisors to prohibit unlawful discrimination in housing and real estate transactions. Under the authority of Virginia Code § 36-96.21, the Board has enacted a separate Fair Housing Act to prohibit such discrimination, which appears as Article 3.

conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability in places of public accommodation, including educational institutions, and with respect to credit;

- Safeguard all individuals within the County from unlawful discrimination in employment because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability;
- Preserve the public safety, health, and general welfare;
- Further the interests, rights, and privileges of individuals within the County; and
- Protect citizens of the County against unfounded charges of unlawful discrimination.

Section 11.1-2-4. Construction.

(a) The provisions of this Article shall be construed liberally for the accomplishment of its policies.

(b) Nothing in this Article shall be deemed to repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability.

(c) Nothing in this Article shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented, or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

(d) Nothing in this Article shall be construed to affect any government program, law or activity differentiating between persons on the basis of age over the age of eighteen (18) years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the County for the general health, safety and welfare of the population at large.

Section 11.1-2-5. Unlawful discrimination.

(a) With the exception of matters relating to housing and residential real estate, conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, including lactation, age, disability, status as a veteran, or national origin shall be an “unlawful discriminatory practice” for purposes of this Article.

(b) It shall be a violation of this Article for any person to engage in an unlawful discriminatory practice.

Section 11.1-2-6. Commission jurisdiction.

(a) The Commission shall exercise jurisdiction to enforce this Article within the geographical boundaries of the County, including the Towns of Clifton, Herndon and Vienna, except for complaints of unlawful discrimination made against governmental entities, and the officers, employees and agents of such entities.

(b) If the Commission determines that a complaint is not within the Commission's jurisdiction, but possibly within the jurisdiction of one of the agencies with which the Commission has an interagency agreement, the complaint shall be sent to the appropriate agency within fifteen (15) working days of the determination. The complainant shall be notified of this action and a reason provided. Once the complaint has been forwarded and the complainant notified, the Commission shall close the case file. In the event the complaint is not under the jurisdiction of the agency to which it was referred, or if additional evidence is submitted, the case file will be reopened. The Commission delegates to the Director authority to make the determination and provide the notice required under this Subsection.

Section 11.1-2-7 Commission powers and duties.

Under this Article, the Commission shall promote policies to ensure that all persons in the County be afforded equal opportunity, serve as an agency for receiving, investigating, holding hearings, processing, and assisting in the voluntary resolution of complaints regarding unlawful discriminatory practices occurring within the County, and with the approval of the County Attorney, to seek, through appropriate enforcement authorities, prevention of or relief from a violation of any County ordinance prohibiting discrimination.

Section 11.1-2-8. Service.

Service by the Commission with respect to matters covered by this Article shall be either in person or by mail to the last-known address of the recipient appearing in OHREP's records. The complainant, respondent, counsel of record and any authorized representative shall be responsible for providing the Commission with prompt notice of any change in address.

Section 11.1-2-9. Filing of complaint.

(a) Any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint in writing under oath or affirmation with the Commission. The Commission or a member of the Commission may in a like manner file such a complaint.

(b) In the event that a complaint is filed on behalf of a person claiming to be aggrieved, the Director shall verify the complaint with the person on whose behalf the complaint is made.

(c) Where a person is entitled to file a complaint with the Commission, OHREP shall render assistance in the filing of a complaint.

(d) A complaint may be filed in person at or by mail to OHREP's office located at the Fairfax County Government Center, 12000 Government Center Parkway, Suite 318, Fairfax, Virginia 22035 during normal County business hours, by fax to 703-324-3570, or by email to EPDEmailComplaints@fairfaxcounty.gov. Telephone calls may be made to 703-324-2953, TTY 711, in order to receive information on how and where to file a complaint. Complaints shall not be accepted over the telephone.

(e) All complaints shall be dated and time-stamped upon receipt.

(f) The Commission may reveal the identity of complainants to federal, state, or local agencies that have agreed to keep such information confidential, or when required to do so by law.

Section 11.1-2-10. Form and contents of complaint.

(a) A complaint shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged unlawful discriminatory practice. To ensure compliance with this requirement, it should contain the following information:

(1) The full name, address and telephone number of the person making the complaint;

(2) The full name, addresses and telephone number of the respondent; and

(3) A clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practice.

(b) Notwithstanding the provisions of Subsection (a) of this Section, a complaint shall be considered filed when OHREP receives a written statement that identifies the parties and describes generally the actions or practices complained of.

(c) A complaint may be reasonably and fairly amended by the filing party at any time prior to a hearing. Except for purposes of notifying the respondent as specified in Subsection (d) of this Section, amended complaints shall be considered as having been made as of the original filing date.

(d) When an amendment is filed, OHREP shall forward a copy of the amendment to the respondent within five (5) working days of the amendment. The respondent shall within ten (10) working days after receiving the amendment file an answer to the amendment.

Section 11.1-2-11. Dismissal of complaint.

(a) The Commission shall dismiss a complaint for lack of jurisdiction.

(b) The Commission shall dismiss a complaint when the complainant fails to cure defects in its allegations or make required amendments within the time prescribed by OHREP.

(c) When the Commission determines that the complaint (1) is not timely or (2) fails to state a claim under this Article, it shall dismiss the complaint.

(d) Written notice of any dismissal pursuant to this Section shall be issued to the complainant and the respondent.

(e) The Commission delegates authority to the Director to dismiss complaints under this Section.

Section 11.1-2-12. Withdrawal of complaint.

(a) A complaint may only be withdrawn by the complainant and only with the consent of the Commission. The Commission hereby delegates authority to the Director to consent to a request to withdraw a complaint, where withdrawal of the complaint will not defeat the purposes of the statute or regulation alleged to have been violated.

(b) The Commission may withdraw any complaint filed by a member of the Commission whose term of office has expired or otherwise ended when it determines that the purposes of this Article are no longer served by processing the complaint.

(c) A complaint filed under this Article may not be withdrawn after a determination of reasonable cause has been made.

Section 11.1-2-13. Service and notice of complaint.

(a) Upon perfection of a complaint, the Commission shall timely serve the complaint on the respondent and provide all parties with written notice informing them of the complainant's rights, including the right to commence a civil action, and the dates within which the complainant may exercise such rights. The notice also shall notify the complainant that the complaint shall be dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with the appropriate general district or circuit court. Finally, the notice also shall advise the parties of the need for them to preserve all documents relevant to the complaint until final disposition of the complaint.

(b) The Commission delegates to the Director authority to serve the complaint and notice provided under this Section.

Section 11.1-2-14. Mediation.

(a) The complainant and respondent may agree voluntarily to submit the complaint to mediation without waiving any rights that are otherwise available to each party pursuant to this Article and without incurring any obligation to accept the result of the mediation process.

(b) Nothing occurring in mediation shall be disclosed by the Commission or OHREP. Nor shall it be admissible in evidence in any subsequent proceeding unless the complainant and the respondent agree in writing that such disclosure be made.

Section 11.1-2-15. Investigation.

(a) Unless the complaint on its face is subject to dismissal under Section 11-1-2-11, the Commission shall conduct an investigation sufficient to determine whether there is reasonable cause to believe the unlawful discriminatory practice alleged in the complaint has occurred or is occurring.

(b) The Commission delegates the authority to investigate the complaint to OHREP. As part of each investigation, OHREP:

(1) Shall accept a statement of position or evidence submitted by the complainant, the person making the complaint on behalf of the complainant, or the respondent;

(2) May require the complainant to provide a statement which includes: (i) a statement of each specific harm that the complainant has suffered and the date on which each harm occurred; (ii) for each harm, a statement specifying the act, policy or practice which is alleged to be unlawful; and (iii) for each act, policy, or practice alleged to have harmed the complainant, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory; and

(3) May submit a request for information to the respondent that, in addition to specific questions, may request a response to the allegations contained in the complaint.

(c) OHREP's authority to investigate a complaint is not limited to the procedures outlined in Subsection (b) of this Section.

Section 11.1-2-16. Subpoena power.

(a) The Commission has no power itself to issue subpoenas under this Article.

(b) Whenever OHREP has a reasonable cause to believe that any person has engaged in, or is engaging in, any violation of this Article, and, after making a good faith effort to obtain the data, information, and attendance of witnesses necessary to determine whether such violation has occurred, is unable to obtain such data, information, or attendance, it may request the County Attorney to petition the General District Court for Fairfax County for a subpoena against any such person refusing to produce such data and information or refusing to appear as a witness, and such court may, upon good cause shown, cause the subpoena to be issued.

(c) Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued by the Commission or OHREP.

(d) Any witness subpoena issued under this Section shall include a statement that any statements made will be under oath and that the respondent or other witness is entitled to be represented by an attorney.

(e) Any person failing to comply with a subpoena issued under this Section shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued a subpoena to quash it.

Section 11.1-2-17. Investigative report.

(a) Upon completion of the investigation, the Commission shall issue a written investigative report determining whether or not there is reasonable cause to believe a violation of this Article has occurred, and the facts supporting such determination. The report shall be a confidential document subject to review by the Director, authorized OHREP staff members, and the parties.

(b) The Commission delegates authority to the Director to prepare and issue written investigative reports.

Section 11.1-2-18. No cause determination.

(a) If the investigative report concludes that there is no reasonable cause to believe the alleged unlawful discrimination has been committed, the complaint shall be dismissed.

(b) The Commission delegates authority to the Director to issue no cause letters of determination and dismiss complaints pursuant to this Section.

(c) If the complainant disagrees with the no cause determination, the complainant may seek reconsideration by the Director or file an appeal with the Commission within ten (10) working days of receipt of the determination.

(d) Reconsideration shall only be granted when the complainant presents newly discovered evidence. After considering any such evidence, the Director shall (1) reaffirm the determination of no cause and dismiss the complaint, or (2) make a determination of reasonable cause.

(e) The Director shall provide a written notice to the complainant of the decision made on the request for reconsideration. In the event the Director reaffirms the no cause determination, this notice shall advise the complainant that the determination shall become final, unless within ten (10) business days of the letter's receipt, the complainant files an appeal with the Commission.

(1) The Commission shall only overturn the Director's no cause determination if it decides that (i) a factual finding underlying the determination is clearly erroneous, or (ii) the determination rests upon an incorrect legal conclusion.

(2) If the Commission affirms the Director's determination, it shall dismiss the complaint. When the Commission overturns the determination, it shall either: (i) vacate the determination and direct the Director to continue the investigation; or

(ii) reverse and determine that there is reasonable cause to believe that a violation of this Article has occurred or is occurring.

Section 11.1-2-19. Reasonable cause determination.

(a) If the investigative report concludes that there is reasonable cause to believe the alleged unlawful discriminatory practice has been committed, the complainant and respondent shall be notified of such determination.

(b) A determination finding reasonable cause shall be based on, and limited to, evidence obtained by during the investigation and does not reflect any judgment of the merits of the allegations not addressed in the determination.

(c) The Commission delegates to the Director, upon completion of the investigation, to make a reasonable cause determination, issue a cause letter of determination and serve a copy of the letter upon the parties.

Section 11.1-2-20. Conciliation.

(a) When a reasonable cause determination has been made, the Commission shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods such as conference, conciliation, negotiation, and persuasion.

(b) The Commission delegates to the Director the authority to enter into informal conciliation efforts, and to negotiate conciliation agreements.

(c) If the conciliation is successful, and agreed to by the vote of the Commission, the complaint shall be considered resolved, and the case file shall be closed. The terms of any settlement agreement resulting from the conciliation shall be reduced to writing and signed by the complainant, respondent, and the Commission. A copy of the agreement signed by parties and the Chair of the Commission or the Chair's designee shall be sent to the complainant and the respondent.

(d) When the Commission agrees in any negotiated settlement not to process the complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. Such agreement shall not affect the processing of any other complaint, including, but not limited to, a complaint with allegations which are like or related to the individual allegations settled.

(e) When the Director determines that further endeavor to settle a complaint by conference, conciliation, negotiation, and persuasion is unworkable and should be bypassed, the Director shall so notify the complainant and the respondent in writing. Within 10 working days of receipt of this notice, the complainant may request referral of the complaint to the Commission for determination of whether to hold a public hearing. If the complainant makes no such request, the Commission shall close the case file.

Section 11.1-2-21. Determination whether to hold a public hearing.

The Commission shall determine whether to hold a public hearing on a complaint based upon the totality of circumstances, including how best to further the policies and purposes underlying this Article. If the Commission determines not to hold a public hearing, it shall close the case file.

Section 11.1-2-22. Confidentiality.

(a) No member of the Commission or member of OHREP shall make public, prior to a public hearing, as provided herein, investigative notes and other correspondence and information furnished to the Commission or OHREP in confidence with respect to an investigation, mediation, or conciliation process involving an alleged unlawful discriminatory practice under this Article; however, nothing in this Section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

(b) This Section does not apply to such disclosures to representatives of federal, state or local agencies as may be appropriate or necessary to carrying out the Commission's functions under this Article; provided, that the Commission may refuse to make disclosures to any such agency which does not maintain confidentiality of such endeavors in accordance with this Section or in any circumstances where the disclosures will not serve the purposes of effective enforcement of the law or regulation alleged to have been violated.

Section 11.1-2-23. Hearing before Commission.

(a) The Commission may hear appeals made following a no cause determination made under this Article; provided, however, that a member of the Commission who has filed the complaint at issue or otherwise has a personal interest in the matter giving rise to the complaint shall be disqualified from hearing the appeal.

(b) After hearing all of the evidence and arguments, the Commission shall vote to dismiss the complaint due to insufficient evidence of a violation of this Article or to find reasonable cause based upon evidence sufficient to establish a violation of this Article.

(c) Once the hearing has concluded, all administrative appeals and hearings shall have been exhausted, and the Commission shall close the case file.

Section 11.1-2-24. Hearing procedures.

(a) This Section applies to all hearings held before the Commission, including any panel of its members, under this Article.

(b) The Commission shall notify the parties of the time, date, and location of a hearing no later than twenty (20) working days prior to the date of the hearing. This notice also shall identify the issues to be considered at the hearing and, when applicable, specify the deadlines by which parties must submit motions, file exhibits, designate witnesses, and raise evidentiary objections. Motions to continue a hearing or extend a deadline shall be in writing with a copy to the opposing party and submitted to the Commission. The Commission may grant any such motion only where good cause is shown.

(c) All hearings shall be open to the public.

(d) Both the complainant and the respondent shall appear and be heard in person.

(e) All testimony shall be given under oath or affirmation.

(f) The order of presentation of evidence shall be established by the Commission with the burden of proof being placed on the complainant. The burden of proof shall be a preponderance of the evidence.

(g) The Commission shall rule on all motions, evidentiary issues, and procedural matters. It shall not be bound by statutory rules of evidence or technical rules of procedure

(h) Irrelevant, immaterial, and unduly repetitious evidence shall, at the discretion of the Commission, be excluded. The rules of privilege shall be given effect.

(i) Documents and witness testimony not provided during the prior investigation shall not be admitted as evidence at the hearing, except for good cause shown or upon agreement of the parties.

(j) A party's exhibit and witness list for a hearing must be distributed to the Commission and the other party no later than five (5) working days prior to the hearing. Non-compliance with this rule shall result in the exclusion of the document or witness testimony left off the list, unless the Commission determines that good cause exists to allow it.

(k) At the start of the hearing, the Commission shall order the exclusion of witnesses so they cannot hear the testimony of other witnesses. This rule does not authorize excluding parties, or a person authorized to be present.

(l) Commission members may ask questions of the parties and witnesses.

(m) Before the hearing concludes, the parties shall be given an opportunity to present oral argument of their cases.

(n) After the parties have completed their presentations, the Commission's members shall cast their votes. After all members have voted, the Chair shall announce the Commission's decision and conclude the hearing.

Section 11.1-2-25. Remedies.

(a) If the respondent fails to adhere to any provision contained in any conciliation agreement or adequately to remedy a violation of this Article giving rise to a reasonable cause determination, the Commission, with the approval of the County Attorney, may seek through appropriate enforcement authorities the prevention of or relief from the violation.

(b) Upon finding a violation of this Article, the Commission may notify the County Purchasing Agent or any County agency providing financial support to the respondent of the violation.

(c) The Commission has no authority to award damages or grant injunctive relief under this Article.

(d) Nothing in this Article creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions.

Section 11.1-2-26. No waiver of other legal rights.

(a) Any person who is aggrieved by an unlawful discriminatory practice may bring an appropriate action in a court of competent jurisdiction, as provided for by any other applicable law.

(b) Nothing in this Chapter shall prevent any person from exercising any right or seeking any remedy to which the person might otherwise be entitled; nor shall any person be required to pursue any remedy set forth herein as a condition of seeking relief from any court or other agency, except as is otherwise provided by applicable Virginia or federal law.

Section 11.1-2-27. Severability.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

ARTICLE 3. Fairfax County Fair Housing Act.

Section 11.1-3-1. Declaration of policy.

- (a) This Article shall be known and referred to as the Fairfax County Fair Housing Act.
- (b) It is the policy of the County of Fairfax to provide for fair housing throughout the County, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the County may be protected and ensured. This law shall be deemed an exercise of the police power of the County of Fairfax for the protection of the people of the County.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-2. Definitions.

For the purposes of this Article, unless the context clearly indicates otherwise:

Aggrieved person means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

Assistance animal means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

Complainant means a person, including the Human Rights Commission, who files a complaint under Section 11.1-3-10.

Conciliation means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal

negotiations involving the aggrieved person, the respondent, their respective authorized representatives, and the Human Rights Commission.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Disability means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this chapter, the terms "disability" and "handicap" shall be interchangeable.

Discriminatory housing practices means an act that is unlawful [under] Sections 11.1-3-4, 11.1-3-5, 11.1-3-6, or 11.1-3-7. Dwelling means any building, structure, or portion thereof, which is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Elderliness means an individual who has attained his or her fifty-fifth birthday.

Familial status means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this Section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

Family includes a single individual, whether male or female.

Lending institution includes any bank, savings institution, credit union, insurance company, or mortgage lender.

Major life activities include any of the following functions: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Person means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

Physical or mental impairment includes any of the following: (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine or (ii) any mental or physiological disorder, such as an intellectual or developmental disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities; emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled substance, and alcoholism.

Prevailing Party has the same meaning as such term has in Section 1988 of Title 42 of the United States Code.

Respondent means any person or other entity alleged to have violated the provisions of this Article, as stated in a complaint filed under the provisions of this Chapter and any other person joined pursuant to the provisions of Section 11.1-3-10.

Restrictive covenant means any specification in any instrument affecting title to real property which purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability.

Source of funds means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

To rent means to lease, to sublease, to let, or otherwise to grant for consideration the right to occupy premises not owned by the occupant.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-3. Exemptions.

- (a) Except as provided in Section 11.1-3-4(a)(3) and Section 11.1-3-7(a)-(c), this Article shall not apply to any single-family house sold or rented by an owner, provided that such private individual does not own more than three single-family houses at any one time. In the case of the sale of any single-family house by a private individual-owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall apply only with respect to one such sale within any 24-

month period; provided that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be exempt from the application of this Article only if the house is sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this Article. However, nothing herein shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer the title.

- (b) Except for Section 11.1-3-4(a)(3), this Article shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.
- (c) Nothing in this Article shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability. Nor shall anything in this Article apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. Nor, where matters of personal privacy are involved, shall anything in this Article be construed to prohibit any private, state-owned, or state-supported educational institution, hospital, nursing home, religious, or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

- (d) Nothing in this Article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.
- (e) It shall not be unlawful under this Article for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.
- (f) A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the rental application. The owner or managing agent may collect from the applicant moneys to reimburse the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this Article shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.
- (g) Nothing in this Article limits the applicability of any reasonable local, state, or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as the standards do not violate local, state, or federal restrictions. Nothing in this Article prohibits the rental application or similar document from requiring information concerning the number, ages, sex, and familial relationship of the applicants and the dwelling's intended occupants.
- (h) Nothing in this Article shall prohibit an owner or an owner's managing agent from denying or limiting the rental or occupancy of a rental dwelling unit to a person because of such person's source of funds, provided that such owner does not own more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice. However, if an owner, whether individually or through a business entity, owns more than a 10 percent interest in more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice, the exemption provided in this subsection shall not apply.
- (i) It shall be unlawful under this Article for an owner or owner's managing agent to deny or limit a person's rental or occupancy of a

rental dwelling unit based on the person's source of funds for that unit if such source is not approved within 15 days of the person's submission of the request for tenancy approval.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-4. Unlawful discriminatory housing practices.

(a) It shall be an unlawful discriminatory housing practice for any person:

- (1) To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, source of funds, familial status, marital status, sexual orientation, gender identity, or status as a veteran;
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, source of funds, familial status, marital status, sexual orientation, gender identity, or status as a veteran;
- (3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this Chapter that shall not be overcome by a general disclaimer. However, reference alone to places of worship including churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference;
- (4) To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

- (5) To deny any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability;
 - (6) To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;
 - (7) To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability;
 - (8) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a disability of (i) the buyer or renter; (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (iii) any person associated with the buyer or renter; or
 - (9) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a disability of (i) that person; (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available; or (iii) any person associated with that buyer or renter.
- (b) For the purposes of this Section, discrimination includes: (i) a refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the

interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

- (1) The public use and common use areas of the dwellings are readily accessible to and usable by disabled persons;
 - (2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by disabled persons in wheelchairs; and
 - (3) All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.
- (c) Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically disabled people shall be deemed to satisfy the requirements of Section 11.1-3-4(b)(3).
- (d) Nothing in this Chapter shall be construed to invalidate or limit any Virginia law or regulation that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this Chapter.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-4-1. Rights and responsibilities with respect to the use of an assistance animal in a dwelling.

- (a) A person with a disability, or a person associated with such person, who maintains an assistance animal in a dwelling shall comply with the rental agreement or any rules and regulations of the property

owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises. Such person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for such damages in accordance with such documents or state law. Nothing herein shall be construed to affect any cause of action against any resident for other damages under the laws of the County.

- (b) If a person's disability is obvious or otherwise known to the person receiving a request, or if the need for a requested accommodation is readily apparent or known to the person receiving a request, the person receiving a request for reasonable accommodation may not request any additional verification about the requester's disability. If a person's disability is readily apparent or known to the person receiving the request but the disability-related need is not readily apparent or known, the person receiving the request may ask for additional verification to evaluate the requester's disability-related need.
- (c) A person with a disability, or a person associated with such person, may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling. Subject to subsection B, the person receiving the request may ask the requester to provide reliable documentation of the disability and the disability-related need for an assistance animal, including documentation from any person with whom the person with a disability has or has had a therapeutic relationship.
- (d) Subject to subsection (b), a person receiving a request for a reasonable accommodation to maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting documentation to verify the disability and the disability-related need for the reasonable accommodation regarding an assistance animal.
- (e) For purposes of this Section, "therapeutic relationship" means the provision of medical care, program care, or personal care services, in good faith, to the person with a disability by (i) a mental health service provider as defined in Virginia Code § 54.1-2400.1; (ii) an individual or entity with a valid, unrestricted state license, certification, or registration to serve persons with disabilities; (iii) a person from a peer support or similar group that does not charge service recipients a fee or impose any actual or implied financial requirement and who has actual knowledge about the requester's disability; or (iv) a caregiver, reliable third party, or government entity with actual knowledge of the requester's disability.

Section 11.1-3-4-2. Reasonable accommodations; interactive process.

- (a) When a request for a reasonable accommodation establishes that such accommodation is necessary to afford a person with a disability, and who has a disability-related need, an equal opportunity to use and enjoy a dwelling and does not impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the request for the accommodation is reasonable and shall be granted.
- (b) When a request for a reasonable accommodation may impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the person receiving the request shall offer to engage in a good- faith interactive process to determine if there is an alternative accommodation that would effectively address the disability-related needs of the requester. An interactive process is not required when the requester does not have a disability and a disability-related need for the requested accommodation. As part of the interactive process, unless the reasonableness and necessity for the accommodation has been established by the requester, a request may be made for additional supporting documentation to evaluate the reasonableness of either the requested accommodation or any identified alternative accommodations. If an alternative accommodation is identified that effectively meets the requester's disability-related needs and is reasonable, the person receiving the reasonable accommodation request shall make the effective alternative accommodation. However, the requester shall not be required to accept an alternative accommodation if the requested accommodation is also reasonable. The various factors to be considered for determining whether an accommodation imposes an undue financial and administrative burden include (a) the cost of the requested accommodation, including any substantial increase in the cost of the owner's insurance policy; (b) the financial resources of the person receiving the request; (c) the benefits that the accommodation would provide to the person with a disability; and (d) the availability of alternative accommodations that would effectively meet the requester's disability-related needs.
- (c) A request for a reasonable accommodation shall be determined on a case-by-case basis and may be denied if (i) the person on whose behalf the request for an accommodation was submitted is not disabled; (ii) there is no disability-related need for the accommodation; (iii) the accommodation imposes an undue financial and administrative burden on the person receiving the request; or (iv) the accommodation would fundamentally alter the nature of the operations of the person receiving the request. With respect to a

request for reasonable accommodation to maintain an assistance animal in a dwelling, the requested assistance animal shall (a) work, provide assistance, or perform tasks or services for the benefit of the requester or (b) provide emotional support that alleviates one or more of the identified symptoms or effects of such requester's existing disability. In addition, as determined by the person receiving the request, the requested assistance animal shall not pose a clear and present threat of substantial harm to others or to the dwelling itself that is not solely based on breed, size, or type or cannot be reduced or eliminated by another reasonable accommodation.

Section 11.1-3-5. Discrimination in residential real estate-related transactions; unlawful practices by lenders, insurers, appraisers, etc.; deposit of state funds in such institutions.

- (a) It shall be unlawful for any person or other entity, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, or in the manner of providing such a transaction, because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability. It shall not be unlawful; however, for any person or other entity whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan or loans for which such person is making application.
- (b) As used in this Section, the term "residential real estate-related transaction" means any of the following:
 - (1) The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling, or (ii) secured by residential real estate; or
 - (2) The selling, brokering, insuring or appraising of residential real property. However, nothing in this Article shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-6. Interference with enjoyment of rights of others under this Article.

It shall be an unlawful discriminatory housing practice for any person to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on the account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Article.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-7. Certain restrictive covenants void; instruments containing such covenants.

- (a) Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of this County.
- (b) Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.
- (c) No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection (a). Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or \$500.00, plus reasonable attorney fees and costs incurred.
- (d) A family care home, foster home, or group home in which individuals with physical disabilities, mental illness, intellectual disabilities, or developmental disabilities reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single-family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single-family or to residential use or structure.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-8. Familial status protection not applicable to housing for older persons.

- (a) Nothing in this Article regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this Section, "housing for older persons" means housing: (i) provided under any federal, state, or local program that is lawfully determined to be specifically designed and operated to assist elderly persons, as defined in the federal, state or local program; or (ii) intended for, and solely occupied by, persons 62 years of age or older; or (iii) intended for, and solely occupied by at least one person 55 years of age or older per unit. The following criteria shall be met in determining whether housing qualifies as housing for older persons under subdivision (iii) of this Section:
 - (1) That at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older per unit; and
 - (2) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- (b) Housing shall not fail to meet the requirements for housing for older persons by reason of:
 - (1) Persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subdivisions (ii) and (iii) of subsection (a) of this Section, provided that new occupants of such housing meet the age requirements of those subdivisions; or
 - (2) Unoccupied units, provided that such units are reserved for occupancy by persons who meet the provisions of subdivisions (ii) and (iii) of subsection (a) of this Section.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-9. Powers of the Human Rights Commission.

The Human Rights Commission has the power for the purposes of this Article to initiate and receive complaints, conduct investigations of any violation of this Article, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge, and refer it to the County Attorney for action. When conducting an investigation of a complaint filed under Article 3 of this Chapter the Commission or its designated subordinates shall have the power to issue and serve a subpoena as provided for by Section 11.1-3-11(b).

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-10. Procedures for receipt or initiation of complaint under Article 3 of this Chapter; notice to parties; filing of answer.

- (a) A complaint under this Article shall be filed with the Commission in writing within one year after the alleged discriminatory housing practice occurred or terminated.
- (b) Any person not named in such a complaint and who is identified as a respondent in the course of the investigation may be joined as an additional or substitute respondent upon written notice to such person by the Director explaining the basis for the Director's belief that such person is properly joined as a respondent
- (c) Any respondent may file an answer to such a complaint not later than ten business days after receipt of the notice described in Section 11.1-3-10(d) below. Complaints and answers must be made in writing, under oath or affirmation, and in such form as the Director requires. Complaints and answers may be reasonably and fairly amended at any time.
- (d) Upon the filing of a complaint under this Article 3 or initiation of such a complaint by the Director or its designee, the Commission shall provide written notice to the parties as follows:
 - (1) To the aggrieved person acknowledging the filing and advising such person of the time limits and choice of forums under this Article; and
 - (2) To the respondent, not later than ten business days after such filing or the identification of an additional respondent under subsection (b), identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this Article with a copy of the original complaint and copies of any supporting documentation referenced in the complaint.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-11. Procedures for investigation.

- (a) The Director shall commence proceedings with respect to a complaint filed under this Article within 30 days after receipt of the complaint, and shall complete the investigation within 100 days thereof unless it is impracticable to do so. If the Director is unable to complete the investigation within 100 days after the receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons for not doing so.

- (b) When conducting an investigation of a complaint filed under this Article, the Director shall have the right to interview any person who may have any information which may further its investigation and to request production of any records or documents for inspection and copying in the possession of any person which may further the investigation. Such persons may be interviewed under oath. The Director or its designated subordinates shall have the power to issue and serve a subpoena to any such person to appear and testify and to produce any such records or documents for inspection and copying. Said subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served as part of a civil action in the Commonwealth of Virginia. In case of refusal or neglect to obey a subpoena, the Commission may petition for its enforcement in the Circuit Court for the County of Fairfax. The Circuit Court of Fairfax County will be requested to give these cases priority on the court docket.
- (c) At the end of each investigation under this Section, the Director shall prepare a final investigative report which may contain:
 - (1) The names and dates of contacts with witnesses;
 - (2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
 - (3) A summary description of other pertinent records;
 - (4) A summary of witness statements; and
 - (5) Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

- (d) The Director shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Director's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-12. Reasonable cause determination and effect.

The Commission shall, within 100 days after the filing of a complaint under this Article, determine, based on the facts and after consultation with the Office of the County Attorney, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is

impracticable to do so or unless the Commission has approved a conciliation agreement with respect to the complaint. If the Commission is unable to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur within 100 days after receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons therefor.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-13. No reasonable cause determination and effect.

If the Commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall promptly dismiss the complaint notifying the parties within 30 days of such determination. The Commission shall make public disclosure of each dismissal.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-14. Conciliation.

During the period beginning with the filing of such complaint under this Article and ending with the filing of a charge or a dismissal by the Director, the Director shall, to the extent feasible, engage in conciliation with respect to such complaint.

- (1) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent, the complainant, and the Commission, and shall be subject to approval by the Commission.
- (2) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.
- (3) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of this Chapter.
- (4) Whenever the Commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the Commission may refer the matter to the County Attorney with a recommendation that a civil action be filed under Section 11.1-3-18 for the enforcement of such agreement.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-15. Issuance of a charge.

Upon failure to resolve a complaint under this Article by conciliation and after consultation with the Office of the County Attorney, the Commission shall issue a charge on behalf of the Commission and the aggrieved person or persons and shall immediately refer the charge to the County Attorney, who shall proceed with the charge as directed by Section 11.1-3-17.

- (1) Such charge:
 - (A) Shall consist of a short and plain statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - (B) Shall be based on the final investigative report; and
 - (C) Need not be limited to the acts or grounds alleged in the complaint filed under Section 11.1-3-10.
- (2) Not later than ten business days after the Commission issues a charge under this Section, the Director shall cause a copy thereof to be served on each respondent named in such charge and on each aggrieved person on whose behalf the complaint was filed.

The Commission may not issue a charge under this Section regarding an alleged discriminatory housing practice after the beginning of a trial of a civil action commenced by the aggrieved party under an Act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-16. Prompt judicial action.

If the Director concludes at any time following the filing of a complaint and after consultation with the Office of the County Attorney, that prompt judicial action is necessary to carry out the purposes of this Chapter, the Director may authorize a civil action by the County Attorney for appropriate temporary or preliminary relief. Upon receipt of such authorization, the County Attorney shall promptly commence and maintain such action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Virginia Rules of Civil Procedure. The commencement of a civil action under this Section shall not affect the initiation or continuation of administrative proceedings by the Commission under Section 11.1-3-9.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-17. Civil action by County Attorney upon referral of charge by the Human Rights Commission.

- (a) Not later than 30 days after a charge is referred by the Commission to the County Attorney under Section 11.1-3-15, the County Attorney, at County expense, shall commence and maintain a civil action seeking relief on behalf of the Commission and the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur.
- (b) Any aggrieved person with respect to the issues to be determined in a civil action pursuant to subsection (a) may intervene as of right.
- (c) In a civil action under this Section, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may grant, as relief, any relief which a court could grant with respect to such discriminatory housing practice in a civil action under Section 11.1-3-19. Any relief so granted that would accrue to an aggrieved person under Section 11.1-3-19 shall also accrue to the aggrieved person in a civil action under this Section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court in the course of the action brought under this Section.
- (d) In any court proceeding arising under this Section, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-18. Civil action by County Attorney; matters involving the legality of any local zoning or other land use ordinance; pattern or practice cases; or referral of conciliation agreement for enforcement.

- (a) Whenever the County Attorney has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this Article, or that any group of persons has been denied any of the rights granted by this Article and such denial raises an issue of general public importance, the County Attorney may commence a civil action in the appropriate circuit court for appropriate relief.
- (b) In the event of a breach of a conciliation agreement by a respondent, the Commission may authorize a civil action by the County Attorney. The County Attorney may commence a civil action in any appropriate

circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of 90 days after the referral of such alleged breach.

- (c) The County Attorney, on behalf of the Commission, or other party at whose request a subpoena is issued, under this Article, may enforce such subpoena in appropriate proceedings in the appropriate circuit court.
- (d) In a civil action under subsections (a) and (b), the court may:
 - (1) Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this Article as is necessary to assure the full enjoyment of the rights granted by this Article.
 - (2) Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000.00 for a first violation; and (ii) in an amount not exceeding \$100,000.00 for any subsequent violation. The court or jury may award such other relief to the aggrieved person, as the court deems appropriate, including compensatory damages, and punitive damages without limitation otherwise imposed by state law.
- (e) Upon timely application, any person may intervene in a civil action commenced by the County Attorney under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a party to a conciliation agreement. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under Section 11.1-3-19.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-19. Civil action; enforcement by private parties.

- (a) An aggrieved person may commence a civil action in an appropriate United States district court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this Article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.
- (b) An aggrieved person may commence a civil action under Section 11.1-3-19(a) no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge or not later than two years after the occurrence or the termination of an

alleged discriminatory housing practice, whichever is later. This subsection shall not apply to actions arising from a breach of a conciliation agreement. An aggrieved person may commence a civil action under this Section whether or not a complaint has been filed under Section 11.1-3-10 and without regard to the status of any such complaint. If the Commission or a federal agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this Section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

- (c) In a civil action under subsection (a), if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive damages, without limitation otherwise imposed by state law, and the court may award reasonable attorney's fees and costs, and subject to subsection (d), may grant as relief, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or order such affirmative action as may be appropriate.
- (d) Relief granted under subsection (c) shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving bona fide purchasers, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Commission or civil action under this Article.
- (e) Upon timely application, the County Attorney may intervene in such civil action, if the County Attorney certifies that the case is of general public importance. Upon intervention, the County Attorney may obtain such relief as would be available to the private party under subsection (c).

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-20. Witness fees.

Witnesses summoned by a subpoena under this Chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Commission.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-21. Promulgating regulations.

The Commission shall perform all acts necessary and proper to carry out the provisions of this Article and may promulgate and amend necessary regulations.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-22. Application of Article.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-23. Construction of law.

Nothing in this Article shall abridge the federal Fair Housing Act of 1968, (42 U.S.C. § 3601 et seq.), as amended, or the Virginia Fair Housing Act (Va. Code Ann. § 36-96.1 et seq.) (Michie 1996) as amended.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-24. Time Limitations.

- (a) A complaint filed under the provisions of this Article shall be dismissed by the Director if the complainant knew or should have known that the alleged violation of this Article ceased more than one year prior to the date of filing of the complaint.
- (b) If the Commission is unable to make a final disposition within 100 days after receipt of the complaint, the parties shall be notified in writing of the reasons for not doing so.

(33-10-11.)

COMPARISON OF CHAPTER 11 TO CHAPTER 11.1

Chapter 11 Section	Chapter 11.1 Section
11-1-1	11.1-2-3
11-1-2	11.1-1-2 and 11.1-2-2
11-1-3	11.1-2-5
11-1-4	11.1-2-5
11-1-5	11.1-2-5
11-1-6	11.1-2-5
11-1-7	11.1-2-5
11-1-8	11.1-2-5
11-1-9	11.1-2-5
11-1-10	11.1-1-3 to 11.1-1-6, and 11.1-2-6
11-1-11	11.1-2-6 to 11.1-2-7, and 11.1-2-16
11-1-12	Moved to bylaws
11-1-13	11.1-2-9 to 11.1-2-15, 11.1-2-17 to 11.1-2-22
11-1-14	11.1-1-7 and 11.1-2-24
11-1-15	11.1-2-23
11-1-16	11.1-2-9
11-1-17	11.1-2-25
11-1-18	Deleted
11-1-19	11.1-1-8
11-1-20	11.1-2-26
11-1-21	11.1-2-8
11-1-22	11.1-2-11
11-1-23	11.1-2-27
11-2-1	11.1-3-1
11-2-2	11.1-3-2
11-2-3	11.1-3-3
11-2-4	11.1-3-4
	11.1-3-4.1

Chapter 11 Section	Chapter 11.1 Section
	11.1-3-4.2
11-2-5	11.1-3-5
11-2-6	11.1-3-6
11-2-7	11.1-3-7
11-2-8	11.1-3-8
11-2-9	11.1-3-9
11-2-10	11.1-3-10
11-2-11	11.1-3-11
11-2-12	11.1-3-12
11-2-13	11.1-3-13
11-2-14	11.1-3-14
11-2-15	11.1-3-15
11-2-16	11.1-3-16
11-2-17	11.1-3-17
11-2-18	11.1-3-18
11-2-19	11.1-3-19
11-2-20	11.1-3-20
11-2-21	11.1-3-21
11-2-22	11.1-3-22
11-2-23	11.1-3-23
11-2-24	11.1-3-24

Board Agenda Item
July 28, 2020

ADMINISTRATIVE - 2

Additional Time to Commence Construction for Special Exception SE 2015-HM-013,
Singh Properties II, LLC (Hunter Mill District)

ISSUE:

Board consideration of additional time to commence construction for SE 2015-HM-013, 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 2015-HM-013 to July 1, 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 February 2, 2016, the Board of Supervisors approved Special Exception SE 2015-HM-013, subject to development conditions. The application was filed in the name of Singh Properties II, LLC, to permit a medical care facility (an assisted living and memory care facility) within the R-1 zoning district for the property located at 10819 Leesburg Pike, Tax Map 12-3 ((1)) 4 (see Locator Map in Attachment 1). A medical care facility is a Category 3 special exception use and is permitted pursuant to Section 3-104 of the Fairfax County Zoning Ordinance. The Special Exception did not contain a provision that the use be established or construction commenced and diligently prosecuted within a specific timeframe, however, Section 9-015 of the Zoning Ordinance, as described above, notes that if no date has been specified, the special

Board Agenda Item
July 28, 2020

exception would expire within thirty (30) months from the approval date. The development conditions for SE 2015-HM-013 are included as part of the Clerk to the Board's letter contained in Attachment 2.

As a result of Virginia General Assembly automatic extensions for this type of Special Exception, the original expiration date of August 2, 2018 was extended until July 1, 2020. On May 18, 2020, the Department of Planning and Development (DPD) received a letter dated May 11, 2020, from Todd J. Rankine, agent for the Applicant, requesting twenty-four (24) months of additional time (see Attachment 3). While the current expiration date is July 1, 2020, the approved Special Exception will not expire pending the Board's action on the request for additional time.

Mr. Rankine states additional time is necessary to commence construction. According to Mr. Rankine's letter, the Applicant has not been able to commence construction of the facility, now known as Waltonwood Reston, due to necessary coordination with the Virginia Department of Transportation for the Leesburg Pike (Route 7) Capital Road Improvement Project which has direct right-of way and design impacts on this site and the approved development plan. Since approval, the Applicant has been pursuing final site plan approval to secure site construction permits but that has taken longer than expected, as outlined in detail in the request letter. Furthermore, the impacts of the coronavirus pandemic on senior living community housing designs as well as the state of emergency for Virginia have impeded the commencement of construction. While the Applicant is working through these issues, Mr. Rankine indicates that the additional time of twenty-four (24) months is necessary to ensure the special exception approval remains valid and to allow the Applicant to commence construction.

Staff has reviewed Special Exception SE 2015-HM-013 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a medical care facility within a R-1 zoning district. Further, staff knows of no change in land use circumstances that affects compliance of SE 2015-HM-013 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 Fairfax County Department of Transportation has reviewed this request and notes that the Applicant had facilitated the transportation project ongoing in the area. 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 2015-HM-013 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.

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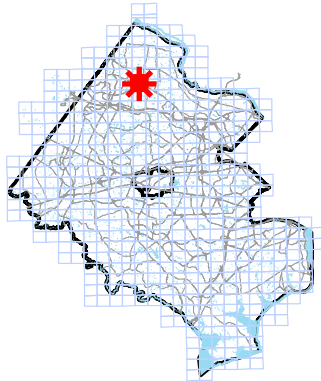
FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1: Locator Map
Attachment 2: Clerk's Letter dated February 3, 2016, to David Houston
Attachment 3: Letter dated May 11, 2020, 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

Special Exception

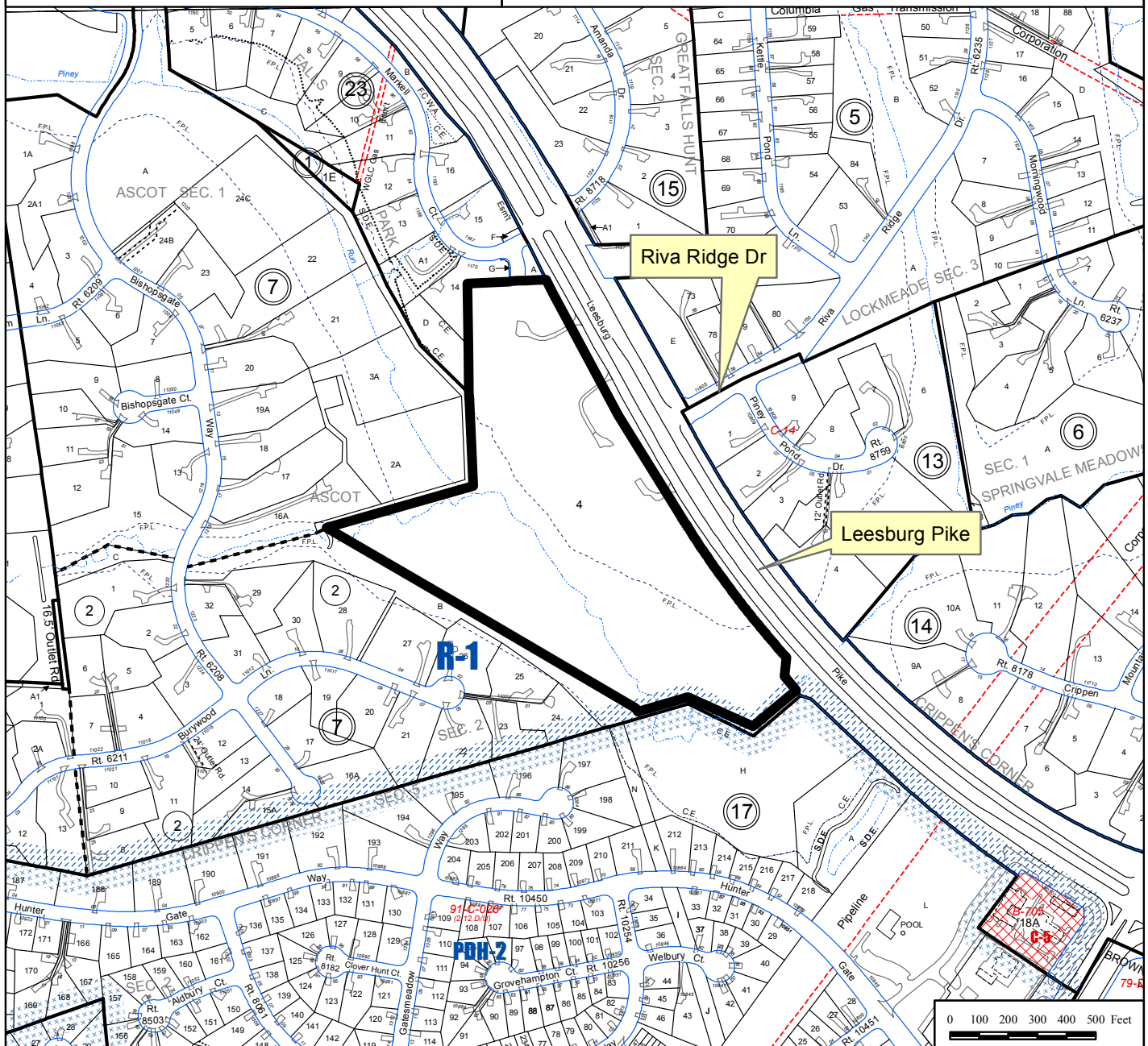
SE 2015-HM-013



Applicant: SINGH PROPERTIES II, LLC
Accepted: 04/06/2015
Proposed: MEDICAL CARE FACILITY
Area: 23.81 AC OF LAND; DISTRICT - HUNTER MILL

Zoning Dist Sect: 03-0104
Located: 10819 LEESBURG PIKE, RESTON, VA 20194
Zoning: R- 1
Plan Area: 3,
Overlay Dist:
Map Ref Num: 012-3- /01/ /0004

ATTACHMENT 1





County of Fairfax, Virginia

ATTACHMENT 2

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

RECEIVED
Department of Planning & Zoning

MAR 29 2016

Zoning Evaluation Division

February 3, 2016

David Houston
Blank Rome LLP
Watergate
600 New Hampshire Avenue NW
Washington, DC 20037

Re: Special Exception Application SE 2015-HM-013

Dear Mr. Houston:

At a regular meeting of the Board of Supervisors held on February 2, 2016, the Board approved Special Exception Application SE 2015-HM-013 in the name of Singh Properties II, LLC. The subject property is located at 10819 Leesburg Pike, on approximately 23.81 acres of land, zoned in the R-1 District in the Hunter Mill District [Tax Map 12-3 ((1)) 4]. The Board's action permits a medical care facility, pursuant to Sections 3-104 and 9-308 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 Article 17 of the Zoning Ordinance, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any site plan submitted pursuant to this Special Exception shall be in substantial conformance with the approved Special Exception Plat titled "Waltonwood Reston" prepared by Bowman Consulting, dated March 2015, as revised through August 24, 2015 (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

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

4. There shall be a maximum of 46 employees per shift and a maximum of 155 residents. The number of employees may be increased if the minimum parking requirements for a medical care facility in Article 11 of the Zoning Ordinance are met, and subject to approval of a parking tabulation by the Department of Public Works and Environmental Services. However, there shall be no increase permitted to the proposed 113 parking spaces. Notwithstanding the notes on the Special Exception Plat, parking shall not be expanded outside of the areas shown for parking and modifications shall not reduce open space. All parking shall be in conformance with Article 11 of the Zoning Ordinance and the Public Facilities Manual.
5. The Applicant shall maintain at least four percent of the beds for residents who are eligible for the Virginia Department for Aging and Rehabilitative Services' Auxiliary Grant Program. If an assisted living resident in an affordable unit moves to the memory care program, the resident shall be entitled to maintain an affordable unit.
6. The Applicant shall continue to coordinate with the Virginia Department of Transportation (VDOT) regarding future improvements to Leesburg Pike as part of Project 0007-019-128, P102, R202, C502, and shall dedicate right-of-way and easements upon demand by VDOT or the County, provided there are no adverse impacts to site improvements, including structures, parking or travel lanes. Right-of-way shall be conveyed at no cost to Fairfax County and in fee simple, without encumbrances, to the Board of Supervisors in a form acceptable to the County Attorney. Density and intensity credit shall be reserved as may be permitted by the provisions of Sect. 2-308 (4) of the Zoning Ordinance for all eligible dedications described herein.
7. As part of the construction of the facility and prior to approval of a Non-Residential Use Permit (Non-RUP), the Applicant shall construct the frontage improvements, including the right turn lane and taper as depicted on the Special Exception Plat, subject to approval by the Virginia Department of Transportation.
8. Prior to site plan approval, the Applicant shall grant a 20-foot wide public access easement to the Fairfax County Park Authority (FCPA) for the minor trail that extends behind the proposed facility in a location as generally shown on the Countywide Trails Plan Map. The location of the easement shall be approved by the FCPA. In lieu of constructing the paved trail, the Applicant shall place in escrow, prior to site plan approval, the funds necessary for construction by FCPA of the 6-foot wide asphalt trail on the subject property or for construction of other trails and/or associated recreational purposes within the vicinity.
9. Prior to site plan approval, the Applicant shall place in escrow the funds necessary for construction of a 10-foot wide asphalt trail along Leesburg Pike, minus the cost of the interim trail constructed pursuant to condition 10, for use by VDOT towards the cost of the permanent improvements.

10. Prior to approval of a Non-Residential Use Permit (Non-RUP), the Applicant shall construct an interim 5-foot wide asphalt trail along Leesburg Pike, as reviewed and approved by VDOT and DPWES, which shall be maintained by the Applicant, unless accepted for maintenance by VDOT. The trail shall be located within the VDOT right-of-way to the extent possible, and within a public access easement if located on the Applicant's property.
11. If VDOT constructs the permanent asphalt trail along Leesburg Pike in conjunction with future roadway improvements, the Applicant shall be responsible for removing the portions of the interim trail described in condition 10 on the subject property and for restoring the affected area with grass or landscaping, and vacating the public access easement.
12. Trash and/or recycling collection, and food and linen delivery hours shall be limited to the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, unless unusual circumstances, such as emergencies, atypical weather or traffic conditions require collection outside of these days and times. No weekend pickups shall be allowed.
13. Stormwater Management:
 - A. The Applicant shall install stormwater management facilities in substantial conformance with the Special Exception Plat and in accordance with the Fairfax County Stormwater Management Ordinance and the Public Facilities Manual. In accordance with the Energy Balance Equation, the facilities shall be designed to detain the 25-year storm and release the captured stormwater at the 10-year pre-development flow rate, in addition to the standard detention requirements for the 2-year and 10-year storms.
 - B. The Applicant shall implement BMP devices in the three areas generally identified on the Plat as "Potential L.I.D. Filter." These additional BMPs, in conjunction with the manufactured treatment devices as part of the detention facilities, shall be designed to achieve a total phosphorus load reduction of a minimum of 2.29 pounds/year, to exceed the minimum required reduction of 1.6 pounds/year (or approximately 43 percent greater removal than what is required by the Stormwater Management Ordinance), of which final calculation is to be determined at the time of final site plan.
 - C. The Applicant shall provide the outfall velocity dissipation basins shown on the Special Exception Plat to reduce the velocity of the runoff from the Leesburg Pike outfall located north of the parking lot.
14. The "gatehouse structures" shown as part of the entry feature shall be designed to not allow entry, and with no function or use other than as architectural features as part of the wall.

15. All signage and flags shall conform to Article 12 of the Zoning Ordinance. The entry signage may be located on either side of the entrance.
 - i.
16. All lighting shall conform to Article 14 of the Zoning Ordinance.
17. The Applicant shall provide landscaping in substantial conformance with the Special Exception Plat. The exact number, species, location and spacing of trees and other plant material shall be determined at the time of site plan review and shall be subject to review and approval of the Urban Forest Management Division (UFMD), DPWES. In addition, the Applicant shall install a seven-foot tall solid fence along the rear of the loading area and supplemental evergreen landscaping as generally shown on Attachment 2, and as approved by the Urban Forest Management Division.
18. Tree Preservation: The Applicant shall submit a Tree Preservation Plan and Narrative as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of UFMD, DPWES.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 12 inches in diameter and greater (measured at 4 ½ feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet of the limits of clearing and grading in the protected area and within 10 feet of the limits of clearing and grading in the area to be disturbed as depicted in Plate 1A-12 of the Public Facilities Manual. The tree preservation plan shall provide for the preservation of trees in areas shown outside of the limits of clearing and grading shown on the Special Exception Plat and in those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0507 and 12-0509. 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.

19. 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 landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are

identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine or other appropriate machinery in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.

20. Limits of Clearing and Grading: The Applicant shall conform substantially to the limits of clearing and grading as shown on the SE Plat, subject to allowances specified in these 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 Plat, 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, taking into account planting restrictions imposed by utility easement agreements.
21. Tree Preservation Fencing: All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing shall be erected at the limits of clearing and grading as shown on the demolition, and Phase I and II Erosion and Sediment Control sheets of the site plan. Tree protection fencing shall consist of either: (a) 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 (b) 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.

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

22. Prior to site plan approval, the Applicant shall contribute \$10,000 to the Capital Project titled "Traffic Light Signals – FRD Proffers in Fund 300-C30070, Public Safety Construction" for use in the installation of preemptive signal devices on traffic signals within the Hunter Mill District as determined by the Fire and Rescue

February 3, 2016

Department. The Applicant shall have no responsibility for the installation or maintenance of the devices.

23. A noise study, including any necessary mitigation measures shall be approved by the Environment and Development Review Branch (EDRB) of the Department of Planning and Zoning and DPWES prior to site plan approval to demonstrate that interior noise will not exceed a level of approximately DNL 45 dBA.
24. The existing well(s) and septic system shall be abandoned in accordance with Fairfax County Health Department regulations and permits prior to approval of a demolition permit for the existing structures and any land disturbance.
25. The Applicant shall, upon demand, grant one sanitary sewer easement to the County in a form approved by the County Attorney's Office in conformance with a plat showing such easement that has been approved by the Fairfax County Department of Public Works and Environmental Services (DPWES) to serve residential properties abutting to the west of the application property, subject to approval by DPWES. The easement shall be at no cost to the Applicant and shall not, in the opinion of DPWES, be located in such a manner as to adversely impact the proposed development approved in this application. The Applicant shall not be responsible for the preparation and processing of the plat and deed of easement, the design and construction of the abutting residential properties' sewer line, nor for application(s), permit(s) or other governmental approvals related to such easement, sewer line, or its impacts to any Resource Protection Area (RPA).
26. All units shall conform to the definition of an Assisted Living Facility pursuant to Article 20 of the Zoning Ordinance, and may include kitchen facilities limited to a sink, refrigerator and/or microwave.
27. The architectural design of the proposed facility shall generally conform to the character and quality of the illustrative elevation included as Attachment 1 to these conditions. The building materials shall be predominantly brick and masonry stone.
28. After construction, the proposed building will obtain an ENERGYSTAR qualified senior care facility rating. In addition to the commitment to ENERGYSTAR, the following green building technology and strategies will be incorporated into the building, and proof of each shall be demonstrated to the Environment and Development Review Branch (EDRB) of the Department of Planning and Zoning, prior to final bond release. Additionally, the ENERGYSTAR senior care facility rating will be reported to the EDRB prior to final bond release.
 - A. A LEED-accredited professional will be included as a member of the design team. The LEED-accredited professional will work with the team to incorporate sustainable design elements and innovative technologies into the project. At the time of site plan submission, documentation will be provided to the EDRB demonstrating compliance with the commitment to engage such a professional.

- B. The Applicant shall install ultralow-flow plumbing fixtures throughout the building with the maximum water usage as listed below. In addition, motion sensor faucets and flush valves shall be installed in public area restrooms. Proof of installation and manufacturers' product data shall be provided to the EDRB.

Water Closet (gallons per flush, gpf) = 1.28

Urinal (gpf) = 0.5

Showerheads (gallons per minute, gpm) = 2.0 (when measured at a flowing pressure of 80 pounds per square inch, psi)

Lavatory faucets (gpm) = 1.5 (when measured at a flowing water pressure of 60 psi)

Kitchen and janitor sink faucets (gpm) = 2.20

Metering faucets (gpm) = 0.25

- C. A recycling area for the separation, collection and storage of glass, paper, metal, plastic and cardboard generated by both residents and employees shall be provided. There shall be a dedicated area on the subject property for the storage of the recycled materials. The Applicant shall provide proof of installation, installation locations, and a copy of the Applicant's hauling contract to the EDRB.
- D. Carbon dioxide (CO₂) monitors with demand control mechanical ventilation shall be installed. CO₂ monitors shall be located in all occupied spaces with a design occupancy of 25 or more people per 1,000 square feet. Monitors shall be located between 3 and 6 feet above the floor. All monitoring equipment shall be configured to generate increased ventilation to restore proper ventilation levels per ASHRAE62.1-2013, or its equivalent. Proof of installation, the manufacturers' product data and installation locations shall be provided to the EDRB.
- E. LED or compact fluorescent lamps shall be incorporated in all interior building lighting fixtures. The Applicant shall provide proof of installation and manufacturer's product data to the EDRB.
- F. Energy Star appliances and equipment shall be installed for all refrigerators, dishwashers, water heaters, computers, monitors, televisions, vending machines, water coolers, and other appliances and office equipment (if available). Proof of installation, installation locations and manufacturers' product data, including the Energy Star energy guide, shall be provided to the EDRB.
- G. The Applicant shall have a construction waste management plan that consists of hiring a waste removal and diversion company to process all construction waste at a recycling center. The Applicant shall provide a copy of the waste removal contract as proof of compliance to the EDRB.

February 3, 2016

- H. The Applicant shall use low-emitting materials for all adhesives, sealants, paints, coatings, flooring systems, composite wood, and agrifiber products, as well as furniture and furnishings if available. Low-emitting is defined as having a VOC content 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

The Applicant shall provide proof of installation and the manufacturers' product data to the EDRB.

- I. The Applicant shall install carpet and carpet padding that shall meet the testing and product requirements of the Carpet and Rug Institute Green Label Plus Program. The Applicant shall provide proof of installation and the manufacturers' product data to the EDRB.
- J. The Applicant shall not use any particle board, medium density fiberboard (MDF), plywood, wheatboard, strawboard, or panel substrates on the interior of the building which contain urea formaldehyde resins. The Applicant shall provide proof of installation and the manufacturers' product data to the EDRB.
- K. Prior to the approval of a Non-RUP, the Applicant, in consultation with the Fairfax County Department of Transportation (FCDOT), shall install bicycle racks within 50 feet of the main and employee entrances. The type, location and number of bicycle racks shall be determined at that time. The Applicant shall provide proof of installation and location to FCDOT.
- L. Preferred parking shall be reserved for hybrid or electric vehicles. The Applicant shall provide proof to the EDRB that one or more spaces have been reserved.
- M. Facilities for the re-use of rainwater for irrigation shall be installed. The Applicant shall provide proof of installation to the EDRB.
- N. Exterior and interior light pollution reduction strategies shall be incorporated, and shall include, but not be limited to, fully shielded and downward-pointed LED site lighting, motion activated common room occupancy sensors (but not inside the residential dwelling units) and night lighting. The Applicant shall provide proof of installation to the EDRB.
- O. The Applicant shall install a roofing membrane with a Solar Reflectance Index (SRI) appropriate to the slope of the roof (i.e., for a low-sloped roof (less than

or equal to 2:12) equal to or greater than 78 for a minimum of 75 percent of the total roof area, and for a high-sloped roof (greater than 2:12) equal to or greater than 29). The Applicant shall provide proof of installation, roof area calculations and manufacturers' product data to the EDRB.

P. The Applicant shall provide natural lighting through the use of windows and/or skylights to a minimum of 75 percent of the spaces. Areas excluded are mechanical rooms, storage and interior staff areas designed to provide designated services to the residents of the community. The Applicant shall provide proof of installation, locations on the architectural plans and calculations demonstrating that the minimum of 75 percent of the spaces as described above has been provided.

29. The Applicant shall offer employees the option of shuttle bus service, at no charge, to and from nearby public bus stop(s) and/or Metro station(s) for their scheduled work shifts. The Applicant shall determine the pick-up/drop-off locations for the shuttle bus based on the public transportation assistance desires of the employees and the availability of legal parking or idling locations for the shuttle bus. The planned locations for the shuttle bus service shall be identified prior to issuance of a Non-Residential Use Permit, and shall be re-evaluated by the Applicant, at a minimum, on a yearly basis.

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 Board also:

- Approved modifications of the transitional screening and barrier requirements of Sect. 13-303 and 304 of the Zoning Ordinance, in favor of the landscaping and barriers shown on the Special Exception Plat.
- Approved a waiver of the service drive requirement of Sect. 17-201 of the Zoning Ordinance along Leesburg Pike.
- Approved an increase in the wall height above seven feet pursuant to Sect. 10-104(3)(H) of the Zoning Ordinance to permit the walls as shown on the Special Exception Plat.

Sincerely,



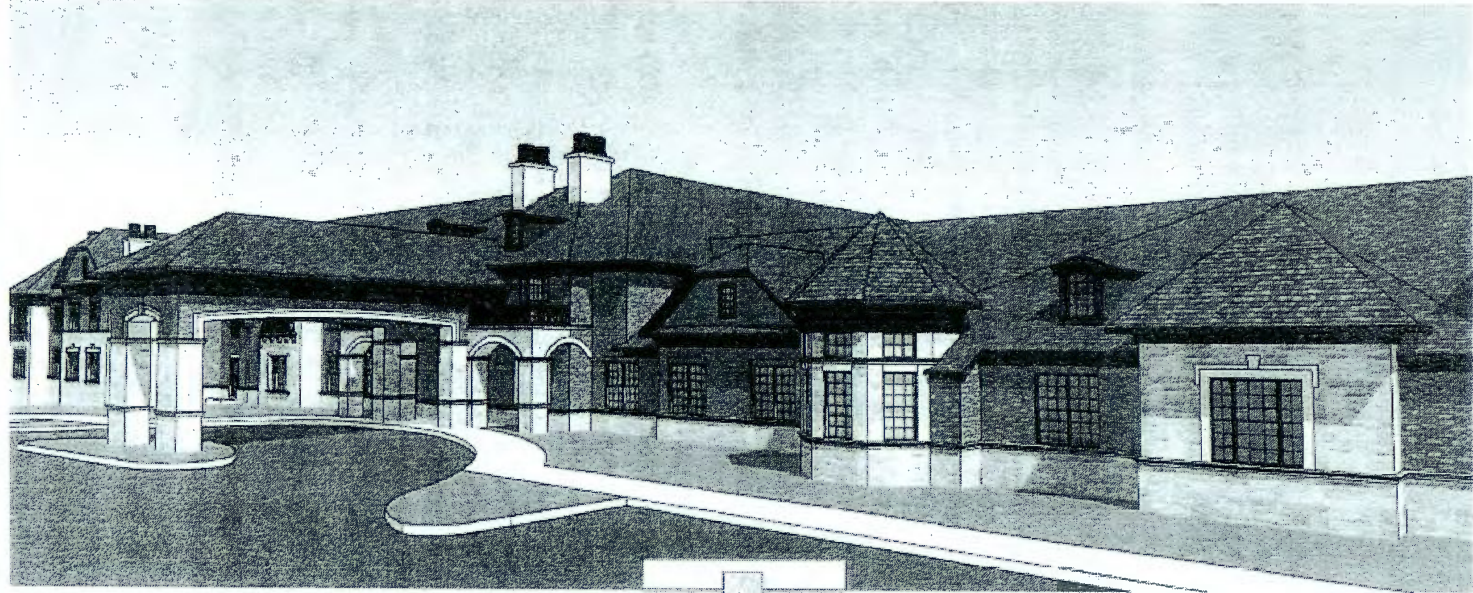
Catherine A. Chianese
Clerk to the Board of Supervisors

February 3, 2016

cc: Chairman Sharon Bulova
Supervisor Catherine Hudgins, Hunter Mill District
Tim Shirocky, Acting Director, Real Estate Division, Dept. of Tax Administration
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
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

SE 2015-HM-013
February 3, 2016

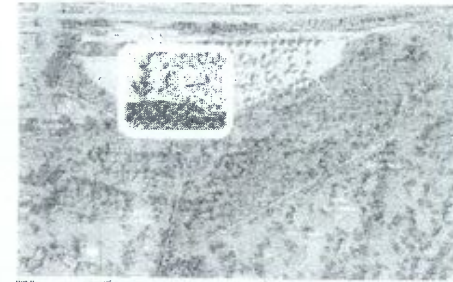
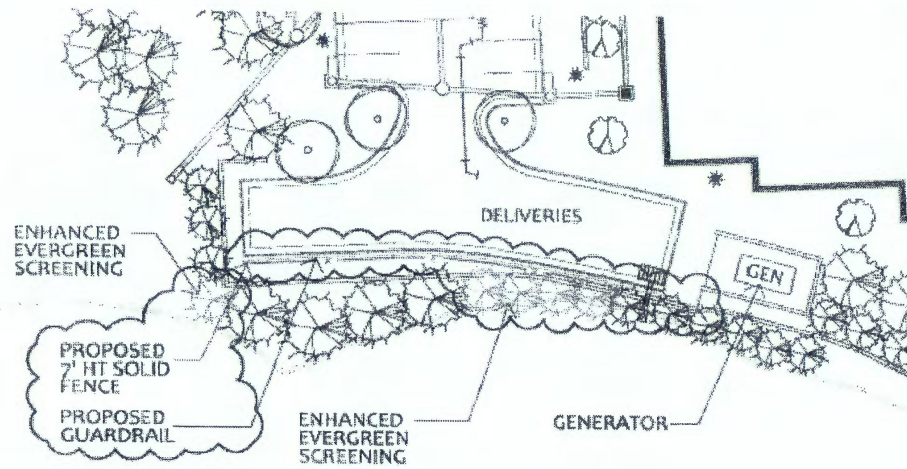
ATTACHMENT 1



WALTONWOOD
RESTON
RESTON, VIRGINIA

ATTACHMENT 2

Additional Screening Plan



Key Plan

SINGH

SE 2015-HM-013
February 3, 2016



Singh Development, L.L.C.
7125 Orchard Lake Road
Suite 200
West Bloomfield, MI 48322

Real Estate - Developers - Builders - Investors - Management



2020-0370

May 11, 2020

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

ATTACHMENT 3

**Re: Waltonwood Reston
Special Exception Extension Request
SE-2015-HM-013**

Dear Ms. Johnson:

On behalf of the applicant, Waltonwood Reston Oberlin, LLC, formally known as Singh Properties II, I am writing this letter to request an extension of the previously approved Special Exception application for the above referenced project. The 23.81 acre subject property is zoned R-1 and is located at 10819 Leesburg Pike (TM 12-3-((1))-4). The Special Exception approval permits the property to be developed with a 155,150 SF medical care facility with 135 units (155 beds) for assisted living and memory care residents. The Special Exception is currently set to expire on July 1, 2020.

The primary reason for the extension request is due to the extenuating circumstances and time frame needed for the continued coordination, analysis, review, approval and anticipated construction of the Leesburg Pike (Rt. 7) Capital Road Improvements currently under design/build contract by the Virginia Department of Transportation (Project #0007-019-128, P102, R202, C502) as they relate to, and impact, the subject application property and approved development plan.

Since the February 2, 2016 approval of the Special Exception application by the Board of Supervisors, our design team has been diligently pursuing the preparation, filing, agency review response and approval of the final site plan documents in order to secure site construction permits that will allow the commencement of construction. In general, the site plan application has progressed as noted below:

- February 2, 2016: Special Exception Application Approval;
- October 24, 2016: First submission Site Plan documents to Fairfax County;
- November 29, 2016: Site Review comments received from Fairfax County;
- April 2017-September 2017: Submission and approval of streetlight waiver by DPWES and SWM outfall zoning interpretation by DPZ;
- December 2016-February 2018: Subsequent outside agency review, revisions and approvals received (Fairfax Wastewater Dept., Fairfax Street Light Dept., Fairfax Water Authority, Fairfax Fire Marshal, Fairfax Urban Forestry Dept., and VDOT Land Development Div.);

- April 10, 2018: Second submission site plan to DPWES;
- January 2017-April 2020: On-Going design coordination of frontage roadway improvements and dedication 'needs' for VDOT stormwater management facilities to be located on the subject application property;
- May 2018: Site plan returned pending resolution of FCPA and VDOT coordination of trail and Rte.7 improvements;
- April 2019-August 2019: In order to facilitate a change in the approved development plans to accommodate VDOT's desire to install an extended detention stormwater management pond, a zoning interpretation was prepared and processed with the Zoning Evaluation Divisions;
- August 2019-December 2019: Revisions were required to the Waltonwood Reston site plan to conform to the zoning interpretation approval, and VDOT prepared the necessary documentation to have Waltonwood Reston dedicate a portion of the property for the pond and grant certain easements related to its installation and maintenance;
- December 2019: Waltonwood Reston resubmitted the revised site plan to DPWES;
- March 9, 2020: The site plan received final technical approval; and
- April 15, 2020: VDOT recorded the Deed of Dedication and the Deed of Easement.

Furthermore, this spring the COVID-19 global pandemic has had a tremendous impact on senior living communities across the country. While Singh Senior Living and Waltonwood has worked diligently to keep our residents and associates safe and healthy across our 12 senior communities, the future of senior housing design is uncertain. The number of entry doors, how those doors are controlled and monitored in efforts of stopping viruses from entering, the size of common areas such as dining rooms with new social distancing practices, determining if "clean rooms" are necessary for staff as they enter and leave the community, and many other design thoughts are all being reconsidered. We will continue working with our existing senior communities, and observing others across the country, as we respond to this crisis. Over the next several months, we intend to integrate new and creative design solutions within the approved building envelope that will provide for an elevated level of wellness for the residents and families of Waltonwood Reston.

As such, we hereby respectfully request the Special Exception be extended to a date of July 1, 2022 in order to allow construction to begin.

If you should have any further questions or comments regarding this request, please feel free to contact me, or my land use counsel, David Houston of Bean Kinney & Korman (703-284-7245/dhouston@beankinney.com), at your convenience. Thank you for your consideration.

Sincerely,



Todd J. Rankine,
Director of Architecture and Planning
Singh Development, LLC

cc: David S. Houston, Esq.

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ADMINISTRATIVE - 3

Authorization to Advertise a Public Hearing on the County and Schools' FY 2020 Carryover Review to Amend the Appropriation Level in the FY 2021 Revised Budget Plan

ISSUE:

Board approval of an advertisement to increase the FY 2021 appropriation level. The advertisement encompasses both the County and the Schools' *FY 2020 Carryover Reviews*. Section 15.2 – 2507 of the Code of Virginia requires that a public hearing be held prior to Board Action.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to publish the advertisement for a public hearing to be held on September 29, 2020 at 10:30 a.m.

TIMING:

Board action is requested on July 28, 2020.

BACKGROUND:

As the *FY 2020 Carryover Review* includes potential increases in appropriation greater than 1 percent, a public hearing is required prior to Board action. In addition, the Code of Virginia requires that a synopsis of proposed changes be included in the advertisement for a public hearing.

Details of the proposed changes shown in the advertisement are provided to the Board in the enclosed *FY 2020 Carryover Review* documents.

The School Board funding adjustments included in the advertisement are based upon the School Board's actions on July 23, 2020.

ENCLOSED DOCUMENTS:

The following attachments will be available online on Monday, July 27, 2020 at:
<https://www.fairfaxcounty.gov/budget/fy-2020-carryover-budget-package>

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Attachment A: Proposed advertisement for public hearing

Attachment B: July 28, 2020 Memorandum to the Board of Supervisors from Bryan J. Hill, County Executive, with attachments, transmitting the County's *FY 2020 Carryover Review* with appropriate resolutions

Attachment C: Fairfax County School Recommended FY 2020 Final Budget Review and Appropriation Resolutions

STAFF:

Bryan J. Hill, County Executive

Joseph M. Mondoro, Chief Financial Officer

Christina Jackson, Director, Management and Budget

Philip Hagen, Deputy Director, Management and Budget

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ADMINISTRATIVE - 4

Authorization to Advertise Public Hearings on Proposed Amendments to the Public Facilities Manual (PFM) Regarding the “PFM Flexibility Project,” a Fairfax First Initiative to Improve the Speed, Consistency and Predictability of the County’s Land Development Review Process

ISSUE:

Board of Supervisors’ (Board) authorization to advertise public hearings on proposed amendments to the PFM to make technical updates.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of the proposed amendments as set forth in the Staff Report dated July 28, 2020.

The proposed amendments have been prepared by Land Development Services (LDS) and coordinated with the Department of Public Works and Environmental Services (DPWES), Fairfax County Department of Transportation (FCDOT), the Department of Planning and Development (DPD), Fairfax County Parks Authority (FCPA), and the Office of the County Attorney (OCA). The PFM amendments have been recommended for approval by the Engineering Standards Review Committee (ESRC).

TIMING:

Board action is requested on July 28, 2020, to provide sufficient time to advertise the Planning Commission public hearing on September 17, 2020, at 7:30 p.m., and the Board public hearing on October 20, 2020, at 4:00 p.m., for the proposed amendment to become effective upon adoption.

BACKGROUND:

The proposed amendments are necessary to make technical updates to the PFM. This effort is a result of goal three of the *Strategic Plan for Economic Success in Fairfax County*: to improve the speed, consistency, and predictability of the land development review process. This effort has been dubbed the “PFM Flex Project.”

The PFM Flex Project is being implemented in two phases of amendments. Phase 1 amendments were adopted by the Board on December 4, 2018. Phase 1 incorporated technical edits that were thoroughly researched and vetted by industry as well as non-

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technical edits to improve the clarity and interactivity of the PFM. Users will find that the PFM is significantly easier to use and understand due to the added links directing users to the related regulations at both the local and state level.

On May 1, 2018, the Board adopted an amendment to the PFM which granted additional flexibility to the Director of LDS when applying the PFM. Added flexibility was also incorporated in the Phase 1 amendments, allowing numerous sections of the PFM to be modified, with adequate justification, as a part of the plan review process and not with separate modifications or waivers.

Phase 2 includes multiple amendments with varying implementation and board adoption dates. The initial Phase 2 amendment (“Spring Package”) was on a fast-track for implementation and was adopted by the Board on May 1, 2019. The Spring Package modernized street light fixtures to LEDs and allowed polypropylene pipe for storm sewer applications.

Phase 2 amendments in this board package primarily focus on technical issues. Overall, the amendments are necessary to incorporate flexibility and innovation into the PFM while updating the PFM to align it with specific requirements set forth in the Virginia Code, the County Code, and other county documents, such as the Comprehensive Plan, the Countywide Trails Plan, and the Urban Design Guidelines. LDS will make further updates to the PFM including the planting densities in Resource Protection Areas, the storm drainage details, and the trail and sidewalk requirements.

Coordination Efforts

The PFM Project staff coordinated review and vetting efforts for each of the chapter amendments with county, land development industry, and citizen stakeholder groups.

County stakeholder groups include technical advisory committees, a steering committee, the Board of Supervisor’s Land Use Aides, the Planning Commission’s Land Use Process Review Committee, and the Board of Supervisor’s Development Process Committee. Land development industry stakeholder groups include the Engineering Standards Review Committee (ESRC), a stakeholder committee, the Zoning Ordinance Modification (zMOD) Land Use Attorneys, the Engineers and Surveyors Institute (ESI), the Commercial Real Estate Development Association (NAIOP), and the Northern Virginia Building Industry Association (NVBIA). Citizen stakeholders groups include the Citizens Working Group, the Zoning Ordinance Listserv, five citizen members of the ESRC (representing three citizens-at-large, the Fairfax County Federation of Citizens Associations, and the League of Women Voters), the Environmental Quality Advisory Council (EQAC), the Geotechnical Review Board (GRB), and the Tree Commission.

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In addition to these stakeholder groups, the [PFM Project](#) website acts as an information hub for anyone interested in participating in or following the updates of the PFM Project. Information posted to the PFM Project website includes proposed PFM chapter amendments, PowerPoint presentations, handouts, background information, and public hearing dates. The PFM Project website also includes a call-out box where anyone interested in commenting on the proposed amendments could provide feedback via a feedback form or by contacting the PFM Project team directly via email.

PROPOSED AMENDMENTS:

The specific changes to the PFM include:

1. Chapter 2: General Subdivision and Site Plan Information

The proposed amendments to Chapter 2 (General Subdivision and Site Plan Information) update the PFM to incorporate the [Urban Design Guidelines](#) for proposed development proposals located in Commercial Revitalization Districts and Areas and Mixed-Use Centers; and incorporate a legislative amendment to decommission solar facilities.

2. Chapter 4: Geotechnical Guidelines

The proposed amendments to Chapter 4 (Geotechnical Guidelines) incorporate standards for the use of lime stabilization; set residential basement floor elevations above the groundwater table; add exploration requirements for deep foundations; and clarify the validity of geotechnical reports previously approved by the county.

3. Chapter 6: Storm Drainage

The proposed amendments to Chapter 6 (Storm Drainage) update the regional pond policy language; enhance the submission requirements for water quality computations; update storm values for the design of dams; add the requirement for “silt tight” joints for storm sewer pipe; update the existing standards for polypropylene pipe; and update the pressure flow requirements for storm sewer.

4. Chapter 7: Streets, Street Lights, Parking and Driveways

The proposed amendments to Chapter 7 (Streets, Street Lights, Parking and Driveways) point to current VDOT standards, specifications and policies to facilitate design and review of streets; allow an alternative driveway entrance subject to approval by VDOT; and require additional information on preliminary plan submissions to ensure proposed street network connectivity to adjoining properties, pedestrian and bike facilities and street right-of way widths are compliant with the Comprehensive Plan and the Transportation Design Standards for the Tysons Urban Center as approved via a

Memorandum of Agreement between Fairfax County and the Virginia Department of Transportation.

5. Chapter 8: Sidewalks, Trails, and Recreation

The proposed amendments to Chapter 8 (Sidewalks, Trails and Recreation) update trails information to reflect the Countywide Trails Plan and Bicycle Network Map; incorporate bicycle parking guidelines in accordance with the Comprehensive Plan; adjust concrete trail widths to accommodate bike users; clarify the different trail requirements for trails located within the right-of-way for acceptance by VDOT; enhance the trail design standards to accommodate positive drainage; incorporate a legislative amendment to clarify the State Code subdivision provisions for sidewalks that front along existing roadways; and update the safety standards for tot lots.

6. Chapter 10: Sewage and Solid Waste Disposal

The proposed amendments to Chapter 10 (Sewage and Solid Waste Disposal) elevate manhole covers to prevent inflow; reduce the unit flow factor for single-family attached and detached dwellings; remove outdated provisions such as concrete pipe; increase and update PVC pipe specifications; and add ductile iron pipe lining requirements.

7. Chapter 12: Tree Conservation

The proposed amendments to Chapter 12 (Tree Conservation) clarify and enhance critical root zone requirements; reduce minimum caliper size requirements for replacement trees to improve survivability; and update and reorganize the tree selection tables.

A copy of the proposed amendments is available online at:

<https://www.fairfaxcounty.gov/landdevelopment/public-facilities-manual-flexibility-project>

REGULATORY IMPACT:

The proposed amendments streamline the ability to use the Urban Design Guidelines for best practices and recommended streetscape standards for proposed urban developments located in Commercial Revitalization Districts and Areas and Mixed-Use Centers. Designers are encouraged to apply the Guideline's recommendations to facilitate plan review and approval by the county.

To facilitate plan design and review, the proposed amendments establish the minimum requirements for geotechnical exploration of deep foundations and codify the requirement to validate the applicability of an original soils report. The long-term practices for the use of lime for soil stabilization and the elevation of basements above

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the seasonal high-water table are being formalized. Design engineers must evaluate the proposed basement floor elevation or the lowest finished floor elevation as compared to the seasonal high water table (SHWT) elevation and include appropriate mitigation on the plans to address potential problems with groundwater intrusion into basements and impacts on the site and adjacent or downstream properties.

The proposed amendments include higher standards for storm sewer pipe joints to align with VDOT's standards, and PVC pipe materials allowed for use in sanitary sewer systems.

The proposed amendments allow use of an alternative driveway entrance subject to approval by VDOT and require additional roadway information on preliminary plan submissions to comply with the Comprehensive Plan.

The proposed amendments clarify the difference between what constitutes a trail and a sidewalk. The proposed amendments point to VDOT standards for trails located within the right-of-way for acceptance by VDOT versus PFM trails; provide an option for developers to construct a wider concrete trail to accommodate bike users; and update the tot lot safety standards.

The proposed amendments reduce the minimum caliper size requirement for replacement trees to increase survivability and update and reorganize the tree selection tables for clarity.

Overall, the proposed updates contribute to creating consistent land development codes. This promotes a faster and more predictable outcome and time to market. In this way the county will continue to attract the talent and businesses that keep our economy growing.

FISCAL IMPACT:

There is no fiscal impact to the county. The proposed amendments will not require any additional staff to implement, though training will be required for site development review, inspection, and maintenance staff.

ENCLOSED DOCUMENTS:

Attachment 1 – The Staff Report dated July 28, 2020, containing Attachments A and B, Amendments to the PFM Chapters and Amendments to the PFM Plates, is available online at:

<https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/assets/documents/pdf/pfm/final-pfm-project-p2-board-package.pdf>.

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STAFF:

Rachel Flynn, Deputy County Executive
William D. Hicks, P.E., Director, LDS
Eleanor K. Coddington, Division Director, LDS

ASSIGNED COUNSEL:

David Stoner, Deputy County Attorney

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ADMINISTRATIVE - 5

Approval of Escrow Agreement Between Fairfax County and Subsidiaries of Cityline Partners, LLC for Proffered Funds for Design and Construction of Scotts Run Fire Station (Providence District)

ISSUE:

Approval for County Executive to sign the Escrow Agreement (Fire Station) with two Cityline Partners, LLC (Cityline) subsidiaries, pursuant to proffers for Cityline's Scotts Run development, for receipt and administration of funds for the design and construction of the Scotts Run Fire Station.

RECOMMENDATION:

The County Executive recommends that the Board approve the form of escrow agreement attached to this item and authorize staff to execute and effectuate the agreement.

TIMING:

Board action is requested on July 28, 2020.

BACKGROUND:

Cityline is the lead developer for the Scotts Run development in Tysons. Scotts Run is generally subject to two sets of land use approvals: RZ-2011-PR-10 and RZ 2011-PR-011, together with their related proffers, apply to a portion of the development known as "Scotts Run South"; RZ 2011-PR-009 and its proffers apply to another portion known as "Scotts Run North". Each of Scotts Run South and Scotts Run North consists of multiple developable blocks.

The Scotts Run South proffers generally require the owners of two Scotts Run South blocks to design and construct, at their expense, the new Scotts Run Fire Station on Fairfax County Tax Map # [29-4 ((06)) Parcel 96A & 29-4 ((06)) Parcel C] and, upon completion, to convey the parcel and fire station to the County. These two blocks are Fairfax County Tax Map # [29-4 ((06)) Parcel 102], known as the "Grant" parcel, and # [29-4 ((06)) Parcel 101A], known as the "Lincoln" parcel. These blocks are currently owned by Grant, 1651 Old Meadow Road, LLC and Lincoln, 1700 Old Meadow Road, LLC, respectively; both entities are subsidiaries of Cityline.

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The Scotts Run South and Scotts Run North proffers also generally require the owners of each other Scotts Run block, upon notice from the County, to contribute certain funds to the County, based on a per-square-foot figure and the developable area of the applicable block. The proffers further require the County, in turn, to hold these funds in escrow for the Grant and Lincoln block owners for reimbursing, on a draw basis, the cost of designing and constructing the fire station. Lastly, the proffers require the County to enter into an escrow agreement governing the specifics of disbursing the funds, such as clearly identifying the materials that Grant and Lincoln block owners must provide to support a draw request.

County staff from the Department of Public Works and Environmental Services, the Fairfax County Fire and Rescue Department (FRD), and the Office of the County Attorney have negotiated a form of this proffered escrow agreement with Cityline (Attachment 1). The escrow agreement does not alter the proffered obligation of the Grant and Lincoln owners to design and construct the fire station generally at their expense. (One caveat is that if the County wishes to add to the scope for the fire station as set forth in the proffers, the County bears costs in connection with that additional, County-added scope.) If the County does not receive sufficient funds from other Scotts Run block owners to cover a given draw request, the Grant and Lincoln block owners – not the County – must cover the shortfall.

Scotts Run Fire Station is a FRD priority to support growth and development in Tysons. The station will have capacity to house an engine, Advanced Life Support (ALS) transport, and one additional response unit. The 2232 Application for the three-bay fire station, including Park Authority restrooms for a future athletic field, was unanimously approved in 2019. The construction began in late 2019, and is scheduled to be completed in Spring 2021.

FISCAL IMPACT:

The proffer requires Cityline to fully fund the design and construction of the fire station with the exception of County management and cost sharing of fire station elements beyond the proffer. This funding, in the amount of \$800,000, was approved as part of *FY 2018 Third Quarter Review* in Fund 30070, Public Safety Construction, Project FS-000043, Tysons East Fire Station.

ENCLOSED DOCUMENTS:

Attachment 1 – Escrow Agreement (Fire Station)

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STAFF:

Rachel Flynn, Deputy County Executive
David Rohrer, Deputy County Executive
Joseph M. Mondoro, Chief Financial Officer
John S. Butler, Chief, Fire and Rescue Department
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)
Ron Kirkpatrick, Deputy Director, DPWES, Capital Facilities
Carey Needham, Director, DPWES, Building Design and Construction Division
Tiya Raju, Acting Branch Chief, DPWES, Building Design Branch

ASSIGNED COUNSEL:

Ryan Wolf, Assistant County Attorney

ESCROW AGREEMENT
(FIRE STATION)

THIS ESCROW AGREEMENT (FIRE STATION) (“Agreement”) is made and entered into this ____ day of _____, 2020, by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic (the “County”); **GRANT 1651 OLD MEADOW ROAD LLC**, a Delaware limited liability company (“Grant”); and **LINCOLN 1700 OLD MEADOW ROAD LLC**, a Delaware limited liability company (“Lincoln”); together with Grant, the “Performing Owners”).

R E C I T A L S:

R-1. Fairfax County Rezoning Applications RZ 2011-PR-010 and RZ 2011-PR-011 include Proffers, dated April 4, 2013 (as modified to date, the “Scotts Run South Proffers”). The property subject to the Scotts Run South Proffers consists of Land Bay East and Land Bay West, which are each defined in the Scotts Run South Proffers.

R-2. The “Land Bay East Owners” are all of the fee simple owners of parcels in Land Bay East other than the MITRE Block (as defined in the Scotts Run South Proffers). The MITRE Block has no obligations regarding the Fire Station Proffer as defined in this Agreement.

R-3. The Performing Owners are all of the fee simple owners of Land Bay West.

R-4. Fairfax County Rezoning Application RZ 2011-PR-009 includes Proffers, dated May 29, 2015 (as modified to date, the “Scotts Run North Proffers”). The “Scotts Run North Owner” is the fee simple owner of all of the properties that are subject to the Scotts Run North Proffers (the “Scotts Run North Properties” together with Land Bay East (other than the MITRE Block) and Land Bay West, the “Scotts Run Properties” or, individually, a “Scotts Run Property”).

R-5. Proffer 99.D of the Scotts Run South Proffers (the “Fire Station Proffer”) obligates the Performing Owners to, among other things, design, permit and construct the Fire Station (as defined in the Scotts Run South Proffers) and, upon completion of the Fire Station, to convey it to the County (as further defined in Section 3(c) below, the “Proffered Work”).

R-6. Proffer 100.A of the Scotts Run South Proffers contemplates the establishment of the Fire Station Escrow Account (as defined in the Scotts Run South Proffers). Proffer 100.B of the Scotts Run South Proffers (the “SRS Funding Proffer”) obligates the Land Bay East Owners to make a cash payment into the Fire Station Escrow Account (such payments being defined therein, and referred to in this Agreement, as an “Advance Funding Payment”) as and when required by the terms of the SRS Funding Proffer.

R-7. Proffer 89 of the Scotts Run North Proffers (the “SRN Funding Proffer”) obligates the Scotts Run North Owner to make cash payments into the Fire Station Escrow Account as and when required by the terms of the SRN Funding Proffer (each such payment also being referred to herein as an Advance Funding Payment).

R-8. Proffer 100.C(ii) of the Scotts Run South Proffers allows the Performing Owners to withdraw funds from the Fire Station Escrow Account to fund the costs associated with the Proffered Work (the “Proffered Work Costs”), subject to the terms of the Scotts Run South Proffers and this Agreement.

R-9. The Performing Owners and the County desire to establish the Fire Station Escrow Account with the County by executing this Agreement. The Performing Owners and, in certain circumstances, the County may make withdrawals from the Fire Station Escrow Account in accordance with the terms of this Agreement and of the above-referenced Proffers.

NOW, THEREFORE, in consideration of these recitals, the promises and obligations set forth herein, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties agree as follows:

1. **Establishment of Fire Station Escrow Account.**

(a) The Performing Owners and the County hereby establish the Fire Station Escrow Account with the County, in accordance with the terms of Scotts Run South Proffers and the terms set forth herein. Nothing in this Agreement shall be deemed a modification, deletion, or other amendment to the terms of the Scotts Run South Proffers.

(b) The County acknowledges that one Land Bay East Owner – JLB McLean LLC (“JLB”), owner of Tax Map 30-3 ((1)), parcel 6A – made its payment required by the SRS Funding Proffer, in the amount of \$651,204.50, on or about July 8, 2016 (the “Garfield Payment”). The County will place the Garfield Payment into the Fire Station Escrow Account promptly following the date of this Agreement, together with simple interest (in accordance with Exhibit B, as defined below) from the date of the Garfield Payment to the County to the date of this Agreement, with no further interest pertaining to the period of time before the date of this Agreement being owed.

(c) Pursuant to the SRN Funding Proffer and SRS Funding Proffer, the County has sent written notice that the Performing Owners have commenced development of the Fire Station to the Scotts Run North Owner and each of the Land Bay East Owners, except JLB. Such notice has demanded that each of the Land Bay East Owners and Scotts Run North Owner make its Advance Funding Payment to the County in satisfaction of their payment obligations under the SRS Funding Proffer and SRN Funding Proffer, respectively.

(d) Pursuant to Scotts Run South Proffer 99.D(iv)(f), the County has elected to add the additional scope described on Exhibit A (the “Additional County Scope”) to the Fire Station. Accordingly, pursuant to Scotts Run South Proffer 99.D(iv)(f), the County is responsible for \$255,441.00 of the costs of the Additional County Scope (the “County Contribution”). The County will place the County Contribution into the Fire Station Escrow Account promptly following the date of this Agreement. Except as provided in Section 10(a), the deadline for delivering the Fire Station set forth in the Scotts Run South Proffers is not affected by this Additional County Scope.

(i) The County acknowledges that the costs relating to the green building requirements in the Additional County Scope may change after the date of this Agreement. If there is a change in the cost of the Additional County Scope due to green building requirements beyond the amount of contingency shown on **Exhibit A** (which will first be applied to any such cost increases), the County will either (A) forego the green building requirement or (B) promptly contribute the additional cost to the Fire Station Escrow Account.

(e) If, pursuant to Scotts Run South Proffer 99.D(iv)(f), or otherwise, the County requests further changes to the design of the Fire Station beyond the Additional County Scope, and such changes result in increases in the Proffered Work Costs, the County shall place the County's share of such increases in the Proffered Work Costs into the Fire Station Escrow Account promptly following the date as of which such changes are made and priced.

2. **Deposit of Funds.**

(a) The County will hold the Advance Funding Payments in the Fire Station Escrow Account. All Advance Funding Payments received by the County shall be deposited into the Fire Station Escrow Account (the amount of funds in the Fire Station Escrow Account at any given time is referred to as the "**Escrowed Funds**"). The Fire Station Escrow Account shall be invested in secure and liquid instruments in accordance with the County Investment Policy, as attached hereto as **Exhibit B** or otherwise approved by the Performing Owners and the County from time to time. Any amounts earned on the Escrowed Funds shall be added to and be part of the Escrowed Funds. The Fire Station Escrow Account may be held as part of a larger pool of County-held funds, however, the funds shall be designated as "restricted funds" (or other appropriate designation to ensure that the funds can only be disbursed as provided in this Agreement) and shall be accounted for separately from other funds in such larger pool.

(b) The Performing Owners agree that the Advance Funding Payment amount, calculated in accordance with the applicable proffers, is the figure set forth on **Exhibit C**, less the Garfield Payment.

3. **Draw Down Schedule; Scope.**

(a) The budget attached to this Agreement at **Exhibit D** is referred to as the "**Budget**". The Budget may be modified only by the mutual written agreement of the County and the Performing Owners.

(b) The drawings and specifications attached to this Agreement at **Exhibit E** are the Construction Documents described in Proffer 99.D and have been reviewed and approved by the County in accordance with Proffer 99.D. The Construction Documents may be modified – including by change order – only as provided by Proffer 99.D. The work reflected in the Construction Documents (as may be modified in accordance with this Agreement) constitutes the Proffered Work.

4. **Withdrawals of Escrowed Funds.**

(a) The Performing Owners may not request a withdrawal of Escrowed Funds, and the County will have no obligation to release any Escrowed Funds, until all of the following conditions have been satisfied:

(i) The Performing Owners have provided the County with a copy of each of the Performing Owners' contracts for the design and construction of the Proffered Work, as well as a notice to proceed from the Performing Owners to the general contractor for the Proffered Work; and

(ii) Each Performing Owner has provided the County with a W9 form.

(b) Upon satisfaction of the prerequisites listed in Section 4(a) above, the Performing Owners may request draws (each, a "Draw") from the Escrowed Funds by delivery of a written notice (each, a "Draw Request") to the County. This Draw Request shall (i) state that it is a Draw Request in accordance with the terms of the Scotts Run South Proffers and this Agreement, (ii) state the amount of the requested Draw, and (iii) be accompanied by the Required Supporting Documentation (as defined below). The Performing Owners shall not make more than one Draw Request in any calendar month.

(c) The term "Required Supporting Documentation" means the following:

(i) Proffer 99.D(v) generally contemplates that the Performing Owners will enter into a contract with the general contractor for the construction of the Fire Station using the Standard Form of Agreement Between Owner and Contractor (AIA Document A101-2007) and General Conditions of the Contract for Construction (AIA Document A201-2007) (or the AIA Series document which is most suitable based upon the contractual arrangement with the general contractor, e.g., stipulated sum, guaranteed maximum price, cost-plus, etc.) (an "AIA Contract"). If a Draw Request is based upon a Certificate for Payment that is issued by the Architect in accordance with an AIA Contract and that requests a payment amount that is directly based on the contract's schedule of values, then the Required Supporting Documentation shall consist of the Certificate for Payment issued by the Architect and the Application for Payment (including all supporting documentation) upon which it was issued. The terms Certificate for Payment, Architect, and Application for Payment used in the preceding sentence shall have the meanings ascribed to them in the AIA Contract.

(ii) For Draw Requests other than those described in subsection (i), the Required Supporting Documentation shall consist of the following:

(1) A certification by the Performing Owners that the costs being paid or reimbursed pursuant to the Draw Request are Proffered Work Costs;

(2) Invoices or other reasonable documentation supporting all costs contained within the Draw Request; and

(3) In the event that any invoice represents an installment payment, progress payment or other periodic payment under a contract for lienable

work (but expressly excluding amounts payable to architects, engineers, utility providers and others from which lien waivers are not typically obtained as a matter of standard practice in the industry), a lien waiver from the invoicing party covering all prior invoices submitted by the invoicing party pursuant to the subject contract.

(d) The County is entitled to rely upon the factual statements and certifications set forth in a Draw Request and has no obligation to take any steps to confirm the veracity of such statements or certifications.

(e) If the County receives a Draw Request and related Required Supporting Documentation, then the County shall withdraw funds from the Fire Station Escrow Account in an amount equal to the Draw, as may be adjusted pursuant to Section 4(e)(i)-(iii) below, and deliver such amount (as adjusted, if applicable) to the Performing Owners or its designee within twenty-one (21) days after the date of the County's receipt of the Draw Request. Such funds shall be delivered to the Performing Party and/or to such other party as the Performing Party may direct by electronic funds transfer in accordance with any instructions set forth in the Draw Request or otherwise provided by the Performing Owners to the County.

(i) Notwithstanding anything in this Agreement to the contrary, until the earlier of the date when the County has received the full amount of Advance Funding Payments, as set forth on Exhibit C, and substantial completion of the Fire Station in accordance with the Scotts Run South Proffers, the Performing Owners may not seek to recoup more than an aggregate total of \$675,000 for costs incurred under design contracts. The County has no obligation to reimburse any Draw Request for design costs in excess of \$675,000 until the County has received the full amount of Advance Funding Payments as set forth in Exhibit C.

(ii) Notwithstanding anything in this Agreement to the contrary, the aggregate of all Draw Requests for Budget line items other than the construction contract and contingency may not exceed the sum of such line items plus \$100,000.00 of contingency. The County has no obligation to reimburse any Draw Request for such costs in excess of such amount unless and until final completion of the work under the construction contract.

(iii) Notwithstanding anything in this Agreement to the contrary, if any portion of a Draw Request is for costs under the construction contract for materials or equipment delivered but not yet installed, the County (A) will reimburse only 70% of such costs, with the other 30% being reimbursed in the next Draw Request after the installation of such materials or equipment and (B) will only reimburse such amounts for materials and equipment that are either (1) delivered and suitably stored and protected onsite or (2) fully or partially fabricated materials delivered and suitably stored and protected offsite.

(iv) To establish that materials or equipment have been "delivered and suitably stored and protected onsite," the Performing Owners must provide reasonable documentation establishing that the material or equipment has been paid for and physically delivered to the jobsite and physically secured or otherwise protected to ensure that such materials or equipment remain on the job site pending final installation. To establish that fully or partially fabricated materials have been "delivered and suitably stored and protected offsite," the

Performing Owners must provide evidence of where the materials are stored and that they have been identified as property dedicated to the fire station job and segregated from other materials so that it is clear such materials are not part of any other stock or stored material.

(f) Proffer 99.D(vii) of the Scotts Run South Proffers allows the County, following a Default (as defined in such Proffer 99.D(vii)), to elect to assume responsibility for the Proffered Work. If the County elects to do so, then (1) the Performing Owners will have no further ability to make Draw Requests or receive Escrowed Funds, and (2) the County will be entitled to apply the Escrowed Funds then in (or later deposited in) the Fire Station Escrow Account toward the County's costs of completing the Fire Station.

(g) In the event that the balance of the Fire Station Escrow Account (exclusive of the Retainage, as defined below) is less than the amount of an approved Draw Request, the County shall disburse any remaining funds in the Fire Station Escrow Account (exclusive of the Retainage) as described in this Agreement, together with a notice of the amount of the shortfall. The County shall have no obligation to pay all or any portion of any approved Draw Request from any source other than Escrowed Funds actually received. If an Advance Funding Payment is later deposited into the Fire Station Escrow Account after an approved but unfunded Draw Request, the County shall reasonably promptly forward such new funds, up to the amount of the approved but unfunded Draw Request, to the Performing Owners or its designee. The obligations of the Performing Owners under the Scotts Run South Proffers shall remain unaffected by any insufficiency of the amount of funds in the Fire Station Escrow Account at any point. The County shall have no liability for the failure of any owner of the Scotts Run Properties to contribute, timely or otherwise, its Advance Funding Payment.

5. Retainage.

(a) The County shall hold \$350,000.00 in the Fire Station Escrow Account as retainage for the delivery of the Fire Station ("Retainage"), as further described in this Agreement.

(b) The County will pay one half of the Retainage to the Performing Owners promptly after the Performing Owners have substantially completed the Fire Station in accordance with the Scotts Run South Proffers. At such time as the Performing Owners notify the County that substantial completion has been achieved, the project architect, in consultation with the County and the Performing Owners, shall prepare a punchlist of items which remain to be completed or corrected in order to achieve final completion (the "Punchlist").

(c) The County will pay the other half of the Retainage to the Performing Owners promptly after the Performing Owners have completed the Punchlist and satisfied all the conditions of all bonded work and obtained releases of such bonds. The Fire Station shall be conveyed to the County promptly after bond release and payment of the balance of the Retainage as aforesaid.

6. Waiver; Indemnification. The County shall not be liable to the Performing Owners in the event that all or any portion of the Escrowed Funds are lost due to the insolvency

or bankruptcy of the financial institution(s) with which they are deposited or invested, provided that the County places the funds in a federally insured financial institution as set forth above.

7. **Termination.** At such time as (a) the Proffered Work has been completed in accordance with the Scotts Run South Proffers (including punch list), (b) all bonds posted in connection with the Proffered Work have been released, and (c) the Fire Station has been conveyed to the County in accordance with the Scotts Run South Proffers, then the Performing Owners shall deliver a written notice to that effect, together with reasonable supporting documentation, to the County. Within sixty (60) days after receipt of such notice, the County shall disburse any remaining Escrowed Funds to the Performing Owners and close the Fire Station Escrow Account. This final disbursement shall also be made to the Performing Owners in the circumstance where the County has assumed responsibility for and completed the Proffered Work as described in Section 4(d) of this Agreement and Proffer 99.D(vii), but only if there are any remaining Escrowed Funds at such time. In addition, within thirty (30) days after receipt of such notice, County shall deliver a final and complete accounting to the Performing Owners.

8. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of (i) the County and its successors and assigns and (ii) each Performing Owner and its respective successors and assigns as a fee simple owner of Land Bay West.

9. **Notices.** All notices, demands, or other communications that may be necessary or proper under this Agreement shall be deemed duly given (i) if hand-delivered, upon delivery (or at the time delivery is refused) (hand-delivery to the mail room, a receptionist or other party found at an addressee's address which is a business address shall be deemed hand-delivery to the addressee), or (ii) one (1) business day after being deposited with Federal Express or other reputable overnight delivery service, with a request for next business day service, and with delivery fees fully paid or duly charged to an account with such service, addressed, respectively as follows:

If to a Performing Owner:

Grant 1651 Old Meadow Road
Lincoln 1700 Old Meadow Road
c/o Cityline Partners LLC
1651 Old Meadow Road, Suite 650
Tysons, VA 22102
Attn: Mr. Michael Pedulla

With a copy to:

Grant 1651 Old Meadow Road
Lincoln 1700 Old Meadow Road
c/o Cityline Partners LLC
1651 Old Meadow Road, Suite 650
Tysons, VA 22102
Attn: Donna P. Shafer, Esq.

If to the County:

Customer & Technical Service Center
Land Development Services
12055 Government Center Parkway, Suite 216
Fairfax, VA 22035
Attention: Chief

With copies to:

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

and:

Department of Public Works and Environmental Services
12000 Government Center Parkway, Suite 448
Fairfax, VA 22035
Attention: Carey Needham, Director, BDCD

Any party may change its address or addressees for notices by giving written notice to the other parties hereto in the manner described in this Section.

10. **Miscellaneous.**

(a) Subject to the determination of the Fairfax County Zoning Administrator pursuant to SRS Proffer 99.D.ix, the County and the Performing Owners agree that the date for substantial completion and delivery of the Fire Station in SRS Proffer 99.D.viii, currently December 31, 2020, will be extended to May 15, 2021.

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

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

(d) Any terms of this Agreement that would require the payment of money by the County other than disbursements from the Fire Station Escrow Account are subject to appropriations by the Fairfax County Board of Supervisors. If appropriations are not made for any

fiscal year, the County will not be obligated to make any payments beyond the amount appropriated.

(e) Time is of the essence with respect to the performance of the obligations of the Parties.

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

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

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the parties hereto have set their signatures and seals as of the date first above written.

COUNTY:

THE BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA

By: _____
Name: _____
Title: _____

PERFORMING OWNERS:

GRANT 1651 OLD MEADOW ROAD LLC

By: _____
Name: _____
Title: Executive Vice President and Manager

LINCOLN 1700 OLD MEADOW ROAD LLC

By: _____
Name: _____
Title: Executive Vice President and Manager

EXHIBIT A

ADDITIONAL COUNTY SCOPE

<u>Budget for Breakout Costs (costs include all GC Mark-ups)</u>	<u>Original</u>	<u>Trinity Contract</u>	<u>Fairfax County Cos</u>	<u>Fairfax County Cost</u>
1. Bifold bay doors	137,353	131,924	50%	65,962
2. Added bathroom 116	8,562	6,533	50%	3,267
3. Added janitor's closet 123	5,375	2,430	100%	2,430
4. Gate & card reader to parking area 2 locations	22,320	15,045	50%	7,523
5. Stainless steel counters in kitchen	8,171	8,960	50%	4,480
6. Grill gas line	837	1,017	50%	509
7. Added card readers - 6 total	4,382	18,900	50%	9,450 \$3,150 per reader
8. Corner guards	7,318	n/a	50%	No drywall partitions
9. Wet wall tile	11,739	9,722	50%	4,861 In bathrooms
10. Electric outlets in dining 108 w/TV mounts	570	n/a	50%	
11. Wall fan outlet in Exercise 002	649	60	50%	30
12. Westnet Communication system premium over APS proposal	138,422	56,541	100%	56,541 Westnet revised quote PCO #2 125,820 -69,279 = 56,541
13. Generator sound insulation	4,387	6,000	50%	3,000
14. Stainless steel / solid surface kitchen backsplash	1,735	3,285	50%	1,643
15. LEED V4 Increase in cost / HVAC system	38,000	38,000	100%	38,000 estimate to achieve USGBC LEED Silver cert requirement
16. General Conditions for added design and permit delays		15,784	100%	15,784 2 weeks at \$7,892/week
17. LEED Point Purchase to target silver cert. (IAQ Enhanced Comm.)			100%	38,500
18. Contingency		24,094		18,688
19. Cox / I Net County contract credit				(15,225)
<u>Subtotal</u>	<u>389,820</u>	<u>338,295</u>		<u>255,441</u>



County of Fairfax, Virginia

INVESTMENT POLICY

August 2019

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1.0 POLICY

It is the policy of the County of Fairfax, Virginia (County) to invest public funds in a manner which will safely preserve principal, provide adequate liquidity to meet the County's cash flow needs, and optimize returns while conforming to all federal, state and local statutes governing the investment of public funds.

2.0 SCOPE

This investment policy (Policy) applies to all cash and financial investments of the County. These assets, as identified in the Comprehensive Annual Financial Report, include the following funds: general, internal service, special revenue, capital project, enterprise, and agency. Bond proceeds shall be invested in accordance with the requirements and restrictions outlined in bond documents. This Policy excludes retirement funds.

Pooling of Funds - Except for cash in certain restricted and special funds, the County will consolidate cash balances from all funds to maximize investment earnings. Investment income will be distributed to the various funds in accordance with County budgetary guidelines.

3.0 OBJECTIVES

The overall objectives of this Policy are: the preservation of capital and the protection of investment principal (safety); maintenance of sufficient liquidity to meet operating requirements; conformance with federal, state and other legal requirements; diversification to avoid incurring unreasonable risks regarding specific security types or individual financial institutions; and attainment of a market rate of return.

Funds of the County will be invested in accordance with this policy and procedures developed by the Investment Committee.

Funds held for future capital projects (i. e., bond proceeds) shall be invested in such a manner so as to ensure compliance with U.S. Treasury arbitrage regulations.

The portfolio shall be managed with the following objectives in mind:

- Priority 1 - Safety
- Priority 2 - Liquidity
- Priority 3 - Yield

1. Safety - Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.

a. Credit Risk - The County will minimize credit risk, the risk of loss due to the failure of the security issuer or bank, by:

- Limiting investments to the safest types of securities.

- Pre-qualifying financial institutions, broker/dealers, intermediaries, and advisers with which the County will do business.
- Diversifying the investment portfolio by issuer and maturity so that potential losses on individual securities will be minimized.

b. Interest Rate Risk - The County will manage the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, by:

- Structuring the investment portfolio so that securities mature to meet daily liquidity.
- Investing operating funds in short-term securities with a maturity of five years or less from settlement date.

2. Liquidity - The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated by holding at least 5% of the portfolio in daily liquidity investments. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs. Since all possible cash demands cannot be anticipated, the portfolio will invest primarily in securities with active secondary or resale markets.

3. Yield - The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. Securities shall not be sold prior to maturity with the following exceptions:

- A security with declining credit may be sold early to minimize loss of principal.
- A security may be sold before maturity to meet liquidity needs.

4.0 PRUDENCE

In accordance with § 2.2-4514 of the Code of Virginia, public funds held by the Commonwealth, public officers, municipal corporations, political subdivisions, and any other public body of the Commonwealth shall be held in trust for the citizens of the Commonwealth. Any investment of such funds pursuant to the provisions of this chapter shall be made solely in the interest of the citizens of the Commonwealth and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The standard of prudence to be used by investment officials shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio.

Investment staff, acting in accordance with written procedures and this Policy, and exercising due diligence, shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported immediately to the Investment Committee and appropriate action is taken to control adverse developments.

5.0 ETHICS AND CONFLICTS OF INTEREST

Investment officials shall:

- Refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial investment decisions.
- Disclose any material interests in financial institutions with which they conduct business within the County.
- Disclose any large personal financial/investment positions that could be related to the performance of the investment portfolio.
- Refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the County.

6.0 DELEGATION OF AUTHORITY

Section 2.2, Chapters 45 and 46 of the Code of Virginia authorizes treasurers or any other persons collecting, disbursing, or otherwise handling public funds to invest public funds. The Investment staff of the Department of Finance are designated as the investors of the County and are responsible for investment decisions and activities in accordance with established written procedures and internal controls as well as operation of the investment program consistent with this Policy, under the direction of the Investment Committee and the Director of Finance (Treasurer of Fairfax County).

The following positions are authorized to make investment transactions on behalf of the County of Fairfax:

- Director, Department of Finance
- Deputy Director, Department of Finance

Investment Staff:

- Investment Manager, Department of Finance Investments & Cash Management (ICM)
- Investment Analysts, Department of Finance ICM Division

6.1 INVESTMENT COMMITTEE

Management of the County's investment portfolio shall be the responsibility of the Investment Committee. The Investment Committee shall consist of the following employees:

- Chief Financial Officer
- Director, Department of Finance
- Director, Department of Tax Administration
- Director, Management and Budget
- Deputy Director, Department of Finance
- Investment Manager, Department of Finance, ICM
- Investment Analysts (2), Department of Finance, ICM

6.2 VOTING HIERARCHY

All members of the Committee shall have voting rights. A majority rule shall consist of five (5) of the eight (8) members, with two (2) of the five (5) majority being either the CFO, Director of the Department of Finance, Director of Management and Budget, or Director of the Department of Tax Administration.

Time sensitive decisions can be decided by polling Investment Committee members via e-mail or telephone and obtaining a majority rule. These items will be presented at the next Investment Committee meeting to document the results for the record.

6.3 INVESTMENT COMMITTEE MEETINGS

The Investment Committee shall meet monthly; meetings will include an economic update and a review of the County's investment portfolio (including investment holdings, issuer's list, monthly portfolio averages, interest revenue earnings and cash flows).

7.0 INVESTMENT PROCEDURES

Investment staff, with approval from the Investment Committee, shall establish written investment policy procedures for the operation of the investment program consistent with this Policy. The procedures should include reference to: safekeeping, repurchase agreements, wire transfer agreements, banking service contracts, cash flow projections, and revenue forecasting and collateral/depository agreements. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this Policy and the procedures established by the investment staff and approved by the Investment Committee.

8.0 AUTHORIZED FINANCIAL INSTITUTIONS

The investment staff shall maintain a list of financial institutions, selected on the basis of credit worthiness, financial strength, experience, and minimal capitalization, authorized to provide investment services to the County (Authorized Financial Institutions). Authorized Financial Institutions will be selected on a competitive basis. A copy of this policy will be delivered to all depositories and Authorized Financial Institutions along with a receipt for same. The receipt will acknowledge delivery of the policy and that the depository and/or Authorized Financial Institution reviewed its content.

Authorized Financial Institutions shall include any of the following:

- 1) Primary security dealers serving as trading counterparties to the New York Federal Reserve.
- 2) Commercial Banks who meet one of two criteria:
 - Must have at least two of the following short term ratings from a Nationally

- Recognized Statistical Rating Organization (NRSRO): A1, P1, F1, or
 - Are listed in the Qualified Public Depository list as issued by the Department of the Treasury, Commonwealth of Virginia. In addition, all existing senior bond indebtedness must be rated "A" or better by an NRSRO
- 3) Any direct issuer of commercial paper that meets the credit criteria outlined in the Policy.
 - 4) Any issuer of banker's acceptances that meet the credit criteria outlined in the Policy.
 - 5) Any regional or secondary market dealer who meet the following criteria or as specifically approved by the Investment Committee:
 - Financial institution, if a bank holding company, at a minimum, the bank holding company of the regional dealer must have an existing senior bond indebtedness rating of "A" or better or the equivalent rating by an NRSRO
 - Financial institution must comply with the Financial Industry Regulatory Authority (FINRA) Net Capital Requirements for Broker or Dealers (SEA Rule 15c3-1). The firm shall provide immediate disclosure to the investing government whenever the firm's capital position falls short of the capital requirement.
 - Financial institution shall submit audited financial statements annually.
 - Financial institution shall maintain an active registration and be in good standing with FINRA.
 - Financial institution must have a Total Net Capital of at least \$100 million.
 - Financial institution must have been in business for at least five years.
 - Financial institution must be currently licensed and in good standing in Virginia, the Securities and Exchange Commission, the National Association of Securities Dealers or other applicable self-regulatory organizations.
 - Financial institution, if it deals in government securities, shall comply with the Government Securities Act (Public Law 99-571) established in 1986, which imposed a regulatory structure and net capital requirements for all brokers/dealers in U.S. Government Securities.

9.0 AUTHORIZED INVESTMENTS AND DEPOSITS

Authorized investments for public funds are set forth in the "Investment of Public Funds Act" of the Code of Virginia §§ 2.2-4500 through 2.2-4518. Percentage limitations and rating requirements, where indicated, apply at the time of purchase. When comparing minimum ratings, an equivalent rating from another NRSRO.

Securities that have been downgraded to a level that is below the minimum rating may be sold or held at the Investment Committee's discretion.

Investments not specifically listed below are deemed inappropriate and are prohibited:

Authorized Investment	VA Code	Maximum %	Maximum Maturity	Minimum Rating	Other Constraints
U.S. Treasury Obligations	2.2-4501 (A2)	No Limit	5 years	N/A	
Federal Agencies/GSEs	2.2-4501 (A2)	No Limit 35% Issuer	5 years	N/A	
Supranationals	2.2-4501 (A6)	10% of Portfolio 5% Issuer	3 years	AAA	Limited to World Bank, Asian Development Bank and African Development Bank
Commercial Paper	2.2-4502	35% of Portfolio 5% Issuer	270 days	2 of the following: A1, P1, D1, F1	US Domicile Net worth \$50 mln, Income \$3 mln yearly average
Corporate Notes	2.2-4510	25% of Portfolio 5% Issuer	3 years	AA	US Domicile
Banker's Acceptance	2.2-4504	35% of Portfolio 5% Issuer	1 year	A1 P1	
Negotiable CDs	2.2-4509	40% of Portfolio 5% Issuer	3 years	A1, P1 if < 1 year, AA if > 1 year	
Non-Negotiables CDs	2.2-4401	25% of Portfolio 10% Issuer	3 years	N/A	
Insured CDs	2.2-4401	15% of Portfolio	3 years	FDIC Insurance	
Repurchase Agreement	2.2-4507	30% of Portfolio 10% Issuer	1 month	N/A	Collateral Obligations of U.S., Master Repurchase Agreement
Bank Demand Deposit	2.2-4518	10% of Portfolio 10% Issuer	N/A	N/A	Virginia Security for Public Deposits Act

Authorized Investment	VA Code	Maximum %	Maximum Maturity	Minimum Rating	Other Constraints
Mutual Funds	2.2-4508	30% of Portfolio 10% Issuer	N/A	AAA	Fund balance > \$1 billion
LGIP – Daily Liquidity	2.2-4513.1	30% of Portfolio 10% Issuer	N/A	A1, P1, D1, F1	
LGIP – Bond Fund	2.2-4513.1	25% of Portfolio 10% Issuer	N/A	AAA	Maximum duration 2 years

No additional funds shall be invested in any investment that is listed on Moody's Watchlist, S&P's CreditWatch or Fitch Watch with a short-term negative rating.

Investments will be limited to U.S. dollar denominated instruments.

Prior to purchasing any investment vehicle that has not previously been purchased; the Investment Committee shall obtain an opinion from the County Attorney's Office or Bond Counsel to ensure that the investment is allowable under the provisions of the Code of Virginia and County Code.

10.0 UNAUTHORIZED INVESTMENTS/INVESTMENT STRATEGIES

1. Derivatives - It is the policy of the County not to invest in derivatives, a financial contract whose value derives from the value of underlying stocks, bonds, currencies, commodities, etc.
2. Leveraging - The County may not borrow funds for the express purpose of reinvesting these funds, otherwise known as leveraging.

11.0 COLLATERALIZATION

Collateralization will be required on certificates of deposit, demand deposit accounts and repurchase agreements. Certificates of deposit and demand deposit accounts shall be collateralized through the state collateral pool as required by the Code of Virginia, for any amount exceeding FDIC coverage. All repurchase agreements shall be fully collateralized by U.S. Treasury issues or agencies with maturities of less than ten years. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be 102% of market value of principal and accrued interest for repurchase agreements and the value shall be adjusted daily. Other investments, as applicable, shall be collateralized by the actual security held in safekeeping by the custodian. A clearly marked evidence of ownership must be supplied to the County and retained.

12.0 SAFEKEEPING

All investment securities purchased by the County will be held by a third-party Custodian, whenever applicable, designated by the Director of Finance and evidenced by safekeeping receipt. The Custodian shall issue a monthly account custody report to the County listing the specific

instruments held in safekeeping. It is the Custodian's responsibility to settle all trades in accordance with instructions received from the County; credit the County with all maturities and interest amounts due, notify the County of call notices and report all activity to the County.

All investments shall be safekept in a manner so as to provide the highest level of protection, using guidance provided in the Governmental Accounting Standards Board Statement No. 3.

All trades, where applicable, will be executed by delivery vs. payment (DVP) to ensure that securities are deposited with the County's custodian prior to the release of funds.

13.0 MONITORING AND ADJUSTING THE PORTFOLIO

The Investment staff will:

- Routinely monitor investment holdings of the portfolio, financial markets, and relative values of competing money market instruments.
- Adjust the portfolio accordingly with the approval of the Investment Committee.
- Conduct an annual review of the financial condition, registrations and other qualifications of all approved financial institutions and broker/dealers to ensure they continue to meet the County's guidelines for qualification.
- Keep a current audited financial statement on file for each approved financial institution and broker/dealer.

14.0 PORTFOLIOS: SIZE AND MATURITIES

Funds available for investment are managed in three portfolios: the Liquidity Portfolio which holds funds needed to meet short-term payment obligations; the Core Portfolio which holds funds not expected to be drawn upon for a period of more than one year; and the Revenue Stabilization Portfolio which holds funds not anticipated to be drawn upon for extended periods, but available in response to extraordinary economic conditions.

14.1 The **Liquidity Portfolio** shall hold all funds not allocated to the Core and Revenue Stabilization Portfolios. With the primary objective of providing availability of cash to meet known and anticipated needs and to respond to reasonable levels of unanticipated spending, this is an ultra-short portfolio. A liquidity cushion will be maintained in this portfolio at all times of at least 15% of the County's stable balance at the seasonal low point. This margin of cushion and the size of the Liquidity Portfolio will be revisited annually. Investments will target a weighted average maturity of 90 days or less. No securities in this portfolio may have a maturity greater than one year from the date the purchase settled.

14.2 The **Core Portfolio** shall be sized periodically at the direction of the Investment Committee. This portfolio will be invested in securities maturing no more than three years and

10% of the entire portfolio up to five years from date purchases are settled. The target average maturity is 1.5 years with a maximum of 1.75 years.

14.3 The **Revenue Stabilization Portfolio** segregates for investment purposes amounts designated by the Board of Supervisors as unavailable for use other than under fiscal conditions for which they were put aside. The size of the Revenue Stabilization Portfolio shall be adjusted annually to an amount no greater than the ending fund balance of the Revenue Stabilization Fund. Although the maximum maturity on investments is three years, the weighted average maturity of the portfolio should not exceed one year.

15.0 COMPETITIVE SELECTION OF INVESTMENT INSTRUMENTS

Investments shall be awarded on a competitive bid basis to the institution whose percentage yield produces the greatest interest income to the County and complies with safekeeping requirements and investment limitations. Comparative rates must be recorded and documented by the Investment Staff for each competitive trade executed. When non-competitive selections exist, the source will be based on other factors favorable to the County, at the discretion of the Investment Manager, and must be approved and documented for each non-competitive trade executed. Factors may include availability in asset type and issuer and must conform to the Code of Virginia 2.2-4327 "Preference for Community Reinvestment Activities in Contracts for Investment of Funds".

Market information systems may be used to assess the market and determine that an offering is above the market for a comparable maturity and investment type when a situation makes competitive bidding impractical.

16.0 DIVERSIFICATION

The County will diversify use of investment instruments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. In addition, investments shall be diversified by continuously investing a portion of the portfolio in readily available funds such as overnight repurchase agreements and/or money market mutual funds.

17.0 INTERNAL CONTROL

The Investment staff, with approval from the Investment Committee, is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the County are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. Accordingly, the Investment Portfolio is subject to an annual independent review by an external auditor. The controls shall be designed to prevent loss of public funds due to fraud, error, misrepresentation, unanticipated market changes or imprudent actions.

The internal controls shall address the following points:

- Controls to prevent collusion;
- Separation of transaction authority from accounting and reconciliation activities;
- Custodial safekeeping;
- Avoidance of physical delivery of securities to the County (when possible);
- Clear delegation of authority to subordinate staff members;
- Written confirmation of transactions for investments and wire transfers;
- Development of a wire transfer agreement with the lead bank and custodian;
- Third party custodian to confirm with the Director of Finance, Deputy Director of Finance, or their approved designee, a security sale prior to maturity.

18.0 PERFORMANCE STANDARDS

The County's investment strategy is to buy and hold all investments until maturity. Given this strategy, several benchmarks will be used by the Investment staff as a basis to determine if market yields are being achieved. The yield on the Liquidity Portfolio will be compared to the Local Government Investment Pool (LGIP). The Core Portfolio yield will be compared to the Merrill Lynch 0-3 years U.S. Treasury Index.

19.0 REPORTING REQUIREMENTS

The Investment staff shall generate daily, weekly and monthly investment activity reports for the Investment Committee.

The investment staff will present analysis and discussion of yield curves, market opportunities and portfolio duration at the monthly Investment Committee meetings

A presentation of the market value of the portfolio is issued annually. The method of determining market value is consistent with the General Accounting Standards Board (GASB) Statements 31 and 40.

20.0 INVESTMENT POLICY ADOPTION AND REVIEW

This Policy will be reviewed at least annually by the Fairfax County Investment Committee. All changes/additions will be presented to the Investment Committee for consideration of approval prior to any changes being made to the Policy.

Attachment I

Glossary of Terms

African Development Bank – A regional multilateral development finance institution established to contribute to the economic development and social progress of its member African countries.

Agencies - Informal name that refers to securities issued by agencies of the United States government and U.S. government sponsored enterprises.

Asian Development Bank – An organization providing loans and equity investments for development projects in its member countries, particularly in Southeast and East Asia.

Banker's Acceptance (BA) - A short-term financial instrument that is the unconditional obligation of the accepting bank. Banker's acceptances arise from transactions involving the import, export, transit or storage of goods - domestic as well as international transit. For investors, it is important to realize that the underlying transaction that gives rise to a BA is almost completely irrelevant to the credit quality or the liquidity of the instrument. From an investor's point of view, a BA is a bank obligation that has at least the same credit strength as any CD issued by the same bank. BA's are considered, safe, liquid, short-term money market securities.

Bid or Bid Price - The trading price acceptable to a prospective buyer of securities.

Bond Anticipation Note (BAN) - A short-term note sold by a public entity that will be repaid from the proceeds of an anticipated bond issue.

Book Entry Securities - Stocks, bonds, other securities, and some certificates of deposit that are purchased, sold and held with only manual or computer accounting entries rather than transfers of physical certificates to evidence the transfer. Typically, instead of a physical certificate or instrument, buyers receive only receipts or confirmations as evidence of their ownership.

Book Value - Value at which an asset is carried on a balance sheet.

Callable Bond - A bond in which the issuer has the right to redeem prior to its maturity, under certain conditions.

Broker - A party who brings buyers and sellers together. Brokers do not take ownership of the property being traded.

Certificate of Deposit (CD) - A deposit of funds, in a bank or savings and loan association, for a specified term that earns interest at a specified rate or rate formula. They may be for terms as short as 1 week or as long as or longer than 10 years.

Collateral - Securities exchanges in a repo, reverse repo, buy/sell back, or sell/buy back. Property that a debtor has pledged, mortgaged, or assigned to a creditor.

Commercial Paper - Unsecured, short-term promissory notes issued by corporations for specific amounts and with specific maturity dates. Firms with lower ratings or firms without well-known names usually back their commercial paper with guarantees or bank letters of credit. Commercial paper may be sold on a discount basis or may bear interest. Terms can be as short as 1 day and usually do not exceed 270 days.

Commingled Funds - Money pooled for a common purpose. Often funds pooled for investments.

Coupon - {a} The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. {b} A certificate attached to a bond evidencing interest due on a payment date.

Credit Risk - Credit risk is the risk that a debtor will fail to make timely payments of principal or interest when due or that a company will fail, thus placing loans, fixed-income debt, and equity in danger of being reduced in value or eliminated. Also called default risk.

Dealer - A firm or an individual who buys and sells for his or her own account. Dealers have ownership, even if only for an instant, between a purchase from one party and sale to another party. They are compensated by the spread between the price they pay and the price they receive. Not the same as a broker; however, the same individuals and firms that act as dealers in some transactions may act as brokers in other transactions.

Debenture – A bond secured only by the general credit of the issuer.

Default Risk - The risk arising from the chance that debtors will not make promised payments either on time or in full. Another term for credit risk.

Delivery vs. Payment (DVP) - the simultaneous exchange of securities and cash. The safest method of settling either the purchase or sale of a security. In a DVP settlement, the funds are wired from the buyer's account and the security is delivered from the seller's account in simultaneous, interdependent wires.

Depository Trust Company (DTC) - An organization that holds physical certificates for stock and bonds and issues receipts to owners. Securities held by DTC are immobilized so that they can be traded on a book-entry basis.

Derivatives - Financial instruments whose value depends on the values of underlying assets, interest rates, currency exchange rates, or indexes. For hedging purposes, common derivatives are options, futures, swaps, and swap options. All CMOs are derivatives.

Discount - The amount by which the price for a security is less than its par.

Discount Rate - The percentage rate applied to reduce the redemption value of a security in cases where the difference between such a reduced value and the redemption value is the investor's compensation for owning the security.

Discount Securities - Securities that do not pay periodic interest. Investors earn the difference between the discount issue price and the full face value paid at maturity. Treasury bills, banker's acceptances, and zero coupon bonds are discount securities. Most commercial paper is also issued at a discount.

Diversification - Dividing investment funds among a variety of securities offering independent returns.

DK - Initials for "don't know". A security is said to be "DK'd" when it is delivered to the purchaser or more typically the purchaser's correspondent but is rejected because the purchaser either doesn't know or doesn't agree with one or more of the aspects of the trade.

Duration - a sophisticated measure of the average timing of cash flows from an asset or a liability or from an asset portfolio or a liability portfolio. Essentially, duration is a more accurate measure of maturity because it reflects the timing of cash flows from period interest and/or principal payments in addition to the cash flows represented by the funds transferred at maturity. Duration is computed by summing the present values of all of the future cash flows after multiplying each by the time until receipt, and then dividing that product by the sum of the present value of the future cash flows without weighting them for the time of receipt.

Effective Annual Yield - A seldom-used expression to refer to the yield on an investment expressed on a compound interest basis.

Event Risk - The risk of an unexpected, future decrease in credit quality that is a result of events such as a corporate acquisition or material changes in taxes, laws, or regulations.

Fannie Mae - An informal name for the Federal National Mortgage Association (FNMA). FNMA is a privately owned corporation whose function is to buy government-insured or guaranteed and conventional mortgages. To finance its mortgage purchases, FNMA relies primarily on the sale of debentures and short-term discount notes. FNMA securities are not backed by the full faith and credit of the federal government, but the risk of default is considered to be low.

Farmer Mac – FAMC or the Federal Agricultural Mortgage Corporation. A federally chartered private corporation providing an alternate source of credit for agricultural loans and rural housing.

Federal Credit Agencies - Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, i.e., S&L, small business firms, students, farmers, farm cooperatives, and exporters.

Federal Deposit Insurance Corporation (FDIC) - A federal agency that insures bank deposits, currently up to \$250,000 per deposit.

Federal Funds Rate - The rate for which overnight federal funds are traded.

Federal Home Loan Bank (FHLB) - Unsecured joint and several obligations of the 12 district banks. They are issued with short maturities (under 1 year) to complement the longer-term borrowings of the bank. It raises money by issuing notes and bonds and lends money to savings

and loans and other mortgage lenders based on the amount of collateral the institution can provide.

Floating Rate Bond - Bonds that have a variable-rate coupon that is usually tied to a predetermined index, plus a margin or spread. The spread is a rate that remains constant.

Freddie Mac - An informal name for the Federal Home Loan Mortgage Corporation (FHLMC) or for securities issued by it. The FHLMC was created to promote the development of a nationwide secondary market in conventional residential mortgages. FHLMC may purchase mortgages only from financial institutions that have their deposits or accounts insured by agencies of the Federal government. FHLMC sells its interest in the mortgages it purchases through mortgage-backed securities. These are not backed by the full faith and credit of the U.S. Government.

International Bank for Reconstruction and Development – Also known as the World Bank. An international lending organization offering long term low interest credit for industrial development.

Interest Rate Risk - The risk that changes in prevailing interest rates will adversely affect assets, liabilities, capital, income, and/or expense at different times or in different amounts.

Laddered Maturities - A maturity pattern within a portfolio in which maturities of the assets in the portfolio are equally spaced. Over time, the shortening of the remaining lives of the assets provides a steady source of liquidity or cash flow.

Liquidity - An individual's or a firm's capacity to meet future monetary outflows (whether they are required or optional) from available resources.

Liquidity Risk - The risk that not enough cash will be generated from either assets or liabilities to meet cash requirements. For a bank, cash requirements primarily comprise deposit withdrawals or contractual loan funding's.

Mark to Market - The process of restating the carrying value of an asset or liability to equal its current market value.

Market Risk - The risk of an increase or decrease in the market value or price of a financial instrument. Market values for debt instruments are affected by actual and anticipated changes in prevailing interest rates.

Market Value – The price at which a security is trading and could presumably be purchased or sold.

Master Agreement - A written contract covering all future transactions between the parties to repurchase-reverse repurchase agreements and establishing each party's rights in the transactions. A master agreement often will specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

Maturity - The date on which the principal or last principal payment on a debt is due and payable.

Money Market – The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

Offer – The price asked by a seller of securities. (When you are buying securities, you ask for an offer.)

Portfolio - Collection of securities held by an investor.

Portfolio Return - The simplest measurement of portfolio return is interest earnings divided by average daily balances.

Primary Dealer – A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities brokers-dealers, banks, and a few unregulated firms.

Prudent Person Rule - An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state—the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

Public Securities Association (PSA) - An industry trade organization for U.S. brokers/dealers. Among other things, the PSA has developed standard documentation for repurchase agreement transactions and for describing prepayments received from mortgage-backed securities.

Qualified Public Depositories - A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

Rate of Return – The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.

Rate Risk - The risk that the entity's earnings and/or its capital may be reduced by an adverse change in prevailing interest rates.

Repurchase Agreement - A form of secured, short-term borrowing in which a security is sold with a simultaneous agreement to buy it back from the purchaser at a future date. Rates paid on repos are short-term money market interest rates and are completely unrelated to the coupon rate paid on the instrument being purchased.

Safekeeping – A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vault for protection.

Securities & Exchange Commission (SEC) – Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SEC Rule 15C3-1 – See Uniform Net Capital Rule.

Settlement Date – Date by which an executed order must be settled, either by a buyer paying for the securities with cash or by a seller delivering the securities and receiving the proceeds of the sale for them.

Treasury Bills – A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

Treasury Bonds – Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years.

Treasury Notes – Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years.

Trade Date – Date on which a security or commodity future trade actually takes place and the buyer and seller agree upon a transaction.

Uniform Net Capital Rule – Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called *net capital rule* and *net capital ratio*. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

Virginia Investment Pool (VIP) – A Section 115 governmental trust fund created under the Joint Exercise of Powers statute of the Commonwealth of Virginia. It provides political subdivisions with an investment vehicle to pool surplus funds and to invest such funds into one or more investment portfolios under the direction and daily supervision of a professional fund manager. The VIP is governed by a Board of Trustees.

Weighted Average Maturity - Calculated as (Percentage of portfolio at cost) x (Maturity date – Today's date). The average maturity calculation for each investment is then totaled.

Yield - The rate of annual income return on an investment expressed as a percentage. {a} **Income Yield** is obtained by dividing the current dollar income by the current market price for the security. {b} **Net Yield or Yield to Maturity** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bonds.

Source: Sheshunoff, Essentials of Cash Management

Attachment II

Revisions and Reviews of Policy

<u>Date</u>	<u>Action Taken</u>
8/15/2019	Change the majority rule in Section 6.2 from “A majority rule shall consist of five (5) of the eight (8) members, with one (1) of the five (5) majority being either the CFO, Director of the Department of Finance, Director of Management and Budget, or Director of the Department of Tax Administration, to “A majority rule shall consist of five (5) of the eight (8) members, with two (2) of the five (5) majority being either the CFO, Director of the Department of Finance, Director of Management and Budget, or Director of the Department of Tax Administration.
7/31/2019	<p>Following are changes to the Investment Policy that were approved on July 31, 2019:</p> <ul style="list-style-type: none">• Using the term Nationally Recognized Statistical Rating Organization (NRSRO) in lieu of listing the rating companies.• Mutual Funds will replace Government Money Market Funds as authorized investments.• Adding the Director of Management and Budget as a member of the Investment Committee, and changing the majority rule to at least five of eight members, with one member being the CFO, Director of Finance, Director of Tax Administration, or Director of Management and Budget.
7/31/2019	The balance in the Liquidity portfolio on June 30, 2019 was \$733.2 million. The Committee decided at this time not to change allocations to the Core and Liquidity portfolios.
7/26/2019	The Investment Committee approved increasing the allocation in the Commonwealth of Virginia’s LGIP from 10% of the portfolio balance to 20%, for a period not to exceed 60 days.
12/13/2017	<p>Combine the present Core, Core Extended, and VIP Bond Fund portfolios into one Core portfolio.</p> <ul style="list-style-type: none">• Increase the maximum maturity to five years, with no more than 10% of the portfolio past three years. Only U.S. Treasuries and agency securities may have a maturity beyond three years.• Add a new asset class for Supranationals. Investments are limited to the International Bank for Reconstruction and Development, Asian Development Bank, and African Development Bank. The maximum maturity for Supranationals is three years.

- Add Farmer Mac as an approved agency investment.
- Increase the maturity on Corporate Notes, Negotiable CDs, Non-negotiable CDs, and Insured CDs to three years.
- Benchmarks will be as follows:
 - Liquidity Portfolio – LGIP and VIP LGIP
 - Core Portfolio – Merrill Lynch 0-3 Year US Treasury Index
- Other tweaks to maximum maturities and holdings.
- Monthly meetings will include analysis and discussion of yield curve, market opportunities and portfolio duration.

6/14/2016	Investment Policy was reviewed and no changes were made.
3/31/2015	Adds Internal Control measure (Section 17.0) that the Custodian is to confirm with Finance Director, Deputy Director, or their approved designee, a security sale prior to maturity. Funds of the County are listed as general, internal service, special revenue, capital project, enterprise, and agency (Section 2.0 Scope). Updates Attachment I to clarify individuals that compose the Investment Staff. Updates Section 9.5, Repurchase Agreements, stating that a Master Repurchase Agreement is required to enter into a repurchase agreement transaction.
1/07/2014	Adds the VACo/VML Virginia Investment Pool as an authorized investment and extends maximum maturity to the Core Extended Portfolio to two years. Adds new portfolio benchmarks, and updates regulatory bodies.
12/5/2012	Expands Insured Certificate of Deposits to include Insured Accounts. This updates policy to include Amendment to Section 2.2.4518 of the Code of Virginia, Insured deposits.
6/6/2012	Adds Demand Deposit Account as another investment for daily liquidity.
6/22/11	Expands Section 14 by defining various portfolios and establishes the size of the Core Portfolio as 50% of all holdings on June 30.
12/15/09	Increase net worth to \$100mln on Authorized Institutions, clarify the “Do Not Buy on Negative Watch” to short term investments, Purchase Date defined as Settlement Date, use short term ratings for eligibility on Bankers Acceptances, separate Banker’s Acceptances from Negotiable CD’s, separate money funds from repurchase agreements holdings, reduce holdings from 50% to 40% on Non-Negotiable CD’s

9/1/09	Add Insured Deposits as a permitted investment
06/30/09	Annual Review of Policy
04/03/07	Annual Review of Policy
02/10/06	Annual Review of Policy
08/22/06	Clarification on Maximum Maturity based upon Trade Date
02/07/06	Clarification on Unauthorized Investments
05/31/05	Annual review of Policy
09/21/04	Modification of “Maximum Term” Policy to provide for investment in a Core Portfolio with an average maturity up to 365 days
05/04/04	Clarification on Ratings for Commercial Paper and Banker’s Acceptances
03/08/04	Annual Review of Policy
01/14/03	Removal of Japanese BA Restriction, Annual Review of Policy
07/16/02	Annual Review of Policy
03/20/01	Quarterly Review of Policy
09/21/99	Quarterly Review of Policy
08/17/99	Increase in Agency Discount Notes
08/04/99	Increase in Repurchase Agreement Limits
10/20/98	Update for submission of Investment Policy Certification by the Municipal Treasurers Association
08/06/98	Quarterly Review of Policy
07/21/98	Commercial Bank - revision of Thompson BankWatch criteria to reflect comprehensive rating.
05/19/98	Update to reflect Section 20 Dealer criteria
05/14/98	Quarterly Review of Policy
11/11/97	Quarterly Review of Policy

09/30/97	Update to reflect GFOA Investment Policy Recommendations (Revised 8/97)
08/14/97	Update to reflect GFOA recommendations and maximum allowable investment term
07/22/97	Quarterly Review of Policy
03/25/97	Quarterly Review of Policy
11/14/96	Quarterly Review of Policy
08/06/96	Quarterly Review of Policy
05/21/96	Update to section 1.5 Prudence
05/07/96	Quarterly Review of Policy
01/31/96	Quarterly Review of Policy
07/06/95	Quarterly Review of Policy
06/22/95	Quarterly Review of Policy
03/28/95	Quarterly Review of Policy
03/21/95	Quarterly Review of Policy
06/07/94	Quarterly Review of Policy
03/22/94	Quarterly Review of Policy
11/16/93	Quarterly Review of Policy
08/03/93	Quarterly Review of Policy
06/29/93	Quarterly Review of Policy
02/16/93	Quarterly Review of Policy
07/07/92	Quarterly Review of Policy
07/07/92	2.1-11 Clarification of Repurchase Agreement Policy, (FY 93 #1)
05/19/92	Swaps, FY 92 #8
02/04/92	Administrative Charge (Replaces FY 92 #6 with FY 92 #7)

02/04/92	Quarterly Review of Policy
01/21/92	Administrative Charge, (Replaces FY92 #4 with FY 92 #6)
01/21/92	2.2 South Africa Policy, (FY 92 #5)
11/26/91	Administrative Charge (Replaced by FY 92 #6), (FY 92 #4)
11/07/91	2.1-5 Authorized Investments--Obligations of U.S., (FY 92 #3)
10/29/91	1.2-1 Voting Hierarchy, (FY 92 #2)
10/29/91	Code Reference for Investments, (FY 92 #1)
10/29/91	Quarterly Review of Policy

Attachment III

Code of Virginia

Chapter 44. Virginia Security for Public Deposits Act

§ 2.2-4400. Short title; declaration of intent; applicability.

A. This chapter may be cited as the "Virginia Security for Public Deposits Act."

B. The General Assembly intends by this chapter to establish a single body of law applicable to the pledge of collateral for public deposits in financial institutions so that the procedure for securing public deposits may be uniform throughout the Commonwealth.

C. All public deposits in qualified public depositories that are required to be secured by other provisions of law or by a public depositor shall be secured pursuant to this chapter. Public depositors are required to secure their deposits pursuant to several applicable provisions of law, including but not limited to §§ [2.2-1813](#), [2.2-1815](#), [8.01-582](#), [8.01-600](#), [15.2-1512.1](#), [15.2-1615](#), [15.2-2625](#), [15.2-6611](#), [15.2-6637](#), [58.1-3149](#), [58.1-3150](#), [58.1-3154](#), and [58.1-3158](#).

D. This chapter, however, shall not apply to deposits made by the State Treasurer in out-of-state financial institutions related to master custody and tri-party repurchase agreements, provided (i) such deposits do not exceed ten percent of average monthly investment balances and (ii) the out-of-state financial institutions used for this purpose have a short-term deposit rating of not less than A-1 by Standard & Poor's Rating Service or P-1 by Moody's Investors Service, Inc., respectively.

1973, c. 172, §§ 2.1-359, 2.1-361; 1984, c. 135; 2000, cc. [335](#), [352](#); 2001, c. [844](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4401. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Dedicated method" or "opt-out method" means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other qualified public depositories, pursuant to § [2.2-4404](#) and regulations and guidelines promulgated by the Treasury Board.

"Defaulting depository" means any qualified public depository determined to be in default or insolvent.

"Default or insolvency" includes, but shall not be limited to, the failure or refusal of any qualified public depository to return any public deposit upon demand or at maturity and the issuance of an order of supervisory authority restraining such depository from making payments of deposit liabilities or the appointment of a receiver for such depository.

"Eligible collateral" means securities or instruments authorized as legal investments under the laws of the Commonwealth for public sinking funds or other public funds as well as Federal Home Loan Bank letters of credit issued in accordance with guidelines promulgated by the Treasury Board.

"Located in Virginia" means having a main office or branch office in the Commonwealth where deposits are accepted, checks are paid, and money is lent.

"Pooled method" means securing public deposits by accepting the contingent liability for the losses of public deposits of other qualified public depositories choosing this method, pursuant to § [2.2-4403](#) and regulations and guidelines promulgated by the Treasury Board.

"Public deposit" means moneys held by a public depositor who is charged with the duty to receive or administer such moneys and is acting in an official capacity, such moneys being deposited in any of the following types of accounts: nonnegotiable time deposits, demand deposits, savings deposits, or any other transaction accounts.

"Public depositor" means the Commonwealth or any county, city, town or other political subdivision thereof, including any commission, institution, committee, board, or officer of the foregoing and any state court.

"Qualified escrow agent" means the State Treasurer or any bank or trust company approved by the Treasury Board to hold collateral pledged to secure public deposits.

"Qualified public depository" means any national banking association, federal savings and loan association or federal savings bank located in Virginia, any bank, trust company or savings institution organized under Virginia law, or any state bank or savings institution organized under the laws of another state located in Virginia authorized by the Treasury Board to hold public deposits according to this chapter.

"Required collateral" of a qualified public depository means the amount of eligible collateral required to secure public deposits set by regulations or an action of the Treasury Board.

"Treasury Board" means the Treasury Board of the Commonwealth created by § [2.2-2415](#).

1973, c. 172, § 2.1-360; 1984, c. 135; 1987, c. 718; 1996, c. [77](#); 1998, cc. [20](#), [21](#); 2001, c. [844](#); 2008, c. [7](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4402. Collateral for public deposits.

Qualified public depositories shall elect to secure deposits by either the pooled method or the dedicated method. Every qualified public depository shall deposit with a qualified escrow agent eligible collateral equal to or in excess of the required collateral. Eligible collateral shall be valued as determined by the Treasury Board. Substitutions and withdrawals of eligible collateral may be made as determined by the Treasury Board.

Notwithstanding any other provisions of law, no qualified public depository shall be required to give bond or pledge securities or instruments in the manner herein provided for the purpose of securing deposits received or held in the trust department of the depository and that are secured as required by § [6.2-1005](#) of the Code of Virginia or that are secured pursuant to Title 12, § 92a of the United States Code by securities of the classes prescribed by § [6.2-1005](#) of the Code of Virginia.

No qualified public depository shall accept or retain any public deposit that is required to be secured unless it has deposited eligible collateral equal to its required collateral with a qualified escrow agent pursuant to this chapter.

1973, c. 172, § 2.1-362; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4403. Procedure for payment of losses by pooled method.

When the Treasury Board determines that a qualified public depository securing public deposits in accordance with this section is a defaulting depository, it shall as promptly as practicable take steps to reimburse public depositors for uninsured public deposits using the following procedures:

1. The Treasury Board shall ascertain the amount of uninsured public deposits held by the defaulting depository, either with the cooperation of the Commissioner of Financial Institutions, the receiver appointed for such depository, or by any other means available.
2. The amount of such uninsured public deposits ascertained as provided in subdivision 1, plus any costs associated with liquidation, shall be assessed by the Treasury Board first against the defaulting depository to the extent of the full realizable market value of the collateral pledged to secure its public deposits.
3. In the event the realized value of the pledged collateral in subdivision 2 is insufficient to satisfy the liability of the defaulting depository to its public depositors and the Treasury Board, the Treasury Board shall assess the remaining liability against all other qualified public depositories securing public deposits according to the following ratio: total average public deposit balance for each qualified public depository held during the immediately preceding twelve months divided by the total average public deposit balance for the same period held by all qualified public depositories under this section other than the defaulting depository.
4. Assessments made by the Treasury Board in accordance with subdivision 3 shall be payable by the close of business on the second business day following demand. Upon the failure of any qualified public depository to pay such assessment when due, the State Treasurer shall promptly take possession of the eligible collateral deposited with the non-paying depository's escrow agent and liquidate the same to the extent necessary to pay the original assessment plus any additional costs necessary to liquidate the collateral.
5. Upon receipt of such assessments and the net proceeds of the eligible collateral liquidated from the State Treasurer, the Treasury Board shall reimburse the public depositors to the extent of the defaulting depository's liability to them, net of any applicable deposit insurance.

1973, c. 172, § 2.1-363; 1978, c. 14; 1984, c. 135; 2001, c. [844](#); 2009, c. [64](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4404. Procedure for payment of losses by dedicated method.

When the Treasury Board determines that a qualified public depository securing public deposits in accordance with this section is a defaulting depository, it shall as promptly as practicable take steps to reimburse public depositors of all uninsured public deposits using the following procedures:

1. The Treasury Board shall ascertain the amount of uninsured public deposits held by the defaulting depository with the cooperation of the Commissioner of Financial Institutions, the receiver appointed for such depository or by any other means available.
2. The amount of such uninsured public deposits ascertained as provided in subdivision 1, plus any costs associated with liquidation of the eligible collateral of the defaulting depository, shall be assessed by the Treasury Board against the defaulting depository. The State Treasurer shall promptly take possession of the eligible collateral deposited by such depository with the depository's escrow agent, as is necessary to satisfy the assessment of the Treasury Board and shall liquidate the same and turn over the net proceeds to the Treasury Board.
3. Upon receipt from the State Treasurer of the eligible collateral liquidated, the Treasury Board shall reimburse the public depositors from the proceeds of the collateral up to the extent of the depository's deposit liability to them, net of any applicable deposit insurance.

1984, c. 135, § 2.1-363.1; 2001, c. [844](#); 2009, c. [64](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4405. Powers of Treasury Board relating to the administration of this chapter.

The Treasury Board shall have power to:

1. Make and enforce regulations and guidelines necessary and proper to the full and complete performance of its functions under this chapter;
2. Prescribe and enforce regulations and guidelines fixing terms and conditions consistent with this chapter under which public deposits must be secured;
3. Require additional collateral, in excess of the required collateral of any or all qualified public depositories as it may determine prudent under the circumstances;
4. Determine what securities or instruments shall be acceptable as eligible collateral, and fix the percentage of face value or market value of such securities or instruments that can be used to secure public deposits;
5. Establish guidelines to permit banks to withdraw from the procedures for the payment of losses under § [2.2-4403](#) and instead be governed by the procedures for the payment of losses under § [2.2-4404](#), consistent with the primary purpose of protecting public deposits;
6. Require any qualified public depository to provide information concerning its public deposits as requested by the Treasury Board; and
7. Determine when a default or insolvency has occurred and to take such action as it may deem advisable for the protection, collection, compromise or settlement of any claim arising in case of default or insolvency.

1973, c. 172, § 2.1-364; 2001, c. [844](#); 2009, c. [64](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4406. Subrogation of Treasury Board to depositor's rights; payment of sums received from distribution of assets.

Upon payment in full to any public depositor on any claim presented pursuant to § [2.2-4403](#) or [2.2-4404](#), the Treasury Board shall be subrogated to all of such depositor's rights, title and interest against the depository in default or insolvent and shall share in any distribution of such defaulting or insolvent depository's assets ratably with other depositors. Any sums received from any such distribution shall be paid to the other qualified public depositories against which assessments were made, in proportion to such assessments, net of any proper payment or expense of the Treasury Board in enforcing any such claim.

1973, c. 172, § 2.1-365; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4407. Mandatory deposit of public funds in qualified public depositories.

Public deposits required to be secured pursuant to this chapter shall be deposited in a qualified public depository.

1973, c. 172, § 2.1-366; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4408. Authority to make public deposits.

A. All public depositors are hereby authorized to make public deposits under their control in qualified public depositories, securing such public deposits pursuant to this chapter.

B. Local officials handling public deposits in the Commonwealth may not require from a qualified public depository any pledge of collateral for their deposits in excess of the requirements of this chapter.

1973, c. 172, § 2.1-367; 1980, c. 538, § 2.1-234.5; 1998, cc. [20](#), [21](#); 2001, c. [844](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4409. Authority to secure public deposits; acceptance of liabilities and duties by public depositories.

All qualified public depositories are hereby authorized to secure public deposits in accordance with this chapter and shall be deemed to have accepted the liabilities and duties imposed upon it pursuant to this chapter.

1973, c. 172, § 2.1-368; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4410. Liability of public depositors.

When deposits are made in accordance with this chapter no official of a public depositor shall be personally liable for any loss resulting from the default or insolvency of any qualified public depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his agents.

1973, c. 172, § 2.1-370; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

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.

§ 2.2-4411. Reports of qualified public depositories.

By the tenth day after the end of each calendar reporting month or when requested by the Treasury Board each qualified public depository shall submit to the Treasury Board an electronic report of such data required by the Treasury Board to demonstrate that the current market value of its pledged collateral was equal to or greater than the amount of required collateral for the previous month, certified as to its accuracy by an authorized official of the qualified public depository.

Upon request by a public depositor, a qualified public depository shall provide a schedule detailing the public deposit accounts reported to the Treasury Board for that depositor, as well as the amount of total public deposits held by that depository at the close of the applicable month and the total market value of the collateral securing such public deposits.

1973, c. 172, § 2.1-369; 1979, c. 154; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

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.

Chapter 45. Investment of Public Funds Act

§ 2.2-4500. Legal investments for public sinking funds.

The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any sinking funds belonging to them or within their control in the following securities:

1. Bonds, notes and other evidences of indebtedness of the Commonwealth, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.
2. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.
3. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth upon which there is no default; provided, that such bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or those unconditionally guaranteed as to the payment of principal and interest by the county, city, town, district, authority or other public body in question; and revenue bonds issued by agencies or authorities of the Commonwealth or its political subdivisions upon which there is no default.
4. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, bonds and other obligations issued, guaranteed or assumed by the Asian Development Bank and bonds and other obligations issued, guaranteed or assumed by the African Development Bank.
5. Savings accounts or time deposits in any bank or savings institution within the Commonwealth provided the bank or savings institution is approved for the deposit of other funds of the Commonwealth or other political subdivision of the Commonwealth.

1956, c. 184, § 2-297; 1958, c. 102; 1966, c. 677, § 2.1-327; 1970, c. 75; 1974, c. 288; 1986, c. 270; 1988, cc. 526, 834; 1996, cc. [77](#), [508](#); 2001, c. [844](#).

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.

§ 2.2-4501. Legal investments for other public funds.

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in the following:

1. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Stocks, bonds, notes and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that within the 20 fiscal years next preceding the making of such investment, such state has not been in default for more than 90 days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

4. Stocks, bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth upon which there is no default, provided that if the principal and interest be payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in Article 9 (§ [64.2-780](#) et seq.) of Chapter 7 of Title 64.2, without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed by the provisions of this section without limitation.

5. Legally authorized stocks, bonds, notes and other evidences of indebtedness of any city, county, town, or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that (i) within the 20 fiscal years next preceding the making of such investment, such city, county, town, or district has not been in default for more than 90 days in the payment of any part of principal or interest of any stock, bond, note or other evidence of indebtedness issued by it; (ii) such city, county, town, or district shall have been in continuous existence for at least 20 years; (iii) such city, county, town, or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town, or district issuing the same; (v) the city, county, town, or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of such city, county, town, or district (including the issue in which such investment is made), after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed 10 percent of the value of the taxable property in such city, county, town, or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank.

B. This section shall not apply to funds authorized by law to be invested by the Virginia Retirement System or to deferred compensation plan funds to be invested pursuant to § [51.1-601](#) or to funds contributed by a locality to a pension program for the benefit of any volunteer fire department or volunteer emergency medical services agency established pursuant to § [15.2-955](#).

C. Investments made prior to July 1, 1991, pursuant to § [51.1-601](#) are ratified and deemed valid to the extent that such investments were made in conformity with the standards set forth in Chapter 6 (§ [51.1-600](#) et seq.) of Title 51.1.

1956, c. 184, § 2-298; 1966, c. 677, § 2.1-328; 1980, c. 596; 1988, c. 834; 1991, c. 379; 1992, c. 810; 1996, c. [508](#); 1999, c. [772](#); 2001, c. [844](#); 2007, c. [67](#); 2008, c. [295](#); 2015, cc. [502](#), [503](#).

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.

§ 2.2-4502. Investment of funds of Commonwealth, political subdivisions, and public bodies in "prime quality" commercial paper.

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in "prime quality" commercial paper, with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States, or of any state thereof including paper issued by banks and bank holding companies. "Prime quality" shall be as rated by at least two of the following: Moody's Investors Service, Inc., within its NCO/Moody's rating of prime 1, by Standard & Poor's, Inc., within its rating of A-1, by Fitch Investor's Services, Inc., within its rating of F-1, by Duff and Phelps, Inc., within its rating of D-1, or by their corporate successors, provided that at the time of any such investment:

1. The issuing corporation, or its guarantor, has a net worth of at least fifty million dollars; and
2. The net income of the issuing corporation, or its guarantor, has averaged three million dollars per year for the previous five years; and
3. All existing senior bonded indebtedness of the issuer, or its guarantor, is rated "A" or better or the equivalent rating by at least two of the following: Moody's Investors Service, Inc., Standard & Poor's, Inc., Fitch Investor's Services, Inc., or Duff and Phelps, Inc.

Not more than thirty-five percent of the total funds available for investment may be invested in commercial paper, and not more than five percent of the total funds available for investment may be invested in commercial paper of any one issuing corporation.

B. Notwithstanding subsection A, the Commonwealth, municipal corporations, other political subdivisions and public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, except for sinking funds, in commercial paper other than "prime quality" commercial paper as defined in this section provided that:

1. Prior written approval is obtained from the governing board, committee or other entity that determines investment policy. The Treasury Board shall be the governing body for the Commonwealth; and
2. A written internal credit review justifying the creditworthiness of the issuing corporation is prepared in advance and made part of the purchase file.

1973, c. 232, § 2.1-328.1; 1974, c. 295; 1976, c. 665; 1986, c. 170; 1987, c. 73; 1988, c. 834; 1992, c. 769; 2001, c. [844](#).

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.

§ 2.2-4503. Investments by Fairfax County finance director [Not set out].

Not set out. (2001, c. [844](#).)

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.

§ 2.2-4504. Investment of funds by the Commonwealth and political subdivisions in bankers' acceptances.

Notwithstanding any provisions of law to the contrary, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in bankers' acceptances.

1981, c. 18, § 2.1-328.3; 1988, c. 834; 2001, c. [844](#).

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.

§ 2.2-4505. Investment in certificates representing ownership of treasury bond principal at maturity or its coupons for accrued periods.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, in certificates representing ownership of either treasury bond principal at maturity or its coupons for accrued periods. The underlying United States Treasury bonds or coupons shall be held by a third-party independent of the seller of such certificates.

1983, c. 117, § 2.1-328.5; 1985, c. 352; 1988, c. 834; 2001, c. [844](#).

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.

§ 2.2-4506. Securities lending.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, political subdivisions and all public bodies of the Commonwealth may engage in securities lending from the portfolio of investments of which they have custody and control, other than sinking funds. The Treasury Board shall develop guidelines with which such securities lending shall fully comply. Such guidelines shall ensure that the state treasury is at all times fully collateralized by the borrowing institution.

1983, c. 268, § 2.1-328.6; 2001, c. [844](#).

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.

§ 2.2-4507. Investment of funds in overnight, term and open repurchase agreements.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth, may invest any and all moneys belonging to them or within their control in overnight, term and open repurchase agreements that are collateralized with securities that are approved for direct investment.

1985, c. 352, § 2.1-328.8; 1988, c. 834; 2001, c. [844](#).

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.

§ 2.2-4508. Investment of certain public moneys in certain mutual funds.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds that are governed by the provisions of § [2.2-4500](#), in one or more open-end investment funds, provided that the funds are registered under the Securities Act (§ [13.1-501](#) et seq.) of the Commonwealth or the Federal Investment Co. Act of 1940, and that the investments by such funds are restricted to investments otherwise permitted by law for political subdivisions as set forth in this chapter, or investments in other such funds whose portfolios are so restricted.

1986, c. 170, § 2.1-328.9; 1988, c. 834; 1996, c. [508](#); 2001, c. [844](#).

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.

§ 2.2-4509. Investment of funds in negotiable certificates of deposit and negotiable bank deposit notes.

Notwithstanding any provision of law to the contrary, the Commonwealth and all public officers, municipal corporations, and other political subdivisions and all other public bodies of the Commonwealth may invest any or all of the moneys belonging to them or within their control, other than sinking funds, in negotiable certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of at least A-1 by Standard & Poor's and P-1 by Moody's Investor Service, Inc., for maturities of one year or less, and a rating of at least AA by Standard & Poor's and Aa by Moody's Investor Service, Inc., for maturities over one year and not exceeding five years.

1998, cc. [20](#), [21](#), § 2.1-328.15; 2001, c. [844](#).

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.

§ 2.2-4510. Investment of funds in corporate notes.

A. Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in high quality corporate notes with a rating of at least Aa by Moody's Investors Service, Inc., and a rating of at least AA by Standard and Poor's, Inc., and a maturity of no more than five years.

B. Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a rating of at least A by two rating agencies, one of which shall be either Moody's Investors Service, Inc., or Standard and Poor's, Inc.

As used in this section, "qualified public entity" means any state agency or institution of the Commonwealth, having an internal or external public funds manager with professional investment management capabilities.

C. Notwithstanding any provision of law to the contrary, the Department of the Treasury may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a rating of at least BBB or Baa2 by two rating agencies, one of which shall be Moody's Investors Service, Inc., or Standard and Poor's, Inc. With regard to investment securities rated below A, the Commonwealth Treasury Board shall establish strict investment guidelines concerning the investment in such securities and monitor the performance of the securities for compliance with the investment guidelines.

1987, c. 187, § 2.1-328.10; 1988, c. 834; 1994, c. [145](#); 2001, c. [844](#); 2002, cc. [18](#), [438](#); 2005, c. [30](#).

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.

§ 2.2-4511. Investment of funds in asset-backed securities.

Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in asset-backed securities with a duration of no more than five years and a rating of no less than AAA by two rating agencies, one of which must be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" means any state agency, institution of the Commonwealth or statewide authority created under the laws of the Commonwealth having an internal or external public funds manager with professional investment management capabilities.

1994, c. [145](#), § 2.1-328.13; 1997, c. [29](#); 2001, c. [844](#).

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.

§ 2.2-4512. Investment of funds by State Treasurer in obligations of foreign sovereign governments.

Notwithstanding any provision of law to the contrary, the State Treasurer may invest unexpended or excess moneys in any fund or account over which he has custody and control, other than sinking funds, in fully hedged debt obligations of sovereign governments and companies that are fully guaranteed by such sovereign governments, with a rating of at least AAA by Moody's Investors Service, Inc., and a rating of at least AAA by Standard and Poor's, Inc., and a maturity of no more than five years.

Not more than ten percent of the total funds of the Commonwealth available for investment may be invested in the manner described in this section.

1988, c. 461, § 2.1-328.11; 2001, c. [844](#).

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.

§ 2.2-4513. Investments by transportation commissions.

Transportation commissions that provide rail service may invest in, if required as a condition to obtaining insurance, participate in, or purchase insurance provided by, foreign insurance companies that insure railroad operations.

1988, c. 834, § 2.1-328.12; 2001, c. [844](#).

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.

§ 2.2-4513.1. Investment of funds in qualified investment pools.

A. Notwithstanding the provisions of Article 1 (§ [15.2-1300](#) et seq.) of Chapter 13 of Title 15.2, in any locality in which the authority to invest moneys belonging to or within the control of the locality has been granted to its elected treasurer, the treasurer may act on behalf of his locality to become a participating political subdivision in qualified investment pools without an ordinance adopted by the locality approving a joint exercise of power agreement. For purposes of this section, "qualified investment pool" means a jointly administered investment pool organized as a trust fund pursuant to Article 1 of Chapter 13 of Title 15.2 that has a professional investment manager.

B. Investments in qualified investment pools described in this section shall comply with the requirements of this chapter applicable to municipal corporations and other political subdivisions.

C. The provisions of this section shall not apply to local trusts established pursuant to Article 8 (§ [15.2-1544](#) et seq.) of Chapter 15 of Title 15.2 to fund postemployment benefits other than pensions.

2017, cc. [792](#), [819](#).

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.

§ 2.2-4514. Commonwealth and its political subdivisions as trustee of public funds; standard of care in investing such funds.

Public funds held by the Commonwealth, public officers, municipal corporations, political subdivisions, and any other public body of the Commonwealth shall be held in trust for the citizens of the Commonwealth. Any investment of such funds pursuant to the provisions of this chapter shall be made solely in the interest of the citizens of the Commonwealth and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

1996, c. [437](#), § 2.1-328.14; 2001, c. [844](#).

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.

§ 2.2-4515. Collateral and safekeeping arrangements.

Securities purchased pursuant to the provisions of this chapter shall be held by the public official, municipal corporation or other political subdivision or public body or its custodial agent who may not otherwise be a counterparty to the investment transaction. Securities held on the books of the custodial agent by a custodial agent shall be held in the name of the municipal corporation, political subdivision or other public body subject to the public body's order of withdrawal. The responsibilities of the public official, municipal corporation, political subdivision or other public body shall be evidenced by a written agreement that shall provide for delivery of the securities by the custodial agent in the event of default by a counterparty to the investment transaction.

As used in this section, "counterparty" means the issuer or seller of a security, an agent purchasing a security on behalf of a public official, municipal corporation, political subdivision or other public body or the party responsible for repurchasing securities underlying a repurchase agreement.

The provisions of this section shall not apply to (i) investments with a maturity of less than 31 calendar days or (ii) the State Treasurer, who shall comply with safekeeping guidelines issued by the Treasury Board or to endowment funds invested in accordance with the provisions of the Uniform Prudent Management of Institutional Funds Act, Chapter 11 (§ [64.2-1100](#) et seq.) of Title 64.2.

1988, c. 834, § 2.1-329.01; 2001, c. [844](#); 2008, c. [184](#).

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.

§ 2.2-4516. Liability of treasurers or public depositors.

When investments are made in accordance with this chapter, no treasurer or public depositor shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees.

1979, c. 135, § 2.1-329.1; 2001, c. [844](#).

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.

§ 2.2-4517. Contracts on interest rates, currency, cash flow or on other basis.

A. Any state entity may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the state entity, as represented by bonds or investments, in whole or in part, on the interest rate cash flow or other basis desired by the state entity. Such contract or other arrangement may include contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the state entity in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the state entity, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by a nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board, the governing body of the state entity or any public funds manager with professional investment capabilities duly authorized by the Treasury Board or the governing body of any state entity authorized to issue such obligations to make such determinations.

As used in this section, "state entity" means the Commonwealth and all agencies, authorities, boards and institutions of the Commonwealth.

B. Any money set aside and pledged to secure payments of bonds or any of the contracts entered into pursuant to this section may be invested in accordance with this chapter and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to this section.

2002, c. [407](#).

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.

§ 2.2-4518. Investment of funds in deposits.

A. Notwithstanding any provision of law to the contrary, the Commonwealth and all public officers, municipal corporations, other political subdivisions, and all other public bodies of the Commonwealth, each referred to in this section as a "public entity," may invest any or all of the moneys belonging to them or within their control in accordance with the following conditions:

1. The moneys are initially invested through any federally insured bank or savings institution selected by the public entity that is qualified by the Virginia Treasury Board to accept public deposits;
2. The selected bank or savings institution arranges for the deposit of the moneys in one or more federally insured banks or savings institutions wherever located, for the account of the public entity;
3. The full amount of principal and any accrued interest of each such deposit is covered by federal deposit insurance;
4. The selected bank or savings institution acts as custodian for the public entity with respect to each deposit issued for the public entity's account; and

5. At the same time that the public entity's moneys are deposited, the selected bank or savings institution receives an amount of deposits from customers of other financial institutions wherever located equal to or greater than the amount of moneys invested by the public entity through the selected bank or savings institution.

B. After deposits are made in accordance with the conditions prescribed in subsection A, such deposits shall not be subject to the provisions of Chapter 44 (§ [2.2-4400](#) et seq.), § [2.2-4515](#), or any security or collateral requirements that may otherwise be applicable to the investment or deposit of public moneys by government investors.

2008, c. [103](#); 2010, c. [33](#).

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.

EXHIBIT C - SCOTTS RUN FIRE STATION #44
PROPERTY OWNERS FOR ESCROW CONTRIBUTIONS TO FIRE STATION

GFA per total development area information from "Tysons 2016-2017 Progress Report on the Implementation of the Comprehensive Plan", "2017 Tysons Annual Report", and /or CDP approved information
Escalation per Consumer Price Index for all Urban Consumers (CPU-U) - Proffer section 101

Property Owner		Mailing Address	Tax Number	Development Name	TOTAL GFA Per CDP	Site Plan GFA	Development Status	Value for Escrow (\$1.35/SF)	JAN 2020 ESCALATION (\$1.47/GFA)	Contribution Status	NOTES
Scotts Run North RZ 2011-PR-009											
1	1820 Dolley Madison LLC	1820 Dolley Madison LLC c/o Capital One, N.A. 1600 Capital One Drive McLean, VA 22102	29-4 ((5)) parcels 9, 9A, and 10A	SRS North	1,500,000		CDP Approved	\$ 2,025,000.00	\$ 2,205,000.00	N	
Scotts Run South RZ 2011-PR-010											
									JAN 2020 ESCALATION (\$1.49/GFA)	1.49	
2	Johnson I 7600 Colshire LLC	1651 Old Meadow Road Suite 650 Cityline Partners LLC McLean, VA 22102 Attn: Sandy Flanagan	30-3 ((46)) parcel 2 and parcel C	Johnson 1 A, B, D	1,675,680		Johnson 1A&B (CDP Approved / Interim FDP Approved) Johnson 1C&D (FDP Approved)	\$ 2,262,168.00	\$ 2,496,763.20	N	Per page 175 of the 2017 Tysons Annual Report
3	SCD Scotts Run LLC	SCD Scotts Run LLC c/o Skanska USA Commercial Dev. Inc. 1776 Wilson Blvd., Suite 250 Arlington, VA 22209	30-3 ((46)), parcel 1	Johnson C	483,000			\$ 652,050.00	\$ 719,670.00	N	
4	Taylor Colshire Meadow LLC	1651 Old Meadow Road Suite 650 Cityline Partners LLC McLean, VA 22102 Attn: Sandy Flanagan	30-3 ((28)) parcel C3	Taylor A, B, C	1,039,380		CDP Approved	\$ 1,403,163.00	\$ 1,548,676.20	N	
5	Tysons LW Hotel Associates LP	Tysons LW Hotel Associates LP c/o Lodgeworks Partners LP 8100 E 22nd St, Unit 500 Wichita, KS 67226	30-3 ((28)) parcel D3	Archer Hotel	218,200	141,879	Site Plan Approved	\$ 191,536.65	\$ 325,118.00	N	Tax Number 0303 28 D1 is Hotel Site per Fairfax County Geographic Exploration & Mapping Parcel information and 0303 28 A, D, E, F, G do not exist in the Fairfax County Parcel Search.
6	Van Buren 1616 Anderson LLC	1651 Old Meadow Road Suite 650 Cityline Partners LLC McLean, VA 22102 Attn: Sandy Flanagan	30-3 ((28)), parcel A & 30-3 ((46)), parcel B1	Van Buren	473,560		CDP Approved	\$ 639,306.00	\$ 705,604.40	N	
7	JBL McLean LLC	PO Box 34472 c/o Ryan LLC Washington, DC 20043	0303 01 0006A	Garfield A & B	475,694	475,346	Completed	\$ 641,717.10	\$ 688,081.72	Y	escrow has been collected at the escalated amount from CPI-U inflation calculator @ \$1.37/GFA at the time of collection per LDS.
8	Westgate 1600 Anderson Road LLC	1651 Old Meadow Road Suite 650 Cityline Partners LLC McLean, VA 22102 Attn: Sandy Flanagan	30-3 ((1)) parcels 6B, 6C, and 6E	Westgate	414,720		CDP Approved	\$ 559,872.00	\$ 617,932.80	N	
	TOTAL				6,280,234			\$ 7,722,762.75	\$ 9,306,846.32		Garfield site development final GFA and collected escrow amount have been used for Total Value

REMAINING CONTRIBUTION AMOUNT (TOTAL AMOUNT - #7 CONTRIBUTION: \$9,305,251.39- \$686,486.79)								\$ 8,618,764.60		
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EXHIBIT D

JobCostProjectBudget

Group By 1 = Category

Job=rwgl_srf(SCotts Run Fire Station)

Category Tree = rwgl_s_JobCost

Period = April 2020

Category Code	Category	Original	Previous	MTD Actual	Cost To Date	Cost To
		Budget	Costs		Actual	Complete
6100-0000	HARD COSTS					
6104-0045	Earthwork/Grading	0.00	2,060.64	0.00	2,060.64	-2,060.64
6104-0090	Traffic Signals	280,000.00	450.00	4,690.00	5,140.00	274,860.00
6104-0125	Utility-Coordination Allow	6,000.00	0.00	0.00	0.00	6,000.00
6104-0130	Hard Cost Allowance	150,000.00	0.00	0.00	0.00	150,000.00
6107-0005	Building - GC Trinity	7,247,732.00	1,216,958.05	503,336.49	1,720,294.54	5,527,437.46
6198-9998	TOTAL HARD COSTS	7,683,732.00	1,219,468.69	508,026.49	1,727,495.18	5,956,236.82
6200-0000	SOFT COSTS					
6200-0130	Other Soft Costs	37,615.00	8,167.33	0.00	8,167.33	29,447.67
6200-0150	Title Insurance	1,000.00	0.00	0.00	0.00	1,000.00
6200-0180	Permits & Fees	79,927.00	143,922.60	0.00	143,922.60	-63,995.60
6200-0205	Testing/Inspection Geotech	75,000.00	0.00	0.00	0.00	75,000.00
6200-0160	Utility Cost & Design	62,725.00	4,287.37	0.00	4,287.37	58,437.63
6200-0200	Construction Admin	85,000.00	76,044.36	0.00	76,044.36	8,955.64
6201-1522	Legal-Land Use	25,000.00	22,360.00	697.50	23,057.50	1,942.50
6202-1541	Design-Architect	550,000.00	413,653.25	6,737.21	420,390.46	129,609.54
6202-1544	Design-Civil Engineering	250,000.00	223,221.43	925.75	224,147.18	25,852.82
6202-1546	Design-Geotech Engineer	45,000.00	38,950.30	8,303.90	47,254.20	-2,254.20
6202-1552	Design-Exterior/Traffic	65,000.00	43,842.56	3,432.26	47,274.82	17,725.18
6202-1568	Design-LEED	1,500.00	1,500.00	0.00	1,500.00	0.00
6202-1569	Design-Environmental	30,000.00	27,783.00	0.00	27,783.00	2,217.00
6298-9998	TOTAL SOFT COSTS	1,307,767.00	1,003,732.20	20,096.62	1,023,828.82	283,938.18
6399-0001	CONTINGENCY					
6104-0100	Project Contingency	550,000.00	0.00	0.00	0.00	550,000.00
6399-0099	TOTAL CONTINGENCY	550,000.00	0.00	0.00	0.00	550,000.00
9999-9999	TOTAL CONSTRUCTION COSTS	9,541,499.00	2,223,200.89	528,123.11	2,751,324.00	6,790,175.00

* Add established cost sharing;

Estimated costs for County requested changes THROUGH MARCH 2020 subject to final cost adjustments

Total project costs by SRS Owners

JLB McLean LLC Garfield Site Escrow Collected

(255,441.00)

9,286,058.00

(651,204.50) + Interest

Budget for Breakout Costs (costs include all GC Mark-ups)

	Original	Trinity Contract	Fairfax County Cos	Fairfax County Cost
1. Bifold bay doors	137,353	131,924	50%	65,962
2. Added bathroom 116	8,562	6,533	50%	3,267
3. Added janitor's closet 123	5,375	2,430	100%	2,430
4. Gate & card reader to parking area 2 locations	22,320	15,045	50%	7,523
5. Stainless steel counters in kitchen	8,171	8,960	50%	4,480
6. Grill gas line	837	1,017	50%	509
7. Added card readers - 6 total	4,382	18,900	50%	9,450 \$3,150 per reader
8. Corner guards	7,318	n/a	50%	No drywall partitions
9. Wet wall tile	11,739	9,722	50%	4,861 In bathrooms
10. Electric outlets in dining 108 w/TV mounts	570	n/a	50%	
11. Wall fan outlet in Exercise 002	649	60	50%	30
12. Westnet Communication system premium over APS proposal	138,422	56,541	100%	56,541 Westnet revised quote PCO #2 125,820 -69,279 = 56,541
13. Generator sound insulation	4,387	6,000	50%	3,000
14. Stainless steel / solid surface kitchen backsplash	1,735	3,285	50%	1,643
15. LEED V4 Increase in cost / HVAC system	38,000	38,000	100%	38,000 estimate to achieve USGBC LEED Silver cert requirement
16. General Conditions for added design and permit delays		15,784	100%	15,784 2 weeks at \$7,892/week
17. LEED Point Purchase to target silver cert. (IAQ Enhanced Comm.)			100%	38,500
18. Contingency		24,094		18,688
19. Cox / I Net County contract credit				(15,225)
Subtotal	389,820	338,295		255,441

EXHIBIT E

CONSTRUCTION DOCUMENTS

DRAWING INDEX

G-1 - Cover Sheet
G-2 - Abbreviations, Symbols, Notes & Sheet Index

Civil

C1 - Cover Sheet
C2 - Project Narrative
C3 - General Notes and Abbreviations and Legend
C3A - Fairfax County General Notes
C4 - Existing Conditions Plan
C5 - Demolition Plan
C6 - Site Grading Plan
C7 - Dimension Plan
C8 - Utility Plan
C8A - Easement Exhibit Plan
C9 - Pavement Plan
C10 - Fire Coverage Plan
C11 - Utility Profiles & Computations
C12 - Adequate Outfall Analysis
C13 - SWM Narrative & Tysons 1 Inch Computations
C14 - SWM Plan & BMP Sizing
C15 - VRRM Computations
C16 - BMP Cross Sections (1 OF 2)
C17 - BMP Cross Sections (2 OF 2)
C18 - Bioretention Facility Notes
C19 - Dry Swale Notes
C20 - Erosion and Sedimentation Control Notes
C2 -1 - Erosion and Sedimentation Control Details
C2 -2 - Erosion and Sedimentation Control Plan - Phase 1
C23 - Erosion and Sedimentation Control Plan - Phase 2
C24 - Site Details (1 OF 4)
C25 - Site Details (2 OF 4)
C26 - Site Details (3 OF 4)
C27 - Site Details (4 OF 4)
C27A - Gate System Details (1 OF 2)
C27B - Gate System Details (2 OF 2)
C28 - Geotechnical Requirements (1 OF 2)
C29 - Geotechnical Requirements (2 OF 2)
C30 - Correspondence (1 OF 2)
C30A - Correspondence (2 OF 2)
C31A - Existing Vegetation Map
C32 - Tree Preservation Plan
C33 - Tree Preservation Notes & Details
C34 - Landscape Plan
C35 - Landscape Notes & Details (1 OF 2)
C35B - Landscape Notes & Details (2 OF 2)
C36 - Water Quality Impact Assessment
C37 - Appendix A - Sheet 1
C38 - Appendix A - Sheet 2

C39 - Draft Plat

Architectural

A0.00 - Architectural Site Plan
A0.01 - Code Analysis Sheets - Lower Level
A0.02 - Code Analysis Sheets - Main Level
A0.03 - Code Analysis - FCDPWES ADA Standards
A2.01 - Floor Plan - Lower Level
A2.02 - Floor Plan - Main Level
A3.01 - Reflected Ceiling Plans
A4.01 - Roof Plan & Roof Details
A4.02 - Roof Details
A5.01 - Building Elevations
A6.01 - Building Sections
A7.01 - Wall Sections
A7.02 - Wall Sections
A7.03 - Wall Sections
A7.04 - Wall Sections
A8.01 - Equipment Plan - Kitchen/ Dining/ Dayroom, Admin., Bunk Rooms
A8.02 - Equipment Plan - Apparatus Bay Support
A8.03 - Equipment Plan - Apparatus Bay
A8.04 - Equipment Plan - Locker/ Laundry/ Exercise Room, FCPA Facilities
A8.05 - Equipment Plan - Stair, Elevator & Ramps
A9.01 - Window Frame Elevations
A9.02 - Door and Door Hardware Schedule and Details
A9.03 - Frame Details
A9.04 - Partition Types & Finish Schedule
A9.05 - Plastic Laminate and Stainless Steel Millwork Details
A9.06 - Misc. Details
A9.07 - Masonry Details

Structural

S0.01 - Structural Notes & Abbreviations
S0.02 - Schedule of Special Inspections
S1.01 - Foundation Plan & Main Level Framing Plan
S1.02 - Roof Framing Plan
S2.01 - Foundation Sections
S2.02 - Foundations Sections
S3.01 - Framing Sections and Schedules
S3.02 - Sections
S4.01 - Framing Sections
S4.02 - Framing Sections

Mechanical

M0.01 - Mechanical Schedules & Legends
M0.02 - Mechanical Schedules
M1.01 - Mechanical Ductwork Plan - Lower Level
M1.02 - Mechanical Ductwork Plan - Main Level
M1.03 - Mechanical Roof Plan
M2.01 - Mechanical Piping Plan - Lower Level
M2.02 - Mechanical Piping Plan - Main Level
M3.01 - Mechanical Details
M4.01 - Mechanical Controls
M5.01 - Kitchen Equipment
M5.02 - Kitchen Equipment
M5.03 - Kitchen Equipment

M5.04 - Kitchen Equipment

Plumbing

P0.01 - Plumbing Legend, Notes, & Schedules
P1.01 - Plumbing Foundation Plan
P2.01 - Plumbing Sanitary Floor Plan - Lower Level
P2.02 - Plumbing Sanitary Floor Plan - Main Level
P3.01 - Plumbing Domestic Water Floor Plan - Lower Level
P3.02 - Plumbing Domestic Water Floor Plan - Main Level
P4.01 - Plumbing Enlarged Plans
P5.01 - Plumbing Sanitary & Storm Riser Diagrams
P5.02 - Plumbing Domestic Water & Gas Riser Diagrams
P6.01 - Plumbing Details

Electrical

E0.01 - Electrical Legend, Schedules, And Details
E0.02 - Electrical Fire Alarm System Details
E0.03 - Electrical Access Control Details
E0.04 - Electrical Details
E1.01 - Electrical Lighting Plan - Lower Level
E1.02 - Electrical Lighting Plan - Main Level
E2.01 - Electrical Power Plan - Lower Level
E2.02 - Electrical Power Plan - Main Level
E2.03 - Electrical Power Plan - Roof Plan
E3.01 - Electrical Low Voltage Plan - Lower Level
E3.02 - Electrical Low Voltage Plan - Main Level
E4.01 - Electrical Power Diagram
E4.02 - Electrical Panelboard Schedules
E5.01 - Electrical Site Plan

Fire Suppression

FS0.01 - Fire Suppression Legend, Notes & Details

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SPECIFICATIONS

VOLUME 1

DIVISION 00 GENERAL CONDITIONS OF THE BUILDING CONSTRUCTION CONTRACT

Section A - Information for Bidders
Section B - Form of Bid
Section C - Owner-Contractor Agreement
Section D - General Conditions
Section E - Supplemental / Special Conditions

DIVISION 01 GENERAL REQUIREMENTS

Section 01 10 00 - Summary of Work
Section 01 10 00.01 - General Paragraphs
Section 01 15 00 - Allowances
Westnet Quote
Westnet Drawings
Section 01 23 10 - Unit Prices
Section 01 25 00 - LEEDv4 Project Documentation for New Construction
LEED v4 Checklist

LEED v4 Materials and Resources Form
Section 01 29 00 - Payment Procedures
Section 01 31 00 - Preconstruction Conference and Preconstruction Submittals
Section 01 31 19 - Progress Meetings
Section 01 32 00 - Construction Schedule
Section 01 32 33 - Project Reporting and Photographs
Section 01 35 23 - Safety and Security
Section 01 40 00 - Testing and Quality Control
Section 01 41 00 - Coordination, Field Engineering and Regulatory Requirements
Section 01 45 00 - Indoor Air Quality Management
Section 01 52 00 - Temporary Facilities, Utilities, Access & Construction Aids
Section 01 52 40 - Construction Waste Management
Section 01 57 19 - Environmental Protection
Section 01 73 10 - Cutting and Patching
Section 01 78 00 - Project Closeout & Closeout Submittals
Section 01 78 23 - Operating and Maintenance Data and Instructions
Section 01 78 39 - As-Built Documentation
Section 01 79 00 - Equipment Demonstration / Instruction
Section 01 91 13 - General Commissioning Requirements

DIVISION 02 EXISTING CONDITIONS

Section 02 32 00 - Subsurface Exploration
GeoTechnical Report (For Information Only)

DIVISION 03 CONCRETE

Section 03 30 00 - Cast in Place Concrete
Section 03 45 00 - Precast Architectural Concrete
Section 03 60 00 - Non-Shrink Grout

DIVISION 04 MASONRY

Section 04 09 00 - Unit Masonry Accessories
Section 04 10 00 - Mortar
Section 04 20 00 - Unit Masonry

DIVISION 05 METALS

Section 05 12 00 - Structural Steel
Section 05 21 00 - Steel Joists and Joist Girders
Section 05 31 00 - Steel Deck
Section 05 40 00 - Cold-Formed Metal Framing
Section 05 50 00 - Metal Fabrications

DIVISION 06 WOOD

Section 06 10 00 - Rough Carpentry
Section 06 40 00 - Architectural Woodwork
Section 06 41 00 - Custom Plastic Laminate Faced Casework

DIVISION 07 THERMAL AND MOISTURE PROTECTION

Section 07 14 16 - Cold Fluid Applied Waterproofing
Section 07 21 00 - Building Insulation
Section 07 26 50 - Liquid-Applied Vapor Barrier
Section 07 41 50 - Pre-Finished Metal Wall Panels
Section 07 53 23 - EPDM Membrane Roofing

Section 07 60 00 - Flashing & Sheet Metal
Section 07 83 00 - Roof Hatches
Section 07 84 10 - Through-Penetration Firestop Systems
Section 07 90 00 - Sealants

DIVISION 08 DOORS & WINDOWS

Section 08 10 00 - Metal Doors and Frames
Section 08 21 00 - Wood Doors
Section 08 35 13 - Electrically Operated Four-Fold Doors
Section 08 40 00 - Aluminum Entrances and Storefronts
Section 08 52 00 - Aluminum Hung Windows
Section 08 71 00 - Finish Hardware
Section 08 80 00 - Glazing
Section 08 91 00 - Stationary Blade Wall Louvers

DIVISION 09 FINISHES

Section 09 11 00 - Non-Load Bearing Framing Systems
Section 09 25 00 - Gypsum Wallboard
Section 09 28 00 - Cement Board
Section 09 31 00 - Ceramic Tile
Section 09 51 00 - Acoustical Tile Ceiling
Section 09 66 00 - Resilient Flooring and Base
Section 09 68 00 - Carpet Tile
Section 09 90 00 - Painting

DIVISION 10 SPECIALTIES

Section 10 11 00 - Visual Display Boards
Section 10 12 00 - Display Case
Section 10 14 00 - Interior Signs
Section 10 21 00 - Solid Phenolic Partitions
Section 10 43 00 - Building and Entrance Sign Identification Letters
Section 10 44 00 - Fire Extinguishers & Cabinets
Section 10 50 30 - Turnout Ready Gear Lockers
Section 10 50 50 - Metal Lockers & Locker Benches
Section 10 56 13 - Metal Shelving Units
Section 10 75 16 - Flagpoles
Section 10 80 00 - Toilet Accessories

DIVISION 11 EQUIPMENT

Section 11 40 00 - Food Service and Laundry Equipment
Section 11 50 30 - Apparatus Bay & Support Equipment

DIVISION 12 FURNISHINGS

Section 12 20 00 - Window Treatments
Section 12 36 60 - Solid Surface Countertops
Section 12 48 40 - Entrance Floor Mats and Frames
Section 12 93 13 - Bicycle Racks

DIVISION 14 CONVEYING SYSTEMS

Section 14 21 00 - Hydraulic Elevator

VOLUME 2

DIVISION 21 FIRE SUPPRESSION

Section 21 04 00 - General Requirements for Fire Suppression
Section 21 13 13 - Wet-Pipe Sprinkler Systems

DIVISION 22 PLUMBING

Section 22 04 00 - General Requirements for Plumbing
Section 22 05 23 - General-Duty Valves for Plumbing Piping
Section 22 05 29 - Hangers and Supports for Plumbing Piping and Equipment
Section 22 05 53 - Painting and Identification for Plumbing Piping and Equipment
Section 22 07 00 - Plumbing Insulation
Section 22 08 00 - Commissioning of Plumbing systems
Section 22 11 16 - Domestic Water Piping
Section 22 11 19 - Domestic Water Piping Specialties
Section 22 11 23 - Domestic Water Pumps
Section 22 13 16 - Sanitary Waste and Vent Piping
Section 22 13 19 - Sanitary Waste Piping Specialties
Section 22 14 13 - Facility Storm Drainage Piping
Section 22 14 23 - Storm Drainage Piping Specialties
Section 22 14 29 - Sump Pumps
Section 22 15 13 - General-Service Compressed-Air Piping
Section 22 15 19 - General-Service Air Compressors and Receivers
Section 22 16 13 - Facility Natural-Gas Piping
Section 22 34 00 - Fuel-Fired, Domestic - Water Heaters
Section 22 40 00 - Plumbing Fixtures
Section 22 47 00 - Drinking Fountains and Water Coolers

DIVISION 23 MECHANICAL

Section 23 00 10 - HVAC General Requirements
Section 23 01 00 - Operation and Maintenance of HVAC Systems
Section 23 05 00 - Common Work Results for HVAC
Section 23 05 48 - Vibration Controls for HVAC Piping and Equipment
Section 23 05 53 - Identification for HVAC Piping and Equipment
Section 23 05 93 - Testing, Adjusting, and Balancing for HVAC
Section 23 07 00 - HVAC Insulation
Section 23 08 00 - Commissioning of HVAC Systems
Section 23 09 00 - Instrumentation and Control for HVAC
Section 23 09 93 - Sequence of Operation for HVAC Controls
Section 23 20 00 - HVAC Piping and Pumps
Section 23 30 00 - HVAC Air Distribution
Section 23 50 00 - Central Heating Equipment
Section 23 70 00 - Central HVAC Equipment
Section 23 80 00 - Decentralized HVAC Equipment

DIVISION 26 ELECTRICAL

Section 26 05 00 - Common Work Results for Electrical
Section 26 05 19 - Low Voltage Electrical Power Conductors and Cables
Section 26 05 23 - Control Voltage Electrical Power Cables
Section 26 05 26 - Grounding and Bonding for Electrical Systems
Section 26 05 33 - Raceway and Boxes for Electrical Systems
Section 26 05 36 - Cable Management for Electrical Systems
Section 26 05 43 - Underground Ducts and Raceways for Electrical Systems
Section 26 05 53 - Identification for Electrical Systems

Section 26 05 73 - Overcurrent Protective Device Coordination Study
Section 26 08 00 - Commissioning of Electrical Systems
Appendix A Pre-Functional Checklists
Appendix B Functional Performance Verification
Appendix C Controls System
Section 26 09 23 - Lighting Control Devices
Section 26 20 00 - Low-Voltage Electrical Distribution
Section 26 24 16 - Panelboards
Section 26 27 26 - Receptacles
Section 26 28 13 - Fuses
Section 26 28 16 - Enclosed Switches and Circuit Breakers
Section 26 29 00 - Low-Voltage Controllers
Section 26 32 13 - Engine Generators
Section 26 36 00 - Transfer Switches
Section 26 41 00 - Lightning Protection System
Section 26 43 00 - Surge Protection Device (SPD)
Section 26 50 00 - Lighting
Section 26 60 13 - Electric Service

DIVISION 27 COMMUNICATIONS

Section 27 05 00 - Common Work Results for Communications
Section 27 05 26 - Grounding and Bonding for Communication Systems
Section 27 05 28 - Pathways for Communications Systems
Section 27 05 53 - Identification for Communications Systems
Section 27 20 00 - Data Communications

DIVISION 28 SECURITY

Section 28 05 00 - Common Work Results for Electronic Safety and Security
Section 28 05 26 - Grounding and Bonding for Electronic Safety and Security Systems
Section 28 05 53 - Identification for Electronic Safety and Security
Section 28 10 00 - Access Control
Section 28 11 16 - Cabinets and Enclosures for Electronic Security
Section 28 20 00 - Electronic Surveillance (CCTV)
Section 28 31 00 - Fire Detection and Alarm

DIVISION 31 EARTHWORK

Section 31 00 00 - Earthwork and Grading

ADMINISTRATIVE - 6

Authorization to Advertise a Public Hearing on a Proposal to Abandon and Convey a Portion of a Frontage Road (FR 953) (Dranesville District)

ISSUE:

Authorization of a public hearing on a proposal to abandon and convey a portion of an unnamed frontage road (FR 953).

RECOMMENDATION:

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

TIMING:

The Board should take action on July 28, 2020, to provide sufficient time to advertise the public hearing for September 15, 2020, at 4:30 p.m.

BACKGROUND:

The applicants, Evermay Community Association and Dunaway Racquet Club, Inc., are requesting that a portion of a frontage road (FR 953) be abandoned under Virginia Code §33.2-909 and conveyed to the Dunaway Racquet Club, Inc., pursuant to Virginia Code §33.2-924. The subject portion of a frontage road (FR 953), just north of the intersection of Dunaway Drive (Route 7132) and Dolley Madison Boulevard (Route 123), is improved and is in the VDOT Secondary System of Highways.

This frontage road (FR 953) was originally dedicated in 1979 as a public road as part of the Section 7-A Evermay Subdivision but currently does not and would not provide vehicular access to any of the surrounding lots. The adjacent property owner, to whom the right-of-way would have typically reverted to after the abandonment (and vacation), prefers not to receive the addition of the subject right-of-way. Consequently, the applicants are requesting that if the abandonment is approved, the abandoned portion be conveyed to the applicants so that it can be incorporated into the community recreation facilities property in the subdivision. The Facilities Management Department has evaluated the value of the portion of the frontage and the applicants will be paying this consideration for the conveyance.

Board Agenda Item
July 28, 2020

Traffic Circulation and Access

The abandonment and conveyance will have no long-term impact on pedestrian, transit, or vehicle circulation and access.

Easements

The project manager has certified that all easement requirements for the project have been met.

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

FISCAL IMPACT:

The portion of the frontage road (FR 953) to be abandoned and conveyed will be purchased by the Evermay Community Association and the Dunaway Racquet Club, Inc. for market value (\$2,348.00).

ENCLOSED DOCUMENTS:

Attachment I: Application Letter
Attachment II: Notice of Intent to Abandon and Convey
Attachment III: Order of Abandonment and Conveyance
Attachment IV: Metes and Bounds Description
Attachment V: Abandonment and Conveyance Plat
Attachment VI: Vicinity Map
Attachment VII: Resolution to Convey

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Jeff Hermann, Division Chief, FCDOT
Marc Dreyfuss, FCDOT
Michelle Guthrie, FCDOT
Jeffrey Edmondson, FCDOT

ASSIGNED COUNSEL:

Pamela K. Peltó, Assistant County Attorney

EVERMAY COMMUNITY ASSOCIATION

Ron Hutchinson, President
P.O. Box 52
McLean, VA 22101

DUNAWAY RACQUET CLUB, INC.

Sattar Mansi, President
6292 Dunaway Court
McLean, VA 22101

VIA HAND DELIVERY AND E-MAIL (Michael.garcia3@fairfaxcounty.gov)

April 18, 2019

Michael W. Garcia, AICP
Transportation Planner
Transportation Planning Division
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22030-2897

Re: Transfer of Ownership of Stub Road in Section 7 of Evermay Subdivision

Dear Mr. Garcia:

This letter is a joint request by the Evermay Community Association (ECA) and its sister organization, the Dunaway Racquet Club, Inc. (DRC), for the Fairfax County Department of Transportation (Fairfax County) to transfer ownership and control of a small stub road located in Section 7 of the Evermay subdivision to DRC. ECA and DRC request that this transfer be processed as an abandonment action pursuant to Virginia Code § 33.2-909.

The Evermay subdivision consists of 159 homes in seven sections. Sections 1-6 with a total of 127 homes, are contiguous with one another and are located on the south side of Dolley Madison Boulevard/Route 123. Section 7 of the Evermay subdivision consists of 32 homes that are on the north side of Dolley Madison Boulevard/Route 123 and are physically separated from Sections 1-6. Section 7 is contiguous to Clemyjontri Park.

ECA is the homeowner association that represents all 159 homes located in all seven sections of the Evermay subdivision and is the entity that has exclusive authority for administering and enforcing the restrictive covenants that are applicable to all seven sections of the Evermay subdivision. ECA does not own any community property but has a permanent easement at the south side entrance to Sections 1-6 of the Evermay subdivision and at the north side entrance to Section 7 for installation and maintenance of Evermay signage.

Within Section 7 is an outdoor tennis court facility and surrounding recreational land that is common area property deeded exclusively to DRC on behalf of the 32 homes located within Section 7. DRC was established to administer this common area property within Section 7 for

Michael W. Garcia
April 18, 2019
Page 2

the benefit of Section 7 homeowners. Unlike ECA, DRC is already set up to own common area property and is the appropriate entity to take ownership of the stub road property that is the subject of our request.

The small piece of land which is the subject of this request is a stub road located at the entrance to Section 7 of the Evermay subdivision and is shown on the recordable plat included as Exhibit 2 to this letter and in the vicinity map/Fairfax County assessment map included as Attachment 6 to this letter. This stub road is also shown circled in red on the VDOT maps which are included as Attachment 2 to this letter. This stub road is contiguous to Clemyjontri Park. This stub road is contained entirely within the boundaries of the Evermay subdivision and serves no purpose, has never been used for any purpose and will serve no purpose in the future.

The master plan for Clemyjontri Park approved by Fairfax County states that the stub roads in Evermay that are contiguous to the park will not be utilized for any purpose, including any access to Clemyjontri Park.

Nor is there any possibility that this small stub road could be used in connection with any widening of Dolley Madison Boulevard/Route 123. Not only is the stub road entirely within the boundaries of the Evermay subdivision and could not be affected by any such widening, the issue of widening Dolley Madison Boulevard/Route 123 was resolved in the negative many years ago as is detailed in a letter dated June 16, 2005 (Attachment 7 hereto) from ECA to Supervisor Joan DuBois, the Dranesville supervisor at that time. As is set forth in ECA's June 16, 2005 letter, the Chairman of the Fairfax County Board of Supervisors advised VDOT of the County's opposition to the proposed widening of Dolley Madison Boulevard and requested its removal from the 2010 State Highway Plan. As further indicated in ECA's 2005 letter VDOT agreed and removed the plan for widening Dolley Madison Boulevard/Route 123 from the State Highway Plan, including removal from VDOT's 2025 State Highway Plan to correspond to the NOVA 2020 regional plan which also does not provide for any such widening.

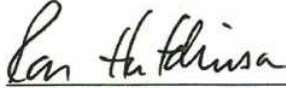
ECA has been pursuing transfer of ownership of this stub road for over a decade. In 2005 at the request of ECA the supervisor for the Dranesville District at that time, Supervisor Joan DuBois, committed to ECA that Fairfax County could have no interest in the continued existence of this stub road after the Phase II construction of the southern part of Clemyjontri Park had been completed. Phase II construction of Clemyjontri Park has now been completed. There is no reason to wait any longer to transfer the stub road to ownership and control of DRC. The Director of Planning and Development of the Fairfax County Park Authority, David Bowden and the current Dranesville supervisor, Supervisor John Foust, agree.

Therefore, ECA and DRC jointly request that Fairfax County start the process of transferring ownership to DRC of this stub road. This joint request has been reviewed by the Virginia Department of Transportation (VDOT) who have determined that this transfer can proceed as an abandonment pursuant to Virginia Code § 33.2-909 as a road in the secondary system.

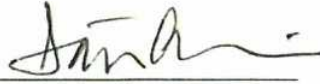
Michael W. Garcia
April 18, 2019
Page 3

We look forward to working with Fairfax County to complete transfer of ownership of this stub road to DRC.

Respectfully submitted,



Ron Hutchinson
President
Evermay Community Association



Sattar Mansi
President
Dunaway Racquet Club, Inc.

Attachments:

- 1 - \$150 Processing Fee;
- 2 - Recordable plat of area to be abandoned showing location of all known utilities and County assessment map reference number;
- 3 - Metes and bounds description of area to be abandoned;
- 4 - Combined notice of public hearing;
- 5 - Order of Abandonment;
- 6 - Vicinity map/Fairfax County assessment map;
- 7 - June 2005 ECA Letter to Supervisor Dubois.

cc: (w/out attachments)

Mr. David Bowden
Director Planning and Development
Fairfax County Park Authority

Supervisor John Foust
Dranesville District

NOTICE OF INTENT TO ABANDON AND CONVEY**FR 953****DRANESVILLE DISTRICT,
Fairfax County, Virginia**

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on September 15, 2020, at 4:30 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, VA, pursuant to Virginia Code Ann. § 15.2-2204 on the proposed abandonment of a public road known as FR 953, from Route 7132 to boundary of Clemyjontri Park, a distance of 134 feet, pursuant to Virginia Code § 33.2-909 and § 33.2-913. At the same time and place, the Board of Supervisors will concurrently hold a public hearing on a proposal to convey the right-of-way so abandoned to Dunaway Racquet Club, Inc, a Virginia non-stock corporation. The road is located on Tax Map 31-1, and is described and shown on the metes and bounds schedule and plat prepared by DeLashmutt Associates, Ltd., dated March 19, 2020, both of which are on file with the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600.

DRANESVILLE DISTRICT.

ORDER OF ABANDONMENT AND CONVEYANCE

FR 593

DRANESVILLE DISTRICT
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 15th day of September, 2020, it was duly moved and seconded that:

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

WHEREFORE, BE IT ORDERED:

That FR 953 from Route 7132 to boundary of Clemyjontri Park, a distance of 134 feet, located on Tax Map 31-1, and described on the plat and metes and bounds schedule prepared by De Lashmutt Associates, Ltd. dated March 19, 2020, which is attached hereto and incorporated herein, be and the same is hereby abandoned as a public road pursuant to Virginia Code §33.2-909 and §33.2-913 and shall be conveyed to Dunaway Racquet Club, Inc, a Virginia non-stock corporation ("DRC") pursuant to a Deed of Conveyance to be executed between the Board of Supervisors of Fairfax County, Virginia, a body corporate and politic and DRC.

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

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

De Lashmutt Associates, Ltd.
CERTIFIED ENGINEERS AND LAND SURVEYORS

1120 S. GEORGE MASON DRIVE
 Area Code (703) 486-8300

ARLINGTON, VIRGINIA 22204
 FAX (703) 521-3101



March 19, 2020

Description of A Portion of Section 7-A Evermay

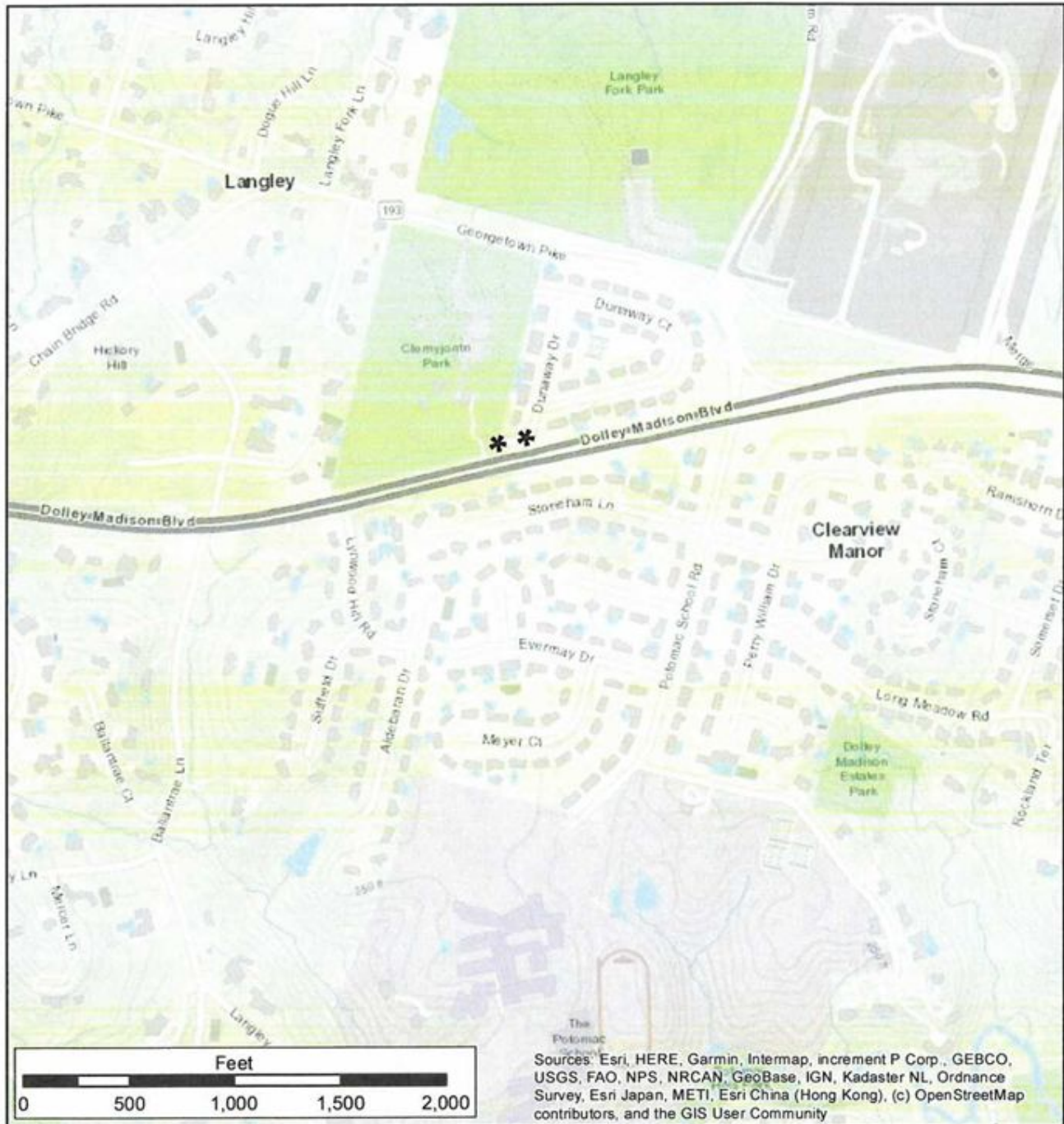
D.B. 5236 Pg. 218

Dranesville District

Fairfax County, Virginia

Beginning at a point being in the Westerly line of Dunaway Drive - State Route 7132 (25 feet from the centerline thereof) said point lying N 23° 28' 10" E ~ 17.00 feet (measured along said Westerly line of Dunaway Drive) from the intersection of the Westerly line of Dunaway Drive - State Route 7132 (25 feet from the centerline thereof) and the Northerly line of Dolly Madison Blvd. - State Route 123 (a right of way of varying width), thence departing from the Westerly right of way line of Dunaway Drive and running through the existing Right-of-Way of State Route F-953, S 86° 37' 43" W ~ 133.37 feet to a point in the Easterly line of the property of the Fairfax County Park Authority being Lot 11B Langley; thence running with the Easterly line of Lot 11B N 23° 28' 20" E ~ 38.46 feet to a point in the Southerly line of Lot 1 Section 7A Evermay as the same appears duly platted and recorded in Deed Book 5236 at Page 218 among the land records of Fairfax County, Virginia; thence running with the southerly line of Lot 1 Section 7A Evermay N 86° 21' 04" E ~ 112.30' to a P.C. of a curve to the left; thence continuing along the curve to the left 38.41 feet, which curve has a radius of 35.00 feet, the chord of which arc bears N 54° 54' 37" E ~ 36.51' to the P.T., a point in the Westerly line of Dunaway Drive - State Route 7132 (25 feet from the centerline thereof); thence continuing with the Westerly line of Dunaway Drive S 23° 28' 10" W ~ 60.58 feet to the point of beginning; containing 4,696 square feet of land, more or less.

FR 953 Right-of-Way Abandonment/Conveyance Dranesville District



Tax Map 31-1



*** Symbol Denotes Area of Right-of-Way to be Abandoned**

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 the 15th day of September, 2020, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Board of Supervisors has approved the abandonment of part of FR 953 located between Tax Map 31-1((18)) Parcel 1 and Dolley Madison Blvd (Route 123), described and shown on the metes and bounds schedule dated March 19, 2020, and abandonment plat dated March 19, 2020, both prepared by De Lashmutt Associates, Ltd,

WHEREAS, the Evermay Community Association and Dunaway Racquet Club, Inc., (Applicant) seek to acquire the fee simple interest in the parcel created by said abandonment for fair market value consideration,

WHEREAS, the County has no current or planned use for the parcel created by the abandonment,

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 fair market value the real property as described above to the Applicant.

NOW, THEREFORE, upon public hearing duly advertised according to law, it is **RESOLVED** that, in consideration of the fair market value of the parcel, the County Executive or Deputy County Executive is hereby authorized to execute all necessary documents to convey the real property described above to the Applicant.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

ADMINISTRATIVE - 7

Supplemental Appropriation Resolution AS 21013 for the Department of Housing and Community Development to Accept Grant Funding from the U.S. Department of Housing and Urban Development as a Result of Additional Funding Made Available Through the Emergency Solutions Grants to Address the COVID-19 Pandemic as Part of the CARES Act

ISSUE:

Board approval of Supplemental Appropriation Resolution AS 21013 for the Department of Housing and Community Development to accept a second allocation of Emergency Solutions Grants funding in the amount of \$6,581,782. This funding is available as a result of the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed by the President on March 27, 2020 and distributed to entities receiving Emergency Solutions Grants funding. The planned uses of the Emergency Solutions Grants funding were incorporated into the Department of Housing and Community Development (HCD) Fairfax County's Citizen Participation Plan and Fairfax County's Consolidated Plan One-Year Action Plan for FY 2020 and approved by the Board of Supervisors on May 12, 2020. The grant period for the supplemental Emergency Solutions Grants ends September 30, 2022. When grant funding expires, the County is under no obligation to continue funding the program. No Local Cash Match is required. 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 21013 to accept funding from the U.S. Department of Housing and Urban Development for the Emergency Solutions Grants. There are no new grant positions associated with this award and 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. This includes authorization and signature of the certifications and federal funding application forms (SF-424), as required by the U.S. Department of Housing and Urban Development (HUD).

TIMING:

Board of Supervisors' approval is requested on July 28, 2020.

BACKGROUND:

An Action Plan is required by HUD as a condition for May 7, receiving Community Development Block Grant, Emergency Solutions Grants and HOME Investment Partnerships Programs funding. The Board of Supervisors approved Fairfax County's Consolidated Plan One-Year Action Plan for FY 2020 on 2019, which was approved by HUD. The Action Plan identifies and plans for Fairfax County's overall needs for affordable housing, community service, homelessness assistance, community development, neighborhood preservation and revitalization, employment and economic opportunity services, as well as the resources and strategies used to meet these needs, to ultimately benefit low- and moderate-income households throughout the community.

The Board of Supervisors approved amendments to Fairfax County's Consolidated Plan One-Year Action Plan for FY 2020 on May 12, 2020. The amendments included the new federal ESG coronavirus response funding and its planned uses (see Attachment 1). The federal Emergency Solutions Grants funding was awarded through two allocations. The first allocation of funding of \$1,699,586 was awarded on April 2, 2020. The second allocation of \$6,581,782 was awarded on June 9, 2020. The total Emergency Solutions Grants funding awarded through the CARES Act is \$8,281,368.

The approved uses of the Emergency Solutions Grants CARES Act funding apply to both allocations and will have no adverse impact on projects and activities that were already a part of the Consolidated Plan One-Year Action Plan for FY 2020 or are included in the Consolidated Plan One-Year Action Plan for FY 2021.

Use of Emergency Solutions Grants Funds

It is recommended that the additional \$6,581,782 in Emergency Solutions Grants CARES Act funds be used to support the same uses presented and approved by the Board of Supervisors on May 12, 2020:

- expansion of shelter capacity by using hotels, which is the primary need and eligible activity that will be prioritized;
- additional supplies, equipment, and transportation services needed to operate this expanded shelter capacity; and
- other eligible activities permitted by HUD, including administrative costs, if needed.

As previously with the first allocation, remaining balances or additional allocations will be used for the same purposes in FY 2021 or until the funding period concludes. The

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goal is to respond to the current and emerging needs related to the coronavirus and ensure that people at risk of or experiencing homelessness, as defined by HUD, can be safely served.

FISCAL IMPACT:

Grant funding from the U.S. Department of Housing and Urban Development in the amount of \$6,581,782 will be appropriated to quickly prevent, prepare for, and respond to coronavirus. 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 2021. This grant does not allow the recovery of indirect costs.

CREATION OF NEW POSITIONS:

No new grant positions will be created.

ENCLOSED DOCUMENTS:

Attachment 1 – Award Letter from U.S. Dept. of Housing and Urban Development
Attachment 2 – Supplemental Appropriation Resolution AS 21013

STAFF:

Tisha Deeghan, Deputy County Executive
Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)
Thomas M. Barnett, Deputy Director, HCD, Office to Prevent and End Homelessness
Teresa Lepe, Deputy Director, HCD, Real Estate Finance & Development
Jamie Ergas, HCD, Office to Prevent and End Homelessness



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

June 9, 2020

The Honorable Jeff Mckay
Chairman, Board of Supervisors of Fairfax County
12000 Government Center Parkway
Suite 530
Fairfax, VA 22035-0001

Dear Chairman, Board of Supervisors Mckay:

I am pleased to inform you of the second allocation of Emergency Solutions Grants (ESG) Program funds HUD is awarding to your jurisdiction in the amount of \$6,581,782, as authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136. These special ESG-CV funds are to be used to prevent, prepare for, and respond to the coronavirus pandemic (COVID-19) among individuals and families who are homeless or receiving homeless assistance; and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts of COVID-19.

President Trump signed the CARES Act on March 27, 2020 to help the Nation respond to the coronavirus outbreak. The CARES Act made available an additional \$4 billion in ESG-CV funds to supplement the Fiscal Year (FY) 2020 ESG funding provided under the Further Consolidated Appropriations Act, 2020 (Public Law 116-94). Of this amount, the Department previously allocated \$1 billion for ESG-CV grants based on the FY 2020 ESG formula and set aside \$40 million for technical assistance.

An additional \$2.96 billion in funding for ESG-CV grants is now being allocated directly to States or units of local government by a separate formula developed by the Secretary. The formula approved by the Secretary includes variables that quantify the population currently experiencing and at risk of homelessness, including:

- Total Homeless Population
- Unsheltered Homeless Population
- Total Very Low Income (VLI) Renters
- VLI Renters that are Overcrowded or without a Kitchen or Plumbing

The variables were further weighted to adjust for fair market rents. HUD's formula methodology for this second allocation can be found at https://www.hud.gov/sites/dfiles/CPD/documents/ESG_CARES_Act_Round_2_Allocation_Methodology_rev.pdf

As with the first allocation, this second allocation of ESG-CV funds is subject to the following flexibilities and conditions provided by the CARES Act:

- The funds may be used to cover or reimburse allowable costs incurred by a State or locality before the award of funding (including prior to the signing of the CARES Act) to prevent, prepare for, and respond to COVID-19;
- The funds are not subject to the spending cap on emergency shelter and outreach under 24 CFR 576.100(b)(1);
- Up to 10 percent of funds may be used for administrative costs, as opposed to 7.5 percent as provided by 24 CFR 576.108(a);
- The funds are exempt from the ESG match requirements, including 24 CFR 576.201;
- The funds are not subject to the consultation and citizen participation requirements that otherwise apply to the Emergency Solutions Grants, however each recipient must publish how its allocation has and will be used, at a minimum, on the Internet at the appropriate Government web site or through other electronic media;
- The funds may be used to provide homelessness prevention assistance (as authorized under 24 CFR 576.103 or subsequent HUD notices) to any individual or family who does not have income higher than HUD's Very Low-Income Limit for the area and meets the criteria in paragraphs (1)(ii) and (1)(iii) of the "at risk of homelessness" definition in 24 CFR 576.3;
- That recipients may deviate from applicable procurement standards when using these funds to procure goods and services to prevent, prepare for, and respond to coronavirus, notwithstanding 24 CFR 576.407(f) and 2 CFR 200.317-200.326;
- While we encourage you to offer treatment and supportive services when necessary to assist vulnerable homeless populations, individuals and families experiencing homelessness must not be required to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, housing, or other services for which these funds are used, notwithstanding 24 CFR 576.401(e).

In addition, the Act authorizes the Secretary to grant waivers of and specify alternative requirements for statutes and regulations the Secretary administers in connection with the use of ESG funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). These waivers and alternative requirements can be issued when necessary to expedite and facilitate the use of funds to prevent, prepare for, and respond to coronavirus. HUD has made available the following waivers that are applicable to ESG-CV funding:

- CPD Memo: Availability of Additional Waivers for CPD Grant Programs to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19 (5/22/2020)
 - **Waiver Applicability to ESG-CV** - Made all ESG waivers provided in 3/31/2020 memo applicable to ESG-CV

- **Housing Stability Case Management** – Original waiver (see below) is extended an additional 3 months beginning on the date of the memorandum (5/22/2020)
- CPD Memo: Availability of Waivers of CPD Grant Program and Consolidated Plan Requirements to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19 for CoC, ESG, and HOPWA (3/31/2020)
 - **HMIS Lead Activities** - Allows any recipient to use ESG funds to pay costs of upgrading or enhancing its local HMIS to incorporate data on ESG Program participants and ESG activities related to COVID-19
 - **Re-evaluations for Homelessness Prevention Assistance** - For up to the 2-year period beginning on the date of the waiver memorandum (3/31/2020), the required frequency of re-evaluations for homelessness prevention assistance under section 576.401(b) is waived
 - **Housing Stability Case Management** - For the 2-month period beginning on the date of the waiver memorandum (3/31/2020), the required frequency of housing stability case management for homelessness prevention and rapid re-housing assistance is waived
 - **Restriction of Rental Assistance to Units At or Below FMR** - For the 6-month period beginning on the date of the waiver memorandum (3/31/2020), the FMR restriction is waived for any individual or family receiving Rapid Re-housing or Homelessness Prevention assistance who executes a lease for a unit

The Department is developing a notice that will further lay out the CARES Act provisions and other waivers and requirements to enable swift implementation of ESG-CV grants. This notice and any subsequent notices of waivers and alternative requirements will be made available on HUD's website and distributed to recipients. The Department will also support recipients with technical assistance.

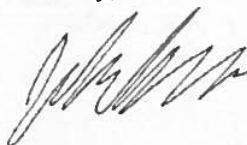
As your jurisdiction continues to develop its plan to use these grant funds, HUD encourages approaches that prioritize the unique needs of persons experiencing homelessness and the development of partnerships between all levels of government and the private for-profit and non-profit sectors. Your jurisdiction should coordinate with State and local health authorities as you support state or local pandemic response. HUD encourages you to share successes that may help other recipients. Like other supplemental funding, ESG-CV grants are subject to oversight and tracking. We look forward to working with you to achieve the best possible outcomes for people experiencing and at risk of homelessness and to prevent fraud, waste, and abuse.

Importantly, proper reporting in the Integrated Disbursement and Information System (IDIS) and Homeless Management Information Systems (HMIS) is critical to ensuring recipients are complying with program requirements and policies, providing demographic and income information about the persons who benefit from funded activities, and allowing HUD to monitor recipients. Your jurisdiction's ongoing attention is essential to ensuring complete and accurate reporting of performance measurement data.

All ESG recipients must ensure they maintain active Dun and Bradstreet Numbering System (DUNS) numbers in the System for Award Management (SAM) system. Entities must have an active and unexpired DUNS before execution of grant agreements to avoid delays in the obligation of funds which will delay your ability to drawdown funds in IDIS. Recipients are required to maintain an active SAMs registration by re-activating their DUNS number annually in the SAM system for the entire drawdown period of their grants. DUNS numbers can be registered and renewed each year at the following website: <https://www.sam.gov/SAM/>.

HUD's Office of Community Planning and Development (CPD) is looking forward to working with your jurisdiction to successfully meet the urgent and complex challenges faced by our communities. If you or your staff have questions, please contact your local CPD Field Office Director or CPDQuestionsAnswered@hud.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John Gibbs', with a stylized, cursive flourish at the end.

John Gibbs
Acting Assistant Secretary
for Community Planning and Development
U.S. Department of Housing and Urban Development

SUPPLEMENTAL APPROPRIATION RESOLUTION AS 21013

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in Conference Room 11 of the Government Center at 12000 Government Center Parkway, Fairfax Virginia on July 28, 2020, 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 2021, the following supplemental appropriation is authorized, and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund: 500-C50000, Federal-State Grant Fund

Agency: H3838, Department of Housing and Community Development

Grants: 1CV3801-2020, Emergency Solutions Grant COVID-19 \$6,581,782

Reduce Appropriation to:

Agency: G8787, Unclassified Administrative Expenses \$6,581,782

Fund: 500-C50000, Federal-State Grant Fund

Source of Funds: U.S. Department of Housing and Urban Development, \$6,581,782

A Copy - Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

ADMINISTRATIVE - 8

Authorization to Advertise a Public Hearing on a Proposal to Prohibit Through Truck Traffic on Bull Run Post Office Road (Sully District)

ISSUE:

Board authorization to advertise a public hearing to be held on Tuesday, September 15, 2020, at 4:00 p.m., for the purpose of endorsing the following road to be included in the Residential Traffic Administration Program (RTAP) for a Through Truck Traffic Restriction:

- Bull Run Post Office Road between Route 29 (Lee Highway) in Fairfax County and Braddock Road in Loudoun County

RECOMMENDATION:

The County Executive recommends the Board authorize advertisement of a public hearing for the purpose of endorsing Bull Run Post Office Road between Route 29 (Lee Highway) and Braddock Road (Attachment II) to be included in the RTAP for a Through Truck Traffic Restriction.

TIMING:

The Board should take action on July 28, 2020, to provide sufficient time for advertisement of the proposed public hearing scheduled for September 15, 2020, at 4:00 p.m.

BACKGROUND:

In August 2019, Supervisor Kathy Smith requested the Virginia Department of Transportation (VDOT) to restore a Through Truck Restriction on Bull Run Post Office Road. The restriction had been rescinded and signage removed by VDOT due to significant changes to the original road alignment that resulted in a noncontinuous route connecting the original terminating points of the restriction. VDOT has been unable to restore the requested restriction and indicated that a new resolution would need to be submitted by Fairfax County to re-start the Through Truck Restriction process.

The proposed restricted route on Bull Run Post Office Road between Route 29 and Braddock Road is within both Fairfax County and Loudoun County. The identified alternate truck route is Sudley Road and Gum Spring Road; between Route 29 and

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Braddock Road, in Fairfax County, Loudoun County and Prince William County.

A portion of the identified alternate route in Prince William County goes through the Manassas National Battlefield Park, part of the National Park Service.

Prince William County and the National Park Service have written to VDOT and Fairfax County indicating opposition to the identified alternate truck route on Sudley Road and the Through Truck Restriction on Bull Run Post Office Road. Identifying a reasonable alternate route for restricted truck traffic is a stated requirement of the Through Truck Restriction Program and does not limit or direct truck traffic to the identified alternate route. Loudoun County stated a need for the results of the VDOT truck traffic analysis before making a determination.

Section 46.2-809, of the *Code of Virginia* requires a local jurisdiction to hold a duly advertised public hearing on any proposal to restrict through truck traffic on a primary or secondary road. Further, a resolution pertaining to prohibiting through truck traffic on a portion of this road (Attachment I) has been prepared for adoption and transmittal to VDOT, which requires a resolution from Fairfax County to conduct the formal engineering study of the Through Truck Traffic Restriction request. Following a VDOT analysis, the Commonwealth Transportation Board will determine whether a restriction is implemented.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Resolution to Restrict Through Truck Traffic on Bull Run Post Office Road

Attachment II: Area Map of Proposed Through Truck Traffic Restriction

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Gregg Steverson, Deputy Director, FCDOT

Eric M. Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Steven K. Knudsen, Transportation Planner, FCDOT

RESOLUTION

**FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
THROUGH TRUCK TRAFFIC RESTRICTION
BULL RUN POST OFFICE ROAD
SULLY DISTRICT**

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 15, 2020, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, the residents who live along Bull Run Post Office Road, between Lee Highway (Route 29) and the Fairfax County Line, have expressed concerns regarding the negative impacts associated with through truck traffic on this road; and

WHEREAS, a reasonable alternate route has been identified for Bull Run Post Office Road starting at the intersection of Bull Run Post Office Road and Lee Highway (Route 29) to the intersection of Lee Highway and Sudley Road, and from the intersection of Lee Highway and Sudley Road to the intersection of Sudley Road and Gum Spring Road, and from the intersection of Sudley Road and Gum Spring Road to the intersection of Gum Spring Road and Braddock Road, and from the intersection of Gum Spring Road and Braddock Road to the intersection of Braddock Road and Bull Run Post Office Road; and

WHEREAS, it is the intent of the Fairfax County Board of Supervisors to ensure that the proposed through truck restriction be enforced by the Fairfax County Police Department where authorized; and

WHEREAS, a public hearing was held pursuant to Section 46.2-809 of the *Code of Virginia*;

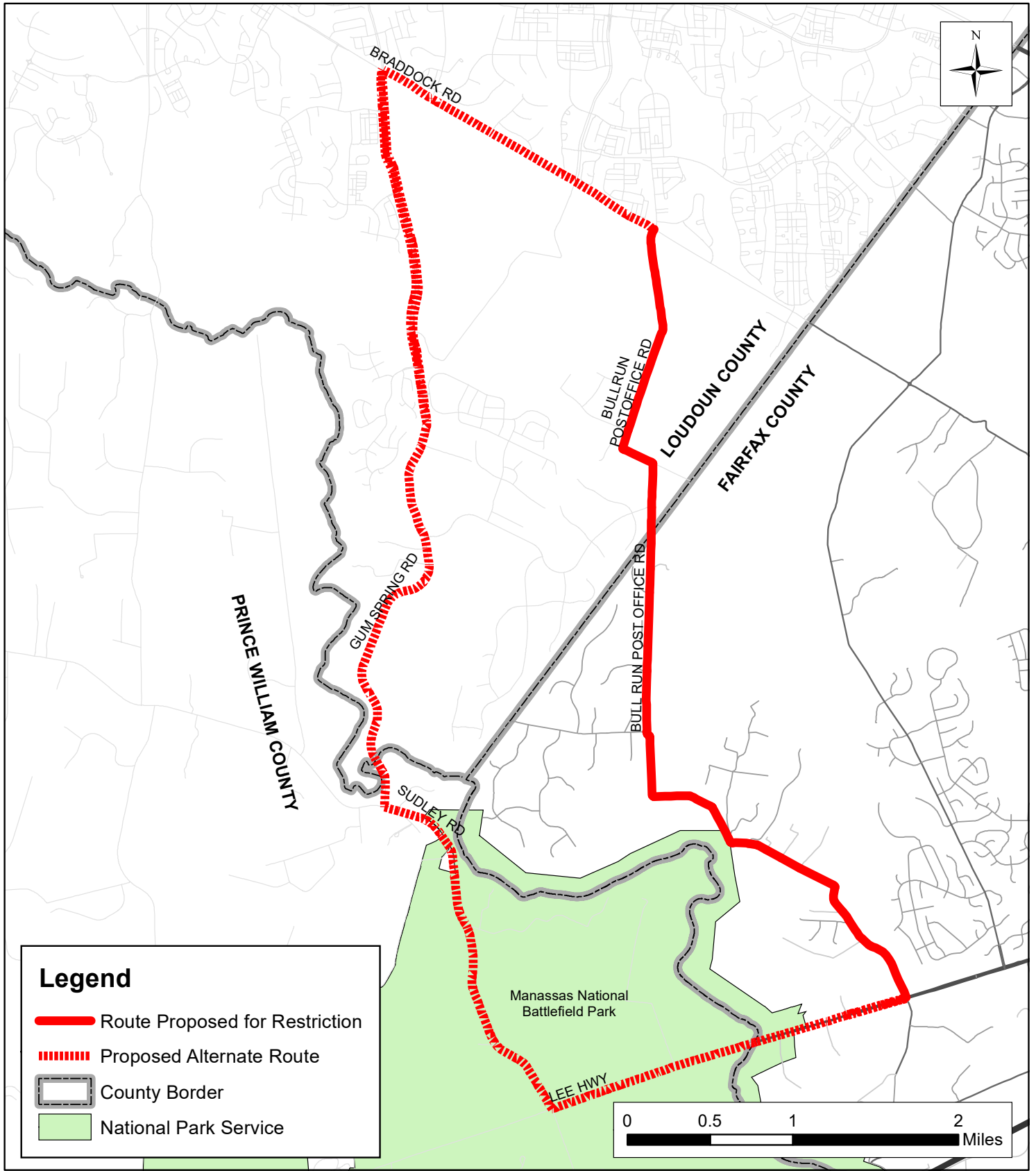
NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, has determined that in order to promote the health, safety, and general welfare of the citizens of Fairfax County, it is beneficial to prohibit through truck traffic on Bull Run Post Office Road, between Lee Highway (Route 29) and Braddock Road, as part of the County's Residential Traffic Administration Program (RTAP).

FURTHER BE IT RESOLVED, that the Commonwealth Transportation Board is hereby formally requested to take necessary steps to enact this prohibition.

ADOPTED this 15th day of September, 2020.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



Tax Map: 42-4, 52-2, 52-4, 53-3, 64-1

**Fairfax County Department of Transportation
Residential Traffic Administration Program
Through Truck Restriction - Fairfax County
Bull Run Post Office Road
Sully District**

June 2020



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ADMINISTRATIVE - 9

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance to Establish an Economic Incentive Program (Dranesville, Hunter Mill, Lee, Mason and Mount Vernon Districts)

ISSUE:

Board authorization to advertise a public hearing to consider amending Chapter 4, Taxation and Finance, of the *Code of the County of Fairfax, Virginia* (Code) to establish a new Article 29 – Incentives to Encourage Economic Growth to establish an Economic Incentive Program (EIP) that will apply to certain areas of the county.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the advertisement of a public hearing on the proposed amendment to Chapter 4, Taxation and Finance to establish Article 29 – Incentives to Encourage Economic Growth.

TIMING:

Board action is requested on July 28, 2020, to advertise a public hearing for September 15, 2020 at 4:00 p.m. If adopted, the benefits of this amendment would take effect on July 1, 2021, and last for a period of 10 years to conclude on June 30, 2031.

BACKGROUND:

In 2017, the Virginia General Assembly passed HB1970 that provides for regulatory flexibility and financial incentives to encourage the private sector to assemble property for economic development purposes. Pursuant to that legislation, along with previously existing law, an inter-departmental team developed and vetted with industry a proposal for a program in Fairfax County to provide an economic development opportunity to the private sector consistent with the legislation. At its October 2, 2018, Board Revitalization Committee meeting, the Board directed staff to draft an ordinance to establish the locations, processes, procedures and incentives of such a program.

The proposed amendment to the Code would add a new Article 29 - Incentives to Encourage Economic Growth that would offer regulatory incentives in the form of concurrent processing of development applications and associated Comprehensive Plan amendments, inclusion of development applications in the LDS Project Management Program, a fee reduction of 10 percent for site plan review, and a partial real estate tax abatement (as described in the Fiscal Impact section below) to private

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sector developers who assemble and develop properties in accordance with the ordinance and consistent with the vision of the Comprehensive Plan.

The EIP is proposed to apply to all five of the County's Commercial Revitalization Districts (CRDs), which are Annandale, Baileys Crossroads/Seven Corners, McLean, Richmond Highway and Springfield; and the County's Commercial Revitalization Area (CRA) of Lincolnia. It is envisioned that the Lake Anne Village Center CRA will come back at a future date based on when redevelopment opportunities arise. The County has a long-standing policy of supporting revitalization and redevelopment in older commercial areas not experiencing reinvestment such as the CRDs/CRAs, and the CRDs/CRAs are established Mixed-use Centers in the Comprehensive Plan targeted for future growth and investment.

Additionally, the EIP is proposed to apply to logical extensions of two of the the CRDs. Only certain portions of the Richmond Highway corridor are designated as CRDs. However, Richmond Highway is viewed as a continuous corridor rather than a series of business nodes and is undergoing extensive transportation and public transit investment. Likewise, the Springfield Transit Station Area (TSA) is intertwined with the Springfield CRD and the two combine to form one overall area known as the Greater Springfield Area. This area has also undergone significant transportation and public transit investments, with more anticipated in the future.

Extending the program beyond the Richmond Highway CRDs would mean including properties fronting on Richmond Highway between the CRDs from Huntington Avenue to Jeff Todd Way as follows: the Suburban Neighborhood Areas along Richmond Highway as shown in the Comprehensive Plan, properties along Richmond Highway located between the Richmond Highway CRDs and Suburban Neighborhood Areas (see Maps 1-4), and Land Units R and Q of the Huntington Transit Station Area as shown in the Comprehensive Plan. Extending the program beyond the Springfield CRD would mean including the Franconia-Springfield TSA, except for those areas planned for single-family development, i.e. sub-units Q and R and the portion of sub-unit N north of the Springfield-Franconia Parkway, as shown in the Comprehensive Plan.

In order to qualify for the program, a development would need to have newly assembled a minimum of two parcels not previously approved for a rezoning or site plan that collectively would comprise at least two acres in size, be zoned to permit commercial or industrial uses or for multifamily residential development, be in conformance with all laws and policies related to the provision and preservation of affordable housing, and be in conformance with the uses and consolidation recommendations in the Comprehensive Plan; however, the Board could consider smaller acreages. Additionally, up to 20 percent of existing development may be retained and/or

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repurposed, although the Board may consider greater amounts if necessary to achieve the vision in the Comprehensive Plan.

The eligibility process would require the applicant to submit a formal application. The applicant could be one or more property owners or a third-party developer. All owners would have to concur. Staff would review the application to determine if it meets the eligibility requirements of the EIP, as well as the Comprehensive Plan, and all laws and policies related to the provision and preservation of affordable housing. Staff would then issue a provisional approval or rejection letter regarding eligibility. Eligible applications would be considered by the Board as an Action Item at a regularly scheduled Board meeting and would be concurrent with any rezoning application, if applicable. The Board would determine whether to approve the eligible application either in conjunction with a concurrent rezoning application or separately for a by-right development proposal. The Board may hold a public hearing to amend or rescind the program for any or all of the applicable areas at any time for future applicants. Likewise, the Board can apply the program to new areas pending a public hearing.

All development proposals will continue to be evaluated in a manner consistent with all other development applications, including how they offset development impacts associated with their development, including those to roadways, parks, schools and other county public facilities. Similarly, on-site commitments would be expected to be met as applicable for items such as the grid of streets, green buildings, stormwater management, urban park spaces, affordable housing, streetscapes, transportation demand management programs and, environmental concerns.

Following the adoption and prior to the effective date, staff will publicize the program, conduct outreach activities to educate the public and members of the development and real estate communities about the new program, and begin to review applications that may be submitted either as part of by-right or rezoning proposals. Staff will also conduct internal trainings of the relevant land development agencies to ensure a shared understanding and coordinated implementation of the program. Periodic updates will be provided to the Board regarding the number of applications, projects approved to date, status of qualifying developments, and financial impacts of the program.

FISCAL IMPACT:

Qualifying developments will receive regulatory and economic benefits including expedited processing, a reduction in site plan review fees of 10 percent, and a partial tax exemption on the real estate tax calculated as the difference between the pre-redevelopment (base) assessed value and the post-development assessed value in accordance with Virginia Code. It should be noted that the partial real estate abatement applies only to the County's real estate tax (with a current rate of \$1.15 per \$100 of

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assessed value) and does not apply to other taxes, such as the Commercial and Industrial Tax or special district taxes. In addition, as the County will continue to receive real estate tax revenues on the base (pre-redevelopment) assessed value of developments in the program, the partial tax exemptions of the real estate tax will have not reduced the General Fund. Real estate taxes will be calculated on the full assessed value of the development no later than the expiration date of the incentive period.

It is not possible to estimate how many projects may come forward and be deemed eligible under the program. However, a prototypical example of the real estate tax abatement would work as follows: If the base assessed value of a property is \$5 million, real estate taxes would generate \$57,500 per year. Assuming a post development assessed value of \$120 million, the partial tax abatement would be calculated on the \$115 million increment or difference between pre- and post-development values. With a tax rate of \$1.15 per \$100 of assessed value, the total tax abatement would be \$1,322,500 per year for a maximum tax abatement of \$13,225,000 over the maximum 10-year life of the program.

It is also difficult to quantify the total fiscal impact to the county as a result of the decreased revenue from site plan review fees, but it is estimated to be less than \$100,000 over the 10-year life of the program.

ENCLOSED DOCUMENTS:

Attachment 1 - Proposed Amendment to the Code of the County of Fairfax, Chapter 4, Article 29, Relating to Incentives to Encourage Economic Growth

Attachment 2 - Maps 1-4

STAFF:

Rachel Flynn, Deputy County Executive

Barbara A. Byron, Director, Department of Planning and Development

Elizabeth A. Hagg, Director, Community Revitalization Section, DPD

Jay Doshi, Director, Department of Tax Administration

Anne Stevenson, Assistant Director, Department of Tax Administration

Bill Hicks, Director, Land Development Services

ASSIGNED COUNSEL:

Corinne N. Lockett, Senior Assistant County Attorney

Cherie L. Halyard, Assistant County Attorney

**AN ORDINANCE ADOPTING
ARTICLE 29 OF CHAPTER 4 OF THE FAIRFAX COUNTY CODE, RELATING TO
INCENTIVES to ENCOURAGE ECONOMIC GROWTH**

AN ORDINANCE to amend the Fairfax County Code by adopting Article 29 to Chapter 4 relating to incentives to private entities to encourage economic growth.

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

1. That Chapter 4, Article 29 of the Fairfax County Code is adopted, as follows:

ARTICLE 29. – Incentives to Encourage Economic Growth.

Section 4-29-1. – Title.

This ordinance shall hereafter be known, cited and referred to as the “Economic Incentive Program Ordinance” of Fairfax County.

Section 4-29-2. - Purpose and Intent.

Fairfax County seeks to provide an economic revitalization and redevelopment opportunity, in accordance with §§ 15.2-1232.2 and 58.1-3219.4 of the Code of Virginia, by offering regulatory and financial incentives, including partial real estate tax exemptions as set forth below, to encourage the private sector to purchase, assemble, revitalize, and redevelop real property suitable for economic development that is consistent with the vision contained in the Comprehensive Plan adopted by Fairfax County.

Section 4-29-3. – Definitions.

- (a) *Application* means the form provided by the Director to be filed by an applicant seeking approval of the redevelopment of an assemblage of parcels and the granting of economic and regulatory incentives pursuant to the terms of this Article.
- (b) *Assemblage* means the combination of adjoining parcels, with different owners, into a single development in accordance with this Article.
- (c) *Commercial and industrial properties* include all real property, excluding commercial condominiums, used for or zoned to permit commercial or industrial uses that are approved and designed for retail or wholesale trade, hotel, restaurant, offices, clinics,

warehouses, light manufacturing, and other such uses. Such classification of real property excludes all residential uses.

- (d) *Director* means the Director of the Department of Planning and Development, or the designated agent of that Director.
- (e) *An Economic Incentive Program* is an area designation that operates for the purposes of economic revitalization as provided for in Va. Code § 15.2-1232.2 and for redevelopment pursuant to Va. Code § 58.1-3219.4.
- (f) *Multifamily residential development* includes apartments or any building containing more than four residential units. Such classification of real property excludes single-family detached and attached residential units, cooperatives, and residential condominiums.
- (g) *Proposed development* means the proposed site design and uses submitted by the applicant(s) for approval under this Article.
- (h) *Qualifying property* means any assemblage approved by the Board of Supervisors under the criteria of this Article.

Section 4-29-4. – Economic Incentive Areas.

The following areas are included in the Economic Incentive Program:

- (a) The Commercial Revitalization Districts as established in Appendix 7 of the Fairfax County Zoning Ordinance:
 - (1) Annandale.
 - (2) Bailey’s Crossroads/Seven Corners.
 - (3) McLean.
 - (4) Richmond Highway.
 - (5) Springfield.
- (b) The following within the Richmond Highway Corridor per the Comprehensive Plan, 2017 Edition, amended May 1, 2018:
 - (1) Suburban Neighborhood Area (SNA) between North Gateway and Penn Daw Community Business Centers (CBCs) (Pg. 167, Figure 67).
 - (2) SNA between Penn Daw and Beacon/Groveton CBCs (Pg. 169, Figure 68).
 - (3) SNA between Beacon/Groveton and Hybla Valley/Gum Springs CBCs (Pg. 170, Figure 69).

- (4) SNA between Hybla Valley/Gum Springs and South County Center CBCs (Pg. 173, Figure 70).
- (5) SNA between South County Center and Woodlawn CBCs (Pg. 179, Figure 71).
- (6) SNA adjacent to Woodlawn CBC (Pg. 182, Figure 72).
- (7) Land Units R and Q of the Huntington Transit Station Area (per the Comprehensive Plan, 2017 Edition, amended through October 16, 2018; Pg. 25, Figure 9).
- (c) The areas located between a Richmond Highway CRD and a Richmond Highway SNA that abut Richmond Highway, as depicted on the attached maps 1-4.
- (d) Franconia-Springfield Transit Station Area, except for those areas planned for single-family residential development, i.e. sub-units Q and R and the portion of sub-unit N north of the Springfield-Franconia Parkway) (per the Comprehensive Plan, 2017 Edition, amended through March 19, 2019; Franconia-Springfield Area Land Unit Map Pg. 37, Figure 7).
- (e) Lincolnia Commercial Revitalization Area (per the Comprehensive Plan, 2017 Edition, amended through July 16, 2019; Lincolnia Community Business Center, Pg. 19, Figure 10).

Section 4-29-5. – Application and Review of Eligibility.

- (a) The Director will determine and publish the procedure for submitting an application. Owners of property located within an area designated for the Economic Incentive Program as established in Section 4-29-4, may submit an application to the Director.
- (b) Such application must be submitted on forms provided by the Director and must include a plan for development as well as any additional schedules, plans, specifications, and an estimated fair market value of the proposed development that the Director requires.
- (c) Every owner of any parcel included in the application must be a party to the application. However, an individual who is the owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of the parcel upon submitting an affidavit that the other owners either: (1) affirm the application, (2) are minors, or (3) after a diligent search, cannot be located.
- (d) Upon receipt of an application, the Director will determine whether the application meets the eligibility criteria under this Article, the Comprehensive Plan, and all laws and policies related to the provision and preservation of affordable housing. If the

application is found eligible, the Director will forward it to the Department of Tax Administration for calculation of an estimated base fair market value based upon the initial proposed development. Any application failing to meet the eligibility criteria will be denied and will be reconsidered only after all missing criteria are met.

(e) The Director will submit an eligible application to the Board of Supervisors for approval either in conjunction with a concurrent rezoning application or separately for a by-right development proposal.

(f) The application must meet both general and specific eligibility requirements as set forth in Section 4-29-6, as well as Virginia and local law, before being considered for approval by the Board of Supervisors.

Section 4-29-6. – Eligibility.

(a) The proposed development must be a commercial, industrial, and/or multifamily residential development within the territorial limits of one of the areas designated for the Economic Incentive Program as described in Section 4-29-4.

(b) An application must contain a newly proposed assemblage, not previously approved for a rezoning or site plan by the County, of at least two contiguous parcels that collectively total a minimum of two acres. The application must conform to all laws and policies related to the provision and preservation of affordable housing and the use and consolidation recommendations in the Comprehensive Plan. Smaller acreages may be considered by the Board for good cause shown, such as to facilitate redevelopment of parcels. A single parcel may contain multiple structures, but all structures must be fully contained within its parcel lot lines before approval of the application.

(c) A minimum of two acres of the assemblage must be located within an area designated for the Economic Incentive Program for the entire assemblage to qualify. Some small acreage of the assemblage may lie outside of the delineated boundary but the area outside of the boundary cannot be counted toward the 2-acre minimum requirement.

(d) Applicants are responsible for obtaining any necessary zoning and site plan approvals in accordance with the Zoning Ordinance and state and local law before receiving incentives in Section 4-29-8(c)(2).

(e) A maximum of 20 percent of the existing development may be retained and/or repurposed, although greater amounts may be approved by the Board upon

demonstration by the applicant that such retention is necessary and furthers the vision in the Comprehensive Plan.

- (f) No improvements made to real property are eligible for real estate tax incentives pursuant to the Article unless approved by the Board of Supervisors.

Section 4-29-7. – Calculation of Partial Real Estate Tax Exemption.

A qualifying property shall receive a partial tax exemption to the general real property tax in an amount that is equal to the difference between (i) the Base Value and (ii) the fair market value of the parcel including all new structures or other improvements at the time of the final inspection and valuation.

- (a) Following Board approval of the application and upon written request from the applicant, the Department of Tax Administration will determine a final base fair market value (“Base Value”) for the qualifying property. The Base Value shall be the fair market value of the qualifying property at the time of determination plus the first \$1,000 in assessed value on the structure planned to be built on the assemblage.

- (b) Applicant shall submit a written request for final inspection and valuation by the Department of Tax Administration at any time after construction of any structure is substantially complete (“substantially complete” meaning the point where the physical shell is completed and basic components of the building are installed and improved including complete installation of elevators, electrical, HVAC, and fire prevention sprinkler systems). If the proposed development contains multiple buildings to be constructed in multiple stages, the tax exemption shall be recalculated for each lot upon substantial completion and a final inspection and written valuation request from the applicant.

- (c) The Department of Tax Administration shall provide written notification to the property owner of the amount of the assessment of the property that will be exempt from real property taxation and the period of such exemption.

- (d) At no time may the partial real estate exemption exceed the current year assessment minus the Base Value.

- (e) The partial tax exemption shall run with the land, and, except as otherwise provided in this Article, the owner of such property during each year of the partial exemption shall be entitled to receive a partial tax exemption in the amount specified by the Department of Tax Administration.

Section 4-29-8. – Economic Incentives.

- (a) Incentives shall be administered by the Director and the Department of Tax Administration in accordance with to the general provisions of this Article.
- (b) Regulatory incentives become effective upon a determination of eligibility by the Director and include:
 - (1) Expedited scheduling of zoning applications.
 - (2) Concurrent processing of a Comprehensive Plan amendment with an associated zoning application.
 - (3) Concurrent processing of a site plan and a zoning application.
 - (4) Inclusion in the Land Development Services Project Management Program.
 - (5) A lower project value to qualify for Fairfax County Land Development Services' Modified Processing Program.
- (c) Financial incentives include:
 - (1) A 10 percent reduction in the site plan fee submitted at the time of application.
 - (2) Partial real estate tax incentives.

Section 4-29-9. - Timing or Effective Rate of Incentives.

This Article shall take effect on July 1, 2021, and expire on June 30, 2031 (incentive period). Real estate tax incentives as set forth in Section 4-29-8(c)(2) shall be effective between January 1 of the tax year next succeeding the year following substantial completion and the end of the incentive period, at which time, the real estate assessment on the subject parcels will revert to full market value. All incentives shall terminate no later than June 30, 2031.

Section 4-29-10. - Failure to pay real estate taxes in a timely manner.

The incentives provided for in Section 4-29-8 shall be suspended if the real estate tax on the qualifying property has not been paid on or before July 28 and December 5 of any year, as required by Sections 4-10-1 and 4-10-2. Failure to pay the real estate tax on or before the day on which the real estate tax is due shall result in the forfeiture of any incentives in that year, and in such cases, the taxpayer shall be liable for the annual real estate tax that otherwise would have been assessed on the full fair market value of the improved real property. Late payment of the real estate tax on the qualifying property shall be subject to late payment penalties and interest in accordance with Sections 4-10-1 and 4-10-2. However, the Director of the Department of Tax Administration may waive any penalty and interest and reinstate the real estate tax exemption if the failure to pay the real estate tax was not in any way the fault of the taxpayer.

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2. That the provisions of this ordinance shall take effect on _____, 2021.

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GIVEN under my hand this ____ day of _____, 2020.

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Jill G. Cooper

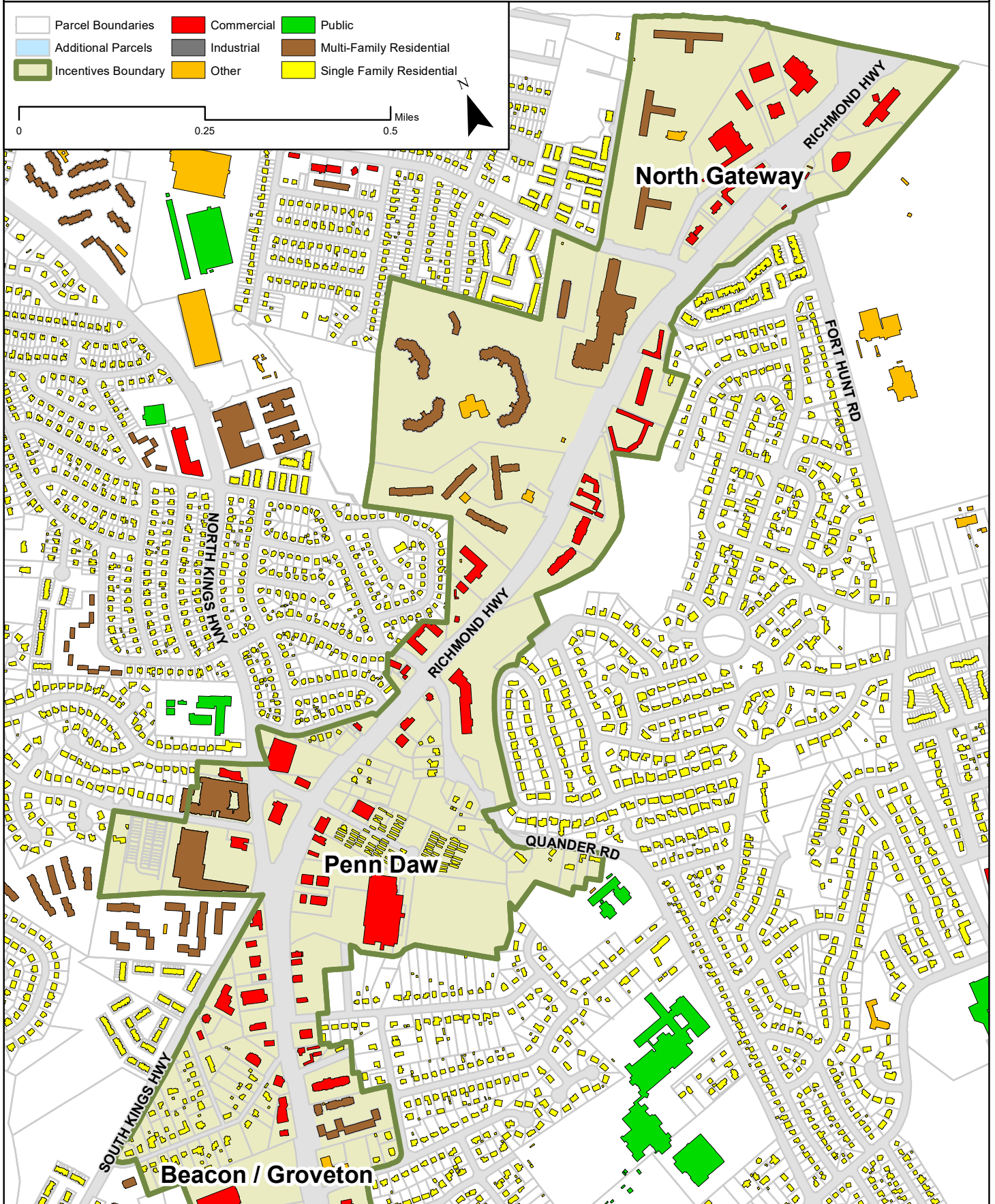
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Clerk for the Board of Supervisors

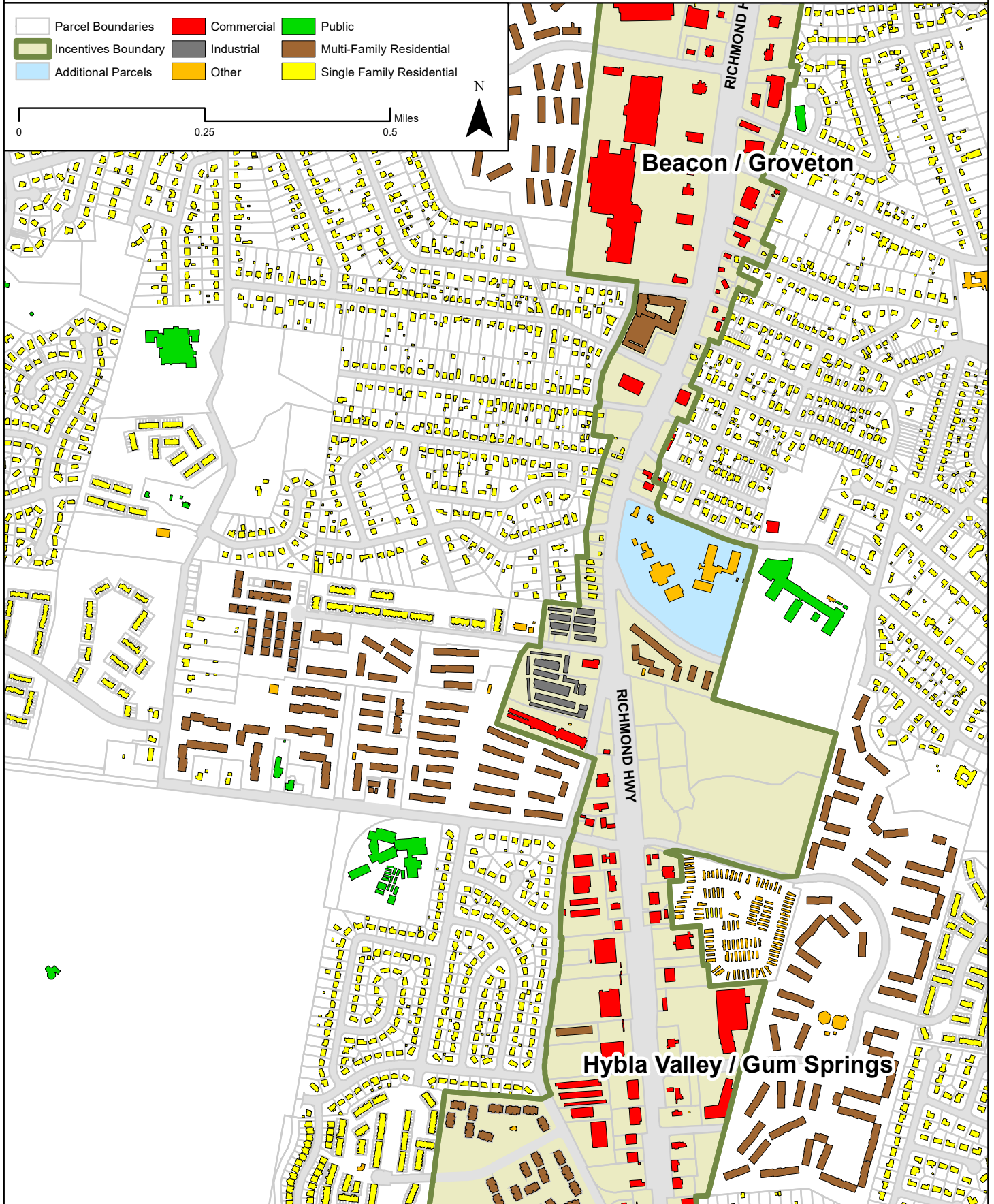
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Department of Clerk Services

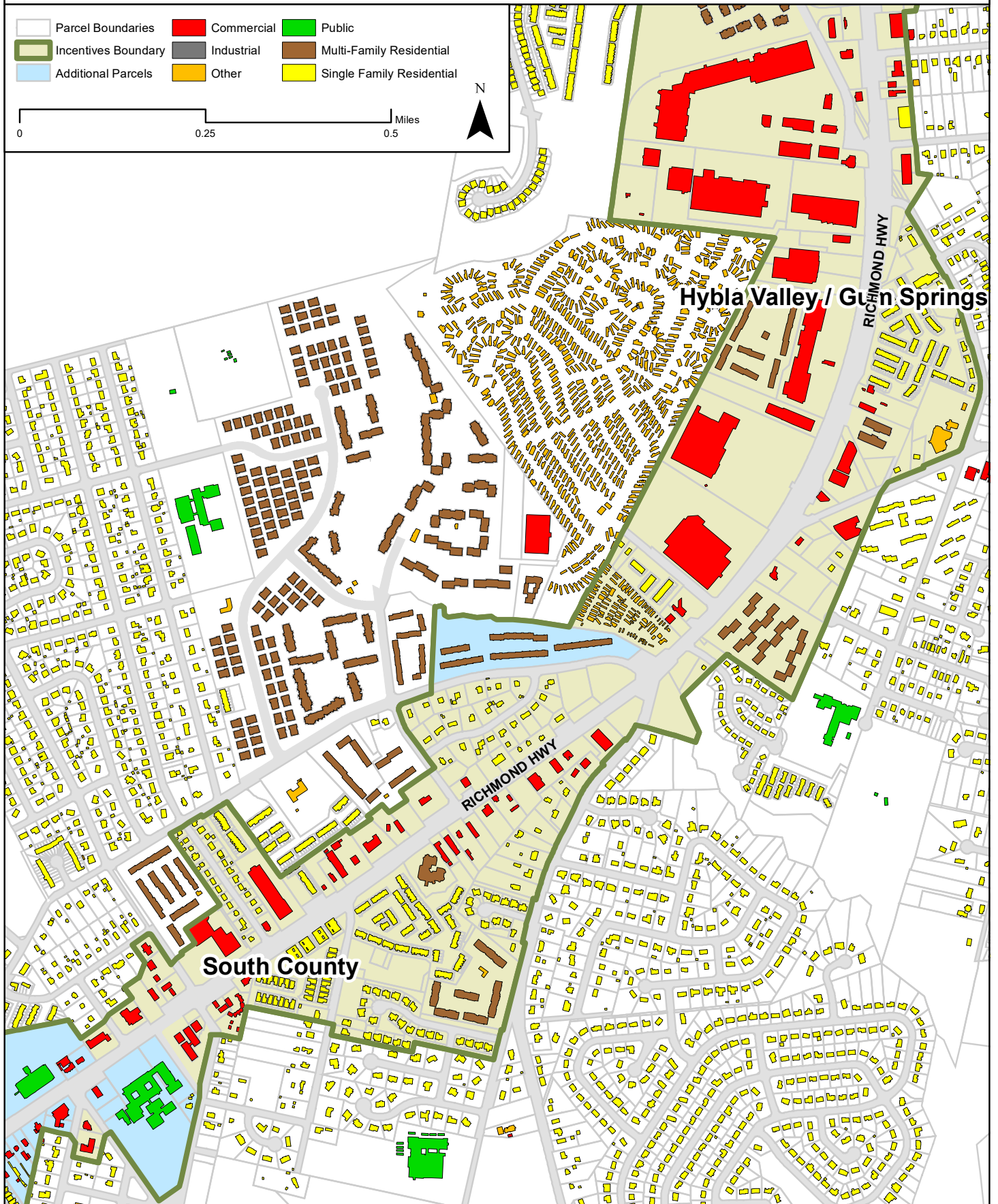
Economic Incentive Program - Richmond Highway Corridor Additional Parcels Between SNA and CRD



Economic Incentive Program - Richmond Highway Corridor Additional Parcels Between SNA and CRD



Economic Incentive Program - Richmond Highway Corridor Additional Parcels Between SNA and CRD



Economic Incentive Program - Richmond Highway Corridor Additional Parcels Between SNA and CRD



ADMINISTRATIVE - 10

Authorization for the Department of Neighborhood and Community Services to Apply for and Accept Supplemental COVID-19 (CARES Act) Grant Funding from the U.S. Department of Health and Human Services Associated with the Head Start, Early Head Start, and Early Head Start Child Care Partnership and Expansion Grants

ISSUE:

Board of Supervisors authorization is requested for the Department of Neighborhood and Community Services to apply for and accept grant funding, if received, from the Department of Health and Human Services, Administration for Children and Families, Office of Head Start in the amount of \$627,468. Funding is specifically being provided by the grantor to support technology, mental health services, and personal protective equipment (PPE) supplies for the Head Start, Early Head Start, and Early Head Start Child Care Partnership and Expansion grants. The grant period is July 1, 2020 to June 30, 2021. The table below details funding for each grant:

Grant	Federal Funding	Local Cash Match	Total New Funding	Total Application
Head Start	\$ 381,402	\$ -	\$ 381,402	\$ 381,402
Early Head Start	\$ 196,853	\$ -	\$ 196,853	\$ 196,853
Early Head Start Child Care Partnership/Expansion	\$ 49,213	\$ -	\$ 49,213	\$ 64,338
Total	\$ 627,468	\$ -	\$ 627,468	\$ 627,468

If the actual award received is significantly different from the application amount, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively as per Board policy. 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 authorize the Department of Neighborhood and Community Services to apply for and accept grant funding, if received, from the Department of Health and Human Services, Administration for Children and Families, Office of Head Start in the amount of \$627,468. Funding is specifically being provided to support technology, mental health services, and PPE

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supplies for the Head Start, Early Head Start, and Early Head Start Child Care Partnership and Expansion grants. Grant funding currently supports 64/56.58 FTE grant positions. No new grant positions are being requested with this funding. 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 action is requested on July 28, 2020. The CARES Act applications associated with the Early Head Start Child Care Partnership and Expansion grant and the Head Start and Early Head Start grants were due on June 8, 2020. The grantor has indicated that before funding is awarded, the Board of Supervisors must formally approve the applications. If the Board does not approve this request, the applications will be immediately withdrawn.

BACKGROUND:

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 2020 [P.L. 116-136]. This legislation includes \$750 million for programs under the Head Start Act to support preventative, preparedness, and response activities related to the coronavirus. Of this amount, up to \$500 million is available for programs to operate supplemental summer programs and about \$250 million is available for one-time activities in response to COVID-19.

Supplemental one-time funds have been made available for Head Start programs in response to the coronavirus disease 2019 (COVID-19). Allocations were provided proportionally to all grants based on federal funded enrollment levels as required by the CARES Act. Office of Head Start funding instructions provide greater flexibility so all grantees can respond to the unique and constantly evolving circumstances within their communities during the COVID-19 pandemic. The Head Start Act recognizes that lack of resources in a community adversely impacted by a major disaster may prevent Head Start grantees from providing all or a portion of their required non-federal contribution; therefore, a waiver of non-federal match can be submitted with the application for funding.

Head Start and Early Head Start are national child and family development programs that provide quality early childhood education and comprehensive family support services to income eligible families with children birth to five years of age. The Head Start grant serves 434 children and their families and the Early Head Start grant serves 224 children birth to three years of age, as well as pregnant mothers.

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The Department of Neighborhood and Community Services, Office for Children was awarded a combined Early Head Start Child Care Partnership and Expansion grant to serve 56 infants and toddlers, and their families, by establishing new partnerships with family child care providers and expanding the existing EHS center-based option at the Gum Springs Glen Early Head Start program.

FISCAL IMPACT:

Grant funding in the amount of \$627,468 is being requested to support technology, mental health services, and PPE supplies for the Head Start, Early Head Start, and Early Head Start Child Care Partnership and Expansion grants. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for unanticipated awards. This grant does allow the recovery of indirect costs; however, because this funding opportunity is highly competitive, the Department of Neighborhood and Community Services has elected to omit inclusion of indirect costs to maximize the proposal's competitive position. No Local Cash Match is required.

CREATION OF NEW POSITIONS:

Grant funding currently supports 64/56.58 FTE grant positions. No new grant positions are being requested with this funding. The County has no obligation to continue funding the existing positions if grant funding ends.


ENCLOSED DOCUMENTS:

Attachment 1: Head Start and Early Head Start COVID-19 Funding Notice
Attachment 2: Early Head Start Child Care Partnership and Expansion
COVID-19 Funding Notice

STAFF:

Tisha Deeghan, Deputy County Executive
Christopher A. Leonard, Director, Department of Neighborhood and Community Services
Anne-Marie D. Twohie, Director, Office for Children, NCS

[Skip Navigation](#)

 Office of Head Start / Head Start Enterprise System
03CH010411 / Grant Application

03CH010411 | 04: 07/01/2019-06/30/2020 | Supplement - COVID-19 One Time**Summary****Budget Summary**

Grant Program, Function or Activity	New or Revised Budget		Total
	Federal	Non-Federal	
1. Head Start: Program Operations	\$381,402	\$0	\$381,402
2. Early Head Start: Program Operations	\$196,853	\$0	\$196,853
5. Totals	\$578,255	\$0	\$578,255

Guidance

This supplement contains funding amount(s) for one-time actions or activities to prevent, prepare for, and respond to COVID-19. The total funding amount has been entered in the object class category "Other" on the SF-424A. Please review, edit if needed, and submit the application to the Regional Office as soon as possible and **no later than May 15, 2020**. Adjustments to funding amounts are permitted between object class categories on the SF-424A tab and between the Head Start and/or Early Head Start programs; however, the Federal Total cannot be adjusted as it reflects the total amount allocated by the Office of Head Start. Allocations were provided proportionally to all grants based on federal funded enrollment levels as required by the CARES Act. Narratives, budget justifications, and governing body or policy council approvals are not required for this application, except for purchases that require prior approval such as for equipment or the purchase, construction, or major renovation of facilities. If any of these activities are included, a narrative explaining the purchases will be required.

The Head Start Act recognizes that lack of resources in a community adversely impacted by a major disaster may prevent Head Start grantees from providing all or a portion of their required non-federal contribution. In order to request a waiver of non-federal match, place the amount of \$0 in Section C of your SF-424A in your application. No separate waiver request is required. For more information, please see [ACF-PI-HS-20-03](#).

Please contact your Program Specialist using the correspondence tab within this application with questions.

COVID-19 One Time	Amount
Head Start	\$381,402
Early Head Start	\$196,853
Total	\$578,255

COVID-19 One Time Supplement

Do you need these funds before your FY2020 budget period (07/01/2020-06/30/2021)?

Status History[Hide Details](#)

Date	Status	User	Comments
06/01/2020 06:20 PM, EST	Returned to Grantee	OHS - Official Action Required	<p>Per Program Instruction ACF-PI-HS-20-04, additional funds were added to the Object Class Category "Other" on the SF-424A in your COVID One Time supplement and returned for your review.</p> <p>Please complete the following question on the Summary tab in the application: "Do you need these funds before your FY2020 budget period?"</p> <p>Adjustments to funding amounts are permitted between object class categories on the SF-424A tab; however, the total cannot be adjusted as it reflects the total amount allocated by OHS. Narratives, budget justifications, and governing body or policy council approvals are not required for this application, except for purchases that require prior approval such as equipment or for the purchase, construction, or major renovation of facilities. If any of these activities are included, a narrative explaining the purchases will be required.</p> <p>Please submit the COVID One Time application by Monday, 6/8/2020.</p>
05/15/2020 01:11 PM, EST	Submitted to Regional Office	Maryom Fox	Fairfax County HS/EHS/CCP appreciates your favorable consideration of this application.

Date	Status	User	Comments
			This supplement contains funding amount(s) for one-time actions or activities to prevent, prepare for, and respond to COVID-19. Please review and submit the application to the Regional Office as soon as possible and no later than May 15, 2020.
04/30/2020 05:41 PM, EST	Returned to Grantee	OHS - Official Action Required	Adjustments to funding amounts are permitted between object class categories on the SF-424A tab; however, the total cannot be adjusted as it reflects the total amount allocated by OHS. Narratives, budget justifications, and governing body or policy council approvals are not required for this application, except for purchases that require prior approval such as equipment or for the purchase, construction, or major renovation of facilities. If any of these activities are included, a narrative explaining the purchases will be required. Funds will be awarded at the start of the FY2020 budget period. Please respond to the question on the summary tab within this supplement if funds are needed before the start of the FY2020 budget period.
04/30/2020 05:41 PM, EST	Started by Regional Office	OHS - Official Action Required	

Warnings / Errors

[Hide Details](#)

For assistance, please contact the HSES Help Desk at help@hsesinfo.org or call 1-866-771-4737 (toll-free) or 1-571-429-4858 (local), Monday - Friday, 8 a.m. - 7 p.m. EST (not available on weekends or federal holidays)

03HP000205 | 01: 07/01/2019-06/30/2020 | Supplement - COVID-19 One Time

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Budget Summary

Grant Program, Function or Activity		New or Revised Budget		Total
		Federal	Non-Federal	
1.	Early Head Start: Program Operations	\$49,213	\$0	\$49,213
5.	Totals	\$49,213	\$0	\$49,213

Guidance

This supplement contains funding amount(s) for one-time actions or activities to prevent, prepare for, and respond to COVID-19. The total funding amount has been entered in the object class category "Other" on the SF-424A. Please review, edit if needed, and submit the application to the Regional Office as soon as possible and **no later than May 15, 2020**. Adjustments to funding amounts are permitted between object class categories on the SF-424A tab and between the Head Start and/or Early Head Start programs; however, the Federal Total cannot be adjusted as it reflects the total amount allocated by the Office of Head Start. Allocations were provided proportionally to all grants based on federal funded enrollment levels as required by the CARES Act. Narratives, budget justifications, and governing body or policy council approvals are not required for this application, except for purchases that require prior approval such as for equipment or the purchase, construction, or major renovation of facilities. If any of these activities are included, a narrative explaining the purchases will be required.

The Head Start Act recognizes that lack of resources in a community adversely impacted by a major disaster may prevent Head Start grantees from providing all or a portion of their required non-federal contribution. In order to request a waiver of non-federal match, place the amount of \$0 in Section C of your SF-424A in your application. No separate waiver request is required. For more information, please see [ACF-PI-HS-20-03](#).

Please contact your Program Specialist using the correspondence tab within this application with questions.

COVID-19 One Time	Amount
Early Head Start	\$49,213

COVID-19 One Time Supplement

ADMINISTRATIVE - 11

Authorization to Advertise a Public Hearing to Consider the Adoption of Amendments to Chapter 6 of the Fairfax County Code Relating to Weapons

ISSUE:

Authorization to advertise a public hearing to consider amendments to Chapter 6 of the Fairfax County Code, governing Weapons. The proposed amendments to Chapter 6 will prohibit the possession, carrying and transportation of firearms, ammunition, or components or combination thereof in County buildings, parks, recreation and community centers and at permitted events and areas adjacent to permitted events, as more fully described in the Background section below.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of a public hearing to consider the proposed amendments to County Code Chapter 6.

TIMING:

Board action is requested on July 28, 2020, to provide sufficient time to advertise the proposed public hearing on September 15, 2020, at 4:30 p.m. If approved by the Board, these provisions will become effective immediately.

BACKGROUND:

In its 2020 session, the Virginia General Assembly passed Senate Bill 35 and House Bill 421, allowing local regulation of firearms in certain areas. The Governor approved the bills on April 22, 2020. The County's legislative program has advocated for many years for state legislation that would allow local governments to prohibit the possession of dangerous weapons in or on any facility or property owned or leased by the locality. During the 2020 session, the County supported Senate Bill 35 and House Bill 421.

This new legislation amends Va. Code § 15.2-915, and allows the County to enact an ordinance prohibiting the possession, carrying and transportation of firearms, ammunition, components or combination thereof in the following areas: (i) in any building, or part thereof, owned or used by the County, or by any authority or local governmental entity created or controlled by the County, for governmental purposes; (ii) in any public park owned or operated by the County, or by any authority or local governmental entity created or controlled by the locality; (iii) in any recreation or

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community center facility operated by the County, or by any authority or local governmental entity created or controlled by the County; or (iv) in any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit.

The enabling legislation also allows for increased security measures, such as security guards or metal detectors, to prevent unauthorized access to those areas. The legislation further mandates that notice of the ordinance be posted at entrances to the areas where the prohibition is in effect, including at all building and park entrances, as well as appropriate places of ingress and egress to permitted events, events that would otherwise require a permit, and adjacent areas.

The proposed amendments exercise this new enabling authority in its entirety. Firearms, ammunition, components or combination thereof would be prohibited in buildings, parks, recreation and community centers owned or used by the County or authorities and entities created or controlled by the County such as the Fairfax County Park Authority. The prohibition would also be in effect at permitted events, events that would otherwise require a permit, and areas adjacent to those events, provided those events take place on a public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public. Appropriate signage must be posted in order to enforce the prohibition.

The proposed ordinance also contains provisions related to Northern Virginia Regional Park Authority (NOVA Parks), which is an authority created and controlled by the County in conjunction with several other surrounding jurisdictions. The prohibition would extend to these parks if all participating jurisdictions enact a prohibition on firearms in parks and the governing body of NOVA Parks passes a resolution concurring with the prohibition.

The ordinance contains exemptions for Reserve Officer Training Corps programs and other intercollegiate programs or club sport teams that use firearms, as required by the enabling authority. Other exceptions are for sworn law enforcement, educational programs or events conducted or permitted by the County or an authority or other local government entity created or controlled by the locality, and wildlife management activities, including the County's Deer Management Program. The Bull Run Public Shooting Center, which is operated by NOVA Parks, also would be exempted.

FISCAL IMPACT:

Staff is in the process of determining costs associated with signage requirements, including installation, hardware, and staffing expenses related to the posting and

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removal of both permanent signage and temporary signage required for any permitted events. It is anticipated that these additional expenses can be absorbed within existing agency budgets. If necessary, budgetary adjustments will be recommended as part of a future quarterly review.

ENCLOSED DOCUMENTS:

Attachment 1 – Va. Code § 15.2-915

Attachment 2 – Proposed Amendments to Chapter 6, Weapons (markup)

STAFF:

David M. Rohrer, Deputy County Executive

Edwin C. Roessler Jr., Chief of Police

Jose Comayagua, Director, Facilities Management Department

Kirk Kincannon, Director, Fairfax County Park Authority

Michael S. Liberman, Director, Department of Cable and Consumer Services

ASSIGNED COUNSEL:

John W. Burton, Assistant County Attorney

Code of Virginia
 Title 15.2. Counties, Cities and Towns
 Chapter 9. General Powers of Local Governments

§ 15.2-915. Control of firearms; applicability to authorities and local governmental agencies

A. No locality shall adopt or enforce any ordinance, resolution, or motion, as permitted by § 15.2-1425, and no agent of such locality shall take any administrative action, governing the purchase, possession, transfer, ownership, carrying, storage, or transporting of firearms, ammunition, or components or combination thereof other than those expressly authorized by statute. For purposes of this section, a statute that does not refer to firearms, ammunition, or components or combination thereof shall not be construed to provide express authorization.

Nothing in this section shall prohibit a locality from adopting workplace rules relating to terms and conditions of employment of the workforce. However, no locality shall adopt any workplace rule, other than for the purposes of a community services board or behavioral health authority as defined in § 37.2-100, that prevents an employee of that locality from storing at that locality's workplace a lawfully possessed firearm and ammunition in a locked private motor vehicle. Nothing in this section shall prohibit a law-enforcement officer, as defined in § 9.1-101, from acting within the scope of his duties.

The provisions of this section applicable to a locality shall also apply to any authority or to a local governmental entity, including a department or agency, but not including any local or regional jail, juvenile detention facility, or state-governed entity, department, or agency.

B. Any local ordinance, resolution, or motion adopted prior to July 1, 2004, governing the purchase, possession, transfer, ownership, carrying, or transporting of firearms, ammunition, or components or combination thereof, other than those expressly authorized by statute, is invalid.

C. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action challenging (i) an ordinance, resolution, or motion as being in conflict with this section or (ii) an administrative action taken in bad faith as being in conflict with this section.

D. For purposes of this section, "workplace" means "workplace of the locality."

E. Notwithstanding the provisions of this section, a locality may adopt an ordinance that prohibits the possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof (i) in any building, or part thereof, owned or used by such locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes; (ii) in any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality; (iii) in any recreation or community center facility operated by the locality, or by any authority or local governmental entity created or controlled by the locality; or (iv) in any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit. In buildings that are not owned by a locality, or by any authority or local governmental entity created or controlled by the locality, such ordinance shall apply only to the part of the building that is being used for a governmental purpose and when such building, or part thereof, is being

used for a governmental purpose.

Any such ordinance may include security measures that are designed to reasonably prevent the unauthorized access of such buildings, parks, recreation or community center facilities, or public streets, roads, alleys, or sidewalks or public rights-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit by a person with any firearms, ammunition, or components or combination thereof, such as the use of metal detectors and increased use of security personnel.

The provisions of this subsection shall not apply to the activities of (i) a Senior Reserve Officers' Training Corps program operated at a public or private institution of higher education in accordance with the provisions of 10 U.S.C. § 2101 et seq. or (ii) any intercollegiate athletics program operated by a public or private institution of higher education and governed by the National Collegiate Athletic Association or any club sports team recognized by a public or private institution of higher education where the sport engaged in by such program or team involves the use of a firearm. Such activities shall follow strict guidelines developed by such institutions for these activities and shall be conducted under the supervision of staff officials of such institutions.

F. Notice of any ordinance adopted pursuant to subsection E shall be posted (i) at all entrances of any building, or part thereof, owned or used by the locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes; (ii) at all entrances of any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality; (iii) at all entrances of any recreation or community center facilities operated by the locality, or by any authority or local governmental entity created or controlled by the locality; and (iv) at all entrances or other appropriate places of ingress and egress to any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit.

1987, c. 629, § 15.1-29.15; 1988, c. 392; 1997, cc. [550](#), [587](#); 2002, c. [484](#); 2003, c. [943](#); 2004, cc. [837](#), [923](#); 2009, cc. [735](#), [772](#); 2012, c. [757](#); 2020, cc. [1205](#), [1247](#).

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.

**AN ORDINANCE AMENDING
CHAPTER 6 OF THE FAIRFAX COUNTY CODE, RELATING TO
WEAPONS**

Draft of July 21, 2020

AN ORDINANCE to amend the Fairfax County Code by amending and reenacting Article 2, Section 6-2-1, relating to firearms in Fairfax County government facilities and other public areas.

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

1. **That Article 2 and Section 6-2-1 of the Fairfax County Code are amended and reenacted as follows:**

Article 2 – ~~Reserved.~~ Firearms in County government facilities and other public areas.

Section 6-2-1 – ~~Reserved.~~ Firearms, ammunition, or components or combination thereof prohibited in certain areas.

A. The possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof is prohibited in the following areas:

1. In any building, or part thereof, owned or used by the County, or by any authority or local government entity created or controlled by the County, for governmental purposes.
2. In any public park owned or operated by the County, or by any authority or local government entity created or controlled by the County.
3. In any recreation or community center facility operated by the County, or by any authority or local government entity created or controlled by the County.
4. In any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit.
5. In buildings not owned by the County, or by any authority or local government entity created or controlled by the County, this Section shall apply only to the part of the building used for a governmental purpose

1 and when such building, or part thereof, is being used for a
2 governmental purpose.

- 3
4 6. In parks located in the County that are owned or operated by a park
5 authority that was created or is controlled by the County in conjunction
6 with one or more other localities, provided that all participating localities
7 enact an ordinance containing a prohibition substantially similar to that
8 imposed by Paragraph A(2) above and the governing body of the park
9 authority passes a resolution or other measure agreeing to the
10 application of each such ordinance within the parks located in each such
11 locality.

- 12
13
14 B. Pursuant to this Section, the County may implement security measures that are
15 designed to reasonably prevent the unauthorized access of such buildings,
16 parks, recreation or community center facilities, or public streets, roads, alleys,
17 or sidewalks or public rights-of-way or any other place of whatever nature that
18 is open to the public and is being used by or is adjacent to a permitted event or
19 an event that would otherwise require a permit by a person with any firearms,
20 ammunition, or components or combination thereof, such as the use of metal
21 detectors and increased use of security personnel.

- 22
23 C. The provisions of this Section shall not apply to the following:

- 24
25 1. The activities of (i) a Senior Reserve Officers' Training Corps program
26 operated at a public or private institution of higher education in
27 accordance with the provisions of 10 U.S.C. § 2101 et seq., or (ii) any
28 intercollegiate athletics program operated by a public or private
29 institution of higher education and governed by the National Collegiate
30 Athletic Association or any club sports team recognized by a public or
31 private institution of higher education where the sport engaged in by
32 such program or team involves the use of a firearm. Such activities shall
33 follow strict guidelines developed by such institutions for these activities
34 and shall be conducted under the supervision of staff officials of such
35 institutions.

- 36
37 2. Sworn law enforcement personnel.

- 38
39 3. Security personnel hired as employees or contracted by the County, or
40 an authority or other local government entity created or controlled by the
41 County in whole or in part, when such personnel are present and

working in any building or other location set forth in Paragraph A and who are authorized to carry firearms as part of their duties.

4. The activities of educational programs and events, including static displays and historical reenactments, conducted or permitted by the County or any authority or local government entity created or controlled by the County, when such educational programs and events involve the use or display of firearms that are not loaded with projectiles.
5. The activities of the County's Deer Management Program and other wildlife management events conducted by the County, by any authority or local government entity created or controlled by the County in whole or in part, by the Commonwealth of Virginia, or by the federal government.
6. The Bull Run Public Shooting Center.

D. Notice of ordinance.

1. Notice of this ordinance shall be posted (i) at all entrances of any building, or part thereof, owned or used by the County, or by any authority or local governmental entity created or controlled by the County, for governmental purposes; (ii) at all entrances of any public park owned or operated by the County, or by any authority or local governmental entity created or controlled by the County; (iii) at all entrances of any recreation or community center facilities operated by the County, or by any authority or local governmental entity created or controlled by the County; and (iv) at all entrances or other appropriate places of ingress and egress to any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit.
2. Notice of this ordinance shall be posted at all entrances of any public park owned or operated by a park authority that was created or is controlled by the County in conjunction with one or more other localities, provided that all participating localities have enacted an ordinance containing a prohibition substantially similar to that imposed by Paragraph A(2) above and the governing body of the park authority has

passed a resolution or other measure agreeing to the application of each
such ordinance within the parks located in each such locality.

E. Violations of Section 6-2-1 (A) shall constitute a Class 1 misdemeanor.

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

3. That the provisions of this ordinance shall take effect upon adoption.

GIVEN under my hand this _____ day of _____ 2020.

Jill G. Cooper

Clerk for the Board of Supervisors

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ACTION - 1

Approval of a Plain Language Explanation for the 2020 Bond Referenda for Transportation, Parks and Park Facilities, Libraries, and Community Health and Human Services Facilities

ISSUE:

Board approval of explanatory statements for each of the four County referenda to be held in conjunction with the General Election on November 3, 2020.

RECOMMENDATION:

The County Executive recommends that the Board approve the plain language explanations for each of the four referenda and authorize staff to translate them, post them online, and make them available at all County polling places and early voting sites.

TIMING:

Board action is recommended on July 28, 2020, so that staff can translate the explanations, post them on the County's website as soon as possible, and have them printed and available when absentee voting begins on September 18, 2020.

BACKGROUND:

At its meeting on June 23, 2020, the Board adopted four resolutions (Transportation, Parks and Park Facilities, Libraries, and Community Health and Human Services Facilities), each of which asks the Fairfax County Circuit Court to order a referendum on November 3, 2020, on the question of whether the Board should be authorized to issue general obligation bonds for certain purposes. The County Attorney filed the resolutions with Petitions asking the Circuit Court to order the elections on June 29, 2020. The Court granted the Petitions on June 29, 2020, and June 30, 2020.

State law requires localities to provide for the preparation and printing of an explanation for each referendum question that involves the issuance of bonds by the locality. The statement must include the ballot question and a neutral explanation of not more than 500 words prepared by the locality's attorney. The Board approved the wording of the ballot questions when it adopted the Resolutions, and the County Attorney's Petition asked the Circuit Court to order that the ballot question be stated as approved by the Board. This Action Item presents only the explanation portion of the proposed statement for the Board's approval.

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These plain language explanatory statements are frequently referred to as “plain English” statements, because State law requires them to be written in “plain English.” The law defines “plain English” to mean “written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession.” Besides English, the County translates these statements into Spanish, Vietnamese, and Korean. Section 203 of the federal Voting Rights Act requires political subdivisions designated by the Director of the U.S. Bureau of the Census to make voting materials available in the language of the designated minority group. The Director of the Census designated Fairfax County in 2011 and in 2016 as a jurisdiction required to provide all voting and information materials in Spanish and Vietnamese, respectively. The Electoral Board has also provided ballots and other election-related materials in Korean since 2017, because the 2015 American Community Service Survey results showed that the number of Korean speakers almost met the federal threshold for designation by the Director of the Census.

FISCAL IMPACT:

Expenses associated with printing and translating the explanation will be paid out of existing appropriations in Fund 20000, Consolidated County and Schools Debt Service Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Virginia Code § 24.2-687
Attachment 2 – Draft Explanation for Transportation Bonds Referendum
Attachment 3 – Draft Explanation for Parks and Park Facilities Bonds Referendum
Attachment 4 – Draft Explanation for Public Library Bonds Referendum
Attachment 5 – Draft Explanation for Community Health and Human Services Facilities Bonds Referendum

ASSIGNED COUNSEL:

Elizabeth D. Teare, County Attorney
Erin C. Ward, Deputy County Attorney
Martin Desjardins, Assistant County Attorney

STAFF:

Joseph M. Mondoro, Chief Financial Officer
Christina Jackson, Director, Department of Management and Budget
Joseph LaHait, Debt Manager, Department of Management and Budget

§ 24.2-687. Authorization for distribution of information on referendum elections

A. The governing body of any county, city or town may provide for the preparation and printing of an explanation for each referendum question to be submitted to the voters of the county, city or town to be distributed at the polling places on the day of the referendum election. The governing body may have the explanation published by paid advertisement in a newspaper with general circulation in the county, city or town one or more times preceding the referendum.

The explanation shall contain the ballot question and a statement of not more than 500 words on the proposed question. The explanation shall be presented in plain English, shall be limited to a neutral explanation, and shall not present arguments by either proponents or opponents of the proposal. The attorney for the county, city or town or, if there is no county, city or town attorney, the attorney for the Commonwealth shall prepare the explanation. "Plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession.

If the referendum question involves the issuance of bonds by a locality, the locality shall provide for such printed explanation. The explanation shall (i) state the estimated maximum amount of the bonds proposed to be issued, and (ii) state the proposed use of the bond proceeds, and if there is more than one use, state the proposed uses for which more than 10 percent of the total bond proceeds is expected to be used.

B. Nothing in this section shall be construed to limit a county, city or town from disseminating other neutral materials or advertisements concerning issues of public concern that are the subject of a referendum; however, the materials or advertisements shall not advocate the passage or defeat of the referendum question.

C. This section shall not be applicable to statewide referenda.

D. Any failure to comply with the provisions of this section shall not affect the validity of the referendum.

1996, c. 297;2004, cc. 21, 399;2006, c. 302;2011, c. 590.

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.

TRANSPORTATION BONDS EXPLANATION

Ballot Question

TRANSPORTATION BONDS

Shall Fairfax County, Virginia, contract a debt, borrow money, and issue bonds, in addition to the transportation improvements and facilities bonds previously authorized, in the maximum aggregate principal amount of \$160,000,000 for the purpose of financing Fairfax County's share, under the Washington Metropolitan Area Transit Authority Compact, of the cost of constructing, reconstructing, improving, and acquiring transportation improvements and facilities, including capital costs of land, transit facilities, rolling stock, and equipment in the Washington metropolitan area?

Explanation

This referendum asks voters whether Fairfax County should be authorized to contract a debt and issue bonds in the maximum principal amount of \$160,000,000 to finance Fairfax County's share, under the Washington Metropolitan Area Transit Authority (Metro) Compact, of the cost of transportation improvements and facilities in the Washington metropolitan area. The County's current plans for the proceeds of bonds that may be authorized by this referendum are described below. These specific plans may be altered, but in any case the bonds can only be issued for purposes described in the ballot question.

Virginia law permits the County government to borrow money to buy land, purchase capital equipment, and construct or improve facilities by issuing general obligation bonds, which are sold to investors and repaid over time with County revenues. Money received from the sale of bonds provides funding for many County facilities. Bond financing permits the costs of those County facilities to be repaid over a period of years. However, before the County may incur a general obligation debt, a majority of the County voters must authorize the County to borrow those funds.

Metro was created in 1967 through an interstate agreement (a "compact") among the District of Columbia, Maryland, and Virginia. Fairfax County and other Northern Virginia jurisdictions served by Metro contribute toward Virginia's share of Metro's costs. The County currently plans to use the proceeds from this \$160,000,000 bond referendum, along with state funding and other local funds, to finance Fairfax County's share of Metro's Capital Improvement Program.

Metro's current Capital Improvement Program is a \$9.7 billion six-year program (FY 2021 – FY 2026), which includes \$1.8 billion in Fiscal Year 2021. The goal of the program is to provide safe, reliable, and affordable public transit service throughout the National Capital Region. It focuses Metro's capital investment on the safety, state of good repair, and reliability of Metrorail, Metrobus, and MetroAccess assets. Fairfax County's share of the current six-year Capital Improvement Program is \$265.8 million.

The investment priorities of the current six-year Capital Improvement Program include completing the multi-year rebuilding of platforms at 20 outdoor Metrorail stations that began in the summer of 2019, including many in Fairfax County along the Blue, Orange, and Yellow lines. The Platform Improvement Program modernizes outdoor Metrorail stations

with slip-resistant tiles, stainless-steel platform shelters with charging outlets, energy-efficient LED lighting, and greater systemwide accessibility. Other investment priorities include: beginning the acquisition of 360 new 8000-Series railcars; establishing radio and wireless communications infrastructure; replacing approximately 700 buses and paratransit vehicles; rehabilitating existing railcars and buses to improve and maintain service reliability; constructing new bus garages; investing in rail, rail stations, tunnels, bridges, signals, and bus system infrastructure to improve safety; and providing modern customer amenities such as passenger information systems.

**This explanation was prepared, printed, and made available at
election polling places in accordance with Virginia Code § 24.2-687**

PARKS AND PARK FACILITIES BONDS EXPLANATION

Ballot Question

PARKS AND PARK FACILITIES BONDS

Shall Fairfax County, Virginia, contract a debt, borrow money, and issue bonds, in addition to the parks and park facilities bonds previously authorized, in the maximum aggregate principal amount of \$112,000,000 for the following purposes: (i) \$100,000,000 principal amount to finance the Fairfax County Park Authority's cost to acquire, construct, reconstruct, develop, and equip additional parks and park facilities, to preserve open-space land, and to develop and improve existing parks and park facilities; and (ii) \$12,000,000 principal amount to finance Fairfax County's contribution to the Northern Virginia Regional Park Authority to acquire, construct, reconstruct, develop, and equip parks and park facilities?

Explanation

This referendum asks voters whether Fairfax County should be authorized to contract a debt and issue bonds in the maximum principal amount of \$112,000,000 for additional parks and park facilities, preservation of open space, and the improvement of existing parks owned and operated by the Fairfax County Park Authority (\$100,000,000) and by the Northern Virginia Regional Park Authority (\$12,000,000). The County's current plans for the proceeds of bonds that may be authorized by this referendum are described below. These specific plans may be altered, but in any case the bonds can only be issued for purposes described in the ballot question.

Virginia law permits the County government to borrow money to buy land, purchase capital equipment, and construct or improve facilities by issuing general obligation bonds, which are sold to investors and repaid over time with County revenues. Money received from the sale of bonds provides funding for many County facilities. Bond financing permits the costs of those County facilities to be repaid over a period of years. However, before the County may incur a general obligation debt, a majority of the County voters must authorize the County to borrow those funds.

The County currently plans to use \$100,000,000 of bonds from this referendum for improvements and facilities identified in a study that the Fairfax County Park Authority completed in 2016 to evaluate the County's recreational needs over a ten-year period. The improvements and facilities include capital projects to renovate and upgrade aging community park facilities, such as playgrounds, picnic shelters, outdoor restrooms, outdoor athletic courts, athletic field infrastructure, and trails; renovations and expansions to improve efficiency of Audrey Moore, Lee District, Cub Run, Providence, and South Run RECenters; projects for natural and cultural resources, such as ecological restorations and historic site preservation projects including development of a storage facility to protect and preserve significant historic artifacts; land acquisition to serve park-deficient areas and protect resources; and new and expanded facilities to improve service delivery, including constructing a second sheet of ice at Mount Vernon RECenter and completing a baseball complex to serve the entire County.

Also, the County is a member of the Northern Virginia Regional Park Authority (NOVA

Parks), which provides regional parks and recreational facilities in the County and elsewhere in Northern Virginia for residents and visitors. The County currently plans to use \$12,000,000 of bonds from this referendum to pay a portion of the County's contribution to NVRPA's Capital Improvement Program. The program's primary focus is to acquire parkland and create or restore park facilities. The bonds will be used to fund an annual \$3,000,000 capital contribution to NVRPA over the next four years and to support the repair, renovation, and expansion of existing and new facilities.

**This explanation was prepared, printed, and made available at
election polling places in accordance with Virginia Code § 24.2-687**

PUBLIC LIBRARY FACILITIES BONDS EXPLANATION

Ballot Question

PUBLIC LIBRARY BONDS

Shall Fairfax County, Virginia, contract a debt, borrow money, and issue bonds in addition to the public library facilities bonds previously authorized, in the maximum aggregate principal amount of \$90,000,000 for the purpose of providing funds, with any other available funds, to finance the cost to provide public library facilities, including the construction, reconstruction, enlargement, and equipment of existing and additional library facilities and the acquisition of necessary land?

Explanation

This referendum asks voters whether Fairfax County should be authorized to contract a debt and issue bonds in the maximum principal amount of \$90,000,000 for public library facilities. The County's current plans for the proceeds of bonds that may be authorized by this referendum are described below. These specific plans may be altered, but in any case the bonds can only be issued for purposes described in the ballot question.

Virginia law permits the County government to borrow money to buy land, purchase capital equipment, and construct or improve facilities by issuing general obligation bonds, which are sold to investors and repaid over time with County revenues. Money received from the sale of bonds provides funding for many County facilities. Bond financing permits the costs of those County facilities to be repaid over a period of years. However, before the County may incur a general obligation debt, a majority of the County voters must authorize the County to borrow those funds.

The County currently plans to use the \$90,000,000 of bonds from this referendum to renovate and upgrade the Patrick Henry Community (\$23,000,000), Sherwood Regional (\$18,000,000), and George Mason Regional (\$15,000,000) Libraries; and to relocate the Kingstowne Regional Library (\$34,000,000). The George Mason Regional Library was constructed in 1967 and last renovated in 1997; the Sherwood Regional Library was constructed in 1969 and last renovated in 1992; and the Patrick Henry Library was constructed in 1971 and last updated in 1995.

The Kingstowne Regional Library is proposed to be moved from a rental location to a new, County-owned facility. The new facility would increase library space from 15,000 to 30,000 square feet and includes additional meeting rooms and increased space for library collections. Current plans for the bonds would fund the Kingstowne Regional Library facility, and current conceptual designs co-locate the library with the Franconia Police Station, Lee District Supervisor's Office, Franconia Museum, an active adult center, and a childcare center within one comprehensive facility with garage parking and a County fueling station.

Funding for the Patrick Henry Library provides building replacement and adds structured parking. The new building will increase library space by roughly 7,000 square feet to 21,000 square feet. The new library will feature additional public seating and a larger children's section. The County is working with the Town of Vienna for the design and construction of the parking facility, including approximately 125 library parking spaces and 88 downtown

Vienna parking spaces.

The George Mason and Sherwood Regional Library renovations will prolong existing building life, provide new HVAC systems, update restrooms, and make additional capital repairs. For all four libraries, renovations and new construction will upgrade building systems and infrastructure for operational and energy efficiency; update power and technology capacity for more public access to the internet, computers, online resources, and wireless networking; and provide efficient layouts of available space supporting possible additional meeting rooms, enlarged children's areas, or increased general capacity.

**This explanation was prepared, printed, and made available at
election polling places in accordance with Virginia Code § 24.2-687**

COMMUNITY HEALTH AND HUMAN SERVICES FACILITIES BONDS EXPLANATION

Ballot Question

COMMUNITY HEALTH AND HUMAN SERVICES BONDS

Shall Fairfax County, Virginia, contract a debt, borrow money, and issue bonds, in addition to the human services facilities bonds previously authorized, in the maximum aggregate principal amount of \$79,000,000 for the purpose of providing funds, with any other available funds, to finance the cost to provide community health and human services facilities, including the construction, reconstruction, enlargement, and equipment of existing and additional community health and human services facilities and the acquisition of necessary land?

Explanation

This referendum asks voters whether Fairfax County should be authorized to contract a debt and issue bonds in the maximum principal amount of \$79,000,000 for community health and human services facilities. The County's current plans for the proceeds of bonds that may be authorized by this referendum are set forth below. These specific plans may be altered, but in any case the bonds can only be issued for purposes described in the ballot question.

Virginia law permits the County government to borrow money to buy land, purchase capital equipment, and construct or improve facilities by issuing general obligation bonds, which are sold to investors and repaid over time with County revenues. Money received from the sale of bonds provides funding for many County facilities. Bond financing permits the costs of those County facilities to be repaid over a period of years. However, before the County may incur a general obligation debt, a majority of the County voters must authorize the County to borrow those funds.

The County currently plans to use \$58,000,000 of bonds from this referendum to renovate or relocate the Joseph Willard Health Center, built in 1954 and partially renovated in 2010. The Joseph Willard Health Center is a licensed medical, nursing, dental, pharmacy, speech and hearing, and X-ray service facility, which also includes Health Department vital records and administrative spaces. Also located at the Joseph Willard Health Center are programs and services supporting the health and well-being of infants, children, women, and families. Over 15,000 individuals are served each year at the Joseph Willard Health Center facility. Building upgrades would allow the Health Department to provide essential services during emergencies or operational interruptions. Renovation or relocation would also include space reconfiguration, modification, and expansion to support current and future needs.

Also, the County currently plans to use \$21,000,000 of bonds from this referendum to renovate the Crossroads facility, built in 1989 and last renovated in 1994. The Crossroads facility is a residential substance abuse treatment and rehabilitation facility serving individuals with substance use disorders or co-occurring substance use and mental health disorders. The Crossroads facility provides substance abuse education, counseling, vocational rehabilitation, psychiatric services, medication monitoring, drug testing, case management, and transition support toward independent living. Individuals typically participate in programs at the Crossroads facility for a duration of four to six months in the

primary treatment phase and three to four months in the supervised living phase, which is also housed in the Crossroads facility. Typically, there are 50-60 individuals on the wait list to receive substance use or mental health treatment at the Crossroads facility. The Crossroads facility renovation plans currently include space reconfiguration, modification, and expansion to meet changing care standards with flexible space for admissions, visitors, and therapeutic services. The current plan would also support more efficient use of existing space to reduce waiting lists and provide updates to outdated equipment, HVAC, plumbing, electrical, and mechanical systems.

**This explanation was prepared, printed, and made available at
election polling places in accordance with Virginia Code § 24.2-687**

Board Agenda Item
July 28, 2020

ACTION - 2

Approval of Head Start Transportation Waiver Request for the Continuation of Fairfax County Public Schools 2020-2021 Transportation Services

ISSUE:

Board approval of the Head Start Transportation Waiver Request for the Continuation of Fairfax County Public Schools 2020-2021 Transportation Services for Head Start children.

RECOMMENDATION:

The County Executive recommends that the Board approve the Head Start Transportation Waiver Request for the Continuation of Fairfax County Public Schools 2020-2021 Transportation Services for Head Start children.

TIMING:

Board action is requested on July 28, 2020 to meet federal Head Start Performance Standards.

BACKGROUND:

The Fairfax County Board of Supervisors, as the grantee, has received a waiver from the federal Office of Head Start for the continuation of Fairfax County Public School Transportation Services since the Head Start Transportation Regulations were enacted in 2006. The waiver was last approved in 2019 and needs to be approved annually.

The Fairfax County Head Start Program is requesting a waiver to Head Start Transportation Regulations 45 CFR 1303.72 (a)(1) Child Safety Restraint Systems Requirement and 45 CFR 1303.72 (a)(4) Bus Monitor Requirement, for the program year 2020-2021. This waiver request has been granted since 2006, based upon the exceptional safety record of the FCPS Transportation Services. The FCPS transportation fleet has 1,625 buses and provides transportation daily for approximately 144,000 students, including approximately 200 buses that transport 242 Head Start children.

FISCAL IMPACT:

None.

Board Agenda Item
July 28, 2020

ENCLOSED DOCUMENTS:

Attachment 1 – Head Start Transportation Waiver Request

STAFF:

Tisha Deeghan, Deputy County Executive

Christopher A. Leonard, Director, Department of Neighborhood and Community
Services

Anne-Marie D. Twohie, Director, Office for Children, NCS

HEAD START 45 CFR PART 1303 – TRANSPORTATION WAIVER REQUEST**DATA COLLECTION FORM****Grant Number:** 03CH010411/05 **Legal Name of Grantee:** Fairfax County Board of Supervisors**Name, Title and Signature of Authorized Official Requesting Waiver:**Jennifer B Branch, Head Start Division Director


Signature

Phone Number : (703) 324 - 8087 Fax Number: (703) 324 – 8200Email Address: Jennifer.Branch@Fairfaxcounty.gov**1. Number of Children Served:**Head Start: 242Early Head Start: N/A**2. Number of Children Provided Transportation Services:**Head Start: 242Early Head Start: N/AA. Using Grantee Owned or Leased Vehicles: N/AB. Through Grantee Contracted Transportation Services: N/AC. Through Arrangement at No Cost to Grantee: N/A**3. Proposed Number of Children Who Will be Covered by Waiver:**Head Start: 242Early Head Start: N/A**4. Requesting Waiver Of:**X

Child Safety Restraint Systems Requirement (45CFR 1303.72 (a)(1))

X

Bus Monitor Requirement (45CFR 1303.72 (a)(4))

5. Waiver Request Applies to the Following:

Grantee

XDelegate(s) (please list): Fairfax County Public Schools**6. Grantee's Justification for Requesting a Waiver (attach no more than five pages):**

Please explain fully as each request will be considered separately and waivers will not receive automatic approval.

If requesting waivers of both 45CFR1303.72 (a)(1), child safety restraint systems requirement, and 45CFR 1303.72(a)(4), bus monitor requirement, you must provide justification for each requirement.

Request for Transportation Waiver for Delegate FCPS

Birth-to-Five Head Start & Early Head Start Application – Fairfax County, VA

July 1, 2020 through June 30, 2021

The Fairfax County Head Start Program (Grant # 03CH010411) has had an approved waiver for delegate program Fairfax County Public Schools since the inception of the Head Start transportation regulations in 2006, as stated in the Head Start Program Performance Standards 1303.72(a)(1) Child Restraints and 1303.72(a)(4) Bus Monitors.

The Fairfax County Public School's transportation fleet includes more than 1,625 school buses that provide transportation daily for over 144,000 students, including approximately 200 buses that transport Head Start children. Transportation for Head Start students is a coordinated system of transportation for all students and it allows family-friendly support to Head Start children who may be riding with their older siblings to school and home.

The FCPS Office of Transportation Services has an outstanding safety record, meeting and/or exceeding National Highway Traffic Safety Administration (NHSTSA) standards and has been transporting Head Start children for over 30 years with no report of a Head Start child ever being injured. The Transportation Regulation requiring restraints and monitors for children in Fairfax County school buses continue to be problematic. There is no seat belt designed for all ages and sizes and to retrofit the current school buses invalidates the warranty under which they were originally purchased. The FCPS Office of Transportation Services does not have the capacity to provide the number of monitors for such a large fleet of buses; the cost of placing a monitor on each bus would be prohibitive. FCPS provides insurance for all the staff and children transported; therefore, volunteers cannot be placed on the buses as bus monitors because it presents a potential liability.

Without the support of the FCPS Office of Transportation Services, many families that depend on bus transportation would not be able to participate in the Head Start Program. Fairfax County public transportation is limited and not available in all areas, resulting in some families having to walk children long distances to reach their destinations. If transportation provided by FCPS was not available, enrollment in Head Start would decline, and families in need would be left without services.

Board Agenda Item
July 28, 2020

ACTION - 3

Approval of Head Start/Early Head Start Policy Council Bylaws, Self-Assessment Report and Memorandum of Understanding between Policy Council and Board of Supervisors

ISSUE:

Board approval of the Head Start/Early Head Start Policy Council Bylaws, Self-Assessment Report and Memorandum of Understanding between Policy Council and Board of Supervisors.

RECOMMENDATION:

The County Executive recommends that the Board approve the Head Start/Early Head Start Policy Council Bylaws, Self-Assessment Report and Memorandum of Understanding between Policy Council and Board of Supervisors.

TIMING:

Board action is requested on July 28, 2020 to meet federal Head Start Performance Standards.

BACKGROUND:

Existing rules and regulations require that the Board of Supervisors, as the County's governing body, review and approve the composition of the Head Start Parent Policy Council and the procedures by which members are chosen, the Head Start program's annual self-assessment report, including actions that are being taken by the program as a result of the self-assessment review, and the memorandum of understanding between Policy Council and Board of Supervisors. Board approval of the following attachments will satisfy these compliance requirements: 1) Policy Council Bylaws, 2) Self-Assessment Report and 3) Memorandum of Understanding between Policy Council and Board of Supervisors.

1. Policy Council Bylaws

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

percent of Policy Council members are parents of currently enrolled children, as required.

The Board of Supervisors most recently approved the Policy Council Bylaws on June 25, 2019. No changes have been made to the bylaws and they have been reviewed by the Office of the County Attorney.

2. Self-Assessment Report

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

3. Memorandum of Understanding

The memorandum of understanding between the Board of Supervisors, as the County's governing body, and the Policy Council, as the primary vehicle for involving parents in decision-making about the Head Start program, documents current practices and procedures regarding how the two bodies implement shared decision-making, as required by federal Head Start Performance Standards. The memorandum of understanding outlines the roles and responsibilities of each group, the interactions between the two, the joint communications they receive, and the approvals both groups provide. The memorandum of understanding was first developed in 2011 and has been renewed every three years. The Office of the County Attorney has reviewed the memorandum of understanding and has advised that it should now be reviewed and approved every two years, rather than every three years. The attached memorandum of understanding has been updated to reflect this change.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:

Attachment 1 – Fairfax County Head Start/Early Head Start Policy Council Bylaws

Attachment 2 – Fairfax County Head Start/Early Head Start 2020 Self-Assessment Report

Attachment 3 – Memorandum of Understanding between Policy Council and Board of Supervisors

Board Agenda Item
July 28, 2020

STAFF:

Tisha Deeghan, Deputy County Executive

Christopher A. Leonard, Director, Department of Neighborhood and Community
Services

Anne-Marie D. Twohie, Director, Office for Children, NCS

ASSIGNED COUNSEL:

Daniel Robinson, Assistant County Attorney

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

ARTICLE I. NAME

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

ARTICLE II. PURPOSE

The purpose of the Fairfax County Head Start/Early Head Start Policy Council shall be to provide direction for the Head Start/Early Head Start program in compliance with Federal Head Start Performance Standards (45 CFR Chapter XIII, Subchapter B) and the Head Start Act as amended December 12, 2007. Specifically, 45 CFR 1301.3 (a) states each agency must establish and maintain a policy council responsible for the direction of the Head Start program at the grantee agency level, and a policy committee at the delegate level. The Policy Council is responsible for providing direction on program design and operation, long- and short-term planning goals and objectives. This direction must take into consideration results from the annual community-wide strategic planning and needs assessment and self-assessment (Head Start Act section 642(c)(2)(A)).

The specific objectives and purpose of this Policy Council shall be to approve and submit to the governing body, Fairfax County Board of Supervisors, decisions on each of the following activities (Head Start Act section 642(c)(2)(D)(i) through (viii) and 45 CFR 1301.3(c)(2)):

- A) Activities that support the active involvement of parents in supporting program operations, including policies to ensure Fairfax County Head Start/Early Head Start program is responsive to community and parent needs.
- B) Program recruitment, selection, and enrollment priorities.
- C) Applications for funding and amendments to applications for funding for Fairfax County Head Start/Early Head Start program.
- D) Budget planning for program expenditures, including policies for reimbursement and participation in policy council activities.
- E) Bylaws for the operation of the policy council.
- F) Program and personnel decisions regarding the recommendation of hiring program staff.
- G) Ongoing monitoring results, data on school readiness goals and status reports of program operations.
- H) Developing procedures for how members of the Policy Council will be elected.
- I) Recommendations on the selection of delegate agencies and the service areas for such agencies.

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

ARTICLE III. MEMBERSHIP

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

- Section 1. The Fairfax County Head Start/Early Head Start Policy Council shall consist of six (6) parent representatives from the grantee program and six (6) parent representatives from each of the delegate programs. The parent representatives must have children currently enrolled in the Head Start /Early Head Start program. The grantee program includes Greater Mount Vernon Community Head Start (GMVCHS), Family Child Care (FCC) Partnership and EHS Expansion programs. The delegate programs are Fairfax County Public Schools (FCPS) and Higher Horizons (HiHo). In addition to the parent representatives, there must also be at least two (2) community representatives, who must be residents of/or employed in Fairfax County. All program options must be represented.
- Section 2. Parent representatives of currently enrolled children shall be elected to the Policy Council at the grantee and delegate program level by the program's respective policy or parent committee.
- Section 3. Community representatives may include representation from other child care programs, neighborhood community groups (public and private), higher education institutions, program boards, and community or professional organizations which have a concern for children and families in the Head Start/Early Head Start Program and can contribute to the direction of the program. Community representatives are nominated by the Head Start Division Director and the Policy Council Executive Committee and must be elected by parent representatives of the Council to serve.
- Section 4. Voting members must resign from the Policy Council if they or an immediate family member (as defined by Virginia Code § 2.2-3101) become employed, temporarily (for sixty (60) days or more) or permanently, by the Fairfax County Head Start/Early Head Start Program. Voting members may substitute occasionally (as defined by each program) in the Fairfax County Head Start/Early Head Start Program.
- Section 5. Policy Council members shall be elected to serve a one (1) year term and may not serve more than three (3) years. Members may voluntarily terminate their membership at any time by giving written notice to the Council. The respective policy or parent committee will be responsible for recruiting and electing a new member to the Council within one month of resignation or termination of the member. In the event of termination or resignation of a community representative, the Head Start Director and the Policy Council Chairperson will

FAIRFAX COUNTY OFFICE FOR CHILDREN
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BYLAWS

recruit a replacement. Election of a new community representative shall take place within one month of resignation or termination of the member.

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

ARTICLE IV. MEETINGS

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

- Section 2. All meetings shall be conducted in compliance with the Virginia Freedom of Information Act, Virginia Code §§ 2.2-3700 – 2.2-3714 (“VFOIA”), and except for closed sessions, all meetings shall be open to the public. Pursuant to Virginia Code § 2.2-3701, “meeting” or “meetings” means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. As required by VFOIA, the public will be given notice of the date, time, and location of the meetings at least three working days before each Policy Council meeting, except in case of an emergency. Notice, reasonable under the circumstances of emergency meetings, shall be given contemporaneously with the notice provided to members. The Head Start administrative staff and/or Chairperson will provide the information to the County’s Office of Public Affairs so that it can provide the public notice. All meetings shall be held in places that are accessible to persons with disabilities, and all meetings shall be conducted in public buildings whenever practical.

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

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

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

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

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

- 1) Be an active participant in good standing with their Parent/Policy Committee for at least 2 consecutive meetings.
- 2) Have served on the Policy Council for a minimum of one year.
- 3) Be able to give either an oral summary or submit a written report (whether still a member or not) at the next regularly scheduled meeting.

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

ARTICLE V. OFFICERS

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

Section 2. Election of officers will take place at the December meeting. Members can nominate themselves or be nominated by another Policy Council member.

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

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

FAIRFAX COUNTY OFFICE FOR CHILDREN
HEAD START/EARLY HEAD START POLICY COUNCIL
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Section 5. Should the Chair position become vacant, the Vice-Chairperson shall become the Chairperson for the remainder of the term. The Council shall elect a replacement for Vice-Chairperson at its next regular meeting to serve the balance of the term.

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

Section 6. The duties of officers are as follows:

- 1) Chairperson – Presides at all Policy Council and Executive Committee meetings; may act as a spokesperson for the Council in events concerning the Head Start program.
- 2) Vice-Chairperson – Assumes the duties of the Chairperson in the absence of the Policy Council Chairperson; performs other duties as assigned by the Chairperson.
- 3) Secretary – Records minutes of the Policy Council meetings with assistance from grantee staff; makes the appropriate corrections to meeting minutes as directed; compiles and keeps current list of all voting members and records their attendance; keeps on file all minutes of the Policy Council; reads minutes and other correspondence at meetings, calls members about absence from meetings, reminds members about meetings and training and tabulates votes.
- 4) Treasurer – Maintains the Council's financial records, prepares Treasurer's report and balances the checkbook; serves on the Budget Subcommittee; prepares for signature and distributes reimbursements, stipends, and payment of invoices; coordinates out-of-town travel funds for Policy Council members, who would be assisted by the grantee staff.
- 5) Parliamentarian – Keeps order during the meetings in accordance with the Policy Council Bylaws and in accordance with the current edition of Roberts' Rules of Order.

ARTICLE VI. COMMITTEES

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

FAIRFAX COUNTY OFFICE FOR CHILDREN
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- Section 2. The Policy Council may create other committees as needed to carry out its duties (i.e. finance, self-assessment). Meetings of these other committees are also public meetings and shall comply with VFOIA, including the meeting notice requirements set forth in Article IV, Sections 2 and 3.
- Section 3. Policy Council members may be appointed by the Head Start Division Director to serve on other Fairfax County Boards, Commissions or Committees and/or private agencies and community boards. Policy Council members will represent the Fairfax County Head Start/Early Head Start program on these boards.

ARTICLE VII. GRIEVANCES

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

ARTICLE VIII. PARLIAMENTARY AUTHORITY

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

ARTICLE IX. AMENDMENT OF BYLAWS

- Section 1. These Bylaws shall be reviewed annually and recommendations presented to the Council for approval. The Policy Council will be given thirty (30) days to review recommendations.
- Section 2. The Bylaws may be amended at any regular meeting of the Policy Council or at a special meeting called for such purpose by majority vote of the Council members present, provided that representatives from each delegate agency are present and voting.
- Section 3. Amendments to the Bylaws will be presented to the Fairfax County Board of Supervisors for approval, and will become effective upon approval by the Board of Supervisors.

FAIRFAX COUNTY OFFICE FOR CHILDREN
HEAD START/EARLY HEAD START POLICY COUNCIL
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ARTICLE X. VOTING

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

ARTICLE XI. TRAINING

Section 1. The Council and its officers shall receive annual training (45 CFR 1301.5) which includes: Head Start Performance Standards, Head Start Act, Roberts' Rules of Order, VFOIA, roles and responsibilities of members and officers, subcommittee functions, budget and finance, personnel procedures and conference travel procedures.

ARTICLE XII. ACTIONS

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

ARTICLE XIII. STIPENDS

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



2020 Program Self-Assessment Summary

Fairfax County Head Start and Early Head Start

Self-Assessment Process

The Fairfax County Head Start/Early Head Start program conducted its required annual self-assessment during January/February, 2020. Annual self-assessment of programs is a requirement of the Head Start Program Performance Standards 45 CFR 1302.102(b)(2)(i). All Fairfax County Head Start/Early Head Start programs, including those operated directly by Fairfax County Office for Children—Greater Mount Vernon Community Head Start (GMVCHS) centers—and those operated contractually by family child care programs and by delegate agencies—Higher Horizons Day Care Center, Inc. and Fairfax County Public Schools (FCPS)—and all options (i.e., center-based, home-based, family child care and child care partnerships) were reviewed using a locally designed protocol based upon the 2020 Head Start Focus Area 1 Monitoring Protocol. Parents and community stakeholders were involved in this process and were interviewed about their experience. The self-assessment supports the continuous improvement of program plans and service delivery, providing an opportunity for engaging parents and community stakeholders. The following is a brief summary of each service area.

Early Childhood Development and Disabilities (ECDD)

Individualization, Disabilities Services, Curriculum and Assessment

Service area found in compliance.

Strengths

Transition services are strong across programs; all have transition strategies and systems to help ensure smooth transitions from EHS to HS and from HS to kindergarten in the public schools.

Disabilities services are a strength in the program; systems are in place for identification, referral and service delivery for children with disabilities and their families. In addition, the program has a strong, collaborative relationship with Parts B & C agencies, Fairfax County Public Schools Early Childhood Identification & Services and Infant & Toddler Connection of Fairfax-Falls Church.

The program has a strong social-emotional approach to the use of the Classroom Assessment Scoring System (CLASS) tool and results in strengthening effective and intentional teaching practices and supports for children. There are systems in place to ensure observations are completed in all HS and EHS classrooms and Family Child Care Partner homes using the Infant, Toddler and PreK CLASS.

Considerations for PY 2020-21

- Program will provide enhanced supports for teachers and Family Child Care Partners to strengthen programming provided to the three-year-olds in Head Start as well as three-year-olds in Early Head Start.

- Program will continue strengthening curriculum fidelity to ensure that the curriculum is implemented fully in the way that it was intended. Strategies include the use of fidelity tools.
- Program will assist programs in using data for instructional planning and program improvement.
- Program will focus on increasing support for coaching best practices.

Health, Mental Health, and Nutrition

Child Health Status and Care, Follow-ups, Child Nutrition, Mental Health, and Safety Practices

Service area found in compliance.

Strengths

Program has sound practices in place to ensure children's and families' health, safety, and well-being. All children receive ongoing monitoring of health requirements and support in receiving follow-up care. All programs conduct daily and regular Health and Safety classroom/site visits.

Regarding Nutrition, across all programs a variety of food which considers families' cultural and religious backgrounds is offered. Strategies are in place to ensure that all programs meet the child's dietary needs, taking food allergies into consideration.

Considerations for PY 2020-21

- Programs are working to enhance mental health services for children and families. This includes identifying consultants to provide mental health services and educational programming that support children's positive behavior as well as services to families, providers, and staff. Programs will continue to coordinate across service areas to implement a collaborative approach to mental health services and identify areas of need.

Family and Community Engagement

Family Partnership Building, Parent Involvement, Community and Child Care Partnerships

Service area found in compliance.

Strengths

Program staff have clear understanding of requirements for documenting contacts with parents and completing Family Partnership Agreements. All programs have comprehensive community resources to address family needs.

Through the implementation of the Parent Gauge survey at the grantee programs, family service staff and family child care specialists interviewed families and utilized the aggregated information to target the communication and referrals to parents on topics such as creating routines, reading to their children, and methods of discipline.

ReadyRosie, an online parenting curriculum, was fully implemented by Higher Horizons, Greater Mt. Vernon and Family Child Care. The Parent Gauge question response "The Program has helped me gain new knowledge and skills about parenting" was significantly higher than it was prior to implementation.

Family Service Workers' monthly discussions with families about the importance of reading to children has led to an increase in the percent of families who read to their children, as well as an increase in the frequency of reading. Programs will continue to track this information and encourage and provide support to those who do not read to their children on a regular basis.

Program offered county-wide Male Engagement events that encouraged significant males in a child's life to be more involved in the day to day learning experiences with children.

Considerations for PY 2020-21

- Program will continue with county-wide Male Engagement events with a focus on physical activity to encourage more participation.
- Data around monthly reading and ReadyRosie will be analyzed to report on whether this correlates with an increase in meeting benchmarks in language/literacy and social emotional domains in child outcomes.

Fiscal

Financial Management Systems, Reporting, Procurement, Compensation, Cost Principles, Facilities and Property

Service area found in compliance.

Strengths

There are sound fiscal systems in place that meet or exceed federal standards for financial reporting, accounting records, internal control, budget control, compliance with cost principles, cash management and administrative cost. Monthly desk reviews and quarterly fiscal monitoring systems provide a strong system of controls to ensure that delegate agencies are using HS/EHS grant funds in compliance with federal rules and regulations. Fairfax County Government's ability to leverage several funding sources in addition to federal funding in support of the Head Start/Early Head Start and Child Care Partnership & Expansion Programs continues to be a fiscal strength and highlight of the overall program.

Delegate and grantee fiscal officers attended Head Start Grants Management and Uniform Guidance Training in December 2019. External training supported programs with strengthening cost allocation challenges identified in the 2019 Self-Assessment and helped to mitigate the inherent risks to fiscal operations.

Considerations for PY 2020-21

- The grantee will continue to provide technical assistance to support the delegate agencies with identified challenges. The grantee will also seek and recommend external training to support the delegate programs.

ERSEA

Eligibility, Recruitment, Selection, Enrollment, Attendance

Service area found in compliance with the exception of enrolling children with disabilities (10%).

As of January 31, 2020, Fairfax County Public Schools HS/EHS, Higher Horizons HS/EHS, and the Family Child Care Partnership and Expansion Grant (FCC and Center-based) did not reach the required minimum enrollment of 10% of children with disabilities. However, programs are still evaluating children and several more may be identified with diagnosed disabilities. In the meantime, ERSEA and ECDD work groups and program managers are reviewing the referral processes, awareness, and placement decisions of children with disabilities. They are also compiling data trends on the incidence of children served through Early Childhood Identification and Services (ECID&S), Infant & Toddler Connection of Fairfax-Falls Church, and other programs in the county as well as number of children served for the past three years and other factors that may be affecting enrollment.

Strengths

Eligibility files were reviewed across all programs and options and were in compliance. Programs are following the procedures detailed in the Eligibility Guidelines and their own policies and procedures manuals. Cover sheet includes eligibility category, date of intake interview, annual income, and required signatures. Review of the program documents and data revealed that there was a great deal of consistency around ERSEA policies, and that the enrollment and point system is utilized across the board.

Considerations for PY 2020-21

- The program has set a goal to reduce chronic absence. Chronic absence continues to be reviewed by managers and family service workers to partner with families in reducing barriers to on-time attendance. Overall, programs are staying above the 85% average daily attendance each month, with the exception of FCPS Early Head Start program.
- Though full enrollment has been maintained in both grants, heightened recruitment efforts will need to continue for Early Head Start family child care, as 58 children will be aging out of EHS and transitioning to Head Start or other early childhood programs.
- Program will prioritize enrollment of children with disabilities to achieve 10% by mid-year.

Program Design and Management

Program Governance, Planning, Communication, Record-keeping and Reporting, Ongoing Monitoring, Human Resources, Organizational Structure, Facilities, Materials, Equipment and Transportation

Service area found in compliance.

Strengths

There are sound management systems in place that meet or exceed federal standards for Planning, Communication, Record-keeping and Reporting, Ongoing Monitoring, Organizational Structure, Facilities and Materials. Program governing bodies are utilizing the shared governance agreement in support of their ongoing planning and communications.

Considerations for PY 2020-21

- Program will support quality transportation services by procuring services of a vendor through a Request for Proposal in Spring, 2020.
- In the area of Program Governance, representation to the Policy Council, Policy Committees, and Parent Committee was low during 2019. In the past year, the Policy Council has struggled to maintain a quorum at the monthly business meetings. Programs are reviewing recruitment of parents to ensure full participation. Suggestions have been made to ensure parents who are not already officers of the committees and other councils become representatives to the larger Head Start Policy Council because of the level of time commitment each one requires. Ensure sufficient detail is included in Council/Committee minutes, particularly as it relates to voting actions.
- The Shared Governance Agreement Memorandum of Understanding will be revised and approved by all bodies by July 2020.
- Ongoing planning in data collection, analysis, and outcomes reporting to support continuous quality improvement.

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding is entered into by and between the Fairfax County Board of Supervisors (hereafter called the **“Board”**) and the Policy Council of the Fairfax County Head Start/Early Head Start Program (hereafter called the **“Council”**).

In accordance with P.L. 110-134 Improving Head Start for School Readiness Act of 2007 (Head Start Act), this MOU describes the processes and procedures regarding how the Board, its designee agency Department of Family Services Neighborhood and Community Services Office for Children (OFC), and the Council implement and share decision-making for the Fairfax County Head Start/Early Head Start program.

The period of this agreement will be for three-two years from the date of approval by the Board.

THE PARTIES TO THIS UNDERSTANDING ARE MUTUALLY AGREED THAT:

1. SHARED GOVERNANCE

- a. Definition – Shared governance is an established working partnership between the Board of Supervisors, Policy Council, Policy Committees, Parent Committees, Delegate Boards, and key OFC management staff to develop, review, and approve or disapprove Head Start/Early Head Start policies and procedures.
- b. Roles/Responsibilities
 - i. Board of Supervisors – As the grantee, the Board assumes the overall legal and fiduciary responsibility to ensure that the county’s Head Start/Early Head Start program operates in compliance with the Federal Head Start Program Performance Standards and other applicable laws, regulations, and policy requirements. The Board has established a system of committees of Board members to help manage its oversight responsibilities. The Board’s Health, Housing and Human Services Committee is responsible for oversight of all County human services programs which includes Head Start/Early Head Start. In compliance with section 642(c)(1)(E)(iv)(XI) of the act, the Board assigns the chairperson of the Health, Housing and Human Services Committee as its liaison to Policy Council and OFC to oversee key responsibilities related to program governance and improvement of Head Start.
 - ii. Department of Family Services Neighborhood and Community Services Office for Children – The Board delegates the administrative operations of the Head Start/Early Head Start program to OFC, who works closely with the Board liaison and the Policy Council.
 - iii. Policy Council – The Council provides a formal structure through which Head Start/Early Head Start parents and community representatives are responsible for the direction of the Head Start program (45 CFR 1301.3(a)) in partnership with the Board. The Council’s roles and responsibilities are governed by its Bylaws, which are reviewed and approved by the Board.

- c. Interaction – The Board and Council have open meetings for reciprocal attendance at any time and the Council has standing invitations for the Board liaison to conduct the annual swearing in of new officers and to deliver acknowledgements during the end of the year recognition ceremony. The Board liaison and Head Start director meet on a quarterly basis, or more often as needed, to exchange information and the Policy Council Chairperson has a standing invitation to attend such meetings.
- d. Joint Communications – As required by the Head Start Act section 642(d)(2), both the Board, through its assigned liaison, and the Policy Council receive regular reports from OFC related to program planning, policies and overall Head Start operations. These reports include the following information:
 - A) Monthly financial statements, including credit card expenditures;
 - B) Monthly program information summaries;
 - C) Program enrollment reports including attendance reports for children whose care is partially subsidized by another agency;
 - D) Monthly reports of meals and snacks provided through the United States Department of Agriculture (USDA) Child and Adult Care Food Program;
 - E) Annual financial audit;
 - F) Annual self-assessment including any findings related to such assessment;
 - G) Community-wide strategic planning and needs assessment which includes any applicable updates;
 - H) Communication and guidance from the federal government;
 - I) Program Information Reports (PIR).

The Board liaison shall share information from these reports with the Board at scheduled meetings of its Health, Housing and Human Services Committee.

- e. Joint Approval – The two governing bodies, the Fairfax County Board of Supervisors and the Head Start/Early Head Start Policy Council, as partners in the governance of the program, both approve the following items:
 - A) Applications for funding and amendments to applications for funding (Board approval governed by Fairfax County’s Grants Board Item Policy effective September 1, 2004)
 - B) Head Start program’s annual Self-Assessment Report, including actions that may result from the self-assessment review, or responses to findings from Federal monitoring reviews
 - C) Policy Council Bylaws

ACCEPTED BY:

 Jeffrey McKay, Chairman Date
 Fairfax County Board of Supervisors

 Heather Thomas, Chairperson Date
 Fairfax County Head Start/Early Head Start
 Policy Council

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ACTION - 4

Approval of Changes to the Fairfax County Purchasing Resolution

ISSUE:

Board of Supervisors' approval of changes to the Fairfax County Purchasing Resolution.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the changes outlined below to the Fairfax County Purchasing Resolution, to become effective on July 28, 2020.

TIMING:

Routine.

BACKGROUND:

The Board of Supervisors adopted the current version of the Fairfax County Purchasing Resolution on July 16, 2019. During the 2020 General Assembly session, fourteen bills were approved relating to procurement and/or contracts that passed the House and Senate. Fourteen bills involving procurement were either killed or continued to the 2021 session. Two successful bills contained a change that modified a mandatory section of the Virginia Public Procurement Act (VPPA) or the Code of Virginia. These mandatory changes and some non-mandatory changes recognized for their potential benefit to the County are proposed for inclusion in the Purchasing Resolution, listed below under the heading "Code Changes."

The remaining five bills either:

- Modify requirements specific to the Department of General Services, state agencies or less populous localities (four), or
- Modify a section of the VPPA that is not included in the Purchasing Resolution (one).

The 2020 General Assembly introduced bills related to procurement and contract administration. Looking forward, the County expects continued interest in legislation related to construction contracting and small businesses in the 2021 General Assembly session.

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This year, staff recommends 15 administrative amendments to the Purchasing Resolution, which can be found under the heading "Administrative Changes." These amendments are clarifications and technical corrections to the Resolution.

Code Changes

1. House Bill 358, Code of Virginia §2.2-4321.2. Authorizes any public body, including any state or local government, when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works, to require bidders to enter into or adhere to project labor agreements on the public works projects. This legislation provides the County with the local option to require such adherence at pages 10, 11, and 13.
2. House Bill 1201, Senate Bill 380, Code of Virginia §§2.2-4302.1, 2.2-4359. Allows localities to include in the invitation for bid criteria that may be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder (Page 14).
3. House Bill 1078 Code of Virginia §2.2-4302.2. Permits public bodies to include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. This legislation provides new local authority for the County (Page 15).
4. House Bill 452, Senate Bill 650, Code of Virginia §§2.2-4303. Increases from \$100,000 to \$200,000 the small purchases exemption under the Virginia Public Procurement Act for single or term contracts for goods and services other than professional services (Pages 16-17, 19-21, 23-24, 26).
5. Senate Bill 487, Code of Virginia §2.2-4303.1. Increases the aggregate limit for architectural and engineering contracts for localities for projects performed in a one-year contract term from \$6 million to \$8 million (Page 45).
6. House Bill 890 §2.2-4382. Removes the provision limiting the use of construction management by local public bodies to projects with a cost expected to exceed \$10 million and provides that the threshold for such shall be consistent with the threshold established in the procedures adopted by the Secretary of Administration for using construction management or design-build contracts (Page 46-47).
7. Senate Bill 341. §2.2-4379 through 2.2-4382. Authorizes local public bodies to use construction management contracts for projects with a cost expected to exceed \$26 million (Pages 46-47).

Administrative Changes

1. Clarified that the updated Fairfax County Purchasing Resolution is effective at the start of the fiscal year, July 1, 2020 (Page 1).
2. Added language to reflect current purchasing practices related to purchases for the Fairfax County Sheriff (Page 4).
3. Amended language to be consistent with Virginia Code §2.2-4310 which

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- was amended by HB 1049 (Page 14).
4. Amended language to conform to County's One Fairfax Policy on racial and social equity and its recognition that economic inclusivity benefits all (Page 13).
 5. Change to align procurement threshold with increase established under HB 452 (Page 16).
 6. Change to align procurement threshold with increase established under HB 452 and allow for notification to the Board of Supervisors by NIP, instead of an Information Item (Page 16-17).
 7. Change to align procurement threshold with increase established under HB 452 and allow for notification to the BOS by NIP (Page 19).
 8. Change to increase small purchase threshold commensurate with other purchase limit thresholds (Page 24).
 9. Change to conform with Virginia Code §2.2-4345(A)(14) (Page 25).
 10. Changed to reflect the County's current practices regarding HIPAA Compliance for its contractors (Page 36).
 11. Changed to reflect current practice (Page 38).
 12. Changed to correct typographical error (Page 39).
 13. Changed to add that the disputes resolution provision is mandatory (Page 40).
 14. Changed to reflect new small purchase threshold (Page 40).
 15. Changed to allow flexibility in contracting given that drug free workplace requirements vary state-to-state (Page 40).

Code Changes Not Adopted

1. HB 1300 and SB 607 set the statute of limitations on construction contracts and architectural and engineering contracts at 15 years. This applies to state agencies only.
2. HB 833 and SB 8 authorize public bodies for public works contracts to require contractors and subcontractors to pay the "prevailing wage rate" as defined by Virginia Code § 2.2-4321.3. This new local authority must be implemented by ordinance. Since these bills include an effective date of May 1, 2021, there is sufficient time to review these bills in greater detail and further discuss how best to consider implementation this new authorization.

The text changes proposed in the Resolution are presented in "track changes" format and legislative references are provided in highlight. These changes have been coordinated with the Department of Public Works and Environmental Services, the Department of Housing and Community Development, the Fairfax County Park Authority, the Department of Transportation, Fairfax County Public Schools, and the Office of the County Attorney.

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FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I - Revised Fairfax County Purchasing Resolution

STAFF:
Joseph Mondoro, Chief Financial Officer
Cathy A. Muse, Director, Department of Purchasing and Supply Management

ASSIGNED COUNSEL:
Patricia M. McCay, Senior Assistant County Attorney

FAIRFAX COUNTY PURCHASING RESOLUTION



July
2019-2020

~~Adopted by the Board of Supervisors on July 16,~~
~~2019~~ Adopted by the Board of Supervisors on July
1428, 2020

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WHEREAS, a central purchasing system is authorized by §15.2-1543 of the Code of Virginia, and is thus a part of the Urban County Executive Form of Government adopted by Fairfax County in 1951; and

WHEREAS, the Board of County Supervisors is dedicated to securing high quality goods and services at reasonable cost while ensuring that all purchasing actions be conducted in a fair and impartial manner with no impropriety or appearance thereof, that all qualified vendors have access to County business and that no offeror be arbitrarily or capriciously excluded, that procurement procedures involve openness and administrative efficiency, and that the maximum feasible degree of competition is achieved; and

WHEREAS, the Code of Virginia, §2.2-4300 through §2.2-4383 (as amended), enunciate the public policies pertaining to governmental procurement from nongovernmental sources by public bodies which may or may not result in monetary consideration for either party, which sections shall be known as the Virginia Public Procurement Act; and

WHEREAS, the Code of Virginia, §15.2-1236 (as amended) requires all purchases of and contracts for supplies, materials, equipment and contractual services shall be in accordance with Chapter 43 of Title 2.2 of the Code of Virginia; and

WHEREAS, the Code of Virginia, §2.2-4343 (as amended) allows implementation of the Virginia Public Procurement Act by ordinance, resolutions, or regulations consistent with this Act by a public body empowered by law to undertake the activities described by the Act; and

WHEREAS, the Code of Virginia, §15.2-1543, empowers the Board of Supervisors to employ a County Purchasing Agent and set his duties as prescribed by the Code of Virginia, §15.2-831, §15.2-1233 through §15.2-1240, and §15.2-1543;

THEREFORE BE IT RESOLVED that this resolution prescribes the basic policies for the conduct of all purchasing in Fairfax County (except as otherwise stipulated herein) to take effect ~~immediately upon passage~~ on July 1, 2020, as follows:

Commented [MP1]: Administrative change to reflect Purchasing Resolution is effective at the start of the fiscal year.

FAIRFAX COUNTY PURCHASING RESOLUTION

Article 1

GENERAL PROVISIONS

Section 1. Title.

This resolution shall be known as the Fairfax County Purchasing Resolution.

Section 2. Organization.

- A. The Department of Procurement and Material Management is a staff activity of the Fairfax County government, operating under the direction and supervision of the County Executive.
- B. The Director of the Department of Procurement and Material Management shall be the County Purchasing Agent who shall have general supervision of the DPMM. The Purchasing Agent shall be appointed by the Board of County Supervisors upon recommendation of the County Executive.

The primary duty of the County Purchasing Agent is to carry out the principles of modern central purchasing and supply management in accordance with applicable laws and regulations and with generally accepted professional standards in such a manner as to insure the maximum efficiency of governmental operation, and to give to County taxpayers the benefit in savings that such accepted business procedures are known to produce. The County Purchasing Agent, or her designee, has the authority to take any action or fulfill any duty granted by this Purchasing Resolution or by law, including, but not limited to, executing and administering contracts and making findings and addressing remedies as outlined in Article 5 of this Resolution.

Section 3. Exclusions from Duties.

- A. The procurement of architectural, engineering and related consultant services for capital construction projects and the contracting for construction projects are excluded from the duties of the County Purchasing Agent for the organizations as specified below:
 - 1. The Department of Public Works and Environmental Services (DPWES), pursuant to §15.2-834 of the Code of Virginia, the Board of Supervisors' Resolution dated September 18, 1968, and this Resolution, is responsible for Fairfax County construction projects

FAIRFAX COUNTY PURCHASING RESOLUTION

administered by DPWES and the architectural, engineering and consultant services related to those projects. The Director, Department of Public Works and Environmental Services or his designee, has the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution. The Director, Department of Public Works and Environmental Services or his designee has the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney.

2. The Fairfax County Public School Board is responsible for construction, related architectural and engineering services, related consulting services, maintenance, repair and related services in connection with building, furnishing equipping, renovating, maintaining, and operating the buildings and property of the school division in accordance with §22.1-79 of the Code of Virginia. The school division's Superintendent or his designee has the same authority as the County Purchasing Agent to execute and administer contracts. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.
3. The Fairfax County Park Authority is responsible for Fairfax County Park Authority capital construction and related architectural and engineering services per §15.2-5704 of the Code of Virginia and Board of Supervisors' Resolution dated April 6, 1981, governing the relationship of the Fairfax County Park Authority and Fairfax County. The Director of the Park Authority or his designee shall have the same authority of as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County Park Authority in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution. The Director, Department of the Park Authority or his designee shall have the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney.
4. The Department of Housing and Community Development shall be responsible for capital construction and the architectural, engineering, and consultant services for all programs and projects administered by the Department on behalf of either the Redevelopment and Housing Authority per §36-19 of the Code of Virginia or the Fairfax County Board of Supervisors, The Director of the Department of Housing and Community Development or his designee shall have the same authority as the County Purchasing Agent to execute and

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administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Department of Housing and Community Development in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution.

5. The Department of Transportation, pursuant to § 33.2-338 of the Code of Virginia, and this Resolution, may be responsible for constructing or improving highways, including related architectural, engineering, and consulting services. Highways may include curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience, which either have been or may be taken into the primary or secondary system of state highways. The Director, Department of Transportation or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution.
 6. The Fairfax County Park Authority, the Department of Housing and Community Development, and the Department of Transportation, may by a Memorandum of Understanding (MOU) delegate construction authority as detailed in sections 3 – 5 above to the Department of Public Works and Environmental Services.
- B. The procurement of goods and services for individual schools using funds generated from school activities for the Fairfax County Public Schools is excluded from the duties of the County Purchasing Agent. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.
- C. The Fairfax County Sheriff shall be the purchasing agent in all matters involving the commissary and nonappropriated funds received from inmates, in accordance with §53.1-127.1 Code of Virginia. The Purchasing Agent shall make all other purchases governed by Virginia Code § 53.1-126.

Commented [MP2]: Administrative change to reflect current practices.

FAIRFAX COUNTY PURCHASING RESOLUTION

Section 4. Rules and Regulations.

- A. The County Purchasing Agent shall prepare and maintain the Fairfax County Purchasing Resolution and other rules and regulations consistent with the laws of the Commonwealth of Virginia governing the operations of the County purchasing and material management system.
- B. The Agencies designated in Section 3 1 - 6 shall prepare and maintain detailed rules and regulations on the conduct of these contracting actions. Such rules and regulations shall be consistent with this Resolution and the laws of the Commonwealth of Virginia. Such rules and regulations shall be approved by the Purchasing Agent for County staff agencies or the administrative head of the respective public body involved.

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Section 6. Definitions.

1. Acquisition Function Closely Associated with Inherently Governmental Functions means supporting or providing advice or recommendations with regard to the following activities:
 - 1) Planning acquisitions.
 - 2) Determining what supplies or services are to be acquired by the County, including developing statements of work.
 - 3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.
 - 4) Evaluating bids or proposals.
 - 5) Awarding County contracts.
 - 6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).
 - 7) Terminating contracts.
 - 8) Determining whether contract costs are reasonable, allocable, and allowable.
2. Best Value, as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.
3. Competitive Negotiation is a formal method of selecting the top rated offeror. It includes the issuance of a written Request for Proposals, public notice, evaluation based on the criteria set forth in the Request for Proposals, and allows negotiation with the top rated offeror or offerors (See Article 2, Section 2 B).
4. Competitive Sealed Bidding is a formal method of selecting the lowest responsive and responsible bidder. It includes the issuance of a written Invitation to Bid, public notice, a public bid opening and evaluation based on the requirements set forth in the invitation (See Article 2, Section 2 A).
5. Complex Project means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.

FAIRFAX COUNTY PURCHASING RESOLUTION

6. Construction shall mean building, altering, repairing, improving or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading or similar work upon real property.
7. Construction Management Contract shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
8. Consultant Services shall mean any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.
9. Covered Employee means an individual who
 - 1) Is an employee of the contractor or subcontractor, a consultant, partner, or a sole proprietor; and
 - 2) Performs an acquisition function closely associated with inherently governmental functions.
10. Debarment is an action taken by the County Purchasing Agent, a contracting officer, or their designee, within the scope of their procurement authority, to exclude prospective contractors from contracting with County agencies or organizations for particular types of supplies, services, insurance, or construction, for specified periods of time.
11. Department means the Virginia Department of General Services
12. Design-build contract shall mean a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.
13. DPMM shall mean the Department of Procurement and Material Management.
14. Emergency shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of essential service.
15. Employment Services Organization shall mean an organization that provides community based employment services to individuals and disabilities that is an approved Commission

FAIRFAX COUNTY PURCHASING RESOLUTION

on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

16. Excess Property shall mean that property which exceeds the requirement of the department to which the property is assigned.
17. FCPS shall mean Fairfax County Public Schools.
18. Faith-Based Organization shall mean a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P. L. 104-193.
19. Firm shall mean any individual, partnership, corporation, association, or other legal entity permitted by law to conduct business in the Commonwealth of Virginia; or any other individual, firm, partnership, corporation, association or other legal entity qualified to perform professional services, non-professional or consultant services.
20. Fixed Asset shall mean a tangible item (not a component) which has an expected useful life of at least one year and a dollar value in excess of \$5,000.
21. Goods shall mean all material, equipment, supplies, printing, and information technology hardware and software.
22. Immediate Family shall mean a spouse, child, parent, brother, sister, and any other person living in the same household as the employee.
23. Independent Contractor shall mean a worker over whom the employer has the right to control or direct the result of the work done, but not the means and methods of accomplishing the result.
24. Ineligibility shall mean an action taken to suspend or debar a prospective contractor from consideration for award of contracts. The suspension shall not be for a period exceeding twelve (12) months and the debarment shall not be for a period exceeding three (3) years.
25. Informality shall mean a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

FAIRFAX COUNTY PURCHASING RESOLUTION

26. Job Order Contracting is a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing.
27. Non-public Government Information means any information that a covered employee gains by reason of work under a County contract and that the covered employee knows, or reasonably should know, has not been made public. It includes information that--
 - 1) Is exempt from disclosure under the Virginia Freedom of Information Act; or
 - 2) Has not been disseminated to the general public and is not authorized by the agency to be made available to the public.
28. Nonprofessional Services shall mean any service not specifically identified as a professional or consultant service.
29. Official Responsibility shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction or any resulting claim.
30. Other Authorized Agency is an Agency as designated by the Code of Virginia and the Board of Supervisors authorized to procure architectural, engineering and related consultant services for construction projects and the contracting for construction projects to include public announcement, receipt of bids, recommending selection and award, negotiation, contract preparation and contract administration as more fully defined in Article 1, Section 3 of this Resolution.
31. Pecuniary Interest Arising from the Procurement shall mean a personal interest in a contract, as defined in the State and Local Government Conflict of Interests Act.
32. Personal Conflict of Interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the County when performing under the contract.

Among the sources of personal conflicts of interest are--

 1. Financial interests of the covered employee, of close family members, or of other members of the household;
 2. Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
 3. Gifts, including travel.

Financial interests may arise from--

 - a. Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

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- b. Consulting relationships (including commercial and professional consulting and service arrangements, or serving as an expert witness in litigation);
 - c. Services provided in exchange for honorariums or travel expense reimbursements;
 - d. Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
 - e. Real estate investments;
 - f. Patents, copyrights, and other intellectual property interests; or
 - g. Business ownership and investment interests.
33. Potential Bidder or Offeror shall mean a person who, at the time the County negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.
34. Procurement Transaction shall mean all functions that pertain to obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- ~~35.~~ Professional services shall mean any type of service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with this Resolution).
- ~~35-36.~~ Project Labor agreement shall mean a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific public works project.
- ~~36-37.~~ Public Body shall mean any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this resolution. Public body shall include any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

Commented [MCA3]: Code Change: HB 358

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~~37-38.~~ Public Contract shall mean an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

~~39.~~ Public or County Employee shall mean any person employed by the County of Fairfax, including elected officials or appointed members of governing bodies.

~~38-40.~~ Public works shall mean the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used or leased by a public body.

Commented [MP4]: Code change: HB 358

~~39-41.~~ Responsible Bidder or Offeror shall mean an individual, company, firm, corporation, partnership or other organization who has the capability in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

~~40-42.~~ Responsive Bidder or Offeror shall mean an individual, company, firm, corporation, partnership or other organization who has submitted a bid which conforms in all material respects to the Invitation to Bid or Request for Proposal.

~~41-43.~~ Reverse Auctioning shall mean a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services, but not construction or professional services, through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidder's prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

~~42-44.~~ SAC shall mean Selection Advisory Committee.

~~43-45.~~ Services shall mean any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

~~44-46.~~ Surplus Property shall mean that property which exceeds the requirement of the entire County.

~~45-47.~~ Suspension is a type of ineligibility based upon an immediate need when there is evidence that a prospective contractor has committed any of the grounds for debarment.



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Article 2

PROCUREMENT POLICIES

Section 1. General.

- A. Unless otherwise authorized by law, all Fairfax County contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, construction, or construction management, shall be awarded after competitive sealed bidding or competitive negotiation, except as otherwise provided for in this Resolution or law.
- B. Professional services shall be procured using competitive negotiation, except as otherwise provided for in this Article.
- C. Consultant services may be procured using competitive negotiation, except as otherwise provided for in the Article.
- D. Except in emergency, no order for delivery on a contract or open market order for supplies, materials, equipment, professional and consultant services or contractual services for any County department or agency shall be awarded until the Director of Finance has certified that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order. If any department or agency of the County government purchases or contracts for any supplies, materials, equipment or contractual services contrary to the provisions of §15.2-1238 of the Code of Virginia or the rules and regulations made thereunder, such order or contract is void and of no effect. The head of such department or agency shall be personally liable for the costs of such orders and contracts.
- E. Notwithstanding any other provision of law in determining the award of any contract for time deposits or investment of its funds, the Director of Finance may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction, including the accessibility of such housing to employees of the county, town, or city or employees of the local school board. No more than fifty percent of the funds of the county, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a

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contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return.

- F. Best value concepts may be considered when procuring goods, nonprofessional and consultant services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

- G. The County may enter into contracts with faith-based organizations on the same basis as any other nongovernmental source subject to the requirements of the Virginia Public Procurement Act (VPPA) §2.2-4343.1.

- H. The County may, when procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works, or when overseeing or administering such procurement, construction, manufacture, maintenance or operation, in its bid specifications, project agreements, or other controlling documents:

1. Require bidders, offerors, contractors or subcontractors to enter into or adhere to project labor agreements with one or more labor organizations, on the same or related public works projects; and
2. Require bidders, offerors, contractors, subcontractors, or operators to become or remain signatories or otherwise adhere to project labor agreements with one or more labor organizations, on the same or other related public works projects.

- I. In alignment with the County's One Fairfax Policy on racial and social equity and its recognition that economic inclusivity benefits all, the County Purchasing Agent will establish and expand programs consistent with all provisions of this Resolution and applicable law to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans (SWaM Businesses) in procurement transactions. SWaM businesses are those businesses as defined by the Virginia Department of Small Businesses and Supplier Diversity (SBSD) at <https://www.sbsd.virginia.gov/faqs/>. Such programs may include cooperation with the SBSD, the United States Small Business Administration, and other public or private agencies.

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

Commented [MCA5]: Code change: HB 358

Commented [MP6]: Administrative change to conform to County policy.

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- J. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the fulfillment of the contract.

Commented [MCA7]: Administrative change. Amends the Purchasing Resolution for consistency with Virginia Code § 2.2-4310, which was amended by HB 1049.

Section 2. Methods of Procurement.

- A. Competitive Sealed Bidding is a method of contractor selection that includes the following elements:
1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the purchase. Unless the County has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. The Invitation to Bid may include criteria to be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder pursuant to § 2.2-4301. Such criteria may include a history of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractor of records of compliance with applicable local, state and federal laws. When it is impractical to prepare initially a purchase description to support an award based on prices, a solicitation may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
 2. Public notice of the Invitation to Bid at least five days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or publication in a newspaper of county wide circulation, or both. Public notice may also be published on a Fairfax County government web site and other appropriate web sites. In addition, bids may be solicited directly from potential vendors.
 3. Public opening and posting of all bids received.

Commented [MCA8]: Code Change HB1201 and SB380

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4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential vendors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.
 5. Award to the lowest responsive and responsible bidder. Multiple awards may be made when so specified in the Invitation to Bid.
- B. Competitive Negotiation.- is a method of contractor selection that includes the following elements:
1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. A public body may include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.
 2. Public notice of the Request for Proposal at least five days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website, by publication in a newspaper of county wide circulation or both. Public notice may also be published on a Fairfax County government web site and other appropriate web sites. In addition, proposals may be solicited directly from potential vendors.
 3. Competitive Negotiation – Consultant Services
 - a. Selection Advisory Committee
 1. When selecting a firm for consultant services where the compensation for such services is estimated to exceed ~~\$100,000~~ \$200,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those consultant services firms that are to be retained by the County. The SAC will be composed of three or more principal

Commented [MCA9]: Code change: HB 1078

Commented [MCA10]: Code change: HB 452

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staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency.

2. When selecting a firm for consultant services, where the compensation for such consultant services is estimated to be less than \$~~100,000~~200,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those consultant services firms that are to be retained by the County or an agency of the County.

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3. Minutes of Selection Advisory Committee deliberations and records or votes taken shall be maintained for at least three years. Minutes shall detail pertinent reasons for committee recommendations and be available for review by the general public upon request.

b. Public Announcement

1. When consultant services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for consultant services is estimated to be less than \$~~100,000~~200,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

Commented [MCA12]: Administrative change to align this procurement threshold with increased threshold set by HB 452.

c. Selection, Negotiation and Approval Process.

1. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

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2. All proposed contracts for consultant services, where the compensation to be paid exceeds \$~~100,000~~200,000, ~~after review of the SAC recommendation, a contract shall be awarded by the Purchasing Agent the Director of DPMM or other Authorized Agency, after review of the SAC recommendation will recommend to the County Executive, or the FCPS Division Superintendent for those consultant services to be retained by the County or an agency of the County. those consultant services to be retained by the County or an agency of the County. The Purchasing Agent or FCPS Division Superintendent will notify the proposed contracts shall be submitted to the Board of Supervisors and/or the School Board of such contract award as an Information Item prior to final execution. Full and adequate explanation of the selection criteria and fee determination shall be presented with the contract in such form as required by the County Executive or the Division Superintendent, FCPS.~~

Commented [MCA13]: Administrative change to accomplish two things. First, this change aligns the dollar threshold with increase included in HB 452. Second, this change allows for notification to the Board by NIP, instead of an Information Item.

3. All proposed contracts for consultant services, where the compensation to be paid is less than \$~~100,000~~200,000, shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

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4. For all cost-plus-a-fixed-fee consultant services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation certification stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any consultant services contract under which such a certificate is required shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

4. Competitive Negotiation – Professional Services

a. Selection Advisory Committee.

1. When selecting a firm for professional services where the compensation for such professional services is estimated to exceed \$80,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those professional services firms that are to be retained by the County. The SAC will be composed of three or more

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principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency.

2. When selecting a firm for professional services, where the compensation for such professional services is estimated to be less than \$80,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those professional services firms that are to be retained by the County or an agency of the County.

3. Minutes of Selection Advisory Committee deliberations and records or votes taken shall be maintained for at least three years. Minutes shall detail pertinent reasons for committee recommendations and be available for review by the general public upon request.

b. Public Announcement and Qualifications for Professional Services.

1. When professional services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for such professional services is estimated to be less than \$80,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

2. For architectural or engineering services estimated to cost less than \$80,000, an annual advertisement requesting qualifications from interested architectural or engineering firms will meet the requirements of paragraph (1) above. The County shall make a finding that the firm to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record of performance, and experience of the firm.

c. Selection, Negotiation, and Approval Process

1. Selection of Professional Services: Where the cost is expected to exceed \$80,000, the County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance

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data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the County may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the County shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. DPMM or other Authorized Agency, with the aid of the Selection Advisory Committee, shall negotiate a proposed contract with the highest qualified firm for the professional services required. The firm deemed to be the most qualified will be required to disclose its fee structure during negotiation. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, the County may award contracts to more than one offeror.

2. Except for construction projects and related architectural, engineering, and consultant services, all proposed contracts for professional services, where the compensation to be paid exceeds \$100,000~~200,000~~, ~~the Director of DPMM or other Authorized Agency, after review of the SAC recommendation a contract shall be awarded by the Purchasing Agent for will recommend to the County Executive, or the FCPS Division Superintendent those professional services to be retained by the County or an agency of the County. The Purchasing Agent or FCPS Division Superintendent will notify the proposed contracts shall be submitted to the Board of Supervisors and/or the School Board as an Information Item prior to final contract execution. Full and adequate explanation of the selection criteria and fee determination shall be presented with the contract in such form as required by the County Executive or the Division Superintendent, FCPS.~~

Commented [MCA15]: Administrative change to accomplish two things. First, this change aligns the dollar threshold with increase included in HB 452. Second, this change conforms to current practice, where notification is provided to the Board by NIP.

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3. All proposed contracts for professional services, where the compensation to be paid is less than ~~\$100,000~~200,000, shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

4. For all cost-plus-a-fixed-fee professional services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation certification stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional services contract under which such a certificate is required shall contain a provision that the original contract price and any addition thereto shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

5. Multiphase professional services contracts satisfactory and advantageous to the County for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the County shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the County require awarding the contract.

6. A contract for architectural or professional engineering services relating to construction projects may be negotiated by the County for multiple projects in accordance with the Virginia Public Procurement Act (VPPA) §2.2-4303.1.

5. Competitive Negotiation – Non-Professional Services

a. Selection Advisory Committee

1. When selecting a firm for non-professional services where the compensation is estimated to exceed ~~\$100,000~~200,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM

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or other Authorized Agency, those non-professional services firms that are to be retained by the County. The SAC will be composed of three or more principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency.

2. When selecting a firm for non-professional services, where the compensation is estimated to be less than ~~\$100,000~~200,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those non-professional services firms that are to be retained by the County or an agency of the County.

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b. Public Announcement

1. When non-professional services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for non-professional services is estimated to be less than ~~\$100,000~~200,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

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c. Selection, Negotiation and Approval Process.

1. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

2. All proposed contracts for non-professional services shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

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- C. Cooperative: The County or any entity identified in Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the Metropolitan Washington Council of Governments, the National Association of Counties, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriff's Association even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

Except for contracts for architectural and engineering services, as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, any county, city, town, or school board may purchase from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

- D. Emergency:- In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the appropriate contract or purchase order file. In addition, a notice shall be posted on the Department of General Services' central electronic procurement website on the day the County awards or announces its decision to award the contract in excess of \$100,000, whichever occurs first.
1. If an emergency occurs during regular County business hours, the head of the using agency shall immediately notify the County Purchasing Agent who shall either purchase the required goods or services or authorize the agency head to do so.
 2. If an emergency occurs at times other than regular County business hours, the using agency head may purchase the required goods or services directly. The agency head shall, however, when practical, secure competitive oral or written bids and order delivery to be made by the lowest responsive and responsible bidder. The agency head shall also, not later than the next regular County business day, submit to the County Purchasing Agent a requisition, a tabulation of the bids received, if any, a copy of the delivery record and a brief explanation of the circumstances of the emergency.

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3. The County Purchasing Agent shall maintain a record of all emergency purchases supporting the particular basis upon which the emergency purchase was made. Such records shall be available for public inspection during regular County business hours in the office of the County Purchasing Agent.
- E. Informal Procurement. - Any Fairfax County contract when the estimated cost is less than ~~\$100,000~~200,000 in value, shall be deemed an informal procurement and not be subject to the rules governing competitive sealed bidding or competitive negotiation for goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed ~~\$100,000~~200,000; and transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000. However, such small purchase procedures shall provide for competition wherever practicable.
1. Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$80,000. Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.
 2. The Purchasing Agent may adopt procedures that establish informal purchase procedures. The rules and regulations adopted pursuant to Section 4 of Article 2 of this Resolution shall prescribe in detail the procedures to be observed in giving notice to prospective bidders, in tabulating and recording bids, in opening bids, in making purchases from the lowest responsive and responsible bidder, and in maintaining records of all informal procurements for public inspection.
- F. Public Private Education Facilities and Infrastructure. - The “Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA)” provides public entities an option for either approving an unsolicited proposal from a private entity or soliciting request for proposals or invitation for bids from private entities. Such projects are exempt from the Virginia Public Procurement Act. The County has developed procedures that are consistent with the principles of the PPEA and adopted by the Board of Supervisors.
- G. Reverse Auctioning. - The purchase of goods, consultant or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

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H. Small Purchase.- Any purchase or lease of goods, professional, consultant, or nonprofessional services, or for the purchase of insurance, construction, or construction management, when the estimated cost is less than ~~\$105,000~~, shall be deemed a small purchase and shall not be subject to the rules governing the formal competitive bidding process.

Commented [MCA21]: Administrative change to increase the small purchase threshold from \$5,000 to \$10,000

I. Sole Source.- Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. A written record documenting the basis for this determination shall be included in the appropriate contract file or other records of the procurement. In addition, a notice shall be posted on the Department of General Services' central electronic procurement website on the day the County awards or announces its decision to award the contract in excess of ~~\$100,000~~ \$200,000, whichever occurs first.

Commented [MCA22]: HB 452

J. Auction.- Upon a determination in writing by the County Purchasing Agent that the purchase of goods, products, or commodities from a public auction sale is in the best interests of the County, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

Section 3. Exceptions to the Requirement for Competitive Procurement.

- A. **Instructional Materials and Office Supplies:** Instructional materials and office supplies which are not stocked or purchased by the Fairfax County School Board pursuant to an existing County contract may be purchased by school principals designated by the School Board. Such purchases shall be conducted in accordance with rules and regulations adopted by the School Board pursuant to §22.1-122.1 of the Code of Virginia. With the exception of textbooks and instructional computer software that have been approved by the State Board of Education and the Fairfax County School Board, no single purchase may exceed the small purchase dollar level (as set forth in Article 2, Section 2. H.). The rules and regulations adopted by the School Board shall prescribe in detail the procedures to be observed in making purchases of instructional materials, establishing accounts for purchases, accounting for the receipt and disbursement of funds, and maintaining records of all transactions. The purchases authorized herein shall be made using funds from accounts established by the School Board solely for such purchases.
- B. **Insurance / Electric Utility Services:** As provided in the Code of Virginia, subdivision 13 of § 2.2-4345, the County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an

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association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

- C. Insurance: As provided in § 2.2-4303(C), upon a written determination made in advance by the County Purchasing Agent that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in §2.2-4302.2(A)(3) of the Virginia Public Procurement Act.
- D. Legal Services: The County (or any public body that has adopted this Resolution) may enter into contracts without competition for (1) the purchase of legal services; and (2) expert witnesses or other services associated with litigation or regulatory proceedings. Any contract for Legal Services may be entered into upon terms established by the County Attorney.
- E. Public Assistance Programs: The County may procure goods or personal services without competition for direct use by a recipient of County administered public assistance or social services programs as defined by § 63.2-100 of the Code of Virginia, or community services board as defined in §37.2-100, or any public body purchasing services under the Children's Services Act for At-Risk Youth and Families (§2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§16.1-309.2 et seq.) provided such good or personal service is delivered by a vendor upon specific instructions from the appropriate employee of the County. Contracts for the bulk procurement of goods and services for use of recipients shall not be exempted from the requirements of competitive procurement.
- F. Workshops or Employment Services Organizations: The County Purchasing Agent may enter into contracts without competition for the purchase of goods or services which are produced or performed by persons or in schools or workshops under the supervision of the Virginia Department for the Blind and Visually Impaired; or which are produced or performed by employment services organizations which offer transitional or supported employment services serving individuals with disabilities.
- G. Other Special Exemptions: Procurement for single or term contracts for goods and services not expected to exceed ~~\$100,000~~ \$200,000 as identified by the Purchasing Agent.

Commented [MP23]: Administrative change to conform with Virginia Code § 2.2-4345(A)(14)

Commented [MCA24]: Code change: HB452

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- H. Ballots and Elections Materials: The provisions of Articles 1, 2, and 5 of the Purchasing Resolution shall not apply to contracts for equipment, software, services, the printing of ballots or statements of results, or other materials essential to the conduct of the election, except as stated in §24.2-602. The provisions of Fairfax County Purchasing Resolution, Article 6, shall apply to such contracts.

Section 4. Exemptions from the Purchasing Resolution.

- A. Retirement Board Investments, Actuarial Services, Disability Determination Services: The selection of services related to the management, purchase, or sale of investments authorized by Virginia Code Ann. §51.1-803, including but not limited to actuarial services, shall be governed by the standard of care set forth in Virginia Code Ann. § 51.1-803(A) and shall not be subject to the provisions of the Purchasing Resolution or the VPPA.
- B. Conference Planning: Acquisition of the use of meeting rooms and lodging rooms in hotels or motels is considered to be short term rentals of portions of real property -real estate transactions. So long as the procurement involves only the use of the facilities, the competitive requirements of the Fairfax County Purchasing Resolution do not apply. However, if the procurement includes the provision of catered meals, audio visual equipment, or other related services, and the value of these other included services exceeds the \$5,000 level for which competition is required, the entire procurement, including the use of the space, shall be procured competitively as a package based on its anticipated value.
- C. Virginia Grown Food Products: Neither the VPPA or the Purchasing Resolution applies to the purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000, provided that the procurement is accomplished by (i) obtaining written solicitation of a minimum of three bidders or offerors if practicable and (ii) including a written statement regarding the basis for awarding the contract.
- D. Finance Board Investments: Pursuant to Virginia Code Ann. § 15.2-1548, the selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial services, of the local finance board shall not be subject to the provisions of the Virginia Public Procurement Act.
- E. Multidivision Online Providers: Pursuant to Virginia Code Ann. §22.2-212.24, the Fairfax County Public Schools may enter into contracts, consistent with the criteria approved by the FCPS Board, with approved private or nonprofit organizations to provide multidivision online

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courses and virtual school programs. Such contracts shall be exempt from the Virginia Public Procurement Act.

- F. Subaward Agreements: Subaward Agreements entered into pursuant to the principles set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. § 200 *et seq.*) are not subject to the Purchasing Resolution. Subaward Agreements and associated documents may, however, be executed by the Purchasing Agent.

Section 5. General Purchasing Provisions.

A. Competitive Solicitation Process.

1. The County Purchasing Agent shall solicit bids from all responsible prospective vendors who have registered their firm to be included on the Commonwealth of Virginia's "eVA" central vendor registration system for all solicitations using the competitive sealed bidding and competitive negotiation methods of procurement. Other potential vendors may be solicited at the discretion of the County Purchasing Agent.
2. The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or informal procurement methods of procurement. In submitting a bid or proposal each bidder shall, by virtue of submitting a bid, guarantee that the bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bid of such bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor shall render the entire proceedings void and shall require readvertising for bids.
3. All solicitations shall include the following provisions:
 - a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or

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debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph a. has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
4. Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named: it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
5. Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.
6. Prospective contractors may be debarred from contracting for particular types of goods, services, insurance, or construction, for specified periods of time. The debarment procedures are set forth under Article 45, Section 1.
7. The County shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.
8. Withdrawal of bids by a bidder.
 - a. A bidder for a contract other than for public construction may request withdrawal of their bid under the following circumstances:
 1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.

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2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
3. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
4. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.
5. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
6. If the County denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.
7. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of Article 2, Section 5, Paragraph D.

B. Contract Award Process.

1. The County Purchasing Agent shall have the authority to waive informalities in bids, reject all bids, parts of all bids, or all bids for any one or more good or service included in a solicitation when in his judgment the public interest is best served. If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of readvertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if none, to the resident Virginia tie bidder, or if none, to one of the tie bidders by

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drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services.

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

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3. Pursuant to Virginia Code §15.2-1237, all contracts shall be approved as to form by the County Attorney or other qualified attorney and a copy of each long-term contract shall be filed with the Chief Financial Officer of the County.
4. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the responsive bid from the lowest responsible bidder exceeds available funds, the County may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiations may be undertaken only under conditions and procedures described in writing and approved by the County prior to issuance of the Invitation to Bid.
5. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Purchasing Agent. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

C. Disclosure of Information.-

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
2. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal

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records shall be open to the public inspection only after award of the contract except as provided in 3. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

3. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to Article 2, Section F shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.
4. Nothing contained in this section shall be construed to require the County, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

D. Bonds.-

1. The County may, at the discretion of the County Purchasing Agent, require bid, payment or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

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

- a. the difference between the bid for which the bond was written and the next low bid, or
 - b. the face amount of the bid bond.
2. Action on performance bond - No action against the surety on a performance bond shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees or (2) discovery of the defect or breach of warranty, if the action be for such, in all other cases.
 3. Actions on payment bonds:

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- a. Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
 - b. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.
 - c. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
 - d. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.
4. Alternative forms of security:
- a. In lieu of a bid, payment or performance bond a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.
 - b. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain

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designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

E. Prequalification. –

1. Any prequalification of prospective contractor by the County shall be pursuant to a prequalification process.
 - a. At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the County shall advise in writing, each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.
 - b. A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the prospective contractor appeals the decision in writing within ten (10) days after receipt of the notice by instituting legal action as provided in the Code of Virginia. The prospective contractor may not institute legal action until all statutory requirements have been met. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Fairfax County Purchasing Resolution, the sole relief shall be restoration of eligibility.
2. The County may deny prequalification to any contractor only if the County finds one of the following:
 - a. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
 - b. The contractor does not have appropriate experience to perform the project in question;

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- c. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts;
- d. The contractor has been in substantial noncompliance with the terms and conditions of prior contracts with the County without good cause. If the County has not contracted with a contractor in any prior contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
- e. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental contracting, including, but not limited to, violation of Article 6 of the Virginia Public Procurement Act (§2.2-4367 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), Chapter 42 (§59.1-68.6 et seq.) of Title 59, or any substantially similar law of the United States or another state;
- f. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
- g. The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions (a) through (f) of this subsection.

Section 6. Compliance with Conditions on Federal Grants or Contract.

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the policy of full and open competition, the County Purchasing Agent may comply with the federal requirements only upon written determination by the County Executive and/or Board of Supervisors that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provisions of this section in conflict with the conditions of the grant or contract.

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Section 7. HIPAA Compliance.

The County is a "covered entity" as defined in 45 Code of Federal Regulations Section 160.103 by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The County has elected to designate itself as a Hybrid Covered Entity. In particular, the County performs HIPAA covered functions when it provides services as a health care provider transmitting health care information in an electronic format in connection with a transaction for which there has been a standard established in accordance with Subparts 160 and 162. A contractor may be designated a business associate pursuant to 45 CFR part 164.504(e) and 164.308 (b) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board; the Health Department; Fire and Rescue Department - Emergency Medical Services Division; and the Department of Human Resources, Benefits Division (health plan) upon award of contract.

Commented [MP25]: Administrative change to reflect County's current practices regarding HIPAA Compliance for its contractors.

~~Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor may be designated a business associate pursuant to 45 CFR part 164.504(e) and 164.308 (b) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor~~Each contractor must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and, if required, the contractual provisions of the Fairfax County Business Associate agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Code of Virginia – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information. Additional information may be obtained by going to the Fairfax County Web site at: <https://www.fairfaxcounty.gov/topics/hipaa-health-insurance-portability-accountability-act>~~http://www.fairfaxcounty.gov/hipaa~~

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

- A. Pursuant to competitive sealed bidding or competitive negotiation, the County shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include

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in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

- B. Any bidder or offeror described in subsection B that fails to provide the required information may not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the County Purchasing Agent.
- C. Any business entity described in subsection A that enters into a contract with the County pursuant to this section shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.
- D. The County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

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Article 3

CONTRACT TERMS AND CONDITIONS

Section 1. Authority to Bind the County.

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

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

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

Commented [MCA26]: Administrative change to reflect current practice

- A. Non-Discrimination: During the performance of this contract, the contractor agrees as follows: The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
1. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 2. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.

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3. The contractor will include the provisions of paragraphs ~~a1~~, ~~2b~~, and ~~3e~~ above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Commented [MCA27]: Administrative correction.

- B. Immigration Reform and Control Act Compliance: The contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.
- C. Nonvisual Access: -All information technology, which is purchased or upgraded by the County, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
1. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 2. The technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 3. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 4. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

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

- D. Prohibition on the Use of Certain Products and Services. Fairfax County may not use, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the U.S. Department of Homeland Security for use on federal systems.
- E. Venue. Venue for any claim under a contract or arising out of an order is exclusively in the state courts of Fairfax County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division.

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- F. Choice of Law. Any contract or ordering document will be governed for all purposes by and construed in accordance with the laws of the Commonwealth of Virginia.
- G. Order of Precedence. If a term or condition included in a contract or ordering document (including any addendum, schedule, appendix, exhibit, or attachment) conflicts with the contract terms contained in this Article, this Article will control.
- H. Contractual Disputes. ~~Contractual disputes must be resolved as set forth in Article 5 of the Purchasing Resolution.~~

Commented [MP28]: Administrative change clarifying disputes resolution provision is also mandatory.

Section 3: Mandatory Terms Applicable to Contracts (including Amendments) in Excess of \$~~100,000~~200,000

Commented [MCA29]: Administrative change to align threshold with HB 452.

A. Authorization to Transact Business in the Commonwealth. A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Audit by the County. For any contract or amendment in excess of \$100,000, the County or its agent has reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form.

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

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accept a vendor's drug free workplace policy as satisfaction of this requirement, even if the vendor's drug free workplace policy differs from the requirements stated above.

Section 34. Prohibited Terms and Conditions.

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

- A. No Indemnification by the County. Under applicable law the County cannot indemnify or defend the Contractor or any third party.
- B. Contracts Subject to Appropriation by Board of Supervisors. The County is not bound by any provision in a contract or ordering document that may or will cause the County, its agencies, or employees, to make or otherwise authorize an obligation in excess of the amount appropriated by the Fairfax County Board of Supervisors for such purpose. Such provisions include, for example, automatic renewal of the agreement, penalty payments by the County, indemnification by the County, and payment by the County of taxes or charges not specifically included in the prices of the goods or services.
- C. Binding Arbitration or Mediation. The County does not agree to submit to any form of binding alternative dispute resolution, including without limitation arbitration or mediation, unless specifically authorized by the Board of Supervisors.
- D. Limitation of Rights and Waiver of Remedies. The County does not agree to limit its rights or waive its remedies at law or in equity, unless specifically authorized by the Board of Supervisors.
- E. Limitation of Liability. For contracts in excess of \$100,000, there is no limitation on the liability of a contractor for (i) the intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a supplier or (ii) claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence of a supplier or any employee of a supplier.

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- F. Confidentiality. The County will not be bound by any confidentiality provision that is inconsistent with the requirements of the Virginia Code, including the Virginia Freedom of Information Act.
- G. Unilateral Modification. Unilateral modification of the contract or ordering document by the contractor is prohibited.

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Article 4

CONSTRUCTION CONTRACTING

Section 1. Authority.

The procurement of architectural, engineering and related consultant services for construction projects and the contracting for construction projects are excluded from the duties of the County Purchasing Agent for the organizations as specified below:

- D. The Department of Public Works and Environmental Services (DPWES), pursuant to §15.2-834 of the Code of Virginia, the Board of Supervisors' Resolution dated September 18, 1968, and this Resolution, is responsible for Fairfax County construction projects administered by DPWES and the architectural, engineering and consultant services related to those projects. The Director, Department of Public Works and Environmental Services or his designee, has the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution. The Director, Department of Public Works and Environmental Services or his designee has the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney.
- E. The Fairfax County Public School Board is responsible for construction, related architectural and engineering services, related consulting services, maintenance, repair and related services in connection with building, furnishing equipping, renovating, maintaining, and operating the buildings and property of the school division in accordance with §22.1-79 of the Code of Virginia. The school division's Superintendent or his designee has the same authority as the County Purchasing Agent to execute and administer contracts. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.
- F. The Fairfax County Park Authority is responsible for Fairfax County Park Authority capital construction and related architectural and engineering services per §15.2-5704 of the Code of Virginia and Board of Supervisors' Resolution dated April 6, 1981, governing the relationship of the Fairfax County Park Authority and Fairfax County. The Director of the

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Park Authority or his designee has the same authority of as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County Park Authority in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution. The Director, Department of the Park Authority or his designee shall have the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney.

- G. The Department of Housing and Community Development shall be responsible for capital construction and related architectural and engineering services for all programs and projects administered by the Department on behalf of either the Redevelopment and Housing Authority per §36-19 of the Code of Virginia or the Fairfax County Board of Supervisors, including contracts per §36-49.1:1 to carry out blight abatement. The Director of the Department of Housing and Community Development or his designee shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Department of Housing and Community Development in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution.
- H. The Department of Transportation, pursuant to §33.2-338 of the Code of Virginia, and this Resolution, may be responsible for constructing or improving highways, including related architectural and engineering services. Highways may include curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience which either have been or may be taken into the primary or secondary system of state highways. The Director, Department of Transportation or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution.
- I. The Fairfax County Park Authority, the Department of Housing and Community Development, and the Department of Transportation, may by a Memorandum of Understanding (MOU) delegate construction authority as detailed in sections 3 – 5 above to the Department of Public Works and Environmental Services.

Section 2. Rules and Regulations.

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The Agencies designated in Section 1 above shall prepare and maintain detailed rules and regulations on the conduct of these contracting actions. Such rules and regulations shall be consistent with this Resolution and the laws of the Commonwealth of Virginia. Such rules and regulations shall be approved by the Purchasing Agent for County staff agencies or the administrative head of the respective public body involved.

Section 3. Definitions.

- A. Construction shall mean building, altering, repairing, improving or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading or similar work upon real property.
- B. Construction Management Contract shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
- C. Design-build contract shall mean a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, transportation project, or other item specified in the contract.
- D. Other Authorized Agency is an Agency as designated by the Code of Virginia and the Board of Supervisors authorized to procure architectural and engineering design services to include public announcement, receipt of bids, recommending selection and award, negotiation, contract preparation and contract administration as more fully defined in Article 1, Section 3 of this Resolution.

Section 4. Purchasing Policies.

- A. Construction may be procured by competitive negotiation as set forth in the Code of Virginia, subsection D of §2.2-4303 for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.
- B. The Purchasing Agent may establish written purchase procedures not requiring competitive sealed bids or competition negotiation for single or term contracts for non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000. However, such small purchase procedures shall provide for competition wherever practicable.

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- C. No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$50,000 or more in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding or competitive negotiation as provided in this Resolution and law. The procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act.
- D. A contract for architectural or professional engineering services relating to construction projects may be negotiated for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year and may be renewable for four additional one-year terms at the option of the County. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed \$6.8 million, (c) the project fee of any single project shall not exceed \$2.5 million. Any unused amounts from the first contract term shall not be carried forward to the additional term(s). Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the County has established procedures for distributing multiple projects among the selected contractors during the contract term.
- E. No County construction contract shall waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay, in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent such delay is caused by acts or omissions of the County, its agents or employees and due to causes within their control.
1. Subsection E shall not be construed to render void any provision of a County construction contract that:
 - a. Allows the County to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractor, agents or employees;
 - b. Requires notice of any delay by the party claiming the delay;
 - c. Provides for liquidated damages for delay; or
 - d. Provides for arbitration or any other procedure designed to settle contract disputes.
 2. A contractor making a claim against the County for costs or damages due to the alleged delaying of the contractor in the performance of its work under any County construction contract shall be liable to the County and shall pay the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the

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contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

3. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the County shall be equal to the percentage of the contractor's total delay claim for which the County's denial is determined through litigation or arbitration to have been made in bad faith.

Section 5. Methods of Procurement.

- A. Construction Management/Design Build Services. In addition to competitive bidding and competitive negotiations, the County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis consistent with this Resolution and law.
 1. Prior to making a determination as to the use of construction management or design-build for a specific construction project, the County shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the County regarding the use of construction management or design-build for that project and (ii) assist the County with the preparation of the Request for Proposal and the evaluation of such proposals.
 2. A written determination shall be made in advance by the County that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.
 3. Procedures adopted by the County for construction management pursuant to this article shall include the following requirements:
 - a. ~~Construction management contracts may be utilized for projects where the project cost is expected to be more than \$10 million;~~
 - b. Construction management may be utilized on projects where the project cost is expected to be less than \$10 million than the project cost threshold established in the procedures adopted by the Secretary of Administration for the Commonwealth using construction management contracts, provided that (i) the project is a complex project and (ii) the project procurement method is approved

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by the local governing body. The written approval of the governing body shall be maintained in the procurement file; b

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~~e-a.~~ Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

~~d-b.~~ The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

~~e-c.~~ Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable projects;

~~f-d.~~ Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;

~~g-e.~~ The procedures allow for a two-step competitive negotiation process; and

~~h-f.~~ Price is a critical basis for award of the contract.

4. Procedures adopted by the County for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department for state public bodies.
 5. The County shall report by no later than November 1 of each year to the Director, Department of General Services on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized; (ii) the project budget; (iii) the actual project cost; (iv) the expected timeline; (v) the actual completion time; and (vi) any post-project issues.
- C. Job order contracting; limitations. Where the method for procurement of job order construction is professional services through competitive negotiation is used, the following shall apply:
1. A job order contract may be awarded by the County for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when

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the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

2. Such contracts may be renewable for two additional one-year terms at the option of the County. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$ 6 million. Subject to the maximum threshold amount, no individual job order shall exceed \$500,000.
3. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.
4. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection 2 is prohibited.
5. No job order contract shall be issued solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in Article 1, Section 6. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.
6. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, job order contracting may be used for safety improvements or traffic calming measures for individual job orders up to \$250,000, subject to the maximum annual threshold amount established in this section.

Section 6. Prequalification, Bonds, Escrow Accounts.

Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.

- A. Any prequalification of prospective contractors for construction by the County shall be pursuant to a prequalification process for construction projects as outlined below.
 1. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an

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objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information pursuant to Article 2, Section 4, Paragraph C.

2. In all instances in which the County requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.
 3. At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the County shall advise in writing, each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.
 4. A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the prospective contractor appeals the decision in writing within ten (10) days after receipt of the notice by instituting legal action as provided in the Code of Virginia. If upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Fairfax County Purchasing Resolution, the sole relief shall be restoration of eligibility.
- B.** The County may deny prequalification to any contractor only if the County finds one of the following:
1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
 2. The contractor does not have appropriate experience to perform the construction project in question;
 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or

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nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
 5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, violation of Article 6 of the Virginia Public Procurement Act (§2.2-4367 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), Chapter 42 (§59.1-68.6 et seq.) of Title 59, or any substantially similar law of the United States or another state;
 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
 7. The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions (1) through (7) of this subsection.
 - a. If the County has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria, provided, however, that nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.
- C. Withdrawal of bids by a bidder.
1. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed

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to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

2. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. No bid shall be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent. The lowest remaining bid shall be deemed to be the low bid. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
3. The County shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the County denies the withdrawal of a bid, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the County shall return all work papers and copies thereof that have been submitted by the bidder.

D. Progress Payments.

1. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to be included in the final payment. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

E. Bonds.-

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1. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with §2.2-4317 of the Code of Virginia. The County may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the County that waiving the requirement is in the best interests of the County. The county shall not enter into more than 10 such contracts per year.

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

- a. the difference between the bid for which the bond was written and the next low bid, or
- b. the face amount of the bid bond.

Nothing in this section shall preclude the County from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

2. Performance and payment bonds:
 - a. Upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor, (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body, or (iii) transportation-related projects exceeding \$350,000 that are partially or wholly funded by the Commonwealth, or (iv) construction contract exceeding \$500,000 in which the performance of labor of

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the furnishing of materials will be paid with public funds, the contractor shall furnish to the County the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.
 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors in furtherance of the work provided for in such contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body. As used in this subdivision "Labor or materials" includes public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
- b. For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the performance and payment bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with §2.2-4317. However, the locality may waive the requirement for prequalification of a contractor with a current Class A contractor license for contracts in excess of \$100,00 but less than \$300,000 upon a written determination in advance by the local governing body that waiving the requirement is in the best interest of the County. The County shall not enter into more than 10 such contracts per year.
 - c. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
 - d. Such bonds shall be payable to the County of Fairfax and filed with the County or a designated office or official.
 - e. Nothing in this section shall preclude the County from requiring payment or performance bonds for construction contracts below \$500,000 for

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nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

- f. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
 - g. The performance and payment bond requirements above for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by the County if the bidder provides evidence, satisfactory to the County, that a surety company has declined an application from the contractor for a performance or payment bond.
- 3. Action on performance bond - No action against the surety on a performance bond shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees or (2) discovery of the defect or breach of warranty, if the action be for such, in all other cases.
- 4. Actions on payment bonds:
 - a. Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
 - b. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the

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name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- c. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
 - d. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.
5. Alternative forms of security:
- a. In lieu of a bid, payment or performance bond a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.
 - b. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

F. Escrow Accounts:-

1. The County, when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations, where portions of the contract price are to be retained, shall include an option in the bid or proposal for the contractor to use an Escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the bid or proposal documents and executing the Escrow Agreement form provided by the County. In the event the contractor elects to use the Escrow account procedure, the Escrow Agreement form shall be executed and submitted to the County within fifteen days after receipt of notification of contract award by the contractor.

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2. The executed Escrow Agreement Form shall be submitted to the Office designated in the bid or proposal documents. If the Escrow Agreement Form is not submitted to the designated office within the fifteen day period, the contractor shall forfeit his rights to the use of the Escrow account procedure.
3. The Purchasing Agent shall promulgate escrow regulations. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent and the surety shall execute the Escrow Agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth and shall satisfy escrow agent qualifications promulgated by the Purchasing Agent.
4. This subsection F. shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
5. Any such public contract for construction with the County which includes payment of interest on retained funds, may include a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.
6. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

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

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Article 5

BIDDER/CONTRACTOR REMEDIES

Section 1. Ineligibility.

- A. Debarment as used in this section means any action taken by the County Purchasing Agent to exclude individuals or entities from contracting with County agencies or organizations for particular types of goods for a specified period of time. A prospective contractor may be suspended from participating in County procurements if there is evidence that the prospective contractor has committed an act that would be the basis of a debarment and immediate action is needed to protect the County's interests. Debarment or suspension do not relieve the contractor of responsibility for its existing obligations.
- B. The County Purchasing Agent shall have the authority to suspend or debar a prospective contractor from contracting for particular types of supplies, services, insurance on construction, for specified periods of time for the causes stated below:
 - 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
 - 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 - 4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

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- b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;
- 5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
- 6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project;
- 7. The contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- C. Ineligibility Period. Debarment shall be for a period of ninety (90) days to three (3) years, at the discretion of the County Purchasing Agent. The period of suspension shall not exceed one year. A debarment or suspension may be lifted or stayed at any time if the County Purchasing Agent determines that doing so is in the best interests of the County.
- D. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
 - 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 - 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- E. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

Section 2. Appeal of Denial of Withdrawal of Bid.

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- A. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- B. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 5A, paragraph 8, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

Section 3. Appeal of Determination of Nonresponsibility.

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

Section 4. Protest of Award or Decision to Award.

- A. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated

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on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 5.D, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 5.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.

- B. If, prior to award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- C. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- D. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

Section 5. Contractual Disputes.

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

Section 6. Legal Action.

- A. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.



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Article 6

ETHICS IN COUNTY CONTRACTING

Section 1. General.

- A. The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
- B. No County employee having official responsibility for a procurement transaction (except as may be specifically allowed by subdivisions of B1, B2, and B3 of § 2.2-3112) shall participate in that transaction on behalf of the County when the employee knows that:
 - 1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or,
 - 2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or,
 - 3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or,
 - 4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

Section 2. Solicitation or Acceptance of Gifts.

No County employee having official responsibility for a procurement transaction shall solicit, demand, accept or agree to accept from a bidder, offeror, contractor or subcontractor any

FAIRFAX COUNTY PURCHASING RESOLUTION

payment, loan, subscription, advance, deposit of money, services personal use rebates or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The County may recover the value of anything conveyed in violation of this section. No employee shall use rebates provided by any vendor for personal use. All monetary rebates received as the result of a procurement transaction are for the sole use of the County.

Section 3. Disclosure of Subsequent Employment.

No County employee or former County employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the County employee or former County employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the County unless the County employee, or former County employee, provides written notification to the County prior to commencement of employment by that bidder, offeror or contractor.

Section 4. Gifts.

No bidder, offeror, contractor or subcontractor shall confer upon any County employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Section 5. Kickbacks.

- A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything present or promised, unless consideration of substantially equal or greater value is exchanged.
- B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a County contract.
- D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be

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recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

- E. No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the County may permit such person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County.

Section 6. Purchase of Building Materials, etc., from Architect or Engineer Prohibited.

- A. No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in §2.2-3101 of the Code of Virginia.
- B. No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in §2.2-3101 of the Code of Virginia.
- C. The provisions of this Section shall not apply in the case of emergency.

Section 7. Certification of Compliance; Penalty for False Statements.

- A. The County may require County employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this section.
- B. Any County employee required to submit a certification as provided in subsection a. of this section who knowingly makes a false statement in such certification shall be punished as provided in §2.2-4377 of the Code of Virginia.

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Section 8. Misrepresentations.

No County employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

Section 9. Penalty for Violation.

The penalty for violations of any of the provisions under Article 6 of this Resolution is provided in the Code of Virginia, §2.2-4377.

Section 10. Personal Conflicts of Interest

It is County policy to require contractors to:

- 1) Identify and prevent personal conflicts of interest of their employees who perform an acquisition function closely associated with inherently governmental functions; and
- 2) Prohibit employees who have access to non-public County information from using such information for personal gain.

Failure to comply may result in suspension or debarment or termination for cause. The Purchasing Agent may waive, in exceptional circumstances, a personal conflict of interest or waive the requirement to prevent conflict of interest for a particular employee, if he determines in writing that such mitigation is in the best interest of the County.

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FAIRFAX COUNTY PURCHASING RESOLUTION

Article 7

PROPERTY MANAGEMENT

The Director of the Department of Procurement and Material Management is responsible for the management of all Fairfax County and Fairfax County Public Schools (FCPS) property, supplies and equipment except as excluded by formal agreement between the County and other public bodies. This includes physical accountability of consumable supplies and accountable equipment, as well as, validation of the inventory and accountable equipment values reported in Fairfax County's Comprehensive Annual Financial Report. DPMM shall prescribe the procedures to be used by departments in the acquisition, receipt, storage and management, and issuance of consumable supplies and accountable equipment inventory, and disposition of excess and surplus County property.

Section 1. County Consolidated Warehouse (Logistics Center).

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

Section 2. Inventory Accountability.

Departments and Fairfax County Public Schools are required to establish and maintain accountability of consumable inventories and accountable equipment in their custody, and to conduct periodic physical inventories in accordance with schedules published by the Director of the Department of Procurement and Material Management.

Section 3. Consumable Inventory Property Management.

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

FAIRFAX COUNTY PURCHASING RESOLUTION

Section 4. Accountable Equipment Inventory Property Management.

- A. The Director of the Department of Procurement and Material Management shall exercise oversight responsibility over all accountable equipment.
- B. The Director of the Department of Procurement and Material Management is responsible for defining items to be capitalized as accountable equipment, and administering the Accountable Equipment Program in accordance with State and County codes, as well as industry standards and best practices.

Section 5. Excess and Surplus Property Management.

- A. The Director of the Department of Procurement and Material Management is responsible for redistribution of serviceable excess property and inventory, to include furniture, equipment, , etc.
- B. The Director of the Department of Procurement and Material Management is responsible for the disposal of surplus property and inventory as applicable by law. Disposals will be evaluated in an effort to maximize financial returns to the County and/or minimize environmental impact.
- C. Confiscated or abandoned property in the hands of the police shall be disposed in accordance with Chapter 2, Article 2, Sections 2-2-1 through 2-2-3 of the County Code.
- D. Employees and members of their immediate family are not eligible to acquire property for personal use before such property has been declared surplus and has been made available to the general public. The County may, however, sell any dog specially trained for police work to the handler who was last in control of such dog, at a price deemed by the locality to be appropriate.

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Section 6. Donations.

A. Accepting Donations:

1. Items \$5,000 or more:
The Director of the Department of Procurement and Material Management or Assistant Superintendent of Financial Services is responsible for approving the acceptance of donated items or services with a fair market value of \$5,000 or more, and ensuring accepted items are properly accounted for.
2. Items under \$5,000:
Department Heads, Principals, or their equivalents may accept donated items or services with a fair market value under \$5,000.
3. Inasmuch as the County is not offering consideration nor is it purchasing or initiating the provision of services, the County may accept a gift of services pursuant to the Virginia State Government Volunteers Act. Such services must be provided from a person who acts of his own free will and without any financial gain.

B. Making Donations:

1. Items \$5,000 or more:
When the fair market value of an item exceeds \$5,000, the Board of County Supervisors or FCPS School Board, as appropriate and allowed by law, may offer surplus County or School property to charitable or non-profit organizations or public bodies for sale or donation, where appropriate. The Director of the Department of Procurement and Material Management or Assistant Superintendent of Financial Services shall coordinate all requests to donate items with their respective Board.
2. Items under \$5,000:
When the fair market value of a surplus item is less than \$5,000, the Director of the Department of Procurement and Material Management or FCPS Chief Financial Services may donate the item directly to charitable or nonprofit organizations as appropriate and allowed by law.

It is further resolved that this resolution shall be effective July ~~28th~~, 20~~20~~¹⁹.

A Copy Teste:

FAIRFAX COUNTY PURCHASING RESOLUTION

Catherine A. Chianese
Clerk to the Board of Supervisors

ACTION - 5

Authorization to: 1) Approve Issuance by the Fairfax County Redevelopment and Housing Authority (FCRHA) of Tax-Exempt Bonds in an Amount not to Exceed \$22,500,000; and 2) For FCRHA to Submit an Application to Virginia Department of Housing and Community Development for Tax-Exempt Bond Allocation for Ovation at Arrowbrook Apartments (Dranesville District)

ISSUE:

Board of Supervisors approval of the issuance by the FCRHA of tax-exempt bonds in an amount not to exceed \$22.5 million for the benefit of Ovation at Arrowbrook Apartments (the Project). In addition, Board authorization is requested for the FCRHA to submit an application to the Virginia Department of Housing and Community Development (VADHCD) for tax-exempt bond allocation for the Project. Approval of this action is necessary to finance the construction and development of the Project.

RECOMMENDATION:

The County Executive recommends: 1) approving FCRHA's issuance of private activity tax-exempt bonds in an amount not to exceed \$22.5 million for the construction and development of Ovation at Arrowbrook Apartments; and 2) authorizing the FCRHA to submit an application to VADHCD for tax-exempt bond allocation for Ovation at Arrowbrook Apartments, as part of the overall financing for the construction and development of the Project.

TIMING:

Immediate. The application to VADHCD for tax-exempt bond allocation is considered on a first-come first-served basis and in order to secure the bond allocation, the FCRHA would like to submit the application to VADHCD immediately after the Board's approval.

BACKGROUND:

In February 2019, the Board authorized Housing Blueprint Loans in the amount of \$694,225 and \$7,050,000 for Arrowbrook Apartments I, LLC and Arrowbrook Apartments II, LLC respectively as subordinate financing for the development of Ovation at Arrowbrook (the Project), a 274-unit affordable multifamily rental housing development, located in the Dranesville District.

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The Project will be built on land subject to the terms of a ground lease with Arrowbrook Centre LLC, and financed with a hybrid structure utilizing nine percent Low-Income Housing Tax Credits (LIHTC) for the financing of 126 units and tax-exempt bonds and four percent LIHTC for the financing of 148 units. The Project will serve an income mix of 30 percent of area median income (AMI), 40 percent of AMI, 50 percent of AMI and 60 percent of AMI levels. Details regarding the affordability, ground lease and financing structures are described in Attachment 3.

Developer:

SCG Development is a privately held real estate development firm focused on creating quality affordable and workforce rental residences with a portfolio of over 40 properties across the country, ranging from high-rise new construction, to adaptive reuse of historic buildings, to the acquisition and rehabilitation of existing apartment communities.

SCG Development has developed and rehabilitated 4,000 units throughout the nation. They are headquartered in Fairfax County and have done extensive work in Washington D.C., Maryland, and Virginia. The most recent successful project they developed is The Residences at Government Center in Fairfax, Virginia, which is a 270-unit project using tax credits and is an Earthcraft Home-certified gold apartment complex. This project has received several notable awards including the 2018 International Economic Development Council Excellence in Economic Development Silver Award Recipient, the 2017 Best Affordable Development Award at the Virginia Governor's Housing Conference, and the 2017 Outstanding Project Innovation Award from the National Council for Public-Private Partnerships (NCPPP). SCG Development has also developed other properties in the Greater Washington D.C. and Virginia area, a few of which are, Forest Village Apartments in Fredericksburg, VA (192 units), Georgia Commons in Washington D.C. (130 units), Park Heights Apartments in Baltimore, MD (100 units) and Mallard Cove Apartments (160 units) and Marsh Landing Apartments in Portsmouth, VA (250 units). Based on its 2018 audited financial statements, SCG Development Partners, LLC & Subsidiaries, have total assets of \$122,122,261, cash balance of \$5,199,831 and net worth of \$51,863,654.

SCG Development has brought together a team that includes local firms with long-time local principals and employees that have an extensive knowledge of the development process from inception to completion.

Project Description:

The site is located at the intersection of the future Arrowbrook Centre Drive (currently known as Field Point Road) and Centreville Road in Herndon, Virginia, with Innovation Metro Station under construction within a mile of this site.

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The site has zoning approval of Planned Development Commercial District, which includes multifamily dwelling units. The site and building plans are in the permitting process. Although acting as one contiguous building, SCG Development will create three separate condominiums within the project, including Arrowbrook Apartments I, LLC for the 126-unit nine percent LIHTC condominium (Condo A), Arrowbrook Apartments II, LLC for the 148-unit four percent LIHTC condominium (Condo B), and a retail condominium (Condo C) that will be developed by SCG Development and conveyed to Arrowbrook Centre LLC, the ground lessor, upon the final completion of construction. The scope of the retail condominium is outside the LIHTC financing transactions for Arrowbrook Apartments I, LLC and Arrowbrook Apartments II, LLC. The project includes 15 Americans with Disabilities Act (ADA) compliant units.

The structured parking garage will be a six-story structure consisting of approximately 473 parking spaces with 424 parking spaces dedicated for the residential units and 49 parking space dedicated for the retail condominium. Residential apartments will surround the garage on three sides.

The Project is located in a highly desirable location in Herndon and is part of the Arrowbrook Centre mixed-use development that includes Arrowbrook Centre Park, an actively selling Pulte for-sale townhome and condominium community, and future high-rise hotel/office/condominium buildings.

The units at Ovation at Arrowbrook will feature:

- Laminated wood flooring in kitchen and living areas
- Carpeting in bedrooms
- Ceramic tile flooring and shower in bathrooms
- Washer and dryer in every unit
- Refrigerator, dishwasher, stove, and garbage disposal
- Pre-wired for TV, phone, and internet services
- Programmable thermostats

The Common Area Amenities at Ovation at Arrowbrook will include:

- Controlled access throughout the property, including the parking garage
- Business Center with conference room/study areas
- Fitness Center
- Cyber Lounge
- Bicycle Storage
- Outdoor Courtyard with grilling and seating

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- Quick access to Dog Park (at Arrowbrook Centre Park) and Children's Playground
- Structured Parking with direct floor access
- Ground Floor Retail

Potential Benefits:

1. Addition of 274 units of affordable housing in a highly cost-burdened Herndon/Reston area.
2. Ovation at Arrowbrook Apartments will offer 55 three-bedroom units that are in high demand in the area.
3. The Project is within a mile of the Innovation Center Metro station, Worldgate shopping and restaurants, food stores and Clocktower Shopping Center.
4. The Project will remain affordable for at least 50 years pursuant to an agreement with Virginia Housing.
5. The Project will incorporate green building, universal and sustainable design features and Earthcraft design features.
6. The Project will have 15 ADA compliant units.
7. The FCRHA will have the Right of First Refusal (if SCG Development Partners, LLC elects to sell its ground lease rights).

Appraised Value:

The appraised value of the project in June 2020 was \$79,350,000 based on the appraisal performed by RPJ & Company and approved by the Department of Taxation Administration (DTA).

Timeline:

The estimated timetable of closing actions follows:

Issuance of a Declaration of Intent (Inducement Resolution)	June 4, 2020 COMPLETED
Loan Underwriting Committee Meeting	June 4, 2020 COMPLETED
Tax Equity and Fiscal Responsibility Act (TEFRA) Advertisement #1	May 28, 2020 COMPLETED
TEFRA Advertisement #2	June 4, 2020
TEFRA public hearing and FCRHA Approval of Bond Issuance	June 11, 2020 COMPLETED
4 percent tax credit application submitted, and reservation received	June 2020 COMPLETED
Board of Supervisors approval of bond issuance	July 28, 2020

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Private activity bond application submitted, and allocation awarded by VADHCD	August 2020
Bond counsel drafts documents required for closing (Bond Indenture, Loan Agreement, etc.)	September 2020
Fannie Mae loan application submitted, and commitment received	September 2020
FCRHA final bond resolution	September 24, 2020
Preliminary Official Statement	September 2020
Underwriter prices and contracts to purchase/sell the bonds and Bond Purchase Agreement executed	September 2020
Final Official Statement/Remarketing Supplement	September/October 2020
Bond Closing	October 2020

STAFF IMPACT:

Real Estate Finance staff continues to spend a considerable amount of time to underwrite, structure and close the transaction with tax-exempt bonds and Housing Blueprint funds by working directly with SCG Development, and coordinating with other HCD staff, the Office of the County Attorney, and FCRHA bond counsel.

FISCAL IMPACT:

The FCRHA will receive an issuer's fee at the time of closing in October 2020. The fee is estimated to be \$145,000 and will post to Fund 81000, FCRHA General Operating Fund. At the time of closing, the FCRHA will also receive an upfront Bond Monitoring Fee in the amount of \$130,000 and an annual Bond Monitoring Fee of \$15,000 thereafter during the Qualified Project Period which will also post to Fund 81000, FCRHA General Operating Fund. An application fee of \$5,000 has already been received.

In addition, the FCRHA will receive an annual Blueprint Monitoring Fee of \$5,000, escalating at three percent annually for a period of at least thirty years for the Housing Blueprint Loans previously authorized by the FCRHA. All of the fees will post to Fund 81000, FCRHA General Operating Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution

Attachment 2 – Vicinity Map

Attachment 3 – Affordability; Ground Lease; Financing Plan

Board Agenda Item
July 28, 2020

STAFF:

Tisha M. Deeghan, Deputy County Executive

Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)

Teresa Lepe, Deputy Director, Real Estate, Finance and Development, HCD

Jyotsna Sharma, Associate Director, Real Estate Finance and Grants Management, (REFGM), HCD

Debashish Chakravarty, Senior Real Estate Finance Officer, REFGM, HCD

Michael Pearman, Portfolio Manager, REFGM, HCD

ASSIGNED COUNSEL:

Cynthia A. Bailey, Deputy County Attorney

Alan M. Weiss, Assistant County Attorney

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in Conference Room 11 of the Government Center at Fairfax, Virginia on Tuesday, July 28, 2020, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Fairfax County Redevelopment and Housing Authority (Authority) of Fairfax County, Virginia desires to issue, sell, and deliver its tax-exempt and/or taxable Multifamily Housing Revenue Bonds (Ovation at Arrowbrook Apartments Project) (the Bonds) in an aggregate principal amount not to exceed \$22,500,000; and

WHEREAS, the Authority was established pursuant to Title 36 of the Va. Code Ann. (the Act), and pursuant to Section 36-19 of the Va. Code Ann., the Authority is authorized, among others, to make loans for assistance in planning, development, acquisition, construction, repair, rehabilitation, equipping or maintenance of commercial, residential or other buildings; provided that prior approval of any such loan by the local governing body shall be required if the building is not located within a housing, redevelopment or conservation project, or a rehabilitation district; and

WHEREAS, the proceeds of the Bonds will be used to finance the new construction and equipping of 148 residential units at Ovation at Arrowbrook Apartments (the Project); and

WHEREAS, the Authority held a public hearing electronically due to the COVID-19 pandemic, on June 11, 2020 for which public notice was duly given on May 27, 2020, being no fewer than 14 days prior to the date of the public hearing as required under the regulations applicable to Section 147(f) of the Internal Revenue Code of 1986, as amended, and such notice was republished on June 3, 2020. The Board of Supervisors has received from the Authority a summary of statements made at the hearing and an extract of minutes of the meeting of the Authority relative to its proposed issuance of bonds to pay all or a portion of the cost of the Project.

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors:

1. For the purposes and only for the purposes of compliance with Section 147(f)(2)(B) of the Internal Revenue Code of 1986, as amended, the Board of Supervisors does hereby approve the issuance of tax-exempt and/or taxable bonds for the Project in an aggregate principal amount not to exceed \$22,500,000.

The Board of Supervisors in no manner assumes any legal or moral obligation for the Bonds. The Bonds will be limited obligations of the Authority and payable from the revenues pledged thereto pursuant to the Trust Indenture pursuant to which the Bonds will be issued. As required by the Act, the Bonds shall not be a debt of Fairfax County, Virginia, the Commonwealth of Virginia or any political subdivision thereof (other than the Authority) and neither Fairfax County, Virginia, nor the Commonwealth of Virginia or

any political subdivision thereof (other than the Authority) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Authority pledged thereto under the Indenture. The Bonds shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

The Board expresses no opinion as to the merits of the Project or of its financing.

This Resolution shall take effect immediately.

Adopted the 28th day of July, 2020, by the Fairfax County Board of Supervisors

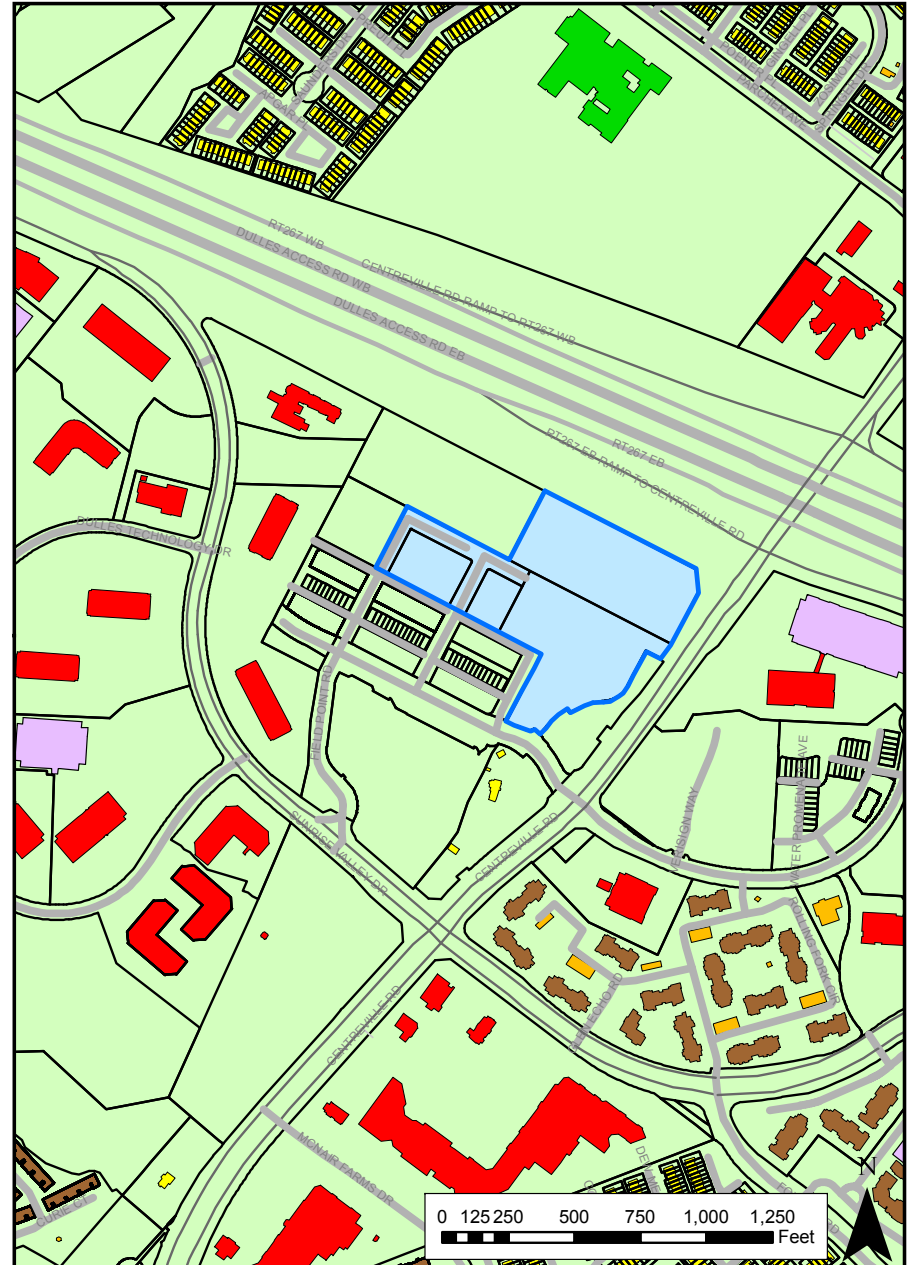
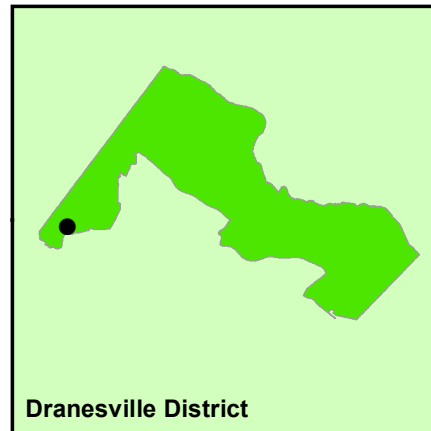
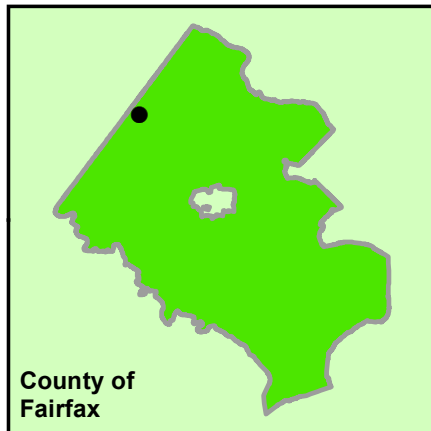
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[SEAL]

Jill G. Cooper
Clerk for the Board of Supervisors

Arrowbrook Centre

Attachment 2



Affordability; Ground Lease; Financing PlanRents and Affordability Restrictions:

The Project has been awarded six units of State Rental Assistance Program (SRAP) Project-Based Rental Assistance for individuals with developmental disabilities who are at 50 percent of the Area Median Income (AMI). In addition, Arrowbrook Apartments I, LLC, Condo A for nine percent LIHTC, has been awarded eight Project Based Vouchers (PBVs) by the FCRHA.

The following tables represent the proposed rents for Ovation at Arrowbrook, Condo A for nine percent LIHTC and Condo B for four percent LIHTC:

Condo A

Unit Type	Number of Units	Gross Allowable Rents	Utility Allowance	Net Rents	Area Median Income (AMI) Levels (%)
1 BR	5	\$709	\$100	\$609	30
1 BR (RA*)	4	\$1,630	Included	\$1,630	40
1 BR	2	\$1,161	\$100	\$1,061	50
1 BR	10	\$1,418	\$100	\$1,318	60
2 BR	6	\$851	\$124	\$727	30
2 BR (RA*)	5	\$1,856	Included	\$1,856	40
2 BR	28	\$1,418	\$124	\$1,294	50
2 BR	38	\$1,701	\$124	\$1,577	60
3 BR	2	\$983	\$147	\$836	30
3 BR (RA*)	5	\$2,443	Included	\$2,443	40
3 BR	7	\$1,638	\$147	\$1,491	50
3 BR	14	\$1,966	\$147	\$1,819	60
Total	126	\$198,466	\$14,009	\$184,457	

*Units receiving rental assistance (RA) through PBV and SRAP awards.

Condo B

Unit Type	Number of Units	Gross Allowable Rents	Utility Allowance	Net Rents	Area Median Income (AMI) Levels (%)
Studio	10	\$1,323	\$81	\$1,242	60
1 BR	20	\$1,418	\$100	\$1,318	60
2 BR	91	\$1,701	\$124	\$1,577	60
3 BR	27	\$1,966	\$147	\$1,819	60
Total	148	\$249,463	\$18,063	\$231,400	

Utility allowance includes electric, water and sewer.

Ground Lease

Arrowbrook Centre LLC, a wholly owned subsidiary of The Ruth and Hal Launders Charitable Trust, a Virginia charitable trust classified as a tax-exempt private foundation under federal tax law, currently owns the parcel of land containing approximately 4.6 acres located within Arrowbrook Centre (the Land). SCG Development Partners, LLC entered into a Memorandum of Agreement and Option to Ground Lease with Arrowbrook Centre, LLC granting SCG Development Partners, LLC the option to ground lease the Land for ninety-nine (99) years. At closing, the Land will be subjected to a leasehold condominium regime and two (or more) ground leases will be entered into between Arrowbrook Centre, LLC as ground lessor and each of the ground lessees for the three condominium units established for the Land (one unit for Condo A, one unit for Condo B, and one unit for Condo C). Under the terms of the ground lease for the nine percent LIHTC project (Condo A), Arrowbrook Centre, LLC will be paid an upfront base rent payment of \$5,000,000, followed by a \$750,000 supplemental rent payment that is payable from net cash flow received from the project during the first 15 years of the lease term (\$50,000 per year). Any supplemental rent that is not paid in installments during the first 15 years becomes fully due and payable in year 15.

In addition, SCG Development will convey to Arrowbrook Centre, LLC the retail portion of the new building comprised of approximately 36,000 gross rentable square feet upon the final completion of construction. The retail portion of the building will be a fully separate condominium owned and operated by Arrowbrook Centre, LLC. The ground lessor has granted SCG Development Partners, LLC an extension of time under the Memorandum of Agreement and Option to Ground Lease to secure the

financing commitments. It is expected that the ground lease will be executed at the time of closing in October 2020.

Financing Plan:

The Project will be divided into three condominium regimes for ownership and financing purposes only, legally dividing the ownership of the property and related rights between two ownership entities controlled by the developer (the ownership entities). The apartments will all be rental. All condominiums will have shared common elements.

SCG Development is proposing to finance the development using both nine percent and four percent LIHTC. The overall project will be financed using three separate financing mechanisms under three separate condominium regimes: a) Arrowbrook Apartments I, LLC for 126 units with nine percent LIHTC, a first mortgage from a private lender and subordinate financing from the FCRHA; b) Arrowbrook Apartments II, LLC for 148 units with four percent LIHTC with short term tax-exempt bonds, Fannie Mae financing and subordinate financing from the FCRHA; and c) the third condominium will provide a 36,000 gross square foot retail structure. This portion of construction will be funded by the ground lessor that will deposit \$4.5 million of the \$5 million base rent payment described above under "Ground Lease" into an escrow to pay for the costs of constructing Condo C.

The project will provide 274 affordable units and serve an income mix of 30 percent of AMI, 40 percent of AMI, 50 percent of AMI and 60 percent of AMI levels. The construction will take place over a period of 24 months after closing and is expected to commence in October 2020.

As previously noted, in January 2019 the Board authorized two Housing Blueprint Loans in the aggregate amount of \$7,744,225 to Arrowbrook Apartments I, LLC and Arrowbrook Apartments II, LLC for the development of the Ovation at Arrowbrook project. As allowed under the terms of the Housing Blueprint Loans, the two loan amounts between the two transactions have changed, resulting in an aggregate amount of \$7,744,000. As reflected in the Sources and Uses for Condo A and Condo B that follow, the Housing Blueprint loan to Condo A will be \$994,000 and the Housing Blueprint loan to Condo B will be \$6,750,000.

The current estimated sources and uses for Condo A are:

Permanent Sources	Sources
First Mortgage Loan	\$21,400,000
Subordinate Financing (Housing Blueprint Funds Loan)	994,000
Tax Credit Equity	24,003,000
Deferred Developer Fee	2,809,113
Total Permanent	\$49,206,113
Summarized Uses	Uses
Acquisition Costs	\$4,500,000
Construction Costs	30,711,823
Construction Costs Contingency	1,577,971
Architecture and Engineering	1,244,558
Soft Costs	3,077,485
Financing/Interest	3,538,198
Reserves	996,077
Developer's Fee	3,560,000
Total Uses	\$49,206,113

For the Arrowbrook I, LLC, nine percent LIHTC transaction, SCG Development is working with M&T Realty Capital Corporation (M&T), a Fannie Mae approved affordable housing lender, to secure a 9 percent forward commitment for permanent first leasehold mortgage financing. General terms are: (i) 35-year amortization, (ii) 4.4 percent interest rate and (iii) an 18-year maturity. Tax credit equity will be provided by Stratford Capital Group. The Housing Blueprint Loan will be disbursed after construction completion.

The current estimated sources and uses for Condo B are:

Permanent Sources	Sources
First Mortgage Loan	\$27,400,000
Subordinate Financing (Housing Blueprint Funds Loan)	6,750,000
Tax Credit Equity	12,235,000
Deferred Developer Fee	1,203,255
Total Permanent	\$47,588,255
Summarized Uses	Uses
Construction Costs	\$32,749,942
Construction Costs Contingency	1,820,118
Architecture and Engineering	1,435,542
Soft Costs	2,685,086
Financing/Interest	3,860,690
Reserves	1,113,674
Developer's Fee	3,923,204
Total Uses	\$47,588,255

For the Arrowbrook II, four percent LIHTC transaction, SCG Development has applied for FCRHA tax-exempt bonds for a short-term duration that will be fully cash-collateralized by the proceeds of a loan issued by M&T. The bonds will be structured so that the FCRHA, the County, and the bond holders will not be at risk. No mortgage lien will secure the bonds. Furthermore, these bonds will be nonrecourse to the FCRHA. M&T will originate a Fannie Mae M-TEB forward commitment for permanent first leasehold mortgage. General terms are: (i) 40-year amortization, (ii) 3.31 percent interest rate and (iii) an 18-year maturity. Based on the information provided, SCG Development will need a bond amount of up to \$22,500,000 to meet the 50 percent test of eligible basis plus land and fund this project, which will be determined before the closing. Tax credit equity will be provided by Stratford Capital Group. The Housing Blueprint Loan will be disbursed after construction completion.

Board Agenda Item
July 28, 2020

ACTION - 6

Approval of a Board of Supervisors' Draft Regular Meeting Schedule for Calendar Year 2021

ISSUE:

Board approval of a draft regular meeting schedule for January through December, 2021.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the draft regular meeting schedule for January through December, 2021.

TIMING:

The Board should take action on July 28, 2020, in order that accommodations to implement this calendar can proceed in advance of January.

BACKGROUND:

The *Code of Virginia*, Section 15.2-1416, requires a governing body to establish the days, times and places of its regular meetings at the annual meeting, which is the first meeting of the year. Therefore, the draft schedule for the 2021 calendar is presented for Board approval. The section further states that "meetings shall be held on such days as may be prescribed by resolution of the governing body but in no event shall less than six meetings be held in each fiscal year."

Scheduled meetings may be adjourned and reconvened but not beyond the time fixed for the next regular meeting. The Board may schedule additional meetings or adjust the schedule of meetings approved at the annual meeting by following the procedures established in the statute cited above, which include the provision of adequate notice of all such meetings.

At the first meeting of the Board of Supervisors in January, staff will present the January-December, 2021 Draft Schedule to the Board for formal adoption.

ENCLOSED DOCUMENTS:

Attachment 1: January-December, 2021 Draft Schedule for Board of Supervisors' Regular Meetings and Potential 2021 Tuesday dates for Board Committee Meetings

STAFF:

Jill G. Cooper, Clerk for the Board of Supervisors

DRAFT

2021 Board of Supervisors Meeting Schedule

January 26, 2021	May 18, 2021
February 9, 2021	June 8, 2021
February 23, 2021	June 22, 2021
March 9, 2021	July 13, 2021
March 23, 2021	July 27, 2021
April 13, 2021	September 21, 2021
<ul style="list-style-type: none"> • 9:30 to 4:00 p.m. Board Meeting • 4:00 p.m. Budget Public Hearing 	October 5, 2021
April 14 and April 15, 2021	October 19, 2021
<ul style="list-style-type: none"> • 3:00 p.m. – Budget Public Hearings 	November 16, 2021
April 27, 2021 (Budget Mark-up)	December 7, 2021
May 4, 2021	

Potential 2021 Tuesday Dates for Board Committee Meetings

(Listed below are Tuesday dates that would be available for scheduling
of Board Committee meetings in 2021)

January 12	June 29
February 2	July 20
March 2	September 14
March 16	September 28
April 6	October 12 (tentative)
May 11	October 26
May 25	November 23
June 15	

The Budget pre mark-up meeting is scheduled on Friday, April 23.

Board Agenda Item
July 28, 2020

ACTION - 7

Approval of Memorandum of Agreement Between Fairfax County and Fairfax County Public Schools for the Free Student Bus Pass Program

ISSUE:

Board of Supervisors' approval of the Memorandum of Agreement between Fairfax County and Fairfax County Public Schools (FCPS) for the Free Student Bus Pass Program.

RECOMMENDATION:

The County Executive recommends the Board approve the Memorandum of Agreement, in substantial form of Attachment I, and authorize the Director of Department of Transportation (FCDOT) to sign the Memorandum of Agreement on behalf of Fairfax County.

TIMING:

Board approval is requested on July 28, 2020, so the agreement can be effective on August 1, 2020.

BACKGROUND:

In September 2015, the Fairfax County and FCPS launched a pilot program to provide access to free Fairfax Connector bus passes to all middle and high school students in Fairfax County. In September 2016, City of Fairfax joined the program providing Fairfax County students free access to ride City of Fairfax CUE buses. Since its inception, nearly two million trips have been taken through the Free Student Bus Pass Program (FSBPP) and as of February 2020, student ridership accounted for approximately 6.5 percent of the total Fairfax Connector ridership. In September 2018, Fairfax County executed a Memorandum of Understanding (MOU) with the Washington Metropolitan Area Transit Authority (WMATA) to expand the FSBPP to include a Metrobus pilot program for Justice High School which is not served by Fairfax Connector. At that time, Fairfax County also transitioned from a flash pass to using a custom designed and programmed SmarTrip card across the entire program. The SmarTrip cards allow students to use the same card for multiple years and the schools to have more control over pass issuance and use.

FSBPP continues to be a highly successful partnership between Fairfax County, FCPS,

Board Agenda Item
July 28, 2020

WMATA and City of Fairfax. Through this innovative program, students can access extracurricular activities, stay after school for support and tutoring, access after school jobs and internships, and visit libraries, museums, and other recreational activities. The program familiarizes students with public transportation and supports the development of a more multi-modal generation of young adults in the future. This is critical to increasing transit ridership, reducing traffic congestion, and improving mobility around the National Capital Region.

Proposal Details:

Since the beginning of the FSBPP, FCDOT and FCPS have worked collaboratively without a formal agreement. While this strong and collegial collaboration continues to date, the success of the program warrants a more formal agreement and understanding of the roles of each party to ensure continued growth and success of the program. The proposed Memorandum of Agreement (MOA) between Fairfax County and FCPS will ensure that there is a continuity of roles, a clear understanding of expectations and obligations for each party, and a formal foundation upon which the program can be further developed.

As part of this agreement Fairfax County will:

- provide the student bus passes/student fare media;
- provide free rides on Fairfax Connector with an eligible pass; and
- promote the program.

FCPS will:

- register the passes/student fare media;
- distribute the passes to students; and
- manage passes within the schools.

FISCAL IMPACT:

There is no fiscal or General Fund impact for approving this Memorandum of Agreement.

ENCLOSED DOCUMENTS:

Attachment I – Memorandum of Agreement between Fairfax County and Fairfax County Public Schools for the Free Student Bus Pass Program

Board Agenda Item
July 28, 2020

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, FCDOT
Todd Wigglesworth, Division Chief, FCDOT
Dwayne Pelfrey, Division Chief, FCDOT
Anna Nissinen, Section Chief, FCDOT
Kala Quintana, Communication Specialist, FCDOT

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

**FREE STUDENT BUS PASS PROGRAM (FSBPP)
MEMORANDUM OF AGREEMENT
BETWEEN FAIRFAX COUNTY BOARD OF SUPERVISORS AND
FAIRFAX COUNTY SCHOOL BOARD**

This Agreement is made by and between the Board of Supervisors of Fairfax County, (the “County” or “Board of Supervisors”) and the Fairfax County School Board, which operates Fairfax County Public Schools (“FCPS”).

RECITALS

WHEREAS, teaching students how to use the bus system effectively helps them access after school programs, extra-curricular activities, jobs, social and community programs to assist students in becoming productive and contributing members of society; and

WHEREAS, the County seeks to provide free bus transportation for eligible FCPS middle and high school students going to and from school activities and for other purposes authorized by the County; and

WHEREAS, since FY2012, the Board of Supervisors has supported a pilot program to provide free access to Fairfax Connector buses for FCPS students; and

WHEREAS, in FY2019, the Board of Supervisors approved a one-year pilot for County-subsidized Washington Metropolitan Area Transit Authority (“WMATA”) Metrobus service for eligible students at Justice High School, which was subsequently extended for the 2020 School Year; and

WHEREAS, the County and WMATA entered into a School Transit Subsidy Agreement on September 11, 2018, to memorialize their agreement to increase ridership by students; and

WHEREAS, FCDOT staff continues to coordinate with FCPS to administer and expand the initiatives above (collectively, “Free Student Bus Pass Program”) to make improvements for the benefit of Fairfax County students, families and community; and

WHEREAS, the Free Student Bus Pass Program is a lifeline and provides independence for students with special needs and/or disabilities, among others, to have equal access to transportation and the ability to access school, employment and community activities and opportunities they would not have access to because they cannot operate a vehicle or obtain a driver’s license; and

WHEREAS, Free Student Bus Pass usage also helps reduce traffic and congestion in Fairfax County and around schools; and

WHEREAS, for the SY2019 – 2020, 14,200 newly designed Student Pass SmarTrip Cards were available to middle schools, high schools secondary schools, alternative high schools and school centers; and

WHEREAS, Fairfax County middle and high school students have taken over 1.5 million trips on Fairfax Connector since September 2015; and

WHEREAS, Fairfax County students using their Free Student Bus Pass make up seven percent (7%) of total Fairfax Connector ridership and this percentage continues to grow; and

WHEREAS, the Board of Supervisors has approved the use of a custom programmed SmarTrip Card for students to access Fairfax Connector, City of Fairfax CUE and Metrobus; and

WHEREAS, both the County and FCPS (collectively, “the Parties”) wish to memorialize their respective rights and obligations in this Memorandum of Agreement.

NOW, THEREFORE, the Parties, with intent to be bound, agree as follows:

Article I – Definitions

- A. “Free Student Bus Pass Program” or “FSBPP” means the program established by the County whereby certain FCPS, home school, or private school students meeting the age requirements to participate receive free Metrobus, Fairfax Connector, and City of Fairfax CUE transit service for trips to and from school or other activities as authorized by the County.
- B. “Freepass E-mail Account” refers to the FCPS email account set up by FCPS Transportation to communicate FSBPP information and materials to each participating school.
- C. “FSBPP Fare Media” or “Fare Media” means a flash card or WMATA-issued SmarTrip® card, or other WMATA-issued product or any other future FCPS-created product required for FSBPP Students to use the Fairfax Connector, City of Fairfax CUE, or Metrobus system that includes a FSBPP Fare Product.
- D. “FSBPP Fare Product” or “Fare Product” means a WMATA-issued electronic pass or product that is loaded onto the Fare Media by WMATA prior to delivery of the Fare Media to the County that allows unlimited travel from 5:00 AM to 10:00 PM seven days a week year-round on Fairfax Connector, and City of Fairfax CUE systems and certain Metrobus routes in Virginia identified in the limited Justice High School Metrobus Pilot as further specified in **Exhibit A** unless the times of eligibility are otherwise changed by the Parties in writing.
- E. “FSBPP Permission Form” means the permission form drafted and distributed by FCPS that is required before a student may participate in the FSBPP.

- F. “FSBPP Students” means students identified by the County as approved to participate in the FSBPP Program pursuant to terms established by the County. This would include any student residing within FCPS boundaries attending a private school, receiving homebased/homebound services, or attending another school within or outside of Fairfax County Public schools.
- G. “FSBPP School” means any FCPS school that is participating in the FSBPP.
- H. “Parent” means any parent or legal guardian.
- I. “Private school” means any school not an FCPS named school that students residing within Fairfax County boundaries attend.

Article II – General Roles and Responsibilities

- A. The County shall:
 - 1. Coordinate directly with WMATA to facilitate purchasing, programming, and reporting for FSBPP Fare Media;
 - 2. Distribute FSBPP Fare Media to centrally based FCPS designee for further distribution to FSBPP Students within 15 days of receipt from WMATA;
 - 3. Design and print all marketing and advertising materials, as the County deems appropriate, to promote the Free Student Bus Pass Program with input from FCPS;
 - 4. Create and update appropriate training materials and provide training for FCPS staff on the administration of the FSBPP based on availability of County staff;
 - 5. Determine, develop, maintain, and update any terms and conditions under which the FSBPP will operate and which serve as the foundation for the FCPS Permission Form, including but not limited to the Terms and Conditions currently set forth in **Exhibits B (Standard Program Terms and Conditions)** and **Exhibit C (Justice High School Terms and Conditions)**. **Excluding any terms or conditions developed or updated solely by WMATA, the County will coordinate with the FCPS designee to develop or update any material FSBPP terms or conditions. The County will not implement any material change in terms and conditions for 90 days unless FCPS agrees. If FCPS objects to any material change in FSBPP terms or conditions, the County will not implement the change.**
 - 6. Meet periodically with FCPS, as necessary, to administer, improve and adjust the FSBPP, including the deactivation of any Fare Media due to disuse or misuse;
 - 7. Provide updates to FCPS regarding ridership statistics periodically or as requested;

8. Provide free transportation to FSBPP Students presenting a valid FSBPP fare media; and
9. Work with FCPS to resolve any issues, comprehensive or individual, that arise from the implementation of the program or use of the FSBPP fare media by students.

B. FCPS shall:

1. Provide a designee for the County to coordinate with FCPS schools who will distribute FSBPP information and Fare Media to each school; promote the FSBPP with materials provided by County; provide training as necessary for administering the FSBPP at each school; answer parents, guardians, or students questions; and present surveys to schools as needed
2. Maintain the spreadsheet Exhibit D; register Fare Media on the WMATA site using the alias provided; ensure each school has a FreePass email account linked to the WMATA website; and activate and deactivate Fare Media as necessary, to include collecting voided or deactivated cards as FSBPP Students become ineligible for the FSBPP.
3. Draft and update, as needed, any/all FSBPP Permission Forms by June 1st annually, to include any necessary translations into languages as appropriate for distribution on an as-needed basis and make the forms available as necessary;
4. Notify the County in a timely manner when materials or Fare Media need to be replenished, so additional materials and Fare Media can be provided promptly;
5. Report any issues, concerns, or suggestions for improvement of the FSBPP, including issues related to student safety and student use or misuse of FSBPP Fare Media, to the County in a timely manner;
6. Meet periodically with the County, as necessary, to administer the FSBPP Program.

Article III – Term and Termination

A. **Term**

This Agreement shall be effective on the date the last signature below is made and shall continue in effect until August 1, 2025.

The County may extend the period of this Agreement by exercising a maximum of five one-year option periods. Option periods may consist of a fiscal year, a fraction thereof, or multiple successive fractions of a year. The County shall provide FCPS with written notice

of its intent to exercise an option period on or before June 30 of the year in which expiration is scheduled to occur. The exercise of any option is subject to the annual appropriation availability of funds at the time of the exercise of the option. FCPS may accept or reject each option at its sole discretion.

B. Termination

This Agreement may be terminated for convenience by the Board of Supervisors or the Fairfax County School Board upon providing 90 days' written notice or unless sooner terminated in accordance with this Agreement.

Article IV – General Matters

A. Availability of Funds

The Parties shall be bound under this Agreement only to the extent of funds which are available for the purposes of this Agreement. All County obligations under this Agreement are subject to appropriations by the Fairfax County Board of Supervisors to satisfy performance of such obligations.

B. Liability

Neither Party to this Agreement shall be liable for any damages, liabilities, judgments, attorney's fees, settlements, or other expenses arising out of claims for the negligent acts or omissions of the other Party. To the extent permitted by Virginia law, each Party shall be responsible for the actionable errors, acts, and omissions of its agents, volunteers, and employees, causing loss or harm to persons not a party to this Agreement. Nothing in this Agreement shall be deemed to waive or abrogate the sovereign immunity of the County or FCPS. This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, or agent of the Parties.

C. Non-Discrimination

During the performance of this Agreement, the County and FCPS will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Parties.

D. Americans with Disabilities Act Requirements

The County and FCPS are fully committed to the federal Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all programs, activities, and

services. Contractors, subcontractors, vendors, and suppliers are subject to this ADA policy.

E. Title VI

The Fairfax County Department of Transportation and Fairfax Connector operate programs and services without regard to race, color, and national origin in accordance with Title VI of the Civil Rights Act.

F. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested and addressed as appropriate to the following addresses (or to such other or further addresses as the Parties may designate by notice given in accordance with this paragraph). Such correspondence shall be deemed delivered upon the earlier to occur of the following: the day delivered by hand delivery; the third day following the day on which the same shall have been mailed by U.S. registered or certified mail, return receipt requested, with all postal charges prepaid, to the respective addresses set forth below; or actual receipt at the Parties' addresses.

Fairfax County School Board

Fairfax County Public Schools
8115 Gatehouse Road
Falls Church, Virginia 22042
Attention: Superintendent of Schools

with copies to:

John Foster
Division Counsel
Gatehouse Administration Center
8115 Gatehouse Road
Falls Church, Virginia 22042

Fairfax County Board of Supervisors:

Tom Biesiadny
Director
Fairfax County Department of Transportation
4050 Legato Road
Fairfax, Virginia 22033

Kala Leggett Quintana
Communications Specialist III

Fairfax County Department of Transportation
4050 Legato Road
Fairfax, Virginia 22033

with a copy to:

Elizabeth Teare, Esquire
County Attorney
Fairfax County
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035

G. Assignment

No transfer or assignment of this Agreement, or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless consent for such transfer or assignment is first approved in writing by the Parties.

H. Third-Party Beneficiaries

This Agreement shall be enforceable and binding upon, and shall only inure to the benefit of, the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed as creating any rights or benefits for any third person or entity.

I. Nature of Relationship

Nothing contained in this Agreement shall have the effect of establishing or creating any joint venture or partnership between the Parties with regard to the conduct of the Free Student Bus Pass Program or shall be construed to create the relationship of employer and employee between the Parties.

J. No Waiver

The failure by either Party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way affect the right to require such performance or compliance at any time thereafter. The waiver by either Party of a breach of any provision in this Agreement shall not be taken or held to be a waiver of any preceding or succeeding breach of such provision or as a waiver of the provision itself. No waiver of any kind shall be effective or binding, unless it is in writing and is signed by the Party against whom such waiver is sought to be enforced.

K. Amendments

This Agreement may not be amended or modified in any respect except by an instrument in writing signed by both Parties.

L. Severance of Terms and Compliance with Applicable Law

The Parties shall comply with all applicable laws, regulations, and rules. This Agreement is subject to all applicable laws, regulations, and rules governing the Parties hereinafter enacted or promulgated. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement. Meeting the terms of this Agreement shall not excuse any failure to comply with all applicable laws, regulations, and rules, whether or not these laws, regulations, and rules are specifically listed in this Agreement.

M. Dispute Resolution

In the event of a dispute under the Agreement, the Parties agree to meet and confer to ascertain if the dispute can be resolved without the need of a third party or judicial intervention. Fairfax County's Department of Transportation Director and Fairfax County Public Schools designee shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via meet and confer dispute resolution method, it shall be presented to the Fairfax County's Board of Supervisors and the School Board for formal confirmation and approval.

Any disputes between the County and FCPS arising out of this Agreement may be disposed of by the Parties by written agreement or amendment of this Agreement. If the Parties cannot resolve the dispute, then the Party seeking a resolution shall provide written notice of the nature of the dispute and the issues to the other Party. The other Party may respond within thirty (30) days. If the dispute is not resolved within thirty (30) days following the response or if there is no response within thirty (30) days, the dispute may be resolved as discussed in Article IV, Section N.

N. Governing Law and Venue

This Agreement and the Parties' obligations under it shall be governed by, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law or conflict of law provisions, including those of the Commonwealth of Virginia, that could cause the application of any laws other than those of the Commonwealth of Virginia, shall not apply.

Any and all disputes, claims, and causes of action arising out of this Agreement or any performance under this Agreement, shall be brought in the Circuit Court of Fairfax County, Fairfax or the United States District Court for the Eastern District of Virginia, Alexandria Division.

O. Captions

The headings throughout this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

P. Counterparts

This Agreement may be signed in one or more identical counterparts, whether transmitted by electronic mail or otherwise. Each such counterpart shall be deemed an original for purposes of this Agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date therein written.

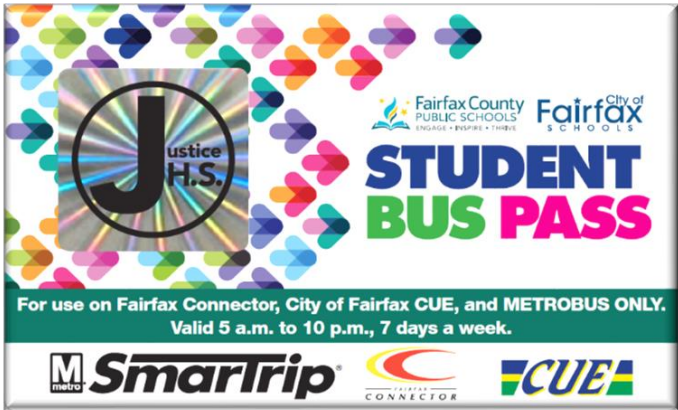
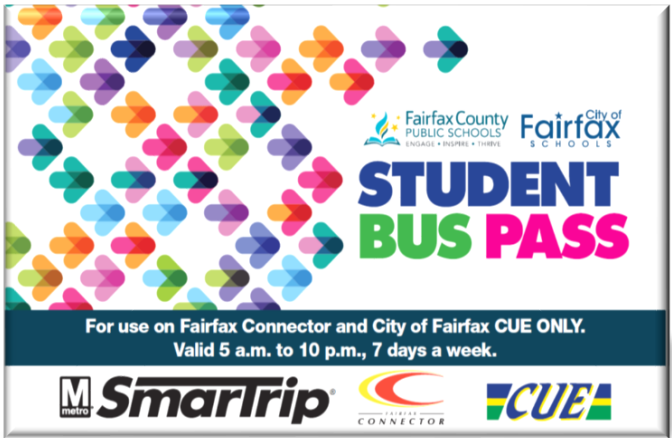
FAIRFAX COUNTY SCHOOL BOARD

By _____
NAME Date

FAIRFAX COUNTY BOARD OF SUPERVISORS

By _____
Tom Biesiadny Date
Director
Fairfax County Department of Transportation

SAMPLE STUDENT BUS PASS “FARE PRODUCT” /”FARE MEDIA”



STANDARD ISSUE SMARTRIP CARD

FREE STUDENT BUS PASS

FULL TERMS AND CONDITIONS

- For use on Fairfax Connector and City of Fairfax CUE ONLY
- Not for use on Metrorail or Metrobus
- This card and activity may be monitored
- Card can be used on Fairfax Connector and City of Fairfax CUE 7 days a week from 5AM - 10PM
- Actual card must be used by student rider
- No substitutions, pictures or reproductions will be accepted
- Card maintains no cash value and value cannot be added to card
- Card active until high school graduation or as otherwise determined by FCPS in consultation with Fairfax County
- Card expiration is subject to the discretion of FCPS and FCDOT
- Subject to validation by authorized transit employee
- Not transferable or assignable under any circumstance
- Students must report their card lost or stolen immediately to the school that issued the card
- Students must return the card to the school that issued the card upon graduation or transfer to or from another school
- Students must adhere to the respective rules and regulations of Fairfax Connector and City of Fairfax CUE
- Free Student Bus Pass SmarTrip® Card is subject to all applicable terms and conditions. See full terms www.smartrip.com
- Card must be tapped on fare box for bus entry
- If found, please return to: Marketing c/o FCDOT 4050 Legato Road #400 Fairfax, Virginia 22033
- SmarTrip® logo is a registered Trademark of WMATA. Questions about SmarTrip call 1-888-SMARTRIP (762-7874) or email smartrip@wmata.com
- May be subject to criminal or administrative action if the card is misused or presented for transportation by any person other than the person to whom it is issued
- Card may be confiscated for misuse or for any reason at any time without notice
- All program Terms and Conditions may be subject to change without notice

METROBUS ENABLED SMARTRIP CARD

FREE STUDENT BUS PASS

TERMS AND CONDITIONS

- For full terms and conditions go to: www.fairfaxconnector.com and www.cuebus.org
- For use on Fairfax Connector and City of Fairfax CUE, and METROBUS ONLY
- Metrobus access is limited to specific Northern Virginia service routes ONLY (ABSOLUTELY NO ACCESS to ANY DC or MD bus routes)
- Not for use on Metrorail
- This card and activity may be monitored
- Card can be used on Fairfax Connector, City of Fairfax CUE and Metrobus 7 days a week from 5AM -10PM
- Actual card must be used by student rider
- No substitutions, pictures or reproductions will be accepted
- Card maintains no cash value and value cannot be added to card
- Card active until high school graduation or as otherwise determined by FCPS upon consultation with Fairfax County
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- SmarTrip® logo is a registered Trademark of WMATA. Questions about SmarTrip call 1-888-SMARTRIP (762-7874)
- May be subject to criminal or administrative action if the card is misused or presented for transportation by any person other than the person to whom it is issued
- All program Terms and Conditions may be subject to change without notice

High School Name

EXHIBIT D

SmarTrip User Name	High School Password
SmarTrip Password	High School

[illegible]

Board Agenda Item
July 28, 2020

ACTION - 8

Approval of Memorandum of Agreement Between the Central Intelligence Agency and Fairfax County to Provide Fairfax Connector Bus Service to the Agency's Facility in Langley, Virginia (Dranesville District)

ISSUE:

Board of Supervisors' approval of a Memorandum of Agreement (MOA) between the Central Intelligence Agency (CIA) and Fairfax County to provide Fairfax Connector bus service from the McLean Metrorail Station to the George Bush Center for Intelligence (GBCI) in Langley, Virginia.

RECOMMENDATION:

The County Executive recommends the Board approve the MOA between the CIA and Fairfax County, in substantial form of Attachment I, and authorize the Director of the Fairfax County Department of Transportation (FCDOT), to execute the finalized agreement on behalf of the County.

TIMING:

Board approval is requested on July 28, 2020, to allow the CIA time to approve the MOA before service to the GBCI is implemented on August 29, 2020.

BACKGROUND:

The CIA's Transportation Service Center approached FCDOT about providing Fairfax Connector bus service to the GBCI. Current bus service to the facility is limited to Metrobus 15K which provides only peak period connections with the East Falls Church Metrorail Station. The proposed Fairfax Connector bus service would provide connectivity between the GBCI facility and the McLean Metrorail Station, and reduce travel times for CIA employees coming from Reston, Herndon, and points west via Metrorail.

PROPOSAL SUMMARY:

Under the agreement, Fairfax County would provide Fairfax Connector bus service via a new express Route 722 operating during peak periods between the McLean Metrorail Station and the GBCI. Midday service would be provided by an extension of the existing Route 721 from the McLean Community Business Center to the GBCI and connecting

Board Agenda Item
July 28, 2020

with the McLean Metrorail Station. Both bus routes will be open to the general public, as the bus stop at the GBCI will be located outside the CIA Visitor Center. The County will invoice the CIA on a quarterly basis for the actual bus services provided. The County would also be responsible for providing ridership and on-time performance data associated with the two routes to the CIA. The CIA would be responsible for reimbursing the County for the bus service on the two routes and the associated capital costs. The CIA will design and distribute the flash passes to eligible CIA employees to cover their trips on the two routes.

The capital costs of the four buses purchased to operate the service will be reimbursed by the CIA and amortized over five years. Should the CIA choose not to exercise one or more of the one-year contract extensions, operating and capital costs accrued through the date of termination or expiration of the agreement will be the responsibility of the CIA as described in the MOA.

FISCAL IMPACT:

The CIA will fully reimburse Fairfax County for the new Route 722 and the Route 721 extension to the GBCI through a one-year agreement with four one-year extension options. The total first year annual contract cost of \$1,244,184 includes an operating cost of \$788,184 plus the annualized capital cost of \$456,000. There will be no fiscal impact to the General Fund during the term of the MOA.

ENCLOSED DOCUMENT:

Attachment I – Memorandum of Agreement

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Dwayne Pelfrey, Division Chief, Transit Services Division, FCDOT
Michael Felschow, Planning Section Chief, Transit Services Division, FCDOT
Stuart Boggs, Transportation Planner, Transit Services Division, FCDOT
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Randy Jouben, Risk Manager, Department of Finance

ASSIGNED COUNSEL:

Erin C. Ward, Deputy County Attorney

MEMORANDUM OF AGREEMENT

This Agreement is made this _____ day of _____, 2020, by and between the Central Intelligence Agency (“CIA”), an agency of the government of the United States of America and the Board of Supervisors of Fairfax County, Virginia (“the County”) a political subdivision of the Commonwealth of Virginia, collectively referred to herein as the “Parties”.

Whereas, the County owns the Fairfax Connector Bus System, a public bus system operating in the County, which is operated and managed by a third-party contractor.

Whereas, the purposes of this Memorandum of Agreement (MOA) are to provide public transit service between the George Bush Center for Intelligence and McLean Metrorail Station, as well as McLean Community Business Center, for the benefit of CIA employees who work at the Center, which is in Langley, Virginia; to set forth the parameters on how said public transit service will be provided; and to establish how the CIA will compensate the County for the public transit service.

Whereas, under this MOA, all public bus service supplied to the CIA shall be provided under the terms and conditions set forth in the agreement(s) between the County and the bus service provider(s) that manage and operate the Connector Bus System.

Now therefore in consideration of the promises made by the County and the CIA, the parties hereby agree as set forth in this Memorandum of Agreement, including Attachment A, Cost Proposal, which is fully incorporated into, and is an integral and enforceable part of, this MOA.

Section 1 – Scope

Section 1.01. The scope of the County’s public bus service under this agreement shall be limited to the public bus service provided between McLean Metrorail Station, McLean Community Business Center, and the George Bush Center for Intelligence in Langley, Virginia.

Section 2 – Definitions

Section 2.01. As used in this MOA, the following terms shall apply.

- a. **Bus** means a Fairfax Connector bus of 30, 35 or 40 feet in length that is equipped with a public service radio system, automatic vehicle location, and is Americans with Disabilities Act (“ADA”) compliant and can accommodate riders with mobility, audio or visual disabilities.

- b. **Peak Service** means bus service operated during morning and afternoon rush hours. Rush hours are defined as 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:00 p.m.
- c. **Midday Service** means bus service operated during the hours between the morning and afternoon rush hour periods.
- d. **Revenue service** means the period when a transit bus is in service and transporting passengers.
- e. **Non-Revenue Service** means the period when a bus is traveling to or from the operating garage to the start of the first revenue service trip or at the end of the last revenue service trip. It can also refer to the deadhead travel between the end of one revenue service trip and the start of the next revenue service trip on routes that only operate in revenue service in one direction.
- f. **Deadhead** means when the bus is operating in non-revenue service as part of a movement to return the bus to the starting point for the next peak service bus trip.
- g. **“CIA Fare Media” or “Fare Media”** means a flash card, or other issued product or any other future-created product utilized by passengers that use the Fairfax Connector.
- h. **“CIA Fare Product” or “Fare Product”** means a flash card or electronic pass or product that is loaded onto the Fare Media prior to delivery of the Fare Media to the County that allows travel on the identified route(s) per the agreed upon schedule on Fairfax Connector unless otherwise changed by the Parties in writing.
- i. **“Fairfax Connector Holidays”** are the holidays listed on Fairfax County Department of Transportation (FCDOT) Connector web page, currently available at <https://www.fairfaxcounty.gov/connector/holiday-schedules>.
- j. **Fairfax Connector Web Page** means a publicly accessible internet web page maintained by Fairfax County that provides information on Fairfax Connector bus service, on changes to said service, and other related information.

Section 3 – Public Bus Service Provided under the MOA

Section 3.01. The service plan as defined under this MOA is as follows:

- a. Public bus service will feature a mix of extended Connector Route 721 midday weekday service trips and a new stand-alone route (Connector Route 722) operating during peak service periods only. Extending Route 721 from the McLean Community Business Center to the George Bush Center for Intelligence (CIA) will provide CIA employees with transit access to this commercial center as well as the McLean Metrorail Station. The stand-alone Route 722 will provide weekday service between McLean Metrorail Station and the George Bush Center for Intelligence (CIA) for those employees seeking to access the facility from Metrorail. Maps showing the route alignments are included in Figures 1 and 2 in Attachment A. All buses will be open to the public as well as to CIA employees. The service plan is more fully described in Attachment A, Cost Proposal.
- b. **Reporting Structure**
 - (a) Service Disruptions or Suspensions
 - (i) The Parties will utilize established public communication channels including the Fairfax Connector Call Center, BusTracker service alerts, and

www.fairfaxcounty.gov/connector/ in the event of the disruption or suspension of normal bus service described in Section 3.01 and Attachment A.

- (ii) In the event of service disruptions that affect route operations over an extended period (i.e. more than seven days), the parties shall contact the primary points of contact described in Section 3.01 b (d) and (e).
 - (iii) Types of service disruptions or suspensions that would pertain to this section include, but are not limited to, Fairfax Connector holidays, road closures due to accidents or incidents, weather-related service suspensions, service suspensions due to national, regional, state, or local emergencies, labor disputes, and bus breakdowns.
- (c) Performance Metrics
 - (i) The County will provide the CIA with quarterly reports of the following performance metrics for Routes 721 and 722:
 1. On time performance by route and by month;
 2. Average daily ridership by route and by month
 3. Total ridership by route and month
 4. Boarding/Alighting data by trip for the bus stop at the CIA Visitor Center
 - (ii) Performance metrics data will be derived from the Fairfax Connector Farebox GFI and from the bus fleet automated passenger counter (APC) system.
 - (iii) Quarterly performance metric reports will be transmitted to the CIA forty-five (45) days after the close of the reporting period.
- (d) Primary Point of Contact with the County under this MOA for all communications will be the Chief of the Operations Section, Transit Services Division, Fairfax County Department of Transportation.
- (e) Primary Point of Contact with the CIA under this MOA for all communications will be the Chief of the Transportation Service Center at the George Bush Center for Intelligence.

Section 4 – Invoicing and Payment for Public Bus Service

Section 4.01. The County will keep track of hours and bus usage associated with this service. The County will directly invoice the CIA. The cost of service provided to the CIA will be based on the “Current Cost Estimates” set forth in Attachment A, Cost Proposal. The County will formally provide the CIA with the hourly service rate, as annually adjusted based on the operating cost inflation described in the County’s agreement with its bus service provider Transdev North America at the beginning of each County fiscal year on July 1st. The CIA will also reimburse the County for the capital cost of the four buses the County will acquire, at a cost of \$2,280,000, to provide the service.

Section 4.02. The County will invoice the CIA quarterly for:

- (a) The operating costs for the actual bus services provided under the MOA. Operating costs based on an initial service hour rate of \$123, adjusted annually for inflation (as per the service rate identified in the County's contract with its bus service provider

- Transdev North America) will be net of fares received and will reflect the actual number of revenue hours provided during the reporting period;
- (b) A capital charge of \$114,000, which represents one twentieth (1/20) the total cost of \$2,280,000 of the buses procured to operate the service.

A copy of a sample invoice is included as Figure 3 in Attachment A. Invoices will be sent no later than 45 days after the end of each quarter. The CIA will pay the invoice by ACH payment within 30 days of receipt of the invoice.

Section 4.03. All revenues received by the County from service operated under this MOA will be credited as an expenditure credit to the accounts maintained and managed by FCDOT.

Section 4.04. Should the CIA request termination of this agreement within the first five (5) years, or give notice under Section 7.01 that it does not wish to renew its participation, the CIA will be responsible for all operating and capital costs associated with operation of the bus service up to the date of said termination or nonrenewal. The County will send the final invoice no later than 45 days after the agreement is terminated or not renewed, and the CIA will pay the invoice by ACH payment within 30 days of receipt of the invoice.

Section 5 – Fare Media

Section 5.01. The County shall:

- a. Direct Fairfax Connector operators to provide transportation to CIA employees presenting a valid CIA flash pass without charging them a fare.
- b. Coordinate with the CIA on the design of the flash pass which will only be valid for a free trip on Routes 721 and/or 722.

Section 5.02. The CIA shall:

- a. Design, produce and distribute a flash pass to be used by their employees when riding Route 721 and/or 722;
- b. Report any issues, concerns related to the flash passes, to the County in a timely manner;
- c. Meet with the County, as necessary, to coordinate fare media design and to address any issues with the fare media.

Section 6 – County Insurance

Section 6.01. Fairfax County/Fairfax Connector bus is insured through the Virginia Transit Liability Pool (VTLP) with a combined single limit of not less than \$20 Million per occurrence. Upon commencement of this Agreement, Fairfax County shall acknowledge possession of insurance to requestor evidencing the following:

- a. Commercial General Liability – with the following minimum coverage and limits on a per Occurrence basis:
 - (i) \$20,000,000 Per Occurrence, and in aggregate, for bodily injury and property damage arising out of ownership, maintenance, or use of any covered premises.
- b. Commercial Auto Liability insurance – in compliance with any and all statutes requiring such coverage in the Commonwealth of Virginia, covering the operation of Fairfax Connector buses.

Fairfax County shall obtain and keep in force throughout the duration of this agreement a policy of Commercial General Liability with a limit of \$20,000,000 per occurrence, and in aggregate, and Commercial Auto Liability Insurance, with the limit of \$20,000,000 per occurrence limit. This insurance will provide defense and indemnification for covered claims, suits or actions brought against Fairfax County on account of injury or damage sustained to any person, or to property of any person, while utilizing the Fairfax Connector buses or as a direct result of utilizing the Fairfax Connector buses.

Section 7 – Term of the Agreement and Renewals

Section 7.01. The initial term of this MOA shall be for a period of one (1) year commencing on the first day of bus service to the George Bush Center for Intelligence and terminating at midnight on the expiration of the first full year of operations (“Initial Term”) and shall automatically be renewed up to four (4) times for successive one (1) year periods unless either party gives written notice that it does not wish to renew its participation ninety (90) calendar days prior to the expiration of the Agreement. All operating and capital costs assessed by the County through the date of non-renewal will be due and payable on the last invoice issued by the County following the nonrenewal of the agreement.

Section 8 – Termination on Notice

Section 8.01. This Agreement may be terminated for convenience by the County or CIA upon providing 90 days’ written notice. All operating and capital costs assessed by the County through the date of termination of the agreement will be due and payable on the last invoice issued by the County following the termination of the agreement.

Section 9 – Notices

Section 9.01. Any notice required or permitted under Sections 4.01, 7, 8, and 11.09 of this Agreement shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested and addressed as appropriate to the following addresses (or to such other or further addresses as the Parties may designate by notice given in accordance with this paragraph). Such correspondence shall be deemed delivered upon the earlier to occur of the following: the day delivered by hand delivery; the third day following the day on which the same shall have been mailed by U.S. registered or certified mail, return receipt requested, with all postal charges prepaid, to the respective addresses set forth below; or actual receipt at the Parties' addresses.

Central Intelligence Agency (CIA)

Central Intelligence Agency
Attn: Chief/Transportation Services Center
Motor Pool Building
Washington, DC 20505

Fairfax County Board of Supervisors:

Tom Biesiadny
Director
Fairfax County Department of Transportation
4050 Legato Road #400
Fairfax, VA 22033

Michael Felschow c/o FCDOT, Transit Services Division, Planning Section
Fairfax County Department of Transportation
4050 Legato Road #400
Fairfax, VA 22033

with a copy to:

Elizabeth Teare, Esquire
County Attorney
Fairfax County
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035

Section 10– Governing Law and Venue

Section 10.01. This Agreement and the Parties' obligations under it shall be governed by, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law or conflict of law provisions, including those of the Commonwealth of Virginia, that could cause the application of any laws other than those of the Commonwealth of Virginia, shall not apply. Venue for any claim arising from this MOA is exclusively in the Circuit Court of Fairfax County or the United States District Court for the Eastern District of Virginia, Alexandria Division. Any and all disputes, claims, and causes of action arising out of this Agreement or any performance under this Agreement, shall be brought in the Circuit Court of Fairfax County, Fairfax or the United States District Court for the Eastern District of Virginia, Alexandria Division.

Section 11– General Matters

Section 11.01. Americans with Disabilities Act Requirements

The County and the CIA are fully committed to the federal Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all programs, activities, and services. Contractors, subcontractors, vendors, and suppliers are subject to this ADA policy.

Section 11.02. Title VI

The Fairfax County Department of Transportation and Fairfax Connector operate programs and services without regard to race, color, and national origin in accordance with Title VI of the Civil Rights Act.

Section 11.03. Assignment

No transfer or assignment of this Agreement, or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless consent for such transfer or assignment is first approved in writing by the Parties.

Section 11.04. Third-Party Beneficiaries

This Agreement shall be enforceable and binding upon, and shall only inure to the benefit of, the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed as creating any rights or benefits for any third person or entity.

Section 11.05. Nature of Relationship

Nothing contained in this Agreement shall have the effect of establishing or creating any joint venture or partnership between the Parties with regard to the conduct of the Fairfax Connector, FCDOT, CIA route service or shall be construed to create the relationship of employer and employee between the Parties.

Section 11.06. No Waiver

The failure by either Party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way affect the right to require such performance or compliance at any time thereafter. The waiver by either Party of a breach of any provision in this Agreement shall not be taken or held to be a waiver of any preceding or succeeding breach of such provision or as a waiver

of the provision itself. No waiver of any kind shall be effective or binding, unless it is in writing and is signed by the Party against whom such waiver is sought to be enforced.

Section 11.07. Amendments

This Agreement may not be amended or modified in any respect except by an instrument in writing signed by both Parties.

Section 11.08. Severance of Terms and Compliance with Applicable Law

The Parties shall comply with all applicable laws, regulations, and rules. This Agreement is subject to all applicable laws, regulations, and rules governing the Parties hereinafter enacted or promulgated. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement. Meeting the terms of this Agreement shall not excuse any failure to comply with all applicable laws, regulations, and rules, whether or not these laws, regulations, and rules are specifically listed in this Agreement.

Section 11.09. Dispute Resolution

In the event of a dispute under the Agreement, the Parties agree to meet and confer to ascertain if the dispute can be resolved without the need of a third party or judicial intervention. Fairfax County's Department of Transportation Director and a CIA designee shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via meet and confer dispute resolution method, it shall be presented to the Fairfax County's Board of Supervisors and the CIA for formal confirmation and approval.

Any disputes between the County and the CIA arising out of this Agreement may be disposed of by the Parties by written agreement or amendment of this Agreement. If the Parties cannot resolve the dispute, then the Party seeking a resolution shall provide written notice of the nature of the dispute and the issues to the other Party. The other Party may respond within thirty (30) days. If the dispute is not resolved within thirty (30) days following the response or if there is no response within thirty (30) days, the dispute may be resolved as set forth in Section 10.01.

Section 11.10. Captions

The headings throughout this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

Section 11.11. Counterparts

This Agreement may be signed in one or more identical counterparts, whether transmitted by electronic mail or otherwise. Each such counterpart shall be deemed an original for purposes of this Agreement.

Section 11.12. Annual Appropriations

All requirements for funds to be borne by Fairfax County shall be subject to annual appropriations by the Fairfax County Board of Supervisors.

Section 11.13. Liability; No Waiver of Sovereign Immunity

Neither Party to this Agreement shall be liable for any damages, losses, liabilities, judgments, attorney's fees, settlements, or other that result from the errors, omissions, or negligent acts of the other Party, its officers, employees, volunteers or agents. To the extent permitted by Virginia law, each Party shall be responsible for the actionable errors, acts, and omissions of its agents, volunteers, and employees, causing loss or harm to persons not a party to this Agreement. Nothing in this Agreement shall be deemed to waive or abrogate the sovereign immunity of either Party to this Agreement.

Section 11.14. Personal Liability

The MOA shall not be construed as creating any personal liability on the part of any officer, employee, agent of the parties.

Section 11.15. Recitals incorporated

The recitals in this MOA are a part of this Agreement and are as fully binding as the remainder of this MOA.

County of Fairfax

Central Intelligence Agency

Cost Proposal

Introduction

Fairfax County is submitting this cost proposal to extend Fairfax Connector bus service from McLean Metrorail Station to the George Bush Center for Intelligence (GBCI) in Langley, Virginia. GBCI is a major employment center in Langley Virginia which contributes a significant volume of work trips to the Langley and McLean road networks. Providing a public transit alternative to single occupant vehicle (SOV) trips during morning and evening commute periods can reduce work related traffic congestion in this area, and the demand for on-site parking for CIA employees.

This cost proposal was the product of ongoing discussions with the Central Intelligence Agency (CIA) to provide a bus connection for agency staff commuting to the GBCI via the Metrorail Silver Line. Fairfax Connector is a public bus service provided by Fairfax County and is managed by the Fairfax County Department of Transportation (FCDOT). The bus system provides service within Fairfax County, providing transit connections to destinations within and outside of Tysons. Through paid connections to other transit systems such as Metrobus, Metrorail, CUE Bus and Virginia Railway Express, Fairfax Connector can provide CIA employees with access to neighborhoods and major activity centers throughout the Greater Washington, DC metropolitan area.

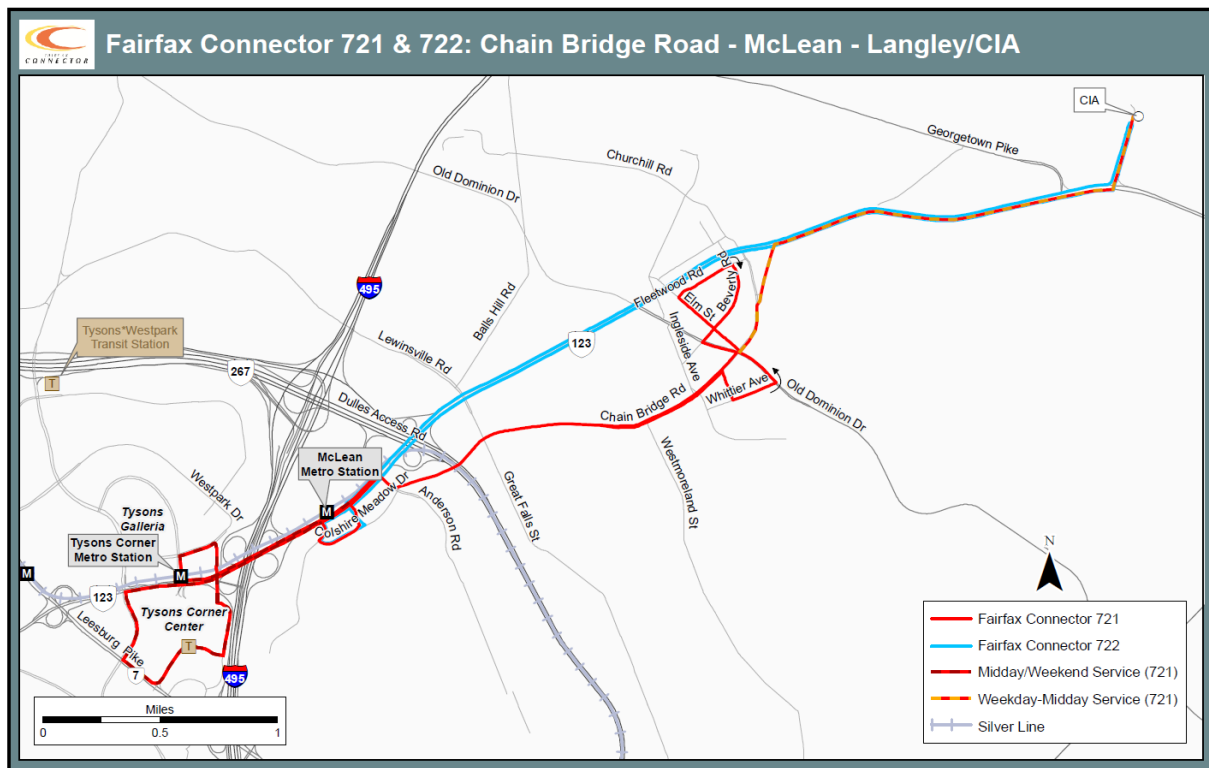
Fairfax Connector, or simply "Connector", is operated for the County by its contractor Transdev North America. Connector is the third largest bus fleet in the Washington DC metropolitan area. Connector provides fixed-route bus service on 93 routes and carries about 8.3 million passengers annually. Connector bus service experiences service changes at specific times during the year.

Service Plan

As presented in Figure 1, the proposed service will feature a mix of extending Route 721 midday trips and a new stand-alone route, Route 722, operating only during peak commute periods. The proposed service on both routes will operate Monday through Friday only. Extending Route 721 from the McLean Community Business Center to the George Bush Center for Intelligence (CIA) will provide CIA employees with transit access to commercial centers, as well as to the McLean Metrorail Station. Route 721 has an annual ridership of over 44,400 and an average weekday ridership of 175 (Source: GFI). On time performance exceeds 91 percent (Source: Ridecheck Plus). Current passenger utilization of this route indicates there is reserve capacity to accommodate trips generated by the GBCI. Available daily seated capacity on Route 721 would be 700 a day. Route 722 would be able to accommodate over 1,200 a day.

The stand-alone peak service Route 722 will provide peak period service between McLean Metrorail Station and the GBCI for those commuting employees seeking to access the facility from Metrorail's Silver Line. As well as the Silver Line, McLean Metrorail Station also provides connections to Metrobus Routes 3T, 23A and 23T.

Figure 1 - Map of Routes 721 and 722



Service Span:

Monday – Friday, 6:00 a.m. to 7:00 p.m. excluding Fairfax Connector Holidays.

- Route 721 – midday bi-direction service
- Route 722 –peak only service

Frequency:

- Route 722: 15 - 20 minutes – during peak
- Route 721: 30 minutes – during off peak

Current Cost Estimates

Total First Year Annual Contract Cost (Operating cost of \$788,184 plus annualized capital cost of \$456,000): \$1,244,184

- Annual Operating Hours: 6,408
- Annual Operating Cost: \$788,184 (based on \$123/hour and subject to 2.5 percent annual inflation rate)
- Vehicle Requirement: Three (3) peak buses plus one spare bus for a total of four (4) buses
- Annualized Capital Cost (4 buses over 5 years): $\$456,000 = \$2,280,000/5 \text{ years}$ (4 buses @ \$570,000 each divided by five years)

Peak Service Route 722 from McLean Metrorail Station to Langley CIA

A total of 29 peak direction trips would serve the George Bush Center for Intelligence. Buses will serve the existing bus stop located outside of the CIA visitor center (see figure 2). The morning service will start at 6:05 a.m. with the last trip arriving at the CIA Visitor Center at 9:20 a.m. In the afternoon, the first trip will depart the CIA Visitor Center at 3:00 p.m. and last trip will arrive at McLean Metrorail Station at 7:15 p.m. (See table 1)

Table 1 - Route 722 (Peak Hour Service Only) Timetable

Eastbound Service

McLean Metrorail Station	Langley/CIA
6:05 a.m.	6:20
6:20	6:35
6:35	6:50
6:50	7:09
7:05	7:24
7:20	7:39
7:35	7:54
7:50	8:09
8:05	8:26
8:20	8:41
8:35	8:56
8:50	9:11
9:05	9:20 a.m.

Westbound Service

Langley/CIA	McLean Metrorail Station
3:00 p.m.	3:18
3:15	3:33
3:30	3:48
3:45	4:03
4:00	4:21
4:15	4:36
4:30	4:51
4:45	5:06
5:00	5:21
5:15	5:36
5:30	5:51
5:45	6:06
6:00	6:18
6:20	6:38
6:40	6:58
7:00	7:15 p.m.

Midday Service – Route 721 Chain Bridge Road – McLean

Eleven midday trips on Route 721 will be extended to the George Bush Center for Intelligence via Dolley Madison Boulevard with the first run arriving at the CIA Visitor Center 10:06 a.m. and the last run arriving at 3:06 p.m. (see Table 2). Buses will serve the existing bus stop located outside of the CIA Visitor Center (see Figure 2).

Table 2 - Route 721 (midday service) Chain Bridge Road – McLean Timetable

Eastbound Service

Tysons Corner Center	McLean Metrorail Station	Chain Bridge Rd & Westmoreland St	Beverly Dr & Old McLean Village Dr	Langley/CIA
9:28 a.m.	9:39	9:46	9:55	10:06
9:58	10:09	10:16	10:25	10:36
10:28	10:39	10:46	10:55	11:06
10:58	11:09	11:16	11:25	11:36
11:28	11:39	11:46	11:55	12:06 p.m.
11:58	12:09 p.m.	12:16	12:25	12:36
12:28	12:39	12:46	12:55	1:06
12:58	1:09	1:16	1:25	1:36
1:28	1:39	1:46	1:55	2:06
1:58	2:09	2:16	2:25	2:36
2:28	2:39	2:46	2:55	3:06 p.m.

Westbound Service

Langley/CIA	Beverly Dr & Old McLean Village Dr	Chain Bridge Rd & Pathfinder	McLean Metrorail Station	Tysons Corner Center
9:46 a.m.	9:55	10:00	10:06	10:17
10:16	10:25	10:30	10:36	10:47
10:46	10:55	11:00	11:06	11:17
11:16	11:25	11:30	11:36	11:47
11:46	11:55	12:00 p.m.	12:06	12:17
12:16 p.m.	12:25	12:30	12:36	12:47
12:46	12:55	1:00	1:06	1:17
1:16	1:25	1:30	1:36	1:47
1:46	1:55	2:00	2:06	2:17
2:16	2:25	2:30	2:36	2:47
2:46	2:55	3:00	3:08 p.m.	-

Figure 2 -Aerial Showing existing bus stop at the CIA Visitor Center



Figure 3 – Sample Invoice



Invoice #

Date:

Bill to

Central Intelligence Agency

For

CIA Transit Service

Description	Amount
Rt 721/722 Operations	\$157,637
Bus Capital	\$114,000

Total Due: \$271,637

Make all checks payable to: County of Fairfax

If you have any questions concerning this invoice, please contact:

Fonique Gladden

fonique.gladden@fairfaxcounty.gov

703.877.5676

Thank you for your business!

Progress Update

Route 721:

- Operated a total of 401 revenue hours on Route 721 during the reporting period
- Average On-Time Performance for the reporting period on Route 721 was
- Average Daily Ridership on Route 721 was:
 - October-
 - November -
 - December -
- Monthly Ridership on Route 721 was:

- October-
 - November –
 - December –
- Average Daily Boarding/Alighting at CIA Visitor Center Stop
 - October-
 - November –
 - December –

Route 722:

- Operated a total of 1,201 revenue hours on Route 722 during the reporting period
- Average On-Time Performance for the reporting period on Route 722 was
- Average Daily Ridership on Route 722 was:
 - October –
 - November –
 - December-
- Monthly Ridership on Route 722 was:
 - October -
 - November -
 - December -
- Average Daily Boarding/Alighting at CIA Visitor Center Stop
 - October -
 - November –
 - December –

Summary

(Description of route performance during reporting period)

Board Agenda Item
July 28, 2020

ACTION - 9

Endorsement of the Residential Traffic Administration Program (RTAP) Revised Traffic Calming General Operating Procedures

ISSUE:

Board endorsement of the revised Traffic Calming General Operating Procedures.

RECOMMENDATION:

The County Executive recommends that the Board endorse the Residential Traffic Administration Program (RTAP) revised Traffic Calming General Operating Procedures (Attachments I and II).

TIMING:

Board action is requested on July 28, 2020, to allow the proposed changes to be incorporated into existing traffic calming efforts.

BACKGROUND:

On January 22, 2002, the Board of Supervisors adopted the Virginia Department of Transportation's (VDOT's) traffic calming program for permanent use in the County's Residential Traffic Administration Program (RTAP), following a successful pilot program. Since then, the traffic calming program has been very popular, with over 450 traffic calming measures implemented throughout the county.

In September 2018, VDOT amended its *Traffic Calming Guide for Neighborhood Streets* and in February 2019, FCDOT subsequently rewrote the guidelines for Fairfax County's Traffic Calming Program to reflect changes made by VDOT.

At the June 30, 2020, Board Transportation Committee meeting, staff informed the Board (Attachment III) that they were reviewing the guidelines and procedures of the existing Traffic Calming Program to revise traffic calming device spacing to account for urban characteristics of roads in Fairfax County. VDOT guidelines cover the entire state of Virginia, which includes rural and urban areas, and the proposed revisions will enhance safety and allow more communities to adopt traffic calming measures. Revisions to the RTAP Traffic Calming General Operating Procedures have been developed, with support from the Board of Supervisors' transportation aides and VDOT.

Board Agenda Item
July 28, 2020

As summarized in Attachment IV, the traffic calming process includes the following changes:

- Shorter and more flexible traffic calming device spacing distances.

Other modifications being requested by FCDOT include:

- General edits to clarify the process, such as renaming the Affected Property Notification form and streamlining the number of steps.

These requested modifications to the current operating procedures will apply to all new requests for traffic calming received by FCDOT, as well as existing traffic calming projects for which FCDOT has not yet installed prior to their adoption on July 28, 2020.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Fairfax County Department of Transportation, Residential Traffic Administration Program (RTAP), Traffic Calming General Operating Procedures, (revision June 8, 2020).

Attachment II: Fairfax County Department of Transportation, Residential Traffic Administration Program (RTAP), Traffic Calming General Operating Procedures, (revision June 8, 2020 with track changes)

Attachment III: Board Transportation Committee Traffic Calming Presentation, June 30, 2020

Attachment IV: Summary of Changes to the Traffic Calming Program

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Gregg Steverson, Deputy Director, 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

ASSIGNED COUNSEL:

Joanna Faust, 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

Fairfax County Department of Transportation Residential Traffic Administration Program (RTAP) Traffic Calming Program General Operating Procedures Adopted June 8, 2020

Based on VDOT Traffic Calming Guide for Neighborhood Streets, September 2018

Intent:

The development of a traffic calming plan is a community-initiated process under the leadership of a traffic calming task force and the overall direction of the Fairfax County Department of Transportation (FCDOT). The Traffic Calming Program is administered by FCDOT in collaboration with the local District Supervisor's office, and based on guidelines established by the Virginia Department of Transportation (VDOT).

Goal:

The Traffic Calming Program develops traffic calming plans that enhance public safety, uphold standard traffic engineering principles, reflect community desires, and are financially responsible.

Initial Contact:

When a Board of Supervisors (BOS) member is initially contacted for a traffic calming project in a community, FCDOT will first determine if the street(s) meets the basic eligibility requirements for the Traffic Calming Program. To meet the basic eligibility requirements a street must:

- Be in the state system of highways owned and maintained by VDOT.
- Be classified as a local, collector, or arterial road.
- Function as a residential street.
- Have a speed limit of 25 miles per hour (MPH).

If these requirements are met, the community members may formally request to enter the street(s) into the Traffic Calming Program.

Step 1: Project Initiation

To enter into the Traffic Calming Program, a request shall be made to the District Supervisor either by the Homeowners Association (HOA) or Civic Association (CA) for the neighborhood. If there is no HOA or CA, then a request shall be made by either 10 residences or 10% of residences along the street (whichever is less). For neighborhoods where there is an association, the District Supervisor may also choose

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



to accept a request made by 10 residences or 10% of residences along the street (whichever is less). Once received, the request is forwarded to FCDOT.

The request needs to include the following:

- The name and termini of the street(s) being requested for a review.
- Contact information of community members, typically 4 to 5 residents, who can serve as community task force members. One resident needs to be identified as a lead contact for the task force.

Responsibilities of task force members will include:

- Informing the community of the request for a traffic calming study.
- Providing community expectations to FCDOT prior to the development of the conceptual traffic calming plan.
- Reviewing and approving the conceptual traffic calming plan.
- Securing affected property owners' signatures.
- Building community support for the conceptual traffic calming plan.
- Distributing, by mail or in person, the ballots to the property owners in the defined ballot area.
- Arranging all costs associated with the production, distribution, and return postage of the ballots.

FCDOT conducts an engineering review, a traffic count, and a speed survey of the study area to determine if the street(s) have an existing speeding concern.

- A preliminary field review is made to determine if the geometry of the street(s) can accommodate traffic calming measures. FCDOT considers features including road grade, sight distance, drainage, and location of road access points.
- The street(s) must have a traffic volume between 500 and 6,000 vehicles per day.
- The recorded 85th percentile speed of vehicles must be equal to or greater than 35 MPH in at least one direction of travel.

FCDOT provides the results of the study to the District Supervisor. If a street(s) does not qualify, the community may request that FCDOT conduct one additional study within the next two years.

Step 2: Plan Development

After the street(s) qualify, FCDOT develops a conceptual traffic calming plan, taking into account device spacing and sight distance requirements, roadway geometry, existing traffic control devices, and existing utility locations. Based on its conceptual plan, FCDOT will identify the ballot area for the project. The ballot area comprises residences and businesses on the street identified for traffic calming and residences

and businesses on other streets whose sole or primary access is the street identified for traffic calming, and who would be considerably inconvenienced if they chose an alternate route.

Development of the conceptual plan considers spacing and placement of traffic calming measures based on existing and proposed measures, stop conditions and intersections.

Vertical deflections require a minimum distance of:

- 300 feet from stop conditions and between proposed or existing vertical deflections;
- 150 feet of sight distance to a device to ensure that drivers will have adequate time to take precautionary measures; and
- 150 feet from an uncontrolled approach of an intersection.

Horizontal deflections (including roadway narrowing measures) require a minimum distance of:

- 200 feet away from the nearest traffic calming measure; and
- 150 feet of sight distance to a device to ensure that drivers will have adequate time to take precautionary measures.

FCDOT may consider locating a horizontal deflection at or near the location of another measure or stop condition when it believes doing so would provide a significant enhancement to the effectiveness of the measure. FCDOT may allow one measure to be placed on a single block or in an area of high pedestrian activity (e.g. a school or park entrance) that is not long enough to meet the minimum spacing requirements. This will be determined on a case-by-case basis.

After the conceptual plan is developed, FCDOT meets with the task force and District Supervisor's staff, to review the conceptual plan and available options, solicit feedback, and seek concurrence of the plan from the task force members. Adjustments to the conceptual plan may be made at this time.

Once the conceptual plan is finalized, FCDOT identifies properties that are directly adjacent to proposed device location(s) and provides Adjacent Property Forms to the task force. Task force members are responsible for obtaining concurrence signatures from the adjacent property owners. If necessary, further adjustments to the conceptual plan may be made by FCDOT. If adjustments are made, consultation with the task force members and District Supervisor is required.

In addition to obtaining concurrence on the Adjacent Property Forms, FCDOT recommends that the task force begins building community support for the traffic

calming plan during this step. Early community engagement is critical to developing a plan that will be both effective and garner widespread support in the neighborhood.

Step 3: Community Engagement

Once the task force has obtained the signatures from all directly affected residences and has determined that significant community support has been developed, then the task force, FCDOT, and the District Supervisor's office determine a suitable date and location for a community-wide informational meeting. The task force must advertise the meeting to the entirety of the ballot area at least two weeks in advance, and must coordinate with FCDOT to ensure that an acceptable advertising method was used. Examples include US mail, community newsletters or listservs, flyers, or road-side signage.

The task force and FCDOT present the proposed traffic calming plan at the informational meeting, explain the ballot process, and solicit feedback from the community. Based on this feedback, the task force determines whether to amend the conceptual plan or proceed to a community vote. If the task force chooses to amend the plan, then another community-wide informational meeting must be held before proceeding to the vote.

Step 4: Ballot Phase

After the community information meeting, representatives of the task force, in collaboration with the District Supervisor's office, conduct a vote to approve or disapprove the proposed traffic calming plan. The following rules will govern the approval of any traffic calming plan:

- Voting shall be conducted by ballot, with only one vote per occupied residence or business allowed.
- Wording on the ballot must be approved by FCDOT. A sample ballot template will be provided by FCDOT.
- Accompanying the ballot shall be voting procedures, a copy of the plan, and a letter providing information about the types and locations of all traffic calming devices being proposed.
- Ballots must be received (or postmarked) by a date - as pre-determined by the task force - to the appropriate District Supervisor's office. **Ballots must be submitted by the person being balloted. Task force members or any person helping with the distribution of ballots may not collect and return ballots.**
- A person who is a renter of a particular residence may vote in lieu of the owner of a particular residence, if such owner currently does not reside at the address, and approved by the HOA/CA and District Supervisor's office.
- Properties that are vacant, bank-owned properties, and properties in foreclosure may be considered as unoccupied and will not be included in the ballot process.

- The proposed traffic calming plan shall be approved as one integrated plan, i.e., a “YES” vote indicates approval for all measures in the proposed traffic calming plan; a “NO” vote indicates disapproval for all measures in the proposed traffic calming plan.
- Ballots received after the official postmark or ‘received by’ dates are to be unopened and not counted.
- Blank ballots or ballots marked with more than one vote are to be considered a “NO” vote.
- More than 50% of the occupied residences or businesses in the ballot area must support the traffic calming plan for the plan to be implemented.
- All costs for ballot production, distribution, and return postage are the responsibility of the task force.

If the ballot measure is successful, FCDOT will take the proposal to the BOS for its endorsement. In the event of a failed ballot measure, a community must wait 2 years from the date the voting period closed before requesting entry back into the Traffic Calming Program.

Step 5: Project Installation

If the proposed traffic calming plan is approved by the community, BOS action is required to endorse the plan. Upon BOS endorsement, the BOS resolution and traffic calming plan are then conveyed to VDOT. After VDOT reviews and confirms the plan, FCDOT will schedule installation of the devices.

Modification of Existing Measure(s)

Modification of an existing traffic calming plan includes the addition of new measures, relocation of existing measures, and/or changing the type of devices installed on the roadway.

A community must wait a minimum of 2 years after the installation of traffic calming measures before requesting its modification. After 2 years but prior to 5 years, a request by the HOA/CA or a petition signed by greater than 50 percent of residences along the candidate road will be required to start the process for modification of existing traffic calming measures. After 5 years have elapsed, the community can make such a request using the same criteria as is used to initiate a new traffic calming project.

Requirements for entry into the program and the traffic calming process remain the same.

Removal of Existing Measure(s)

Removal of existing traffic measures entails the elimination of one or more installed devices without replacing them with a different type of measure or moving them to a new location on the same roadway.

A community must wait a minimum of 2 years after the installation of traffic calming measures before requesting its removal. After 2 years but prior to 10 years, a request by the HOA/CA or a petition signed by greater than 50 percent of residences along the candidate road will be required to start the process for removal of existing traffic calming measures. After 10 years have elapsed, the community can make such a request using the same criteria as is used to initiate a new traffic calming project.

The traffic calming process will remain the same, with the exception that a community seeking to remove installed traffic calming devices does not need the road to meet the speed and volume qualification criteria. (FCDOT will still collect this data, however.) The community must identify which specific traffic calming devices it wishes to have removed. The proposal will be presented at a community information meeting, and then the task force will conduct a vote to approve or disapprove the plan to remove the traffic calming devices. If the ballot measure is successful, then FCDOT will take the proposal to the BOS for its endorsement.

Appendix A: List of Traffic Calming Devices

FCDOT categorizes its traffic calming devices as either vertical or horizontal measures. Below are measures that are part of the Traffic Calming Program.

Vertical deflections:

- Raised crosswalk
- Speed cushion
- Speed hump
- Speed table

Horizontal deflections:

- Bulb-out
- Chicane
- Choker
- Crosswalk refuge
- Pavement markings (to narrow travel lane)
- Raised median



County of Fairfax, Virginia

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

Fairfax County Department of Transportation Residential Traffic Administration Program (RTAP) Traffic Calming Program General Operating Procedures Adopted ~~February 19, 2019~~ June 8, 2020

Based on VDOT Traffic Calming Guide for Neighborhood Streets, ~~November 2017~~ September 2018

Intent:

The development of a traffic calming plan is a community-initiated process under the leadership of a traffic calming task force and the overall direction of the Fairfax County Department of Transportation (FCDOT). The Traffic Calming Program is administered by FCDOT in collaboration with the local District Supervisor's office, and based on guidelines established by the Virginia Department of Transportation (VDOT).

Goal:

The Traffic Calming Program develops traffic calming plans that enhance public safety, uphold standard traffic engineering principles, reflect community desires, and are financially responsible.

Initial Contact:

When a Board of Supervisors (BOS) member is initially contacted for a traffic calming project in a community, FCDOT will first determine if the street(s) meets the basic eligibility requirements for the Traffic Calming Program. To meet the basic eligibility requirements a street must:

- Be in the state system of highways owned and maintained by VDOT.
- Be classified as a local, collector, or arterial road.
- Function as a residential street.
- Have a speed limit of 25 miles per hour (MPH).

If these requirements are met, the community members may formally request to enter the street(s) into the Traffic Calming Program.

Step 1: ~~Study~~ Project Initiation

To enter into the Traffic Calming Program, a request shall be made to the District Supervisor either by the ~~Home Owners~~ Homeowners Association (HOA) or Civic Association (CA) for the neighborhood. If there is no HOA or CA, then a request shall be made by either 10 residences or 10% of residences along the street (whichever is less). -For neighborhoods where there is an association, the District Supervisor may

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also choose to accept a request made by 10 residences or 10% of residences along the street (whichever is less). Once received, the request is forwarded to FCDOT.

The request needs to include the following:

- The name and termini of the street(s) being requested for a review.
- Contact information of community members, typically 4 to 5 residents, who can serve as community task force members. One resident needs to be identified as a lead contact for the task force.

Responsibilities of task force members will include:

- Informing the community of the request for a traffic calming study.
- Providing community expectations to FCDOT prior to the development of the conceptual traffic calming plan.
- Reviewing and approving the conceptual traffic calming plan.
- Securing affected property owners' signatures.
- Building community support for the conceptual traffic calming plan.
- Distributing, by mail or in person, the ballots to the property owners in the defined ballot area.
- Arranging all costs associated with the production, distribution, and return postage of the ballots.

Step 2: Traffic Count and Speed Study

FCDOT conducts an engineering review, a traffic count, and a speed survey of the study area to determine if the street(s) have an existing speeding concern.

- A preliminary field review is made to determine if the geometry of the street(s) can accommodate traffic calming measures. FCDOT considers features including road grade, sight distance, drainage, and location of road access points.
- The street(s) must have a traffic volume between 500 and 6,000 vehicles per day.
- The recorded 85th percentile speed of vehicles must be equal to or greater than 35 MPH in at least one direction of travel.

FCDOT provides the results of the study to the District Supervisor. If a street(s) does not qualify, the community may request that FCDOT conduct one additional study within the next two years.

Step 23: Conceptual Plan Development and Task Force Meeting

After the street(s) qualify, FCDOT develops a conceptual traffic calming plan, taking into account device spacing and sight distance requirements, roadway geometry, existing traffic control devices, and existing utility locations. Based on its conceptual plan, FCDOT will identify the ballot area for the project. ~~The ballot area comprises residences and businesses on the street identified for traffic calming and residences and businesses on other streets whose sole or primary access is the street identified for traffic calming, and who would be considerably inconvenienced if they chose an alternate route.~~

Development of the conceptual plan considers spacing and placement of traffic calming measures based on existing and proposed measures, stop conditions and intersections.

Vertical deflections ~~Program criteria~~ require a minimum distance ~~of of:~~

- ~~o 400-300 feet from stop conditions and~~ between proposed or existing vertical traffic calming devices ~~deflections; or stop conditions~~
- ~~o 150 feet of sight distance to a device to ensure that drivers will have adequate time to take precautionary measures; and~~
- ~~o . Vertical traffic calming devices are to be installed mid-block, with a minimum of 12550 feet away from an the nearest uncontrolled approach of an intersection. The minimum spacing for horizontal traffic calming devices is 200 feet between away from the nearest other traffic calming measures. In addition, FCDOT requires a minimum of 150 feet of sight distance to a device to ensure that drivers will have adequate time to take precautionary measures.~~

Horizontal deflections (including roadway narrowing measures) require a minimum distance of:

- ~~o 200 feet away from the nearest traffic calming measure; and~~
- ~~o~~
- ~~o 150 feet of sight distance to a device to ensure that drivers will have adequate time to take precautionary measures.~~

FCDOT may consider locating a a horizontal traffic calming device deflection at or near the location of another measure or stop condition when it believes doing so would provide a significant enhancement to the effectiveness of the measure.

FCDOT may allow one measure to be placed on a single block or in an area of high pedestrian activity (e.g. a school or park entrance) that is not long enough to meet the minimum spacing requirements. This will be determined on a case-by-case basis.

After the ~~draft conceptual~~ plan is developed, FCDOT meets with the task force and District Supervisor's staff, to review the conceptual plan and available options, solicit feedback, and seek concurrence of the plan from the task force members. Adjustments to the conceptual plan may be made at this time.

Once the conceptual plan is finalized, FCDOT identifies ~~directly affected~~ properties ~~that are directly adjacent to the proposed location of the device on the roadway~~ proposed device location(s) and provides Affected Adjacent Property Forms to the task force. ~~FCDOT considers a property to be directly affected if a physical device is proposed to be placed in the roadway such that it is directly adjacent to the property's boundaries.~~ Task force members are responsible for obtaining concurrence signatures from the ~~directly affected adjacent~~ property owners. If necessary, further adjustments to the conceptual plan may be made by FCDOT. If adjustments are made, consultation with the task force members and District Supervisor is required.

In addition to obtaining concurrence on the Affected Adjacent Property Forms, FCDOT recommends that the task force begins building community support for the traffic calming plan during this step. Early community engagement is critical to developing a plan that will be both effective and garner widespread support in the neighborhood.

Step 34: Community Meeting Engagement

Once the task force has obtained the signatures from all directly affected residences and has determined that significant community support has been developed, then the task force, FCDOT, and the District Supervisor's office determine a suitable date and location for a community-wide informational meeting. The task force must advertise the meeting to the entirety of the ballot area at least two weeks in advance, and must coordinate with FCDOT to ensure that an acceptable advertising method was used. Examples include US mail, community newsletters or listservs, flyers, or road-side signage.

The task force and FCDOT present the proposed traffic calming plan at the informational meeting, explain the ballot process, and solicit feedback from the community. Based on this feedback, the task force determines whether to amend the conceptual plan or proceed to a community vote. If the task force chooses to amend the plan, then another community-wide informational meeting must be held before proceeding to the vote.

Step 45: Community Vote Ballot Phase

After the community information meeting, representatives of the task force, in collaboration with the District Supervisor's office, conduct a vote to approve or disapprove the proposed traffic calming plan. The following rules will govern the approval of any traffic calming plan:

- Voting shall be conducted by ballot, with only one vote per occupied residence or business allowed.
- Wording on the ballot must be approved by FCDOT. A sample ballot template will be provided by FCDOT.
- Accompanying the ballot shall be voting procedures, a copy of the plan, and a letter providing information about the types and locations of all traffic calming devices being proposed.
- Ballots must be received (or postmarked) by a date - as pre-determined by the task force - to the appropriate District Supervisor's office. **Ballots must be submitted by the person being balloted. Task force members or any person helping with the distribution of ballots may not collect and return ballots.**
- A person who is a renter of a particular residence may vote in lieu of the owner of a particular residence, if such owner currently does not reside at the address, and approved by the HOA/CA and District Supervisor's office.
- Properties that are vacant, bank-owned properties, and properties in foreclosure may be considered as unoccupied and will not be included in the ballot process.
- The proposed traffic calming plan shall be approved as one integrated plan, i.e., a "YES" vote indicates approval for all measures in the proposed traffic calming plan; a "NO" vote indicates disapproval for all measures in the proposed traffic calming plan.
- Ballots received after the official postmark or 'received by' dates are to be unopened and not counted.
- Blank ballots or ballots marked with more than one vote are to be considered a "NO" vote.
- More than 50% of the occupied residences or businesses in the ballot area must support the traffic calming plan for the plan to be implemented.
- All costs for ballot production, distribution, and return postage are the responsibility of the task force.

If the ballot measure is successful, FCDOT will take the proposal to the BOS for its endorsement. In the event of a failed ballot measure, a community must wait 2 years from the date the voting period closed before requesting entry back into the Traffic Calming Program.

Step 56: ~~Fairfax County Board of Supervisors Endorsement~~Project Installation

If the proposed traffic calming plan is approved by the community, BOS action is required to endorse the plan. -Upon BOS endorsement, the BOS resolution and traffic calming plan are then conveyed to VDOT. After VDOT reviews and confirms the plan, FCDOT will schedule installation of the devices.

Modification of Existing Measure(s)

Modification of an existing traffic calming plan includes the addition of new measures, relocation of existing measures, and/or changing the type of devices installed on the roadway.

A community must wait a minimum of 2 years after the installation of traffic calming measures before requesting its modification. After 2 years but prior to 5 years, a request by the HOA/CA or a petition signed by greater than 50 percent of residences along the candidate road will be required to start the process for modification of existing traffic calming measures. After 5 years have elapsed, the community can make such a request using the same criteria as is used to initiate a new traffic calming project.

Requirements for entry into the program and the traffic calming process remain the same.

Removal of Existing Measure(s)

Removal of existing traffic measures entails the elimination of one or more installed devices without replacing them with a different type of measure or moving them to a new location on the same roadway.

A community must wait a minimum of 2 years after the installation of traffic calming measures before requesting its removal. After 2 years but prior to 10 years, a request by the HOA/CA or a petition signed by greater than 50 percent of residences along the candidate road will be required to start the process for removal of existing traffic calming measures. After 10 years have elapsed, the community can make such a request using the same criteria as is used to initiate a new traffic calming project.

The traffic calming process will remain the same, with the exception that a community seeking to remove installed traffic calming devices does not need the road to meet the speed and volume qualification criteria. (FCDOT will still collect this data, however.) The community must identify which specific traffic calming devices it wishes to have removed. The proposal will be presented at a community information meeting, and then the task force will conduct a vote to approve or disapprove the plan to remove the traffic calming devices. If the ballot measure is successful, then FCDOT will take the proposal to the BOS for its endorsement.

Appendix A: List of Traffic Calming Devices

FCDOT categorizes its traffic calming devices as either vertical or horizontal measures.- Below are measures that are part of the Traffic Calming Program.

Vertical ~~traffic calming devices~~deflections:

- Raised crosswalk
- Speed cushion
- Speed hump
- Speed table

Horizontal ~~traffic calming devices~~deflections:

- Bulb-out
- Chicane
- Choker
- Crosswalk refuge
- Pavement markings (to narrow travel lane)
- Raised median



Changes to the Residential Traffic Administration Program (RTAP)

Board Transportation Committee

June 30, 2020

Neil Freschman, Chief, Traffic Engineering Section
Department of Transportation

Changes to the Residential Traffic Administration Program

- Revisions to the Traffic Calming Program

FCDOT is seeking Board concurrence to advance proposed revisions to the Traffic Calming Program.

Proposed Revisions to the Traffic Calming Program

- In 2019, FCDOT updated the Traffic Calming Program to reflect VDOT's revised Traffic Calming Guide
- FCDOT's proposed revisions better accommodate roads with urban characteristics
- Revisions enhance safety and allow more communities to adopt traffic calming measures.



Changes to Traffic Calming Program: Device Spacing

- Current spacing requirements:
 - Minimum distance of **400** feet between devices or stop conditions
- Proposed spacing requirements:
 - Minimum of **300** feet from stop conditions or between vertical deflection devices (e.g. a speed hump)
 - Placement of vertical deflections a minimum of **150** feet from an uncontrolled approach of an intersection

Effect: More flexibility when designing traffic calming plans offers greater and more consistent reduction of speeding



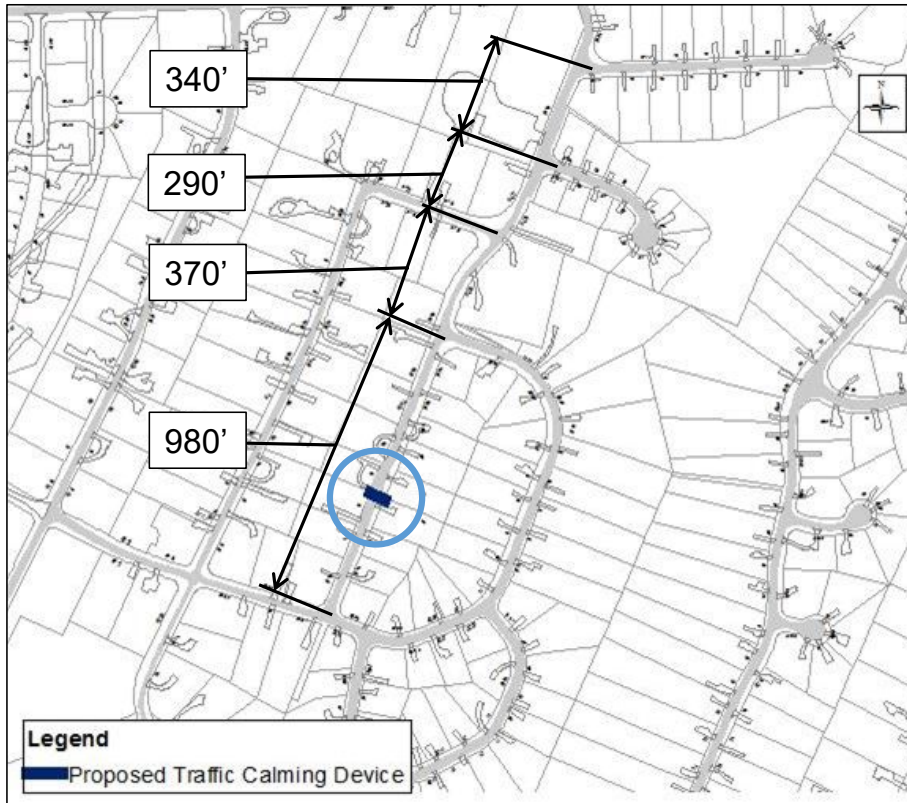
Vertical Deflection



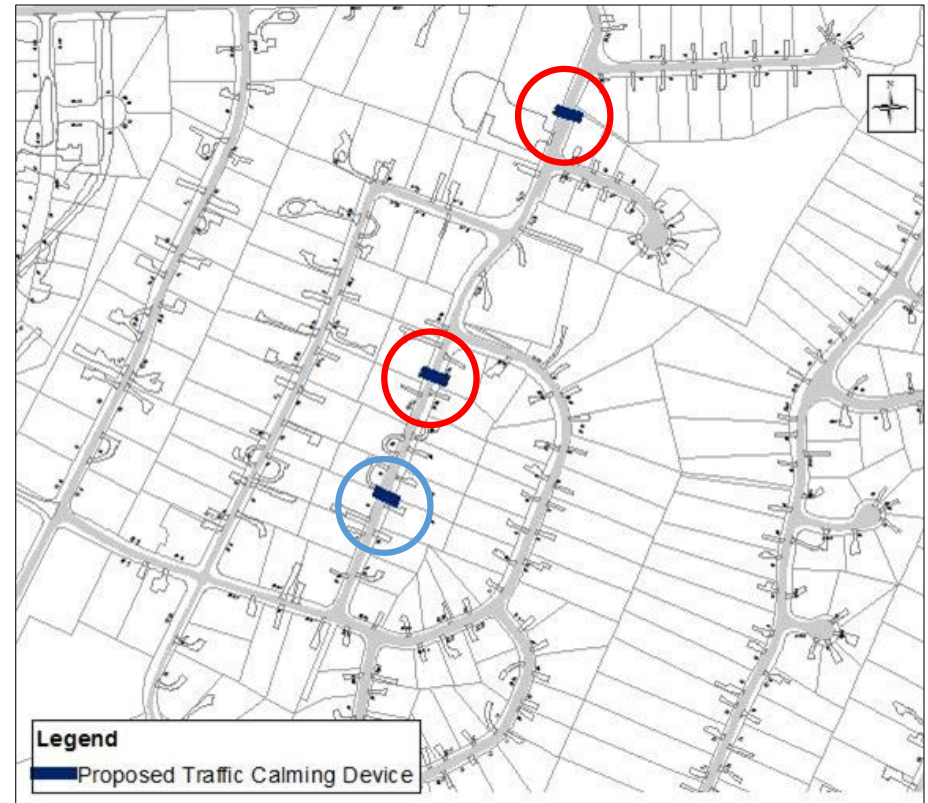
Horizontal Deflection



Current Spacing Guidelines



Proposed Spacing Guidelines



Next Steps

- Approval of changes to the Traffic Calming guidelines by the Board through an Action Item. Scheduled for consideration on July 28, 2020
- Guidelines phased in for traffic calming projects already underway and applicable for all new traffic calming projects

Thank You!

Questions?



**Fairfax County Department of Transportation
Residential Traffic Administration Program
Traffic Calming Program
General Operating Procedures**



	Adopted February 2019	Proposed 2020
Eligibility Criteria	Be in the state system of highways owned and maintained by VDOT	No revisions
	Be classified as a local, collector, or arterial road	
	Function as a residential street.	
	Have a speed limit of 25 miles per hour	
	Have a traffic volume between 500 and 6,000 vehicles per day	
	Vehicles have an 85th percentile speed of 35 MPH or greater in at least one direction of travel	
Plan Development	A minimum distance of 400 feet between proposed or existing vertical traffic calming devices or stop conditions	A minimum distance of 300 feet from stop conditions and between proposed or existing vertical deflections
	Placement of horizontal devices 200 feet from nearest traffic calming measure	No revision
	150 feet of sight distance to a traffic calming device in both directions	No revision
		Placement of vertical deflections a minimum distance of 150 feet from an uncontrolled approach of an intersection
Ballot	Greater than 50 percent of all occupied residences or businesses in the ballot area must vote in favor for the plan to be implemented	No revision

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July 28, 2020

ACTION - 10

Approval of Fairfax Connector August 29, 2020, Service Changes (Dranesville, Lee, Mount Vernon, Providence, and Springfield Districts)

ISSUE:

The Fairfax County Department of Transportation (FCDOT) is seeking the Board of Supervisors' approval of the Fairfax Connector August 29, 2020, service changes.

RECOMMENDATION:

The County Executive recommends the Board approve the Fairfax Connector August 29, 2020, service change proposals outlined below.

TIMING:

Board approval is requested on July 28, 2020, to allow for implementation on August 29, 2020.

BACKGROUND:

Fairfax County staff proposes service changes for implementation on August 29, 2020, to improve the customer experience and increase ridership through improved connectivity, on-time performance, service reliability, and effectiveness. In conjunction with these recommended service changes, staff is also submitting a Board Agenda Item recommending Board approval on a Memorandum of Agreement (MOA) between the County and Central Intelligence Agency (CIA) to fund the additional midday service on Route 721 and express service on a new Route 722. The proposed service changes are described below. Additional background information and proposal details are provided in Attachment III.

PROPOSAL SUMMARY:

Route 334: Newington Circulator

To improve connectivity, staff recommends the following service adjustment to Route 334:

- Route realignment to serve the new Army Museum and new Transportation Security Administration (TSA) facility. A map of Route 334 is included in Attachment II.

Board Agenda Item
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- The level of service will remain at the existing levels, with 30-minute frequency during weekday peak hours and 60-minute frequency during weekday off-peak hours.
- The estimated annual revenue hours will be decreased by 235 hours.
- The estimated annual operating cost will be decreased by \$28,200.

Route 340: Patriot Ridge – Saratoga

To improve connectivity, staff recommends the following service adjustment to Route 340:

- Minor running time adjustments.
- The level of service will remain at the existing levels.

Route 341: Patriot Ridge – Saratoga

To improve connectivity, staff recommends the following service adjustment to Route 341:

- Minor running time adjustments.
- The level of service will remain at the existing levels.

Route 721: Chain Bridge Road – McLean Metrorail Station

To improve connectivity, staff recommends the following service adjustment to Route 721:

- Weekday midday service will be extended from the McLean Metrorail Station to the Central Intelligence Agency (CIA) George Bush Center for Intelligence (GBCI) facility in Langley, Virginia. A map of Route 721 is included in Attachment II.
- The buses will operate with 30-minute frequency during midday.
- The estimated total additional annual revenue hours are 1,400.
- The estimated total annual operating cost is \$172,000.

Route 722: McLean Metrorail Station – George Bush Center for Intelligence

To improve connectivity, staff recommends implementing the new Route 722:

- New weekday peak-period express service will be provided between the McLean Metrorail Station and the CIA GBCI facility in Langley, Virginia. A map of Route 722 is included in Attachment II.
- The buses will operate with 15-minute frequency.
- The estimated total annual revenue hours are 5,000.
- The estimated total annual operating cost is \$616,000.
- The annualized capital cost is \$456,000 over five years to cover the purchase of four new buses.

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Public Involvement

To inform the public of the service changes and receive feedback from passengers, staff posted detailed information on the Fairfax Connector website and social media accounts, conducted an online survey, hosted an online meeting to directly engage the public, and reviewed and responded to public comments and questions. The public comments were incorporated into the proposal, where feasible. Of the total ten comments received, eight comments were in favor of the service changes and two comments were neutral. A summary of the public feedback and responses is provided in Attachment IV.

TITLE VI:

The service changes proposed for implementation on August 29, 2020 were reviewed as mandated by the Federal Transit Administration (FTA) in *Circular C4702.1B: Title VI Requirements and Guidelines for Federal Transit Administration Recipients*. The Title VI analysis showed the proposed service changes to Routes 334, 340, 341, and 721 did not meet the major service change threshold, so no Disparate Impact (DI) or Disproportionate Burden (DB) analysis was conducted on these routes. The new Route 722 did meet the major service change threshold; however, the analysis suggested this route would not result in a DI or DB. Overall, the proposed service changes will increase access to major regional employment centers, improve connectivity to the public transit network, and improve service for Fairfax Connector riders and the communities served. The Title VI analysis is provided in Attachment V.

FISCAL IMPACT:

The adjustments to Routes 334, 340, and 341 will not increase operational costs. The operating and capital costs to implement the service changes on Routes 721 and 722 will be fully covered by an agreement with the CIA. The total first-year contract cost of \$1,244,184 includes an operating cost of \$788,184 and an annualized capital cost of \$456,000 for buses. There will be no fiscal impact to the Fund 40000 (County Transit System) budget or the General Fund.

ENCLOSED DOCUMENTS:

Attachment I - News Release
Attachment II - Route Maps
Attachment III - Background Information
Attachment IV - Public Comments Summary
Attachment V - Service Equity (Title VI) Analysis

Board Agenda Item
July 28, 2020

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Dwayne Pelfrey, Division Chief, Transit Services Division, FCDOT

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

Ray Johnson, Funding Section Chief, Coordination and Funding Division, FCDOT



NEWS RELEASE

Attachment I

Public Input Sought on Fairfax Connector Fall 2020 Service Changes

For Immediate Release

May 22, 2020

Fairfax County Department of Transportation (FCDOT) is seeking public input on [Fairfax Connector](#) proposed service changes for Fall 2020 that aim to enhance customer service. FCDOT normally conducts several community input meetings on proposed changes to Fairfax Connector service, but because of Governor Northam's current public gathering restrictions due to COVID-19, transit staff recorded the presentation and made it available for viewing. The public is encouraged to view the presentation and give feedback on the proposed changes via an online survey, email, mail and by phone.

- [View the video presentation](#)
- [View the PowerPoint presentation](#)
- [Take the online survey](#)

Highlights of the Proposed Changes

- [Route 334: DLA Circulator](#) (Peak and Off-Peak) – Directly serves the TSA facility via Springfield Center Drive and Metropolitan Center Drive with weekday service between the Franconia Springfield Metrorail Station, the Defense Logistics Agency, and Army Museum on John Kingman Drive. Buses will serve the TSA facility on both northbound and southbound trips every 30 minutes during peak service and hourly during off-peak service.
- [Routes 340/341: Patriot Ridge-Saratoga](#) – Includes minor route adjustments to maintain efficiency.
- ***NEW* Route 350: Springfield Circulator** – Replaces weekday service after Metrobus route elimination of the TAGS S80. Route 350 will operate every 15 minutes during peak hours and every 20-minute during off-peak hours.
- ***NEW* Route 351: Springfield Peak-Hour Circulator** – Replaces peak weekday service after Metrobus route elimination of TAGS S91. The Springfield Peak-Hour Circulator will provide weekday express every 15 minutes during morning and afternoon peak hours between the Franconia Metrorail Station and the Transportation Security Administration (TSA).
- [Route 721: Chain Bridge Road–McLean Metrorail Station](#) – Includes expanded service with peak service every 20 minutes from the McLean Metrorail Station to the George Bush Center for Intelligence (GBCI) facility in Langley. The buses will operate every 30-minutes during off-peak and evening hours.

- ***NEW* Route 722: McLean Metrorail Station-GBCI** – Includes new weekday express service every 15 minutes during morning and afternoon peak hours between the McLean Metrorail Station and the GBCI facility in Langley.

Provide Feedback

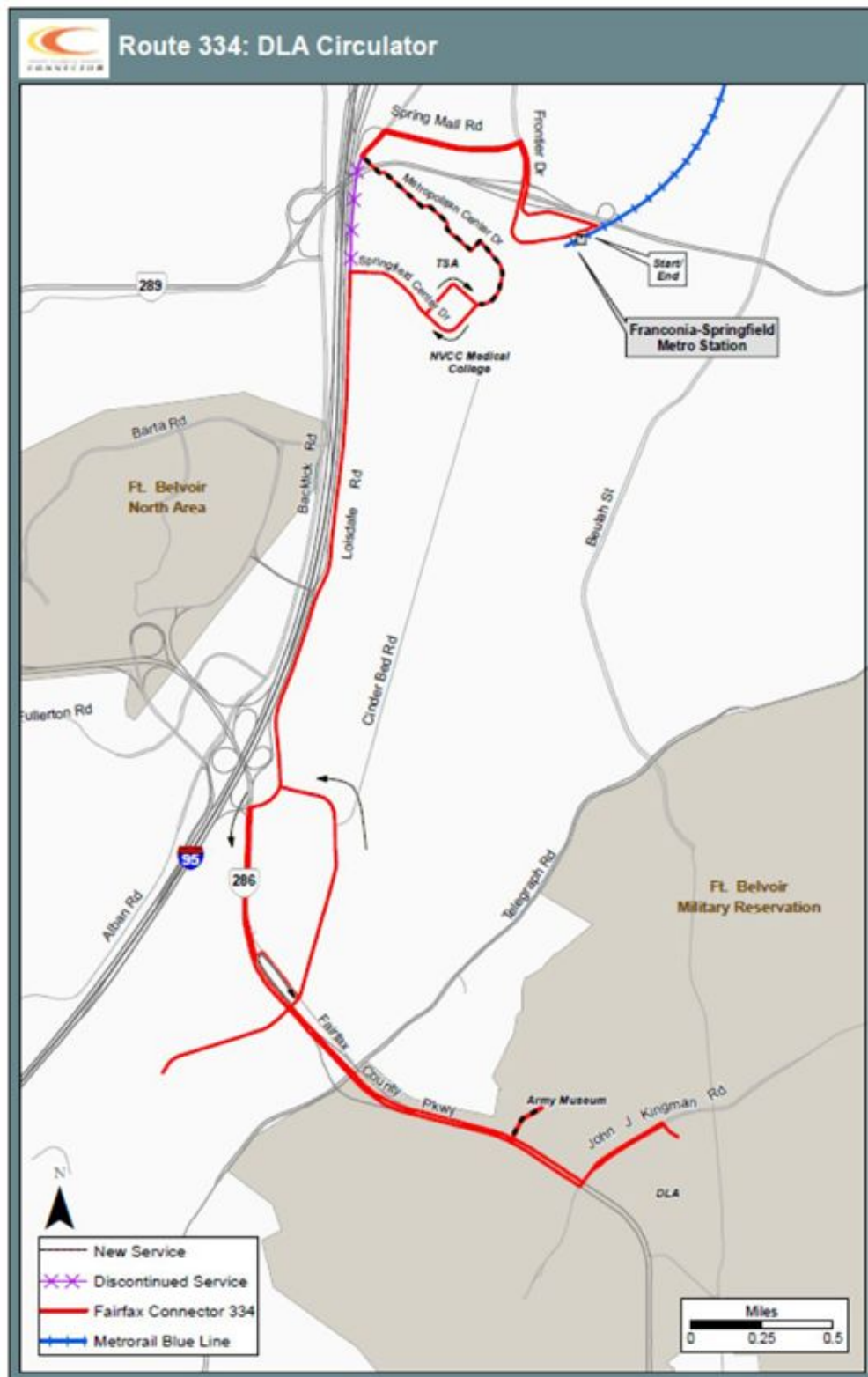
Public comments will be accepted until Friday, June 5, 2020. After receiving and reviewing public feedback, FCDOT staff will present the final proposed changes to the [Fairfax County Board of Supervisors](#) in July 2020. If approved, the changes will go into effect no later than October 31, 2020.

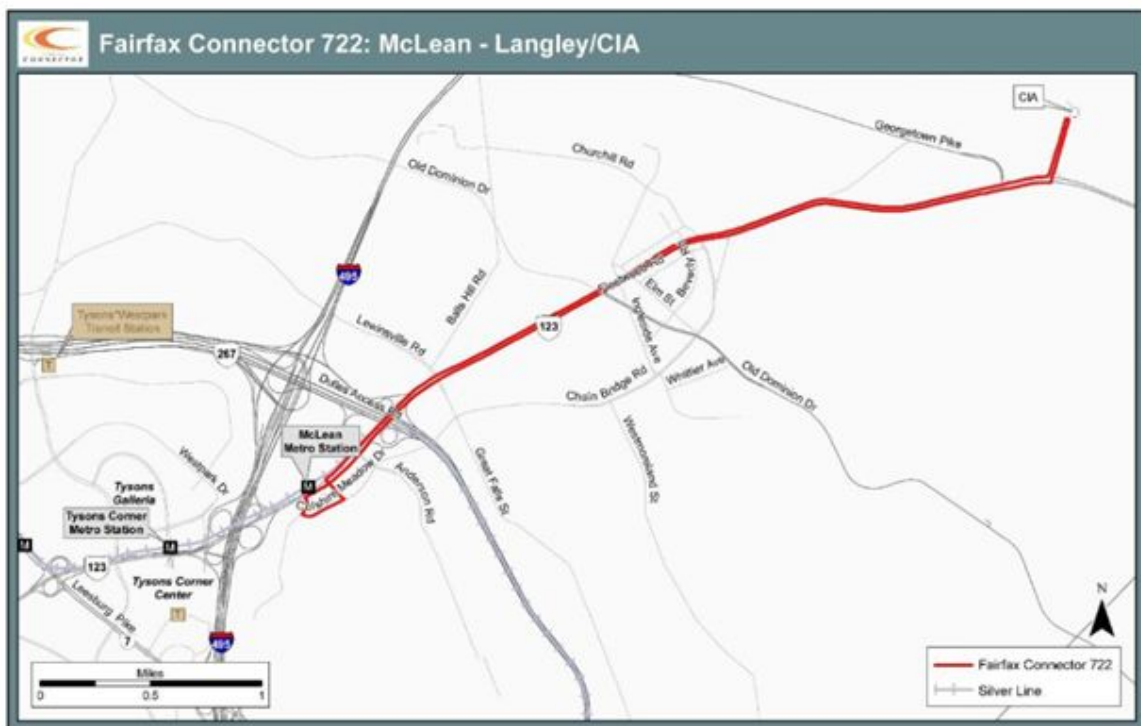
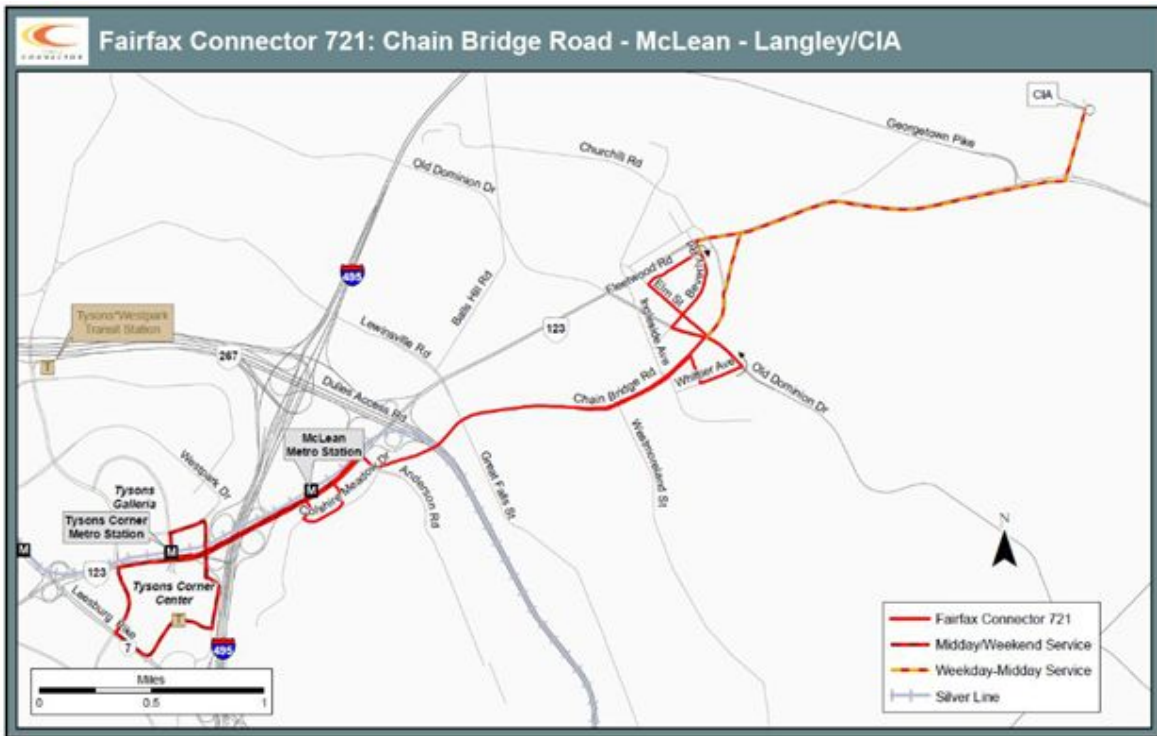
- [Take the online survey](#)
- Mail your written comments to: September 2020 Service Change c/o FCDOT Marketing Communications 4050 Legato Road #400 Fairfax, VA 22033-2895
- E-mail fairfaxconnector@fairfaxcounty.gov
- Call 703-339-7200, TTY 703-339-1608

Stay Connected with Fairfax Connector

- Visit www.fairfaxconnector.com
- Call 703-339-7200, TTY 703-339-1608 (Mon.-Fri., 5 a.m.- 10 p.m.; Sat.-Sun., 7 a.m.- 9 p.m.)
- Email Fairfaxconnector@fairfaxcounty.gov
- To receive notifications for your bus route, sign up for [BusTracker email or text alerts](#)
- Follow us on [Twitter](#) & [Facebook](#)
- Visit a [Connector Transit Store](#)

###





Background Information and Proposal Details

Route 334: Newington Circulator

The County staff has been working with Boston Properties and Transportation Association of Greater Springfield (TAGS) to develop a transit service plan for the new Transportation Security Administration (TSA) facility. The new TSA facility will be a major employment center within the Springfield area and has the potential of contributing a significant volume of work trips to the Franconia – Springfield area road network. Providing a public transit alternative to single-occupancy vehicle (SOV) trips can reduce work-related traffic congestion within this area and decrease the demand for on-site parking for TSA employees. This proposed service change includes a connection between the TSA facility and Franconia – Springfield Metrorail Station. Route 334 will also provide a direct connection to the Springfield Town Center. A map of Route 334 is included in Attachment II.

To improve connectivity, staff recommends the following service adjustment to Route 334:

- Route realignment to serve the new TSA facility and new Army Museum.
- The level of service will remain at the existing levels, with 30-minute frequency during weekday peak hours and 60-minute frequency during weekday off-peak hours.
- Title VI populations will not be impacted.
- The estimated revenue hours will be decreased by 235 hours.
- The estimated annual operating cost will be decreased by \$28,200.

Route 340: Patriot Ridge – Saratoga

Routes 334, 340, and 341 are interconnected and utilize the same buses. Minor schedule adjustments are proposed for Route 340 to improve schedule reliability and bus utilization.

To improve connectivity, staff recommends the following service adjustment to Route 340, as this route is currently interlined with Route 334:

- Minor running time adjustments.
- The level of service will remain at the existing levels.
- Title VI populations will not be impacted.

Route 341: Patriot Ridge – Saratoga

Routes 334, 340, and 341 are interconnected and utilize the same buses. Minor schedule adjustments are proposed for Route 341 to improve schedule reliability and bus utilization. The schedule adjustments will maintain the Route 341 connection to the Virginia Railway Express (VRE) at the Franconia – Springfield Metrorail Station.

To improve connectivity, staff recommends the following service adjustment to Route 341, as this route is currently interlined with Route 334:

- Minor running time adjustments.
- The level of service will remain at the existing levels.
- Title VI populations will not be impacted.

Route 721: Chain Bridge Road – McLean Metrorail Station

The Central Intelligence Agency (CIA) has requested transit service be expanded to the George Bush Center for Intelligence (GBCI) facility in Langley, Virginia. The CIA is willing to fund this service expansion. Route 721 will operate in combination with the new Route 722 to service the GBCI facility. A map of Route 721 is included in Attachment II.

To improve connectivity, staff recommends the following service adjustment to Route 721:

- Weekday midday service will be expanded from the McLean Metrorail Station to the CIA GBCI facility in Langley, Virginia. The bus stop will be located at the CIA Visitor Center, so service will be available to the general public.
- The route will operate open door between the McLean Metrorail Station and the GBCI facility in both directions.
- The buses will operate with 30-minute frequency during mid-day.
- Title VI populations will not be impacted.
- The estimated total additional annual revenue hours are 1,400.
- The estimated total annual operating cost is \$172,000.

Route 722: McLean Metrorail Station – George Bush Center for Intelligence

The CIA has requested transit service be expanded to the GBCI facility in Langley, Virginia. The CIA is willing to fund this service expansion. The new Route 722 will operate in combination with Route 721 to service the CIA facility. A map of Route 722 is included in Attachment II.

To improve connectivity, staff recommends implementing the new Route 722:

- New weekday peak-period express service will be provided between the McLean Metrorail Station and the CIA GBCI facility in Langley, Virginia. The bus stop will be located at the CIA Visitor Center, so service will be available to the general public.
- The buses will operate with 15-minute frequency.
- Title VI populations will not be impacted.
- The estimated total annual revenue hours are 5,000.
- The estimated total annual operating cost is \$616,000.
- The annualized capital cost is \$456,000 over five years to cover the purchase of four new buses.

Public Comments Summary

The following is a public comments summary regarding the August 29, 2020 service change proposal. All comments were derived from the online survey due to the COVID-19 health crisis.

- Online video and survey:

Route	Comment	Summary Response
334	This is a good schedule. It should be acceptable to most riders.	
334	As a current TSA employee in Pentagon City, this is an essential route for our employees taking other buses, VRE, and Metro to get to the facility.	
721	This is very acceptable. I ride the 721 every day 5-6 times a week, and I require transportation from Beverly Road to McLean Metrorail Station and back again. As long as that remains, my family and I will be happy. The 721 is an effective and much needed bus route. It is always on time and is very relied upon. It is a tremendous addition to McLean.	
721	I very much appreciate the expanded service from the McLean Metrorail Station.	
721	I would recommend adding additional Tysons Corner Station connections, especially at rush hour rather than all of the buses starting and stopping at McLean Metrorail Station. Tysons is a central hub with additional bus and pedestrian connections.	Due to funding limitations, service to Tysons Corner Center will not be expanded at this time. Staff will continue to monitor demand and may make future adjustments to the route based on demand and funding availability.
721	Thanks for expanding this service. The bus is needed to travel to/from work.	

Route	Comment	Summary Response
722	Same as above the bus is needed to travel to/from work.	
722	This is a great idea.	
722	This service is essential to replace the former Metrobus Route 15k that was discontinued.	Please note Metrobus Route 15K has not been discontinued yet. Metrobus has reduced service on many routes due to the COVID-19 crisis.
722	I would recommend adding additional Tysons Corner Station connections, especially at rush hour rather than all of the buses starting and stopping at McLean Metrorail station. Tysons has additional pedestrian and bus connections.	Due to funding limitations, Route 722 will not be expanded at this time. The proposed Route 722 was developed in consultation with the CIA, which will be paying for the service. Staff will monitor demand and may make future adjustments to the route based on demand and funding availability.

**Title VI Service Equity Analysis
Proposed August 29, 2020 Fairfax Connector Service Changes**

Summary of Analysis Results

The service changes proposed for implementation on August 29, 2020 were reviewed as mandated by the Federal Transit Administration (FTA) in *Circular C-4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients*. The analysis showed the proposed service changes to Routes 334, 340, 341, and 721 did not meet the major service change threshold, so no DI or DB analysis was conducted on these routes. The new Route 722 did meet the major service change threshold; however, the analysis suggested this route would not result in a DI or DB. Overall, the proposed service changes will increase access to major regional employment centers, improve connectivity to the public transit network, and improve service for Fairfax Connector riders and the communities served.

Relevant Fairfax County Title VI Program Elements

A service equity analysis may require the evaluation of as many as four items depending on the route's nature, proposed changes, and served environment. The policies listed in this section are contained in the County's Title VI Program, as approved by the Board of Supervisors on July 25, 2017.

A major service change is defined as either an increase or decrease of 25 percent or more in either daily revenue service hours, revenue service miles, or both for the individual route being modified.

A disparate impact (DI) occurs when the difference between minority riders and non-minority riders affected by a proposed service change or fare change is 10 percent or greater.

A disproportionate burden (DB) occurs when the difference between low-income riders and non-low-income riders affected by a proposed service change or fare change is 10 percent or greater.

An adverse effect occurs when the proposed service change meets any of the following criteria for minority or low-income populations:

- *New or additional service*: if other service was eliminated to release resources
- *Headway change*: if headway increased by at least 20 percent
- *Alignment change*: if at least 15 percent of the alignment is eliminated or modified
- *Span of service change*: if the span of service decreases by at least 10 percent
- *Elimination of entire route*

"If a transit provider chooses not to alter the proposed service changes despite the potential disparate impact on minority populations, or if the transit provider finds, even after the revisions, that minority riders will continue to bear a disproportionate share of

the proposed service change, the transit provider may implement the service change *only* if:

- “the transit provider has a substantial legitimate justification for the proposed service change; and
- “the transit provider can show that there are no alternatives that would have a less disparate impact on minority riders but would still accomplish the transit provider’s legitimate program goals.” (*Circular C-4702.1B*, page IV-16.)

FCDOT measured and compared the percentages of minority and non-minority populations living within the service area of the proposed route alignment to determine whether the service change would cause a DI. Additionally, FCDOT measured and compared the percentages of low-income and non-low-income households within the service area of the proposed route alignment to determine whether the service change would cause a DB.

Overview

The service changes proposed for implementation on August 29, 2020 include Routes 334, 340, 341, 721, and 722.

Route 334: Newington Circulator

Route 334 will be realigned to serve the new Army Museum and new Transportation Security Administration (TSA) facility.

Route 340: Patriot Ridge – Saratoga

Route 340 will have minor schedule adjustments to improve reliability and connectivity.

Route 341: Patriot Ridge – Saratoga

Route 341 will have minor running time adjustments to improve connectivity.

Route 721: Chain Bridge Road – McLean Metrorail Station

Route 721 will extend service from the McLean Metrorail Station to the Central Intelligence Agency (CIA) George Bush Center for Intelligence (GBCI) facility in Langley, Virginia.

Route 722: McLean Metrorail Station – George Bush Center for Intelligence

The new Route 722 will provide express service between the McLean Metrorail Station and the CIA GBCI facility in Langley, Virginia.

Major Service Change Evaluation

Each of the above routes included in the proposed service changes was evaluated against the major service change threshold defined in the County’s Title VI Program. Table 1 shows only the new Route 722 met the major service change threshold and required further DI and DB analysis.

Table 1: Proposed Service Changes

Route	Proposed Change in Revenue Hours (%)			Proposed Change in Revenue Miles (%)		
	Weekday	Sat.	Sun.	Weekday	Sat.	Sun.
334	-6%	N/A	N/A	1%	N/A	N/A
340	-20%	N/A	N/A	-20%	N/A	N/A
341	0%	N/A	N/A	0%	N/A	N/A
721	14%	0%	0%	19%	0%	0%
722 (new)	100%	N/A	N/A	100%	N/A	N/A

Route 722: McLean Metrorail Station – George Bush Center for Intelligence

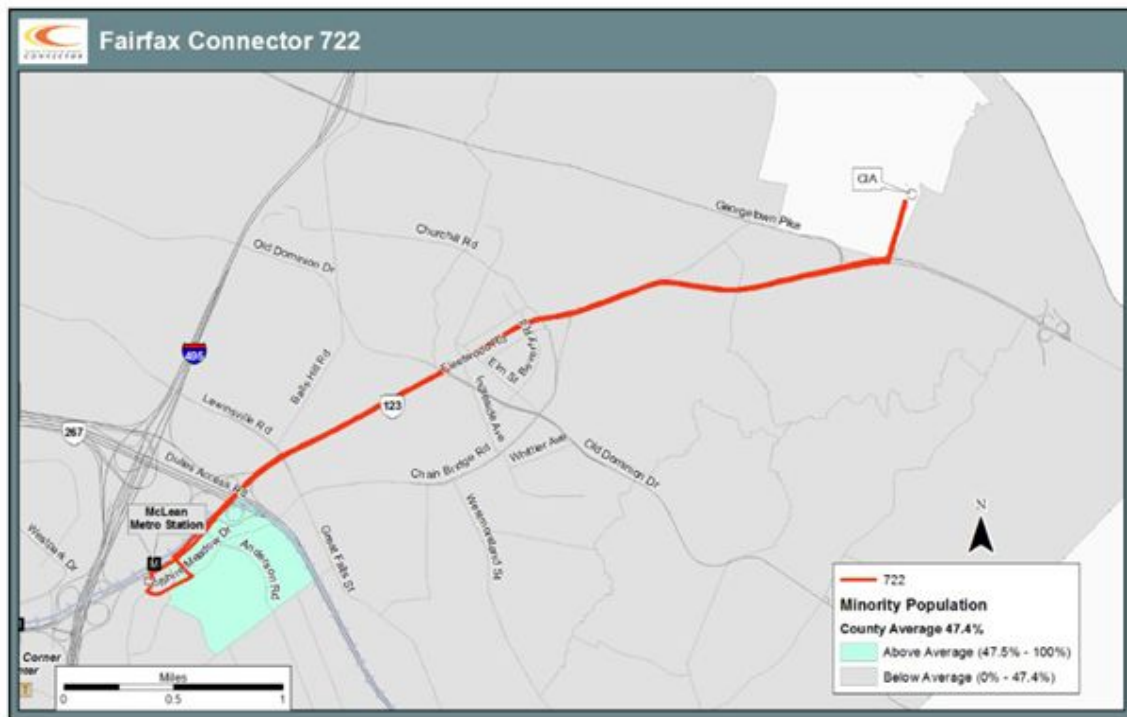
Disparate Impact (DI): Within the service area of Route 722¹, the minority population is 48 percent, which is 1 percent higher than the system average (see Table 2). There is no DI since the route will benefit a higher proportion of minority population than the system average. Figure 1 shows the proposed route alignment in relation to predominantly minority census block groups.

Table 2: Route 722 Disparate Impact

Route	System Minority Average	Total Population Along the Route	Total Minority Population Along the Route	% of Minority Population Along the Route	Difference	DI
722	47%	1,304	626	48%	1%	No

1. ¼ mile buffer of the two termini of the Route 722: McLean Metrorail Station and the CIA GBCI facility.

Figure 1: Route 722 Minority Population Map

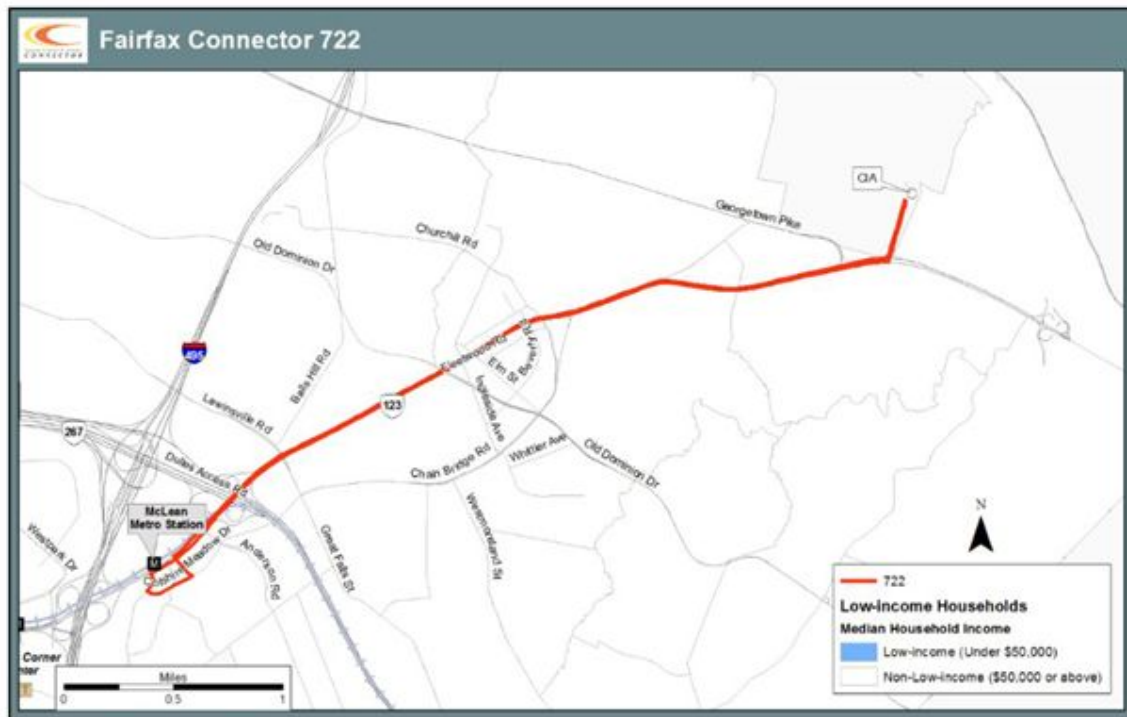


Disproportionate Burden (DB): Within the service area of Route 722, the low-income households are 6 percent lower than the system average (see Table 3). Although the route will benefit slightly less than the low-income households than the system average, the difference is less than the DB threshold of 10 percent. Therefore, there is no DB. Figure 2 shows the proposed route alignment in relation to predominantly low-income census block groups.

Table 3: Route 722 Disproportionate Burden

Route	System Low-income Average	Total Households Along the Route	Total Low-income Households Along the Route	% of Low-income Households Along the Route	Difference	DB
722	18%	531	62	12%	-6%	No

Figure 2: Route 722 Low-income Households Map



Conclusion

The Title VI analysis showed the proposed service changes to Routes 334, 340, 341, and 721 did not meet the major service change threshold, so no DI or DB analysis was conducted on these routes. The new Route 722 did meet the major service change threshold; however, the analysis suggested this route would not result in a DI or DB. Overall, the proposed service changes will increase access to major regional employment centers, improve connectivity to the public transit network, and improve service for Fairfax Connector riders and the communities served.

Board Agenda Item
July 28, 2020

ACTION - 11

Approval of a Resolution Endorsing Projects Being Submitted for State Funding Through the Commonwealth Transportation Board's FY2022-2027 Smart Scale Program

ISSUE:

Board approval of a resolution (Attachment 1) endorsing Fairfax County and the City of Falls Church projects for consideration in the Commonwealth Transportation Board's (CTB) FY2022–FY2027 Smart Scale Program.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve Attachment 1 endorsing Fairfax County, and the City of Falls Church transportation projects for submission to the CTB's FY2022-FY2027 Smart Scale Program.

TIMING:

Board approval is requested on July 28, 2020, to meet the Smart Scale submission deadline of August 3, 2020.

BACKGROUND:

During the 2014 Session, the General Assembly passed HB2, which directed the development of a prioritization process (now called Smart Scale) for projects funded by the CTB. The Smart Scale process was used for the first time in the development of the FY2016-FY2021 Six-Year Improvement Program (SYIP).

The Smart Scale process considers congestion mitigation, economic development, accessibility, safety, land use, and environmental quality to rank candidate projects. The CTB can weigh these factors differently in each of the Commonwealth's transportation districts. Smart Scale requires congestion mitigation to be weighted highest in Northern Virginia. The Weighting Framework for Northern Virginia, as well as the Hampton Roads and Fredericksburg areas, is:

- Congestion Mitigation (45%)
- Land Use Coordination (20%)
- Accessibility (15%)
- Environmental Quality (10%)

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- Economic Development (5%)
- Safety (5%)

This process is used for both the Statewide High-Priority Projects and Transportation District Grant which are programs (or sources of funding) within the Smart Scale effort. Project applications must be submitted for consideration for funding by August 3, 2020. Staff worked with VDOT, and other regional partners to submit pre-applications for County projects to ensure strong final applications for our projects.

The Smart Scale process limits localities meeting population criteria like Fairfax County, to no more than ten applications and that projects be ranked in priority order if an applicant is submitting more than one project. The table below contains projects (described in Attachment 2) recommended by staff for Smart Scale consideration for FY2022-FY2027, with not to exceed amounts for "Smart Scale Request". The not to exceed amounts will provide staff some additional limited flexibility when finalizing applications.

Several factors have been used to prioritize projects for Smart Scale submission, and in determining the requested amount. These factors include:

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

Rank	Project	Smart Scale Request (\$000)
1	Richmond Highway Widening (Sherwood Hall Lane to Mount Vernon Highway/Jeff Todd Way)	\$106,822
2	Soapstone Drive Extension/Dulles Toll Road Overpass	\$66,426
3	Braddock Road Improvements Phase I (Southampton Drive to Ravensworth Road)	\$38,850
4	Frontier Drive Extension (Franconia-Springfield Metrorail Station to Loisdale Road)	\$110,250
5	Seven Corners Ring Road (Phase 1A/Segment 1A)	\$99,540
6	Braddock Road & Old Lee Road Improvements	\$15,972

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7	Route 7 Widening for Bus Rapid Transit (Route 123 to I-495)	\$46,090
8	Fairfax County Parkway Widening (Route 123 to Nomes Court)	\$96,884
9	Route 7 Widening for Bus Rapid Transit (I-495 to I-66)	\$56,955

These projects were included in the TPP adopted by the Board in December 2019, or previous transportation priority documents. Staff recommends submitting all projects in Attachment 1 for Smart Scale consideration by August 3, 2020.

Fairfax County has also been contacted by the City of Falls Church requesting an endorsement of their application for a project that may benefit Fairfax County:

- South Washington Bus Stop Expansion & Access to Transit - The project is located between the intersection of South Washington Street & South Maple Avenue and South Washington Street & Graham Road, at the City/County boundary line. The project scope includes a new traffic signal at South Washington Street & Greenway Boulevard, and intersection improvements at South Washington Street & Greenway Boulevard, and South Washington Street & Marshall Street. The project includes sidewalk widening, the narrowing of travel lanes on South Washington Street, construction of eight new bus shelters, and improved access to existing bus stops.

This project has been included in the resolution for Board endorsement.

FISCAL IMPACT:

Requests for state funding for FY2022-FY2027 Smart Scale program are shown by project in the table above. No cash match is required for these requests. If awarded funding, staff will return to the Board to secure approvals for project funding agreements as needed. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution of Endorsement of Projects Being Submitted for FY2022-FY2027 Funding through the Commonwealth Transportation Board Smart Scale Program
Attachment 2 – List of Projects with Descriptions

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STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Gregg Steverson, Deputy Director, FCDOT
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Todd Minnix, Chief, Transportation Design Division, FCDOT
Jeff Hermann, Chief, Transportation Planning Division, FCDOT
Michael Guarino, Section Chief, Capital Projects and Operations Division, FCDOT
Noelle Dominguez, Chief, Coordination Section, FCDOT
Ray Johnson, Chief, Funding Section, FCDOT
Jennifer Miller, Financial Specialist III, FCDOT

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in Conference Room 11 of the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, July 28, 2020, 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 Virginia Department of Transportation requests for funding from the Commonwealth of Transportation Board's Six-Year Improvement Program for FY2022-FY2027 Smart Scale funding programs for the following projects in amounts not to exceed:

- Richmond Highway Widening (Sherwood Hall Lane to Mount Vernon Highway/Jeff Todd Way) - \$106,822,000
- Soapstone Drive Extension/Dulles Toll Road Overpass - \$66,426,000
- Braddock Road Improvements Phase I (Southampton Drive to Ravensworth Road) - \$38,850,000
- Frontier Drive Extension (Franconia-Springfield Metrorail Station to Loisdale Road)- \$110,250,000
- Seven Corners Ring Road (Phase 1A/Segment 1A) - \$99,540,000
- Braddock Road & Old Lee Road Improvements - \$15,972,000
- Route 7 Widening for Bus Rapid Transit (Route 123 to I-495) - \$46,090,000
- Fairfax County Parkway Widening (Route 123 to Nomes Court) - \$96,884,000
- Route 7 Widening for Bus Rapid Transit (I-495 to I-66) - \$56,955,000

BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby also supports the efforts of the City of Falls Church in submitting an applications the Commonwealth of Transportation Board's FY 2022 – FY 2027 Six-Year Improvement Program through the Smart Scale Process for the following project partially located in Fairfax County:

- City of Falls Church - South Washington Bus Stop Expansion & Access to Transit

Adopted this 28th day of July 2020, Fairfax, Virginia

ATTEST _____

Jill G. Cooper
Clerk for the Board of Supervisors

List of Recommended Projects for Smart Scale (VDOT SYIP FY2022-FY2027) Submission

PROJECT	PROJECT DESCRIPTION	CURRENT COST ESTIMATE (\$000)	SECURED FUNDING ROUNDED (\$000)	BALANCE NEEDED BASED ON CURRENT ESTIMATE (\$000)	SMART SCALE REQUEST UP TO (\$000; Balance Needed + 5%)
Richmond Highway Widening (Sherwood Hall Lane to Mount Vernon Highway/Jeff Todd Way)	The Richmond Highway widening project is 3.1 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 widened Richmond Highway segment from Telegraph Road to Mt. Vernon Memorial Highway. This project includes both pedestrian and bicycle facilities and provisions to facilitate future bus rapid transit. This is the last four lane section of Richmond Highway north of Lorton.	\$410,000	\$308,360	\$101,640	\$106,822
Soapstone Drive Extension/Dulles Toll Road Overpass	The Soapstone Connector is a new roadway, approximately one-half mile long between Sunrise Valley Drive and Sunset Hills Road, in Reston. The project is located west of the Wiehle-Reston East Metrorail Station and would include a new (bridge) crossing the Dulles Toll Road, the Dulles International Airport Access Highway, and the Metrorail Silver Line. The new roadway extension will include pedestrian and bicycle accommodations.	\$216,460	\$153,197	\$63,263	\$66,426
Braddock Road Improvements Phase I (Southampton Drive to Ravensworth Road)	Braddock Road Project Phase I will increase capacity, improve bicycle and pedestrian access/safety, and provide transit access along Braddock Road from Southampton Drive to Ravensworth Road. Improvements to intersection operation includes optimizing signal operation, adding turn lanes, and implementing	\$48,700	\$11,700	\$37,000	\$38,850

ATTACHMENT 2

	access management. Improvements to bicycle and pedestrian access include adding missing links to pedestrian facilities along Braddock Road with a shared-use path in eastbound and westbound directions. These will tie-into existing side street sidewalks to complete missing connections. Project also includes signalized at-grade pedestrian crossing and improvement to existing underpass Cross County Trail. Braddock Road supports commercial, retail, institutional, commuter, residential traffic and provides a connection to the I-495 Capital Beltway (I-495 Beltway, and the I-495 Express Lanes), and connects Centreville, George Mason University, and Annandale, and provides access to Fairfax Center, Fairfax City, and Vienna (activity centers).				
Frontier Drive Extension (Franconia-Springfield Metrorail Station to Loisdale Road)	The Frontier Drive Extension will extend Frontier Drive from its terminus south of the Franconia-Springfield Parkway to Loisdale Road, including improved access to the Franconia-Springfield Metrorail Station and braided ramps to and from the Franconia-Springfield Parkway. Provide on-street parking along Frontier Drive as well as pedestrian and bicycle accommodations.	\$140,000	\$35,000	\$105,000	\$110,250
Seven Corners Ring Road (Phase 1A/Segment 1A)	The Board of Supervisors adopted an updated Comprehensive Plan for the Seven Corners area that includes a concept for a reconfigured Seven Corners Interchange. This project will design and construct 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.	\$94,800	\$0	\$94,800	\$99,540

ATTACHMENT 2

Braddock Road & Old Lee Road Improvements	The project will improve the intersection of Braddock/Old Lee, realign the S-curve on Braddock Road, and provide bicycle/pedestrian facilities to mitigate congestion and improve safety of vehicles and pedestrians.	\$15,211	\$0	\$15,211	\$15,972
Route 7 Widening for Bus Rapid Transit (Route 123 to I-495)	The project will widen approximately 0.7 miles of Route 7 between Route 123 and I-495 by an additional lane in each direction. The widening will provide accommodation for future BRT. The project includes a shared used path, and a BRT stop at Fashion Boulevard. Intersection improvements will be required at 4 signals within to facilitate the widening.	\$71,835	\$27,940	\$43,895	\$46,090
Fairfax County Parkway Widening (Route 123 to Nomes Court)	The project widens Route 286 from a 4-lane divided roadway to a 6-lane divided roadway from south of Nomes Court to the Route 123 interchange (2 miles) by widening into the existing median. Route 123 interchange improvements are included. Project will also include a shared use path.	\$92,270	\$0	\$92,270	\$96,884
Route 7 Widening for Bus Rapid Transit (I-495 to I-66)	The project will widen approximately 1 mile of Route 7 between I-495 and I-66 by one lane in each direction. The widening will be used for future BRT. The project includes installation of shared used paths. Intersection improvements will be required at 5 signals within to facilitate the widening.	\$64,744	\$10,500	\$54,243	\$56,955

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ACTION - 12

Approval of the Master Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Use of Commonwealth Transportation Funds

ISSUE:

Approval for the Director of the Department of Transportation to sign the Master Agreement with DRPT to enable the County's receipt of FY 2021 transit operations and capital assistance.

RECOMMENDATION:

The County Executive recommends that the Board authorize the Director of the Department of Transportation to sign the Master Agreement between DRPT and Fairfax County, in substantial form of Attachment 1.

TIMING:

The Board of Supervisors should act on this item on July 28, 2020. Approval of the Master Agreement is required before the County can receive and use FY 2021 Commonwealth Transportation Funds.

BACKGROUND:

For more than 30 years, the state has 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 member jurisdictions.

In 2012, Fairfax County and DRPT entered into a Master Agreement for the Use of Commonwealth Transportation Funds (the Master Agreement), which provided the basis for which the County received numerous transportation project grant funds. NVTC acts as Fairfax County's agent for WMATA regional agreements. This procedural action reduces the number of project agreements that Fairfax County is required to process.

In February 2020, DRPT proposed an updated Master Agreement. Since that time, County staff has worked with DRPT to ensure that the document complied with state law and the County Code. The Agreement is now complete, and the parties are

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prepared to present it (Attachment 1) to the Board for approval. Key aspects of the agreement are the following.

- The Master Agreement establishes the overarching terms and conditions governing receipt of grants supported by Commonwealth transportation funds.
- DRPT and the County are committed to entering into project-specific agreements ("Project Agreements") that includes the overall purpose for which grants are awarded.
- DRPT will provide funds for eligible project grants submitted by the County on a reimbursement basis.

The revised Master Agreement is very similar to the previous agreement executed in 2012. There are several minor business-related changes that will not impact the County's efforts to apply for and received transportation funds from the Commonwealth.

FISCAL IMPACT:

The Master Agreement will govern the receipt, use, and transfer of Commonwealth Transportation Funds to the County. There is no General Fund impact.

ENCLOSED DOCUMENTS:

Attachment 1 – Master Agreement for Use of Commonwealth Transportation Funds

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:

Joanna Faust, Assistant County Attorney

MASTER AGREEMENT

FOR USE OF

COMMONWEALTH TRANSPORTATION FUNDS

COUNTY OF FAIRFAX

This Master Agreement ("Agreement"), is made and executed as of the ____ day of _____, 2020 between the Virginia Department of Rail and Public Transportation ("Department"), acting by and through its Director, and the County of Fairfax ("Grantee") (collectively Department and Grantee referred to as "Parties"). On a case by case basis, the Parties will enter into a project specific agreement ("Project Agreement") that includes the overall purpose for which grants are awarded ("Project"), the total cost of a Project, the Department and Grantee participation, Project time period, and any subsequent amendments thereto. This Agreement constitutes the terms and conditions governing receipt of grants supported by Commonwealth transportation funds and governs and is incorporated by reference in all Project Agreements approved by the Department. The terms of this Agreement shall apply to all actions such as executing a Project Agreement, requesting reimbursement, requesting extensions or other actions taken pursuant to complete a Project ("Grant Transactions") from the date of this Agreement until a new Master Agreement for the use of Commonwealth transportation funds is executed by the Department and the Grantee.

ARTICLE 1. PROGRAMS AND FUNDING

§ 1.1 This Agreement contains requirements that must be adhered to by the Grantee for all grants received from the Department.

§ 1.2 Funding is subject to annual appropriation by the Virginia General Assembly ("General Assembly"), allocation by the Commonwealth Transportation Board ("CTB"), and execution by the Parties of this Agreement and an associated Project Agreement. For any grants administered by the Department, the CTB or the General Assembly may change the percentage of the local share that can be financed by Commonwealth transportation funds to a higher or lower percentage than set forth in the Project Agreement. In the event such a change occurs, the applicable percentage will be the new

percentage set by the CTB or the General Assembly. All Eligible Project Costs incurred prior to the date of the change will be governed by the previous percentage.

§ 1.3 In the event that the Grantee receives a subsequent allocation of funding from the Commonwealth of Virginia ("Commonwealth") other than the Department, or receives Federal funding for a Project, the allocation of grant funds originally allocated for that Project shall be reduced by the amount of the subsequent allocation of Commonwealth or Federal funding. Within thirty (30) days of receipt, the Grantee shall notify the Department in writing when a subsequent allocation of Commonwealth or Federal funding is received.

§ 1.4 The Grantee shall provide funds from sources other than Federal funds, except as may otherwise be authorized by Federal statute, in an amount sufficient, together with the grant funding governed by this Agreement, to assure payment of the total cost of the Project. The Grantee further agrees that no refund or reduction of the amount so provided will be made at any time, unless there is at the same time a refund and/or de-obligation to the Department of a proportional amount of the grant funds paid or to be paid by the Department. The Grantee is obligated to provide its share of Project cost as detailed in the Project Agreement.

§ 1.5 Payment of funds by the Department pursuant to a Project Agreement shall not exceed the Department funding amount identified in the applicable Project Agreement.

ARTICLE 2. ELIGIBLE PROJECT COSTS

§ 2.1 The Grantee agrees to incur costs in accordance with Project Agreements and this Agreement ("Eligible Project Costs"). The Department shall provide reimbursement of Eligible Project Costs submitted by the Grantee in proportion to the percentage of total funding to be provided by the Department pursuant to the Project Agreement. All expenses for which the Grantee seeks reimbursement by the Department shall be charged at the actual cost(s) to the Grantee with no Grantee markup.

§ 2.2 Eligible Project Costs must meet the following requirements:

- A. Be necessary in order to accomplish the Project as identified in an associated Project Agreement;
- B. Be reasonable for the goods or services purchased;
- C. Be actual net costs charged to the Grantee (i.e., the price paid minus any refunds, rebates, salvage, or other items of value received by the Grantee which have the effect of reducing the cost actually incurred and paid);
- D. Be incurred during the time period specified in the associated Project Agreement;
- E. Be in accordance with 2 C.F.R. Pt. 200 Subpart E;
- F. Be based on a cost allocation plan that has been approved in advance by the Department if the costs are indirect costs;
- G. Be documented in accordance with the terms of this Agreement;
- H. Be treated uniformly and consistently under generally accepted accounting principles; and
- I. There must be sufficient remaining allocated Commonwealth transportation funds pursuant to the associated Project Agreement to make the requested reimbursement.

Costs incurred by the Grantee to correct deficiencies in a Project, including costs related to the Grantee's failure to comply with the terms of this Agreement or a Project Agreement, do not qualify as Eligible Project Cost.

The Department shall make the final determination as to whether costs submitted for reimbursement qualify as Eligible Project Costs.

ARTICLE 3. REIMBURSEMENT OF GRANTEE

§ 3.1 Some Projects involving operating costs will require payment based on a schedule. Payment schedules for such projects will be detailed in the Project Agreement. The Department will make payment to the Grantee of the Department's share of scheduled payments as outlined in the Project Agreement. For other Projects not subject to a schedule of payments, grant funds will be distributed by the Department to the Grantee on a reimbursement basis.

§ 3.2 The Grantee shall submit requests for reimbursement using the form ("Project Reimbursement Form") provided by the Department through the Department Online Grant Administration System ("OLGA"). The Grantee shall submit Project Reimbursement Forms no more frequently than once a month and within 90 days from incurrence of Eligible Project Costs. Project Reimbursement Forms must be supported by third party evidence. The Department shall have the right to request additional details. The Grantee shall provide information within 30 days of the Department's request for additional information. The Department will make reimbursement of approved Eligible Project Costs within 30 days of the Department's receipt and approval of Grantee's Project Reimbursement Form. The Grantee shall submit its final reimbursement request to the Department within 90 days of expiration of funding for the Project Agreement.

§ 3.3 The Department shall have the right, in its sole discretion, to withhold reimbursement for Project Reimbursement Forms or line items in Project Reimbursement Forms found to be incomplete or not in conformance with the requirements of this Agreement or the associated Project Agreement. The Department will notify the Grantee of the basis for withholding total or partial reimbursement and will work with the Grantee to resolve disputed items.

§ 3.4 Reimbursement by the Department is not a waiver of Department's claim that said cost violates this Agreement or Project Agreement. Reimbursement is not a final decision by the Department as to validity of the cost as an Eligible Project Cost.

§ 3.5 Any reimbursement paid to the Grantee by the Department not in accordance with the provisions of this Agreement, associated Project Agreement, or Federal, State, or local law, shall be repaid to the Department by the Grantee within 60 days of the Department's written notice to the Grantee of the repayment obligation.

§ 3.6 The Grantee is responsible for payment of all third-parties performing work on behalf of the Grantee ("Contractors"). The Grantee shall attach copies of Contractors' invoices to each Reimbursement request.

§ 3.7 The Grantee shall remit payment to Contractors within five business days of receipt of reimbursement from Department. If, for any reason, the Grantee cannot remit payment to Contractor within five days, the Grantee shall immediately notify the Chief Financial Officer of the Department ("CFO") in writing, inform the CFO of the date Grantee will remit payment to its Contractors, and deposit the reimbursement funds received in an interest bearing account. The Grantee shall use all interest proceeds toward the Project, reducing the funding obligation of the Department outlined in the Project Agreement. Depending upon the Grantee's revised Contractor payment date, the Department may require the Grantee to repay the funds to the Department. If the Grantee fails to comply with this provision, the Department will require the Grantee to prepay Contractors prior to submitting Project Reimbursement Forms.

§ 3.8 With the exception of debt service specifically identified in a Project Agreement, the Grantee may not seek reimbursement for interest payments or charges on debt financing vehicles used to fund Projects.

ARTICLE 4. LAPSE OF FUNDS

§ 4.1 A Project Agreement obligates the Grantee to undertake and complete a Project within the period from the Project Start Date to the Project Expiration Date as identified in the Project Agreement. The Department shall not provide any Reimbursement for any expenses incurred after the Project Expiration Date.

§ 4.2 The Grantee's submission of a Project Reimbursement Form marked "Final," is Grantee's certification that it has completed the Project.

§ 4.3 The Department will withdraw any remaining Commonwealth transportation funds allocated for the Grantee's Project for which a final Project Reimbursement Form has been submitted and paid. Withdrawn funds will be allocated to other projects.

ARTICLE 5. MAINTENANCE OF RECORDS

§ 5.1 The Grantee shall maintain all books, accounting records, and any other documents supporting the Grantee's activities and costs for every Project Agreement. The Grantee shall maintain such records for four years from the end of the state fiscal year (June 30) in which the final payment is made.

The Grantee shall maintain records pertaining to facilities for the Useful Life of the facility. The Grantee shall maintain records pertaining to land in perpetuity. The Grantee shall require Contractors to similarly maintain their books, accounting records, and any other documents supporting the Contractors' activities and costs incurred, and require Contractors contain a similar provision in their contracts with subcontractors.

ARTICLE 6. AUDIT AND INSPECTION OF RECORDS

§ 6.1 The Grantee and Contractors shall permit the authorized representatives of the Department to inspect and audit their records related to the performance of this Agreement. Acceptable records are original documents (such as timesheets, travel reimbursements, invoices, receipts, etc.) that are the basis

of entries on the Payment Reimbursement Forms. The Department may require the Grantee to furnish certified reports of all expenditures under any contracts or subcontracts.

§ 6.2 The Grantee must follow the requirements of 2 C.F.R. pt. 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." A Single Audit¹ is required when an entity spends \$750,000 or more of Federal funds in a year. The Grantee must maintain auditable records and adequate supporting documentation. Grantees spending less than \$750,000 of Federal assistance during any one fiscal year are not required to undergo a Single Audit unless specifically requested by the Department. The Department reserves the right to require any recipient of State funds to undergo an audit the scope of which will be defined by the Department and performed on any matter relating to a Project Agreement.

§ 6.3 If an independent Certified Public Accountant, other auditor, the Department, or any other party conducting an authorized audit finds the Grantee to be out of compliance with any provision of this Agreement, any Project Agreement, or any relevant Federal, State, or local law or regulation, the Grantee must provide a satisfactory corrective action plan to the Department within 60 days of notification of that finding. The scope of any audit conducted must include expenditures made by Contractors and any other recipients of pass-through funds.

§ 6.4 The Grantee agrees if any audit finds payments by the Department were (1) unsupported by acceptable records, or (2) in violation of any other provisions of this Agreement or associated Project Agreement, within 60 days of audit findings, the Grantee will promptly refund unsupported payments or payments found in violation.

¹ Single Audit is an annual audit where all non-Federal entities that expend \$750,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and applicable U.S. DOT "Single Audit" requirements of 2 C.F.R. pt. 1201, which incorporate by reference 2 C.F.R. part 200.

§ 6.5 The Grantee must submit audited financial statements to the Department within six months following the end of the Grantee's fiscal year to:

Virginia Department of Rail and Public Transportation
Attention: Audit Manager
600 East Main Street, Suite 2102
Richmond, VA 23219

§ 6.6 The Grantee shall include language consistent with this Article in its contracts with Contractors to provide the Department the same access to Contractors' books and records, and requiring the Contractors to include language consistent with this Article in all subcontracts.

ARTICLE 7. PROCUREMENT OF SERVICES

§ 7.1 If the Grantee is not subject to the Virginia Public Procurement Act, then the Grantee shall utilize, and require its Contractors to utilize, competitive processes as follows:

- .1 for procurement of professional services as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive negotiation process acceptable to the Department that is similar to applicable portions of the process set forth in §§ 2.2-4302.2 and 2.2-4303.B of the *Code of Virginia* (1950), as amended. Additional information regarding procedures for procurement of professional services can be found at §§ 2.2 and 3.1 of the most recent edition of the Commonwealth's Construction and Professional Services Manual ("CPSM");
- .2 for procurement of construction services, a nonprofessional service as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive bidding process acceptable to the Department that is similar to applicable portions of the process set forth in §§ 2.2-4302.1 and 2.2-4303.D of the *Code of Virginia* (1950), as amended. Additional information regarding procedures for procurement of construction services can be found at § 7.1 of the most recent edition of the CPSM; and

- .3 for procurement of nonprofessional services other than construction services as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive sealed bidding or a competitive negotiation process acceptable to the Department that is similar to applicable portions of the processes set forth in §§ 2.2-4302.1, 2.2-4302.2, and 2.2-4303.C of the *Code of Virginia* (1950), as amended.

§ 7.2 The Department reserves the right to review and approve, in advance, any request for proposals or solicitation to bid. The Department also reserves the right to require that the Grantee not execute any contract, amendment, or change order thereto, or to obligate itself in any manner with any third party with respect to the Grantee's rights, duties, obligations, or responsibilities under this Agreement or any Project Agreement unless and until authorized to do so in writing by the Department.

ARTICLE 8. ASSIGNMENTS

§ 8.1 Assignment of any portion of this Agreement or of any Project Agreement must be preapproved by the Department in writing.

ARTICLE 9. TERM, ENTIRE AGREEMENT, AND AMENDMENT

§ 9.1 This Agreement shall be effective immediately upon its execution.

§ 9.2 This Agreement, and associated Project Agreements, constitute the entire and exclusive agreement between the Parties relating to all specific matters covered therein. All prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

§ 9.3 The execution of this Agreement and any associated Project Agreements may include electronic signatures using Personal Identification Number (PIN) based access.

§ 9.4 In order to effect a uniform set of terms governing Grant Transactions, effective as of the date of this Agreement, the Grantee and Department agree the terms of this Agreement supersede any and all

previous Master Agreements previously entered between the parties. Any ongoing Project Agreements will be governed by the terms of this Agreement.

ARTICLE 10. NOTICES AND DESIGNATED REPRESENTATIVE

§ 10.1 All notices or communications with respect to this Agreement and associated Project Agreements shall be in writing and shall be deemed delivered (a) by hand, upon day of delivery, (b) by prepaid overnight delivery service, upon the next business day or (c) by U.S. Mail, certified, postage prepaid, return receipt requested, on the third business day following mailing. All notices or communications with respect to this Agreement and associated Project shall be delivered to the addresses set forth below or such other addresses as may be specified by a party.

Designated
Representative:

Department:

Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219
Attention: Chief Financial Officer
Chief of Public Transportation

Grantee:

Tom Biesiadny, Director
NAME AND TITLE
Fairfax County Department of Transportation
4050 Legato Road, Fairfax, VA 22033
ADDRESS
Tom.Biesiadny@fairfaxcounty.gov
E-MAIL ADDRESS

ARTICLE 11. TERMINATION OF PROJECT AGREEMENT

§ 11.1 **Grantee's Termination for Convenience.** At any time, the Grantee may terminate a Project Agreement for its convenience by providing written notice to the Department. The termination will be

effective 30 days after the Department's receipt of the Grantee's notice. Upon such termination, the Grantee will repay all funds received from the Department pursuant to the Project Agreement.

§ 11.2 Grantee's Termination for Cause

§ 11.2.1 The Grantee may terminate a Project Agreement for cause by providing written notice to the Department.

§ 11.2.2 The Department will have 90 days from receipt of the Grantee's notice, or such longer time as agreed by the Parties, to cure the breach ("Department's Cure Period"). If the breach remains uncured at the end of the Department's Cure Period, the termination shall be effective the day after expiration of the Department's Cure Period.

§ 11.2.3 If a Project Agreement is validly terminated pursuant to Section 11.2, the Grantee will not be required to repay funds disbursed by the Department and are confirmed as Eligible Project Costs by the Department's audit.

§ 11.3 Department's Termination for Convenience

§ 11.3.1 At any time, the Department may terminate a Project Agreement for its convenience by providing written notice of termination to the Grantee. Upon receipt of notice, the Grantee shall cease all Project work as soon as is practicable and refrain from entering into contracts in furtherance of the Project. The termination shall be effective 10 Days after the Grantee's receipt of the Department's notice.

§ 11.3.2 If the Department terminates a Project Agreement pursuant to Section 11.3, the Grantee will not be required to repay funds disbursed by the Department prior to the effective date of the termination and are confirmed Eligible Project Costs by the Department's audit. The Grantee may seek reimbursement for Eligible Project Costs for which it has not previously sought reimbursement incurred prior to the effective date of the termination.

§ 11.3.3 The Grantee waives all claims for damages and expenses related to a termination by the Department pursuant to Section 11.3.

§ 11.4 Department's Termination for Cause

§ 11.4.1 The Department may terminate a Project Agreement for cause by written notice to the Grantee upon the Grantee's breach, insolvency, or assignment for benefit of creditors.

§ 11.4.2 The Grantee shall have 30 Days from receipt of notice, or such longer time as agreed by the Parties, to cure or provide assurances acceptable to Department of solvency ("Grantee's Cure Period"). If the breach remains uncured at the end of the Grantee's Cure Period, the termination shall be effective the day after expiration of the Department's Cure Period.

§ 11.4.3 If the Department terminates a Project Agreement for cause, the Grantee shall repay the Department all funds received pursuant to a Project Agreement, and shall not be entitled to further repayment. The Grantee shall make such payment within 60 days following effective day of termination.

ARTICLE 12: FORCE MAJEURE

§ 12.1 Force Majeure Event means fire, flood, war, rebellion, terrorism, riots, strikes, or acts of God, which may affect or prevent either Party from timely or properly performing its obligations under this Agreement.

§ 12.2 Delays caused by a Force Majeure Event shall not be deemed a breach or default under this Agreement. A Force Majeure Event will automatically result in a day-for-day extension to the performance period if any is specified in the Project Agreement. If the Department determines a Force Majeure Event renders Project Completion impossible or impractical, the Department may terminate the Project Agreement pursuant to Section 11.3.

§ 12.3 Within five days of occurrence, the Grantee will provide the Department written notice and documentation of the Force Majeure Event requesting relief necessary, and detailing required additional investigation, and analysis to determine extent of delay and remedy. Within 15 days of receipt of the Grantee's submission, the Department shall review the submission and determine whether the Grantee is entitled to the requested relief. Within 30 days of the Department's determination, the Grantee may appeal by requesting Director review. The Director's written decision is final.

ARTICLE 13. LIABILITY AND INSURANCE

§ 13.1 The Grantee shall be responsible for damage to life and property, including environmental pollution and/or contamination, arising from (a) its Contractors, subcontractors, agents and employees activities related to this Agreement or any associated Project Agreement and (b) any subsequent use of the Project.

§ 13.2 The Grantee shall carry sufficient insurance or have a sufficient self-insurance program to cover the risks for work performed under this Agreement and any associated Project Agreement. If the Grantee's insurance fails to cover agents, Contractors or subcontractors, the Grantee will require agents, Contractors and subcontractors performing work on Projects to carry insurance sufficient to cover risks associated with activities associated with a Project. Insurance purchased by the Grantee, its agents, Contractors, or subcontractors, shall list the Commonwealth, the Department, the Virginia Department of Transportation, and the officers, agents and employees of these entities as additional insureds.

§ 13.3 To the extent allowable by law, the Grantee shall indemnify, defend and hold harmless the Commonwealth, the Department, the Virginia Department of Transportation, and their officers, agents, and employees of these entities from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any act or omission by the Grantee, its Contractors, subcontractors, agents or employees in the performance of the work

covered by this Agreement or associated Project Agreement. Nothing in this Agreement shall constitute a waiver of sovereign immunity of any Party.

§ 13.4 The obligations of this Article shall survive the termination or completion of this Agreement and any Project Agreement and the Department's payment.

ARTICLE 14. CONFLICT OF INTEREST

§ 14.1 The State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended, shall apply if the Grantee is a local or state government, or a local or state governmental agency, commission, or authority.

§ 14.2 The following shall apply if the Grantee is not subject to the State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended:

.1 The following definitions shall apply concerning conflict of interest provisions in this Agreement and any associated Project Agreement:

“Contract” or “agreement” means any agreement, including any contract or subcontract, whether written or not, to which the Grantee is a party, or any agreement on behalf of the Grantee, including any contract or subcontract, which involves the payment of funds appropriated by the General Assembly of Virginia distributed pursuant to or subject to this Agreement or any associated Project Agreement.

“Employee” means any person employed by the Grantee, whether full time or part time.

“Thing of pecuniary value” means any thing having a monetary value including gifts, loans, services, securities, tangible objects, and business and professional opportunities.

.2 Other than the salary and remuneration received from the Grantee as a normal attribute of employment with the Grantee, no employee of the Grantee shall solicit, offer to accept, or accept, any money or other thing of pecuniary value or financial benefit or advantage, for the employee or for any other person, especially for any of the following reasons:

- a. in consideration of the use of the employee's position or status with the Grantee to obtain for any person or business any employment with or any contract with the Grantee or with any Contractor, subcontractor, or supplier of the Grantee, including any consulting or professional services contract.
- b. from any person or business other than the Grantee for performing any services for the Grantee in connection with any projects funded pursuant to or subject to this Agreement or any Project Agreement written hereunder.
- c. from any person or business other than the Grantee for rendering any decision or directing any course of action in connection with any Projects funded pursuant to or subject to this Agreement or any Project Agreement.

.3 If any contract is obtained in violation of this Article or if the terms of this Article are violated, the Department may require the Grantee to take whatever legal action is necessary to rescind, void, invalidate, or cancel such contract or other action taken and/or to recover any funds paid in violation of the provisions of this Article, and remit recovered funds to the Department.

ARTICLE 15. COVENANT AGAINST CONTINGENT FEES

§ 15.1 The Grantee warrants that it has not, and shall not, employ or retain any company or person, other than a bona fide employee working solely for the Grantee, to solicit or secure a Project Agreement, and that it has not, and shall not, pay or agree to pay any company or person, other than a bona fide

employee working solely for the Grantee, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of a Project Agreement. Upon breach or violation of this Article, the Department shall have the right to terminate this Agreement or any Project Agreement pursuant to Section 11.4 of this Agreement.

ARTICLE 16. NON-DISCRIMINATION

§ 16.1 In the solicitation or awarding of any contracts directly related to this Agreement or any associated Project Agreement, the Grantee shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia law relating to discrimination in employment.

§ 16.2 During the performance of this Agreement or any associated Project Agreement, the Grantee agrees as follows: (a) the Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (b) the Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, will state that the Grantee, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

§ 16.3 In all solicitations, either by competitive bidding or negotiation made by the Grantee for work to be performed under a contract, including procurement of materials or equipment, each potential Contractor shall be notified by the Grantee of the Grantee's obligations under this Agreement and the

regulations relative to nondiscrimination on the grounds of age, race, religion, sex, color, disability or national origin.

ARTICLE 17. DRUG-FREE WORKPLACE

§ 17.1 During the performance of this Agreement and any Project Agreement, the Grantee agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that the Grantee maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

ARTICLE 18. SMALL, WOMEN, AND MINORITY (SWAM) BUSINESSES

§ 18.1 The Grantee is encouraged to seek and use Small, Women, and Minority ("SWAM") enterprises in relation to any Project Agreement issued pursuant to this Agreement. § 2.2-4310 of the *Code of Virginia* (1950), as amended, addresses SWAM enterprises.

ARTICLE 19. PERSONS WITH DISABILITIES

§ 19.1 The Grantee, its agents, employees, assigns or successors, and Contractors, shall comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the *Code of Virginia* (1950), as amended), the terms of which are incorporated herein by reference.

ARTICLE 20. NONRESTRICTIVE CLAUSE

§ 20.1 Solicitation documents will be based upon clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The descriptions will not contain features that unduly restrict competition.

ARTICLE 21. SPECIFIC PROJECT CONSIDERATIONS

§ 21.1 The Americans with Disabilities Act ("ADA") established universal access by requiring complementary paratransit services to be provided for visitors if they have been certified as "ADA paratransit eligible" by a public entity. If the Grantee provides paratransit services, the Grantee must honor the certification of a visitor qualified by another public entity for a period of 60 days during a calendar year. The visiting rider shall not have to provide any additional documentation, or participate in interviews or any other reviews to gain the complementary certification. If the visitor needs service beyond the 60 days in a calendar year, the visitor must go through the paratransit system's qualification process.

§ 21.2 Any motor vehicles purchased under this grant shall comply with Motor Vehicle Safety Standards as established by the United States Department of Transportation and with the Motor Vehicle Standards of the *Code of Virginia* (Title 46.2).

§ 21.3 The Department requires a systematic, multi-disciplined approach design to optimize the value of each dollar spent on a Project through the engagement of a team of architects, engineers or other professionals to identify, analyze and establish a value for a function of an item or system Value

Engineering (“VE”) for any project with a total cost in excess of \$10 million (“Major Capital Projects”). A Major Capital Project is usually identified during the application review process. VE for a Project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (“PE”) or at 30 percent of design. Some large or complex projects may require more than one VE study over their duration. For Major Capital Projects, upon completion of the VE phase, the Grantee shall submit the VE report to the Department. The Department may also require that VE be performed on individual Projects that do not qualify as Major Capital Projects. The Grantee is encouraged to conduct VE on all Projects for construction, including bus maintenance and storage facilities, as well as on those Projects regarding revenue railcar acquisition and rehabilitation.

§ 21.4 The Department encourages the Grantee to confer with other transit operations and maintenance experts in order to benefit from their experiences and to improve the performance of the process or product being reviewed (“Peer Review”). Although the Grantee is encouraged to conduct a Peer Review with all capital projects, the Department may require Peer Review in some instances.

§ 21.5 The Grantee is encouraged to perform crime prevention reviews during the design phase of all Department-funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should be carried out as a project intended to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of the review should complement the size and scope of the Project. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the Grantee and be available for Department review upon request.

ARTICLE 22. SPECIAL CAPITAL PROVISIONS

§ 22.1 The purchase of all equipment and services, and the construction of any facilities financed in whole or in part pursuant to a Project Agreement (“Project Equipment” and “Project Facilities”), shall be undertaken by the Grantee in accordance with Article 7 of this Agreement, Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders. The Department reserves the right to review and approve all solicitations for purchase of equipment, facilities, and services prior to their issuance by the Grantee.

§ 22.2 The Grantee agrees that the Project Equipment and Project Facilities shall remain in service in the area and be used for the purpose for which they were purchased for the duration of the Useful Life. Useful Life will be defined by the Grantee utilizing Generally Accepted Accounting Principles, Internal Revenue Service or other industry practice standard agreeable to Department. If any Project Equipment or Project Facilities is not used for the intended purpose defined in the Project Agreement during the Project Equipment’s and Project Facilities’ Useful Life, the Grantee shall immediately notify the Department. In the case of Project Equipment, the Department shall have the option of requiring the Grantee either to transfer title to the Project Equipment to the Department or to remit to the Department an amount equal to a proportional share of the fair market value remaining in the Project Equipment based upon the Department’s ratio of participation detailed in the Project Agreement. In the case of Project Facilities, the Grantee shall remit to the Department the proportional share of the remaining fair market value of the Project Facilities based upon the ratio of the Department’s participation detailed in the Project Agreement. The Grantee shall keep records of the use of the Project Equipment and Project Facilities for review by the Department upon request.

§ 22.3 At any time, the Grantee shall permit the Department or its authorized representatives to inspect all vehicles, Project Facilities and Project Equipment; all transportation services rendered by the Grantee using such vehicles, Project Facilities or Project Equipment; and all relevant Project data and records.

§ 22.4 The Grantee shall maintain, in amount and form satisfactory to the Department, and in accordance with the laws of the Commonwealth, such insurance or self-insurance adequate to protect Project Facilities or Project Equipment and persons using such Project Facilities or Project Equipment throughout their use. The Department will be named as an additional insured.

§ 22.5 With regard to contracts for construction or facility improvement totaling less than \$250,000, the Grantee shall follow its own requirements relating to bid guarantees, performance and payment bonds. For contracts in excess of \$250,000, the Grantee shall adhere to the following minimum requirements:

- A bid bond from each bidder from a surety company legally authorized to do business in Virginia. The amount of the bid bond shall not exceed five percent (5%) of the bid price. This bid bond is a guarantee that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- A performance bond for 100% of the contract price.
- A payment bond for 100% of the contract price.
- In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check in the amount required for the bond.
- The Grantee shall seek Department approval of its bonding policy and requirements if they do not comply with these criteria.

§ 22.6 When any motor vehicle is purchased with funds supplied by the Department pursuant to this Agreement or any associated Project Agreement, the Department reserves the right, in its sole discretion, to require that a lien or security interest be placed upon the title of said vehicle to secure the amount of

the funds supplied by the Department, with the lien or security interest to be perfected and recorded upon the certificate of title in the manner prescribed by law, with the certificate of title to be sent to the Department.

ARTICLE 23. MISCELLANEOUS PROVISIONS

§ 23.1 This Agreement and any Project Agreement shall, in all respects, be governed by the laws of the Commonwealth without giving effect to its principles of conflicts of law. Nothing in this Agreement or any Project Agreement shall constitute a waiver of sovereign immunity. Any legal action concerning this Agreement or any Project Agreement shall be brought in a Circuit Court of the Commonwealth.

§ 23.2 The Grantee shall comply with all of the requirements specified in an associated Project Agreement, as well as all related and relevant Federal, State, and local law and regulations.

§ 23.3 If any term or provision of this Agreement or any Project Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality, validity, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement or any Project Agreement shall be binding upon the Parties.

§ 23.4 All provisions of this Agreement and any Project Agreement shall be binding upon the Parties and their respective successors and assigns.

§ 23.5 Upon the Department's request, the Grantee shall appoint one principal representative selected by the Department to the oversight board of any public transit service provider on which the Commonwealth is not already represented by a principal member and which benefits from state funding provided to the Grantee. If the members of an oversight board are determined through public election, or if complying with this requirement will violate a federal or state statute or General Assembly authorization, this provision shall not apply.

§ 23.6 The Grantee shall adhere to the current grant administration requirements issued by the Department and if required by the Department maintenance of asset inventory and performance reporting through OLGA.

§ 23.7 Any repayment by the Grantee to the Department for funds granted by the Department pursuant to this Agreement and any associated Project Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date Reimbursement was made by the Department to date of repayment by the Grantee.

§ 23.8 All covenants and provisions of this Agreement shall be made expressly a part of any contracts executed by the Grantee, and shall be binding on the Contractors, their agents, and employees.

ARTICLE 24. UNAUTHORIZED ALIENS

§ 24.1 The Grantee certifies that it does not, and that it shall not, during the performance of this Agreement and any Project Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the Act). The Grantee will also contractually require any Contractors who participate in any Project funded pursuant to this Agreement and any Project Agreement to comply with this provision. Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.

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IN TESTIMONY THEREOF, the Parties have caused this Agreement to be executed, each by its duly authorized officers, all as of the day, month, and year first written.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

BY: _____
DIRECTOR DATE

WITNESS: _____
(NAME AND TITLE) DATE

COUNTY OF FAIRFAX

BY: _____
DATE

WITNESS: _____
(NAME AND TITLE) DATE

Board Agenda Item
July 28, 2020

3:30 p.m.

Public Hearing on PCA-C-052-09/CDPA-C-052-02 (KIW SKYLINE 1, LLC, KIW SKYLINE 2, LLC and KIW SKYLINE 3, LLC) to Amend the Proffers and Conceptual Development Plan for RZ-C-052, Previously Approved for Office Use, to Permit the Repurposing of Office Buildings to Accommodate Live/Work Units and Associated Modifications to Proffers and Site Design at a 2.98 Floor Area Ratio, Located on Approximately 6.45 Acres of Land Zoned PDC, CRD, SC and HC (Mason District)

This property is located on the E. side of Seminary Rd., S. of Leesburg Pike and N. of South George Mason Dr. Tax Map 62-3 ((1)) 30, 33, 35, 35A and 45.

PLANNING COMMISSION RECOMMENDATION:

On July 15, 2020, the Planning Commission voted 12-0 to defer the decision on this application to a date certain of July 22, 2020. The Planning Commission's recommendation will be forwarded upon 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)
Sharon Williams, Planner, DPD

Board Agenda Item
July 28, 2020

3:30 p.m.

Public Hearing on RZ 2019-MA-018 (Christopher Land, LLC) to Rezone from R-4, C-3, CRD, SC and HC to PDH-12, CRD, SC and HC to Permit 43 Single-Family Attached Residential Units with an Overall Density of 11.1 Dwelling Units per Acre and Approval of the Conceptual Development Plan, Located on Approximately 3.88 Acres of Land (Mason District)

This property is located approx. 600 ft. W. of Ravensworth Rd. and 650 ft. S. of Little River Tnpk., N. and S. sides of McWhorter Pl., W. side of Markham St. and portions of McWhorter Pl./Markham St. to be vacated and/or abandoned. Tax Map 71-1 ((1)) 28 (pt.), 29, 31, 32, 33, 36, 37, 38A and 41 and McWhorter Pl./Markham St. public rights-of-way to be vacated and/or abandoned. Approval of this application may enable the vacation and/or abandonment of portions of the public rights-of-way for McWhorter Pl./Markham St. to proceed under Sect. 15.2-2272 (2) of the *Code of Virginia*.

PLANNING COMMISSION RECOMMENDATION:

On July 15, 2020, the Planning Commission voted 12-0 to defer the decision only on this application to a date certain of July 22, 2020. The Planning Commission's recommendation will be forwarded upon 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)
Zach Fountain, Planner, DPD

Board Agenda Item
July 28, 2020

3:30 p.m.

Public Hearing on PCA 2011-PR-011-03 (Cityline Partners LLC) to Amend the Proffers and Conditions for RZ 2011-PR-011, Previously Approved for Mixed-Use Development to Permit Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 8.04, Located on Approximately 1.33 Acres of Land Zoned PTC and HC (Providence District)

This property is located on the N. side of Chain Bridge Rd. and W. side of South Dartford Dr. Tax Map 30-3 ((46)) 2 (pt.).

PLANNING COMMISSION RECOMMENDATION:

On July 8, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of PCA 2011-PR-011-03, subject to the execution of proffered conditions consistent with those dated May 8, 2020;
- Reaffirmation of the modification of all trails and bike trails in favor of the streetscape and on-road bike land system shown on the Plans and as proffered;
- Reaffirmation of the modification of Sect. 7-0802.2 of the Public Facilities Manual (PFM) to allow for the projection of structural columns into parking stalls (no more than 4 percent of the stall area);
- Reaffirmation of the modification of Sect. 12-0601.18 of the PRM to permit the reduction of the minimum planter opening area for trees used to satisfy the tree cover requirement, in favor of that shown on the Plans and as proffered;
- Reaffirmation of the modification of the Zoning Ordinance and PFM for required tree preservation target and ten percent canopy coverage on individual lots/land bays to allow for tree preservation to be calculated on the overall Conceptual Development Plan (CDP) development area;
- Reaffirmation of the modification of the Zoning Ordinance to allow for a parapet wall, cornice, or similar projection to exceed the height limit established by more than three feet as may be indicated on the Final Development Plan (FDP) to screen mechanical equipment;

Board Agenda Item
July 28, 2020

- Reaffirmation of the modification of the maximum fence height requirements from 7 feet to 14 feet around accessory uses/structures located within the rear yard for those areas of fencing associated with any proposed sports courts and urban plaza areas, as indicated on the CDP, or as may be indicated on the FDP;
- Reaffirmation of the modification of Par. 4 of Sect. 11-202 of the Zoning Ordinance requiring a minimum distance of 40 feet of loading space in proximity to drive aisles, to that shown on the CDP, and when shown on an approved FDP;
- Reaffirmation of the modification of Sect. 12-0515.6B of the PFM to allow for trees located above any proposed percolation trench or bio-retention areas to count towards county tree cover requirements;
- Reaffirmation of the modification of the 10-year tree canopy requirements in favor of that shown on the Plans and as proffered; and
- Reaffirmation of the modification of Par. 7 of Sect. 17-201 of the Zoning Ordinance to permit the applicant to establish parking control, signs, and parking meters along private streets within and adjacent to the development in coordination with FCDOT.

In a related action, the Planning Commission voted 12-0 to approve FDPA 2011-PR-011-04, subject to the proposed development conditions dated June 24, 2020.

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)
Kelly Posusney, Planner, DPD

Board Agenda Item
July 28, 2020

3:30 p.m.

Public Hearing on PCA/CDPA 2000-MV-046 (Aventon Holdings I, LLC) to Amend the Proffers and Conceptual Development Plan for RZ 2000-MV-046, Previously Approved for up to 650 Dwelling Units and 250,000 Square Feet of Office and Retail, to Permit up to 379 Dwelling Units and Associated Modifications to Proffers and Site Design at a Density of 94.4 Dwelling Units per Acre, Located on Approximately 4.01 Acres of Land Zoned PRM (Mount Vernon District)

This property is located on the N. side of Huntington Park Dr., approx. 300 ft. E. of its intersection with North Kings Hwy. Tax Map 83-3 ((38)) C and 83-3 ((1)) 88G.

PLANNING COMMISSION RECOMMENDATION:

On July 15, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of PCA 2000-MV-046 and the associated Conceptual Development Plan Amendment, subject to the execution of proffered conditions consistent with those dated July 14, 2020;
- Modification of Sects. 11-201 and 11-203 of the Zoning Ordinance to reduce the number of loading spaces from the required 4 to up to 2, as shown on the CDPA/FDPA;
- Waiver of Sect. 13-203 of the Zoning Ordinance requiring peripheral landscaping adjacent to the above grade parking garage;
- Modification of Par. 4 of Sect. 13-305 of the Zoning Ordinance to allow the "Type 1" Transitional Screening yard requirement to be reduced by 2/3 and to allow a solid masonry wall adjacent to a single-family detached dwelling;
- Waiver of Par. 3.B of Sect. 17-201 of the Zoning Ordinance requiring an interparcel connection to the eastern parcels; and
- Reaffirmation of the waiver of Par. 2 of Sect. 11-302 of the Zoning Ordinance to permit a private street to exceed a maximum 600 feet in length.

Board Agenda Item
July 28, 2020

In a related action, the Planning Commission voted 12-0 to approve FDPA 2000-MV-046, subject to the proposed Final Development Plan conditions dated June 23, 2020.

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

Board Agenda Item
July 28, 2020

4:00 p.m.

Public Hearing on RZ 2019-SU-021 (Blue Knob Investors, LLC) to Rezone from I-3, WS, AN and HC to C-8, WS, AN and HC to Permit a Vehicle Sales, Rental, and Ancillary Service Establishment with an Overall Floor Area Ratio of 0.17, and to I-5, WS, AN, and HC to Permit a Vehicle Major Service, Vehicle Light Service, and New Vehicle Storage Establishment with an Overall Floor Area Ratio of 0.07, Located on Approximately 12.06 Acres of Land (Sully District) (Concurrent with SE 2019-SU-022)

and

Public Hearing on SE 2019-SU-022 (Blue Knob Investors, LLC) to Permit a Vehicle Sales, Rental, and Ancillary Service Establishment and Vehicle Light Service Establishment, Located on Approximately 12.06 Acres of Land Zoned C-8, I-5, WS, AN and HC (Sully District) (Concurrent with RZ 2019-SU-021)

This property is located on the S. side of Lee Jackson Memorial Hwy., approx. 1,200 ft. W. of its intersection with Stonecroft Blvd. Tax Map 33-2 ((1)) 6 (pt.).

PLANNING COMMISSION RECOMMENDATION:

On July 8, 2020, the Planning Commission voted 12-0 to recommend to the Board of Supervisors the following actions:

- Approval of RZ 2019-SU-021, subject to the execution of proffered conditions consistent with those dated June 19, 2020;
- Approval of SE 2019-SU-022, subject to the proposed development conditions dated June 15, 2020;
- Modification of Sect. 13-303 of the Zoning Ordinance for transitional screening requirements along the eastern property line of the I-5 zoning district, in favor of the landscaping required by the development conditions;
- Waiver of Sect. 13-304 of the Zoning Ordinance for barrier requirements along the eastern property line of the I-5 zoning district;

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- Modification of Sect. 13-203.1 of the Zoning Ordinance for peripheral parking lot landscaping for the eastern and western property lines, in favor of the existing and proposed vegetation shown on the GDP/SE Plat; and
- Modification of Sect. 17-201.3(A) of the Zoning Ordinance for the construction of a service drive adjacent to any primary highway, to permit inter-parcel access to satisfy the requirement.

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
July 28, 2020

4:00 p.m.

Public Hearing on the Use of Eminent Domain Proceedings for the Acquisition of Certain Land Rights Necessary for the Construction of the Proposed Patrick Henry Place (Mason District)

ISSUE:

Public hearing on the use of eminent domain proceedings for the acquisition of certain land rights necessary for the construction of Project HS-000021, Patrick Henry Shelter - 2016, in Fund 30010, General County Construction and Contributions.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the eminent domain proceedings for the acquisition of certain land rights.

TIMING:

On June 23, 2020, the Board authorized advertisement of a public hearing to be held on July 28, 2020, at 4:00 p.m.

BACKGROUND:

The existing, approximately 9,500 square foot Patrick Henry Shelter is part of Hollybrooke II Condominium (H2C) originally built in 1952 as apartments. In 1985, the Board acquired 10 of the condominium's 249 units. The 10 units were in a single building and were the only units contained in the building. Although the Board owns the entirety of the units in the building, the building's shell, as well as the land and parking areas surrounding the building, are considered common elements of H2C and are controlled by the Hollybrooke II Condominium Association (Association).

The 10 units in the building are currently used for the Patrick Henry Shelter. The existing Patrick Henry Shelter provides emergency 30-day accommodations to homeless families with a capacity to serve nine families. The proposed project would require the existing building to be demolished and would entail constructing the new Patrick Henry Place to provide 16 permanent supportive housing (PSH) units. The new, four-level, approximately 24,000 square feet facility will be constructed on the existing 0.66-acre site and includes 16 parking spaces and associated site improvements. In the new facility, the Office to Prevent and End Homelessness (OPEH) within the

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Department of Housing and Community Development will leverage the property and services to provide a more effective solution to reducing homelessness by providing 16 permanent supportive housing units for families in lieu of the current emergency shelter model. The new supportive housing facility will serve people from anywhere in the County, but this location is superior because of its access to public transportation and employment opportunities, which is an asset for low-income and formerly homeless families. It is also important that supportive housing facilities are included throughout the county so homeless families have housing options like any other county resident that will complement their family's work, education, and social connections in the community. Currently, the only other facility like this for families with children in Fairfax is adjacent to the Katherine Hanley Family Shelter.

However, because the Board only owns the units and not the building's shell or the underlying land, the Board needs to obtain land rights for the building and surrounding land in order to demolish the building and commence construction of the project. In order to accomplish the acquisition of these land rights, the Board must "extract" the land from H2C and transfer ownership to the Board. The two areas needing extraction are 1) the land area where the current shelter exists which is identified as H2C's Phase 4A (26,188 sf or .60119 ac) and 2) a small portion of H2C's adjacent Phase 4B containing 2,492 sf or .05721 ac. This smaller portion of land is needed to satisfy current parking regulations for the new facility to be built. The eminent domain process would also remove the units owned by the Board from H2C. The balance of H2C's Phase 4B will remain part of H2C. The total of both areas to be extracted and transferred into BOS ownership is 28,680 sf (.65840 ac).

Additionally, the eminent domain proceedings will grant ingress/egress, drainage, utility, and temporary grading and construction easements to the County on the Phase 4B property that is to be retained by H2C. Due to the condominium arrangement, the Association's instruments require 100% of owner's and related mortgage company's approval to demolish and rebuild the facility. However, the Association is authorized under law to reach an agreement that would resolve an eminent domain action. In order to facilitate the construction of the new facility in a timely manner, the County and the Association have reached a tentative agreement through which the County would pay the Association \$639,000 to acquire the necessary common elements and easements through eminent domain proceedings, thereby divesting (extracting) the property from the Association and its members. Due to the complexity of the Virginia condominium laws relating to property extractions, acquiring the property through eminent domain provides the cleanest possible title to the property.

In order to file a petition for condemnation with the Fairfax Circuit Court, the Board must first hold a public hearing and adopt a resolution or ordinance approving the public use and directing staff to acquire the property for the public use by condemnation or other

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means in accordance with Va. Code § 15.2-1903. If a petition is filed and the Circuit Court approves the tentative agreement, it will enter an order pursuant to Va. Code 55.1-1906 setting forth the changes to the property rights of the Board and the Association and its members. However, the Association is not bound to accept the \$639,000 price until the Circuit Court enters a final order. If the Association withdraws from the tentative agreement, then the property's fair market value would be litigated in the Circuit Court through the traditional condemnation process.

FISCAL IMPACT:

The replacement of the Patrick Henry Shelter was approved as part of the 2016 Human Services/Community Development Bond Referendum in the amount of \$12,000,000 and funding is currently available in Project HS-000021, Patrick Henry Shelter-2016, Fund 30010, General Construction and Contributions. This project is included in the FY2021 - 2025 Adopted Capital Improvement Program (with Future Fiscal Years to 2030). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

Attachment A - Project Location Map
Attachment B - Resolution
Attachment C - Fact Sheets on the affected parcels
Attachment D - Plats showing interests to be acquired

STAFF:

Rachel Flynn, Deputy County Executive
Randolph W. Bartlett, Director, Department of Public Works and Environmental Services (DPWES)
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities
Carey F. Needham, Director, DPWES, Building Design and Construction Division
Julie B. Cline, Director, DPWES, Land Acquisition Division

ASSIGNED COUNSEL:

F. Hayden Coddington, Assistant County Attorney
Daniel Robinson, Assistant County Attorney



Patrick Henry Place

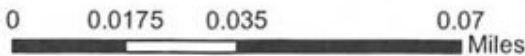
Mason District

Tax Map: 51-3

Project: HS-000021-001

Affected Properties:

Proposed Improvements:



ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in Conference Room 11 of the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, July 28, 2020, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, Eminent Domain Proceedings for the Acquisition of Certain Land Rights Necessary for the Construction of the Proposed Patrick Henry Place will need to be used; and

WHEREAS, the Proposed Patrick Henry Place will constitute a public use by providing permanent supportive housing under County ownership for low-income and formerly homeless families in the County; and

WHEREAS, the property interests proposed to be acquired are necessary for the Proposed Patrick Henry Place at this location because it has access to public transportation and employment opportunities necessary for residents of the Proposed Patrick Henry Place; 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.

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 by eminent domain; and be it further

RESOLVED, that the Board declares the Proposed Patrick Henry Place to be a public use by providing permanent supportive housing under County ownership for low-income and formerly homeless families in the County and that the proposed location for the Proposed Patrick Henry Place is necessary because it has access to public transportation and employment opportunities necessary for residents of the Proposed Patrick Henry Place and because the Board currently owns condominium units at the location where the Patrick Henry Shelter is currently operated; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests listed in the Attachments and that this Board intends to enter and take the said property interests for the purpose of constructing a Patrick Henry Place, to provide 16 permanent supportive housing (PSH) units. The new, four-level, approximately 24,000 square feet facility, will be constructed on the 0.66-acre site where the Patrick Henry Shelter currently exists and include 16 parking spaces and associated site improvements. Additionally, the eminent domain proceedings will, as shown on the attachments Exhibits, grant ingress/egress, drainage, utility, and temporary grading & construction easements to the County on the adjacent Phase 4B property to be retained by the Hollybrooke II Condominium. This is further shown and described in the plans of Project HS-000021, 3080 Patrick Henry Drive, on file in the Building Design and Construction Division the Department 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 the County Attorney, in conjunction with the Director, Land Acquisition Division, is hereby authorized and directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in this Resolution by eminent domain, if necessary, but nothing in this resolution shall be construed as preventing negotiation by the County Attorney and/or the Director, Land Acquisition Division for the acquisition of any and all of said property rights at a private sale if the owners are able to convey such property rights and agree to sell at the prices offered.

A Copy – Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

ATTACHMENT C

LISTING OF AFFECTED PROPERTIES
Project HS-000021 3080 Patrick Henry Drive
(Mason District)

<u>OWNER</u>	<u>ADDRESS</u>	<u>TAX MAP NUMBER</u>
Fairfax County BOS	6200 Leesburg Pike, Falls Church	0513 36 0101
Fairfax County BOS	6200 Leesburg Pike, Falls Church	0513 36 0102
Fairfax County BOS	6200 Leesburg Pike, Falls Church	0513 36 0201
Fairfax County BOS	6200 Leesburg Pike, Falls Church	0513 36 0102
Fairfax County BOS	6200 Leesburg Pike, Falls Church	0513 36 0301
Fairfax County BOS	6200 Leesburg Pike, Falls Church	0513 36 0302
Fairfax County BOS	3080 Patrick Henry Dr., Falls Church	0513 3680 0101
Fairfax County BOS	3080 Patrick Henry Dr., Falls Church	0513 3680 0102
Fairfax County BOS	3080 Patrick Henry Dr., Falls Church	0513 3680 0201
Fairfax County BOS	3080 Patrick Henry Dr., Falls Church	0513 3680 0202

<u>OWNER</u>	<u>ADDRESS</u>	<u>TAX MAP NUMBER</u>
Hollybrooke II Condominium	6200 Leesburg Pike, Falls Church	0513 3680 common
Hollybrooke II Condominium	3080 Patrick Henry Dr., Falls Church	0513 3680 common

Note: The Hollybrooke II Condominium property refers to all common elements to be extracted as shown on the associated Exhibit D (appearing in bold as "WITHDRAWN" and "WITHDRAWN PORTION OF" on sheet 2 of 4) containing the following land areas and structures:

LAND: Phase 4A which consists of 26,188 sf (0.60119 ac) and, A portion of Phase 4B (appearing as "PHASE 4-B1") which consists of 2,492 sf (0.05721 ac).
The total of both land areas to be extracted and transferred into BOS ownership is 28,680 sf. (.65840 ac).
Certain easements to be placed and confirmed on the remainder of Phase 4B (appearing as "RESIDUE 4-B") for the Verizon, Washington Gas, Dominion Virginia Power and the County of Fairfax, as depicted and shown on the attached plat Exhibits.

STRUCTURE: The shell of the existing Patrick Henry Shelter building and the (6200

Leesburg Pike, Falls Church, VA and 3080 Patrick Hery Drive, Falls Church, VA) original common elements within the building itself as defined in the Declaration of Hollybrooke II Condominium appearing in Fairfax County Deed Book 6083 at Page 1241.

NOTES:

1. THE SUBJECT PROPERTIES SHOWN HEREON ARE IDENTIFIED ON FAIRFAX COUNTY, VIRGINIA TAX MAP NO. 051-3-36-0101 THRU 0302 AND NO 051-3-3680-0101 THRU 0302 AND ARE ZONED R-30.
2. THE PROPERTY SHOWN HEREON IS NOW IN THE NAME OF BOARD OF SUPERVISORS FAIRFAX COUNTY AS RECORDED IN DEED BOOK 6101 AT PAGE 1086 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.
3. THE SUBJECT PROPERTY IS LOCATED IN ZONE "A" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN) AS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FLOOD INSURANCE RATE MAP (FIRM) 51059C0285E, COMMUNITY PANEL NO. 515525 0285 E FOR FAIRFAX COUNTY, VIRGINIA, DATED SEPTEMBER 17, 2010. ZONE "A" IS NOT IDENTIFIED AS A SPECIAL FLOOD HAZARD ZONE AREA.
4. THE HORIZONTAL DATUM SHOWN HEREON IS REFERENCED TO VIRGINIA COORDINATE SYSTEM OF 1983 (VCS '83).
5. THE HORIZONTAL DATUM SHOWN HEREON ARE BASED ON A GPS SURVEY PERFORMED BY VIKI VIRGINIA, LLC ON OCTOBER 31, 2017 USING THE FOLLOWING CONT STATIONS: VAAH ASHBURN VA - 0591, VADY GAINESVILLE VA - 0588 AND LOKV ANNAPOLIS JCT MD - 0370 (NGS PID DL3640), AND A COMBINED SCALE FACTOR OF 0.999999696.
6. BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON A FIELD RUN SURVEY BY VIKI, INC. THE SURVEY CONTROL ESTABLISHED BY VIKI VIRGINIA, LLC AND USED TO DETERMINE THE BOUNDARY HAS A HORIZONTAL PRECISION OF 1:48,641, WHICH EXCEEDS THE MINIMUM HORIZONTAL PRECISION OF 1:30,000 AS REQUIRED BY THE COMMONWEALTH OF VIRGINIA.
7. THE SUBJECT PROPERTY DOES NOT LIE IN A RESOURCE PROTECTION AREA (RPA) PER FAIRFAX COUNTY CHESAPEAKE BAY AREAS MAP NO. 051-3, DATED 08-01-2005.
8. THE EXISTING CONDITIONS SURVEY WAS COMPLETED UNDER THE DIRECT RESPONSIBLE CHARGE OF FRANKLIN E. JENKINS FROM AN ACTUAL GROUND SURVEY MADE UNDER MY SUPERVISION, THAT THE ORIGINAL DATA WAS OBTAINED ON OCTOBER 31, 2017, AND THAT THIS PLAN/PLAT MEETS MINIMUM HORIZONTAL ACCURACY STANDARDS UNLESS OTHERWISE NOTED.
9. THE HORIZONTAL AND VERTICAL DATUMS REFERENCED HEREON ARE IN CONFORMANCE WITH FAIRFAX COUNTY REQUIREMENTS 2-0107.1B (115-13-PFM) AND 2-0212.3 (70-00-PFM).

EXISTING AREA TABULATION

PHASE 1	78,282 SQ. FT.	OR 1.79711 AC.
PHASE 2	98,506 SQ. FT.	OR 2.26129 AC.
PHASE 3	80,914 SQ. FT.	OR 1.85753 AC.
PHASE 4-A	26,188 SQ. FT.	OR 0.60119 AC.
PHASE 4-B	33,929 SQ. FT.	OR 0.77890 AC.
PHASE 5	94,679 SQ. FT.	OR 2.17353 AC.
PHASE 6	64,376 SQ. FT.	OR 1.47787 AC.
PHASE 7	18,908 SQ. FT.	OR 0.43407 AC.
EXISTING TOTAL	495,782 SQ. FT.	OR 11.38159 AC.

WITHDRAWN AREA TABULATION

PHASE 4-B1	2,492 SQ. FT.	OR 0.05721 AC.
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PROPOSED AREA TABULATION

PHASE 1	78,282 SQ. FT.	OR 1.79711 AC.
PHASE 2	98,506 SQ. FT.	OR 2.26129 AC.
PHASE 3	80,914 SQ. FT.	OR 1.85753 AC.
PHASE 4-A	26,188 SQ. FT.	OR 0.60119 AC.
RESIDUE 4-B	31,437 SQ. FT.	OR 0.72169 AC.
PHASE 5	94,679 SQ. FT.	OR 2.17353 AC.
PHASE 6	64,376 SQ. FT.	OR 1.47787 AC.
PHASE 7	18,908 SQ. FT.	OR 0.43407 AC.
PROPOSED TOTAL	493,290 SQ. FT.	OR 11.32438 AC.

SURVEYOR'S CERTIFICATION

I, FRANKLIN E. JENKINS A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THIS PLAT FOR HOLLYBROOKE II CONDOMINIUM, CONSISTING OF THREE (3) SHEETS EXHIBIT D TO THE DECLARATION IS ACCURATE AND COMPLIES WITH SECTION 55-79.58 A OF THE VIRGINIA CONDOMINIUM ACT, AND THAT THE BUILDING AND PHYSICAL IMPROVEMENTS SHOWN HEREON ARE SUBSTANTIALLY COMPLETE.

CERTIFIED CORRECT:

DATE



FRANKLIN E. JENKINS
LICENSED LAND SURVEYOR
VIRGINIA #2061

CURVE TABLE						
NO.	LENGTH	RADIUS	BEARING/DELTA	TANGENT	CHORD BEARING	CHORD
C1	49.07	189.50	14°50'06"	24.67	S74°09'18"W	48.93
C2	28.61	110.50	14°50'04"	14.39	S74°12'11"W	28.53
C3	41.08	240.00	04°21'33"	20.55	S64°27'49"W	41.07
C4	46.80	240.00	04°57'58"	23.42	S59°53'43"W	46.79
C5	31.82	183.00	09°57'47"	15.95	S12°48'07"W	31.78
C6	78.18	183.00	24°28'59"	39.70	S04°25'07"E	77.59
C7	110.00	183.00	34°26'06"	56.72	N00°33'47"E	108.25
C8	53.62	38.00	89°33'48"	37.92	S18°03'14"E	53.69
C9	227.31	324.90	39°50'26"	118.47	S45°49'02"W	222.76

**VICINITY MAP**

THE INFORMATION, DESIGN, AND CONTENT OF THESE DRAWINGS AND/OR DOCUMENTS HERETO ARE PROPRIETARY TO VIKI VIRGINIA, L.L.C. AND CONSTITUTE ITS PROPRIETARY INTELLECTUAL PROPERTY. THESE DRAWINGS AND/OR DOCUMENTS MUST NOT BE DIGITALLY FORWARDED, SHARED OR COPIED, DIGITALLY CONVERTED, MODIFIED, OR USED FOR ANY PURPOSE, IN ANY FORMAT, WITHOUT PRIOR WRITTEN AUTHORIZATION FROM VIKI VIRGINIA, L.L.C. VIOLATIONS MAY RESULT IN PROSECUTION. ONLY APPROVED, SIGNED AND SEALED PLANS OR DRAWINGS MAY BE UTILIZED FOR CONSTRUCTION PURPOSES. © 2019 VIKI VIRGINIA, L.L.C.

APPROVED COUNTY OF FAIRFAX LAND DEVELOPMENT SERVICES ADDRESSING REVIEW	
DATE	BY: [Signature]
FINAL PLAT	
RECOMMENDED FOR APPROVAL FAIRFAX COUNTY LAND DEVELOPMENT SERVICES ALL STREET LOCATIONS AND/OR EASEMENTS CONFORM TO THE REQUIREMENTS OF THIS OFFICE THIS APPROVAL IS NOT A COMMITMENT TO PROVIDE PUBLIC SANITARY SERVICES.	
DATE	BY: Director, Site Development and Inspection Division or Agent
APPROVED FOR BOARD OF SUPERVISORS FAIRFAX COUNTY, VIRGINIA	
DATE	BY: Director, Land Development Services or Agent
APPROVAL VOID IF PLAT IS NOT OFFERED FOR RECORD ON OR BEFORE:	

EXHIBIT D
PLAT SHOWING LOCATIONS
AND DIMENSIONS OF
SUBMITTED LAND, CONVERTIBLE LAND,
WITHDRAWABLE LAND
EXISTING IMPROVEMENTS AND
EXISTING EASEMENTS

**HOLLYBROOKE II
CONDOMINIUM**
MASON DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE: AS SHOWN DATE: JUNE 8, 2020
SHEET 1 OF 3

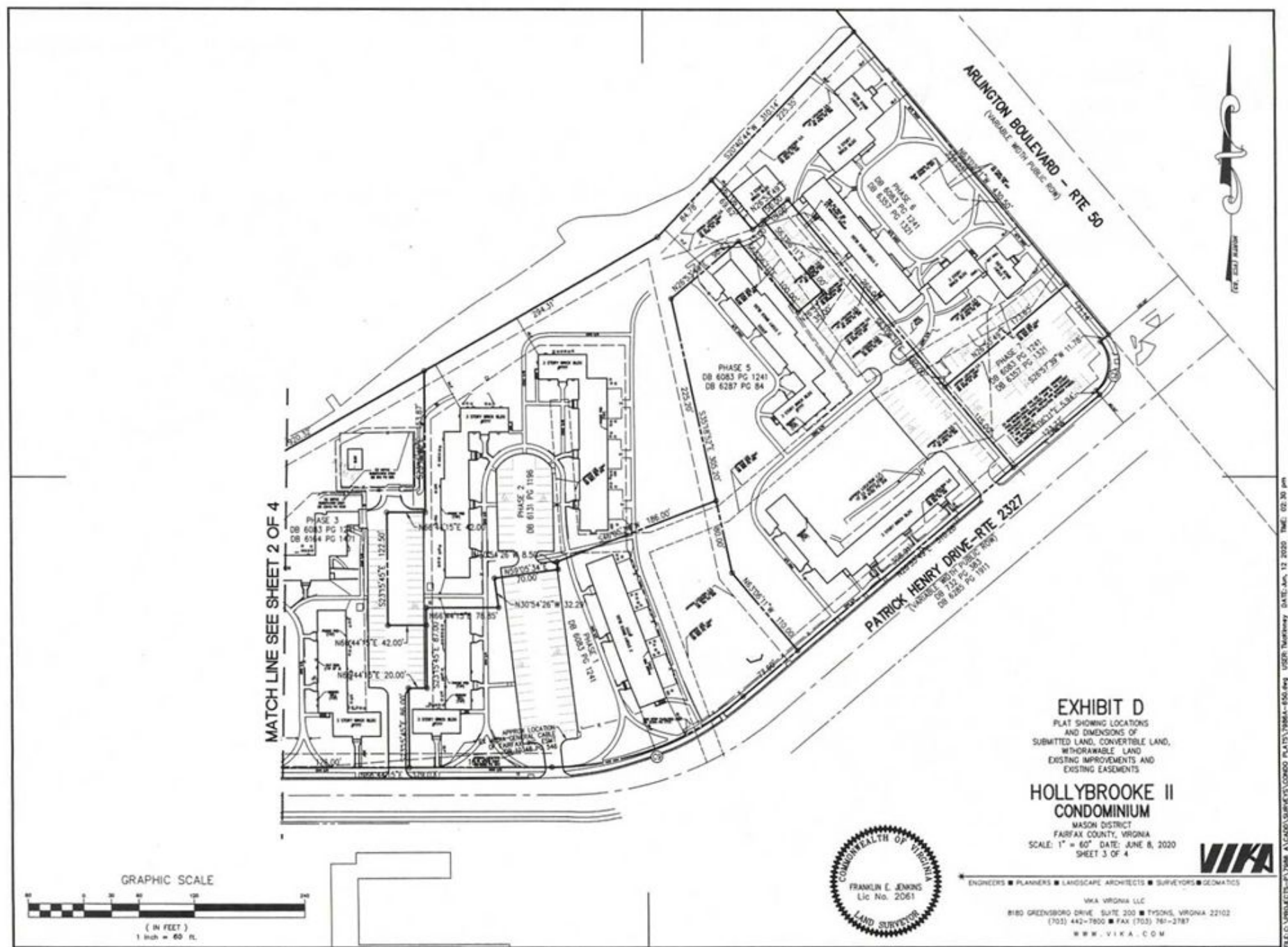


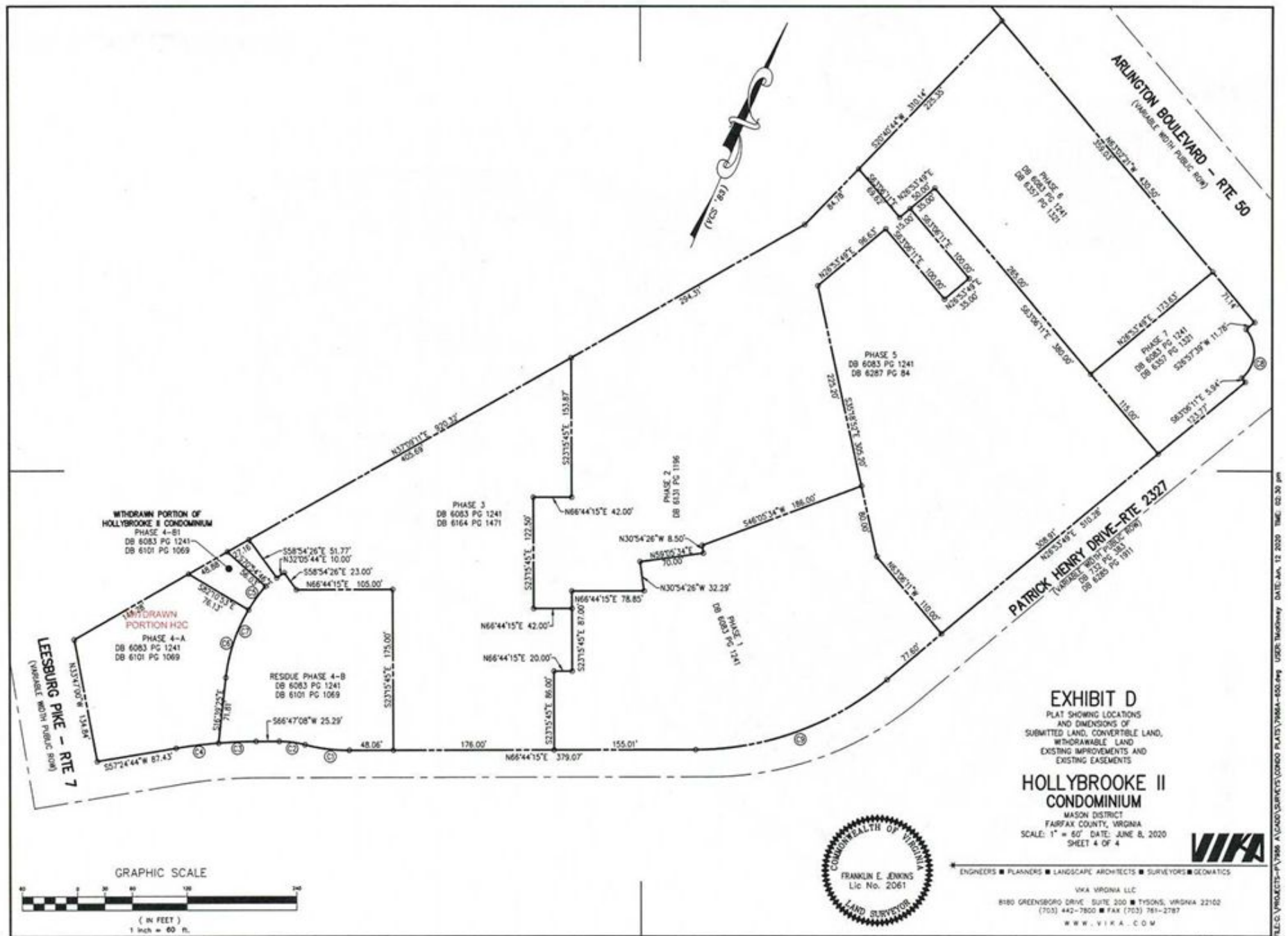
ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ GEOMATICS

VIKI VIRGINIA, L.L.C.
8180 GREENSBORO DRIVE SUITE 200 TYSONS, VIRGINIA 22102
(703) 442-7800 ■ FAX (703) 781-2787
WWW.VIKI.COM

RP







Board Agenda Item
July 28, 2020

4:00 p.m.

Public Comment on Issues of Concern

4:00 p.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. *Anna Elena Gordon, by GEICO, subrogee v. Kevin Lee Keyes*, Case No. GV20-001213 (Fx. Co. Gen. Dist. Ct.)
 - 2. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Lecia A. Reeve*, Case No. CL-2020-0008873 (Fx. Co. Cir. Ct.) (Dranesville District)
 - 3. *Leslie B. Johnson, Fairfax County Zoning Administrator v. FSI Properties, LLC*, Case No. CL-2019-0011149 (Fx. Co. Cir. Ct.) (Dranesville District)
 - 4. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Kathy A. Hale*, Case No. GV20-004394 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
 - 5. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Ben Thomas*, Case No. CL-2020-0008874 (Fx. Co. Cir. Ct.) (Hunter Mill District)
 - 6. *Leslie B. Johnson, Fairfax County Zoning Administrator v. The Malkeet K. Sidhu Revocable Trust, by and through its Trustees Malkeet K. Sidhu, Baltej Singh Sidhu, and Sundeep Singh Sidhu*, Case No. CL-2019-0017572 (Fx. Co. Cir. Ct.) (Lee District)
 - 7. *Leslie B. Johnson, Fairfax County Zoning Administrator v. King Homes, Inc., and Terrace Townhomes of Annandale*, Case No. CL-2020-0008407 (Fx. Co. Cir. Ct.) (Mason District)
 - 8. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Aaron Samson, Mary Samson, and Zaaki Restaurant and Cafe LLC*, Case No. CL-2020-0009420 (Fx. Co. Cir. Ct.) (Mason District)
 - 9. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. LZ Investments, LLC*, Case No. GV20-004253 (Fx. Co. Gen. Dist. Ct.) (Mason District)

10. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John N. Withrow*, Case No. CL-2019-0014360 (Fx. Co. Cir. Ct.) (Mount Vernon District)
11. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Kathleen E. Sprague and Timothy F. Showalter*, Case No. GV19-026357 (Fx. Co. Gen. Dist. Ct.) (Providence District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Maeen Al-Huraibi*, Case No. CL-2020-0008402 (Fx. Co. Cir. Ct.) (Springfield District)
13. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Mark Anthony Shiflette*, Case Nos. GV20-005273 and GV20-005274 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
14. *Elizabeth Perry, Property Maintenance Code Official v. Mehrnoosh Shirazi Linke*, Case No. GV 20-000878 (Fx. Co. Gen. Dist. Ct.) (Sully District)
15. *Board of Supervisors of Fairfax County v. Casey Margenau Fine Homes & Estates, LLC*, Case No. GV20-06960 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)