

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 19, 2022**

AGENDA

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

**ADMINISTRATIVE
ITEMS**

1	Approved	Authorization to Advertise a Public Hearing to Convey County-Owned Property to the Virginia Department of Transportation for the Route 29 Widening Project Phase II (Springfield District)
2	Approved	Approval of Traffic Calming Measures as Part of the Residential Traffic Administration Program for Memorial Street (Mount Vernon District)
3	Approved	Extension of Review Period for 2232 Applications (Mason District)
4	Approved	Extension of Review Period for 2232 Application (Springfield District)
5	Approved	Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the Department of Homeland Security for the FY 2022 DHS Targeted Violence and Terrorism Prevention (TVTP) Grant Program
6	Approved	Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the Bureau of Justice Assistance for the Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies (Category 3) Grant

ACTION ITEMS

1	Approved	Approval of a Cooperative Agreement – Fairfax County Partnership with the United States Geological Survey for a Comprehensive Water Resources Monitoring Network and Stream Restoration Monitoring in the Long Branch Watershed
2	Approved	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

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 19, 2022**

**ACTION ITEMS
(continued)**

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| 3 | Approved | Approval to Execute an Agreement of Perpetual Maintenance with the Virginia Department of Transportation for the Joint Operation and Maintenance of the Shared-Use Path at the Intersection of Provincial Drive and Old Meadow Road (Providence District) |
| 4 | Approved | Approval and Authorization to Execute a Project Administration Agreement with the Virginia Department of Transportation for Braddock Road at Old Lee Road Improvements (Sully District) |
| 5 | Approved | Approval of a Memorandum of Agreement between the Virginia Department of Transportation and Fairfax County for the Stream Restoration of Scotts Run |
| 6 | Approved | Approval of Changes to the Fairfax County Purchasing Resolution |
| 7 | Approved | Approval of a Project Administration Agreement Resolution with the Virginia Department of Transportation for the Implementation of Pedestrian Improvements for the Route 29 Bridge over Cub Run Project (Sully District) |
| 8 | Approved | Approval of a Board of Supervisors' Draft Regular Meeting Schedule for Calendar Year 2023 |
| 9 | Approved | Endorsement of Vienna Metro Station Bicycle and Pedestrian Improvements Project (Providence District) |
| 10 | Approved | Approval of a Resolution Endorsing Projects Being Submitted for State Funding Through the Commonwealth Transportation Board's FY 2024-2029 Smart Scale Program |
| 11 | Approved | Approval of I-495 Southside Express Lanes Study Comments (Mason, Lee, Mount Vernon Districts) |

**CONSIDERATION
ITEMS**

- | | | |
|---|-----------------|---|
| 1 | Approved | Approval of an Amendment to the Bylaws of the Police Civilian Review Panel to Codify a Subcommittee Review Process for Initial Review of Complaints |
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**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 19, 2022**

**CONSIDERATION
ITEMS
(continued)**

2	Approved	Approval of Amendments to the Fairfax-Falls Church Community Services Board Bylaws
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CLOSED SESSION

Done	Closed Session
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**PUBLIC
HEARINGS**

3:30	Approved	Public Hearing on SE 2021-SU-00017 (RP Industrial Owner LLC) (Sully District)
3:30	Approved	Public Hearing on Proposed Modifications to the Site-Specific Plan Amendment (SSPA) Process
4:00	Approved	Public Hearing on the Acquisition of Certain Land Rights Necessary for Construction of Scotts Run Station North (Providence District)
4:00	Approved	Public Hearing on the Acquisition of Certain Land Rights Necessary for Construction of Pole Road Crosswalk Improvements (Mount Vernon District)
4:00	Approved	Public Hearing on a Proposal to Vacate a Portion of Westbranch Drive (Providence District)
4:00	Approved	Public Hearing on a Proposal to Vacate and Abandon a Portion of Loisdale Road / Route 789 (Lee District)
4:30	Approved	Public Hearing to Lease County-Owned Property at 7936 Telegraph Road to STC Three LLC (Lee District)



Fairfax County, Virginia

BOARD OF SUPERVISORS

AGENDA

Tuesday
July 19, 2022

9:30 a.m.

PRESENTATIONS

- RESOLUTION — To recognize the members of the McLean High School “It’s Academic” team for their championship victory. Requested by Supervisor Foust.
- RESOLUTION — To recognize Second Story for their 50th anniversary of service to young people in the community. Requested by Chairman McKay.
- RESOLUTION — To recognize Cathy Ledec for her service in support of Fairfax County environmental initiatives. Requested by Chairman McKay and Supervisor Storck.
- RESOLUTION — To recognize Virginia Railway Express on the organization’s 30th anniversary, for its service to the community. Requested by Chairman McKay and Supervisors Walkinshaw, Alcorn and Storck.

STAFF:

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

Board Agenda Item
July 19, 2022

9:30 a.m.

Matters Presented by Board Members

Board Agenda Item
July 19, 2022

9:30 a.m.

Items Presented by the County Executive

Board Agenda Item
July 19, 2022

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Convey County-Owned Property to the Virginia Department of Transportation for the Route 29 Widening Project Phase II (Springfield District)

ISSUE:

Authorization to advertise a public hearing to convey County-owned property to the Virginia Department of Transportation (VDOT) for the Route 29 Widening Project Phase II.

RECOMMENDATION:

The County Executive recommends that the Board authorize a public hearing regarding the proposed conveyance to VDOT to be held on September 13, 2022, at 4:00 p.m.

TIMING:

Board action is requested for July 19, 2022, to provide sufficient time to advertise the proposed public hearing on September 13, 2022, at 4:00 p.m.

BACKGROUND:

VDOT is the construction manager for the Route 29 Widening Project Phase II which will rebuild and enlarge one-and-a-half miles of Route 29 (Lee Highway) from four to six lanes between Union Mill Road and Buckleys Gate Drive. As part of the land acquisition process, VDOT has approached the County about purchasing a 187 square foot parcel identified as Tax Map No. 0554 01 0037A. The parcel will become part of a ten-foot-wide shared-use path on the south side of the expanded road.

Virginia Code Ann. § 15.2-1800 requires a locality to hold a public hearing before it may dispose of any real property. Staff did explore with VDOT engineers the possibility of the Board dedicating a perpetual road easement over the parcel rather than conveying the property itself to VDOT to expedite the processing of the land rights. However, it was determined that the retention of fee simple rights to the parcel could create liability issues in the future for the County involving the shared-use path.

VDOT presented an offer of compensation of \$500 for the County's fee simple conveyance of the parcel.

FISCAL IMPACT:

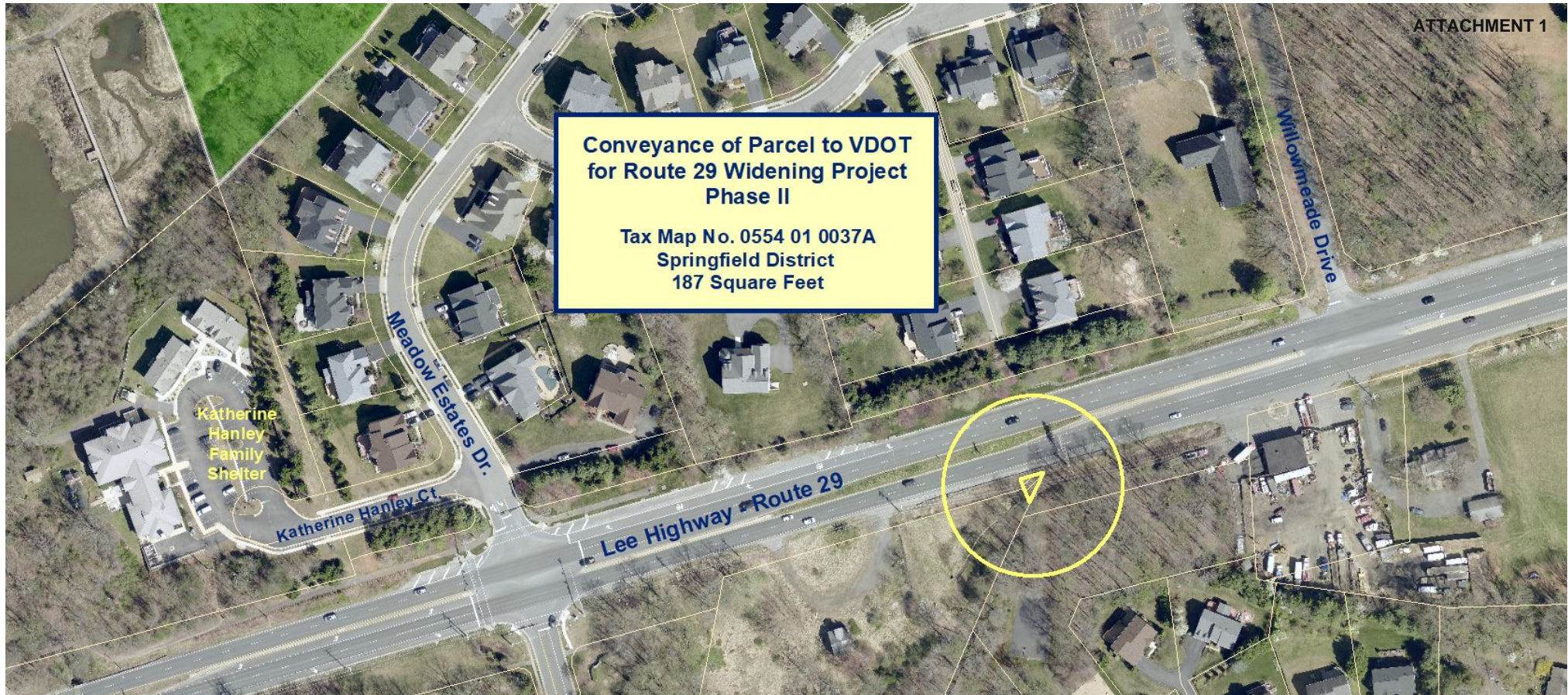
VDOT's payment of \$500 will be deposited in the General Fund.

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ENCLOSED DOCUMENTS:
Attachment 1 - Location Map

STAFF:
Ellicia L. Seard-McCormick, Deputy County Executive
Jose A. Comayagua, Director, Facilities Management Department
Tom Biesiadny, Director, Department of Transportation

ASSIGNED COUNSEL:
F. Hayden Coddington, Assistant County Attorney



ADMINISTRATIVE - 2

Approval of Traffic Calming Measures as Part of the Residential Traffic Administration Program for Memorial Street (Mount Vernon District)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board endorse the traffic calming plan for Memorial Street (Attachment I and Attachment II) consisting of the following:

- Three speed humps on Memorial Street (Mount Vernon District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) be requested to schedule the installation of the approved traffic calming measures as soon as possible.

TIMING:

Board action is requested on July 19, 2022, to allow the proposed measures to be installed as soon as possible.

BACKGROUND:

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

On June 7, 2022, FCDOT received verification from the Mount Vernon District Supervisor's office confirming community support for the Memorial Street traffic calming plan.

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FISCAL IMPACT:

Funding in the amount of \$23,000 is necessary to fund the traffic calming measures associated with this traffic calming project. Funds are currently available in Project 2G25-076-000, Traffic Calming Program, Fund 300-C30050, Transportation Improvements.

ENCLOSED DOCUMENTS:

Attachment I: Traffic Calming Resolution for Memorial Street
Attachment II: Traffic Calming Plan for Memorial Street

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

RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
TRAFFIC CALMING MEASURES
MEMORIAL STREET
MOUNT VERNON DISTRICT

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, July 19, 2022, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the residents in the vicinity of Memorial Street have requested the Mount Vernon District Supervisor's Office of Fairfax County to consider remedial measures to reduce the speed of traffic on Memorial Street; and

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

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

WHEREAS, the Traffic Calming Plan was subsequently approved by the occupied residences within the appropriate surveyed area; and

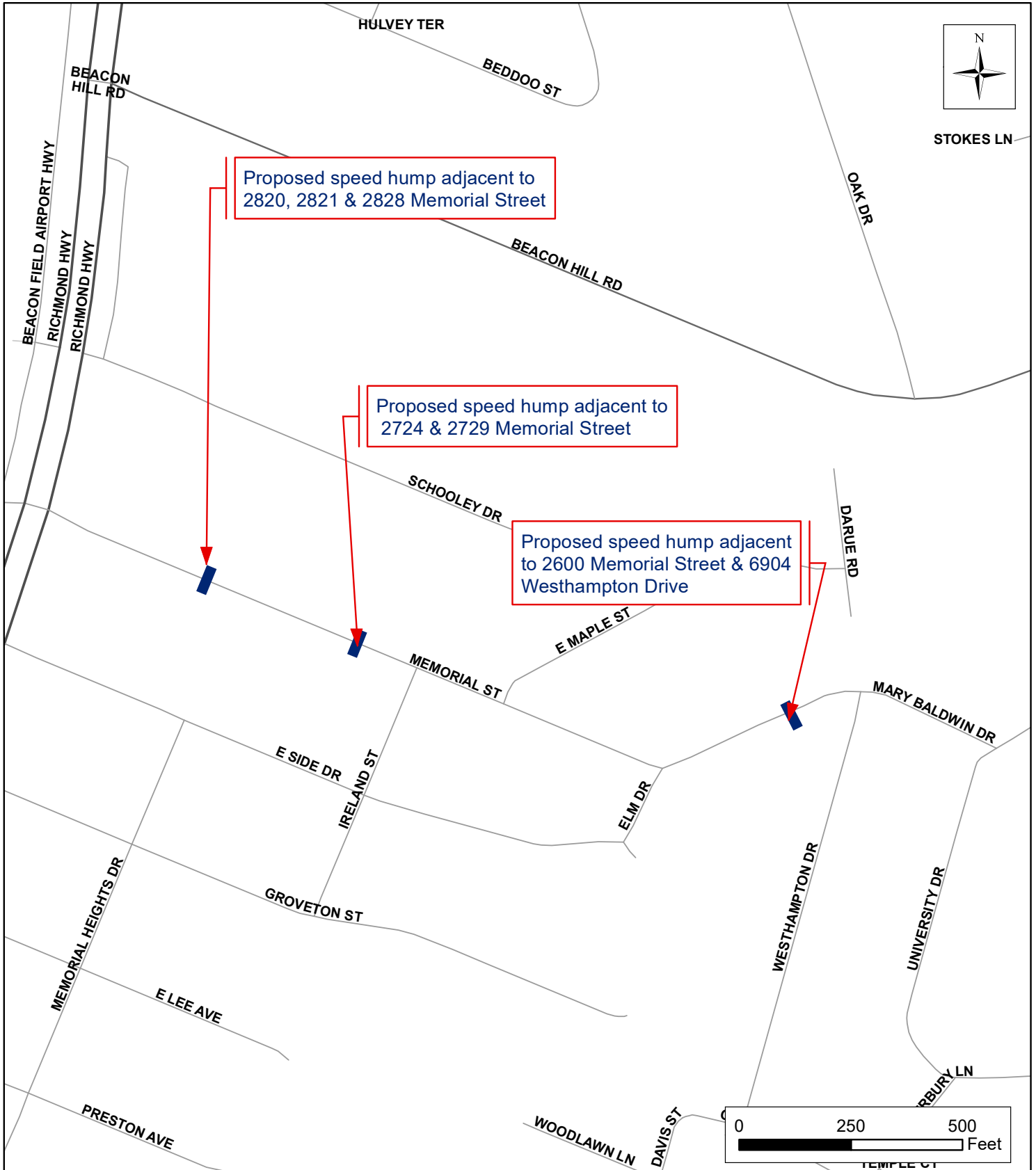
WHEREAS, the intended source of funding for the Traffic Calming Plan is Fairfax County.

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

ADOPTED this 19th day of July, 2022.

A Copy Teste:

Jill G. Cooper
Clerk to the Board of Supervisors



Tax Map: 93-1

June 2022

**Fairfax County Department of Transportation
Residential Traffic Administration Program
Traffic Calming Plan
Memorial Street
Mount Vernon District**



ADMINISTRATIVE - 3

Extension of Review Period for 2232 Applications (Mason District)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following applications: 2232-2022-MA-00002 and 2232-2022-MA-00003

TIMING:

Board action is requested on July 19, 2022, and is required by July 25, 2022, to extend the review period for the applications noted above before their expiration date.

BACKGROUND:

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

PROJECT DESCRIPTION:

The Department of Public Works and Environmental Services (DPWES) submitted two 2232 applications for the proposed permanent and temporary facilities for the West Annandale Fire Station # 23.

The review period for the following applications should be extended to October 31, 2022.

2232-2022-MA-00002	Department of Public Works and Environmental Services (DPWES) West Annandale Fire Station # 23 (Permanent Station) Tax Map No. 58-4 ((1)) 62 8914 Little River Turnpike Fairfax, VA 22031 Mason District Accepted February 25, 2022
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2232-2022-MA-00003 Department of Public Works and Environmental Services
(DPWES)
West Annandale Fire Station # 23 (Temporary Station)
Tax Map No. 59-3 ((1)) 7
8724 Little River Turnpike
Fairfax, VA 22031
Mason District
Accepted February 25, 2022

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
None.

STAFF:
Rachel Flynn, Deputy County Executive
Barbara A. Byron, Director, Department of Planning and Development (DPD)
Leanna O'Donnell, Director, Planning Division (PD), DPD
David Stinson, Planner, Facilities Planning Branch, PD, DPD

ADMINISTRATIVE - 4

Extension of Review Period for 2232 Application (Springfield District)

ISSUE:

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

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following application: 2232-2022-SP-00005.

TIMING:

Board action is requested on July 19, 2022, and is required by July 26, 2022, to extend the review period for the application noted above before its expiration date.

BACKGROUND:

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

PROJECT DESCRIPTION:

The Department of Public Works and Environmental Services (DPWES) is requesting 2232 approval to construct a temporary fire station at a new location, while the existing Fairview Fire Station #32 is under re-construction at its permanent location.

The review period for the following application should be extended:

2232-2022-SP-00005	Department of Public Works and Environmental Services (DPWES) Fairview Temporary Fire Station #32 Tax Map No. 77-3 ((2)) 16 11112 Chapel Road, Fairfax Station, VA Springfield District Accepted May 27, 2022 Extended to September 24, 2022
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FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

None.

STAFF:

Rachel Flynn, Deputy County Executive

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

Michelle K. Stahlhut, Chief, Facilities Planning Branch, Planning Division (DPD)

Salem Bush, Planner, Facilities Planning Branch, Planning Division, (DPD)

ADMINISTRATIVE – 5

Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the Department of Homeland Security for the Targeted Violence and Terrorism Prevention (TVTP) Grant Program

ISSUE:

Board of Supervisors authorization is requested for the Fairfax County Police Department (FCPD) to apply for and accept funding, if received, from the Department of Homeland Security (DHS) for the Targeted Violence and Terrorism Prevention (TVTP) Grant Program in the amount of \$215,000. The proposed project will develop a threat assessment and management (TAM) team, based on national best practices, made up of law enforcement, mental health, and community services personnel for the Northern Virginia region.

The proposed project would build upon and complement current local and state initiatives in Northern Virginia that divert individuals encountering law enforcement while in mental health crisis to programs to better address these concerns. The TAM team would expand this to identify and divert individuals who may be at risk to radicalize or mobilize to violence prior to any encounters with law enforcement. No Local Cash Match is required. 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 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 authorize the FCPD to apply for and accept funding, if received, from the Department of Homeland Security for the Targeted Violence and Terrorism Prevention Grant Program in the amount of \$215,000. Funding will be used to develop a threat assessment and management (TAM) team, based on national best practices, made up of law enforcement, mental health, and community services personnel for the Northern Virginia region. No new positions will be created 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 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.

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TIMING:

Board action is requested on July 19, 2022. Due to an application deadline of May 18, 2022, the application was submitted pending Board approval. This Board item is being presented at the earliest subsequent Board meeting. If the Board does not approve this request, the application will be immediately withdrawn.

BACKGROUND:

Since the September 11th attacks, terrorist threats to the United States have evolved and diversified but remain dynamic and volatile. The most significant terrorist threat currently facing the homeland comes from lone offenders and small groups of individuals who commit acts of violence. They are motivated by a broad range of violent racial, ethnic, political, religious, anti-government, societal, or personal ideological beliefs and grievances. Pandemic-related stressors also have contributed to increased societal strains and tensions, including grievances over public health measures and perceived government restrictions. Violent extremists' motivations and grievances are often influenced and exacerbated by conspiracy theories online in the form of misinformation, disinformation. Many violent extremists exploit online platforms to spread hate, sow discord and division, and promote narratives to encourage violence.

Domestic violent extremists (DVEs) represent the most persistent terrorism-related threat facing the United States. Among DVEs, racially or ethnically motivated violent extremists, including white supremacists, likely will remain the most lethal DVE threats in the United States. Since 2020, however, there has also been a significant increase in anti-government and anti-authority violent extremism, particularly from militia violent extremists, which typically target law enforcement, elected officials, and government personnel and facilities. Foreign terrorist organizations still have the intent to carry out attacks in the United States or inspire others, known as Homegrown Violent Extremists (HVEs), to do so, both within and from beyond our borders. Al-Qaeda and ISIS have been diminished by longstanding pressure, but their networks and affiliates have diffused and persisted, often in areas of enduring conflict or lacking governance.

Terrorism and targeted violence have harmful effects on our communities. Preventing acts of terrorism and targeted violence requires a whole society approach and is part of Goal 1 of the DHS Strategic Plan. The DHS Targeted Violence and Terrorism Prevention Grant Program supports the creation of sustainable prevention capabilities, both online and in local communities. This program supports the development of promising practices by reserving a portion of the funds for innovative approaches.

This program supports projects that prevent all forms of targeted violence and terrorism as well as projects that seek to prevent emerging or growing threats. Individuals and organizations with violent ideologies, conspiracies, and grievances of all kinds are

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weaponizing online platforms to radicalize individuals to commit targeted violence; this program supports online, offline, and hybrid programs that address this threat. The proposed project will develop a threat assessment and management (TAM) team, based on national best practices, made up of law enforcement, mental health, and community services personnel for the Northern Virginia region. This core team will produce threat assessments based on an appraisal of observed (or reasonably observable) behaviors to identify potentially dangerous or violent situations, to investigate/assess them, and to manage them. The overall goal will be to ensure the safety of all involved, while respecting individual privacy, civil rights, and civil liberties.

To complement the threat assessment and management program, awareness training for community members and partners will be provided quarterly. The training curriculum will cover behavioral indicators of mobilization or radicalization to violence and how to refer individuals to the TAM team or law enforcement if there is a risk of imminent harm. The total amount project the Fairfax County Police Department will spend will be approximately \$215,000.

FISCAL IMPACT:

Grant funding in the amount of \$215,000 is being requested to provide a Targeted Violence and Terrorism Prevention Grant Program. No Local Cash Match is required. This grant does allow the recovery of indirect costs; however, because this funding opportunity is highly competitive, the FCPD has elected to omit inclusion of indirect costs to maximize the proposal's competitive position. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards in FY 2023.

CREATION OF NEW POSITIONS:

No positions will be created by this grant award.

ENCLOSED DOCUMENTS:

Attachment 1 – Summary of Grant Proposal

STAFF:

Thomas Arnold, Deputy County Executive for Safety and Security
Kevin Davis, Chief of Police

**Target Violence and Terrorism Prevention (TVTP) Grant Program
Summary of Grant Proposal**

Grant Title:	Target Violence and Terrorism Prevention (TVTP) Grant Program
Funding Agency:	Department of Homeland Security
Applicant:	Fairfax County Police Department
Funding Amount:	Funding of \$215,000 has been requested.
Proposed Use of Funds:	<p>Funding will be used to develop a threat assessment and management (TAM) team, based on national best practices, made up of law enforcement, mental health, and community services personnel for the Northern Virginia region. This core team will produce threat assessments based on an appraisal of observed (or reasonably observable) behaviors to identify potentially dangerous or violent situations, to investigate/assess them, and to manage them. The overall goal will be to ensure the safety of all involved, while respecting individual privacy, civil rights, and civil liberties.</p> <p>To complement the threat assessment and management program, awareness training for community members and partners will be provided quarterly. The training curriculum will cover behavioral indicators of mobilization or radicalization to violence and how to refer individuals to the TAM team or law enforcement if there is a risk of imminent harm.</p> <p>The proposed project would build upon and complement current local and state initiatives in Northern Virginia that divert individuals encountering law enforcement while in mental health crisis to programs to better address these concerns. The TAM team would expand this to identify and divert individuals who may be at risk to radicalize or mobilize to violence prior to any encounters with law enforcement.</p>
Performance Measures:	<p>The proposed project to address this evolving problem facing our communities is within the Promising Practices Track and incorporates the following project types:</p> <ul style="list-style-type: none"> • Threat Assessment & Management Teams • Raising Societal Awareness • Bystander Training
Grant Period:	October 1, 2022 – September 30, 2024

ADMINISTRATIVE - 6

Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the Bureau of Justice Assistance for the Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies (Category 3) Grant

ISSUE:

Board of Supervisors authorization is requested for the Fairfax County Police Department (FCPD) to apply for and accept funding, if received, from the Bureau of Justice Assistance, Body-worn Camera Policy and Implementation Program to Support Law Enforcement Agencies (Category 3) Grant in the amount of \$1,000,000. The proposed project will fund and enhance an established program for sharing digital evidence with the Fairfax County Office of the Commonwealth's Attorney (Commonwealth's Office) for use in criminal prosecution. This proposal would utilize grant funding for the enhancement of system integrations to assist in expediently sharing digital evidence to the Commonwealth's Office, providing needed tools for the review of digital evidence by their staff, and hiring dedicated personnel to assist in digital evidence management, training, and support. The goal would be to achieve demonstrable results in faster and more comprehensive sharing and review of digital evidence used in the prosecution of crimes. No Local Cash Match is required. If the actual award received is significantly different from the application amount, another item will be submitted to the Board requesting an appropriation of grant funds. Otherwise, staff will process the award administratively 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 authorize the FCPD to apply for and accept funding, if received, from the Bureau of Justice Assistance for the Body-worn Camera Policy and Implementation Program to Support Law Enforcement Agencies (Category 3) Grant in the amount of \$1,000,000. Funding will support the enhancement of system integrations to assist in expediently sharing digital evidence to the Commonwealth's Office, providing needed tools for the review of digital evidence by their staff, and hiring dedicated personnel to assist in digital evidence management, training, and support. No new positions will be created 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 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.

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TIMING:

Board action is requested on July 19, 2022. Due to an application deadline of May 25, 2022, the application was submitted pending Board approval. This Board item is being presented at the earliest subsequent Board meeting. If the Board does not approve this request, the application will be immediately withdrawn.

BACKGROUND:

In 2018, FCPD conducted a pilot program to assess Body-worn camera (BWC) adoption and began wide-scale BWC deployment in 2020. FCPD currently has 1,210 sworn positions outfitted with BWCs, encompassing all officers working in an operational capacity. Axon Enterprise, Inc. was selected as the BWC and cloud-based video storage vendor. Shortly after BWC deployment, FCPD also adopted Axon's in-car video (ICV) and interview room recording systems.

The Fairfax County Office of the Commonwealth's Attorney handles the prosecution of all felony and most misdemeanor crimes occurring within Fairfax County. In addition to handling criminal cases referred by FCPD, the Commonwealth's Office also handles criminal cases from the Virginia State Police, Fairfax City Police Department, Town of Herndon Police Department, and Town of Vienna Police Department. This results in one of the highest caseloads in the Commonwealth of Virginia. Both the attorneys and support staff are responsible for the review of BWC, ICV, and other digital evidence in preparation for prosecution and dissemination in response to discovery requests.

FCPD and the Commonwealth's Office are committed to the ethical use of digital evidence to assist in achieving speedy and appropriate criminal justice outcomes. To help achieve that goal, FCPD and the Commonwealth's Office partnered to develop a policy for the use of BWC video in criminal proceedings. Based on this co-production, FCPD adopted a policy requiring that for any event involving a criminal arrest or warrant being obtained, all related BWC and/or ICV video shall be provided to the Office of the Commonwealth's Attorney as soon as feasible. This was done to give the Commonwealth's Office staff time to review the potentially large number of videos related to a criminal arrest before any court appearance or discovery requests. To alleviate privacy concerns over access to BWC video raised by community stakeholders, FCPD and the Commonwealth's Office obtained separate instances of Axon's digital evidence management system (DEMS), called Evidence.com. This limited the Commonwealth's Office access to only videos shared for use in criminal proceedings while also providing them greater management capabilities for videos shared to their office.

Before the adoption of BWCs, FCPD already regularly generated large amounts of digital evidence. Sources of such evidence include, but were not limited to, digital photography, helicopter video, automated license plate reader data, crime scene laser imaging, computer and mobile device forensic data extractions, electronic data secured

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through search warrants and subpoena requests, and various types of digital files provided by the public for use in investigations. Much of this digital evidence was stored in a patchwork of on-site servers, individual computers, and physical digital media storage. The result was a lack of consistency in how this digital evidence was transferred to the Commonwealth's Office. Depending on the type of files and their size, the evidence would be provided using a mixture of email attachments, Microsoft OneDrive file-sharing, or hand-delivered digital media. The difficulty in tracking where particular evidence was stored and how it was provided was a detriment to the speedy review of this evidence by Commonwealth staff. It also resulted in it being nearly impossible to track the amount or how quickly this evidence was being provided.

With the adoption of the Evidence.com DEMS by both FCPD and the Commonwealth's Office, FCPD began transitioning most digital evidence to this more secure and manageable system. Streamlining of digital evidence intake provided for simpler and faster sharing of this evidence to the Commonwealth's Office. Under the co-developed policy, FCPD officers and detectives would gather related BWC and ICV videos into an Evidence.com "Case", which is then shared with the Commonwealth's Office. This provided a more organized and easily accessible method of finding related videos. As FCPD began uploading other types of digital evidence to Evidence.com, that evidence could also be added to the same "Cases" function for sharing, providing an all-in-one location where digital evidence could be accessed for a particular case. Using this method, over 24 months, 58,348 BWC/ICV recordings, totaling 29,835 hours of video, were shared by FCPD with the Commonwealth's Office. Additionally, more than 33,000 other digital evidence files were shared using Evidence.com

Despite the successes of these initiatives, some challenges remain. Due to the high costs of storage in Evidence.com and limitations of the system itself, extremely large digital files, such as those from forensic extractions of computers and mobile devices or files created by the Faro crime scene laser imaging tools, cannot be uploaded into the DEMS. These files continue to be stored on separate on-site storage solutions. Additionally, while Evidence.com allows for the storage of nearly any type of digital data, its standard feature set only allows for native viewing of common file types. Less common or proprietary file types must be downloaded and accessed using a litany of specialized programs. While FCPD utilizes a catalog of player programs and forensic tools, such as Input-Ace Video Analysis, to work with this type of digital evidence, the Commonwealth's Office lacks such capabilities. This results in a time-consuming process of needing to convert this digital evidence to more common file types before it is provided to the Commonwealth's Office.

The streamlining of storage and sharing further defined the difficulties in relating digital evidence collected from a multitude of sources. Due to budgetary concerns, FCPD was unable to hire staff dedicated to the management of the massive amount of digital evidence stored in the Evidence.com DEMS and other storage solutions. The management of this evidence, and responsibility for ensuring it is shared with the Commonwealth's Office, was delegated to the officer or detective responsible for a

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case, each of whom has varying degrees of technological competence, resulting in errors, inconsistency, and compliance failures. Training has helped mitigate these issues to some extent but, without dedicated staff, it can be challenging to provide such training on a routine basis for a large department.

With the amount of digital evidence that may be involved in even the simplest of offenses, the potential for digital evidence to not be identified and provided to a prosecutor's office, along with the ramifications of such a failure, are significant. FCPD procured Axon's auto-tagging service, which utilizes data from the computer-aided dispatch (CAD) and records management system (RMS) to automatically relate and apply identifying metadata to BWC and ICV videos. This resulted in a significant workload reduction for individual camera operators and provided better consistency by reducing the errors inherent to manual data entry. While accurate, the auto-tagging feature generally fails to add metadata to 5-8% of videos, usually due to police events that fall outside of the feature's operating parameters.

While Axon's auto-tagging feature will only work with BWC and ICV video, the use of similar system integrations to apply identifying information automatically and consistently to other types of digital evidence is an area of further interest. FCPD sees promise in the use of such integration and automation to provide cost-effective assistance in relating a variety of digital evidence to a particular case so that it can be efficiently transferred to the Commonwealth's Office for review. Based on experience, FCPD is aware that such technology also has limits. The inclusion of dedicated staff to provide insight and correction to complex situations where the technology may fall short would provide a balanced solution. Such staff can also provide ongoing training and support to personnel that must utilize this evidence. Once the evidence has been provided to the Commonwealth's Office, expanding their capability to quickly access it for review will ensure the evidence is used to its maximum efficacy. The total amount the Fairfax County Police Department will spend with these funds will be approximately \$1,000,000.

FISCAL IMPACT:

Grant funding for \$1,000,000 is being requested through the Body-worn Camera Policy and Implementation Program to Support Law Enforcement Agencies (Category 3) Grant. No Local Cash Match is required. This grant does allow the recovery of indirect costs; however, because this funding opportunity is highly competitive, the FCPD has elected to omit the inclusion of indirect costs to maximize the proposal's competitive position. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards in FY 2023.

CREATION OF NEW POSITIONS:

No positions will be created by this grant award.

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ENCLOSED DOCUMENTS:
Attachment 1: Summary of Grant Application

STAFF:
Thomas Arnold, Deputy County Executive for Safety and Security
Kevin Davis, Chief of Police

**Body-worn Camera Policy and Implementation Program to Support Law Enforcement Agencies
(Category 3) Grant
Summary of Grant Proposal**

Grant Title:	Body-worn Camera Policy and Implementation Program to Support Law Enforcement Agencies (Category 3) Grant
Funding Agency:	Bureau of Justice Assistance
Applicant:	Fairfax County Police Department
Funding Amount:	Funding of \$1,000,000 has been requested.
Proposed Use of Funds:	Funding will enhance an established program for sharing digital evidence with the Fairfax County Office of the Commonwealth's Attorney for use in criminal prosecution. This proposal would utilize grant funding for the enhancement of system integrations to assist in expediently sharing digital evidence to the Commonwealth's Office, providing needed tools for the review of digital evidence by their staff, and hiring dedicated personnel to assist in digital evidence management, training, and support. The goal would be to achieve demonstrable results in faster and more comprehensive sharing and review of digital evidence used in the prosecution of crimes.
Performance Measures:	To increase FCPD and the Commonwealth's Office's abilities to comprehensively relate all digital evidence from a particular event or investigation and ensure that evidence is provided to the Commonwealth's Office as quickly as possible. Greater time for review, along with providing the tools needed to allow for that review on-demand, will help ensure that the digital evidence can be used to maximum efficiency in criminal proceedings and appropriate justice outcomes. Additionally, the success of this proposal would result in reduced staff workload and potential cost savings. Lastly, documentation of the development and implementation of the proposed program could be used by other law enforcement agencies and prosecutor's offices facing similar challenges.
Grant Period:	October 1, 2022 – September 30, 2025

ACTION – 1

Approval of a Cooperative Agreement – Fairfax County Partnership with the United States Geological Survey for a Comprehensive Water Resources Monitoring Network and Stream Restoration Monitoring in the Long Branch Watershed

ISSUE:

Board of Supervisors authorization is requested for Fairfax County (County) to enter into the Joint Funding Agreement (JFA) with the United States Geological Survey (USGS) to continue and combine two existing joint partnerships:

- Water Resources Monitoring Network established in the County
- Assessment of Reach and Watershed-Scale Responses to Stream Restoration in Long Branch (Branch), Fairfax, Virginia

The merger of these two programs will improve efficiency by reducing administrative burdens and building upon our ongoing collaboration with the USGS.

RECOMMENDATION:

The County Executive recommends the Board authorize a five-year JFA between the County and the USGS in the amount of \$3,335,000 for FY 2023 through FY 2027. This agreement combines the existing water resources monitoring network first established in 2007 with a program established in September 2021 that provides specialized monitoring in the Long Branch sub-watershed of Accotink Creek. The JFA funds five years of monitoring at a standard annual cost (with inflationary increases) as outlined in Attachment 1.

TIMING:

Board action is requested on July 19, 2022, to ensure timely combination and continuance of the monitoring networks.

BACKGROUND:

Water quality Best Management Practices (BMPs), such as stream restorations, green stormwater infrastructure, and facility retrofits, are designed and constructed to reduce excess runoff and pollution reaching the receiving waters of the County that drain into the Potomac River, and eventually, the Chesapeake Bay. BMPs have been employed and constructed throughout the County for the past several decades and will continue to

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be implemented as part of the County's ongoing stormwater management efforts to reduce flooding, improve aquatic resources, and meet various regulatory requirements of the federally mandated Municipal Separate Storm Sewer System (MS4) permit. The County invests approximately \$23 million in watershed improvement projects annually. Long-term monitoring to evaluate BMP effectiveness on the watershed scale is critical from both regulatory compliance and watershed planning perspectives.

In 2007, the County established a monitoring agreement with the USGS to create a Water Resources Monitoring Network that collects water quality and quantity data. The Board authorized an initial series of five annual JFAs through FY 2012. This partnership was intended to be an ongoing, long-term monitoring effort to evaluate and report on the benefits of the projects implemented under the watershed improvement program.

In FY 2013, the Board of Supervisors (BOS) authorized the County Executive (CE) to enter into a similar agreement through FY 2017, while also expanding the monitoring network by adding five new monitoring stations. On July 25, 2017, the Board of Supervisors again authorized the CE to continue the partnership through FY 2022 by another series of annual JFAs.

In September 2021, the BOS authorized the CE to sign a separate one-year agreement with the USGS to assess reach and watershed-scale responses to the planned, large-scale restoration of the Long Branch tributary sub-watershed of Accotink Creek. This tributary was identified by the Commonwealth as impaired for excessive sediments and chloride and the County must meet pollution reduction targets. Among the goals for the Long Branch restoration is the long-term sustainability of Lake Accotink. This JFA incorporates the Long Branch monitoring into the existing Water Resources Monitoring Network through a single five-year JFA renewal (FY 2023-FY 2027), as outlined by this Action Item.

The USGS has performed its obligations under the JFA in a professional and proficient manner throughout this partnership, including annual updates to County staff and published reports (2014 and 2020) that assessed the data collected during the first ten years of monitoring. Publication by the USGS has multiple benefits, including outreach to stakeholders and the general public, using observed pollutant loadings for comparison to modeled pollutant loads and potential Total Maximum Daily Load (TMDL) allocations, such as the Accotink Creek and the Chesapeake Bay TMDLs, and demonstrating Fairfax's commitment to compliance with state and federal regulations.

The success of this collaborative effort has led to ancillary studies within the County (conducted and funded solely by the USGS), furthering our understanding of our

watersheds. All data collected under this study and all related publications are publicly available on the project website.

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

Funding for this project will be provided on a cost-share basis with the USGS and the County. Funds will be allocated annually over the five-year JFA term as indicated in the table below.

Fiscal Year	Total Cost	USGS Contribution	Fairfax County Contribution
2023	\$812,000	\$195,000	\$617,000
2024	\$836,000	\$195,000	\$641,000
2025	\$861,000	\$195,000	\$666,000
2026	\$887,000	\$195,000	\$692,000
2027	\$914,000	\$195,000	\$719,000
Total	\$4,310,000	\$975,000	\$3,335,000

In total, USGS will contribute \$975,000 to this effort. Annual USGS contributions are fixed year-to-year because this amount represents the maximum available Federal matching funds. An annual inflationary increase of 3 percent has been applied to the County contribution to offset actual increases in the costs of materials, instrumentation, salary, and travel.

FISCAL IMPACT:

Funding is available to award this Joint Funding Agreement in Project 2G25-006-000, Stormwater Regulatory Program, Fund 40100, Stormwater Services. Funds will be allocated annually over the five-year JFA term as noted above and in Attachment 1.

The County will also be providing in-kind services as follows:

1. Laboratory services for nutrient and ion analysis will be performed by the County's Noman M. Cole Lower Potomac Pollution Control Plant laboratory.
2. Stormwater Planning staff will provide support for water quality sample collection and biological sampling and processing.

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ENCLOSED DOCUMENTS:

Attachment 1: USGS Proposal – Continuation of the Fairfax County Water Resources Monitoring Network and Stream Restoration Monitoring in Long Branch – 2023 - 2027
Attachment 2: FY 2023 – FY 2027 USGS Joint Funding Agreement

STAFF:

Rachel Flynn, Deputy County Executive
Christopher Herrington, Director, Department of Public Works and Environmental Services (DPWES)
Eleanor Ku Coddling, Deputy Director, DPWES, Stormwater and Wastewater Divisions
Marc Gori, County Attorney



Continuation of the Fairfax County Water-Resources Monitoring Network and Stream Restoration Monitoring in Long Branch – 2023-2027

Virginia and West Virginia Water Science Center

June 7th, 2022

Executive Summary

Since 2007, Fairfax County and the US Geological Survey (USGS) have operated a cooperative water-resources monitoring program with the goals of establishing baseline characterizations of water-quality and streamflow conditions in county streams, to determine sediment and nutrient trends and loadings in those streams, and to evaluate relations between the observed water-resources conditions and Best Management Practice (BMP) implementation activities in the monitored watersheds. Currently, the county spends over \$26 million per year implementing BMPs to satisfy Chesapeake Bay and local total maximum daily load (TMDL) requirements. Because of the costs associated with the implementation of these BMPs and a genuine interest in improving ecological conditions, Fairfax County and other agencies are asking: 1) Are the implementation activities working, 2) How long will it take for the BMPs to work, and 3) Are there more time-efficient, cost-effective methods for detecting these improvements. To answer these questions this monitoring program will satisfy three primary objectives: 1) generate long-term monitoring data to describe current water-quality (sediment and nutrients) and quantity conditions, trends in water-quality and quantity, and nutrient and sediment loads and yields; 2) evaluate relations between observed conditions/trends and BMP implementation within the monitored watersheds; and 3) expand the spatial representation of the network and the understanding gained using data collected at other less-intensively monitored watersheds.

In 2018, the monitoring effort reached the 10-years of record required for trend analysis; subsequently, two substantial data analysis and reporting efforts were initiated to begin addressing the questions posed above. The first of these reports, “*Spatial and Temporal Patterns in Streamflow, Water Chemistry, and Aquatic Macroinvertebrates of Selected Streams in Fairfax County, Virginia, 2007–18*” was published in 2020 (Porter and others, 2020). This publication expanded on the 2014 publication “*Streamflow, Water Quality, and Aquatic Macroinvertebrates of Selected Streams in Fairfax County, Virginia, 2007 to 2012*” (Jastram, 2014) providing a detailed analysis of patterns and trends in streamflow, water-chemistry, and benthic macroinvertebrates, as well as annual nutrient and sediment loads across the first ten years of monitoring. A second report, “*Evaluating the Drivers of Water-Quality and Ecological Responses in Streams of Fairfax County, Virginia, 2007-18*” (Webber and others, *in preparation*) will be published later in 2022. This report represents a foundational effort to identify the drivers of spatial differences and temporal changes in streamflow, water-quality, and ecological condition of Fairfax County streams to inform watershed management activities. These reports provide critical insights about the health of Fairfax County streams and the factors driving change over time; however, continuation of this monitoring program is necessary to continue to build the datasets required to understand the yet observed and/or long-term effects of BMP implementation as well as to provide the fundamental hydrologic data required to support restoration design and other county-operated monitoring programs.

Additionally, in 2021 Fairfax County and USGS initiated a long-term monitoring study to assess the Long Branch Central Watershed Management (LBCWM) project. Long Branch, a tributary of Accotink Creek, in Fairfax County, Virginia, is subject to Total Maximum Daily Load (TMDL) requirements to reduce sediment and chloride. This watershed, like the rest of the county, is also subject to the larger Chesapeake Bay sediment and nutrient TMDL. In response to these requirements, and in an effort to reduce sediment loading to Lake Accotink – which results in substantial maintenance costs – Fairfax County developed the LBCWM project. This project seeks to meet TMDL requirements, improve water quality, and generate ecological lift in Long Branch. The project objectives will be pursued through extensive stream restoration within Long Branch, through which an estimated 50%-75% of the stream length will be restored. Investments in this restoration effort are anticipated to approach \$40 million.

Sound monitoring and scientific evaluation are needed to a) inform design and implementation of restoration efforts, b) assess progress towards the objectives of the restoration project, and c) inform future stormwater management and stream restoration efforts. This effort augments the highly successful county-wide water-resources monitoring program, which, since 2013, has included monitoring at the outlet of the Long Branch watershed. The initial year of monitoring was funded by a single-year JFA; however, it is proposed that continued funding for this effort be combined with the county-wide program to ease administrative burdens and because the success of this effort is contingent on the continuation of the county-wide monitoring program. Specific objectives for the county-wide and Long Branch efforts, and the monitoring and analytical approaches required to address these questions are provided in the full proposal below.

The work described herein includes all data collection efforts and annual summarization or basic analysis of the data. Additionally, these data will be used to publish 5 peer-reviewed journal articles, each of which will explore a selected research topic, and when appropriate, be coauthored by Fairfax County scientists. This process of identifying priority research topics, leveraging results from the monitoring network, and communicating detailed interpretations is expected to provide more timely scientific information to guide Fairfax County's management activities. Potential research topics are provided (pg. 11); however, USGS will work with county staff to ensure topics best align with current needs.

The funding required to operate this monitoring program, which includes both county-wide and Long Branch efforts, is \$812,000 in year 1, with USGS contributing \$195,000 per year, resulting in a year-1 cost of \$617,000 for Fairfax County. Inflationary increases are required over the 5-year term, as shown in Table 1. USGS funding contributions have been increased over previous amounts – now totaling \$975,000 – and this increase will support the preparation and publication of 5 peer-reviewed journal articles/USGS reports.

Additionally, USGS will contribute all funds for purchasing equipment and site installation for two new precipitation gages, valued at approximately \$25,000. Costs are fixed at the beginning of this 5-year agreement and will not increase to account for additional needs of the currently-scoped program, such as the cost of repairing or replacing instrumentation that reaches end-of-life or is damaged or destroyed. Annual costs for the monitoring effort described herein are specific to this network as currently implemented – any changes to the network may result in changes to the itemized costs. The Fairfax County contribution will be billed in equal quarterly billings.



Continuation of the Fairfax County Water-Resources Monitoring Network and Stream Restoration Monitoring in Long Branch

Virginia and West Virginia Water Science Center

Since 2007, Fairfax County and the USGS have operated a cooperative water-resources monitoring program with the goals of establishing baseline characterizations of water quality and streamflow conditions in county streams, to determine sediment and nutrient trends and loadings in those streams, and to evaluate relations between the observed water-resources conditions and Best Management Practice (BMP) implementation activities in the monitored watersheds. Substantial investments are made each year to meet Federal, State, and local water-quality goals and this program provides the sound monitoring needed to evaluate current progress and inform future management decisions. To date, this effort has resulted in multiple publications describing the current and changing state of Fairfax County streams and identified drivers of spatial differences and temporal changes in streamflow, water-quality, and biological conditions.

In 2021, Fairfax County and USGS added to the county-wide program by initiating a long-term monitoring study to assess the Long Branch Central Watershed Management (LBCWM) project. The Long Branch watershed is subject to TMDL requirements to reduce sediment and chloride, and, like the rest of the county, is subject to the larger Chesapeake Bay sediment and nutrient TMDL. This project seeks to meet TMDL requirements, improve water quality, and generate ecological lift in Long Branch through an extensive stream restoration of approximately 50%-75% of the stream channel. At the watershed-scale, detection of the effects of individual management implementations can be complicated by inputs from unmitigated areas of the watershed. Given the scale of restoration planned in the Long Branch watershed, this monitoring effort provides a unique opportunity to directly evaluate the success of the LBCWM.

Objectives

The objectives of the county-wide monitoring program are to operate a water-resources monitoring network within Fairfax County to describe surface-water quantity and quality in numerous county streams to satisfy three specific objectives:

1. Generate long-term monitoring data to describe current water-quality (sediment and nutrients) and quantity conditions, trends in water-quality and quantity, and nutrient and sediment loads and yields;
2. Evaluate relations between observed conditions/trends and BMP implementation within the monitored watersheds; and
3. Expand the spatial representation of the network and the understanding gained using data collected at other less-intensively monitored watersheds.

The objectives of the Long Branch program are to collect and evaluate hydrologic, geomorphic, and water-quality data to inform and assess the LBCWM project. Specifically, the objectives of this effort are to:

1. Quantify hydrologic responses to watershed-wide stream restoration, with particular focus on the role of floodplains;
2. Quantify the effects of watershed-wide stream restoration on sediment and nutrient transport, with particular focus on the role of floodplains; and
3. Quantify loads and trends of major ions, sediment, and nutrients.

Approach

The approach for these programs remains largely unchanged but includes two additional elements designed to achieve program objectives. Two precipitation gages will be installed and operated, and multiple publications will be developed focusing on priority research topics that provide timely scientific information to guide Fairfax County's management activities. These approaches are described in greater detail below.

County-wide Water-Resources Monitoring Program:

The approach utilizes two tiers of monitoring intensity across a network of 20 stations. These tiers include 5 “intensive” monitoring stations and 15 “trend” monitoring stations, each designed to specifically address different objectives of the overall effort. Monthly water-quality samples, real-time water-level data, and biannual benthic macroinvertebrate and fish samples are collected at all monitoring stations. In addition, real-time water-quality and streamflow data, and stormflow water-quality samples are collected at five intensive monitoring stations. Collecting these additional data at all stations is cost prohibitive; however, the information gained at the 15 trend stations provides greater spatial representativeness of current conditions and trends in water quality and benthic macroinvertebrate metrics across Fairfax County. These data provide the statistical power required to link changes in stream condition to management activities.

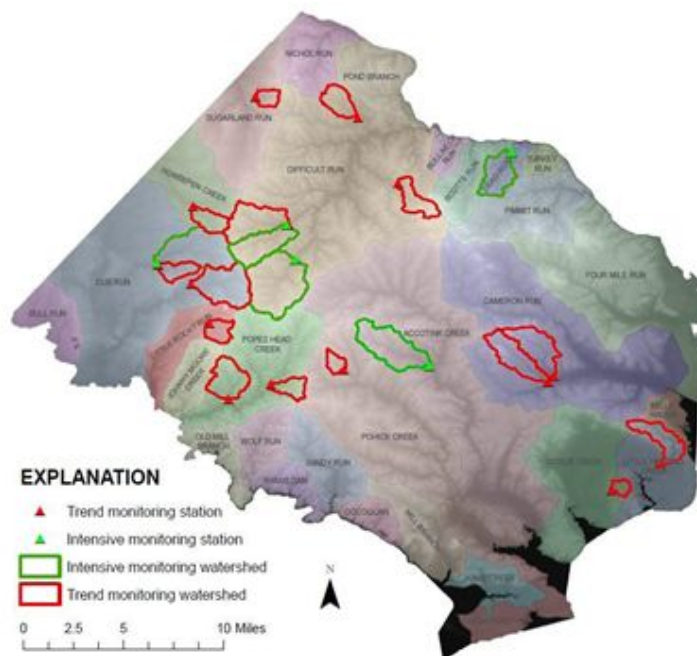


Figure 1. Map of monitoring stations and watersheds and major watersheds of Fairfax County, Virginia.

- 1- Operate five intensive water-resources monitoring stations throughout the county to monitor streamflow and water quality in selected county streams. Each water-resources monitoring station includes the following.

Continuous-record streamgage

A standard USGS streamgage is operated at each intensive site for the collection of water level and streamflow at 5-minute intervals. Both water level and streamflow data are served on the internet approximately 1 hour after the data are collected (<https://waterdata.usgs.gov/va/nwis/rt>).

Continuous-record water-quality monitor

A water-quality monitoring sonde is deployed to measure turbidity, pH, specific conductance, dissolved oxygen, and water temperature at 15-minute intervals. These water-quality parameters are also served on the internet approximately 1 hour after the data are collected. These continuous data are critical to understanding water-quality conditions in these highly dynamic urban streams, and when coupled with surrogate approaches allow the computation of a continuous record of nutrient and sediment concentrations which captures events that would be missed by traditional approaches relying solely on discrete sample collection. Further, use of these computed concentration data in load computations results in load estimates with greatly reduced uncertainty – a factor critical to the detection of change over time.

Automated stream sampling

Manual storm sampling, of Fairfax County streams, is not a reasonable long-term sampling option because these relatively small streams rise and fall very quickly with storm events (commonly termed “flashy”). Therefore, each intensive monitoring station is equipped with an automated stream sampler to collect stream-water samples during stormflow periods; in general, the goal is to collect wet weather samples over a wide range of flow conditions. The automated samplers are configured to activate during storm events, and approximately 12 storm events are targeted for sampling each year (with 5-10 samples collected during each event). These automated stream samples are analyzed for both suspended sediments and nutrients.

Monthly Sampling

Monthly sampling is conducted to provide data appropriate for trend analysis. Samples are analyzed for a suspended-sediment concentration, major ions, and a suite of nutrients. A monthly sampling approach in which approximately 25% of the monthly samples are collected during targeted wet-weather conditions is employed. It is expected that such targeting will result in a better representation of the range of hydrologic conditions, and thereby support a trend analysis that is more representative of changes over that range. To minimize the potential of introducing a seasonal bias when using this approach, the months in which wet-weather flows are targeted are randomly selected at the beginning of the sampling year, and regardless of the success of the targeting in a selected month those data will be included in the data set. In other words, it is likely that conditions may change after the decision is made to target an event, but those data are used as the monthly sample regardless of the magnitude of flow they represent.

Benthic Macroinvertebrate Sampling

Benthic macroinvertebrate samples are collected from each of the 20 monitoring stations in the spring of each year, at the 5 intensive stations each fall, and fish are collected from about 7

stations each summer on a 3-year rotating schedule. Samples are collected by Fairfax County staff in conjunction with the annual sampling performed for the Fairfax County Biological Stream Monitoring Program. During each sampling event, benthic macroinvertebrate or fish samples are collected, stream habitat metrics recorded, and basic water-quality parameters measured according to standard operating procedures. Samples are collected along a 100-meter reach using the EPA's Rapid Bioassessment Protocol multihabitat, 20-jab methodology. Benthic macroinvertebrate taxa are identified to genus and fish to the species level, when possible, and are used to compute the Fairfax County Index of Biological Integrity as well as multiple community richness and compositional metrics.

2- Operate trend monitoring stations to improve the spatial representativeness of current and changing conditions in water chemistry and benthic macroinvertebrate metrics across Fairfax County streams. These data, in aggregate, provide the statistical power required to link changes in stream condition to management activities across the county. To cost-effectively monitor these stations the trend network is operated as follows:

- At these additional 15 stations, monthly water-quality monitoring is performed, and these data are evaluated for water-quality trends. To perform trend analyses, streamflow data also are needed.
- Streamflow measurements are made at the trend monitoring stations to support the development of stage-streamflow relations. These relations are used to associate a streamflow value with each water-quality sample to permit the computation of flow-adjusted trends.
- These expanded data provide an improved platform for predicting how water-quality conditions may change and improve in other un-monitored county basins with BMP implementation.

Cumulatively, inclusion of these 15 trend monitoring stations results in a significantly greater number of water-quality trend stations. Consequently, these monitoring locations greatly enhance our ability to evaluate whether observed responses and understanding gained are transferable to less intensively monitored or unmonitored watersheds. Further, these stations provide opportunities to identify and explore spatial water-quality conditions found throughout the county. This 20-station water-quality monitoring network (fig. 1) is regarded as the most robust urban-focused water-quality monitoring network in the entire Chesapeake Bay Watershed and is one of very few such networks in the nation.

Assessment of Reach- and Watershed-Scale Responses to Stream Restoration in Long Branch

The approach for this portion of the program builds on the existing foundation of monitoring occurring in Long Branch as part of the cooperative county-wide monitoring program operated by USGS and Fairfax County. Under the county-wide program, a monitoring station (USGS ID: 01654500) is operated near the terminus of Long Branch where it flows into Accotink Creek.

Hydrologic Monitoring and Analysis

Additional hydrologic monitoring in Long Branch, including an additional streamgage, multiple water-level monitoring stations, and a precipitation gage, is required to support detailed analysis of hydrologic responses to restoration. Further, hydrologic data and analyses are used to support interpretation of water-quality and ecological patterns observed in other components of the monitoring program. In total, 8 hydrologic monitoring stations are operated in this watershed.

A streamgage (USGS station ID 01654107, hereafter referred to as the "nested station") was installed within the watershed in late 2021 and is operated identically to other USGS streamgages in the county. The existing streamgage (USGS station ID: 01654500, hereafter referred to as the

“main station”), located near the outlet of the watershed, and the nested streamgage, which is located near the midpoint of the watershed, are used to investigate changes in streamflow characteristics such as the frequency, duration, volume, and magnitude of stormflows expected to result from the proposed watershed management implementations. Data collected at the main station are expected to inform watershed-wide hydrologic characteristics, and changes in those characteristics; however, the nested station is expected to provide improved understanding of hydrologic characteristics and potentially earlier detection of change in hydrologic metrics resulting from restoration of the headwaters. The nested station will capture approximately half of the study watershed (3.72 mi²), which, depending on restoration plans (currently in development), is expected to drastically reduce the proportion of unrestored channel in the gaged watershed. Restoration is likely to be limited during the first 5 years of monitoring; those data are critical to characterizing pre-implementation conditions against which post-implementation comparisons will be made.

A precipitation gage was installed at Little Run Elementary School in 2021 and collects 5-minute interval measurements of rainfall volume and intensity. Data collected at the precipitation gage are critical to detecting change in watershed hydrology, both by controlling for annual climatic variability, and allowing for the calculation of additional hydrologic metrics. This standalone gage consists of a weighing type precipitation gage, datalogger and satellite telemetry unit, and a solar-charged DC power supply. The data from this site are served in near-realtime on NWISWeb and will be used to inform analyses of watershed hydrology.

Six floodplain inundation monitoring stations were established in 2021 to assess change in the duration, frequency, and magnitude/volume of floodplain inundation. Stream restoration designs typically aim to reconnect the channel and floodplain to promote overbank flow during moderate to large storm events. This design facilitates reductions in peak flow and in-channel water velocity to promote nutrient and sediment attenuation, groundwater recharge, and geomorphic stability. Evaluation of floodplain inundation characteristics is key to assessing the success of restoration practices at achieving these goals. Floodplain inundation monitoring stations are equipped with standalone non-realtime water-level recorders to measure stream water level at 5-minute intervals.

Sediment and Nutrient Monitoring and Analysis

Sediment and nutrient data collection and analyses elements were added within the Long Branch watershed to provide additional detail to support the understanding of changes in sediment and nutrient loads. The additional elements include:

Load and Trend monitoring is supported at the nested station through the manual collection of monthly and event-targeted samples in accordance with USGS protocols. Monthly samples are collected to inform evaluation of spatial and temporal patterns in sediment and nutrients, and provided that monitoring continues for a minimum 10 years, long-term trends. Additionally, USGS collects suspended-sediment and nutrient samples from approximately 5 targeted stormflow events annually. Collection of event-targeted samples at the nested streamgage is critical to extending the load models developed for the main station or developing station specific models.

Floodplain deposition stations are used to quantify sediment and nutrient deposition (or erosion) rates on floodplain surfaces. These stations are co-located with the continuous streamgages and floodplain inundation stations and utilize clay pads to distinguish recently

deposited materials from existing floodplain sediments. In the event that floodplains are erosive, marker pins are co-located with each clay pad; exposure of pins are measured to quantify floodplain erosion. Approximately 20 clay pads were installed at each station at the outset of monitoring and are remeasured annually. For each sample, the depth of sediment accumulation over the clay pad is measured in the field; laboratory analyses include bulk density and nitrogen, phosphorus, and carbon concentrations to quantify particulate deposition. Sedimentation or erosional rates from each plot are extrapolated over both space and time to estimate the mass reduction (or contribution) of sediment and nutrients (e.g pounds/yr) from floodplains. These data allow calculation of annual depositional rates and volumes, are used with multiple other study elements to compute a watershed-wide sediment budget, are critical to quantify change in sedimentation and nutrient deposition associated with changes in floodplain connectivity and may inform potential change in sediment or nutrient loads computed at the main station.

Bank erosion stations were installed at 4 of the monitored stream reaches and are remeasured at least twice annually. The subset of stations selected for bank erosion monitoring were identified based on suitability and representativeness. Structure-from-Motion (SfM), a low-cost photogrammetric method for collecting high spatial resolution, three-dimensional data for surface modeling is used to provide reach-scale estimates of sediment flux from bank erosion. Measurements of bank erosion are used in conjunction with multiple other study elements to compute a sediment budget, which is critical for assessing the efficacy of restoration efforts, achieving the stated goals of reducing sediment transport to Lake Accotink, and promoting ecological uplift throughout the watershed.

In-channel sediment mapping is conducted to better understand sediment dynamics throughout the watershed. Characteristics and abundance of fine-grained depositional areas are made throughout the stream channel. These measurements include the number of deposits, average length, width and thickness of deposits, average volume of depositional areas, particle size distribution, and the total volume of stored sediment in the stream reach. The volume of in-channel sediment deposits is used to calculate the percentage mass equivalent of the annual suspended-sediment load stored in-channel and used in conjunction with streambank erosion, floodplain depositional measurements, and annual suspended sediment loads to inform a watershed-wide sediment budget.

Stream Salinization Monitoring and Analysis

Quantification of loads and trends in salinization-related ions is accomplished through event-targeted sampling for major ions at the main and nested stations. These samples are collected when concentrations are expected to be elevated, primarily during winter months, and are analyzed by the USGS National Water Quality Laboratory. Major ions are also collected monthly at the main station as part of the existing county-wide monitoring program, and this has been extended to the nested station. Monthly samples are analyzed by the Fairfax County lab. These data (both monthly and targeted samples) are paired with continuous measurements of water-quality parameters and streamflow to develop surrogate models for the computation of loads and yields. Once models are established at the main station, these relations may be extended to the continuous water-quality and streamflow data collected at the nested station, if appropriate, to provide greater spatial understanding of salinity loading throughout the watershed. Collectively, these data will also be used to investigate seasonal patterns, inform ecological measurements throughout the watershed, and provided monitoring continues for a minimum 10 years, analyze trends over time.

Continuous Water-Quality Monitoring

A continuous water-quality monitor is operated at the nested station. The monitor provides data analogous to the 5 intensive monitoring stations in the county-wide network and data are publicly served on NWISWeb in near-realtime.

The nested station is expected to augment our understanding of the fate and transport of sediments and nutrients throughout the watershed, and potentially facilitate earlier detection of change resulting from restoration of the headwaters. Continuous measurements of basic water-quality parameters provide many additional benefits beyond the simple, yet informative, patterns in those directly measured parameters. For example, these data can be used to detect changes in gross primary production, ecosystem respiration, water temperature, and sediment transport, which may result from stream restoration. Additionally, these data may be used to extended sediment, nutrient, and salinization models developed at the main station, which will provide greater resolution of the spatial distribution of loadings throughout the watershed.



Figure 2. Map of Long Branch monitoring locations in Fairfax County, Virginia.

Additional Monitoring Elements

It is proposed, in consultation with county staff, that two USGS precipitation gages be installed and operated in Fairfax County. These gages will augment the new precipitation gage at Little Run Elementary School located within the Long Branch watershed and will be sited appropriately to provide proper spatial representation of the other four intensively monitored watersheds. Gages will collect 5-minute interval measurements of rainfall volume and intensity, which will be served in near-realtime on NWISWeb. Precipitation data will be critical to identifying and understanding changes in watershed hydrology at the 6 USGS streamgaging stations, both by controlling for annual climatic variability, and allowing for the calculation of additional hydrologic metrics. These standalone gages consist of a weighing type precipitation gage, datalogger and satellite telemetry unit, and a solar-charged DC power

supply. Precipitation monitoring provides significant benefit to the county beyond the scope of this monitoring program. Climate induced increases in the volume, intensity, and recurrence of storm events has resulted in flooding throughout the county. Flooding can cause public nuisance, damage property, and loss of life. The 2022 Fairfax County Advertised Budget Plan outlines the need to invest in flood assessment and mitigation measures, and these monitoring stations will augment Fairfax County's existing flood monitoring network. Locally accurate and frequent measurements of rainfall volume and intensity will help the county develop and refine plans for flood preparedness and resilience and may be used as a tool for emergency responders to quickly react to extreme rainfall events.

Monitoring Program Products

The monitoring program has two overarching goals: the foundation of the program is a data collection effort aimed at properly characterizing current and changing conditions in Fairfax County streams, and nested within that is an effort for assessing the effects of stream restoration in Long Branch. This effort is ongoing and, to date, has resulted in the manual collection of approximately 5,500 discrete water-quality samples yielding over 60,500 measurements of water-quality constituents, approximately 1,150 manual streamflow measurements, and 26-million individual measurements of water-quality and streamflow parameters. Data collection efforts have supported the computation of annual nutrient and sediment loads and decadal trends in a suite of streamflow, water-quality, and benthic macroinvertebrate metrics. Initial efforts have sought to link observed trends to changes in land use, public infrastructure, climate, physical watershed properties, and the implementation of management actions. Communication of data collection activities and associated analyses has been, and will continue to be, achieved through:

Data Accessibility – All data will continue to be made publicly available on the USGS National Water Information Service Website (NWISWeb) and through the USGS-maintained project-specific web site. Additionally, annual progress reports will be prepared to summarize data collection efforts.

Stakeholder Meetings – regular meetings are held with stakeholders in multiple county departments to provide updates on the status of the monitoring program and findings of preliminary analyses. Additionally, USGS scientists conducting research of interest within and around Fairfax County share findings at these meetings and at a series of meetings on “USGS Water Science in Fairfax County” coordinated by USGS for county staff. In 2020, USGS provided a detailed presentation of the Porter and others, 2020 report described below, and a recording of this presentation is available at <https://va.water.usgs.gov/fairfax/pubs.html>.

Project Website - A project website (<http://va.water.usgs.gov/fairfax/>) has been developed to communicate the study design and objectives, monitoring data, results, and related publications. This resource provides easy access to a wealth of hydrologic data collected in Fairfax County for County ecologists, engineers, managers, and others, as well as for the general public.

USGS Publications - Three USGS Scientific Investigations Reports and other publications have been published, including:

1. Jastram, J.D., 2014, **Streamflow, water quality, and aquatic macroinvertebrates of selected streams in Fairfax County, Virginia, 2007–12**: U.S. Geological Survey Scientific Investigations Report 2014–5073, 68 p., <http://dx.doi.org/10.3133/sir20145073>.
2. Porter, A.J., Webber, J.S., Witt, J.W., and Jastram, J.D., 2020, **Spatial and temporal patterns in streamflow, water chemistry, and aquatic macroinvertebrates of selected**

- streams in Fairfax County, Virginia, 2007–18:** U.S. Geological Survey Scientific Investigations Report 2020–5061, 106 p., <https://doi.org/10.3133/sir20205061>.
3. Porter, A.J., Webber, J.S., Witt, J.W., and Jastram, J.D., 2020, **Inputs and selected outputs used to assess spatial and temporal patterns in streamflow, water chemistry, and aquatic macroinvertebrates of selected streams in Fairfax County, Virginia, 2007-2018:** U.S. Geological Survey data release, <https://doi.org/10.5066/P95S9RFV>.
 4. Webber, J.S., Chanat, J.G., Porter, A.P., and Jastram, J.D., 2022, **Evaluating the Drivers of Water-Quality and Ecological Responses in Streams of Fairfax County, Virginia, 2007-18:** U.S. Geological Survey Scientific Investigations Report 2022 (*in preparation, anticipated mid-2022*).
 5. Webber, J.S., Chanat, J.G., Porter, A.P., and Jastram, J.D., 2022, **Climate, Landscape, and Water-Quality Metrics for Selected Watersheds in Fairfax County, Virginia, 2007 – 2018:** U.S. Geological Survey data release (*in preparation, anticipated mid-2022*).
 6. **Story map - “What's driving changing conditions in Fairfax streams? Insights from a decade of investigative monitoring hydrology, water-quality, and benthic macroinvertebrates in streams of Fairfax County, Virginia, 2007-18”** (*in preparation*). This product is a geo-narrative designed to communicate key findings presented in previous USGS Scientific Investigations Reports. The story map is an interactive web-based format designed to be interpretable by scientific and non-scientific audiences, alike.

This record of publications will be expanded greatly in the coming term with the production of 5 peer-reviewed reports/journal articles. New and existing data will be utilized to identify priority-research topics in cooperation with Fairfax County that provide timely scientific information to guide management activities. Topics will be vetted and approved by Fairfax County and may include:

- i Continuing to evaluate watershed-scale effects of management practices after additional years of post-restoration monitoring.
- ii The effects of seasonal and annual variability in temperature and precipitation on streamflow, water-quality, and ecological responses; specifically, changes in watershed hydrology and flooding, the roles of nitrogen and phosphorus biogeochemical transformations, sediment erosion freeze-thaw processes, and winter weather management strategies.
- iii The effects of urbanization on changing benthic and fish community metrics. This topic would expand on past work, which identified factors affecting IBI scores, to investigate drivers of change in multiple community metrics such as EPT, COTE, and functional feeding groups.
- iv The role of wastewater inputs on increasing nutrient trends over time, specifically whether these effects are caused by additional septic systems, aging infrastructure, wastewater leaks in sewer watershed, or changing rates of groundwater nutrient delivery to streams.
- v Drivers of phosphorus variability, which includes factors affecting phosphorus retention on the landscape, the role of fertilizer applications on phosphorus conditions, drivers of elevated phosphorus concentrations in Triassic Lowland watersheds, and the effects of increased salinization on phosphorus mobilization.
- vi The influence of human activities and natural watershed setting on stream salinization.
- vii The effects of lateral stream migration and other geomorphic changes on streambank erosion rates and suspended-sediment conditions.
- viii Exploring the influence of cooling tower discharges on elevated nitrate concentrations in select watersheds.

- ix Loads and trends in monitored Fairfax County streams – and update to past publications, which presented findings through 2018. Specific focus on changes (or continuity) in previously reported patterns.

These, and other, future research directions will be evaluated and advanced in collaboration with Fairfax County to identify questions most relevant to management needs.

Additional Benefits

This monitoring network is unique in its scope and setting and has attracted interest from other researchers within USGS and in academia. A great amount of additional associated water-resources research has been conducted in Fairfax County over the past decade as a direct result of the availability of the fundamental hydrologic data being generated by this program. Research, totaling hundreds of thousands of dollars, has been conducted by scientists from the USGS National Research Program, Chesapeake Bay Science Program, and other USGS program areas at no additional cost to the county. This work has produced numerous scientific publications – the findings of which have been communicated to county staff and have resulted in an improved understanding of county streams and best approaches to managing them. A listing of the publications produced in association with the monitoring network is provided at <http://va.water.usgs.gov/fairfax/pubs.html>. Academic interest in this network has resulted in multiple research proposals by various university faculty and the use of data from the network in graduate theses. The continued, and likely expanded, use of data generated by this program for associated research is expected as the long-term data being generated is unparalleled.

The monitoring network also can be used to address additional scientific questions of interest to the county. For example, over the last 15 years elevated nitrate concentrations have been observed at the Dead Run monitoring station (station ID: 01646305). In 2020 and 2021, USGS and Fairfax County scientists used an in-situ analyzer to trace the nitrate signal throughout the entire Dead Run watershed. This effort identified cooling tower effluent as one potential driver of elevated nitrate concentrations in the watershed.

Funding

The funding required to operate this monitoring program, which includes both county-wide and Long Branch efforts is presented in Table 1, with itemized costs presented in Table 2. Funding also is included for the preparation and publication of 5 peer-reviewed journal articles/USGS reports, which, over the duration of this JFA, will provide significant cost savings for the county. In previous JFAs, analysis and publication costs were not included in the monitoring program budget. These savings were realized through an increase in USGS contributions of \$250,000 over the proposed 5-year period. In total, USGS will contribute \$975,000 to this effort. Annual USGS contributions are fixed year-to-year because this amount represents the maximum available Federal matching funds. Additionally, USGS will contribute all funds for purchasing equipment and site installation for two precipitation gages, valued at approximately \$25,000.

This budget is based solely on cost-recovery; therefore, it is necessary to apply an annual inflationary increase to offset actual increases in the costs of materials, instrumentation, salary, and travel – continued operation of the monitoring network without reduction in scope requires that the inflation rate of 3% be maintained (table 1). Further, it should be noted that costs are fixed at the beginning of this 5-year agreement and will not increase to account for additional needs of the currently-scoped program, such as

the cost of repairing or replacing instrumentation that reaches end-of-life or is damaged or destroyed. The continuous water-quality monitoring instruments deployed at the onset of this monitoring program, valued at \$75,000, were replaced in 2018, and additional monitoring components such as equipment enclosures, refrigerated automatic samplers, telemetry equipment, and dataloggers, valued at \$115,000 are nearing end-of-life. These items were and will be replaced within the operational budget for the network, and should costs exceed available funding, will be supported by the USGS.

Annual costs for the monitoring effort described herein are specific to this network as currently implemented – any changes to the network may result in changes to the itemized costs. The Fairfax County contribution will be billed in equal quarterly billings.

Table 1. Annual costs for Fairfax County fiscal year 2023-27.

Fiscal Year	Total Cost	USGS Contribution	Fairfax County Contribution
2023	\$812,000	\$195,000	\$617,000
2024	\$836,000	\$195,000	\$641,000
2025	\$861,000	\$195,000	\$666,000
2026	\$887,000	\$195,000	\$692,000
2027	\$914,000	\$195,000	\$719,000

In-Kind Contributions by Fairfax County

As a collaborative study, several in-kind contributions from Fairfax County are required to improve data collection protocols, reduce project costs, and increase overall study efficiency. In-kind project contributions from Fairfax County remain unchanged and include:

- Assistance with the collection of water-quality samples, and delivery to the laboratory within the appropriate holding times, including the removal of storm samples from the automated samplers and shared responsibility for collection of monthly samples. Approximately 12 storm events are anticipated to be sampled each year, at each intensive station. Additionally, approximately 5 nutrient samples will be collected at the Long Branch nested station.
- All monthly nutrient samples, which include those collected at the 20 county-wide stations and the Long Branch nested station are to be processed and analyzed by the Fairfax County Environmental Services Lab at the Noman M. Cole, Jr. Pollution Control Plant. It is anticipated that as many as 100 nutrient samples may be collected from each of the 5 intensively monitored stations, while only 12 samples will be collected from each of the less intensively monitored stations and the Long Branch nested station. Under these plans, Fairfax County would be responsible for over 600 nutrient analyses per year (USGS performs all sediment analyses). Nutrient analyses include total nitrogen, total phosphorus, particulate nitrogen, particulate phosphorus, total dissolved nitrogen, total dissolved phosphorus, dissolved nitrate, dissolved total Kjeldahl nitrogen, total Kjeldahl nitrogen, and orthophosphate.
- All stations will be sampled as part of the county's ongoing benthic macroinvertebrate and fish sampling program. Fairfax County will process the samples and perform the taxa counts in a manner consistent with other benthic/fish sampling activities conducted by the county. Collection of these supporting data will further permit a holistic approach for evaluating improvements in

flow, water quality, and ecological health. Historically, sampling has occurred only in the Spring, but has been expanded to include Fall collections at the intensively monitored stations in recent years.

Contact

Questions or comments, please contact:

Aaron Porter
804-261-2628
aporter@usgs.gov

Table 2. Itemized costs for County Fiscal Year 2023.

Fiscal Year 2023 Data Collection Costs – Trend and Intensive Stations			
Item	Cost	# of Stations	Total
Stage-Discharge Streamgages - includes technician salary, travel, and equipment/supplies for the operation and maintenance of continuous-record streamgages in accordance with USGS protocols. Tasks include scheduled maintenance and measurement visits (every 8 weeks), unscheduled visits for stormflow measurements, surveying for datum maintenance and indirect peak flow measurements, maintenance of real-time data relay, and streamflow record computation. Deliverable is continuous (5-minute interval) streamflow and water level data, and basic summary statistics, publicly available in online in near real-time.	\$18,000	6	\$108,000
Continuous Water-Quality Monitors - includes technician salary, travel, and equipment/supplies for the operation and maintenance of continuous-record 5-parameter water-quality monitor in accordance with USGS protocols. Tasks include scheduled maintenance and measurement visits (monthly), unscheduled visits for sensor fouling, maintenance of real-time data relay, and record computation. Deliverable is continuous (15-minute interval) temperature, dissolved oxygen, specific conductance, pH, and turbidity data, and basic summary statistics, publicly available in online in near real-time. These data are required to support computation of nutrient and sediment loads in these flashy urban streams.	\$34,000	6	\$204,000
Precipitation Gage - includes technician salary, travel, and equipment/supplies for the operation and maintenance of continuous-record precipitation station in accordance with USGS protocols. Tasks include scheduled maintenance, unscheduled visits for sensor fouling, maintenance of real-time data relay, and record computation. Deliverable is continuous (15-minute interval) rainfall volume data and basic summary statistics, publicly available online in near real-time. These data are required to support computation of streamflow metrics such as runoff rates and other precipitation-streamflow relations.	\$6,000	3	\$18,000

Table 2(continued). Itemized costs for County Fiscal Year 2023.

Fiscal Year 2023 Data Collection Costs – Trend and Intensive Stations			
Item	Cost	Item	Cost
Storm Sampling - includes technician salary, travel, and equipment/supplies for the operation and maintenance of refrigerated autosamplers in accordance with USGS protocols, laboratory analysis of suspended sediment samples, and hydrologist salary for sampler activation, storm sample selection, and laboratory data review. Technician tasks include routine maintenance and occasional repair of autosamplers. Hydrologist tasks include routine enabling/disabling of autosamplers in accordance with Fairfax County scheduling requirements, selection of storm samples for analysis, and review/approval of laboratory results. Deliverable is 40+ storm event samples per year. Additionally, multiple samples will be collected from up to 5 storm events at the nested Long Branch gage and analyzed for suspended sediments.	\$16,000	6	\$96,000
Monthly Sampling at All Stations - includes technician salary, travel, and equipment/supplies for the manual collection of monthly sediment and nutrient samples at intensive, trend, and nested Long Branch stations in accordance with USGS protocols, technician salary for data entry, laboratory analysis of suspended sediment samples, and hydrologist salary for laboratory data review. Annual deliverable for the monthly samples is 8 routinely scheduled samples collected jointly with a Fairfax County sampling team, and 4 storm event samples collected by a pair of USGS sampling teams.	\$4,000	21	\$84,000
Streamflow Data at Trend Stations - includes technician salary, travel, and equipment/supplies for the manual collection of monthly sediment and nutrient samples at intensive, trend, and nested Long Branch stations in accordance with USGS protocols, technician salary for data entry, laboratory analysis of suspended sediment samples, and hydrologist salary for laboratory data review. Annual deliverable for the monthly samples is 8 routinely scheduled samples collected jointly with a Fairfax County sampling team, and 4 storm event samples collected by a pair of USGS sampling teams.	\$4,500	15	\$67,500
Sub-total	\$55,750		\$577,500

Table 2 (continued). Itemized costs for County Fiscal Year 2023.

Fiscal Year 2023 Data Collection Costs – Long Branch Specific Data				
Item	Cost	# of Stations	Total	
Floodplain-Inundation Monitors - includes technician salary, travel, and equipment/supplies for the operation and maintenance of floodplain-inundation stations in accordance with USGS protocols, and technician salary for data entry and records processing. Tasks include monthly site visits to download and process logged data as well as annual surveying of channel and floodplain elevations. Deliverables include continuous (15-minute interval) water level data paired with annual stream/floodplain surveys to compute the frequency, magnitude, and duration of floodplain inundation.	\$5,000	6	\$30,000	
In-channel Sediment-Depositional Surveys - includes technician salary, travel, and equipment/supplies for surveys of in-channel fine-grained sediment deposits, technician salary for data entry, and project chief salary for data computation. Tasks include annual surveys of the entire Long Branch stream reach. Deliverables will include quantification of the total volume and mass of available in-channel sediment deposits expressed as volume and mass per unit stream length, estimates of the total storage of sediment by mass expressed as a percentage of the total annual suspended-sediment load.	\$25,000	1	\$25,000	
Floodplain Nutrient and Sediment Stations - includes technician salary, travel, and equipment/supplies for the manual collection of sediment samples and lab analyses for bulk density, carbon (C), nitrogen (N), and phosphorus (P) concentrations, as well as technician salary for data entry. Tasks will include manual collection of sediment cores from floodplain monitoring plots and collection and processing of sediment deposited on ceramic tiles. Deliverables will include rates of sedimentation (g/cm ² /yr), as well as particulate deposition of N, P, and C (g-N, g-P, or g-C/cm ² /yr) *This task will only be completed twice during the study period, pre- and post-restoration. Costs have been spread out over each year.	\$3,750	8	\$30,000	
Streambank-Geomorphology Stations - includes technician salary, travel, and equipment/supplies for the operation and maintenance of streambank-geomorphology monitoring stations using bank pins, structure-from-motion (SfM) photogrammetry, and project chief salary to process imagery data. Tasks include initial installation and survey of control points, with subsequent surveys repeated annually. Multiple site visits each year to collect photographic imagery and subsequent processing to generate point-clouds. Point-clouds from successive dates will be compared to measure the change in bank situation. Deliverables will include quantification of the rate and volume of bank erosion/deposition.	\$10,000	3	\$30,000	

Table 2 (continued). Itemized costs for County Fiscal Year 2023.

<u>Fiscal Year 2023 Data Collection Costs – Long Branch Specific Data</u>			
Item	Cost	# of Stations	Total
Ion Monitoring - includes technician salary for data entry and project chief salary for coordination of sample collection, USGS lab analyses, data review, quality assurance, and subsequent analysis of data. Samples will be paired with continuously measured streamflow and basic water=quality parameters to compute annual loads. The cost to collect and analyze monthly samples for major ions will be contributed in-kind by Fairfax County; whereas, the event-targeted samples will be collected and analyzed by USGS. Annual deliverable is 12 monthly samples and up to 15 event-targeted samples collected at the main Long Branch gage and analyzed for a suite of major ions including, but not limited to, chloride, sodium, potassium, calcium, and magnesium.	\$12,000	1	\$12,000
Sub-total	\$55,750		\$127,000

<u>Fiscal Year 2023 Program Costs</u>			
Project Chief - includes hydrologist salary project management, travel for data evaluation and communication, cooperator meetings, scientific oversight of program, and presentations at scientific meetings & conferences.			\$57,500
Publications - includes all data analyses, writing and preparation, and publication costs associated with journal articles and USGS series reports. Deliverable is one publication per year published in a peer-reviewed scientific journal or USGS series report.			\$50,000
Sub-total			\$107,500

Total Program Cost \$812,000



United States Department of the Interior

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

May 25, 2022

Mr. Shannon Curtis

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

Dear Mr. Curtis:

Enclosed is a signed original of our standard joint-funding agreement for the Water Resources Monitoring Network in Fairfax County, VA, during the period **July 1, 2022 through June 30, 2027** in the amount of **\$3,335,000 from your agency**. U.S. Geological Survey contributions for this agreement are \$975,000 for a combined total of \$4,310,000. Please sign and return one fully-executed original to Paige Keaton at pkeaton@usgs.gov.

Federal law requires that we have a signed agreement before we start or continue work. Please return the signed agreement by **August 1, 2022**. If, for any reason, the agreement cannot be signed and returned by the date shown above, please contact Aaron Porter by phone number (804) 261-2628 or email aporter@usgs.gov to make alternative arrangements.

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

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

Sincerely,

Mark R. Bennett

Mark Bennett
Director

Enclosure
22LMJFAVA000085_00

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

Customer #: 6000000666
Agreement #: 22LMJFAVA000085_00
Project #: LM009RO
TIN #: 54-0787833

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the July 1, 2022, by the U.S. GEOLOGICAL SURVEY, VA/WV Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the Fairfax County, VA party of the second part.

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

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

- (a) \$975,000 by the party of the first part during the period
July 1, 2022 to June 30, 2027
- (b) \$3,335,000 by the party of the second part during the period
July 1, 2022 to June 30, 2027
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs,
in the amount of: \$0

Description of the USGS regional/national program:

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

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

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

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

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

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

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

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

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

**Customer #: 6000000666
Agreement #: 22LMJFAVA000085_00
Project #: LM009RO
TIN #: 54-0787833**

Water Resource Investigations

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

USGS Technical Point of Contact

Name: Aaron Porter
Physical Scientist
Address: 1730 East Parham Road
Richmond, VA 23228
Telephone: (804) 261-2628
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Customer Technical Point of Contact

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Fairfax, VA 22035
Telephone: (703) 324-5811
Fax: (703) 802-5955
Email: Shannon.Curtis@fairfaxcounty.gov

USGS Billing Point of Contact

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Charleston, WV 25301
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Email: pkeaton@usgs.gov

Customer Billing Point of Contact

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449
Fairfax, VA 22035
Telephone: (571) 992-3771
Fax:
Email: Alicia.gallogly@fairfaxcounty.gov

**U.S. Geological Survey
United States
Department of Interior**

Fairfax County, VA

Signature

By _____ Date: _____
Name: Mark Bennett
Title: Director

Signatures

By _____ Date: _____
Name: Bryan J. Hill
Title: County Executive

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

Board Agenda Item
July 19, 2022

ACTION – 2

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

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 19, 2022 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 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 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 July 27, 2021. The Office of the County Attorney has reviewed the Bylaws and approved staff's recommended amendment to change the number of one-year terms a Council member may hold from three to five for a total of five years, as allowed by the Head Start Performance Standards.

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 for consideration, 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 regularly since. One minor revision to the MOU is recommended to clarify already existing language. The Board of Supervisors last reviewed and approved the memorandum of understanding on July 28, 2020.

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 19, 2022

STAFF:

Christopher A. Leonard, Deputy County Executive
Lloyd Tucker, Director, Department of Neighborhood and Community Services (DNCS)
Anne-Marie D. Twohie, Director, Office for Children, (DNCS)

ASSIGNED COUNSEL:

Daniel Robinson, Senior 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.

ARTICLE III. MEMBERSHIP

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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 ~~five~~ ~~three~~ (53) 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

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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 and applicable law, 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.

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Anyone may photograph, film, or record meetings, so long as they do not interfere with any of the proceedings.

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.

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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.

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

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Committee are public meetings and shall comply with VFOIA, including the meeting notice requirements set forth in Article IV, Sections 2 and 3.

- 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.

ARTICLE X. VOTING

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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.

Self-Assessment Summary

PY 2021-2022

Fairfax County Head Start and Early Head Start



PURPOSE

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 centers); operated contractually by family child care program partners; operated by delegate agencies (Higher Horizons Day Care Center, Inc. and Fairfax County Public Schools (FCPS); and all options (center-based, home-based, family child care and child care partnerships) are included. The self-assessment supports the continuous improvement of program plans and service delivery and provides an opportunity for engaging parents.

PROTOCOL

The Fairfax County Head Start Assessment Protocol is a locally designed protocol adapted from the Office of Head Start's FY 2021 Focus Area One Monitoring Protocol and the Addendum: FA1 COVID-19 Discussion Guide.

The systems reviewed are:

- Early Childhood Development and Disabilities.
- Health, Mental Health, and Nutrition.
- Family and Community Engagement.
- Fiscal Infrastructure.
- Eligibility, Recruitment, Selection, Enrollment and Attendance (ERSEA).
- Program Design, Management, and Quality Improvement.
- Governance.

METHODOLOGY

The self-assessment process is coordinated by the Head Start Division Director, grantee management and fiscal team, and delegate staff. For each service area, specific performance measures and associated Federal regulations were addressed. Self-assessment teams review documents, child/eligibility files, and compile responses to Focus Area One questions to assess how effectively the grantee and delegates are implementing a high-quality program to promote school readiness for children and their families. The final report is shared with the governing body, Policy Council, parents, and program stakeholders.

Early Childhood Development and Disabilities

Individualization, Disabilities Services, Curriculum and Assessment

Area in Compliance with the exception of Home-Based program.

The Home-Based program is out of compliance in areas of caseload, services duration and group socializations.

STRENGTHS

- Educators develop and maintain strong relationships with families.
- Educators effectively adapt teaching methods, implementing a variety of modalities and communication strategies to support flexibility between in-person and virtual learning environments.
- Collaborative relationships between programs are strong, making transitions smoother for children and families.
- Highly qualified consultants have enhanced the program's ability to provide coaching and CLASS observations services.

CONSIDERATIONS AND ACTIONS

- Social emotional development and academic readiness are being encouraged and supported through the use of enhanced trauma-informed care practices and by addressing the implementation of curricula across all ages. These strategies help mitigate the impact of the pandemic on young children and families.
- An improvement plan has been developed and is being monitored for non-compliant areas of the Higher Horizons Home-Based program.



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

- Effective strategies for mitigating the spread of COVID-19 are implemented.
- Health services monitoring is continuous throughout the year.
- FCPS has strong systems within program to ensure children have access to resources to improve mental health, well-being and social emotional skills.
- The Office for Children (OFC) collaborated with Neighborhood Health to provide on-site dental screenings by a dental hygienist for children and families.
- Promotion of oral health education and practice by providing Brush, Book, Bed packets (a program of the American Academy of Pediatrics) to all enrolled children quarterly.

CONSIDERATIONS AND ACTIONS

- Management team members are currently working with Office of Head Start Regional Health Training/Technical Assistance staff to strengthen the mental health system for the grantee programs.
- Families will be encouraged to complete Early and Periodic Screening, Diagnostic and Treatment (EPSDT) screenings prior to enrollment and Head Start Program Performance Standards (HSPPS) health requirements within the compliance period. Some of the compliance issues will resolve as doctor and dentist offices are now open for well-child visits and routine dental exams.
- A new collaboration is being formed with George Mason University's Mason and Partners (MAP) Clinics to provide on-site health screenings and physicals at the Greater Mount Vernon Community Head Start and Early Head Start centers at the beginning of the new program year to help ensure children are up-to-date on health requirements.

Family and Community Engagement

Family Partnership Building, Parent Involvement, Community and Child Care Partnerships
Service area found in compliance.

STRENGTHS

- Efficient monthly monitoring and documentation systems are in place. Family and Community Engagement has a strong monthly monitoring and documentation system in place at each level from family service worker to family service manager to grantee management. Family service staff have demonstrated competencies in documentation of services to families in the Child Plus database.
- Strong collaboration/coordination with Health and Nutrition service areas to encourage visits to pediatricians and dental providers. Community resources provided to families improved food security during the pandemic.
- Although programs are now open for on-site services, the conversion to virtual services (staff meetings with parents, parent meetings/governance) during the pandemic increased the technology capacity of staff and families. Virtual contacts continue to be provided based on parent request.
- Fathers and father figures participation increased due to virtual learning/meeting opportunities.

CONSIDERATIONS AND ACTIONS

- With many staff transitions, managers will continue to work with staff who require training and/or more technical assistance in following the Child Plus protocol for documentation of services. New orientation activities will be developed to ensure new staff feel supported in their role.
- Continue to leverage county-wide father engagement initiatives to support ongoing male engagement. During workgroup meetings, staff will develop a plan to encourage and support males to be engaged in the program.
- OFC has partnered with Northern Virginia Community College (NVCC) to provide financial literacy courses in English and Spanish in response to parents expressing interest in learning more about managing finances, creating realistic budgets, and improving credit scores. NVCC has completed the first two cohorts of Financial Literacy courses in April 2022. More cohorts will be offered during the upcoming program year to help support the goal of increasing financial literacy.

Fiscal Infrastructure

Financial Management Systems, Reporting, Procurement, Compensation, Cost Principles, Facilities and Property

Service area found in compliance.

STRENGTHS

- Sound financial systems and record keeping practices meet the required federal standards for financial reporting, accounting records, internal controls, budget control, cost principles, cash management, and administrative costs.
- Programs demonstrate proficient and organized fiscal management of multiple funding streams.
- Procurement policies and procedures meet or exceed all requirements for applicable federal, state, and local statutes, regulations, and administrative rules for federal grants.
- Compensation plan structures ensure salaries charged to the federal award are reasonable and necessary for the accomplishment of the program's objectives and are allocated appropriately.
- 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 leverages several funding sources in addition to federal funding to support the program.

CONSIDERATIONS AND ACTIONS

- While the grantee and Higher Horizons Day Care were recruiting for fiscal officers, the County retained a fiscal consultant with extensive Head Start grants management experience to ensure continued program compliance and support new staff.
- Higher Horizons Day Care hired a new fiscal officer in April 2022 and a new fiscal officer at the grantee office is scheduled to start in July 2022.



ERSEA

Eligibility, Recruitment, Selection, Enrollment, Attendance Service area found in compliance with the exception of Enrollment.

The need to reduce classroom sizes to support social distancing recommendations, and hesitation from parents to send their children to group settings during the pandemic were both barriers to achieving full enrollment.

The Family Child Care Partnership and Expansion Grant (family child care and center based) has not reached the required minimum enrollment of ten percent of children with disabilities. This is due to a variety of factors including lower than usual enrollment, lack of parent consent for testing and impact of the pandemic on the referral process for services.

STRENGTHS

- Program has strong relationships with community organizations who are instrumental in referring potentially eligible families.
- Attendance reporting is consistent and monitoring processes are in place.
- Program follows the procedures detailed in the eligibility guidelines; documentation is consistent.
- All staff are involved in recruiting new families.
- Policy Council members actively recruit families.

CONSIDERATIONS AND ACTIONS

- Programs have worked to increase enrollment in all programs which was challenging during the pandemic. Ongoing strategies to reach and maintain full enrollment, particularly in family child care and child care partnership classrooms, will continue to be a focus this year.
- Recruitment planning will take place during ERSEA work group meetings to identify areas within the county where recruitment efforts should be increased and to identify new recruitment opportunities/tactics.
- Additional family child care partners will be recruited to support increased enrollment efforts.
- Further collaboration with Infant & Toddler Connection (Part C) and the FCPS Early Childhood Identification and Services (Part B) can be explored to help identify children who may qualify for services under the Individuals with Disabilities Education Act to assist the program to ensure ten percent enrollment of children with disabilities.
- ERSEA Coordinator and Education Manager will collaborate to recruit and give enrollment preference to children with an Individualized Family Service Plan (IFSP) or an Individualized Education Program (IEP) during the selection process to assist with meeting the ten percent mandate.
- Filing a waiver for the 10% mandate with the Office of Head Start may be considered to ensure the program meets compliance requirements.



Program Design, Management and Quality Improvement

Program Planning, Communication, Record-keeping and Reporting, Ongoing Monitoring, Human Resources, Organizational Structure, Facilities, Materials, Equipment and Transportation

Service area found in compliance.

STRENGTHS

- The hiring of bilingual staff and family child care partners support active participation of children who are dual language learners. Translators are utilized as needed. Programs have a shared belief that having a strong home language foundation makes it easier for children to learn English.
- Programs have systems in place to use program data to evaluate progress and identify needs.
- User friendly communication systems are in place to share programmatic information with families, parent committees, and stakeholders.
- Budget and staffing requests are reviewed by the grantee office.

CONSIDERATIONS AND ACTIONS

- Developing additional strategies to retain and recruit staff will remain a priority as programs continue to experience turnover. Onboarding processes will be reviewed and improved, and mentorship opportunities will be offered.

Governance

Service area found in compliance.

STRENGTHS

- Effective oversight of programs include active engagement of board members, Policy Council members, and parent committee representatives

CONSIDERATIONS AND ACTIONS

- Policy Council elections were delayed this program year due to difficulty recruiting new members to run for offices. Increasing the number of one-year terms a parent can serve on Policy Council will help address this challenge.
- Policy Council officers and members may benefit from additional training on roles and responsibilities and shared governance.
- Programs should explore new ways to encourage parents to consider participating on the Policy Council, as maintaining Policy Council participation from each program has been challenging.
- Recruitment of potential Policy Council members will begin earlier in the program year.

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 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 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 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, must 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

 Tanya Blackburn, Chairperson Date
 Fairfax County Head Start/Early Head Start
 Policy Council

ACTION – 3

Approval to Execute an Agreement of Perpetual Maintenance with the Virginia Department of Transportation for the Joint Operation and Maintenance of the Shared-Use Path at the Intersection of Provincial Drive and Old Meadow Road (Providence District)

ISSUE:

Board of Supervisors' approval and authorization for the Director of the Fairfax County Department of Transportation (FCDOT) to execute an Agreement of Perpetual Maintenance, substantially in the form of Attachment I, for the joint operation and maintenance of the Shared-Use Path at the intersection of Provincial Drive and Old Meadow Road.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the Director of FCDOT to execute the Agreement with the Virginia Department of Transportation (VDOT), substantially in the form of Attachment I.

TIMING:

The Board should act on this item on July 19, 2022, so that VDOT and the County can begin operation and maintenance of the Shared-Use Path.

BACKGROUND:

VDOT is constructing a shared-use path from the intersection of Provincial Drive and Old Meadow Road east of I-495 to the intersection of Tysons One Place and Fashion Boulevard west of I-495 (Shared-Use Path), pursuant to VDOT Project Number I-495-029-078, P101, R201, C501, B630. The Shared-Use Path will run along the west side of Old Meadow Road and encompass a bicycle and pedestrian bridge located over the Capital Beltway until it reaches the existing and separate shared-use path at the intersection of Tysons One Place and Fashion Boulevard. The Shared-Use Path will allow pedestrians and bicycles to travel in each direction.

VDOT will assume ownership of and will accept into the state's permanent inventory the ramp and pedestrian bridge over I-495. VDOT will also perform biennial inspections of this infrastructure, in accordance with Federal Regulations. VDOT will maintain, repair,

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July 19, 2022

and replace the sub-base, asphalt pavement, mowing, regulatory signing, and sound wall structure elements of the Shared-Use Path. In turn, the County will maintain, repair, and replace the lighting and wayfinding signing elements of the Shared-Use Path.

FISCAL IMPACT:

Department of Public Works is planning to increase their maintenance budget by a minimum of \$44,000 annually (\$8,000 towards electricity and \$36,000 towards lighting maintenance) for this project.

ENCLOSED DOCUMENTS:

Attachment I: Agreement of Perpetual Maintenance

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 (CFD), FCDOT
Ray Johnson, Chief, Funding Section, CFD, FCDOT
Smitha Chellappa, Senior Transportation Planner, CFD, FCDOT
Michael J. Guarino, Chief, Capital Projects Section, Capital Projects and Traffic Engineering Division (CPTED), FCDOT
Chris Wells, Active Transportation, CPTED, FCDOT
Valecia Witt, Chief, Administration Services, FCDOT

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

Agreement of Perpetual Maintenance

This Agreement of Perpetual Maintenance (“Agreement”) is dated as of this ____ day of 2022 and is made by and between the **Virginia Department of Transportation** (“VDOT”) and **The County of Fairfax Virginia** (“County”), collectively referred to as the Parties.

WITNESSETH

WHEREAS, VDOT is constructing a shared-use path from the intersection of Provincial Drive and Old Meadow Road east of I-495 to the intersection of Tysons One Place and Fashion Boulevard west of I-495 in Fairfax County, Virginia (“Shared-Use Path”), pursuant to VDOT Project Number I-495-029-078, P101, R201, C501, B630 (“Project”). The Shared-Use Path will run along the west side of Old Meadow Road and encompass a bicycle and pedestrian bridge located over I-495 (Capital Beltway) until it reaches the existing and separate shared use path at the intersection of Tysons One Place and Fashion Boulevard; and

WHEREAS, the Shared-Use Path will allow pedestrians and bicycles to travel in each direction; and

WHEREAS, the Project includes the provision of infrastructure to provide lighting for the Shared-Use Path; and

WHEREAS, VDOT and the County together agree to operate and maintain the Shared-Use Path.

NOW, therefore the County, for itself and its successors and/or assigns, hereby agrees to maintain, repair, and replace, at its sole cost and expense, the Shared-Use Path elements described in **Exhibit A**. Similarly, VDOT, for itself and its successors and/or assigns, hereby agrees to maintain, repair, and replace, at its sole cost and expense, the Shared-Use Path elements described in **Exhibit A**, which is attached to this Agreement and incorporated herein.

The County agrees that all work that it is responsible for within the Shared-Use Path shall conform to the then-current version of the Virginia Work Area Protection Manual issued by VDOT and all other applicable specifications and standards designed to protect the public safety. In the event that the County chooses to make modifications to the Shared-Use Path, such modifications shall be authorized after providing written notice to VDOT at least 30 days in advance of the performance of any modification and receiving written approval from the Department. Temporary and permanent bridge attachments shall not be installed without VDOT Structure and Bridge approval.

VDOT will assume ownership of and will accept into the state’s permanent inventory the ramp and pedestrian bridge over I-495. VDOT will also perform biennial inspections of said infrastructure, in accordance with Federal Regulations.

The Agreements and obligations of the Parties, and their successors and/or assigns, contained herein are expressly intended to run with the land.

WITNESS THE FOLLOWING SIGNATURE AND ATTESTATION:

John Lynch, P.E.
Northern Virginia District Administrator
Commonwealth of Virginia
Virginia Department of Transportation

State of Virginia
Fairfax County

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by John Lynch, Northern Virginia District Administrator, Virginia Department of Transportation.

My Commission expires: _____

Notary Public

Tom Biesiadny
Director
Fairfax County Department of Transportation

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by Tom Biesiadny, the Director of the Fairfax County Department of Transportation.

My Commission expires: _____

Notary Public

Exhibit A

This Exhibit describes the various elements of the Shared-Use Path for which the County of Fairfax and VDOT are responsible to maintain, repair, and replace.

The County of Fairfax and VDOT Responsibilities for Shared-Use Path Elements

	Item	Description/Details	VDOT	The County of Fairfax
1.	Shared-Use Path Sub-Base	Maintenance, Repair, and Replacement	Fully Responsible	Not Responsible
2.	Shared-Use Path Asphalt Pavement	Maintenance, Repair, and Replacement	Fully Responsible	Not Responsible
3.	Mowing Grass Adjacent to the Shared-Use Path	Cutting and Trimming	Responsible for normal VDOT lawn cutting practices	Not responsible, except if Fairfax County desires increased frequency than normal VDOT lawn cutting practices.
4.	Lighting along the Shared-Use Path (from Provincial Drive to Tysons One Place)	Maintenance, Repair, Replacement as determined by Fairfax County	Not Responsible	Fully Responsible
5.	Shared-Use Path Regulatory Signing	Maintenance, Repair, Replacement	Fully Responsible	Not Responsible
6.	Shared-Use Path Wayfinding Signing	Maintenance, Repair, Replacement	Not Responsible	Fully Responsible
7.	Ramp and Pedestrian Bridge over I-495	NBIS Safety Inspection and Maintenance, Repair, and Replacement of structural elements	Fully Responsible	Not Responsible
8.	Sound Wall Structure	Maintenance, Repair, and Replacement	Fully Responsible	Not Responsible

Board Agenda Item
July 19, 2022

ACTION – 4

Approval and Authorization to Execute a Project Administration Agreement with the Virginia Department of Transportation for Braddock Road at Old Lee Road Improvements (Sully District)

ISSUE:

Board of Supervisors' approval and authorization for the Director of the Fairfax County Department of Transportation (FCDOT) to execute a Project Administration Agreement (PAA), substantially in the form of Attachment 2, for the implementation of improvements on Braddock Road at Old Lee Road.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve a resolution (Attachment 1), authorizing the Director of FCDOT to execute a PAA with the Virginia Department of Transportation (VDOT), substantially in the form of Attachment 2, for the implementation of the project.

TIMING:

The Board should act on this item on July 19, 2022, so that VDOT can proceed with the implementation of the project.

BACKGROUND:

This project will improve the intersection of Braddock Road and Old Lee Road and realign the S-curve on Braddock Road to mitigate congestion and improve safety in the corridor. The S-curve and intersection at Braddock Road and Old Lee Road each present safety and operational challenges. VDOT has studied alternatives for intersection improvements at Braddock Road and Old Lee Road and developed a conceptual design that will add signalization, a 200-foot southbound right turn lane, an 1,100-foot jug-handle eastbound turn lane, and pedestrian facilities. Along with the intersection improvements, VDOT proposes to fix the S-curve by realigning the road. The realignment of the S-curve will have a typical cross section of two 11-foot lanes with a 10-foot shared-use path. The project has moderate right-of-way, utility (gas, fiber, electric), and environmental impacts.

Board Agenda Item
July 19, 2022

FISCAL IMPACT:

The current total project estimate is approximately \$18.1 million, and it currently has \$15,972,000 in state Smart Scale funding allocated to it. The balance of \$2,104,569 is needed to fully fund the project. Staff recommends using funds from the Northern Virginia Transportation Authority (NVTa) 30 Percent Construction Reserve (2G40-107-000) in Fund 40010, County and Regional Transportation Projects, to satisfy this funding gap. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution to Execute a Project Administration Agreement with the Virginia Department of Transportation

Attachment 2: Project Administration Agreement with Related Appendices

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), FCDOT

Ray Johnson, Chief, Funding Section, CFD, FCDOT

Smitha Chellappa, Senior Transportation Planner, CFD, FCDOT

Michael J. Guarino, Chief, Capital Projects Section, Capital Projects and Traffic Engineering Division (CPTED), FCDOT

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center in Fairfax, Virginia, on Tuesday, July 19, 2022, at which meeting a quorum was present and voting, the following resolution was adopted:

AGREEMENT EXECUTION RESOLUTION

A RESOLUTION FOR THE BOARD OF SUPERVISORS OF THE COUNTY OF FAIRFAX, VIRGINIA

AS AN ENDORSEMENT OF THE Braddock Road at Old Lee Road Improvements PROJECT

WHEREAS, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring local jurisdiction or agency requesting the Virginia Department of Transportation (VDOT) to establish a project(s), if not already established, in the County of Fairfax.

NOW, THEREFORE, BE IT RESOLVED, that the County of Fairfax requests the Commonwealth Transportation Board to establish a project(s), if not already established, for the implementation of the Braddock Road at Old Lee Road Improvements project (VDOT project # 0620-029-575, UPC 120777) (“Project”).

BE IT FURTHER RESOLVED, that the County of Fairfax hereby agrees to provide its share of the local contribution, in accordance with the Project Administration Agreements (“PAA”, attached) and associated financial documents (Appendix A and B), executed pursuant to this Resolution.

BE IT FURTHER RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County’s Department of Transportation to execute, on behalf of the County of Fairfax, the PAA with the Virginia Department of Transportation for the implementation of the Project to be administered by Fairfax County.

Adopted this 19th day of July 2022, Fairfax, Virginia

ATTEST _____
Jill G. Cooper
Clerk to the Board of Supervisors

**VDOT ADMINISTERED – LOCALLY FUNDED
PROJECT ADMINISTRATION AGREEMENT**

Attachment 2

Project Number	UPC	Local Government
0620-029-575	120777	County of Fairfax

THIS AGREEMENT, made and executed in triplicate this ____ day of _____, 20__, by and between the County of Fairfax, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT. The DEPARTMENT and the LOCALITY are collectively referred to as the “Parties”.

WITNESSETH

WHEREAS, the LOCALITY has expressed its desire to have the DEPARTMENT administer the work as described in Appendix B, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds as shown in Appendix A have all been allocated by the LOCALITY to finance the Project; and

WHEREAS, the LOCALITY has requested that the DEPARTMENT design and construct this project in accordance with the scope of work described in Appendix B, and the DEPARTMENT has agreed to perform such work; and

WHEREAS, both parties have concurred in the DEPARTMENT's administration of the project identified in this Agreement and its associated Appendices A and B in accordance with applicable federal, state, and local law and regulations; and

WHEREAS, the LOCALITY's governing body has, by resolution, which is attached hereto, authorized its designee to execute this Agreement; and

WHEREAS, Section 33.2-338 of the Code of Virginia authorizes both the DEPARTMENT and the LOCALITY to enter into this Agreement;

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

A. The DEPARTMENT shall:

1. Complete said work as identified in Appendix B, advancing such diligently, and all work shall be completed in accordance with the schedule established by both parties.
2. Perform or have performed, and remit all payments for, all preliminary engineering, right-of-way acquisition, construction, contract administration, and inspection services activities for the project(s) as required.

3. Provide a summary of project expenditures to the LOCALITY for charges of actual DEPARTMENT cost.
 4. Notify the LOCALITY of additional project expenses resulting from unanticipated circumstances and provide detailed estimates of additional costs associated with those circumstances. The DEPARTMENT will make all efforts to contact the LOCALITY prior to performing those activities.
 5. Return any unexpended funds to the LOCALITY no later than 90 days after the project(s) have been completed and final expenses have been paid in full.
- B. The LOCALITY shall:
1. Provide funds to the Department for Preliminary Engineering (PE), Right of Way (ROW) and/or Construction (CN) in accordance with the payment schedule outlined in Appendix A.
 2. Accept responsibility for any additional project costs resulting from unforeseeable circumstances, but only after concurrence of the LOCALITY and modification of this Agreement.
- C. Funding by the LOCALITY shall be subject to annual appropriation or other lawful appropriation by the Board of Supervisors.
- D. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
- E. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, received a true copy of

such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

- F. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
- G. Should funding be insufficient and LOCALITY funds be unavailable, both parties will review all available options for moving the project forward, including but not limited to, halting work until additional funds are allocated, revising the project scope to conform to available funds, or cancelling the project.
- H. Should the project be cancelled as a result of the lack of funding by the LOCALITY, the LOCALITY shall be responsible for any costs, claims and liabilities associated with the early termination of any construction contract(s) issued pursuant to this agreement.
- I. This Agreement may be terminated by either party upon 60 days advance written notice. Eligible expenses incurred through the date of termination shall be reimbursed to the DEPARTMENT subject to the limitations established in this Agreement.

THE LOCALITY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors and assigns.

THIS AGREEMENT may be modified in writing upon mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF FAIRFAX, VIRGINIA:

Typed or Printed Name of Signatory

Date

Title

Signature of Witness

Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:

Chief of Policy
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Attachments

Appendix A (UPC 120777)

Appendix B (UPC 120777)

VDOT Administered, Locally Funded Appendix A
Date: 5/16/2022

Project Number: 0620-029-575 UPC: 120777 CFDA# 20.205 Locality: County of Fairfax

Project Location ZIP+4: 20120-1236	Locality UEI #: W2ZUFMBDM378	Locality Address (incl ZIP+4): 4050 Legato Road, Suite 400 Fairfax, VA 22033-2867
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Project Narrative

Work Description: BRADDOCK ROAD at OLD LEE ROAD IMPROVEMENTS - Braddock/Old Lee and realign S-curve on Braddock Road, add signalization, a 200 foot southbound turn lane, and a 1,100 foot Jug-handle eastbound turn lane. Realignment will have a typical cross section of two 11foot lanes with a 10 foot shared use path. The project has moderate right of way, utility (gas, fiber, electric), and environment impacts.

From: Braddock Road (approximately .04 mile west of Tre Towers Court)

To: Old Lee Road

Locality Project Manager Contact info: Will Steinhilber 703-273-6400 august.steinhilber@fairfaxcounty.gov

Department Project Manager Contact Info: Sitaram Kodali 703-691-6710 Sitaram.Kodali@vdot.virginia.gov

Project Estimates

Phase	Estimated Project Costs
Preliminary Engineering	\$2,405,037
Right of Way & Utilities	\$5,124,637
Construction	\$10,546,895
Total Estimated Cost	\$18,076,569

Project Cost

Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering	\$2,405,037	Priority Transportation	0%	\$0
Total PE	\$2,405,037			\$0
Right of Way & Utilities	\$5,124,637	Priority Transportation	0%	\$0
Total RW	\$5,124,637			\$0
Construction	\$8,442,326	Priority Transportation	0%	\$0
	\$2,104,569	Local Funds	100%	\$2,104,569
Total CN	\$10,546,895			\$2,104,569
Total Estimated Cost	\$18,076,569			\$2,104,569

Total Maximum Reimbursement / Payment by Locality to VDOT

\$2,104,569

Project Financing

Priority Transportation	Local Funds				Aggregate Allocations
\$15,972,000	\$2,104,569				\$18,076,569

Payment Schedule

FY 2030			
\$2,104,569			

Program and Project Specific Funding Requirements

- This is a limited funds project. The locality shall be responsible for any additional funding in excess of \$15,972,000.
- All local funds included on this appendix have been formally committed by the local government's board or council resolution subject to appropriation.
- At Construction Award, VDOT will invoice the LOCALITY for their share of the project costs. The LOCALITY shall make one lump sum payment in the amount of \$2,104,569 to VDOT, no later than 30 days after receipt of VDOT's invoice, and prior to the occurrence of any Construction work.

This attachment is certified and made an official attachment to this document by the parties to this agreement

Authorized Locality Official and Date

Authorized VDOT Official and Date

Typed or printed name of person signing

Typed or printed name of person signing

Revised: February 1, 2019

Appendix B

Project Number: 0620-029-575 (UPC 120777) Locality: County of Fairfax

Project Scope	
Work Description:	BRADDOCK ROAD at OLD LEE ROAD IMPROVEMENTS - Braddock/Old Lee and realign S-curve on Braddock Road, add signalization, a 200 foot southbound turn lane, and a 1,100 foot Jug-handle eastbound turn lane. Realignment will have a typical cross section of two 11foot lanes with a 10 foot shared use path. The project has moderate right of way, utility (gas, fiber, electric), and environment impacts.
From:	Braddock Road (approximately .04 mile west of Tre Towers Court)
To:	Old Lee Road
Locality Project Manager Contact Info: Will Steinhilber 703-273-6400 august.steinhilber@fairfaxcounty.gov Department Project Coordinator Contact Info: Sitaram Kodali 703-691-6710 Sitaram.Kodali@vdot.virginia.gov	

Detailed Scope of Services
<p>VDOT will administer, design, and construct improvements to Braddock Road (Route 620) from a point approximately 0.4 miles west of Tre Towers Court to the intersection with Old Lee Road (Route 661) as follows:</p> <ul style="list-style-type: none"> • Reconstruct Braddock Road within the project limits, including realignment of the existing S-curve located near the western project limits. • Provide a jug-handle left turn from Braddock Road to Old Lee Road, with an auxiliary lane of ~ 1,100 foot on the eastbound approach. • Provide a right turn lane from southbound Old Lee Road onto westbound Braddock Road. • Provide a traffic signal at the Braddock Road / Old Lee Road intersection. • The typical section of Braddock Road will provide for two 11 foot lanes and a 10 foot shared use path (SUP), in addition to the auxiliary lane indicated above. <p>The project will include all necessary drainage and storm water management (SWM) improvements and limited landscaping. Improvements to the existing bridge carrying Braddock Road over Cub Run (at the eastern project limits) are not included in the project scope.</p> <p>Design Phase Perform surveys, obtain traffic count data, prepare environmental documentation and analyses, and perform all engineering necessary to develop plans pursuant to VDOT's project development process. Administer and complete Public Involvement requirements in accordance with VDOT policy and applicable regulations. Prepare complete plans for right of way acquisition and construction.</p>

Right of Way Phase

Acquire all land rights necessary to construct the project in accordance with applicable VDOT policy and procedures. Relocate or provide for the relocation of utilities by others as required in accordance with applicable VDOT policy and procedures to facilitate project construction.

Construction Phase

Advertise, award, and administer a construction contract through project completion, acceptance, and closeout in accordance with applicable VDOT policy and procedures.

VDOT reserves the option, at its discretion and with the concurrence of the County, to develop this project using a Design-Build project development process and procurement. In the event that VDOT and the County mutually agree to the use of this alternative approach, this Agreement will be amended as necessary to reflect applicable changes.

This attachment is certified and made an official attachment to this document by the parties of this agreement

Authorized Locality Official and date

Residency Administrator/PE Manager/District Construction Engineer
Recommendation and date

Typed or printed name of person signing

Typed or printed name of person signing

Board Agenda Item
July 19, 2022

ACTION - 5

Approval of a Memorandum of Agreement Between the Virginia Department of Transportation and Fairfax County for the Stream Restoration of Scotts Run

ISSUE:

Board of Supervisors' (Board) authorization is requested for the Fairfax County (County) to execute an agreement with the Virginia Department of Transportation (VDOT) that provides the terms and conditions for the transfer of funds to benefit the stream restoration of a segment of Scotts Run as a part of the 495 NEXT project (see Attachment 1).

RECOMMENDATION:

The County Executive recommends that the Board approve and authorize the County Executive or his designee to sign an agreement with VDOT to accept funding toward the design and construction of the Scotts Run at Lewinsville Road (SC9220) Stream Restoration Project (Project).

TIMING:

Board approval is requested on July 19, 2022.

BACKGROUND:

In October 2020, the County provided comments on the VDOT 495 NEXT project Environmental Assessment (see Attachment 2). The comments recommended VDOT pursue stream restoration along the section of Scotts Run parallel to the transportation project between Lewinsville Road and Old Dominion Drive in McLean. In December 2020, VDOT agreed to partner with the County to restore this segment of Scotts Run. The project was recommended in the Middle Potomac Watershed Management Plan and will restore approximately 4,900 linear feet of stream, providing nutrient reduction and improved water quality in the Scotts Run watershed. The County will administer the design and construction of the Project.

FISCAL IMPACT:

The estimated total cost of the Project is \$6,615,000. VDOT will contribute \$1,387,000 for the design and construction of the Project. The County will fund the remaining \$5,228,000. Funding is currently available in Project SD-000031, Stream & Water

Board Agenda Item
July 19, 2022

Quality Improvements, Fund 40100, Stormwater Services, for the County's obligation to this Project.

CREATION OF POSITIONS:
No positions will be created.

ENCLOSED DOCUMENTS:
Attachment 1: Memorandum of Agreement between the Virginia Department of Transportation and The County of Fairfax, Virginia for the Stream Restoration of Scotts Run
Attachment 2: Fairfax County Comments on I-495 Express Lanes Northern Extension Project Environmental Assessment

STAFF:
Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Christopher Herrington, Director, Department of Public Works and Environmental Services (DPWES)
Eleanor Ku Coddling, Deputy Director, DPWES, Stormwater and Wastewater Divisions
Craig Carinci, Director, DPWES, Stormwater Planning Division

MEMORANDUM OF AGREEMENT
BETWEEN
THE VIRGINIA DEPARTMENT OF TRANSPORTATION
AND
THE COUNTY OF FAIRFAX, VIRGINIA
FOR THE
STREAM RESTORATION OF SCOTTS RUN

THIS MEMORANDUM OF AGREEMENT ("Agreement"), made and effective upon the last date of execution below, between the Virginia Department of Transportation (VDOT) and the County of Fairfax ("County") (collectively, the "Parties") provides the terms and conditions for the transfer of funds to benefit the stream restoration of a segment of Scotts Run and the allocation of credits therefrom among the Parties (the "Project").

RECITALS

WHEREAS, for over 25 years, the U.S. Environmental Protection Agency identified significant portions of the Chesapeake Bay and its tidal tributaries within Virginia as not meeting water quality standards and listed these waters as impaired, resulting in a total maximum daily load (TMDL) being established under the Clean Water Act and multiple Consent Decrees, designed to achieve reductions in the amount of phosphorus, nitrogen, and sediment pollution in the Chesapeake Bay; and

WHEREAS, pursuant to a Virginia Pollutant Discharge Elimination System Individual Permit ("Permit") issued by the Virginia Department of Environmental Quality for the operation of its municipal separate storm sewer system (MS4), VDOT is required to implement certain best management practices (BMPs) to reduce nutrients and sediment pollution within the Chesapeake Bay watershed and comply with the Chesapeake Bay TMDL; and

WHEREAS, the I-495 Express Lanes Northern Extension Project ("495 NEXT") is an extension of the 495 HOV/HOT Lanes in Fairfax County, Virginia, along Interstate 495 from the current northern terminus of the 495 Express Lanes near Old Dominion Drive (Route 738) to the vicinity of the George Washington Memorial Parkway, and includes improvements to the Dulles Toll Road, Georgetown Pike and George Washington Memorial Parkway interchanges, existing bridges, and general purpose lanes; and

WHEREAS, 495 NEXT is being developed as a concessionaire project enhancement in accordance with the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, dated December 19, 2007, between VDOT and Capital Beltway Express, LLC ("Concessionaire"); and

WHEREAS, to accommodate 495 NEXT, VDOT and the Concessionaire executed the Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project ("2nd ARCA") on September 30, 2021; and

WHEREAS, the Concessionaire, as a condition precedent to financial close pursuant to Section 6.08(c) of the 2nd ARCA, provided VDOT with a one-time contribution of \$1,387,000 ("ARCA Funding Contribution") towards the stream restoration of Scotts Run adjacent to I-495 (see Attachment A); and

WHEREAS, VDOT intends to provide the ARCA Funding Contribution to the County for the design, construction, and maintenance of the Project, more specifically identified in the County's *Middle Potomac Watershed Management Plan* as Stream Restoration Project SC9220 (see Attachment B), which the Parties agree is intended to promote streambank stabilization and enhanced outfalls for an overall improvement to the stream condition of Scotts Run and ultimately result in reduction of nutrients and sediments reaching the Chesapeake Bay; and

WHEREAS, the County agrees to allocate to VDOT a proportional share of any TMDL credits for the Chesapeake Bay TMDL pollutants of concern that are achieved as a result of the Project.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the Parties hereto agree as follows:

A. VDOT shall:

1. Within 30 days of execution of this Agreement, provide the ARCA Funding Contribution to the County ; the Parties hereby agree that VDOT shall not be obligated to provide the County any funds other than, or in excess of, the ARCA Funding Contribution;
2. Allow the County access from and to any VDOT-owned rights-of-way to the Project site for the study, design, construction, and maintenance of the Project pursuant to a land use permit issued by VDOT, for which any fees and surety shall be waived, and on the condition that said activities shall not interfere with the construction or maintenance of 495 NEXT; and
3. Unless otherwise provided by the County, perform any TMDL credit verification in accordance with the schedule provided in VDOT's MS4 Permit.

B. The County shall:

1. Expend the ARCA Funding Contribution only for costs directly associated with, and necessary for, the completion of the Project;
2. Every ninety (90) days, submit to VDOT progress reports on Project development and construction to include documentation supporting the expenditure of the ARCA Funding Contribution, the aggregate of all funds expended on the Project to date, and the amount of any residual ARCA Funding Contribution;
3. Allocate to VDOT a proportional share of TMDL credits for the Chesapeake Bay TMDL pollutants of concern that are achieved as a result of the Project, which proportional share shall remain constant over the life of the Project regardless of actual load reductions, calculated as (i) the proportional share of costs for Project design and construction for VDOT's financial contribution pursuant to this Agreement relative to the actual demonstrated expenses incurred by the County for Project design and construction or (ii) the proportional share of the Project occurring within VDOT's right-of-way relative to the share occurring outside of VDOT's right-of-way, whichever is greater. Upon calculation of the proportional share, the County shall submit to VDOT documentation of incurred Project expenses, relative share of Project site on VDOT-owned rights-of-way, TMDL credits achieved, and methodology of calculation;
4. Submit to VDOT an initial pre-construction credit estimate with the following documentation at least 30 days prior to the initiation of Project construction. The pre-construction credit estimate will be based on the most recently approved or grandfathered, if applicable, Chesapeake Bay Program's *A Unified Guide to Crediting Stream and Floodplain Restoration Practices in the Chesapeake Bay Watershed* ("Guidance"). The County will conduct activities that provide the necessary information and design guidance to maximize nutrient and sediment pollutant load reductions utilizing Updated Protocol 1, Prevented Sediment; Updated Protocol 2, Hyporheic Denitrification; and Updated Protocol 3, Floodplain Reconnection, as provided in the Guidance;
5. Finance the balance of the Project design, permitting and construction costs;
6. Finance, perform, and be solely responsible for permit-required monitoring and long-term maintenance of the Project;
7. Before the initiation of Project construction, obtain any required rights-of-entry, easements, or property interests needed to construct and maintain the Project;

8. Be responsible for administering preliminary engineering, TMDL credit analyses, design, environmental permits and clearances, construction, and maintenance for the Project;
 9. Submit a statement of certification based on the Project's adjusted credit calculation within the first year following completion of construction or with the as-built survey to include (i) a post-construction certification that the stream restoration project was installed properly, meets or exceeds its functional restoration objectives, and is hydraulically and vegetatively stable; and (ii) photo-documentation of both current and pre-restoration conditions;
 10. Submit the credit reverifications to VDOT as follows for the functional life of the Project in accordance with either subsection B(8)(a) or B(8)(b) below;
 - a. In accordance with Guidance:
 - i. Conduct visual inspections once every five (5) years after the date of installation to ensure that the overall stability of the Project is consistent with the design intent by documenting the percentage of the Project that is:
 - (1). Functioning or showing minor compromise;
 - (2). Showing major compromise; and
 - (3). Indicating project failure.
 - ii. Provide supporting documentation for continued credit verification to VDOT by the following June 30th; or
 - b. In accordance with a Project-specific credit verification process approved by DEQ for reporting VDOT's portion of the credit verification.
 11. Provide access to VDOT, and/or VDOT's contractors, to perform any TMDL credit certification or reverification on any Project areas under the control of, or accessible by, the County if such credit certification or reverification obligations are not otherwise fulfilled by the County; and
 12. Return to VDOT any amount of the ARCA Funding Contribution that has not been expended on the Project as of the date of termination of this Agreement or completion of construction, whichever occurs first.
- C. All obligations of VDOT pursuant to this Agreement are subject to appropriation by the General Assembly and allocation by the Commonwealth Transportation Board.

- D. All obligations of the County are subject to annual appropriations from the Board of Supervisors.
- E. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and that neither Party will bring a suit or assert a claim against any official, officer, or employee of either Party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this paragraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
- F. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposits, cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Nothing in this Agreement shall be construed as a waiver of the County's or the Commonwealth of Virginia's sovereign immunity.
- G. This Agreement is governed by the laws of the Commonwealth of Virginia and any litigation hereto shall be brought in the circuit courts of the Commonwealth.
- H. This Agreement may be modified only upon written agreement of the Parties and may be terminated by either party upon sixty (60) days advance written notice. Should the County terminate this Agreement, or fail to fulfill an obligation herein in a manner that materially impedes Project completion, the County shall reimburse VDOT for any unexpended amount of the ARCA Funding Contribution received as of the termination date. The Parties' obligations pursuant to subsections B(1), B(8), and B(9) herein shall survive any termination of this Agreement.
- I. The Parties acknowledge and agree that this Agreement has been prepared jointly by the Parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any Party.

THIS AGREEMENT, when properly executed, shall be binding upon both Parties, their successors and assigns.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed as of the day, month, and year herein written.

FAIRFAX COUNTY:

Bryan J. Hill
County Executive
Fairfax County

Date

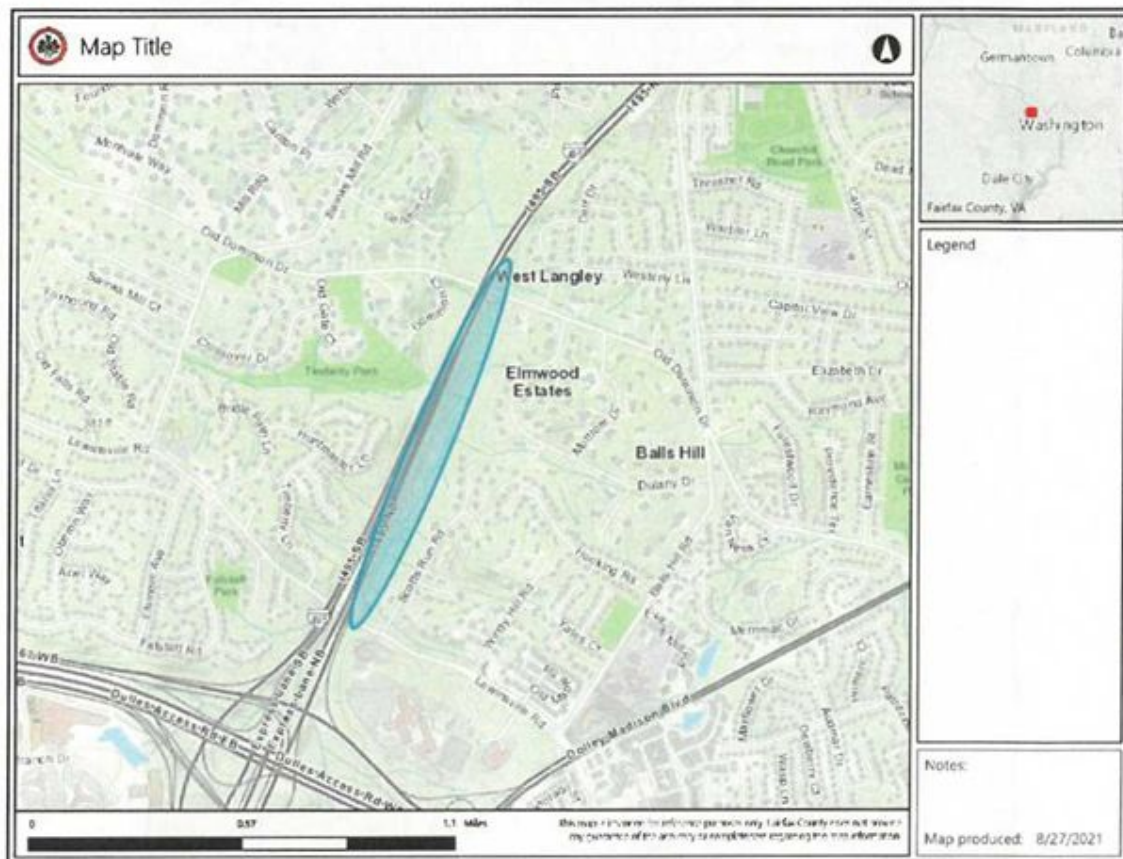
VIRGINIA DEPARTMENT OF TRANSPORTATION:

Stephen C. Brich, P.E.
Commissioner of Highways
Virginia Department of Transportation

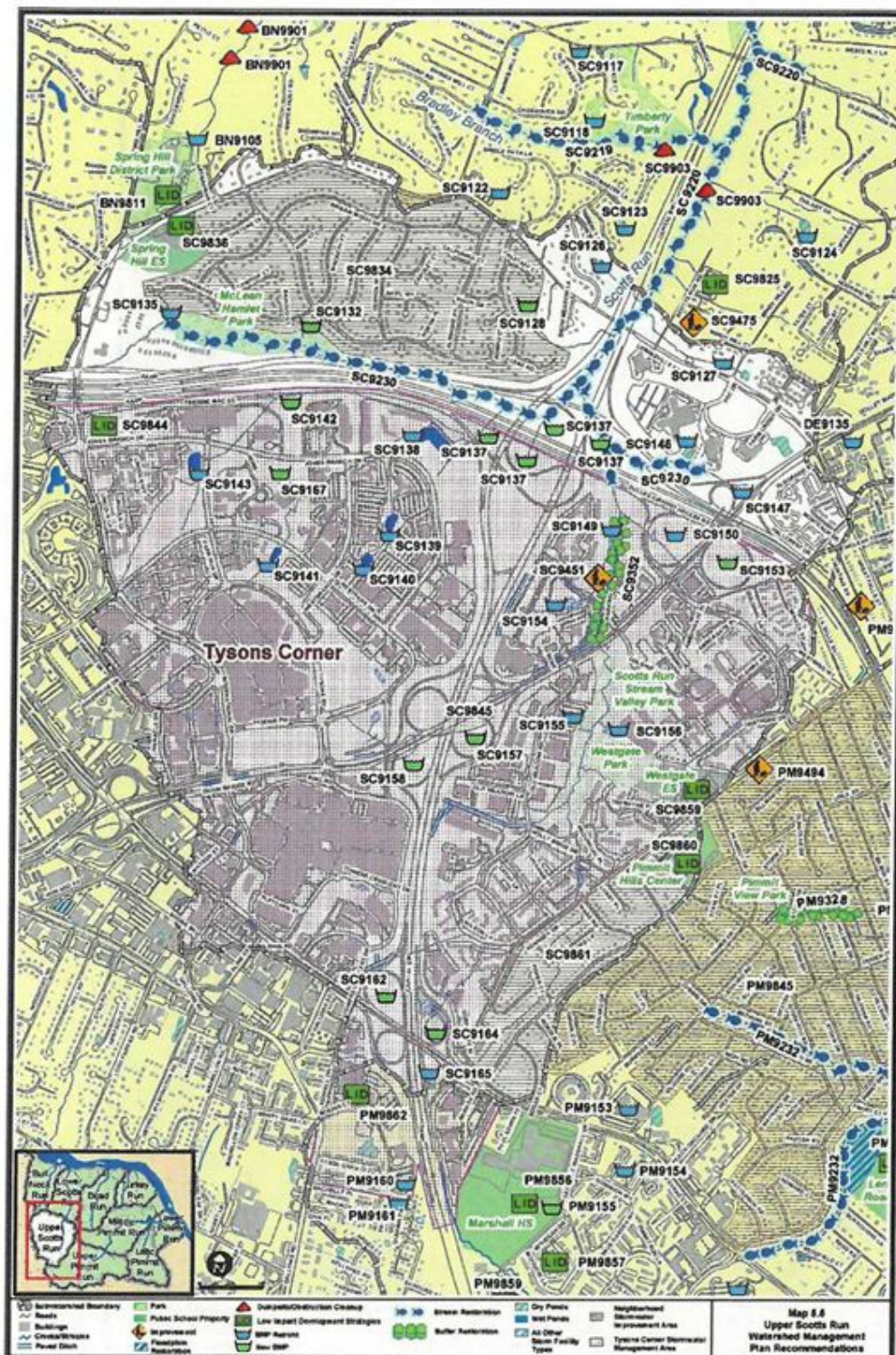
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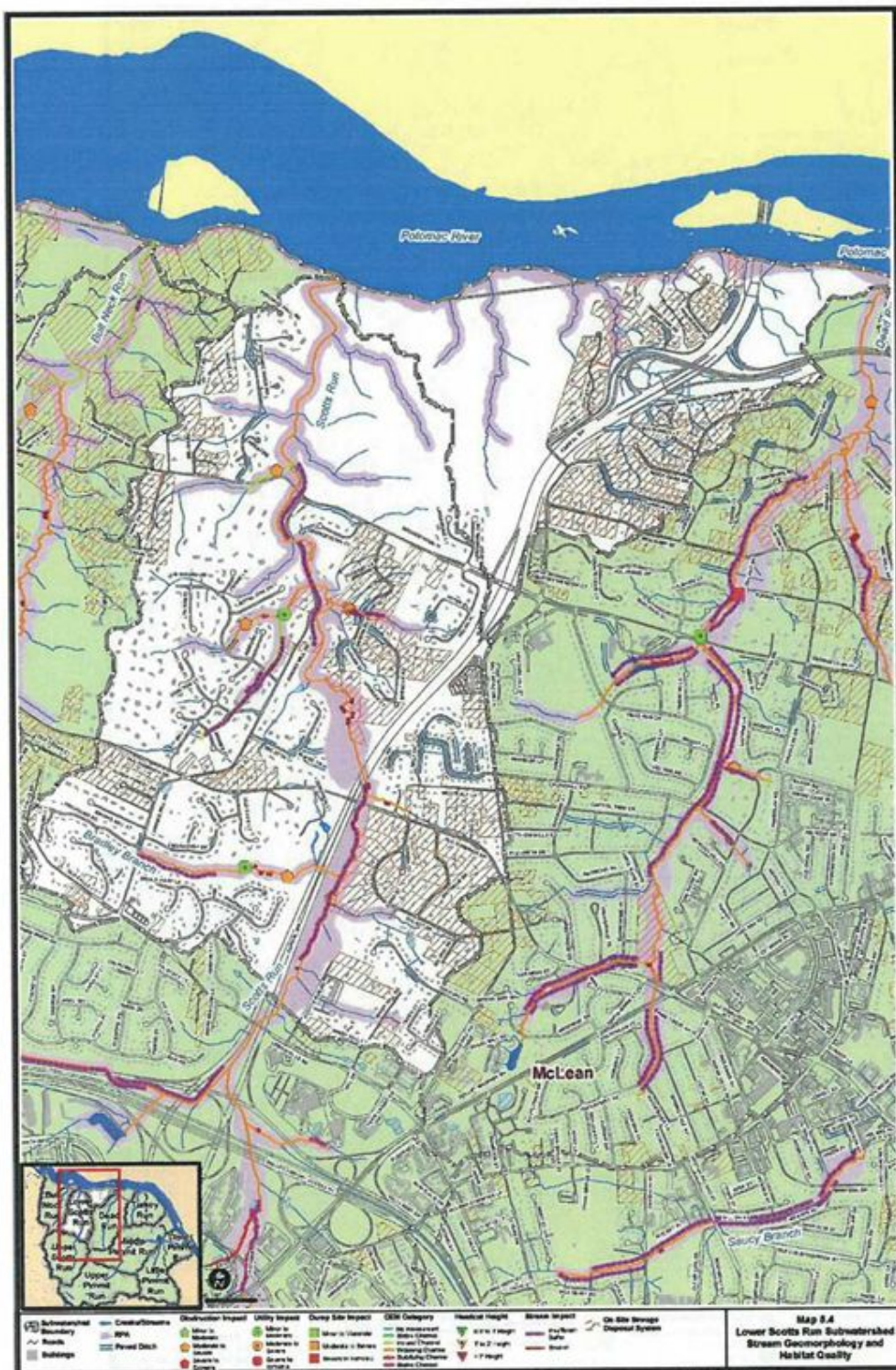
Attachment A

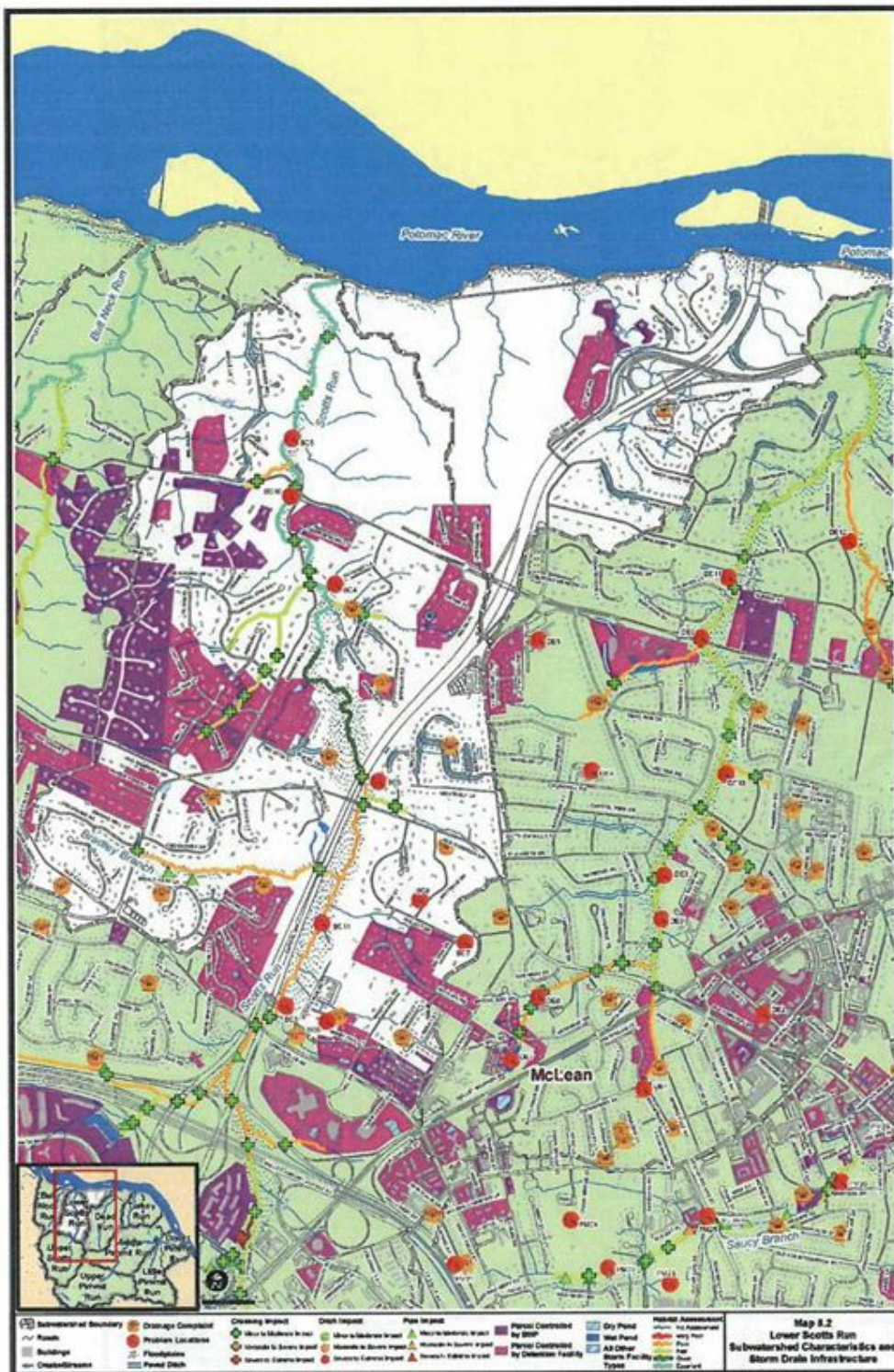
Scotts Run Stream Restoration Project Location Map



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JEFFREY C. MCKAY
CHAIRMAN

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
BOARD OF SUPERVISORS
FAIRFAX, VIRGINIA 22035

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chairman@fairfaxcounty.gov

December 3, 2020

The Honorable Shannon Valentine
Secretary of Transportation
Commonwealth of Virginia
Patrick Henry Building, Third Floor
1111 East Broad Street
Richmond, Virginia 23219

Reference: Fairfax County Comments on I-495 Express Lanes Northern Extension Project Environmental Assessment

Dear Secretary Valentine:

On December 1, 2020, the Fairfax County Board of Supervisors approved comments regarding the I-495 Express Lanes Northern Extension (I-495 NEXT) Project Environmental Assessment. I-495 NEXT project is important to Fairfax County. The Board continues to support the Commonwealth's efforts to reduce congestion and provide additional travel choices in the Capital Beltway Corridor and to move the most people as efficiently as possible in this region. The project's proximity to Tysons and McLean also signifies that improvements in the Corridor will have lasting effects on accessibility and increased economic opportunity for surrounding communities in Fairfax County. As VDOT's own studies demonstrate, the project provides significant benefits only if Maryland completes their system of managed lanes, particularly increasing the capacity of the American Legion Bridge. In the interim, the project will cause inequitable and, therefore, unacceptable delays to non-Express Lane traffic. Construction of the project will also cause massive disruption to neighborhoods in and around McLean and Tysons as well as permanent damage to parks, stormwater, streams, and private property with no equivalent benefits without Maryland's managed lanes. Therefore, it is imperative that VDOT only consider final action on the I-495 NEXT project once Maryland has successfully executed a comprehensive agreement with a developer to complete their system of managed lanes.

Considering the implications of the I-495 NEXT project, it is essential that citizens are well informed of its scope and resulting impacts. As previously communicated, the Board requests that VDOT continue to allow time for the public to provide feedback on the project prior to executing a final contract with the concessionaire.

Fairfax County has been engaged with this project from its inception and appreciates VDOT's efforts to address many of the project issues. The Board looks forward to continued and improved coordination as project design progresses. As part of those efforts, the Board offers the following comments regarding the I-495 NEXT Environmental Assessment released in February 2020. These comments should not be construed as a County endorsement of the I-495 NEXT project.

- 2025 Traffic Operations Prior to Maryland Managed Lanes
 - The Board acknowledges VDOT's effort to analyze the 2025 traffic conditions in the event managed lanes north of the American Legion Memorial Bridge (ALMB) in Maryland are not complete. Based on the measures of effectiveness established in the report, there are impacts to travel time along General Purpose (GP) Lanes on I-495 NB with this Build scenario in both the

AM and PM. In addition, there are intersections in the study area that are degraded in both No Build and Build scenarios, which should be evaluated for context-sensitive mitigation measures. Based on the current schedule, I-495 NEXT is expected to be completed prior to Maryland's system of managed lanes. Considering the interim time period between the full operation of both systems, it is critical that VDOT address the temporary impacts of opening prior to Maryland's managed lanes.

- Since the project will be more effective once Maryland improves the American Legion Bridge, the Board recommends that VDOT continue to closely coordinate with Maryland on the two projects to ensure that these transportation improvements are well integrated and beneficial to the region. Recognizing that Maryland has solicited proposals from multiple private partners for their project, including improvements to the American Legion Bridge as a first phase, the Board strongly urges that VDOT make every effort to minimize the time between the opening of I-495 NEXT and the Maryland project.
- Stormwater
 - The Board recognizes the importance of transportation projects to our community. However, it is also critical to minimize the negative water quality impacts that the additional impervious area has on County watersheds. This is critically important in the McLean area adjacent to the I-495 NEXT project, which has experienced significant flooding during recent storms. Based on the current plan, VDOT anticipates about 3,000 linear feet of stream impacts, mostly located along Scotts Run between Lewinsville Road and Old Dominion Drive. Increased imperviousness from the I-495 NEXT project has a significant potential to exacerbate already prevalent stream degradation and flooding issues, particularly at Scotts Run.

For over a year, County staff has worked with VDOT to coordinate the efforts on stormwater management design for this project. As has been discussed in meetings and via the attached letters to Department of Environmental Quality (Attachment 2) and to Office of the Secretary of Natural Resources (Attachment 3), VDOT should pursue on-site restoration of Scotts Run within the project limits and state transportation projects should meet local standards for stormwater management when the local standards are more stringent to the extent possible. Most recent discussions with VDOT indicate the potential to partner with Fairfax County on stream restoration for Scotts Run. Though these discussions are ongoing, such a partnership would be in addition to the project's regulatory requirements and the project's planned purchase of stream impact credits from an approved stream restoration bank.

Along with comments in Attachment 1, the Board requests VDOT consider these requests below prior to advancing the I-495 NEXT project:

- **Stormwater Management (SWM) Requirements** –The Board requests that this project meet the current County SWM requirements rather than the state grandfathered SWM conditions. As stated in the letter to VDOT on July 17, 2019, and presented in Attachment 3, Fairfax County's criteria is more stringent than VSMP Parts II B and II C of VSMP Regulations, and the Board requests that this project meet these SWM requirements. If meeting our local stormwater management requirements is not attainable, VDOT should implement requirements to the maximum extent practicable and provide documentation demonstrating that the technical requirements are not fully feasible.

- **Water Quantity Control** – The majority of runoff from the new lanes will be piped directly to Scotts Run stream or the Potomac River with no detention, worsening downstream flooding and erosion along Scotts Run. Road flooding impacts both Fairfax County and VDOT infrastructure. The Board is also concerned about tree loss due to stream erosion downstream of I-495. The Board acknowledges that the provision of underground detention may present difficulties with relation to future maintenance and safety. However, the Board requests VDOT pursue underground detention within the right-of-way to the extent feasible to prevent negative impacts to Scotts Run and downstream areas.
- **Stream and Wetland Impacts** – Based on the current plan, the project will generate up to 3,000 linear feet of stream impacts and affect 19.8 acres of impacted wetlands. County staff has requested additional consideration for permittee-responsible mitigation along Scotts Run, particularly between Lewinsville Road and Old Dominion Drive. This stream section is mostly within VDOT right-of-way and directly adjacent to the project limits. Discussions with VDOT on this stream restoration are ongoing.
- **Water Quality** – VDOT's interpretation of routine maintenance exempts the project's existing impervious area from the state SWM requirements, so the existing impervious surface will remain largely untreated. Under county stormwater standards, the existing impervious area would also be treated. Additionally, the project will not meet its minimum on-site water quality requirements and will purchase 80 percent of its required nutrient reduction offsite outside of Fairfax County. The Board requests VDOT apply enhanced outfall stabilization practices to meet the project's water quality requirements on site to the extent possible.
- **Resource Protection Area (RPA) Impacts** – The Environmental Assessment (EA) cites up to 75.5 acres of temporary and permanent impacts to the RPA. Public roads are conditionally exempt from RPA regulation under the Virginia Administrative Code provided that the roadway is designed and constructed in accordance with water quality protection criteria at least as stringent as VDOT requirements. Given that the project will not meet minimum water quality requirements, the Board requests that the project meet the RPA replanting requirements detailed in Fairfax County Code Chapter 118 Chesapeake Bay Preservation Ordinance and Public Facilities Manual Chapter 12 (12-0316.4) in the Scotts Run stream valley section between Lewinsville Road and Old Dominion Drive.

While the Board recognizes the constraints faced by linear projects like I-495 NEXT, we also believe that transportation projects, particularly of this magnitude, should strive to minimize negative effects on water quality, local streams, and ultimately the Chesapeake Bay. The cumulative impact from the project's failure to address each of the bullets above will worsen the already degraded condition of the Scotts Run stream valley. Although there are limited options to manage stormwater within the right-of-way, there are other mitigation opportunities within the Scotts Run watershed. Those additional mitigation opportunities are being discussed with VDOT, and the Board is committed to working with VDOT to help meet the project's stormwater obligations.

- Bike/Pedestrian Facilities

- The bicycle and pedestrian facilities are critical to addressing the varied mobility needs of the region. Fairfax County's Comprehensive Plan recommends a major regional trail along I-495. Such a facility is intended as a link between Maryland and Virginia. The I-495 NEXT project has committed to providing this trail. The provision of this major regional trail is imperative to providing nonmotorized transportation alternatives and reducing single occupancy vehicles in the region. As the Commonwealth coordinates with Maryland on improvements to the ALMB, all efforts should be taken to ensure the continuation of this trail into Maryland for pedestrians and bicyclists.
- Tysons is located at the southern end of the I-495 NEXT project. The connection of pedestrian and bicycle facilities as part of this major regional trail and along the secondary streets to Tysons is critical to providing a comprehensive transportation network that meets the needs of this growing community. Currently, this major regional trail ends at Lewinsville Road, north of Tysons. We encourage VDOT to make all efforts to provide a safe and consistent connection from this major regional trail to and within Tysons.
- The I-495 NEXT project should make all efforts to promote pedestrian and bicycle connections to this major regional trail and along secondary streets throughout the project corridor.
- VDOT should continue coordination with the surrounding community on the location of the trail.
- Enhanced Transit
 - A clear advantage of the managed lanes is that they support more reliable and more efficient bus service in the corridor. The Board acknowledges the I-495 American Legion Bridge Transit and TDM Study led by Maryland Department of Transportation (MDOT)/ Maryland Transit Administration (MTA) and Virginia Department of Rail and Public Transportation (DRPT), which seeks to find multimodal solutions for the corridor. Prior to the completion of this study, it is imperative that additional community outreach occur to ensure that feedback from the community is considered in any final recommendations. In addition to this effort, Fairfax County has included a new bus route over ALMB in its Transit Network Study. Considering the potential for new transit routes via the Express Lanes, VDOT should incorporate the findings and recommendations of the Transit and TDM Study and County's Transit Network Study prior to final action on I-495 NEXT.
 - Due to its location, I-495 NEXT has the potential to serve as a key link in transit accessibility between Maryland and Virginia, including Fairfax County and its economic centers like Tysons. It is Fairfax County's understanding that discussions are still ongoing with the concessionaire regarding the project agreement; however, it is critical that VDOT work with the concessionaire to secure transit capital and operating funds that will promote transit access along the corridor. Dedicated transit funding associated with this project is essential towards reducing single-occupancy vehicle ridership, vehicle miles traveled in the area, and encouraging a sustainable transportation system.
- Elevated Ramps
 - Some flyover and interchange ramps along the project have been designed with high elevations to allow for adequate clearances and connections between travel lanes. Alternative concepts to the high elevation ramps should be evaluated and considered for minimizing noise, visual and right-of-way impacts upon nearby residential communities. This is a special concern regarding the ramp from the northbound I-495 Express Lanes to George Washington Parkway and the interchange at Dulles Toll Road and I-495.
 - A separate reassessment of the design and environmental impacts should be completed before construction of any ramps beyond Phase 1 of the Dulles Toll Road and I-495 interchange. The

reassessment should also include a significant community engagement effort to ensure the community is well informed of any impacts and has an opportunity to provide input on the design.

- VDOT should consider an additional sensitivity analysis that more clearly addresses the timing and need for the future phases of the Dulles Toll Road and I-495 interchange in relation to the traffic scenarios presented.
- Failing Conditions at Studied Intersections
 - The Board acknowledges travel time along the Capital Beltway corridor, as shown in the traffic analysis, is generally improved by I-495 NEXT in both 2025 and 2045 once Maryland completes their managed lane system. However, there are adjacent intersections that operate poorly in both the 2025 and 2045 analysis compared to the No-Build scenario. VDOT should further analyze the traffic operations at these impacted intersections and evaluate the potential for context-sensitive mitigation measures. Funding should be provided from the I-495 NEXT project or VDOT to address any necessary improvements on these impacted intersections.
- Implementation Issues
 - VDOT has made extensive efforts to coordinate with County staff on project designs, pedestrian/bicycle facilities, and stormwater, among other aspects of the project. These efforts are expected to provide substantial opportunity for input and consideration for the implementation of the I-495 NEXT project. The Board emphasizes that these efforts should continue and the following considerations be included:
 - Ensuring that sound walls are replaced rapidly after the existing wall is removed,
 - Minimizing park impacts,
 - Developing an aggressive maintenance of traffic plan for roadway and pedestrian/bicyclist accessibility,
 - Ensuring sufficient time to coordinate traffic and design changes with County staff and Supervisors' offices, as well as the impacted communities,
 - Minimizing night construction in areas adjacent to residential neighborhoods,
 - Maintaining proper erosion, siltation and stormwater management equipment and facilities during construction,
 - Developing an effective landscaping and tree replacement plan,
 - Minimizing disruption during construction,
 - Minimizing construction that impacts bus services especially at peak times, and
 - Including proper temporary roadway striping capable of maintaining visibility at night and in inclement weather.
- Environmental Issues
 - As indicated in the Department of Planning and Development's (DPD) letter to the Department of Environmental Quality, to address the environmental objectives of the Comprehensive Plan and avoid undue impacts to community resources, the project should consider the following recommendations:
 - Avoidance or minimization of impacts to properties that are located on the National Register of Historic Places, including the George Washington Memorial Parkway and Georgetown Pike.

- Avoidance or minimization of impacts to the two properties on the Fairfax County Inventory of Historic Sites (Beaufort Park and Shiloh Baptist Church).
- Assessment, minimization, avoidance, and mitigation of the direct and indirect impacts to the three properties identified in the Virginia Outdoors Plan (George Washington Memorial Parkway, Scotts Run Nature Preserve, and the 4.6-acre private property near Langley Club).
- Optimization of road alignments and designs to prevent or otherwise minimize encroachment in Resource Protection Areas (RPAs) and adverse effects on water quality.
- Assessment of the impacts to Dead Run, Scotts Run, and Turkey Run and the downstream impacts to the Potomac River.
- Perform ecological resource surveys for the Scotts Run Nature Preserve and the George Washington Memorial Parkway stream corridors.
- Assess the environmental services and the economic, social, and health benefits of the urban forest that would be lost due to the clearing associated with this project, as well as compensation for these impacts.
- Reforest all disturbed areas with commitments to compensation, soil rebuilding, and the restoration of native plant communities.
- Integrate of invasives control throughout the project area. Most recent discussions with VDOT have indicated that the I-495 NEXT project is considering a funding contribution towards invasive species management to be used along the corridor.
- Clarify the current status of and expectations regarding noise mitigation, to include potential barrier locations and design details. It is acknowledged that VDOT has recently proposed to add soundwall along the gap at Live Oak Drive, but the Board remains concerned about the soundwalls along George Washington Memorial Parkway. The Board requests that VDOT continue coordination with the National Park Service to address any concerns associated with the installation of soundwalls along the George Washington Memorial Parkway. Furthermore, the Board requests that VDOT conform to the previous commitments on soundwall installation as detailed in the March 2009 letter from Secretary Homer.

More detailed comments from DPD (Attachment 4 and Attachment 5) regarding some of these issues can also be found at the end of this letter.

○ Park Impacts

○ Cultural Resources:

- Any areas with ground disturbance throughout the project corridor that are not previously surveyed should undergo a Phase I archaeological survey. If sites are found that are potentially significant to the history of Fairfax County, or potentially eligible for inclusion onto the National Register of Historic Places, they should undergo Phase II archaeological testing. If sites are found significant or eligible, avoidance or Phase III data recovery is recommended.
- Park Authority staff has conducted archival cultural resources review. The Environmental Assessment report made no mention of the site, 44FX2430, specifically. The report only mentioned that any sites within their area of impact contained no sites that were eligible, or potentially eligible for inclusion onto the National Register of Historic Places (NRHP), but did not evaluate the Virginia Department of Historic Resources (VDHR) status of 44FX2430. If the site will be

impacted, a Phase II study is necessary to determine county significance or eligibility for NRHP status. If found significant or eligible, avoidance, or Phase III data recovery is recommended as mitigation.

- Natural Resources

- All development on Park Authority property must comply with its Policy 201, Natural Resources, and agency-wide Natural Resource Management Plan (NRMP). Of note is Section 7 of the NRMP:

Avoid adverse impacts to natural areas, mitigate unavoidable impacts from construction and maintenance projects and require restoration and rehabilitation of impacted natural resources.

- i. Minimize impacts to forests, meadows and other natural areas from human use.
- ii. Protect significant natural communities and species.
- iii. Require restoration of impacted natural resources when use of parkland causes damage to them.

If impacts cannot be avoided, the Board requests a design that minimizes impacts and a mitigation plan for any losses, which should be coordinated with the Park Authority. This mitigation plan will need to clarify the extent of construction that will occur on Park Authority property, as well as the impacts to natural resources.

- The Park Authority recommends the rehabilitation for any temporary impacts to natural resources to Park Authority standards and mitigate/compensate for permanent impacts to natural resources on Park Authority managed lands. This requirement applies to any natural resource impact (terrestrial or aquatic) that is not regulated under the jurisdiction of any federal or state agency.
- Due to the proximity to parkland, the Board requests the use of only common native species, including perennials and seed mixes, on this project since non-native species either do not fare as well as natives or are invasive, negatively impacting the environmental health of Park Authority property. The Park Authority requests that VDOT use common plant species generally native to Fairfax County, including trees, perennials, and seed mixes, to provide the greatest ecosystem benefit.

- Environmental Justice

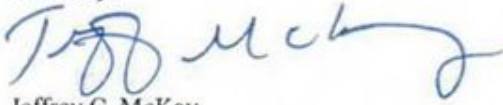
- The EA identified one census block group with over 50% minority population. As the project proceeds, efforts should be undertaken to ensure sufficient outreach for this community as this project progresses.
- Fairfax County encourages the use of 30% or 50% of Area Median Income to more accurately accounting for economically vulnerable households given the high median income of the County.

Additional County comments can be found in the attachments to this letter. Fairfax County appreciates the work that has been undertaken to date in this project and the opportunity to provide comments. We also look forward to working closely with the Commonwealth and developing a mutually beneficial project to County residents and the region.

The Honorable Shannon Valentine
December 3, 2020
Page 8

If you have any questions or need additional information, please contact Martha Coello of the Department of Transportation at Martha.Coello@fairfaxcounty.gov or 703-877-5682.

Sincerely,



Jeffrey C. McKay
Chairman

Enclosure:

- Attachment 1: Combined List of Comments from Fairfax County staff on I-495 NEXT EA
- Attachment 2: DPWES Letter to DEQ on I-495 NEXT Water Quality on June 30, 2020
- Attachment 3: DPWES Letter to Natural Resources on State Transportation Project SWM Concerns August 14, 2020 and BOS Letter to VDOT on SWM Requirements July 17, 2019
- Attachment 4: DPD Letters to Comment on I-495 NEXT EA
- Attachment 5: DPD Letter to DEQ on I-495 & I-270 Managed Lanes Study Draft EIS August 31, 2020

cc: Members, Fairfax County Board of Supervisors

Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Department of Transportation
Helen Cuervo, District Administrator, VDOT, Northern Virginia
Susan Shaw, Megaprojects Director, VDOT
Barbara Byron, Director, Department of Planning and Development
Randy Bartlett, Director, Department of Public Works and Environmental Services
Kirk Kincannon, Director, Fairfax County Park Authority

Board Agenda Item
July 19, 2022

ACTION - 6

Approval of Changes to the Fairfax County Purchasing Resolution

ISSUE:

Board of Supervisors' approval of changes to the Fairfax County Purchasing Resolution ("Purchasing Resolution").

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the changes outlined below to the Fairfax County Purchasing Resolution, to become effective on July 19, 2022.

TIMING:

Board action is requested on July 19, 2022.

BACKGROUND:

The Board of Supervisors adopted the current version of the Fairfax County Purchasing Resolution on July 13, 2021. During the 2022 General Assembly session, eleven (11) bills relating to procurement and/or contracts and passed the House and Senate. There were four successful bills that modified mandatory sections of the Virginia Public Procurement Act (VPPA). These four bills are proposed for inclusion in the Purchasing Resolution and are listed below under the heading "Code Changes."

The remaining seven (7) bills either:

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

This year, staff recommends twelve (12) administrative changes to the Purchasing Resolution, which can be found under the heading "Administrative Changes." These amendments are clarifications and technical corrections to the Purchasing Resolution. Any changes not offered with an explanatory note are not material in nature and are minor updates.

Code Changes

1. House Bill 429, Code of Virginia §§2.2-4301.1. Provides the sum of all projects performed in an architectural and professional engineering contract term shall not exceed \$10 million, and the fee for any single project shall not exceed \$2.5 million. This change is found at page 51.
2. Senate Bill 225, Code of Virginia §2.2-4301.1. This is a “mirror” bill to House Bill 429. Provides the sum of all projects performed in an architectural and professional engineering contract term shall not exceed \$10 million, and the fee for any single project shall not exceed \$2.5 million. These changes can be found at page 51.
3. Senate Bill 258, Code of Virginia §2.2-4336. Provides that, except in cases of emergency, all bids and proposals for construction contracts in excess of \$500,000 shall be accompanied by a bid bond. These changes can be found at pages 57-58.
4. Senate Bill 259, Code of Virginia §2.2-4337. Requires a performance and payment bonds to be furnished by the contractor for all public construction contracts that exceed \$500,000. These changes can be found at pages 59-60.

Administrative Changes

1. Corrections to section headings and pagination due to changes in the document text (Table of Contents).
2. Several references to “he” have been updated to “their” to reflect gender neutrality of the individual roles. (Pages, various)
3. Updates to the Background and Whereas sections, to update outdated language. (Pages, various)
4. Clarification of the source of the Purchasing Agent’s authority, as well as more clearly describing the legal basis for the Purchasing Resolution. (Pages 5-6)
5. Updates to the Legal Remedies section to better align with existing legal authority. (Page 67)
6. Removed repetitious references. (Pages 48-50)
7. Updated the documents governing the relationship between the Board of Supervisors and the Fairfax County Park Authority. (Page 8)
8. Updated the equipment capitalization threshold to be consistent with County policy. (Page 13)
9. Update public announcement requirements to be consistent with the VPPA and current practices. (Pages, various)
10. Updated the Audit requirements clause, under Mandatory Terms for Contracts in Excess of \$200,000, to permit consideration of alternate requirements as may be in the best interests of the County when negotiating certain contracts. (Page 45)

Board Agenda Item
July 19, 2022

11. Updated Limitation of Liability to be consistent with current practices.
(Page 46)
12. Deleted reference to provision that had a “sunset” date of July 2021,
related to Performance and Payments Bonds. (Page 59)

The text changes proposed in the Purchasing Resolution are presented in “track changes” format. 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.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I - Revised Fairfax County Purchasing Resolution

STAFF:
Christina Jackson, Chief Financial Officer
Lee Ann Pender, Director, Department of Procurement and Material Management

ASSIGNED COUNSEL:
Patricia M. McCay, Senior Assistant County Attorney

Style Definition: TOC 1

Style Definition: TOC 2

Style Definition: TOC 3

FAIRFAX COUNTY
~~PURCHASING RESOLUTION~~FAIRFAX COUNTY
PURCHASING RESOLUTION



July 2021

~~Adopted by the Board of Supervisors on July 13, 2021~~
Adopted by the Board of Supervisors on July 19, 2022

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FAIRFAX COUNTY PURCHASING RESOLUTION

~~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 Fairfax County Board of County Supervisors (the Board) is dedicated to securing high quality goods and services at reasonable cost while ensuring that all purchasing actions be conducted in a fair and impartial manner with no impropriety or appearance thereof, that all qualified vendors have access to County business and that no offeror be arbitrarily or capriciously excluded, that procurement procedures involve openness and administrative efficiency, and that the maximum feasible degree of competition is achieved; and

Commented [MP1]: Administrative changes.

~~WHEREAS, a central purchasing system is authorized by Virginia Code §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 Virginia Public Procurement Act (Chapter 43 of Title 2.2 of the Code of Virginia, as amended) Code of Virginia, §2.2-4300 through §2.2-4383 (as amended), enunciates the public policies pertaining to governmental procurement from nongovernmental sources by public bodies which may or may not result in monetary consideration for either party, ~~which sections shall be known as the Virginia Public Procurement Act;~~ and

WHEREAS, the Code of Virginia, Virginia Code § 15.2-831 and Virginia Code § 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 the Virginia Public Procurement Act and under such rules and regulations consistent with the Act as established by the Board through this resolution; and

WHEREAS, ~~the Code of Virginia, Virginia Code § 15.2-831, § 2.2-4302, and § 2.2-4343 (as amended)~~ allows implementation of the Virginia Public Procurement Act ~~by ordinance, through resolutions, or and~~ 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 Code § 15.2-831 and §15.2-1543, empowers the Board ~~of Supervisors~~ to employ a County Purchasing Agent, Virginia Code § 2.2-4302 authorizes the Board to act through its County Purchasing Agent, and § 15.2-831, § 15.2-1233 through §

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[15.2-1240](#), and [§ 15.2-1543](#) set their duties as prescribed by the Code of Virginia, [§15.2-831](#), [§15.2-1233](#) through [§15.2-1240](#), and [§15.2-1543](#) the County Purchasing Agent's duties;

THEREFORE BE IT RESOLVED that this resolution prescribes the basic policies for the conduct of all purchasing in Fairfax County (except as otherwise stipulated herein) to take effect on July ~~13~~¹⁹, 202~~1~~², as follows:

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

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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 ~~their~~^{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 ~~their~~^{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 ~~their~~^{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' ~~Ordinance~~^{Resolution} dated ~~July 13, 2021, April 6, 1981, and a Memorandum of Understanding~~ governing the relationship of the Fairfax County Park Authority and Fairfax County. The Director of the Park Authority or ~~their~~^{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 ~~their~~^{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

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County Board of Supervisors, The Director of the Department of Housing and Community Development or ~~his~~-their designee shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 of this Resolution. 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 ~~their~~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 non-appropriated funds received from inmates, in accordance with §53.1-127.1 Code of Virginia. The Purchasing Agent shall make all other purchases governed by Virginia Code § 53.1-126.

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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(A) 1 - 6 shall prepare and maintain detailed rules and regulations on the conduct of these contracting actions. Such rules and regulations shall be consistent with this Resolution and the laws of the Commonwealth of Virginia. Such rules and regulations shall be approved by the Purchasing Agent for County staff agencies or the administrative head of the respective public body involved.

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Section 5. 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.
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

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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 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.

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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 ~~\$105,000~~.
21. Goods shall mean all material, equipment, supplies, printing, and information technology hardware and software.
22. Immediate Family shall mean a spouse, child, parent, brother, sister, and any other person living in the same household as the employee.
23. Independent Contractor shall mean a worker over whom the employer has the right to control or direct the result of the work done, but not the means and methods of accomplishing the result.
24. Ineligibility shall mean an action taken to suspend or debar a prospective contractor from consideration for award of contracts. The suspension shall not be for a period exceeding twelve (12) months and the debarment shall not be for a period exceeding three (3) years.
25. Informality shall mean a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
26. Job Order Contracting is a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing.
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

Commented [PLA3]: Administrative Change: Capitalization Threshold for County Assets (Effective 7/1/21)

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- 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;
 - 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.

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33. Potential Bidder or Offeror shall mean a person who, at the time the County negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.
34. Prevailing Wages shall mean the rate, amount or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of public works is located as determined by the Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. §276 et seq., as amended.
35. Procurement Transaction shall mean all functions that pertain to obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
36. Professional services shall mean any type of service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with this Resolution).
37. Project Labor agreement shall mean a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific public works project.
38. Public Body shall mean any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this resolution. Public body shall include any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.
39. Public Contract shall mean an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

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40. Public or County Employee shall mean any person employed by the County of Fairfax, including elected officials or appointed members of governing bodies.
41. 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, including transportation infrastructure projects.
42. 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.
43. 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.
44. 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.
45. SAC shall mean Selection Advisory Committee.
46. 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.
47. Surplus Property shall mean that property which exceeds the requirement of the entire County.
48. 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

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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 contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return.

- F. Best value concepts may be considered when procuring goods, nonprofessional and consultant services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.
- G. The County may enter into contracts with faith-based organizations on the same basis as any other nongovernmental source subject to the requirements of the Virginia Public Procurement Act (VPPA) §2.2-4343.1.
- H. The County may, when procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works, or when overseeing or administering such procurement, construction, manufacture, maintenance or operation, in its bid specifications, project agreements, or other controlling documents:
 - 1. Require bidders, offerors, contractors or subcontractors to enter into or adhere to project labor agreements with one or more labor organizations, on the same or related public works projects; and
 - 2. Require bidders, offerors, contractors, subcontractors, or operators to become or remain signatories or otherwise adhere to project labor agreements with one or more labor organizations, on the same or other related public works projects.
- I. The County may, by ordinance, require that, when letting contracts for public works paid for in whole or in part by funds of the County, or when overseeing or administering a public contract, its bid specifications, project agreements, or other public contracts applicable to the public works, bidders, offerors, contractors, and subcontractors shall pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract at the prevailing wage rate. Each public contract of a locality that has adopted an ordinance described in this section shall contain a provision requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.
- J. In alignment with the County's One Fairfax Policy on racial and social equity and its recognition that economic inclusivity benefits all, the County Purchasing Agent will establish and expand programs consistent with all provisions of this Resolution and

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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 SBSB, 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.

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

Section 2. Methods of Procurement.

- A. Competitive Sealed Bidding - is a method of contractor selection that includes the following elements:
 - 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the purchase. Unless the County has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. The Invitation to Bid may include criteria to be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder pursuant to § 2.2-4301. Such criteria may include a history of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in

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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, including the Fairfax County Government website, other appropriate websites, or publication in a newspaper of county-wide general 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.
 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

Commented [PLA4]: Administrative Change: To be consistent with the VPPA § 2.2-4302.1 Process for competitive sealed bidding.

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Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

2. Public notice of the Request for Proposal at least five days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website, the Fairfax County Government website, or other appropriate websites, or by publication in a newspaper of general 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.

Commented [PLA5]: Administrative Change: To be consistent with the VPPA § 2.2-4302.2 Process for Competitive negotiations.

3. Competitive Negotiation – Consultant Services

- a. Selection Advisory Committee

1. When selecting a firm for consultant services where the compensation for such services is estimated to exceed \$200,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee, shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those consultant services firms that are to be retained by the County. The SAC will be composed of 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 consultant services, where the compensation for such consultant services is estimated to be less than \$200,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of ~~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.

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

FAIRFAX COUNTY PURCHASING RESOLUTION

be less than \$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.~~

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

3. All proposed contracts for consultant services, where the compensation to be paid is less than \$200,000, shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

4. For all cost-plus-a-fixed-fee consultant services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation certification stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any consultant services contract under which such a certificate is required shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

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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~~ 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

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making this finding are the capabilities, adequacy of personnel, past record of performance, and experience of the firm.

c. Selection, Negotiation, and Approval Process

1. Selection of Professional Services: Where the cost is expected to exceed \$80,000, the County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence 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.

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2. Except for construction projects and related architectural, engineering, and consultant services, all proposed contracts for professional services, where the compensation to be paid exceeds \$200,000, after review of the SAC recommendation a contract shall be awarded by the Purchasing Agent for those professional services to be retained by the County or an agency of the County. The Purchasing Agent or FCPS Division Superintendent will notify the Board of Supervisors and/or the School Board prior to final contract execution.

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3. All proposed contracts for professional services, where the compensation to be paid is less than \$200,000, shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

4. For all cost-plus-a-fixed-fee professional services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation 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

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a. Selection Advisory Committee

1. When selecting a firm for non-professional services where the compensation is estimated to exceed \$200,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those non-professional services firms that are to be retained by the County. The SAC will be composed of ~~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 \$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.

b. Public Announcement

1. When non-professional services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for non-professional services is estimated to be less than \$200,000 may be accomplished without public announcement, ~~but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.~~

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 non-professional services shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

- C. Cooperative: The County or any entity identified in Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the Metropolitan Washington Council of Governments, the National Association of Counties, for the purpose of combining requirements to increase efficiency or reduce administrative 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, the Fairfax County Government website, or other appropriate websites, or in a newspaper of general circulation on the day the County awards or announces its decision to award the contract for contracts in excess of \$200,000, ~~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.

Commented [PLA6]: Administrative Change: To be consistent with VPPA § 2.2-4303 Methods of procurement.

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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.
 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 \$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 \$200,000; and transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000. However, such purchase procedures shall provide for competition wherever practicable.
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 informal 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 ~~4-5~~ 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

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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.
- 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 \$10,000, shall be deemed a small purchase and shall not be subject to the rules governing the ~~formal~~ competitive bidding process.
- 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, the Fairfax County Government website, or other appropriate websites, or in a newspaper of general circulation on the day the County awards or announces its decision to award the for contracts in excess of \$200,000, ~~whichever occurs first~~.
- 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.

Commented [PLA7]: Administrative Change: To be consistent with the VPPA § 2.2-4303 Methods of procurement.

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

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regulations adopted by the School Board shall prescribe in detail the procedures to be observed in making purchases of instructional materials, establishing accounts for purchases, accounting for the receipt and disbursement of funds, and maintaining records of all transactions. The purchases authorized herein shall be made using funds from accounts established by the School Board solely for such purchases.

- B. Insurance / Electric Utility Services: As provided in the Code of Virginia, subdivision 13 of § 2.2-4345, the County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set in writing that 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

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produced or performed by persons or in schools or workshops under the supervision of the Virginia Department for the Blind and Visually Impaired; or which are produced or performed by employment services organizations which offer transitional or supported employment services serving individuals with disabilities.

- G. Other Special Exemptions: Procurement for single or term contracts for goods and services not expected to exceed \$200,000 as identified by the Purchasing Agent.
- H. Ballots and Elections Materials: The provisions of Articles 1, 2, and 5 of the Purchasing Resolution shall not apply to contracts for equipment, software, services, the printing of ballots or statements of results, or other materials essential to the conduct of the election, except as stated in §24.2-602. The provisions of Fairfax County Purchasing Resolution, Article 6, shall apply to such contracts.

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 \$10,000 level for which competition is required, the entire procurement, including the use of the space, shall be procured competitively as a package based on its anticipated value.
- C. Virginia Grown Food Products: Neither the VPPA or the Purchasing Resolution applies to the purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000, provided that the procurement is accomplished by (i) obtaining written solicitation of a minimum of three bidders or offerors if practicable and (ii) including a written statement regarding the basis for awarding the contract.

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- D. Finance Board Investments: Pursuant to Virginia Code Ann. § 15.2-1548, the selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial services, of the local finance board shall not be subject to the provisions of the Virginia Public Procurement Act.
- E. Multidivision Online Providers: Pursuant to Virginia Code Ann. §22.2-212.24, the Fairfax County Public Schools may enter into contracts, consistent with the criteria approved by the FCPS Board, with approved private or nonprofit organizations to provide multidivision online courses and virtual school programs. Such contracts shall be exempt from the Virginia Public Procurement Act.
- F. Subaward Agreements: Subaward Agreements entered into pursuant to the principles set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. § 200 *et seq.*) are not subject to the Purchasing Resolution. Subaward Agreements and associated documents may, however, be executed by the Purchasing Agent.

Section 5. General Purchasing Provisions.

A. Competitive Solicitation Process.

- 1. The County Purchasing Agent shall solicit bids from all responsible prospective vendors who have registered their firm to be included on the Commonwealth of Virginia's "eVA" central vendor registration system for all solicitations using the competitive sealed bidding and competitive negotiation methods of procurement. Other potential vendors may be solicited at the discretion of the County Purchasing Agent.
- 2. The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or informal procurement methods of procurement. In submitting a bid or proposal each bidder shall, by virtue of submitting a bid, guarantee that the bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bid of such bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor shall render the entire proceedings void and shall require re-advertising for bids.

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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-theirer-her~~ knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of ~~his-theirer-her~~ immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
 - b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph a. has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
4. Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named: it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
5. Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.
6. Prospective contractors may be debarred from contracting for particular types of goods, services, insurance, or construction, for specified periods of time. The debarment procedures are set forth under Article 5, Section 1.
7. The County shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and

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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.
 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

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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 their judgment the public interest is best served. If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of re-advertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if none, to the resident Virginia tie bidder, or if none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services.
2. When in the course of procuring goods, if the County receives two or more bids for products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified, the County may only select among those bids unless, before selecting a different bid, the Purchasing Agent provides a written statement that demonstrates the bid price(s) of such products are unreasonable.
3. The County Purchasing Agent shall be responsible for determining the responsibility of a bidder. In determining responsibility, the following criteria will be considered:
 - a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;

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- 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;
 - j. Whether the bidder who is not prequalified by the Virginia Department of Transportation has complied with criteria set forth in the solicitation regarding safety training programs, apprenticeship, and compliance records; and
 - k. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
- 4. Pursuant to Virginia Code §15.2-1237, all contracts shall be approved as to form by the County Attorney or other qualified attorney and a copy of each long-term contract shall be filed with the Chief Financial Officer of the County.
 - 5. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the responsive bid from the lowest responsible bidder exceeds available funds, the County may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiations may be undertaken only under conditions and procedures described in writing and approved by the County prior to issuance of the Invitation to Bid.
 - 6. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Purchasing Agent. In no event may the amount of any contract, without adequate consideration, be increased for any

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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 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-5.E~~ shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

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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:
 - 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

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or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where ~~their~~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 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.

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- 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;
 - 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

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(§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.

Section 7. HIPAA Compliance.

The County is a "covered entity" as defined in 45 Code of Federal Regulations Section 160.103 by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The County has elected to designate itself as a Hybrid Covered Entity. In particular, the County performs HIPAA covered functions when it provides services as a health care provider transmitting health care information in an electronic format in connection with a transaction for which there has been a standard established in accordance with Subparts 160 and 162. A contractor may be designated a business associate pursuant to 45 CFR part 164.504(e) and 164.308 (b) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board; the Health Department; Fire and Rescue Department - Emergency Medical Services Division; and the Department of Human Resources, Benefits Division (health plan) upon award of contract.

Each contractor must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and, if required, the contractual provisions of the Fairfax County Business

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Associate agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Code of Virginia – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information. Additional information may be obtained by going to the Fairfax County Web site at: <https://www.fairfaxcounty.gov/topics/hipaa-health-insurance-portability-accountability-act>

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

- A. Pursuant to competitive sealed bidding or competitive negotiation, the County shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.
- 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, are deemed included in all contracts for the purchase of goods, services, or both governed by the Purchasing Resolution. These terms and conditions will apply with the same force and effect as if set forth in the contract or ordering document.

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.

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

- B. Immigration Reform and Control Act Compliance: The contractor does not, and shall not, during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.
- C. Nonvisual Access: -All information technology, which is purchased or upgraded by the County, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
1. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 2. The technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 3. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 4. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

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

- 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.

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

A. Authorization to Transact Business in the Commonwealth. A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Audit by the County. The County or its agent has reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form. The Purchasing Agent may accept modifications to this requirement, in their discretion.

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

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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, accept a vendor's drug free workplace policy as satisfaction of this requirement, even if the vendor's drug free workplace policy differs from the requirements stated above.

Section 4. Prohibited Terms and Conditions.

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

- A. No Indemnification by the County. Under applicable law the County cannot indemnify or defend the Contractor or any third party.
- B. Contracts Subject to Appropriation by Board of Supervisors. The County is not bound by any provision in a contract or ordering document that may or will cause the County, its agencies, or employees, to make or otherwise authorize an obligation in excess of the amount appropriated by the Fairfax County Board of Supervisors for such purpose. Such provisions include, for example, automatic renewal of the agreement, penalty payments by the County, indemnification by the County, and payment by the County of taxes or charges not specifically included in the prices of the goods or services.
- C. Binding Arbitration or Mediation. The County does not agree to submit to any form of binding alternative dispute resolution, including without limitation arbitration or mediation, unless specifically authorized by the Board of Supervisors.
- D. Limitation of Rights and Waiver of Remedies. The County does not agree to limit its rights or waive its remedies at law or in equity, unless specifically authorized by the Board of Supervisors.
- E. Limitation of Liability. There is no limitation on the liability of a contractor for claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence of a ~~supplier—contractor~~ or any employee of a ~~supplier~~contractor. For Information Technology contracts in excess of \$~~1~~200,000 there is no limitation of liability of a contractor for the intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a supplier.

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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:

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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~~ as set out in Article 1, Section 3. :

~~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 theirhis 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 theirhis 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.~~

~~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 theirhis 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.~~

~~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, Fairfax County of the Park Authority or theirhis 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~~

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~~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, Fairfax County Department of the Park Authority or theirhis designee shall have the authority to enter into agreements pursuant to Virginia Code Ann. § 2-2.2 4366 (2014). Any such agreements shall be approved by the County Attorney.~~

~~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 theirhis 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.~~

~~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 theirhis 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.~~

~~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.

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

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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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

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Section 4.3. Purchasing Policies.

- A. Construction may be procured by competitive negotiation as set forth in the Code of Virginia, subsection D of §2.2-4303 for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.
- B. The Purchasing Agent may establish written purchase procedures not requiring competitive sealed bids or competition negotiation for single or term contracts for non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000; and transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000. However, such purchase procedures shall provide for competition wherever practicable.
- C. No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$50,000 or more in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding or competitive negotiation as provided in this Resolution and law. The procedure for

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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 ~~multiple construction~~ projects may be ~~awarded 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 ~~three~~^{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~~^{one} contract term shall not exceed \$~~8~~¹⁰ million, (c) the ~~project fee~~ ~~of~~ for any single project shall not exceed \$2.5 million. Any unused amounts from the first contract term shall not be carried forward to the additional term(s). Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the County has established procedures for distributing multiple projects among the selected contractors during the contract term.
- E. No County construction contract shall waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay, in performing such contract, either on ~~his~~^{his} ~~their~~ behalf or on behalf of ~~his~~^{his} ~~their~~ subcontractor if and to the extent such delay is caused by acts or omissions of the County, its agents or employees and due to causes within their control.
1. Subsection E shall not be construed to render void any provision of a County construction contract that:
 - a. Allows the County to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractor, agents or employees;
 - b. Requires notice of any delay by the party claiming the delay;
 - c. Provides for liquidated damages for delay; or
 - d. Provides for arbitration or any other procedure designed to settle contract disputes.
 2. A contractor making a claim against the County for costs or damages due to the alleged delaying of the contractor in the performance of its work under any County construction contract shall be liable to the County and shall pay the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

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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 ~~54~~. Methods of Procurement.

- A. Construction Management/Design Build Services. In addition to competitive bidding and competitive negotiations, the County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis consistent with this Resolution and law.
 1. Prior to making a determination as to the use of construction management or design-build for a specific construction project, the County shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the County regarding the use of construction management or design-build for that project and (ii) assist the County with the preparation of the Request for Proposal and the evaluation of such proposals.
 2. A written determination shall be made in advance by the County that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.
 3. Procedures adopted by the County for construction management pursuant to this article shall include the following requirements:
 - a. Construction management may be utilized on projects where the project cost is expected to be less than the project cost threshold established in the procedures adopted by the Secretary of Administration for the Commonwealth using construction management contracts, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the local governing body. The written approval of the governing body shall be maintained in the procurement file; public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

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- b. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;
 - c. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable projects;
 - d. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;
 - e. The procedures allow for a two-step competitive negotiation process; and
 - f. Price is a critical basis for award of the contract.
 - 4. Procedures adopted by the County for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department for state public bodies.
 - 5. The County shall report by no later than November 1 of each year to the Director, Department of General Services on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized; (ii) the project budget; (iii) the actual project cost; (iv) the expected timeline; (v) the actual completion time; and (vi) any post-project issues.
- C. Job order contracting; limitations. Where the method for procurement of job order construction is competitive negotiation, the following shall apply:
- 1. A job order contract may be awarded by the County for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.
 - 2. Such contracts may be renewable for two 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

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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 65. Prequalification, Bonds, Escrow Accounts.

Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.

- A. Any prequalification of prospective contractors for construction by the County shall be pursuant to a prequalification process for construction projects as outlined below.
 1. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information pursuant to Article 2, Section 4, Paragraph C.

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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 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

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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~~their bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of

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the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw ~~his~~their bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from 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~~their claim of right to withdraw ~~his~~their bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. No bid shall be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent. The lowest remaining bid shall be deemed to be the low bid. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
3. The County shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the County denies the withdrawal of a bid, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the County shall return all work papers and copies thereof that have been submitted by the bidder.

D. Progress Payments.

1. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to be included in the final payment. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

E. Bonds.-

1. Except in cases of emergency, all bids or proposals for ~~non-transportation-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

Commented [PLA12]: Code change: Pursuant to SB 258, which amends §2.2-4336.

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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 non-transportation-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 non-transportation-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 the furnishing of materials will be paid with public funds,~~ the contractor shall furnish to the County the following bonds:

Commented [PLA13]: Code Change: Pursuant to SB 258, which amends §2.2-4336, Bid bonds, construction contracts, and eliminates the requirement under 2.2-4317, Prequalification, under the VPPA.

Commented [PLA14]: Code Change: Pursuant to SB 258, which amends §2.2-4336 of the VPPA Bid bonds, construction contracts.

Commented [PLA15]: Code change: Pursuant to SB 258, which amends §2.2-4336 of the VPPA Bid bonds, construction contracts.

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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 ~~the~~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 non-transportation-related projects or \$350,000 for transportation-related projects~~

Commented [PLA16]: Code Change: Pursuant to SB 259, which amends §2.2-4337, Performance and Payment Bonds, of the VPPA.

Commented [PLA17]: Code Change: SB 259, which amends §2.2-4337, Payment and Performance Bonds, of the VPPA.

Commented [PLA18]: Administrative Change: Language had a sunset provision effective July 2, 2021.

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~~authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.~~

Commented [PLA19]: Administrative Change: To be consistent with the VPPA.

- 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.~~

Commented [PLA20]: Code Change: Pursuant to SB 259 which amends § 2.2-4337, Performance and Payment Bonds, of the VPPA.

3. Action on performance bond - No action against the surety on a performance bond shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees or (2) discovery of the defect or breach of warranty, if the action be for such, in all other cases.
4. Actions on payment bonds:
- a. Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
- b. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed

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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~~-their office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- c. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- d. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

5. Alternative forms of security:

- a. In lieu of a bid, payment or performance bond a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.
- b. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

F. Escrow Accounts:-

- 1. The County, when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations, where portions of the contract price are to be retained, shall include an option in the bid or proposal for the contractor to use an Escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the bid or proposal documents and executing the Escrow Agreement form provided by the County. In the event the contractor elects to use the Escrow account procedure, the Escrow Agreement form shall be executed and submitted to the County within fifteen days after receipt of notification of contract award by the contractor.

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2. The executed Escrow Agreement Form shall be submitted to the Office designated in the bid or proposal documents. If the Escrow Agreement Form is not submitted to the designated office within the fifteen day period, the contractor shall forfeit ~~his~~ their rights to the use of the Escrow account procedure.
3. The Purchasing Agent shall promulgate escrow regulations. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent and the surety shall execute the Escrow Agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth and shall satisfy escrow agent qualifications promulgated by the Purchasing Agent.
4. This subsection F. shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
5. Any such public contract for construction with the County which includes payment of interest on retained funds, may include a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.
6. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

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

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Article 5

BIDDER/CONTRACTOR REMEDIES

Section 1. Ineligibility.

- A. Debarment as used in this section means any action taken by the County Purchasing Agent to exclude individuals or entities from contracting with County agencies or organizations for particular types of 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.

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Section 2. Appeal of Denial of Withdrawal of Bid.

- A. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- B. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 5A, paragraph 8, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

Section 3. Appeal of Determination of Non-responsibility.

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

Section 4. Protest of Award or Decision to Award.

- A. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County

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of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 5.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.

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Section 5. Contractual Disputes.

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

Section 6. Legal Action.

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

Commented [MP21]: Administrative change.

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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~~-their suppliers or ~~his~~-their subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything present or promised, unless consideration of substantially equal or greater value is exchanged.
- B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a County contract.
- D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be

FAIRFAX COUNTY PURCHASING RESOLUTION

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.

FAIRFAX COUNTY PURCHASING RESOLUTION

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.

■

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.

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.

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.

FAIRFAX COUNTY PURCHASING RESOLUTION

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~~their 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.

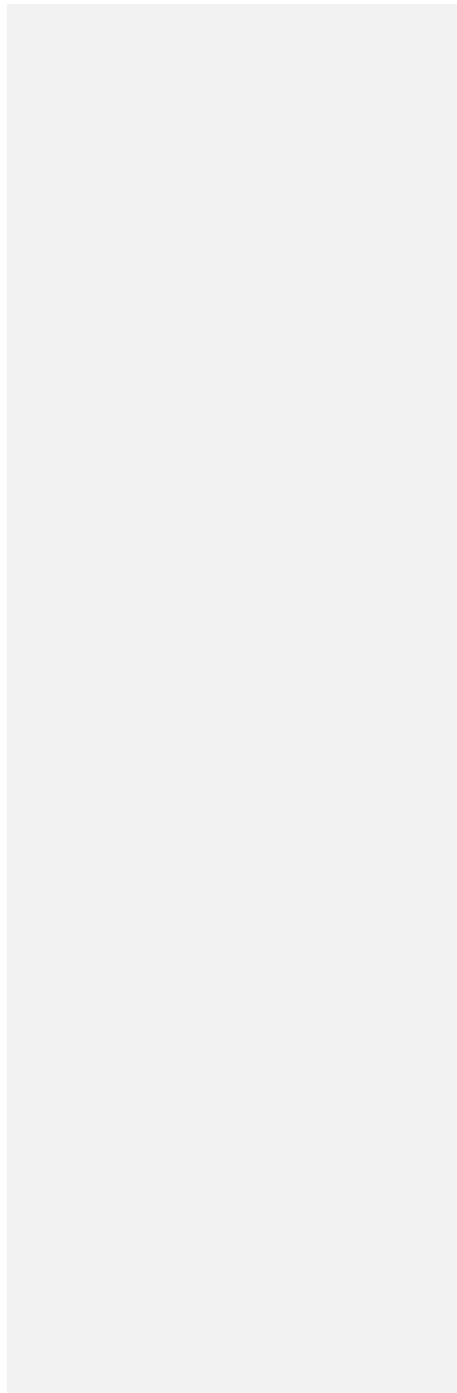
FAIRFAX COUNTY PURCHASING RESOLUTION

It is further resolved that this resolution shall be effective July ~~13~~¹⁹, ~~2021~~²⁰²².

A Copy Teste:

Jill G. Cooper
Clerk to the Board of Supervisors

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Board Agenda Item
July 19, 2022

ACTION - 7

Approval of a Project Administration Agreement Resolution with the Virginia Department of Transportation for the Implementation of Pedestrian Improvements for the Route 29 Bridge over Cub Run Project (Sully District)

ISSUE:

Board of Supervisors' approval of a Project Administration Agreement Resolution for the funding of improvements at the Route 29 Bridge over Cub Run project.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve a resolution, in substantial form of Attachment 1, with the Virginia Department of Transportation (VDOT), for the funding of the project.

TIMING:

The Board should act on this item on July 19, 2022, so that the project can continue to advance.

BACKGROUND:

As a part of the effort to improve the Route 29 bridge over Cub Run, this project includes a missing segment of a pedestrian facility on the bridge. The original project did not include a trail connection on the southern side of Route 29.

This project was previously approved by the Board of Supervisors on April 12, 2022 (Attachment 2), but lacked certain language, required by VDOT, in the resolution, that committed the County to pay its portion of the project.

FCDOT is requesting approval of the amended resolution which includes the required language committing the County to pay the local match (\$52,000) to VDOT.

FISCAL IMPACT:

The total project estimate is \$3,565,994. The County's share of the project is \$52,000; This will be entirely funded by Fund 40010, County and Regional Transportation Projects. There is no impact to the General Fund.

Board Agenda Item
July 19, 2022

ENCLOSED DOCUMENTS:

Attachment 1: Resolution for Agreement Execution

Attachment 2: April 12, 2022, Board Item

Attachment 3: Appendix A & B

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

Michael Guarino, Chief, Capital Projects Section, FCDOT

Caijun Luo, Senior Transportation Planner, Capital Projects Section, FCDOT

Ray Johnson, Chief, Funding Section (FS), FCDOT

Smitha Chellappa, Senior Transportation Planner, FS, FCDOT

Michael Cuccias, Transportation Planner, FS, FCDOT

ASSIGNED COUNSEL:

Richard Dzubin, Assistant County Attorney

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held on Tuesday, July 19, 2022, at which meeting a quorum was present and voting, the following resolution was adopted:

AGREEMENT EXECUTION RESOLUTION

A RESOLUTION FOR THE BOARD OF SUPERVISORS OF THE COUNTY OF
FAIRFAX, VIRGINIA
FOR THE EXECUTION OF AN AGREEMENT FOR THE
Route 29 Bridge Over Cub Run
PROJECT

WHEREAS, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring local jurisdiction or agency requesting the Virginia Department of Transportation (VDOT) to establish a project(s), if not already established, in the County of Fairfax.

NOW, THEREFORE, BE IT RESOLVED, that the County of Fairfax requests the Commonwealth Transportation Board to establish a project(s), if not already established, for the funding of the Route 29 Bridge Over Cub Run ("Project").

BE IT FURTHER RESOLVED, that the County of Fairfax hereby agrees to provide its share of the local contribution, in accordance with the Project Administration Agreements ("PAA", attached) and associated financial documents (Appendix A and B), executed pursuant to this Resolution.

BE IT FURTHER RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, the agreement with the Virginia Department of Transportation, for the funding of the Project.

Adopted this 19th day of July 2022, Fairfax, Virginia

ATTEST _____
Jill G. Cooper
Clerk to the Board of Supervisors

ACTION -

Approval of a Project Administration Agreement with the Virginia Department of Transportation for the Implementation of Pedestrian Improvements for the Route 29 Bridge over Cub Run Project (Sully District)

ISSUE:

Board of Supervisors' approval and authorization for the Director of the Fairfax County Department of Transportation (FCDOT) to execute a Project Administration Agreement (PAA) for the funding of improvements at the Route 29 Bridge over Cub Run project.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve a resolution (Attachment 1) authorizing the Director of FCDOT to execute a PAA (substantially in the form of Attachment 2) with the Virginia Department of Transportation (VDOT), for the funding of the project. This agreement secures full funding for the project.

TIMING:

The Board should act on this item on April 12, 2022, so that the project can continue to advance.

BACKGROUND:

As a part of the effort to improve the Route 29 bridge over Cub Run, this project includes a missing segment of a pedestrian facility on the bridge. The original project did not include a trail connection on the southern side of Route 29.

The County has negotiated with VDOT to add pedestrian improvements along the south side of the bridge and Route 29. VDOT has agreed to include this segment in the project delivery, but funding is necessary to complete it.

The majority of the improvements will be funded by VDOT using State of Good Repair funds. The portion of the project the County has requested is estimated to be \$52,000.

FISCAL IMPACT:

The total project estimate is \$3,565,994. The County's share of the project is \$52,000; This will be entirely funded by Fund 40010, County and Regional Transportation Projects. There is no impact to the General Fund.

Board Agenda Item
April 12, 2022

ENCLOSED DOCUMENTS:

Attachment 1: Resolution for Agreement Execution

Attachment 2: Proposed Project Administration Agreement

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

Michael Guarino, Chief, Capital Projects Section, FCDOT

Caijun Luo, Senior Transportation Planner, Capital Projects Section, FCDOT

Ray Johnson, Chief, Funding Section (FS), FCDOT

Smitha Chellappa, Senior Transportation Planner, FS, FCDOT

Michael Cuccias, Transportation Planner, FS, FCDOT

ASSIGNED COUNSEL:

Richard Dzubin, Assistant County Attorney, Office of the County Attorney

VDOT Administered, Locally Funded Appendix A

Date: 3/15/2022

Project Number: 0029-029-504 UPC: 118348 CFDA# N/A Locality: County of Fairfax

Project Location ZIP+4: 20121-4404	Locality DUNS #074837626	Locality Address (incl ZIP+4): 4050 Legato Road, Suite 400 Fairfax, Va. 22033-2895
Project Narrative		
Work Description: Construction of an 8' wide trail as requested and funded by Fairfax County. This work is included in #SGR-21VB (FED ID 06272)		
Description: SUPERSTRUCTURE REPLACEMENT - ROUTE 29 NORTHBOUND OVER CUB RUN.		
From: Station 20+37		
To: Station 22+30		
Locality Project Manager Contact info: Caijun Luo 703-877-5755 caijun.luo@fairfaxcounty.gov		
Department Project Manager Contact Info: Abdoul Koura-Bodji 703-259-2770 Abdoul.Koura-Bodji@VDOT.Virginia.gov		

Project Estimates	
Phase	Estimated Project Costs
Preliminary Engineering	\$0
Right of Way & Utilities	\$0
Construction	\$52,000
Total Estimated Cost	\$52,000

Project Cost				
Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering				
Total PE				\$0
Right of Way & Utilities				
Total RW				\$0
Construction	\$52,000	Local Funds	100%	\$52,000
Total CN	\$52,000			\$52,000
Total Estimated Cost	\$52,000			\$52,000

Total Maximum Reimbursement / Payment by Locality to VDOT	\$52,000
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Project Financing					
Local Funds					Aggregate Allocations
\$52,000					\$52,000

Payment Schedule			
FY 2022			
\$52,000			

Program and Project Specific Funding Requirements	
<ul style="list-style-type: none"> This is a limited funds project. The locality shall be responsible for all funding and any additional funding in excess of \$52,000 for the requested trail work. All local funds included on this appendix have been formally committed by the local government's board or council resolution subject to appropriation. Construction of the trail was requested by Fairfax County. The cost of this work is ineligible for State of Good Repair Bridge funds and will be covered by local funds. This trail is part of the overall project to replace the superstructure over Route 29. At Construction Award, VDOT will invoice the LOCALITY for their share of the project costs. The LOCALITY shall make one lump sum payment in the amount of \$52,000 to VDOT, no later than 30 days after receipt of VDOT's invoice, and prior to the occurrence of any Construction work. 	

This attachment is certified and made an official attachment to this document by the parties to this agreement

Authorized Locality Official and Date

Authorized VDOT Official and Date

Typed or printed name of person signing

Typed or printed name of person signing

VDOT ADMINISTERED – LOCALLY FUNDED Project Administration Agreement
 Locality: County of Fairfax
 Project Number: 0029-029-504, UPC 118348

Appendix B

Project Number: 0029-029-504 (UPC 118348) Locality: COUNTY OF FAIRFAX

Project Scope	
Work Description:	Construction of an 8' wide trail as requested and funded by Fairfax County. This work is included in #SGR-21VB (FED ID 06272) SUPERSTRUCTURE REPLACEMENT - ROUTE 29 NORTHBOUND OVER CUB RUN.
From:	Station 20+37
To:	Station 22+30
Locality Project Manager Contact Info: Caijun Luo 703-877-5755 caijun.luo@fairfaxcounty.gov Department Project Coordinator Contact Info: Abdoul Koura-Bodji 703-259-2770 Abdoul.Koura-Bodji@VDOT.Virginia.gov	

Detailed Scope of Services
<p>The purpose of this agreement is to account for the Local Funds added to the project to construct a trail as requested by the Locality. The cost of this work is ineligible for State of Good Repair Bridge (SGR) funds and will be covered by Local Funds.</p> <p>In addition to the superstructure replacement, VDOT will construct a proposed 8' wide asphalt path located east of Route 29 northbound from the private entrance Station 20+37 to Station 22+30, in accordance with the plans using Local Funds as shown in Appendix-A. VDOT will <u>maintain the trail after construction and continue to maintain the superstructure.</u></p>

This attachment is certified and made an official attachment to this document by the parties of this agreement

 Authorized Locality Official and Date

 Authorized VDOT Official and Date

 Typed or printed name of person signing

 Typed or printed name of person signing

Board Agenda Item
July 19, 2022

ACTION - 8

Approval of a Board of Supervisors' Draft Regular Meeting Schedule for Calendar Year 2023

ISSUE:

Board approval of a draft regular meeting schedule for January through December 2023.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the draft regular meeting schedule for January through December 2023.

TIMING:

The Board should take action on July 19, 2022, 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 2023 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 2023 Draft Schedule to the Board for formal adoption.

ENCLOSED DOCUMENTS:

Attachment 1: January-December 2023 Draft Schedule for Board of Supervisors' Regular Meetings and Potential 2023 Tuesday dates for Board Committee Meetings

STAFF:

Jill G. Cooper, Clerk for the Board of Supervisors

DRAFT

2023 Board of Supervisors Meeting Schedule

January 24, 2023	May 23, 2023
February 7, 2023	June 6, 2023
February 21, 2023	June 27, 2023
March 7, 2023	July 11, 2023
March 21, 2023	July 25, 2023
April 11, 2023	September 12, 2023
<ul style="list-style-type: none"> • 9:30 to 4:00 p.m. Board Meeting • 4:00 p.m. Budget Public Hearing 	September 26, 2023
April 12 and April 13, 2023	October 10, 2023
<ul style="list-style-type: none"> • 3:00 p.m. – Budget Public Hearings 	October 24, 2023
May 2, 2023 (Budget Mark-up)	November 21, 2023
May 9, 2023	December 5, 2023

Potential 2023 Tuesday Dates for Board Committee Meetings

(Listed below are Tuesday dates that would be available for scheduling
of Board Committee meetings in 2023)

January 10	June 13
January 31	July 18
February 14	August 1
February 28	September 19
March 14	October 3
March 28	October 17
April 25	November 28
May 16	December 12

The Budget pre-Mark-up meeting is scheduled on Friday, April 28, 2023.

ACTION - 9

Board Endorsement of Vienna Metrorail Station Bicycle and Pedestrian Improvements Project (Providence District)

ISSUE:

Board endorsement of the Virginia Department of Transportation (VDOT) Design Public Hearing plans for the Vienna Metrorail Station Bicycle and Pedestrian Improvements Project.

RECOMMENDATION:

The County Executive recommends that the Board endorse the design plans for the Vienna Metrorail Station Bicycle and Pedestrian Improvements Project administered by VDOT as generally presented at the November 17, 2021, Design Public Hearing and authorize the Director of the Fairfax County Department of Transportation (FCDOT) to transmit the Board's endorsement to VDOT (Attachment 1). Board authorization is also requested to fully fund the project as stated in the Fiscal Impact section below.

TIMING:

The Board should take action on this matter on July 19, 2022, to allow VDOT to proceed with final design plans to keep the project on schedule.

BACKGROUND:

The purpose of this project is to construct bicycle and pedestrian improvements near the Vienna Metrorail Station, along Country Creek Road/Virginia Center Boulevard between Sutton Road and the ramp to westbound I-66, and along Sutton Road between Blake Lane and Country Creek Road. This project improves bicyclist and pedestrian safety, accessibility, and connectivity to/within the planned I-66 bicycle and pedestrian network.

The bicycle and pedestrian improvements will have two phases: Interim and Ultimate.

The proposed project's ultimate improvements include:

- Along Virginia Center Boulevard (from I-66 westbound on-ramp to Vaden Drive):
 - 200 feet of a new 10-foot-wide shared use path in front of the Metrorail station parking lot.

Board Agenda Item
July 19, 2022

- 1,200 feet of a new 10-foot-wide two-way raised (sidewalk level) cycle track along the south side of the road by removing one eastbound lane (included in road diet), while maintaining the existing sidewalk where feasible and adding a new sidewalk as needed.
 - New pavement markings, signage, and traffic signal modifications/optimization.
 - Enhanced crosswalks.
- Along Country Creek Road (from Vaden Drive to Sutton Road):
 - 1,500 feet of two-way cycle track and sidewalk along the south side of the road (included in road diet).
 - New pavement markings, signage, and traffic signal modifications/optimization.
 - Removal of the free-flow right turn from the I-66 ramp and addition of a right turn lane at signal.
 - Enhanced crosswalks.
- Along Sutton Road (from Country Creek Road to Blake Lane):
 - 1,900 feet of a new 10-foot-wide shared use path on the south side of Sutton Road.
 - Reduced right-of-way impacts north of Sutton Green Court using excess pavement, while maintaining on-street parking on both sides of Sutton Road.
- At/Along Blake Lane:
 - Provide a new bike/pedestrian crossing on Blake Lane on the south side of the intersection along with a new traffic signal.
 - Upgrade 100 feet of existing sidewalk on west side of Blake Lane to 10-footwide shared use path.

The project's proposed interim improvements include:

- Shared travel lane along Sutton Road from Blake Lane to Sutton Green Court.
- Buffered bike lanes along Sutton Road from Sutton Green Court to Country Creek Road.
- Separated two-way cycle track along Country Creek Road and Virginia Center Boulevard from Sutton Road to the Metrorail Parking Lot Entrance.

The construction of the project will not displace any families, businesses, or non-profit organizations.

PUBLIC HEARING COMMENTS:

In accordance with the Code of the Commonwealth of Virginia and policies of the Commonwealth Transportation Board, a Design Public Hearing was held on Wednesday, November 17, 2021, for both interim and ultimate improvements. 51

Board Agenda Item
July 19, 2022

people attended the hearing, including members of the Virginia Department of Transportation, Fairfax County Department of Transportation, and elected officials. There were 58 comments received on the project with 41 comments provided at the public hearing, 16 received by email, and one online comment survey was submitted. The comments were generally in favor of the project, and one person opposed the project. Some raised concerns over the safety issues along the corridor, the potential loss of on street parking, and the property frontage impacts. A copy of the Design Public Hearing postcard is attached (Attachment 2).

After reviewing the project design plans, County staff recommends that the Board of Supervisors endorse the plans.

PROJECT SCHEDULE:

Virtual Public Hearing Meeting:	November 17, 2021	
Design Approval:	Interim: Mid 2022	Ultimate: Mid 2022
Begin ROW Acquisition and Utility Relocation:	Interim: N/A	Ultimate: Mid 2022
Construction Begins:	Interim: Mid 2022	Ultimate: Late 2024
Construction Ends:	Interim: Late 2022	Ultimate: Early 2026

The interim improvements are planned to be in place commensurate with the opening of the parallel trail improvements associated with the Transform 66 Outside the Beltway project.

FISCAL IMPACT:

The total project estimate is approximately \$10.5 million, including \$1.0 million for the interim project and \$9.5 million for the ultimate project. Staff recommends the use of a combination of Regional Surface Transportation Program (RSTP), Northern Virginia Transportation Commission's I-66 Commuter Choice grant funding, and Transportation Alternatives (TA) funds allocated to the County to fund \$9.1 million of the ultimate project cost. In addition, staff has identified \$700,000 in surplus funds in state accounts from the Edsall Road Walkway project which can partially fund the interim project. Staff recommends that the remaining \$700,000, including \$400,000 for the ultimate project and \$300,000 interim project, be funded from the Northern Virginia Transportation Authority (NVTA) 30 Percent Construction Reserve (2G40-107-000) in Fund 40010, County and Regional Transportation Projects, to fully fund the entire project with the approval of this item.

There is no impact to the General Fund.

Board Agenda Item
July 19, 2022

ENCLOSED DOCUMENTS:

Attachment 1: Letter transmitting Board of Supervisors' Endorsement of the Vienna Metrorail Station Bicycle and Pedestrian Improvements Project

Attachment 2: November 17, 2021, Design Public Hearing Postcard

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric M. Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Michael J. Guarino, Chief, Capital Projects Section (CPS), FCDOT

Caijun Luo, Transportation Planner III, CPS, FCDOT



County of Fairfax, Virginia

Attachment 1

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

July 19, 2022

Mr. John D. Lynch, P.E.
District Administrator
Northern Virginia District
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, Virginia 22030

Subject: Board of Supervisors Endorsement of Vienna Metrorail Station Bicycle and Pedestrian Improvements Project, UPC 113611

Dear Mr. Lynch:

On July 19, 2022, the Fairfax County Board of Supervisors endorsed the design plans of Vienna Metrorail Station Bicycle and Pedestrian Improvements, as presented at the November 17, 2021, virtual public hearing. This project will construct bicycle and pedestrian improvements near the Vienna Metrorail Station, including a new 10-foot-wide two-way raised (sidewalk level) cycle track along the south side of Country Creek Road/Virginia Center Boulevard between Sutton Road and the ramp to westbound I-66, as well as a new 10-foot-wide shared use path along the south side of Sutton Road between Blake Lane and Country Creek Road. This project is part of the I-66 Parallel Trail and improves bicyclist and pedestrian safety, accessibility, and connectivity to/within the planned I-66 bicycle and pedestrian network.

Please call Caijun Luo at (703) 877-5755 or me at (703) 877-5663 if you have any questions or need additional information. Thank you for your assistance with this important project.

Sincerely,

Tom Biesiadny
Director

cc: Members, Board of Supervisors
Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Andrew Beacher, Manager, Preliminary Engineering, VDOT

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



Mr. John D. Lynch, P.E.
July 19, 2022
Page 2 of 2

Eric M. Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Michael J. Guarino, Chief, Capital Projects Section, FCDOT

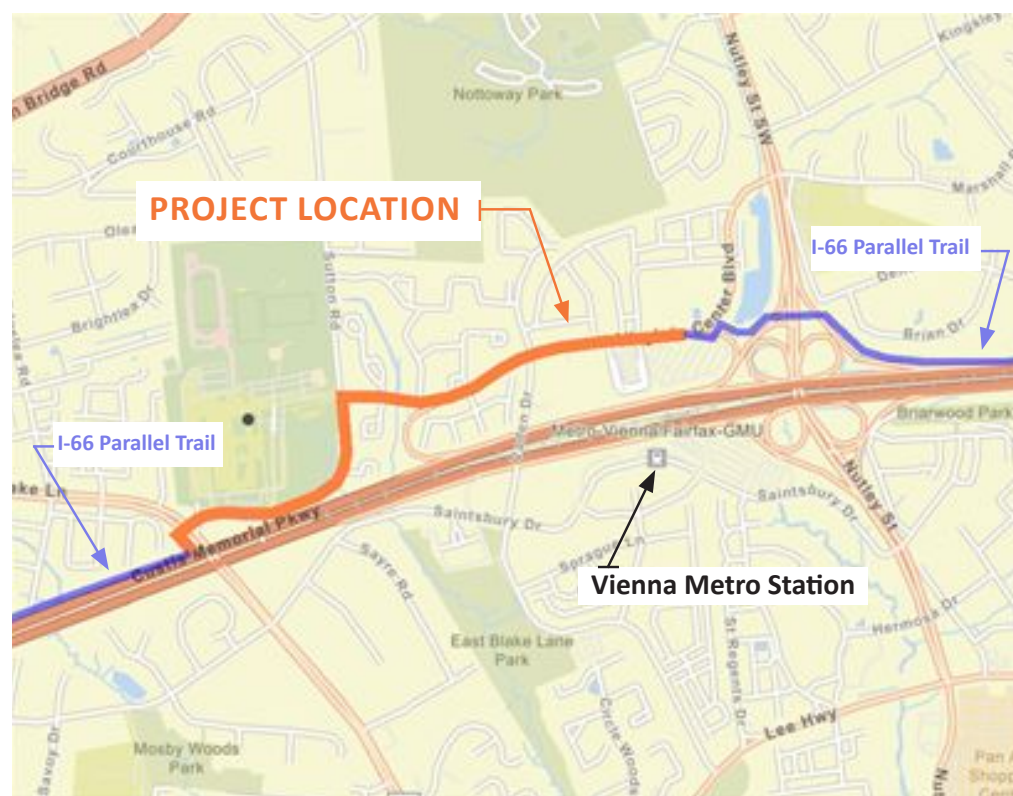
VIRTUAL DESIGN PUBLIC HEARING

Join Us! Wednesday, November 17, 2021 at 7 p.m.



Vienna Metro Station Bicycle and Pedestrian Improvements

Find out about planned bicycle and pedestrian improvements in the area of the Vienna Metro station along Country Creek Road/Virginia Center Boulevard between Sutton Road and the ramp to westbound I-66, and along Sutton Road between Blake Lane and Country Creek Road. Proposed interim improvements include creating a separated two-way cycle track on eastbound Country Creek Road/Virginia Center Boulevard between Sutton Road and the Metro North Parking Lot entrance by restriping and installing posts or barriers for separation, adding a buffered bike lane on Sutton Road between Sutton Green Court and Country Creek Road, upgrading pedestrian signals and installing related signs and pavement markings. Proposed final improvements include constructing shared-use paths along Blake Lane and Sutton Road from the I-66 bridge to Country Creek Road, adding a separated two-way cycle track with adjacent sidewalk along Country Creek Road/Virginia Center Boulevard, consolidating and relocating bus stops for improved transit access, and realigning the I-66 westbound ramp to Country Creek Road.



State Project: EN18-029-423, P101, R201, C501 | UPC: 113611 | Federal: TAP-5A01 (964)



This public hearing is an opportunity to inform residents and stakeholders on the proposed design. In lieu of an in-person hearing, the project team invites residents and travelers to learn more about the project, participate in the virtual design public hearing and provide feedback by December 3, 2021.

ATTEND the virtual public hearing on Wednesday, November 17, 2021, register for the hearing or learn more about the project at viriniadot.org/ViennaMetroBikePed.

PROVIDE COMMENTS

Online: During the virtual public hearing

Via Email: Meetingcomments@vdot.virginia.gov (please reference “*Vienna Metro Station Bicycle and Pedestrian Improvements*” in the subject line)

By Mail: Mr. Zamir Mirza, Virginia Department of Transportation, 4975 Alliance Drive, Fairfax, VA 22030

Via Phone: (703) 259-1794

In Person by Request: During business hours at VDOT’s Northern Virginia District Office, 4975 Alliance Drive, Fairfax VA 22030. Please call ahead at (703) 259-1794 or TTY/TDD 711 to make an appointment.

VDOT ensures nondiscrimination and equal employment in all programs and activities in accordance with Title VI and Title VII of the Civil Rights Act of 1964. If you need more information or special assistance for persons with disabilities or limited English proficiency, contact VDOT Civil Rights at 703-259-1775.

Board Agenda Item
July 19, 2022

ACTION - 10

Approval of a Resolution Endorsing Projects Being Submitted for State Funding Through the Commonwealth Transportation Board's FY2024-2029 Smart Scale Program

ISSUE:

Board approval of a resolution (Attachment 1) endorsing Fairfax County projects for consideration in the Commonwealth Transportation Board's (CTB) FY2024–FY2029 Smart Scale Program.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve Attachment 1 endorsing Fairfax County projects for submission to the CTB's FY2024-FY2029 Smart Scale Program.

TIMING:

Board approval is requested on July 19, 2022, to meet the Smart Scale submission deadline of August 1, 2022.

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%)
- Economic Development (5%)
- Safety (5%)

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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 1, 2022. 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 the 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 FY2024-FY2029, 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 (Mount Vernon Highway to Sherwood Hall Lane)	\$35.0
2	Frontier Drive Extension (Franconia-Springfield Metrorail Station to Loisdale Road)	\$225.0
3	Seven Corners Ring Interchange	\$158.0
4	Town Center Parkway Underpass	\$252.0
5	Route 7 Widening (Route 123 to I-495) for Bus Rapid Transit	\$63.0
6	Route 7 Widening (I-495 to I-66) for Bus Rapid Transit	\$85.0

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 1, 2022.

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FISCAL IMPACT:

Requests for state funding for FY2024-FY2029 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 FY2024-FY2029 Funding through the Commonwealth Transportation Board Smart Scale Program

Attachment 2 – List of Projects with Descriptions

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

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, July 19, 2022, 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 FY2024-FY2029 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) - \$35,000,000
- Frontier Drive Extension (Franconia-Springfield Metrorail Station to Loisdale Road)- \$225,000,000
- Seven Corners Interchange - - \$158,000,000
- Town Center Parkway Underpass - \$252,000,000
- Route 7 Widening (Route 123 to I-495) for Bus Rapid Transit - \$63,000,000
- Route 7 Widening (I-495 to I-66) for Bus Rapid Transit - \$85,000,000

Adopted this 19th day of July 2022, Fairfax, Virginia

ATTEST _____
Jill G. Cooper
Clerk to the Board of Supervisors

List of Recommended Projects for Smart Scale (VDOT SYIP FY2024-FY2029) 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 +25%)
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.	\$464.0.0	\$436.7	\$27.3	\$35.0
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.	\$237.0	\$35.5	\$179.9	\$225.0
Seven Corners Interchange	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.	\$136.4	\$10.5	\$125.9.4	\$158.0

ATTACHMENT 2

Town Center Parkway Underpass	The project will extend the existing Town Center Parkway by constructing a new roadway (approximately 0.4-mile-long) between Sunrise Valley Drive and Sunset Hills Road under the Dulles Toll Road and Metrorail Silver Line Tracks.	\$201.6	\$0	\$201.6	\$252.0
Route 7 Widening (Route 123 to I-495) for Bus Rapid Transit	The project will widen approximately 0.7 miles of Route 7 between Route 123 and I-495 by an additional lane in each direction for 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.	\$147.5	\$68.0	\$50.0	\$63.0
Route 7 Widening (I-495 to I-66) for Bus Rapid Transit	The project will widen approximately 1 mile of Route 7 between I-495 and I-66 by one lane in each direction for BRT. The project includes installation of shared used paths. Intersection improvements will be required at 5 signals within to facilitate the widening.	\$118.0	\$50.0	67.6	\$85.0

Board Agenda Item
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ACTION - 11

Approval of I-495 Southside Express Lanes Study Comments (Mason, Lee, and Mount Vernon Districts)

ISSUE:

Board approval of comments on the I-495 Southside Express Lanes (SEL) Study.

RECOMMENDATION:

The County Executive recommends that the Board approve the letter (Attachment I) containing Fairfax County's comments on the I-495 SEL Study.

TIMING:

Board approval is requested on July 19, 2022, to allow the County's comments to be considered by the project team.

BACKGROUND:

VDOT initiated the I-495 Southside Study in January 2022, in cooperation with the Federal Highway Administration (FHWA), Maryland Department of Transportation State Highway Administration (MDOT SHA), surrounding localities, and other federal, state, and local stakeholders. The study is examining a proposed 11-mile extension of the I-495 Express Lanes from the Springfield Interchange (I-95/I-395/I-495), across the Woodrow Wilson Bridge to the MD 210 interchange in Prince George's County, Maryland. The study will also be informed by a Transit and Transportation Demand Management Study initiated by the Virginia Department of Rail and Public Transportation (DRPT) and coordinated with the Maryland Transit Administration.

The goals and objectives of the study are to evaluate transportation improvements that extend and provide continuity of the Express Lanes system on I-495 (Beltway), provide additional travel choices, reduce congestion, improve travel reliability, improve safety, and provide consistency with local and regional plans. The main features of the study currently include:

- Extension of the I-495 Express Lanes from the current terminus at the I-95/I-395/I-495 interchange, to MD 210, with the option of one or two express lanes in each direction pending alternatives analysis, and
- Improvements to the I-495 interchanges between Springfield Interchange to MD 210 in Maryland.

Board Agenda Item
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VDOT is coordinating with MDOT SHA on the improvements from the Woodrow Wilson Bridge to MD 210.

VDOT has started preparing the Environmental Assessment (EA) for I-495 SEL Study pursuant to the National Environmental Policy Act (NEPA) of 1969, and in accordance with FHWA regulations. The purpose of the EA is to analyze the potential social, economic, and environmental effects associated with the proposed improvements. For this study, VDOT will separate the effort into five tasks including: Methodologies, Purpose and Need, Range of Alternatives, Recommended Preferred Alternatives, and Conceptual Mitigation. During each task, local and state agencies, including County staff, will have an opportunity to give input and comments before progressing to the next task. VDOT will also seek public input at key points during the study.

Public meetings were held on the following dates:

- May 18, 2022 – Virtual
- May 19, 2022 – Oxon Hill High School, Oxon Hill, Maryland
- May 23, 2022 – John R. Lewis High School, Springfield, Virginia
- May 25, 2022 – Nannie J. Lee Memorial Recreation Center, Alexandria, Virginia

The purpose of these meetings was to introduce the parameters of the study, such as scope of the study area, goals and objectives, alternatives to be analyzed, and the timeline of the study and seek public inputs. Comments were requested from the public by June 21, 2022. Staff provided comments in conformance with the June 21, 2022, due date pending Board approval. In general, the comments, as outlined in Attachment I, include:

1. Coordination with Maryland to ensure project compatibility with plans for managed toll lanes from I-95/I-395/I-495 Interchange in Fairfax County, across the Woodrow Wilson Bridge, to MD 210 with existing Northern Virginia express lanes.
2. Considerations of compliance to the local standards and regulations in regard to stormwater design, water quality, water quantity control, and wetland impacts.
3. Addressing impacts to historic resources and parks.
4. Integration of pedestrian and bicycle facilities along the Beltway.
5. Evaluating further mitigation to congestion at arterial intersections and adjacent local transportation networks at interchanges, including Richmond Highway and Van Dorn Street.
6. Conformance with Fairfax County Comprehensive Plan.

Staff from Fairfax County Department of Transportation, Public Works and Environmental Services, Planning and Development, Health, and Neighborhood and Community Services also provided comments on the Methodologies portion of the study

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and indicated the areas where County staff wanted to ensure to be considered as the Study progresses. These comments are referenced in Attachment I.

This study effort will include the following key milestones:

Fall 2022/Winter 2023	Public information meetings Develop/discuss range of alternatives
Spring/Summer 2023	Public hearing for EA and preferred alternative
Fall 2023/Winter 2024	NEPA completion

However, this anticipated study schedule is subject to change as the study progresses.

FISCAL IMPACT:

There is no fiscal impact resulting from this action.

ENCLOSED DOCUMENTS:

Attachment I: Draft Letter transmitting Comments on I-495 SEL Study

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Martha Elena Coello, Chief, Special Projects Division, FCDOT
Yuqing Xiong, Senior Transportation Planner, FCDOT
Sean Schweitzer, Senior Transportation Planner, FCDOT



JEFFREY C. MCKAY
CHAIRMAN

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
BOARD OF SUPERVISORS
FAIRFAX, VIRGINIA 22035

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TELEPHONE 703- 324-2321
FAX 703- 324-3955

chairman@fairfaxcounty.gov

July 19, 2022

The Honorable W. Sheppard Miller III
Secretary of Transportation
P.O. Box 1475
Richmond, Virginia 23218

Reference: Fairfax County Comments on VDOT I-495 Southside Express Lanes Study

Dear Secretary Miller:

On July 19, 2022, the Fairfax County Board of Supervisors approved comments regarding the I-495 Southside Express Lanes (I-495 SEL) Study. I-495 SEL Study is important to improving mobility in Fairfax County. The Board continues to support the Commonwealth's efforts to reduce congestion and provide additional travel choices in the Capital Beltway Corridor and to move the most people as efficiently as possible in this region. The study's proximity to the anticipated Richmond Highway Bus Rapid Transit (BRT) corridor and the Woodrow Wilson Bridge, also signifies that improvements in the corridor will have lasting effects on accessibility and increased economic opportunity for surrounding communities in Fairfax County. It is imperative that VDOT and local and state agencies in Virginia and in Maryland effected by the proximity of the study, coordinate as the study continues.

The Board looks forward to continued and enhanced collaboration as the study progresses. As part of those efforts, the Board offers the following comments regarding the information shared during the I-495 SEL Study public meetings held in May 2022. These comments should not be construed as a County endorsement of the I-495 SEL Study.

Oakwood Road / Vine Street Bridge – Comprehensive Plan

- A bridge connection from Oakwood Road to Vine Street is shown on the Fairfax County Comprehensive Plan. I-495 SEL Project should not preclude this bridge connection. Considering the proximity of the I-495 SEL study and potential impacts to traffic conditions in the area as well as access to the Van Dorn Metrorail Station, the connection should be assessed as part of the I-495 SEL Study.
- Lee District Site Specific Plan Amendment (SSPA) task force members have identified a 1999 letter from VDOT regarding the Bush Hill Drive overpass bridge. The letter refers to the construction of a new bridge by VDOT over the Beltway pending the widening study concerning I-495 and a determination that a new bridge is warranted. The I-495 SEL Study should analyze the need for this bridge and not preclude the constructability of the bridge as specified in the Fairfax County Comprehensive Plan.
- The Board strongly recommends that VDOT consider ways to improve the interchange at Van Dorn Street. The current interchange does not function efficiently, and we are concerned that the local transportation network will experience increased congestion due to the potential access at the interchange to/from the express lanes.

The Honorable W. Sheppard Miller III
July 19, 2022
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- There are Site Specific Plan Amendments (SSPA's) that are currently being conducted for the redevelopment of land along the southern side of the Beltway (along Oakwood Road) that could be impacted by the I-495 SEL Study if the project intended to widen the Beltway outside of the existing right-of-way. Advanced coordination and outreach efforts are needed when impact to the right-of-way is further identified.

“North Gateway Study” Route 1 Traffic Congestion – Morning/Afternoon Peak Period Woodrow Wilson Bridge

- Northbound Richmond Highway traffic destined for eastbound I-495 routinely causes congestion issues at the intersection of Richmond Highway and Fort Hunt Road. Many Mount Vernon residents raised their concerns about this during the engagement process for the Special Exception Amendment in the Huntington Metro area. The Board would like to ensure that the I-495 SEL Project addresses the congestion on northbound Richmond Highway approaching the Beltway as part of the improvements implemented with the I-495 SEL Project.

Comprehensive Plan and Trails Plan – In General

- As I-495 SEL Study progresses and alternatives are assessed, the Board would like to reiterate the importance that VDOT include projects included in Fairfax County's Comprehensive Plan (Trails Plan) as well as recommendations and mitigations that have come out of those studies along the southside of I-495 such as the Huntington Area Metro Study (HATS) in the project. These improvements should include the implementation of a trail along the stretch of I-495 that would connect to the pedestrian bridge across the Woodrow Wilson Bridge, as well as other County trails that are close in proximity to I-495 to allow for an expansive, interconnected trail system.

County staff previously provided comments (Attachment A) during the Methodologies phase of this Environmental Assessment (EA) process to meet VDOT's deadline and indicated the areas where County staff wanted to be considered as the Study progresses.

Fairfax County appreciates the work that has been undertaken to date in this project and the opportunity to provide comments. We also look forward to working closely with the Commonwealth and developing a mutually beneficial project to County residents and the region.

If you have any questions or need additional information, please contact Sean Schweitzer of the Department of Transportation at: Sean.Schweitzer@fairfaxcounty.gov or 703-877-5843.

Sincerely,

Jeffery McKay
Chairman

The Honorable W. Sheppard Miller III
July 19, 2022
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Enclosure:

Attachment A: Fairfax County Staff Comments on Methodologies Task Submitted to VDOT on
March 23, 2022

cc: Members, Fairfax County Board of Supervisors

Bryan J. Hill, County Executive

Rachel Flynn, Deputy County Executive


Tom Biesiadny, Director, Department of Transportation

Martha Coello, Chief, Department of Transportation

John Lynch, District Administrator, VDOT, Northern Virginia

Susan Shaw, Megaprojects Director, VDOT

Attachment A: Fairfax County Staff Comments Regarding Methodologies Task (submitted on 3/23/22)

Submittal Review Form 		Design Package:	N/A	Latest Aconex Submittal No.				
Project: 495 Express Lanes Southern Extension		Document:	Methodologies Report Task	Comment Types: X = Contract Requirement not Met Y = VDOT/Transurban Customary Practice not Met Z = Preference				
Project No.: VDOT Project No. (UPC 117217)								
Comment No.	Comment Type ¹	Review Comment	Firm/Agency	Final Responder's Full Name	Status Code	Response	Response Action Verified	
1		A portion of the I-495 Southside Express Lanes Study area drains to Backlick Run within the Cameron Run watershed. Cameron Run watershed is one of the most degraded watersheds in the county: the Virginia Department of Environmental Quality lists it as Impaired; it is under multiple total maximum daily loads (TMDLs) (both E. coli bacteria and Chesapeake Bay TMDLs for nutrients and sediment); and biological monitoring of its streams has consistently found impacted habitat and poor benthic health. In particular, Backlick Run has significant erosion as documented in this Story Map on the Fairfax County Department of Public Works and Environmental Services Backlick Run Stream Restoration Project currently under design (https://storymaps.arcgis.com/stories/2fb78310f7a34f1186ee33c66da2bf27) and this video (https://www.youtube.com/watch?v=U90g78wvC-o). The County requests the project to meet local requirements on stormwater management. In the case of not being feasible to meet local standard, the County is interested in partnering with VDOT on the stream restoration project or other stormwater management enhancement opportunities to support watershed health, similar to the agreement being development on 495 NEXT project.	FCDOT					
2		Section 2: Mapping on the RPA, Floodplains, Watersheds, Tree Cover, Topography, and Soils should be presented during this Study.	FCDOT					
3		Section 3.1.2.2 Environmental Consequences – If there is a loss of trees within the study area during the findings of this effort, the study should consider additional environmental impacts from the loss of trees based on health to neighborhoods and residents located in proximity to the impacted locations.	FCDOT					
4		Section 4: Will the issues of geology, topography, soils and sewage be addressed and to what extent?	FCDOT					
5		The study should address the provision of the trails shown on the County's Comprehensive Plan and Trails plan and take into account planned projects located within the vicinity of the study area. The study should consider making necessary connections to improve pedestrians and bicyclists facilities within the study areas.	FCDOT					

CONSIDERATION - 1

Approval of an Amendment to the Bylaws of the Police Civilian Review Panel to Codify a Subcommittee Review Process for Initial Review of Complaints

ISSUE:

Approval of an amendment to the bylaws for the Police Civilian Review Panel (Panel) to codify a subcommittee review process for initial review of complaints.

RECOMMENDATION:

Staff recommends approval of the requested amendment to the Panel's bylaws.

TIMING:

Board action is requested on July 19, 2022.

BACKGROUND:

The Board of Supervisors approved the establishment of the Panel on December 6, 2016. The Board established the Panel for the purposes of building and maintaining public trust between the Fairfax County Police Department, the Board, and the public, and to enhance police legitimacy.

The Panel prepared an Annual Report for 2021, published it on March 1, 2022, and discussed the report's findings at the Board's Public Safety Committee meeting on May 17, 2022. The Panel noted that it created a subcommittee process in 2019 to assist in processing a growing volume of complaints received each year. As the Panel further explained in its Report,

The purpose of the subcommittee process was not to short-change any complainants, but to allow the Panel to avoid unnecessary expenditures of resources where complaints simply fall outside of the jurisdiction of the Panel or wholly lack merit. Rather than having every single complaint reviewed in full by all members of the Panel, which involves at the moment each Panel member reviewing investigation files one-by-one at FCPD headquarters, a subcommittee of three Panel members reviews the files first to determine whether the allegations of the complaint rise to the level of 'serious misconduct' or 'abuse of authority' as defined by the Panel's Bylaws and considers whether, to put it bluntly, if there is any there.

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See Attachment 2, page 5. In accordance with the recommendations of the Panel's Four-Year Review, in September 2021, the Panel codified in its bylaws this "summary judgment"-like process for disposing of wholly unfounded complaints. This process is codified in a new Article VI.D., as noted in the redlined version of the attached bylaws.

Under the new Article VI.D of the proposed bylaws and as detailed at the Board's Public Safety Meeting on May 17, 2022, if the three-member Subcommittee unanimously determines that a complaint is unfounded, then a member of the Subcommittee will provide a summary of its deliberations and recommendations to the full Panel when it takes up the complaint. The full Panel will ultimately vote to determine whether it accepts a particular Review Request or complaint. The Complainant will be given the opportunity to address the full Panel before any complaint is disposed of under this process.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Amendment to the Panel's Bylaws

Attachment 2: Fairfax County Police Civilian Review Panel Annual Report 2021

STAFF:

Thomas G. Arnold, Deputy County Executive

ASSIGNED COUNSEL:

Elizabeth D. Teare, County Attorney

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018, November

19, 2019, December 1, 2020, February 23, 2021, ~~and~~ July 27, 2021, and [DATE]

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police ("Chief") and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
 - 1. The Board of Supervisors shall appoint each Panel Member.
 - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel's responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
 - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

¹ Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three- year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
 - (a) Preside over Panel meetings in the absence of the Chair; and
 - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
 - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of “abuse of authority” or “serious misconduct” by a FCPD officer, and (2) a Review Request is filed. The Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

~~2. Initial Disposition Notice.~~

- ~~(a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.~~
- ~~(b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.~~
- ~~(c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:~~
 - ~~(i) is timely filed; or~~
 - ~~(ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.~~
- ~~(d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.~~
- ~~(e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.~~
- ~~(f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.~~

D. Initial Review and Disposition.

1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees ("Initial Review Subcommittee") comprised of Panel Members to conduct initial reviews of Review Requests filed by

community members with the Panel.

(b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).

(c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.

(d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

3. Initial Review Subcommittee Process and Report to the Panel

(a) The Subcommittee shall review a Complaint to determine whether:

(i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and

(ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.

(b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.

(c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.

(d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

4. Initial Disposition Notice

(a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.

(b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.

(c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.

(d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D.E. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E.F. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.

- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
 - (e) The Panel shall not take testimony or receive evidence.
 - (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
 - (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
 - (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
 - (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.
2. Closed Sessions, and Confidential Matters During Panel Review Meetings.
- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
 - (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
 - (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
 - (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims,

or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.

- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F.G. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
 - (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
 - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.



Fairfax County Police Civilian Review Panel Annual Report 2021

Building Community Trust Through Accountability

Fairfax County Police Civilian Review Panel: Annual Report 2021



A Fairfax County, VA Publication

Publication Date: February 28, 2022

PANEL MEMBERS

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Cheri Belkowitz, Fairfax Station
Todd Cranford, Fairfax
Janell Wolfe, Fairfax
Frank Gallagher, Burke
Bryon Garner, Alexandria
Dirck Hargraves, Kingstowne
Shirley Norman-Taylor, Lorton
William Ware, Alexandria

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To request this information in an alternate format, call 703-324-3459, TTY 711.

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INTRODUCTION

The fifth year of the Fairfax Police Civilian Review Panel (Panel) was one marked by change and transition. In May 2021, Kevin Davis took over as Chief of the Fairfax County Police Department, the County's first new police chief in eight years. In August of 2021, the Fairfax County Board of Supervisors approved funding for the Panel's first Executive Director, who will be of great assistance to the Panel. Over the course of the year, six new members joined the Panel, and at the conclusion of this term, only one member will remain from the Panel's previous 2020-2021 term.¹

Furthermore, throughout the year, the Panel took important steps to systematize and streamline its processes without sacrificing respect for and attention to complainants. These included clarifying the subcommittee process, adopting new rules surrounding complainant comments at meetings, and implementing new communication templates for interactions with complainants. The Panel did its best to implement recommendations from the prior year's Four-Year Review into practice. While it was a year of change and transition, the Panel never strayed from its mission to "to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors and the Fairfax County Police Department (FCPD)."

Unfortunately, the year did not prove wholly transitional with respect to the many challenges facing our community due to the COVID-19 pandemic. The Panel, like the country, did its best to weather the storm but had fits and starts with respect to in-person meetings due to the rise of new variants and changing public health circumstances. These challenges only further confirmed the Panel's longstanding position that it would be tremendously beneficial to allow for review of investigation files electronically.

¹ Bob Cluck and Sris Sriskandarajah left the Panel before the end of the 2020-2021 term. Holly Doane, Rhonda Van Lowe, and Hansel Aguilar left the Panel at the conclusion of the 2020-2021 term. Doug Kay left the Panel in August of 2021. Frank Gallagher and Shirley Norman-Taylor will be leaving the Panel at the conclusion of the 2021-2022 term. During the 2021-2022 term, Dirck Hargraves, Cheri Belkowitz, Todd Cranford, William Ware, Bryon Garner, and Janell Wolfe joined the Panel. Jimmy Bierman was reappointed to the Panel at the end of the 2021-2022 term.

Finally, the Panel’s everyday work taking complaints and reviewing investigations never slowed. Over the course of the year, the Panel received 14 Initial Complaints and 14 Requests for Review. See Appendix A: Complaints and Requests for Review Received by the Panel, 2017-2021. The Panel met 14 times as a full Panel, conducted 9 additional subcommittee meetings, and hosted a public forum. In the end, the Panel handled 13 complaints to conclusion,² producing two full review reports³. The Panel continued its ongoing dialogue with the FCPD and the Internal Affairs Bureau (IAB), and continued to see strong work in IAB investigations.

What follows is a general summary of the Panel’s year along with additional recommendations for the Panel and the FCPD going forward. The Panel is pleased with the progress that the year has brought, but remains dedicated to improvement and evolution going forward.

WORKING WITH NEW POLICE CHIEF KEVIN DAVIS

On May 3, 2021, Kevin Davis took the reins as Chief of the Fairfax County Police Department. The Panel sought to establish a strong working relationship with Chief Davis, while still maintaining and confirming its independence. On May 26, 2021, the Panel held a public forum attended by nearly 100 people with Chief Davis allowing members of the Panel and the Community to address concerns about Chief Davis’s past experiences and to discuss and look toward the future of the FCPD. Chief Davis affirmed his support for civilian oversight bodies and committed to ensuring that the Panel can continue its work independently and without interference. At that Forum, Chief Davis also provided his assurance that he would find ways to work with whatever iteration of the Panel continued in the future and would not block reforms to the Panel including the creation of an Executive Director position.

² Note, not all investigations into Initial Complaints have yet been completed and several completed investigations into Initial Complaints to the Panel have not resulted in requests for Panel review. See Appendix B: Status of FCPD Investigations into Initial Complaints Received in 2021. Further, two Complaints handled to completion were initiated before this term, and the number of Complaints handled to completion includes several Complaints that were determined to be time-barred.

³ The Review Reports from CRP-20-20 and CRP-20-21, and from CRP-20-24 are provided as Appendix C and D respectively.

On June 9, 2021, Chief Davis invited the Chair of the Panel, Jimmy Bierman, to address the Administrative Staff meeting of the FCPD, which included all Deputy Chiefs, Majors, and high level civilian staff of the FCPD. This was the first time in the Panel's history that such a meeting, including a dialogue between Chair Bierman and high-ranking officers, had ever taken place.

At the request of the Panel, Chief Davis attended the Panel's November 16, 2021, meeting along with trainer Scott Meadows to discuss the FCPD's implicit bias training. Chief Davis and Mr. Meadows took questions from Panel members and the public during that meeting.

On a practical level, although Chief Davis has not implemented a plan to allow for Panel members to review investigation files electronically, *see Recommendations supra*, but at Chief Davis's direction, the IAB has expanded hours that investigation files are available, allowing Panel members to conduct their reviews outside of normal working hours, which has been an important improvement.

The Panel is pleased to report that it believes that its current working relationship is strong (and it would say so if it did not). However, the year was not without its challenges and it is important to move past the limitations of this past year. While the Panel intended to fully continue its quarterly meeting practices and host additional public forums, the Panel's intended schedule was interrupted by Delta, Omicron, and constraints on the time of its all-volunteer members. Further, while the Panel intended to hold additional meetings with the rank-and-file of the FCPD and take part in additional trainings, the Panel did not achieve its goals beyond taking the opportunity to address and answer questions from a class of Criminal Justice Academy recruits in June of 2021. The Panel hopes and believes that it can and will improve upon these shortcomings in the upcoming year with the arrival of the Panel's first Executive Director.

THE EXECUTIVE DIRECTOR POSITION

The Panel's appreciation of the Board of Supervisors' decision to provide the Panel with funding for and authorize the creation of an Executive Director position cannot be overstated. Nor can the influence that an Executive Director will have in professionalizing and improving the Panel's work and impact going forward. The advocacy efforts of Panel leadership did not fall on deaf ears before the Board of Supervisors and the Panel is grateful for the opportunities it had to work with the Board.

The Panel would be remiss not to recognize that it has benefited from excellent administrative support in the past from the Office of the Independent Police Auditor and specifically from Management Analyst Rachelle Ramirez, who has been doing double-duty supporting both the OIPA and the Panel. Simply put, without Ms. Ramirez, the Panel would not have been able to function at a high-level—or perhaps at any level—during the past year.

The Panel's workload and the limitations of an all-volunteer enterprise were highlighted during this year of transition, especially with significant turnover in the Panel's membership. An Executive Director will provide additional stability for the Panel and will be able to greatly expand upon the Panel's necessary outreach efforts. Many duties that have in the past fallen largely to the Chair, a volunteer, especially in a time of turnover, will now be professionalized. The new Executive Director will be empowered to organize more public outreach events, to set up more opportunities for the Panel to interface with the rank-and-file of the FCPD, and to liaise with Chief Davis and leaders of the Internal Affairs Bureau (IAB) on a more regular basis. The Panel is well aware that many members of the community are not even aware of its existence and that many members of the rank-and-file of the FCPD are uninformed as to the practices and procedures of the Panel, and insofar as that is the case, the Panel's mission falters. A dedicated, full-time Executive Director who can develop and execute a comprehensive outreach strategy will offer the Panel a tremendous opportunity to enhance its

ability to improve trust between the community and the FCPD, which will benefit community members and FCPD officers alike.⁴

The Board of Supervisors appointed the Panel's first Executive Director, Steven Richardson, on February 22, 2022. The Panel thanks the County's Human Resources leaders and the Board of Supervisors for being invited to play a role in the selection process, with two Panel members sitting on the interview committee. The Panel looks forward to what is to come.

REFORM OF THE SUBCOMMITTEE PROCESS

In 2019, the Panel created a subcommittee process to help handle the growing number of complaints being received by the Panel. The purpose of the subcommittee process was not to short-change any complainants, but to allow the Panel to avoid unnecessary expenditures of resources where complaints simply fall outside of the jurisdiction of the Panel or wholly lack merit. Rather than having every single complaint reviewed in full by all members of the Panel, which involves at the moment each Panel member reviewing investigation files one-by-one at FCPD headquarters, a subcommittee of three Panel members reviews the files first to determine whether the allegations of the complaint rise to the level of "serious misconduct" or "abuse of authority" as defined by the Panel's Bylaws and considers whether, to put it bluntly, is there is any there there.

The Panel's Four-Year Review recommended that the Panel "codify in its bylaws a 'summary judgment'-like process for disposing of wholly unfounded complaints at the Subcommittee level." The Panel did so in September of 2021.⁵ Vice Chair Dirck Hargraves and

⁴ Appendix E details the Panel's outreach efforts this term. There are areas for improvement in the Panel's outreach strategy in the coming year, especially given the circumstances of this past year. Turnover on the Panel led in part to perhaps more outreach responsibilities falling squarely on the Chair than in past years, while the Chair was also focused on advocating for structural change, including the creation of the Executive Director position, and implementing recommendations from the Panel's Four-Year Review. If anything, though, this only reinforces and highlights past recommendations and the need for an Executive Director: the Panel's workload is no longer an all-volunteer proposition.

⁵ With this report, the Panel is sharing these proposed Bylaw changes in hopes that the changes will be wholly adopted by the Board of Supervisors. The Panel will formally submit the proposed Bylaws changes and the necessary action item to the Board at a later date.

Panel Member Todd Cranford drafted new language to clarify past practices. Specifically, the Panel decided to add to its Bylaws a provision detailing the following in a new Article VI.D.⁶:

- (a) The Subcommittee shall review a Complaint to determine whether:
 - (i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and
 - (ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.
- (b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.
- (c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.
- (d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

See Appendix F (Proposed Bylaw Changes on Subcommittee Process). While in truth this addition does not represent a radical departure from past practice, the Panel now has a clear command and method for handling complaints at the Subcommittee level.

Perhaps most importantly, in adopting the Bylaws change, the Panel retained two critical checks on any potential for a lack of uniformity among subcommittee outcomes. First, the Panel decided that in order for a Subcommittee to recommend that the full Panel not review an investigation, the Subcommittee must be unanimous in its decision. Second, the Panel made sure to retain power for the full Panel to reject any such Subcommittee recommendation. Indeed, in practice, every full Panel meeting considering a Subcommittee's

⁶ The new proposed Bylaws language, if approved by the Board, will replace Article VI.C.2.

recommendation includes an opportunity to question the Subcommittee members and probe the question of whether or not a full Panel review is necessary.

Following the adoption of the Bylaws change, the Panel took an additional step to protect the interests of complainants. Subcommittee meetings have never offered an opportunity for the complainant to address the Subcommittee. Rather, Complainants were only customarily invited to address the full Panel at a Review Meeting, which only occurred if the subcommittee recommended to the Panel that it undertake a full review. The Panel decided that, despite the fact that every investigation reviewed includes a full interview of the Complainant by the IAB, this created a potentially problematic situation where a Complainant would not be able to have their voice heard by the entire Panel before the Panel dispensed with their complaint. Therefore, the Panel adopted a new practice whereby a Complainant is entitled to and invited to address the full Panel in the event of a Subcommittee recommendation that the Panel not undertake a full review.

The Panel believes that the Subcommittee process has been working well, but acknowledges that at the moment, a majority of complaints are not being reviewed by the full Panel. The Panel has no reason, however, to believe that the outcomes would be any different with the benefit of full Panel reviews. Indeed, the Panel procedure requires the Subcommittee to consider whether a full Panel review might turn out differently, and the Subcommittee always explains its recommendation to the full Panel. Rather, the Subcommittee process has allowed the Panel to handle wholly unfounded complaints in a more expeditious manner. For instance, in 2021 the Panel avoided conducting a full review of a complaint where in-store cameras and body-cameras demonstrated that the Complainant's arrest for shoplifting had been wholly justified and was effectuated in an appropriate manner; a complaint where body-camera footage demonstrated that police officers had responded to a 9-11 call by-the-book; and a complaint where extensive records and investigation by multiple detectives and victims' services agents wholly contradicted a Complainant's account.

IMPROVING PANEL COMMUNICATIONS WITH COMPLAINANTS

The Panel does not possess unlimited jurisdiction. For instance, under the terms of the Panel's Action Item and Bylaws, the Panel may not review any complaints concerning allegations of conduct occurring before December 6, 2016. Further, for a complaint to fall within the Panel's purview, it generally must be brought either directly to the FCPD or as an Initial Complaint to the Panel within one year of the incident. (Notably, the IAB does not operate with such a time bar and will and frequently does review complaints made beyond the one-year limitation.) And for the Panel to accept a Review Request, it generally must be made within 60 days of the issuance of the FCPD's disposition letter providing the outcome of the investigation.

The one-year and 60-day time bars are not absolute, however. If a Complainant is able to show "good cause" as to why the deadline was missed, the Panel can decide to accept a complaint for review. In one particular case from this past year where the Panel found good cause, the Complainant had not requested review within 60 days of the FCPD's disposition letter resolving the investigation into the complaint. But the Complainant explained that he had never received the letter and it was confirmed that the disposition letter had been sent to an old address for the Complainant. Upon receiving a copy of the disposition letter, the Complainant promptly requested a review and the Panel ultimately decided good cause demonstrated reason for the otherwise unacceptable delay.

This, however, has been the exception. In 2019, the Panel adopted a policy whereby the Chair would respond to out-of-time filings by asking the Complainant if there was "good cause" to waive the time limitation. Understandably, this had frequently not resulted in a satisfying outcome for either party because the somewhat amorphous legalese of "good cause" did not do enough to inform Complainants of the kind of information they were to provide. Rather, what typically happened was that Complainants would respond simply by reiterating the allegations of the Complainant and would provide no justification for delay.

Thus, the Panel adopted a new template for the typical “good cause” letter where the letter explains in more simple and direct detail what could constitute “good cause.”

Specifically, now the letter explains “good cause” as follows:

Your request for review is late. Panel rules say that you must make your request less than 60 days after the police department completes its investigation. The Panel must now decide if there is good cause for your late request. Good cause means that you have a good reason for being late. If you believe you have a good reason for the late request, please provide your reasons in writing. You must submit the reasons why you believe there is good cause to review your request . . .

The Panel hopes that this change will allow the Panel to receive adequate information in the future to allow it to make good cause determinations.

ISSUES FOR CONSIDERATION, RECOMMENDATIONS, AND COMMENTS

One of the stated purposes of the Panel in its Bylaws is to “make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police (“Chief”) and Board of Supervisors in policy review.” In 2019, the Panel released the first version of its Recommendations Matrix, in which the Panel makes recommendations to the FCPD and the FCPD has the opportunity to respond to such recommendations. The latest version of that Recommendations Matrix, including the FCPD’s response, and the Panel’s counter-responses where necessary, is attached as Appendix G. The Panel notes that at the time of its last Annual Report, the FCPD had not yet responded to some of the Panel’s recommendations. It has since done so and, as reflected in the Matrix, the Panel and the FCPD have come to agreement on a number of reforms. For instance, following a Panel review in which the Panel learned that the FCPD did not have an always-record policy with respect to station interviews, the FCPD has updated its practices to include a rule that all interviews are to be recorded as practicably possible.

In February of 2021, in publishing a Four-Year Review report, the Panel also provided recommendations directly to the Board of Supervisors regarding the Panel, many of which have

been implemented either by Board or the Panel itself. Further, the Panel has been given the opportunity to discuss such recommendations with the Board and where the Board has not yet implemented certain recommendations, *i.e.*, a request for limited investigatory power, changes to the Panel's conclusion options, they have nevertheless remained open for further consideration down the line, especially in light of the development of the Panel now that an Executive Director is being hired. The Panel hereby reaffirms those specific recommendations to the extent they are still operable. The Specific Recommendations from the Four-Year Review are attached as Appendix H.

The Panel further wishes to provide the following issues for consideration, recommendations, and comments:

Inappropriate 9-1-1 Calls and Their Aftermath

Two complaints reviewed this term concerned police procedures when responding to 9-11 calls. In both instances, it was clear that the 9-1-1 call had been erroneously placed, possibly deliberately.

In the first instance, described in Review Report CRP-20-20 and CRP-20-21, attached as Appendix C, a man purporting to be a downstairs neighbor provided the address of a second-floor apartment in two separate 9-1-1 calls claiming to be hearing a loud domestic disturbance—a shouting match—at roughly 4:00am in the morning. The Complainants were two sisters who were awoken at 4:00 am by police officers banging on their front door who complained of the officers' conduct and communication during the service call, especially where it was clear that no such domestic disturbance was, in fact, occurring at the residence. The Panel, after requesting additional investigation of the complaint, ultimately concurred with the findings of the investigation that cleared the officers of misconduct under the circumstances, which included the officers' positioning on a narrow, second floor landing at the apartment's front door, but made recommendations regarding the importance of clarifying service call procedures in the future and recommendations regarding correspondence with complainants. The Panel was surprised to learn in that instance, however, that there had been no follow up with the individual whose two 9-1-1 calls were either outright fabrications or a

curious case of mistaken location. The Panel was informed that such follow up normally does not occur due to privacy concerns and a desire to avoid any potential deterrence to making 9-1-1 calls. The Panel understands these concerns, but where the situation is as clear cut as it was here, the Panel believes it would be in the interest of all parties involved to get to the bottom of what happened and why, especially if it was the case of intentional “swatting,” a term that literally describes trying to generate a false alarm that leads to a SWAT team being wrongfully dispatched to an inappropriate location.

A second complaint involved a more egregious, more clearcut example wholly in line with the term. There, the 9-1-1 call actually referenced fired shots and a SWAT team was dispatched to the scene. Very fortunately for the Complainant, the situation was handled competently and by-the-book as was caught on body-worn cameras. While the Subcommittee reviewing the complaint expressed sympathy for the Complainant’s plight and conceded that the experience of having a full swat team show up at one’s house in the middle of the night was traumatic and problematic, the Subcommittee nevertheless did not recommend review by the full Panel where the investigation benefited from extensive video and audio confirming that police were responding to what sounded like a serious threat—gunshots during a likely domestic disturbance—followed General Orders, and diffused the situation as expeditiously as possible. Still, the Panel was concerned that such a situation could have had a very different and very tragic outcome.

There, the Panel was told that the FCPD *does* investigate such serious incidents, and the potential criminal nature of such calls that are essentially akin to filing a false police report. But that begs the question whether certain investigatory steps can or should be taken in the event of the former scenario, which still resulted in terrified residents and police officers in a potentially precarious situation. While the Panel is aware that certain rules concerning 9-1-1 procedures are set at the Commonwealth-wide level, it is our hope that the FCPD and the County can work together to make sure that procedures and laws are in place such that the frequency of such dangerous incidents is greatly minimized.

Electronic Access to Investigation Files

The Panel still does not have electronic access to the FCPD investigation files that it reviews. The Panel is fully cognizant of the importance of confidentiality in reviewing administrative investigations and takes its work very seriously. The Panel understands that one way to protect such confidentiality is to keep such files centrally located and limit access. But the Panel simply does not believe these concerns override the importance of Panel access to such documents and the very real efficiency losses under the current review regime.

With six new members joining the Panel in the past term, a consistent surprise from new members was that we do not have electronic file access and that, in order to review investigation files per our mandate, Panel members need to go to FCPD Headquarters and take turns reviewing a paper file book and audio and video on CDs. This is a significant burden on volunteers with other jobs. Indeed, in the past year, two Panel members started new jobs, making conducting in-person file reviews during work hours even more difficult.

As already mentioned, this year the IAB started opening up after normal business hours, which was extremely helpful. However, for the sake of Panel members *and* the IAB, the Panel believes that it should be granted access to such files electronically and Panel members should be able to review such files on their own time. To the credit of the officers in the IAB, no one has ever complained about or failed to accommodate Panel member requests for review (though, notably, only one Panel member can review at a time). But when, for instance, a Panel member's schedule dictated that he review an investigation file the Wednesday evening before Thanksgiving, it seems like all parties could have benefited from electronic file review. In addition, at one point during this past year a combination of snow days and illness prevented a full file review and led to multiple subcommittee delays that could have been avoided by electronic file review. The Panel respectfully requests again that it be granted the ability to review files electronically.

Training

The Panel's training regimen was again impacted by the COVID-19 pandemic, and the Panel is aware that it needs to remedy the situation. The Panel has continued to rely on

extensive training recordings from 2019 provided by the National Association of Civilian Oversight of Law Enforcement (NACOLE) and the FCPD, but is well in need of a refresh. In December, 2021 incoming Chair Dirck Hargraves, Independent Police Auditor Richard Schott, and Ms. Ramirez were able to attend the annual NACOLE conference, which provided ideas about further training and Panel development. The Panel fully intends to task its new Executive Director with working with the FCPD to organize training for the full Panel, especially given the Panel's recent turnover.

WITH APPRECIATION

The Panel offers thanks to the Fairfax County Board of Supervisors for its continued commitment to meaningful civilian oversight. In particular, the Panel thanks Chairman Jeff McKay and Supervisor Rodney Lusk, Chair of the Public Safety Committee, for their work in securing funding for, and approval of, an Executive Director. The Panel further thanks Supervisor Penny Gross for her role in leading the hiring search for the Executive Director.

The Panel offers thanks to Shirley Norman-Taylor, Frank Gallagher, and Doug Kay for their service to the Panel that came to an end in 2022. Mr. Kay was an inaugural member of the Panel, a past Chair, and a member of the Ad Hoc Police Practices Commission that led to the creation of the Panel. The Panel thanks him for his many years of service to the County and dedication to the work of civilian oversight. Ms. Norman-Taylor and Mr. Gallagher both joined the Panel in 2019 and are leaving after productive and meaningful terms. The Panel thanks them both for the perspectives that they brought to the Panel and their commitment to the work. Further, the Panel thanks them for their ongoing mentorship and assistance to members of the Panel who joined this term: Dirck Hargraves, Cheri Belkowitz, Todd Cranston, William Ware, Janelle Wolf, and Bryon Garner.

The Panel thanks Anita McFadden, who served as Counsel to the Panel from July, 2020 to November, 2021 before she moved to the West Coast. Ms. McFadden offered consistent, reliable advice and assistance to the Panel that has been missed.⁷

The Panel also wishes to thank those who have led the IAB during this past term. The Panel is very appreciative of the efforts of Major Dean Lay, Captain Alan Hanson, Captain Camille Stewart, Captain Dana Robinson, Major Todd Billeb, Lieutenant Eric Ivancic, Lieutenant Derek Gray, and Second Lieutenant Timothy Forrest, all of whom have played prominent and important roles at the IAB in this past term, and all of whom have worked with the Panel. The Panel recognizes the hard work of the IAB and the seriousness with which it approaches its work.

The Panel wishes to thank Chief Davis and his team for their work with the Panel throughout the year, and wishes to thank Major Darrell Nichols for joining the Panel for an informative presentation on the FCPD's implicit bias training.

Finally, the Panel thanks Independent Police Auditor Richard Schott and Management Analyst Rachelle Ramirez for their ongoing support of the Panel, and Dre'Ana Whitfield, who joined the OIPA as a temporary Administrative Assistant in late 2021. The Panel's work parallels Mr. Schott's and he has always showed a willingness to assist the Panel. And really, last but not least, the Panel thanks Ms. Ramirez, who has provided immeasurable support to the Panel throughout the year and who, no doubt, is looking forward to the arrival of the Panel's first Executive Director.

⁷ The Panel hopes to hire new counsel in the coming term.

APPENDICES

Appendix A: Complaints and Requests for Review Received by the Panel, 2017-2021

Appendix B: Status of FCPD Investigations into Initial Complaints Received in 2021

Appendix C: Review Report CRP-20-20 and CRP-20-21

Appendix D: Review Report CRP-20-24

Appendix E: Panel Outreach in 2021

Appendix F: Proposed Bylaws Changes on Subcommittee Process

Appendix G: Panel Recommendation Matrix

Appendix H: Specific Recommendations from the Panel's Four-Year Review

Appendix I: Police Civilian Review Panel Member Biographies

APPENDIX A: Complaints and Requests for Review Received by the Panel, 2017 - 2021

	2017	2018 ^{&}	2019	2020	2021 ^{&}	All Years
Number of All Complaints filed against the FCPD (Panel Authority)	2	31	29	35	28	125
Number of Initial Complaints brought to the Panel	1	24	20	21	14	80
Number of Initial Complaints filed with the Panel but for which there is no ultimate review request	1	18	14	10	2	45
Number of Initial Complaints that are later requested to be reviewed by the Panel	0	2	5	11	8	26
Number of Initial Complaints in process (investigation ongoing as of 12/31/2021)	0	0	0	0	4	4
Number of Review Requests Brought to the Panel	1	7	9	14	14	45
Number of Review Requests Accepted for Full Panel Review	1	4	5	5	0	15
Number of Review Requests Reviewed by a Subcommittee	0	1	8	9	9	27
Number of Review Requests Rejected by the Panel (No full Panel Review)	0	2	4	9	11 [^]	26
Number of Review Requests in process (as of 12/31/2021)	0	0	0	0	4	4
Number of FCPD Investigations still pending (as of 12/31/2021)	0	0	0	0	3	3
Allegations[#]	2017	2018	2019	2020	2021	All Years
Bias - race/ethnicity		7	6	4	6	23
Bias - other discrimination		2	1			3
False arrest/Malicious prosecution	1	4	3	4	2	14
FCPD communication issue		1	1	4		6
Harassment		6	3	4	2	15
Hostile/threatening manner		4	2	3	2	11
Illegal search		3	1	1	1	6
Illegal stop		1				1
Failed to Investigate or Incomplete investigation			1		4	5
Law/FCPD policy violation	1	5	6	9	7	28
Misconduct		4				4
Negligence		6	4			10
Officer did not identify				1	1	2
Officer had unprofessional manner		1	1	9		11
Officer was untruthful		2	4	5		11
Other		3	4	1	2	10
Use of Force		2	1	3		6
Grand Total	2	51	38	48	27	166

Notes:

& In 2021, 1 Review Request was unclear so no action was taken. In 2018, 3 Initial Complaints and 1 Review Request were withdrawn.

[^] In 2021, 3 Review Requests were denied due to late submission.

[#] There may be multiple allegations associated with a single complaint.

APPENDIX B: Status of FCPD Investigations into Initial Complaints Received in 2021

CRP Case Number	Date Forwarded to FCPD	Date Findings Due	Number of Extensions	Date Findings Received	Number of Days Past Due #
CRP-21-01	1/25/2021	3/26/2021	0	3/2/2021	On time
CRP-21-03	1/28/2021	3/29/2021	1	4/29/2021	31
CRP-21-07	4/15/2021	6/14/2021	1	6/29/2021	15
CRP-21-08	4/19/2021	6/18/2021	1	6/25/2021	7
CRP-21-09	5/4/2021	7/3/2021	0	6/8/2021	On time
CRP-21-12	7/8/2021	9/6/2021	0	8/12/2021	On time
CRP-21-16	8/6/2021	10/5/2021	0	10/5/2021	On time
CRP-21-18	8/19/2021	10/18/2021	1	11/12/2021	25
CRP-21-19	8/20/2021	10/19/2021	0	10/4/2021	On time
CRP-21-23	11/15/2021	1/14/2022	1	1/26/2022	12
CRP-21-25	11/12/2021	1/11/2022	0	12/30/2021	On time
CRP-21-26	12/6/2021	2/4/2022	0	2/1/2022	On time
CRP-21-27	12/22/2021	2/20/2022	^	^	^
CRP-21-28	12/22/2021	2/20/2022	0	1/4/2022	On time

^ Outstanding as of February 4, 2022

When past due, average days overdue is 18 days, down from 85 in 2020.



County of Fairfax, Virginia

MEMORANDUM

DATE: 5/6/2021

TO: Fairfax County Board of Supervisors
Chief Kevin Davis, Fairfax County Police Department
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of Complaint No. CRP-20-20 and CPR-20-21

I. Introduction

The Panel held a Panel Review Meeting on September 24, 2020, to review the Investigation concerning the events of March 8, 2020 which resulted in a complaint directly submitted to the Panel on March 16, 2020. The FCPD completed its investigation on May 21, 2020 and issued its disposition letter dated May 29, 2020. The Complainants¹ requested a review of the Investigation on July 28, 2020.

At the September 24, 2020 Panel Review Meeting, the Panel voted in favor of requesting that the FCPD conduct an additional investigation. The FCPD completed its additional investigation and notified the Panel by a letter dated March 22, 2021. The Panel held a second Panel Review Meeting on April 1, 2021 to consider the additional investigation. The Panel decided to not request additional review and concur with the ultimate findings of the FCPD documented in the Investigation Report as supplemented, but made clear that it would be presenting several comments and recommendations for future reports and police procedures based on unique aspects of the file.

II. Background Facts and Review Request

At 4:00 a.m. on March 8, 2020, an anonymous caller (the “Caller”) reported to a 911 dispatcher with the Department of Public Safety Communications (“DPSC”), that he could hear domestic violence in progress. The Caller claimed his neighbors were yelling and

¹ The Complainants are sisters. Their complaints are substantially the same.

fighting and that there was pounding on the walls of a townhome he shared with his neighbors. He asked that the FCPD dispatch an officer to investigate. The Caller insisted that the dispatcher keep the Caller out of it since he claimed knew the mother of those involved. The Caller directed the FCPD to an address located on Logsdon Drive in Annandale (the "Address").

Two FCPD officers (Officer R and Officer M) (sometimes collectively the "Subject Officers") arrived at the Address within five minutes in uniform displaying their badges. The porchlight to the Address was not illuminated. The front door was one story above street level, with a spiraling staircase to an elevated landing in front of the door. Officer R approached the front door; Officer M was standing nearby as backup. Officer R commenced pounding on the front door with sufficient force that his knocking could be heard throughout the Address. The investigation revealed that Officer R was relatively new to the FCPD, and that he believed that his training and experience dictated that he not announce himself at that time given that the call for service had been for a domestic dispute, so he did not announce himself. After three to four minutes of hard knocking on the door and receiving no response, the Subject Officers departed the scene at 4:14 a.m.

At 4:22 a.m. the Caller contacted 911 dispatch a second time. He insisted he still could hear people fighting and he could hear yelling and banging. The Caller insisted on anonymity and claimed his neighbors (who were fighting) were now knocking on his door. The dispatcher again directed the Subject Officers to the Address who promptly arrived and resumed knocking on the front door.

At 4:23 a.m., one of the Complainants (YB) called 911 to report loud banging at her front door and that someone was shining a flashlight into her home. YB explained that she resides at the Address with her sister. The dispatcher informed YB that the Subject Officers were the ones doing the knocking at her door and instructed YB to open the door and let the officers inside. YB was reluctant to do so under the circumstances. She reported that she had no way of knowing that the people at the front door were, in fact, police officers, but she did note that it appeared that one of the men was wearing a "dark uniform." Eventually, at approximately 4:32, YB opened the door and she claimed that, with some difficulty, she thinks she was able to identify the Subject Officers as FCPD. According to YB, the Subject Officers never identified themselves. In a contemporaneous radio transmission, the Subject Officers informed the dispatcher that they had identified themselves. YB informed the dispatcher and the Subject Officers that there was no emergency and police are not needed.

The Complainants called 911 dispatch again at 5:15 a.m. to complain about the events of the morning.

III. Procedural Background and Panel Meetings

As explained above, on March 16, 2020, the Complainants filed a complaint with the Panel alleging the Subject Officers banged on their door excessively, did not identify themselves and were not wearing clothing from which they could be identified as police officers. On March 20, 2021, the Internal Affairs Bureau ("IAB") assigned an investigator (the "Investigator") to determine facts and circumstances surrounding the Complainants' claims. The Investigator (1) gathered relevant Computer Aided Dispatch ("CAD") messages and radio traffic, (2) collected

and reviewed dispatch recordings of the DPSC, and (3) interviewed the Complainants and the Subject Officers.

The Investigator concluded that the Subject Officers were duty-bound to make a reasonable attempt to speak to the parties at the Address. He found that the Subject Officers knocked loudly several times, and the occupants at the Address did not respond. The Subject Officers began to depart when a second call to DPSC requested officers return. This time the Subject Officers, with the aid of DPSC, persuaded the Complainants to open the door and demonstrate they were not in danger. The Investigator concluded that the repeated attempts of the Subject Officers to get the residents at the Address to answer the door was necessary for them to perform their duty. The station commander and Chief Roessler concurred with the Investigator's conclusions.

On May 29, 2020, Chief Roessler issued a disposition letter to the Complainants informing them that the investigation did not support their allegations and that Subject Officers' actions were lawful and in compliance with FCPD Regulations. Thereafter, the Complainants timely filed a review request to the Panel.

On September 24, 2020, the Panel conducted a Panel Review Meeting (the "First Meeting"). The Complainants both appeared by telephone. YB explained the events in question in detail and she answered questions of the Panel. The FCPD also appeared. The Investigator offered a summary and several IAB officers and the Investigator answered questions. At the conclusion of the First Review Meeting, a majority of the Panel voted to request additional investigation to include:

1. Investigate and analyze the gulf between the plain language of General Order 601.4 ("GO 601.4") and the actions taken during the incident;
2. Interview additional relevant witnesses named in the complaint;
3. Analyze the scene of the events in question;
4. Conduct other such investigation as warranted.

The Investigator performed some additional investigation as requested by the Panel. He reported his conclusions in the order the of the Panel's request:

Recommendation One: General Order 601.4(C) (the "Order") states in relevant part as follows:

The responding officers [to a domestic violence incident] *shall identify themselves as police officers*, explain the reason for their presence, and request entry into the home.

The Investigator noted three times in his supplemental report that the Subject Officers "could not definitively recall if they announced their presence during their first attempt to contact [the Complainants]." (In fact, the investigation file otherwise makes indisputably clear that the Subject Officers did not announce themselves at the time of the first attempt to make contact.) Moreover, the Investigator referenced a court case² he asserted stood for the proposition "that officers of the law who are in full uniform have identified themselves by their very presence."

² See Beckman v. Hamilton, No. 17-12407, 2018 WL 1907151 (11th Cir. Apr. 23, 2018).

The Investigator noted further that “it is not tactically prudent for a police officer to knock on a door and simultaneously announce that they are the police while still standing in the fatal funnel.” Further, he asserted a distinction between “announce” and identify. He wrote that “[t]actical approaches to police calls for service must be considered and weighed against the need for immediate announcements. Identification takes place once contact with a community member occurs.”

Recommendation Two: The Investigator (1) canvassed the neighbors; (2) left business cards on the doors asking for return calls and (3) called and left a voicemail for the witness identified by Complainants. None of these steps resulted in any additional information.

Recommendation Three: The Investigator went to the Address and took photographs of the scene. He concluded that the elevated front door at the Address presented limited officer safety options and supported the Subject Officers’ approach and positioning during the calls for service.

Recommendation Four: The Investigator determined no additional investigation was warranted.

The FCPD concluded that the Subject Officers did not violate any Department policy or procedure.

IV. Second Panel Meeting and Conclusions

On April 1, 2021, the Panel conducted a second Panel Review Meeting (the “Second Meeting”). The Complainants both appeared by telephone. YB explained her continued dissatisfaction with the events in question, with the two investigations and she answered questions of the Panel.

The thrust of the Complainants continued dissatisfaction centered around their fright caused by their inability to recognize the police in the darkness and their fear that the police may be intruders. Even after the dispatchers provided specific instructions to the Complainants to open the door and let the police inside, the YB indicated she was reluctant to do so. At bottom, YB maintained the Complainants would not have complained and persisted in their request for review if the police had identified themselves when they knocked.

YB indicated the Complainants had received the findings letter in May 2020 and a second letter following the First Meeting. However, the FCPD did not contact the Complainants to offer any further explanation.

The FCPD also appeared, and the Investigator summarized the additional investigation and several IAB officers and the Investigator and answered questions. The Investigator explained how the officers could have been reasonably identified and concluded that community members can identify officers by their uniforms, sounds of the radio, and the police car outside. The Investigator asserted that his investigation established that the Subject Officers eventually verbally identified themselves; however, he admitted it was unclear when they did so, and he acknowledged that the Subject Officers do not have appeared to have announced themselves the first time they knocked on the door. Further, he stated that the FCPD concluded that the Subject Officers’ actions were in compliance with General Order 601.4.

The Panel questioned the FCPD extensively about these conclusions. The Investigator stated that it may not always be tactically safe for an officer to announce his presence in the type of situation presented, including here where the door was on an elevated landing and there was little ground for immediate retreat. He noted that the FCPD probably needs to evaluate General Order 601.4 and more clearly define the difference between identify and announce so that expectations of responding officers responding and the public are clear. The Investigator stated that it is a common understanding in law enforcement that officers identify themselves when a community member answers the door. He contrasted this understanding with a knock and announce. He said that the FCPD needs to revise General Order 601.4 to ensure it reflects best practice and the intent of the policy is clear to officers. Another IAB officer stated that the FCPD would have preferred that the Subject Officers knocked and announced on the first approach.

The Investigator acknowledged that, in the darkness, it may be difficult for a community member to identify a police officer.

The Panel noted that the information the Subject Officers received from the dispatcher was not as described by the caller. An IAB officer noted that it is not uncommon for officers to encounter a scene that does not match the dispatcher's description. Under those circumstances, an officer should take steps to clarify. In this instance, the Subject Officers did so by verifying the address and confirming that the Caller did not want to be identified. Nevertheless, the Subject Officers knocked on the door to investigate the Caller's complaint.

The Panel noted that General Order 601.4 proscribes that officers shall identify themselves, explain the reason for their presence, and request entry into the home. The Panel asked if the language could be reworked to disentangle the three clauses.³ An IAB officer answered affirmatively and said that they will review and reconsider the language in General Order 601.4.

The Panel asked if the FCPD is considering how to best address "swatting" incidents (where false police reports are made to harass innocent community members). The Panel asked whether the FCPD can trace such false reports. The IAB officer explained protocol at the call-taking center on swatting events. However, in this case the Caller used a local phone number (that was apparently noted in dispatch records). The Panel inquired if the FCPD called the number back to investigate the Caller. The IAB officer said the policy is that if someone wants to remain anonymous, the FCPD will not contact the caller again.

The Panel deliberated extensively.

Some Panel Members were critical of the FCPD's assertion in the investigation file that it was unclear if the Subject Officers announced themselves the first time they went to the Address. These Panel Members found this assertion to be inaccurate as substantial evidence in the file suggested that they did not announce and identify themselves as FCPD officers upon approaching the residence.

However, this inaccuracy was insufficiently material for the Panel to request further analysis by the FCPD. Rather, the three options available in the Bylaws – to concur with the

³ The Panel also noted that the court case referenced did not, in fact, create a clear distinction between "identify" and "announce" and was not precedential.

investigation, to request additional investigation, or to inform the Board of Supervisors that the investigation was incomplete/in need of further review – were disappointing to some in the context of this investigation review and lend further support for the need to amend the Bylaws to give the Panel more options consistent with those outlined in the Panel’s Four-Year Review. To these Panel Members, it matters little under the options afforded to the Panel that the Subject Officers did not announce themselves immediately upon arrival since the FCPD takes the position that the officers must have tactical discretion to *not* announce themselves. It is this discretion – which is inconsistent with the dictates of General Order 601.4 – that is the critical issue, but the Panel is not currently empowered to simply say that the investigation contained a conclusion regarding the General Order that is “incorrect,” and in light of the FCPD’s repeated acknowledgments that the General Order may be ripe for clarification, even skeptical Panel members questioned the utility of requesting further action on this Complaint. The Panel expects that the FCPD will make good on its promise to take a close look at General Order 601.4 and revise it as necessary.

The Panel was also critical of the FCPD’s handling of the Complainants. The Panel urged the FCPD to have more robust communications with complainants. With respect to this Complaint in particular, it appears that better communication between the FCPD and the Complainants, and a better explanation of why the officers did not immediately identify themselves or what could have been done better in the future, could have vitiated the need for requesting a Review entirely.

In addition, the Panel urged the FCPD to take a critical look at how it handles swatting incidents. Here, the only crime committed may have been a false police report by the Caller. That potential crime was never investigated.

In the end, the Panel voted unanimously to concur with the findings of the Investigations.⁴

An audio recording of the September 24, 2020, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-september-24-2020>.

An audio recording of the April 1, 2021, Panel Review Meeting may be reviewed here:

On May 6, 2021, the Panel discussed this Finding Summary; an audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-april-1-2021>.

V. Comments:

1. The three finding options available in the Bylaws are inadequate to address all potential conclusions that may arise in a Panel Review. The Bylaws should be amended to give the Panel more options for conclusions consistent with those outlined in the Panel’s Four-Year Review.

⁴ Panel Member Cheri Belkowitz, who joined the Panel too late to take part in a review of the investigation, abstained and took no part in the decision.

VI. Recommendations:

1. The FCPD should consider how officers respond to swatting incidents where the scene does not match the description in a 911 call, provide the necessary training to officers on these situations, and whether they can investigate calls as potential false police reports.
2. The FCPD should review and revise General Order 601.4 regarding how officers identify and announce themselves when responding to domestic service calls, clarify the situations when they are permitted to delay in announcing or otherwise identifying themselves, and ensure that officers are properly trained in implementing a revised general order.
3. The FCPD should consider how it can better communicate with Complainants the outcomes of its investigations, including whether such communication should go beyond standard disposition letters.

CC: Complainant



County of Fairfax, Virginia

MEMORANDUM

DATE: 6/3/2021

TO: Fairfax County Board of Supervisors
Chief Kevin Davis, Fairfax County Police Department
Mr. Richard G. Schott, Independent Police Auditor

FROM: Fairfax County Police Civilian Review Panel

SUBJECT: Report of Panel Findings in case of Complaint No. CRP-20-24

I. Introduction

The Panel held a Review Meeting on May 6, 2021, to review the Investigation resulting from a complaint of Racial Profiling and excessive Use of Force submitted concurrently to the Panel and the Independent Police Auditor on May 7, 2020. The Community Member (hereinafter referred to as the “Complainant”) had just received the results from a completed FCPD investigation in an April 28, 2020, Disposition Letter into his allegations of excessive Use of Force.¹ The FCPD conducted an investigation into the Racial Bias allegation and issued a second letter to the Complainant on August 19, 2020, and he requested a review by the Panel on August 24, 2020. The Panel reviewed the investigation into the Racial Profiling allegation.²

After reviewing the Investigation file, speaking with members of FCPD along with the Investigating Officers, and speaking with the Complainant, the Panel members (PCRP) voted unanimously that the Investigation was complete, thorough, accurate, objective, and impartial, and concurred with the findings of the FCPD.

¹ The Police Civilian Review Panel (PCRP) does not have jurisdiction to review the Use of Force allegation. This allegation falls within the purview of the Fairfax County Independent Police Auditor, Richard Schott, who did review and provide a report on the results of his finding on this allegation.

² After the Panel conducted its initial review of the request (during a subcommittee meeting on September 14, 2020, and a Panel meeting on September 24, 2020), the FCPD notified the Panel that it was reopening the investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021. The FCPD notified the Complainant of the additional findings in third Disposition Letter dated April 1, 2021.

II. Background Facts

The following facts are central to the Complainant's allegation that he was the subject of racial profiling:

On October 25, 2019, the Complainant, an immigrant of African descent, with his girlfriend in the vehicle, was driving behind an unmarked vehicle driven by a Black FCPD Officer (hereinafter "the Subject Officer") eastbound on Lee Hwy near the Fair Oaks Mall. It was approximately 6:15 a.m., and it is undisputed that the Complainant flashed his headlights at the vehicle because the Complainant said the vehicle was drifting in the lane. After overtaking the unmarked vehicle by passing on right, the Subject Officer clocked the Complainant on radar traveling at a speed of 73 mile per hour in a 45 mile per hour speed zone.

The Subject Officer initiated a traffic stop, approached the vehicle, identified himself as a FCPD Officer and informed the Complainant of the reason for the stop. The Subject Officer asked and was provided Complainant's driver's license and vehicle registration. The Complainant was ultimately issued three traffic citations via Summonses for Reckless Driving, Aggressive Driving, and Failure to Dim Headlights. The Subject Officer requested the Complainant sign the Summonses, which were not admissions of guilt, rather an acknowledgment of notice of the future court date.

The Complainant refused to sign the Summonses and was told by the Subject Officer that his failure to sign would result in his arrest pursuant to Virginia law. The Complainant acknowledged knowing he would be arrested for refusing to sign the Summonses after which he informed the Subject Officer that he would not answer any questions and took out his phone to record the interaction.

The Subject Officer asked the Complainant three times to sign to avoid an arrest, but he was ultimately arrested and taken to the Magistrate for his failure to sign.

III. Procedural Background and Investigative Findings

The Complainant, upon his release by the Magistrate, later that morning, contacted the FCPD to make a complaint about the Subject Officer and his treatment while being placed in the back of the police cruiser for transport to the Fairfax County Adult Detention Center. In his initial complaint, the Complainant alleged excessive Use of Force, which was investigated by the FCPD, and a disposition letter was sent to the Complainant on April 28, 2020. The Panel was not involved as the matter was solely within the purview of the Fairfax County Independent Police Auditor, and therefore, the content of that Disposition Letter will not be addressed.

The Complainant upon receiving the Disposition Letter from the FCPD, requested a review by both the Independent Police Auditor and the Police Civilian Review Panel. In his request for the review, the Complainant in addition to the allegation of excessive Use of Force included for the first time the allegation of Racial Profiling.

The FCPD did not initially investigate the racial profiling claim because it was not included in the original complaint. Thereafter, the FCPD notified the PCRPP that it was reopening the investigation to investigate the claim of Racial Profiling.

On August 19, 2020, the FCPD informed “the Complainant” that it had “completed its investigation into the allegations of your complaint, dated October 25, 2019.” The Disposition Letter indicated that the IAB had conducted a “comprehensive examination of the facts and circumstances surrounding the incident and the actions taken by [the Subject Officer] which occurred on October 25, 2019.”

The letter outlines the following:

Your initial complaint alleged that [the Subject Officer] ‘choked’ you when he fastened your seatbelt while in the police vehicle before the prisoner transport to the Fairfax County Adult Detention Center. . . . Upon receiving a letter from the Chief of Police, you later alleged that [the Subject Officer] was racially biased toward you. . . . The Internal Affairs Bureau completed an additional examination of the facts and circumstances surrounding the incident to include the bias allegation.” During the investigation, we interviewed you, the officers, who responded to the incident in question and identifiable witnesses to the incident.” We examined all the relevant evidence, including In-Car Video recordings, statements, and documents.

The investigation revealed the following facts: [The Subject Officer] stopped you for speeding and aggressive driving. Due to the traffic stop being during the hours of darkness, [the Subject Officer] was not able to determine your race, gender, place of birth, or actual identity prior to the stop. After your refusal to sign the traffic summonses, you were arrested, searched, and asked to take a seat in the police cruiser.

The letters contain additional information related to the Use of Force allegation, and therefore, not relevant to the racial profiling portion. However, the Chief of Police ultimately, informed the Complainant, “based on my review of the facts discovered during the investigation and a recommendation from the Commander of the Patrol Bureau, I have concluded that evidence does not support your allegations. . . . [The Subject Officer’s] actions were lawful and in compliance with FCPD Regulations.”

The Complainant was further advised that he could seek a review of the investigation from the Police Civilian Review Panel. The Complainant did make a formal request for review by the Panel on August 24, 2020.

It should be noted that the Complainant videoed his encounter and during the investigation was asked by the IAB Investigator, on at least two occasions, to provide a copy of the video to assist in the investigation. The Complainant initially said he would provide a copy. Upon being asked again for a copy he said he could not find the video and was therefore, not able to provide a copy to the Investigator.

A subcommittee of the Panel met on September 14, 2020, to discuss the request for a review of CRP 20-24. On the date of the meeting, each Panel members had reviewed the Investigation File. After discussions, each agreed that the allegations entailed abuse of authority and serious misconduct. In particular, the allegation of Racial Profiling would be in violation of FCPD General Order 201.13.³ Also, the request was timely filed, and therefore, the Panel had jurisdiction to review the investigation. The full nine-member Panel met on September 24, 2020, and the subcommittee recommended the Panel review the Investigation.

IV. Panel Meeting and Finding

The Complainant was present for the Panel Review on May 6, 2021.⁴ Also, both IAB Investigators were present along with other members of the FCPD. Major Lay was the primary spokesperson for the IAB who introduced 2nd Lt. Spooner to present the Investigation.

The Complainant was given an opportunity to share with the Panel his version of the events and why he filed the complaint. In his recitation to the Panel, the Complainant said he was driving to work and saw an unmarked Chevy Impala driving in the middle lane, but on the white line. He said he shared with his girlfriend that was a cop car. He said he flashed his lights to alert the driver, passed the vehicle and after passing he saw the police car lights flashing. The Complainant said he didn't know why he was being stopped but thought perhaps he has a break light out. He said he asked why he was being stopped and the Subject Officer told him he was going 73 miles per hour in a 45 mile per hour zone, and was therefore, driving reckless. He said he was given a citation to sign, but he refused. He said the Subject Officer appeared angry by his facial expression, so he began filming the encounter and handed the phone to his girlfriend. He said the Subject Officer asked him to step out of the vehicle, but while doing so the Subject Officer asked his girlfriend her name. The Complainant told the girlfriend she didn't have to give any information because she was a passenger.

The Complainant began to discuss the Use of Force allegations and was reminded by Acting Chair Bierman that the Panel could only review the allegations of racial profiling. The Complainant said he was driving alongside four or five other cars and believed he was singled out because he flashed his lights.

The Complainant was responsive to the questions asked by the various Panel members. Most Panel questions centered around race and the belief on the part of the Complainant that race played a role in his stop. He answered in the affirmative on most questions relating to his belief that he was stopped because of his race. However, he did acknowledge that if a white driver had flashed his lights and passed on the right, at the same rate of speed, that person would have been stopped as well.

The Complainant was asked by one Panel member if his driving speed could have been the reason for the stop. His response was that he passed the officer, so they were not going the same speed. Also, he said he would not drive recklessly when he knew it was a police officer.

³ FCPD 201.13 Human Relations subsection (A) Community Contacts.

⁴ The review by the Panel was delayed due to the FCPD reopening its investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021.

He was also asked about the Subject Officer ability to know his race based on it being dark when the stop occurred.

The Complainant was asked to explain how hierarchical bias manifested itself in this incident since he accused the Subject Officer of that offense. “The Complainant” said that just because someone is African American does not mean they cannot be biased against another African American, and he asserted that such biases were often present with immigrants of African descent, like the Complainant. He further asserted that African Americans often get stopped for minor offenses.

Acting Chair Bierman thanked the Complainant for bringing the matter to the Panel.

Acting Chair Bierman then introduced FCPD’s Major Lay who introduced 2nd LT. Spooner who conducted both the initial Use of Force and later the Racial Profiling investigation.

2nd LT. Spooner provided a summary of the facts of the case, the investigation and the finding. Each Panel member reviewed the investigation and so his summary will not be detailed here. However, one update given by 2nd LT. Spooner to the Panel was the fact that police cruisers assigned to the Fair Oaks Station Traffic Enforcement Team did not have ICV in the rear of the cruisers. However, this situation necessitated that that team be equipped and since this incident the police cruisers for the Traffic Enforcement Team now have ICV in the rear.

The Panel had the opportunity to ask questions of 2nd LT. Spooner. One question dealt with the appropriate action to take when a community member observes a police cruiser allegedly drifting over the line. 2nd LT. Spooner said that would depend on the circumstances, but if approaching at a high rate of speed the community member would need to slow down as a defensive tactic. Another question dealt with cars traveling behind a police cruiser at the same rate of speed whether officers can pinpoint one car with radar. 2nd LT. Spooner said that in this case, the Subject Officer was able to single out the vehicle because of the high rate of speed it was traveling when he looked in his rearview mirror.

A Panel member asked about the requirement that motorists sign summonses and whether it was State law or a county policy. 2nd LT. Spooner pointed to Virginia Code 46.2-940.

Another Panel member commented on this case being a good example of why it is beneficial to video. Major Lay agreed and said that body-worn cameras are now fully implemented in the FCPD, so that is in addition to having ICV.

A Panel member had questions about the training procedures for officers and whether there was an inconsistency in what the training says should occur and what happened in this case. In particular, the Panel member referred to an academy training slide, included with the investigation, that talks about differences in the placement of an arrestee in a vehicle with a cage as opposed to the placement without a cage. 2nd LT. Spooner said he would check and get back with the Panel.

A Panel member asked about the stop and arrest history of the Subject Officer that was included in the file by race. He wanted to know how the FDPC categorized the Subject Officer’s

arrest patterns. 2nd LT. Spooner said that there was a higher percentage when looking at the arrest patterns, but he noted that the Subject Officer was a traffic officer, so many of his arrests came with traffic stops, such as refusing to sign summonses, driving on suspended licenses and driving without licenses, in a manner where the Subject Officer lacked discretion to avoid an arrest. In fact, the officer's citation statistics were consistent with the Department, though the arrest statistics showed a disparity.

Act Chair Bierman thanked the FCPD representatives for their participation.

The Panel heard from the "Complainant" and from FCPD. Based on each Panel members review of the file, statements and responses from both Complainant and FCPD, the Panel made the following finding:

The Panel voted unanimously that the Investigation was accurate, complete, thorough, objective, and impartial after open deliberation. Specifically, the Panel found no evidence suggesting that racial profiling occurred where the Complainant's undisputed and documented actions – flashing his lights and passing a police officer while speeding in the early morning hours in the dark – would have resulted in the Complainant being pulled over regardless of his race. Further, the Panel found that the IAB had followed all available lines of inquiry, including interviewing all pertinent witnesses (including the Complainant's girlfriend), viewing all available video evidence, and conducting a thorough analysis of the Subject Officer's arrest and citation statistics to determine whether there was any evidence of a history of bias.

An audio recording of the May 6, 2021, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-may-6-2021>

On June 3, 2021, the Panel discussed this Finding Summary; an audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-subcommittee-meeting-june-3-2021>

CC: Complainant

APPENDIX E: Panel Outreach in 2021

Faith and Community Organizations and Events

- ❖ Communities of Trust
- ❖ McLean Citizen's Association
- ❖ National Night Out (Kingstowne)

Public Forums

- ❖ Panel Public Forum with New FCPD Chief
- ❖ Public Safety Forum Panel on Criminal Justice Reform, hosted by Fairfax County Federation of Citizens Associations

Fairfax County Police Department

- ❖ FCPD Admin Staff Meeting
- ❖ FCPD Recruit Class

Other Outreach

- ❖ Inside Scoop (Fairfax Public Access Channel 10)
- ❖ Richmond (VA) Review Board
- ❖ Virginia Beach City Council

APPENDIX F: Proposed Bylaws Changes on Subcommittee Process

BYLAWS OF THE FAIRFAX COUNTY POLICE CIVILIAN REVIEW PANEL

Approved by the Board of Supervisors on July 11, 2017

Accepted by the Police Civilian Review Panel on August 3, 2017

Amendments Approved by the Board of Supervisors on October 16, 2018, November 19, 2019, December 1, 2020, February 23, 2021, ~~and~~ July 27, 2021, and [DATE]

ARTICLE I. NAME¹

The name of this organization is the **Fairfax County Police Civilian Review Panel**.

ARTICLE II. PURPOSE

The Board of Supervisors, pursuant to Virginia law, established the Panel on December 6, 2016, to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public. The Panel will:

- A. Review certain Investigations to ensure the thoroughness, completeness, accuracy, objectivity, and impartiality of the Investigations;
- B. Provide an independent process for commencing an Initial Complaint against the FCPD or its officers; and
- C. Make recommendations on law enforcement policies, practices, and procedures to assist the FCPD Chief of Police ("Chief") and Board of Supervisors in policy review.

The Panel shall report directly to the Board of Supervisors.

ARTICLE III. COMPOSITION OF THE PANEL AND TERM OF OFFICE FOR PANEL MEMBERS

- A. Composition and Qualifications.
 - 1. The Board of Supervisors shall appoint each Panel Member.
 - 2. The Panel shall be comprised of nine Fairfax County residents with expertise and experience relevant to the Panel's responsibilities. At least one Panel Member shall have prior law enforcement experience other than as a member of the FCPD or the FCSO.
 - 3. The Board of Supervisors shall endeavor to create an independent and fair body giving due consideration to the following factors, among others it may choose: community and

¹ Certain terms used in these Bylaws are defined in the attached Exhibit A incorporated herein by this reference.

civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designated to ensure a balanced Panel representative of Fairfax County.

4. No Panel Member may be a current employee of Fairfax County, a current or former member of the FCPD or the FCSO, have a relative (i.e., an immediate or extended family member) who is a member of the FCPD or FCSO, hold public office, or be a candidate for public office.

B. Terms of Service.

1. Panel Members shall be appointed for three-year terms, except for the inaugural Panel (which shall have terms as described below) and may be appointed to no more than two consecutive terms.
2. Panel Member terms shall be staggered.
3. With respect to the inaugural Panel, three Panel Members shall be appointed for three-year terms, three Panel Members shall be appointed for two-year terms and three Panel Members shall be appointed to a one-year term.
4. The Panel Members of the inaugural Panel are eligible to be appointed to a second three- year term upon expiration of the Panel Member's initial term.

C. Resignations, Removals and Vacancies.

1. Panel Members serve at the pleasure of the Board of Supervisors.
2. The Chair shall notify the Board of Supervisors if a Panel Member is absent from three consecutive Panel meetings or is absent from five Panel meetings in any calendar year (unless the absence is for good reason as determined by the Chair).
3. Any Panel Member may resign from the Panel at any time by delivering written notice of termination to the Board of Supervisors with a copy to the Chair. The resignation will be effective upon receipt, unless an effective date of the resignation is specified in the notice.
4. The Board of Supervisors may appoint a new Panel Member for the unexpired Panel Member term resulting from a vacancy that occurs for any reason.

ARTICLE IV. CHAIR, VICE CHAIR, OTHER OFFICERS AND COMMITTEES

A. The Initial Chair and Vice-Chair.

The Board of Supervisors may choose to designate one of the Panel Members as the initial Chair. At a time agreed by the Panel Members, the Panel shall elect the initial Vice-Chair.

B. Succession; Annual Election of Officers; Vacancies.

1. Unless the Panel Members agree otherwise, the Vice-Chair shall succeed to the Chair position upon expiration of the Chair's term.
2. Panel Members shall elect the Vice-Chair and other officers (as determined by the Panel Members) who shall be responsible for those functions as assigned by the Panel and the Chair.
3. All Panel officers shall be elected at the first meeting of each calendar year. Unless the Panel Members agree otherwise, terms of office for Panel Officers shall be for one year, effective March 1st of each calendar year.
4. No Panel Member may serve successive terms as Chair.
5. If there is an officer vacancy, the Panel may elect a replacement officer at any time after the vacancy occurs to serve the balance of the unexpired term.
6. Before the election of any replacement officer, the Chair or Vice-Chair shall provide the Panel Members with at least two weeks written notice of the proposed election before the meeting at which the replacement is to be elected.
7. Election of Panel officers must take place in a meeting duly called as provided for in Article V.

C. Duties of the Chair and Vice-Chair.

1. The Chair shall:
 - (a) Preside over all Panel meetings at which the Chair is present;
 - (b) Act as a liaison between the Panel and (i) the Board of Supervisors, (ii) the FCPD, and (iii) the Auditor, as needed;
 - (c) Serve as the Panel's official spokesperson;
 - (d) Oversee the preparation of the Panel's annual report described in Article IX.B;
 - (e) Perform any other duties as the Panel may delegate; and

- (f) Delegate any of these duties to other Panel Members.
- 2. The Vice-Chair shall:
 - (a) Preside over Panel meetings in the absence of the Chair; and
 - (b) Perform any other responsibilities delegated by the Chair or requested by the Panel.
- 3. Panel Committees.
 - (a) The Panel may establish as many committees as the Panel deems necessary to perform the Panel's duties. All Panel committee meetings shall comply with the notice and other requirements of the Virginia Freedom of Information Act.

ARTICLE V. QUORUM, VOTING AND MEETINGS

A. Quorum.

At any Panel meeting, the presence of five Panel Members shall constitute a quorum. Any Panel meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

B. Voting.

The vote of a majority of Panel Members present at a meeting with a quorum is necessary for the Panel to take an action. Notwithstanding the previous sentence, the affirmative vote of a majority of all Panel Members is required to approve Panel Findings or the Annual Report. All votes of Panel Members shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. All Panel Members who are present at a meeting, including the Chair, may vote at any meeting.

C. Meetings.

- 1. The Panel shall meet as often as necessary to conduct Panel business.
- 2. All Panel Meetings shall be conducted in accordance with VFOIA, and, except for closed sessions, all Panel Meetings shall be open to the public.
- 3. All Panel Meetings shall be preceded by a Panel Meeting Notice, and, except for emergency Panel Meetings, a Panel Meeting Notice shall be published at least three working days before the Panel Meeting. Notice, reasonable under the circumstances for emergency Panel Meetings, shall be given contemporaneously with the notice provided to Panel Members.

4. Panel Meeting Notices shall be:
 - (a) provided to the Office of Public Affairs for posting at the Government Center and on the County Internet site, and
 - (b) placed at a prominent public location by the Clerk of the Board of Supervisors.
5. All Panel Meetings shall be conducted in:
 - (a) places that are accessible to persons with disabilities,
 - (b) public buildings whenever practical; and
 - (c) accordance with Robert's Rules of Order, Newly Revised (except as otherwise provided by Virginia law or these Bylaws).
6. Except as specifically authorized by VFOIA, no Panel Meeting shall be conducted through telephonic, video, electronic, or other communication means where the Panel Members are not all physically assembled to discuss or transact public business.
7. At any Panel Meeting, at least one copy of the agenda and, unless exempt from disclosure under VFOIA, all materials furnished to Panel Members shall be made available for public inspection at the same time the documents are furnished to the Panel Members.
8. Any person may photograph, film, record, or otherwise reproduce any portion of a Panel Meeting required to be open, but no person broadcasting, photographing, filming, or recording any open Panel Meeting may interfere with any of the proceedings.
9. The Panel shall keep minutes of its Panel Meetings, and those minutes shall include:
 - (a) the date, time, and location of each meeting;
 - (b) the Panel Members present and absent;
 - (c) a summary of the discussion on matters proposed, deliberated, or decided; and
 - (d) a record of any votes taken.
10. The Panel meeting minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media.
11. The Panel may solicit and receive public comment and answer questions about any matter relating to law enforcement policies, practices, and procedures up to six times annually. As long as all applicable VFOIA requirements are followed, the Panel may solicit, receive, and respond to such public comment in up to six public meetings annually, sponsored by the Panel or by others, where the public is invited to comment.

ARTICLE VI. PANEL AUTHORITY TO REVIEW INVESTIGATIONS AND REVIEW PROCEDURES

A. Scope of Panel Review Authority.

1. The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of “abuse of authority” or “serious misconduct” by a FCPD officer, and (2) a Review Request is filed. The Panel shall not review:
 - (a) alleged misconduct that is subject to the exclusive review by the Auditor;
 - (b) any Complaint related to an incident that occurred before December 6, 2016;
 - (c) an Initial Complaint that is filed more than one (1) year after the date of the incident that is the subject of the Investigation (unless the Panel determines that there is good cause to extend the filing deadline);
 - (d) a Review Request filed more than sixty (60) days after the date of the FCPD notice sent to the complainant that informs the complainant of the completion of the FCPD’s investigation of the complainant’s Initial Complaint (unless the Panel determines that there is good cause to extend the filing deadline); or
 - (e) a Complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding; or any complaints from Fairfax County employees that are subject to any process, proceeding or appeal as set forth in the County’s Personnel Regulations or that are subject to the Police Department’s General Orders 310.1, 310.2, or 310.3.
2. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court’s judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.
3. Where a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort. If the matter cannot be divided between the Auditor and the Panel in an efficient manner, then the Auditor shall conduct the review of all portions of the investigation.
4. If there is a conflict in the scope of authority between the Auditor and the Panel, then the matter shall be resolved by the Auditor.

B. Definition of “Abuse of Authority” or “Serious Misconduct”.

For purposes of determining the Panel’s authority to review an Investigation, “abuse of authority” or “serious misconduct” by an FCPD police officer includes, but is not limited to:

1. the use of abusive racial, ethnic or sexual language or gestures;
2. harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability;
3. acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense;
4. reckless endangerment of detainee or person in custody;
5. violation of laws or ordinances; or
6. other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.

C. The Complaint.

1. Content and Filing of a Complaint.

- (a) An Initial Complaint and a Review Request shall be in writing and shall be deemed filed when delivered or emailed to the Office of the Independent Police Auditor.
- (b) A Complaint shall contain:
 - (i) identifying information for the person filing the Complaint;
 - (ii) a statement describing the reasons for the Review Request, unless the Complaint is an Initial Complaint;
 - (iii) the specific police behavior of concern;
 - (iv) a description of the incident in which the behavior occurred; and
 - (v) a list of the names, addresses and phone numbers of all witnesses to or persons with knowledge of the incident known by the complainant.
- (c) The Panel shall immediately forward an Initial Complaint to the FCPD for investigation. The FCPD shall complete its investigation and provide an Investigation Report to the Panel within sixty (60) days. The Panel shall extend the 60-day period upon request of the Chief to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice to the complainant and the Board of Supervisors.

~~2. Initial Disposition Notice.~~

- ~~(a) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or establish a subcommittee of at least three Panel Members (with rotating membership) to conduct the initial review. The Chair may appoint, on a rotating basis, one or more Panel Members as Review Liaisons to manage the disposition of a Complaint in accordance with written duties established by the Panel.~~
- ~~(b) Within 30 days of Receipt of the Investigation Report, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.~~
- ~~(c) The Panel will determine if the Panel has authority to review the subject Investigation taking into account whether the underlying Complaint:~~
 - ~~(i) is timely filed; or~~
 - ~~(ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.~~
- ~~(d) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.~~
- ~~(e) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.~~
- ~~(f) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.~~

D. Initial Review and Disposition.

1. Initial Review

- (a) The Panel will determine if it has authority to review the subject Investigation taking into account whether the underlying Complaint:
 - (i) is timely filed; or
 - (ii) is a Review Request of alleged misconduct that is subject to exclusive review of the Auditor.
- (b) The Panel shall conduct an initial review of each Review Request and may conduct the initial review as a committee of the whole or by subcommittee.

2. Initial Review Subcommittee Authority and Composition

- (a) The Panel Chair may designate subcommittees ("Initial Review Subcommittee") comprised of Panel Members to conduct initial reviews of Review Requests filed by

community members with the Panel.

(b) An Initial Review Subcommittee shall be comprised of at least three Panel Members (with rotating membership).

(c) The Panel Chair shall designate one Panel Member as chair of the Initial Review Subcommittee.

(d) The Subcommittee shall conduct, in accordance with written duties established by the Panel, an initial review of the subject Complaint to determine whether the Complaint meets the minimum criteria for review and consideration by the full Panel.

3. Initial Review Subcommittee Process and Report to the Panel

(a) The Subcommittee shall review a Complaint to determine whether:

(i) The Complaint alleges Serious Misconduct or Abuse of Authority as defined in these Bylaws; and

(ii) The evidence contained in the investigative file could lead a reasonable Panel to conclude that there is sufficient evidence to support the allegations.

(b) A unanimous Subcommittee vote shall be required to determine that a Complaint does not meet the criteria set forth in these Bylaws, and thus recommends that the Complaint not be considered by the full Panel.

(c) A member of the Subcommittee, designated by the Subcommittee chair, shall provide a summary of the Subcommittee's deliberations and recommendation at such time as the Panel considers the subject Complaint.

(d) The full Panel will consider the recommendation from the Subcommittee and vote to determine whether it accepts a Review Request.

4. Initial Disposition Notice

(a) Within 30 days of the Panel's vote on whether the Complaint qualifies for review by the full Panel, the Panel shall send an Initial Disposition Notice to the complainant with the Panel's determination of its authority to undertake a review of the subject Investigation.

(b) If the Panel determines that the Panel does not have authority to review the subject Investigation, the Initial Disposition Notice shall state the reasons for the Panel's decision.

(c) Where the Panel finds that a review of the subject Investigation is warranted, the Initial Disposition Notice shall include a description of the review process, a deadline for completion of the review, and a date for the Panel Review Meeting.

(d) If the underlying Complaint alleges police misconduct that requires the Auditor's review, the Panel shall (i) promptly forward the matter to the Auditor and (ii) send an Initial Disposition Notice to the complainant explaining the reasons for the referral.

D.E. Pending Proceedings.

1. If at any point in the review process the Panel learns that the matters of a Review Request are the subject of pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall:
 - (a) suspend its review;
 - (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court;
 - (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and
 - (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed.
2. The panel may request assistance of Counsel, the Auditor, the Chief, or the County Attorney in making its determination that matters of a Review Request are the subject of pending proceedings.
3. The Panel may act on a Review Request after the trial court has ruled in any such civil or criminal proceeding, even if the trial court's judgment has been appealed. The Panel shall not act on any Review Request that is the subject of an administrative proceeding until any administrative appeals are resolved.

E.F. Panel Meetings to Review Investigations.

1. Additional Requirements for Panel Review Meetings.

In addition to the requirements for Panel Meetings generally set forth in Article V.C., Panel Review Meetings shall be conducted as follows:

- (a) If the Panel determines it has authority to review an Investigation under article VI.A.1, the Panel shall convene a Panel Review Meeting to review an Investigation as to which a Review Request has been submitted within sixty (60) days of Receipt of the Investigation Report.
- (b) The Panel Review Meeting Notice shall not only comply with Article V.C.4., but shall also include a statement inviting any person with information about the Investigation or the incident that is the subject of the Panel Review Meeting to submit the information in writing to the Chief or the Auditor.
- (c) Notwithstanding Article V.C.4, Panel Review Meeting Notices shall be published and sent to Panel Members, the FCPD Internal Affairs Office, the County Attorney's Office, and the complainant at least fourteen (14) days before the Review Meeting.

- (d) The Panel may conduct as many Panel Review Meetings as the Panel deems necessary to complete the requested review.
 - (e) The Panel shall not take testimony or receive evidence.
 - (f) At the request of the Panel or if the Complainant attends and requests an opportunity to be heard at the Panel Review Meeting, the complainant shall have the opportunity to state the reasons for filing the Review Request, and the Panel may ask questions of the complainant regarding those reasons. The Panel shall submit to the FCPD contact information for those persons who were not interviewed with a request for further investigation of the matters under review.
 - (g) At the request of the Panel, an FCPD representative knowledgeable of the Investigation under review shall appear before the Panel at a Panel Review Meeting (as determined by the Panel) to review and answer questions from the Panel about the Investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not.
 - (h) At the Panel's discretion, it may request further investigation by the FCPD, and the FCPD shall, within a reasonable time, conduct further investigation and provide to the Panel a supplemental report that details the findings of the additional investigation.
 - (i) Translation services will be provided for a complainant or other person that needs translation assistance to present to the Panel or respond to questions from Panel Members.
2. Closed Sessions, and Confidential Matters During Panel Review Meetings.
- (a) The Panel may conduct portions of any Panel Meeting (including Panel Review Meetings) in closed session, so long as the purpose for and conduct of the closed session is consistent with VFOIA.
 - (b) Any statement made by a FCPD police officer to the FCPD that the FCPD required under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967), shall not be disclosed in public. The Panel shall have confidential access to the entire statement for its review. Unless the FCPD officer consents to the public release of the entire statement given during an Investigation, the FCPD representative(s) presenting information to the Panel on a Complaint may publicly state only that the officer admitted or denied the allegation.
 - (c) Panel Members shall not reveal the identity of (i) any juvenile, or (ii) victim of sexual assault (unless authorized to do so by the victim in writing).
 - (d) Each Panel Member who reviews a FCPD officer's personnel record or a FCPD internal administrative investigative case file shall sign a Notice of Confidentiality affirming that an officer's personnel record and those portions of the investigative case file reflecting officer discipline, other officers, confidential informants, victims,

or witnesses, personal information including names, social security number, date of birth, driver's license number, agency-issued identification number, student identification number, criminal or employment record, shall not be disclosed or disseminated unless the information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia Law.

- (e) Portions of records of law-enforcement agencies, including the FCPD, that contain specific tactical plans or investigative procedures, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public, shall also not be disclosed or disseminated unless such information has been disclosed by the FCPD in a disposition letter or at a Panel meeting, or by the Complainant, and is not otherwise specifically prohibited by separate statute or ordinance under Virginia law.

- (f) If information subject to the Panel's review concerns an identifiable juvenile, the requested information shall first be forwarded to the County Attorney's Office for redaction in conformance with Code of Virginia §16.1-301, as amended.

F.G. Disposition of Review Requests.

1. Timely Completion.

- (a) The Panel shall complete the review of an Investigation and issue a public written report detailing the Panel Findings (defined below) within ninety (90) days of Receipt of the Investigation Report.
- (b) The Panel may extend the deadline for completion for good cause. The Chair shall report all deadline extensions (and the reason for the extension) to the Board of Supervisors. The Panel shall send written notice to the complainant, if the deadline for completion is extended. The notice shall include an approximate date for completion.

2. Panel Findings.

- (a) Upon completing a requested Investigation review, the Panel may reach one of the following Panel Findings:
 - (i) Concur with the findings and determination detailed in the Investigation Report;
 - (ii) Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the FCPD and recommend further review and consideration by the Chief; or
 - (iii) Advise the Board of Supervisors that, in the Panel's judgment, the Investigation is incomplete and recommend additional investigation.
- (b) If the Panel Finding is either (ii) or (iii) above, the Board of Supervisors may direct the Chief to take further action as the Board of Supervisors deems appropriate.
- (c) A majority of the appointed Panel Members must concur in the Panel Findings for the Panel Findings to be the authorized conclusion of the Panel.
- (d) The Chair may assign to one or more Panel Members concurring in the conclusions of the Panel Findings the responsibility for drafting the Panel's final review report that shall be sent to the complainant, the Board of Supervisors, the Chief and the Auditor.

ARTICLE VII. RECOMMENDATIONS FOR REVISIONS TO FCPD POLICIES, TRAINING AND PRACTICES

A. Review of Law Enforcement Policies and Practices.

1. The Panel may recommend to the Chief and the Board of Supervisors revisions to FCPD policies, practices, and procedures that the Panel concludes are needed.
2. The Panel may conduct up to six public meetings annually, where it solicits and receives public comment and answers questions relating to law enforcement policies, practices, and procedures. Such public meetings may be sponsored by the Panel or by others, and they must meet applicable VFOIA requirements.

B. Meetings with the Auditor.

The Panel may meet periodically with the Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide the Panel's view to the Board of Supervisors and the Chief as to changes in policies and practices that may be warranted.

ARTICLE VIII. OTHER DUTIES OF PANEL MEMBERS

A. Training.

All Panel Members shall complete all training mandated by the Board of Supervisors, which may include police ride alongs. The Panel shall determine the calendar for the presentation and completion of the required training. The Panel shall conduct other training as it determines would be helpful.

B. Confidentiality.

Each Panel Member shall maintain the confidentiality of all confidential or privileged information that Panel Members receive during service on the Panel.

C. Conflicts of Interest.

Panel Members shall avoid conflicts of interest with the provisions of Chapter 31 – State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100, et seq. A Panel Member shall consult with counsel to the Panel if the Panel Member believes that the Panel Member has or may have a conflict of interest with respect to a matter that the Panel will consider. A Panel Member with a conflict of interest shall not participate in or vote on the matter.

D. Communications.

1. Only the Chair or the Chair's designee shall make public statements on behalf of the Panel. The primary means for the Panel to communicate to the public shall be the Panel's written reports that are approved by a majority of the Panel Members.
2. Except as expressly authorized by the Chair in furtherance of a Panel Member's duties, Panel Members shall make diligent efforts to avoid individual discussion of a matter before the Panel with any person with an interest in the matter, including but not limited to a complainant, a witness to events giving rise to a complaint, or an FCPD officer that is the subject of a Complaint. The Panel Member shall inform the Chair if any interested party communication occurs and provide the Chair with any information about the communication that the Chair requests.

ARTICLE IX. RECORDKEEPING; ANNUAL REPORT

A. Recordkeeping.

1. All Panel meetings, including Panel Review Meetings and Public Comment Meetings, but excluding closed sessions within a Panel Meeting, shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition Schedule.
2. The Auditor shall maintain a copy of all Complaints together with the reports detailing the disposition of each Complaint.

B. The Annual Report.

1. The Panel shall prepare the Annual Report describing its activities for the reporting year, including any recommendations to the Board of Supervisors, Auditor, and the Chief for revisions to FCPD policies, training, and practices that the Panel concludes are needed.
2. The Annual Report must be approved by a majority of the appointed Panel Members before the Annual Report is released publicly.
3. The Panel shall deliver the Annual Report to the Board of Supervisors through the Auditor and the Chair of the Board's Public Safety Committee. The Annual Report shall then be released to the public.
4. The initial Annual Report of the Panel shall be due on March 31, 2018. Subsequent Annual Reports shall be published in accordance with this section no later than March 1st of each year.

ARTICLE X. COMPLIANCE WITH LAW AND COUNTY POLICY; CONFLICTS OF LAW AND POLICY; PANEL IMMUNITY

A. Compliance with Law and County Policy.

The Panel and each Panel Member shall comply with all Virginia laws, including, but not limited to, VFOIA, and the Virginia State and Local Government Conflict of Interests Act, Virginia Code §§ 2.2-3100 through -3131, as amended, all County ordinances, the Panel Code of Ethics and with all County policies concerning the activities of its boards, authorities, and commissions.

B. Conflicts of Law and Policy.

These Bylaws are not intended to conflict with Laws or policies of the Board of Supervisors. To the extent there is a conflict between any Law or any other resolution or matter passed by the Board, and these Bylaws, the Law or Board action shall govern.

C. Panel Immunity.

Panel Members shall enjoy the protection of sovereign immunity to the extent allowed and provided under Virginia law whether common law or statutory, including, but not limited to, the Virginia State Government Volunteers Act, Virginia Code §§ 2.2-3600, *et seq.*, and the provisions of Virginia Code § 15.2-1405.

ARTICLE XI. DUTIES OF THE COUNTY EXECUTIVE AND BOARD OF SUPERVISORS

A. The County Executive.

1. The County Executive shall cause the attendance of any County employee, other than the involved officer(s), at any Panel meeting whose appearance is requested by the Panel, unless the required attendance violates a statutory or constitutional right of the employee.
2. The County Executive shall cause the submission (from any County agency including the FCPD) of any relevant documents or other relevant materials requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived.

B. The Board of Supervisors.

1. The Board of Supervisors may conduct a review of the Panel at any time, except that the initial review shall be conducted within six months of receipt of the Panel's first annual report.
2. The Board of Supervisors shall ensure the Panel and Panel Members, as necessary, have the benefit of legal counsel.
3. The Board of Supervisors shall appoint an Executive Director for the Panel. Among other duties as assigned, the Executive Director will review and summarize all Police Department investigations before the Panel undertakes its review. The Executive Director also will provide administrative support to the Panel.

ARTICLE XII. EFFECTIVE DATE OF THE BYLAWS; AMENDMENT OF THE BYLAWS

A. Effective Date of the Bylaws.

The Bylaws shall become effective upon approval by the Board of Supervisors.

B. Amendment of the Bylaws.

These Bylaws may be amended by the Panel by adopting the proposed amendment or amendments and by presenting those proposed changes for approval to the Board of Supervisors. Any such amendments to the Bylaws shall become effective upon approval of the Board of Supervisors.

Exhibit A

DEFINED TERMS

The following terms used in these Bylaws of the Fairfax County Police Civilian Review Panel mean the following:

Abuse of Authority has the meaning assigned to the term in Article VI.B.

Annual Report means the written annual report the Panel shall deliver to the Board of Supervisors as described in Article IX.B.1.

Auditor means the Fairfax County Independent Police Auditor.

Board of Supervisors means the Board of Supervisors of Fairfax County.

Bylaws means the Bylaws of the Fairfax County Police Civilian Review Panel

Chief means the FCPD Chief of Police.

Complaint means collectively, unless the context otherwise indicates, an Initial Complaint and a Review Request.

Counsel means the legal counsel that the Board of Supervisors designates to support the Panel.

FCPD means the Fairfax County Police Department.

FCSO means the Fairfax County Sheriff's Office.

Initial Complaint means a complaint from any person about the FCPD or its officers that has been first submitted to the Panel and not the FCPD.

Initial Disposition Notice means the notice that the Panel sends to a complainant detailing the Panel's disposition of the Review Request after the initial review described in Article VI.C.2.

Investigation(s) means a FCPD internal administrative investigation.

Investigation Report means the completed written FCPD report setting forth the findings of the Investigation.

Laws means collectively any Virginia or Fairfax County law, ordinance, regulation, resolution, or other Fairfax County policy duly authorized by the Board of Supervisors.

Meeting(s) has the meaning assigned to the term in VFOIA and includes work sessions, when sitting physically, or through telephonic or video equipment, as defined in VFOIA, as a body or entity, or as an informal assemblage of (i) as many as three Panel Members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

Panel means the Fairfax County Police Civilian Review Panel.

Panel Findings means those conclusions that the Panel can adopt in response to a Review Request that are delineated in Article VI.F.2(a).

Panel Meeting means a meeting of the Panel.

Panel Meeting Notice means the written notice stating the date, time, and location of a Panel Meeting.

Panel Member(s) means each of the persons that the Board of Supervisors appoints to the Panel.

Panel Review Meeting means a Panel Meeting where a Review Request is reviewed by the Panel, including a Panel Meeting where a complainant or FCPD representative is present to discuss an Investigation.

Panel Review Meeting Notice means the Panel Meeting Notice for a Panel Review Meeting.

Public Meeting(s) means a Panel Meeting open to the public conducted on issues within the Panel's jurisdiction and on law enforcement policies and practices where the public is invited to comment on such issues and policies and practices.

Receipt of the Investigation Report is deemed to occur at the first Panel meeting subsequent to FCPD making an Investigation Report available to the Panel in response to a Review Request.

Review Request means a person's request for the Panel to review an Investigation.

Serious Misconduct has the meaning assigned to the term in Article VI.B.

VFOIA means the Virginia Freedom of Information Act, as amended from time to time.

APPENDIX G: Panel Recommendations Matrix

Updated 2/28/2022

<u>Report</u>	<u>Panel Recommendation</u>	<u>FCPD Action</u>	<u>Status</u> <u>(as determined by</u> <u>the Panel)</u>
CRP-20-20 and CRP-20-21 (Published May 10, 2021)	The FCPD should consider how officers respond to incidents where the scene does not match the description in a 911 call, provide the necessary training to officers on these situations, and whether they can investigate calls as potential false police reports.	FCPD has taken this recommendation under consideration and will research best practices to ensure General Order 520.3 (Hostage/Barricaded Persons) reflects these suggestions in future revisions.	Under Review by FCPD
CRP-20-20 and CRP-20-21 (Published May 10, 2021)	The FCPD should review and revise General Order 601.4 regarding how officers identify and announce themselves when responding to domestic service calls, clarify the situations when they are permitted to delay in announcing or otherwise identifying themselves, and ensure that officers are properly trained in implementing a revised general order.	<p>Current version of 601.4 Section IV, Subsection C, states officers <i>"shall identify themselves as police officers, explain the reason for their presence, and request entry into the home."</i> Officers are also expected to use proper discretion when circumstances indicate or suggest there are potential weapons involved in an event, or a potential subject could be looking to ambush an officer arriving at a domestic event, as domestic events constitute highly unpredictable and dangerous events for responding officers.</p> <p>All officers are required to acknowledge General Order revisions via Power DMS. Supervisors are required to ensure officers under their guise are up to date on new policies and procedures and schedule squad</p>	<p>Implemented by FCPD</p> <p>Panel requests that the FCPD consider adding the explanatory sentence highlighted to the next version of the General Order.</p>

		training initiatives as necessary to ensure compliance.	
CRP-20-20 and CRP-20-21 (Published May 10, 2021)	The FCPD should consider how it can better communicate with Complainants the outcomes of its investigations, including whether such communication should go beyond standard disposition letters.	Complaints in all formats are accepted by the FCPD and proper acknowledgment is provided at the time of receipt that the complaint will be investigated and followed-up on. Investigating supervisors are expected to inform complainants that their cases will be investigated thoroughly and as expeditiously as possible depending upon the nature and complexity of the specific allegation(s). Once an investigation has concluded, supervisors are expected to notify complainants as such and note the case is under a review and action process at the command level. Disposition letters are sent once the investigation has resolved, with a thorough recitation of the facts and circumstances of the allegation, as well as a recitation of FCPD investigative findings. These letters also include contact information for appeals to both CRP and the Office of the Independent Police Auditor. Any inquiry regarding case status during the investigative process from a complainant is required to be responded to in a timely manner.	FCPD explanation is not wholly responsive Panel recognizes the FCPD's efforts to improve the disposition letters but requests the FCPD to consider specific circumstances when letters can be followed up with an alternative method of communication, like a phone call to complainants.

<p><u>CRP-20-19 and CRP-20-27</u> (Published February 9, 2021)</p>	<p>The FCPD should create a policy requiring all district station interviews be recorded.</p>	<p>FCPD General Order 501.2 covers Investigative Responsibilities but makes no reference to recording of interviews. Since the last revision (04-01-13), all district station interview rooms have been equipped with audio/video technology. In-progress revisions to this General Order will note that all investigating officers/detectives ensure interviews are recorded unless unusual/unforeseen circumstances (ex: technology failures, interviews in outdoor environments) exist. Also, it should be noted that officers equipped with body-worn cameras are required to activate them during any rendering of police service unless unusual circumstances exist (ex: hospital, schools, bathrooms) or whenever interviewing victims of sexual assault for their privacy concerns.</p>	<p>Implemented by FCPD</p>
<p><u>CRP-20-19 and CRP-20-27</u> (Published February 9, 2021)</p>	<p>The FCPD should ensure that all FCPD Officers are informed of its policy 501.2 Investigative Responsibilities.</p>	<p>All officers are required to acknowledge via PowerDMS signature any revisions to Department policy, to include General Orders, SOPs, and Department-wide Command Staff Memorandums. These signatures are audited and any officer failing to acknowledge is notified via their direct supervisor. As</p>	<p>Implemented by FCPD</p>

		mentioned above, General Order 501.2 is under revision and once completed will necessitate officer acknowledgement.	
CRP-20-19 and CRP-20-27 (Published February 9, 2021)	The FCPD should encourage the Fairfax County Sheriff to record and preserve video taken from inside the Fairfax County Adult Detention Center.	As the FCSO constitutes a separate agency run via an elected official (Sheriff Stacey Kincaid), it would be inappropriate for FCPD to make best practices recommendations to her agency. CRP recommendations on FCSO policies and practices should be made directly to the FCSO by the Panel.	Not Implemented by FCPD. The Panel understands that the Sheriff is an elected official, but given the degree to which the FCPD does ultimately interact with and work with the Sheriff's office, we think such encouragement is entirely appropriate.
CRP-19-29 (Published October 23, 2020)	"The FCPD should develop objective criteria and processes to evaluate allegations of bias or profiling (as pertains to race, ethnicity, sexuality, religion or sexual orientation) in internal investigations of complaints against officers. These criteria may include (1) searching the officer's public social media profiles; (2) interviewing coworkers in the officer's unit and other potential witnesses; (3) quantitatively and/or qualitatively analyzing data (by trained analysts) from community contacts, stops, searches and arrests; and (4) comparing the circumstances and claims of the current complaint to any prior complaints.	<ol style="list-style-type: none"> 1) All Internal Affairs investigations receive an open-source social media inquiry as of April 1, 2020. 2) General Order 301, Internal Investigations, states that witnesses shall be interviewed if they would assist in an investigation. Regulation 201.3, Obedience to Laws, Regulations, and Training, as it pertains to Regulation 201.5, Reporting Violation, states any employee shall immediately report any 	<ol style="list-style-type: none"> 1) Implemented by FCPD. 2) Not Implemented by FCPD. Presently being reviewed by the FCPD following the January 26, 2021 decision by the Board of Supervisors in CRP-29-19 directing the FCPD to take further action,

	<p>Quantitative analysis of data should not be limited to descriptive analyses, but when appropriate, should include bivariate and multivariate analyses to ensure that appropriate variables are considered. The investigation file should contain a clear evaluation and summary of the officer's actions under each of the criteria listed above."</p>	<p>violation, including bias-based policing.</p> <p>3) Arrests and traffic statistics are publicly shared on the FCPD website. IAB is in the process of procuring a Management Analyst to perform quantitative and qualitative analysis of public safety data.</p> <p>4) To ensure qualitative analysis, consistency and thoroughness, the administrative due process includes several levels of review up to the Chief of Police in each administrative investigation. These levels of review include prior consideration of sustained allegations against the subject employee, and appropriate action to be taken for further sustained violations of patterns of conduct. Use of criterion of "circumstances and claims of the current</p>	<p>including conducting interviews with the officer's co-workers.</p> <p>3) Pending further analysis by the FCPD. Data analysis conducted for investigations must include quantitative and qualitative analysis of community contacts and stops by officers, as well an analysis of publicly shared data on arrests and traffic statistics.</p> <p>4) FCPD explanation is responsive.</p>
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		complaint to any prior complaints" is subjectively vague and non-definitive as it pertains to whether or not an officer engaged in either unlawful or procedurally violative conduct.	
CRP-19-29 (Published October 23, 2020)	"All community contacts, stops, searches and arrests by the FCPD should be entered into the data management system. Data analysis of an officer's community contacts, stops, searches and arrests should be broken down by the race and ethnicity of community members. Data on community contacts should be broken down as follows: (1) community contacts that remain consensual for the duration of the encounter; (2) community contacts that evolve into detentions by virtue of reasonable suspicion; and (3) community contacts that evolve into detentions by virtue of probable cause. Officers should also enter into the data base the reasons for the community contact, stop, search or arrest. Such rationale should be coded (i.e., by a particular violation of law, type of behavior, appearance, time, place, etc.). If a community contact evolves into a detention, the officer should enter into the data base the reasons for such detention."	General Order 603.4, Police Community Member Contacts, and General Order 601, Arrest Procedures, requires specific documentation regarding all community member contacts, including voluntary contacts. FCPD is currently in the process of upgrading agency record management systems which will further enhance tracking.	Pending upgrade to FCPD's data management system.
CRP-19-29 (Published October 23, 2020)	"Data analysis of an officer's community contacts, stops, searches and arrests should be compared and contrasted with comparable data from the district	For all bias allegations, the Internal Affairs Bureau conducts an 18-month examination of the officer's arrests and citations. This data is compared	Pending upgrade to FCPD's data management system.

	<p>station where the incident occurred and the county as a whole. The data analysis should also take into account the racial and ethnic composition of each district as compared to the county overall.”</p>	<p>to pertinent station demographics. The demographics of each district station and the County are publicly available in the IAB annual report.</p> <p>FCPD is assessing capabilities of reviewing officer field contacts and searches in future RMS programs. Currently searches of these descriptions are limited to technological limitations inherent in I/LEADS RMS. With implementation of a new RMS in the future, the hope is that tracking of contacts and searches, the two recommended data points, will be more feasible, changing policy on how the Department tracks field contacts and searches.</p>	
<p>CRP-19-29 (Published October 23, 2020)</p>	<p>“For the purposes of investigations into allegations of bias or profiling, data analysis of the officer’s community contacts, stops, searches and arrests should cover a period of 3-5 years, or if the officer has less tenure, for the duration of his service in the FCPD. If during the prescribed time period the officer has worked in different districts within the county, the review and analysis of the officer’s community contacts, stops, searches and arrests should not be limited to the district where the officer is assigned at the moment, but rather should include all such encounters in every county district where the officer served during the time period.”</p>	<p>Bias investigations include an 18-month statistical analysis of the officer’s arrests and citations, comparing them with other officers at the same station. Historic database software is only capable of tracking certain data. System replacement and procurement will permit advances to add tracking fields and information categories.</p>	<p>Pending upgrade to FCPD’s data management system.</p>

<p><u>CRP-19-29</u> (Published October 23, 2020)</p>	<p>"Like the efforts the FCPD has undertaken to analyze and identify use of force incidents, the FCPD should consider creating an early warning system to alert commanders as to whether an officer's community contacts, stops, searches or arrests are excessive and disproportionate for a particular race or ethnic group."</p>	<p>Since November 2012, per policy, the FCPD has utilized an Early Identification System.</p> <p>Monitored incidents include administrative investigations (including cruiser crashes), initial inquiries, forced entries, de-arrests, off-duty traffic citations, off-duty civil and criminal court actions, use of force, and pursuits. Community contacts, stops, searches, and/or arrests are non-dispositive of whether or not an officer has potentially engaged in bias-based policing which FCPD has an absolute prohibition against its employees engaging in. These actions are based upon legally defined standards of probable cause and reasonable suspicion, regardless of race or ethnicity. Where these legally defined standards are non-existent, searches, stops, and arrests would be improper and ultimately unlawful. Where a complaint is made that any officer engaged in disproportionate policing, that complaint would automatically initiate an administrative investigation, which would account as stated above as a qualifying EIS event. This also includes supervisor audits and reviews of officer BWC and ICV</p>	<p>FCPD explanation is responsive.</p>
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		footage to ensure stops, arrest, and searches are within FCPD policy.	
CRP-19-29 (Published October 23, 2020)	"The FCPD should retain an independent expert on implicit bias to examine all law enforcement policies, practices and training for the purpose of recommending evidence-based strategies to mitigate the impact of implicit bias on policing."	<p>In addition to mandatory County and/or agency training on bias, the Fairfax County Police Department is currently engaging an outside independent expert to train implicit bias, the understanding of implicit bias; procedural justice; "<i>trust building</i>;" and detecting and addressing institutional and structural racism.</p> <p>Independent subject matter experts on bias have lectured to Command Staff.</p> <p>Bias and culture-based training has been offered to employees through academy and other venture partnerships.</p>	Training implemented. Further explanation is required as to the examination of all law enforcement policies and practices.
CRP-19-29 (Published October 23, 2020)	"Officers should receive implicit bias training on an annual basis."	The FCPD Equity Team and its Ambassadors will receive specialized independent bias-based training. This education will provide a unique, cutting-edge platform for organizations to build a foundational capacity to address or discuss equity gaps, race, equality, cultures, and unity. The independent expert will also train-the-trainer for annual	Implemented by FCPD.

		refresher courses on implicit bias, procedural justice, and <i>trust building</i> .	
2019 Annual Report (Published February 28, 2020)	“Where the evidence gathered during an Investigation into a Complaint of racial bias does not offer a race-neutral explanation for the conduct of the accused officer, the FCPD should continue to investigate seeking some explanation for the officer’s conduct by obtaining reasonably available evidence that will corroborate either a race-neutral or race-biased explanation such as examining the officer’s social media accounts and/or interviewing witnesses.”	This recommendation is counter intuitive. Where there is no “race-neutral explanation,” to explain officer conduct, then by default the conduct would fall within the purview of bias-based or discriminatory conduct and appropriate action would be taken swiftly by the Department. Where conduct falls within these parameters, all available investigatory measures will be taken to ascertain the root of why the action took place. The Fairfax County Police Department Internal Affairs Bureau conducts investigations into all complaints involving any allegation of perceived bias. Bias-based complaints will include obtaining all available evidence; such as, but not limited to, witness statements, videos, publicly available social media, statistics, reports, etc. Consistent with all investigations completed by the police department; any available evidence is thoroughly examined for appropriate response and lawful action.	FCPD explanation is responsive. The Panel’s recommendation is that the FCPD proactively continue to investigate to find corroborating evidence, if the available evidence does not offer a “race-neutral explanation” (including times when there simply is no explanation) for the conduct of the officer. The Panel recommends (see recommendation in CRP-19-29) that the FCPD develop objective criteria and processes to evaluate allegations of bias or profiling separate from its normal investigation processes.
CRP-19-11 (Published			Implemented by FCPD.

January 15, 2020)	"With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur."	<u>General Order 301</u> , Internal Investigations, states that witnesses shall be interviewed if they would assist in an investigation of a complaint or incident. Commanders were reminded of this policy in a March 2020 Command Staff meeting. Furthermore, Bureau Commanders are responsible for ensuring all investigative tasks have been properly completed as an additional quality control and review oversight protocol.	
CRP-19-11 (Published January 15, 2020)	"FCPD civilian ride-a-long individuals should be tracked and recorded in all instances. A police ride-a-long individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined."	<u>General Order 430.3</u> sets policy and procedure for each Ride-Along to include maintenance of the application and required documentation for every Ride-Along. Commanders were reminded of this importance during a Command Staff meeting in March 2020.	Implemented by FCPD.
CRP-19-11 (Published January 15, 2020)	"The FCPD should implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents."	FCPD policy requires officers to " <i>preserve the sanctity of life</i> " and, as community caretakers, officers must attend to the needs of any person who is unable to care for themselves as expeditiously as possible. <u>Regulation 201.6, Preservation of Peace and Protection of Life and Property</u> , states:	Implemented by FCPD.

		<p><i>"It shall be the duty of each sworn officer of the Department to:</i></p> <ul style="list-style-type: none"> <i>• Preserve the public peace;</i> <i>• Protect life and property; and</i> <i>• Enforce and uphold the laws of the Commonwealth of Virginia and the ordinances of the County of Fairfax."</i> <p>This policy requires officers to attend to children, and any other person who is left alone and unable to care for themselves, under their oath as a sworn officer to protect life. Furthermore, officers are provided guidance from <u>the Fairfax County Family Services Child Supervision Guidelines</u> regarding unattended minors and children.</p>	
CRP-18-27 (Published July 12, 2019)	<p>"[T]he Panel recommends that in the future the Department refrain from publicly releasing [investigatory information pertaining to the Complainant's social media accounts], because it "discourages individuals from filing future complaints,</p>	<p>Respectfully disagree. Open source information is by definition, available publicly to all individuals and entities. Where an individual posts publicly available information of relevance to an investigation, the Department will</p>	<p>Implemented by FCPD, as the Panel understands the response to be to the Panel's prior belief that</p>

	and it undermines community trust in the Panel.” If the FCPD believes such information is relevant to the investigation, “that information should be included only in the Department’s investigative file.”	examine this content for relevancy as it pertains to either a criminal or administrative investigation. The Department does not publicly release the findings of administrative investigations, except in the rarest of occasions where, due to public request, the Department would be compelled to disclose whether an accused officer was found in violation of Department policy. The Department does not publicly post administrative investigatory information in any event, and that information is kept confidential within the Department unless subjected to court-ordered discovery or in accordance with the Code of Virginia. All of the information was obtained via public websites from a Google search. The information that was released was already publicly available on the internet.	this was “not implemented” because in fact the FCPD will not be publicly releasing social media information of complaints.
2018 Annual Report (Published March 21, 2019)	FCPD disposition letters to the complainant upon conclusion of FCPD investigations, “must contain sufficient, specific detail to provide complainant with a clear understanding of the scope of the FCPD investigation and the rationale for the FCPD findings.”	The FCPD co-produced a disposition letter with members of the community. Commanders who author these letters were then trained on the new form in September. Since that time, the new form has been in use.	New format for more explanatory disposition letters has been adopted by the FCPD and is being implemented.

2018 Annual Report (Published March 21, 2019)	"Action Item 17, dated December 6, 2016 (p. 278), limits the Panel's ability to include salient facts in public reports. This restriction inhibits "the Panel's ability to achieve its purpose 'to enhance police legitimacy and to build and maintain public trust between the FCPD, the Board of Supervisors and the public."	During Quarterly Meetings, FCPD representatives coordinated with the CRP in preparation of the proposed Action Item that was adopted by the Board of Supervisors on September 24, 2019, giving the Panel the authority to disclose facts of the investigation in the Panel's Review Reports, with certain restrictions.	Action Item adopted by the Board of Supervisors on September 24, 2019, gives the Panel authority to disclose facts of the investigation in Review Reports with certain limited restrictions.
2018 Annual Report (Published March 21, 2019)	"The Panel suggests that the Board of Supervisors require a quarterly meeting among the Chiefs of Staff for the Chairman of the Board of Supervisors and the Chairman of the Public Safety Committee, the FCPD Chief, and the Chair and Vice-Chair of the Panel to review Panel comments and recommendations and discuss the implementation of the same.	The FCPD supports the quarterly meetings and the sharing of information regarding Panel comments and recommendations. These meetings began in June 2019 and are continuing to occur with FCPD staff present for each of them.	Implemented by FCPD
CRP-18-26 (Published March 8, 2019)	"During FCPD administrative investigations, where statistical evidence is used, [the Panel] recommends the Crime Analyst Unit (CAU) be consulted in the gathering, preparation and reporting of the statistical data."	The compilation of statistical evidence is the responsibility of the Analyst assigned to the Internal Affairs Bureau.	Implemented by FCPD

CRP-18-26 (Published March 8, 2019)	"The FCPD should make BWC and In-Car Video (ICV) footage available for viewing at Panel Review Meetings as requested by the Panel."	Requests for the Panel to view video and audio footage will be approved on a case-by-case basis.	FCPD explanation noted. The Chief has committed to review any Panel request for footage and determine whether to release of requested footage on a case-by-case basis.
CRP-18-26 (Published March 8, 2019)	"The Panel recommends that the FCPD ensures that individuals involved in incidents with FCPD officers which are subject to a complaint be provided with an opportunity to review the video footage of the incidents."	It has been the policy of the Police Department to allow complainants to view video footage consistent with <u>Body Worn Camera Pilot Program SOP 18-506, Section VII, Paragraph B</u> and <u>General Order 430.8, In Car Video Program Procedures, Section IV, Paragraph C-5.</u>	Implemented by FCPD
CRP-18-12 (Published January 9, 2019)	"The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name."	In keeping with our commitment to transparency, the FCPD annually publishes an <u>Internal Affairs Bureau Statistical Report</u> , which is made available both within and outside of the Department. IAB is currently researching best practices. Once a template is developed, it will be discussed with the County Attorney for legal review. These reports are posted quarterly, and identify rank of the accused	Under Review by FCPD.

		officer, allegation, disciplinary measures implemented, and disposition.	
<u>CRP-18-12</u> (Published January 9, 2019)	"The Panel recommends that the FCPD ensure that all concerns outlined in future Complaints be fully investigated and separately addressed in the Investigation Report." (Officer's demeanor was not explicitly discussed in the Investigation Report, even though it had been an issue in the Complaint)."	Complaints received by the FCPD are thoroughly investigated. As stated in your report, Major Reed assured the Civilian Review Panel (CRP) members that investigators take a holistic approach to ensure that all aspects of a complaint are addressed. Upon completion, all investigations are subject to a multi-layer review. This investigative review may be conducted by Station Commanders, Bureau Commanders, Deputy Chiefs, and the Chief of Police to ensure accuracy and thoroughness.	FCPD explanation noted.
<u>CRP-18-12</u> (Published January 9, 2019)	"The Panel recommends that the FCPD develop an efficient methodology to reintegrate some level of supervision over the submission of [FR300P accident report] forms [by FCPD officers]." The Panel concluded that the consequences for errors could be problematic, as certain insurance claims were initially denied based on erroneous information in the initial FR300P."	Under the Traffic Records Electronic Data System (<u>TREDS</u>) system, which is a VA State Program, when an officer submits an FR300P, a layered approval process begins. The first layer is the TREDS system itself, which provides a real-time review to ensure all required fields are populated. After the TREDS system review, the report is submitted for internal review by the FCPD Central Records Division. The Central	The Panel accepts explanation of FCPD regarding supervision under TREDS System.

		Records Division has received specialized training on TREDs and have the delegated authority to accept or reject accident reports if they are not in compliance. In addition, the Central Records Staff distributes error reports to supervisory staff to ensure quality control and accountability.	
<u>CRP-17-10</u> (Published <u>March 26,</u> <u>2018</u>)	"[T]he Complainant indicated in her statement to the Panel that, other than the Notification, she had not received any further explanation from the FCPD. The Panel recommends that the FCPD contact the complainant and offer her whatever additional explanation that is legally permissible and appropriate under the circumstances."	Letter signed by Station Commander was sent to the complainant indicating the officer's violation was addressed and how to seek additional recourse. Internal Affairs Bureau (IAB) personnel also had a phone conversation with the complainant to address their concerns.	Implemented by FCPD

APPENDIX H: Specific Recommendations from the Panel's Four-Year Review

SPECIFIC RECOMMENDATIONS

- 1) **The Panel should be empowered to hire a full-time Executive Director (ED) with some investigatory experience.** The Panel needs a full-time, dedicated staff member to handle administrative aspects of the Panel and assist the Panel in its reviews, Review Reports, and Annual Reports. The ED ideally should be an individual with some investigatory experience. The ED should also have access to the Investigation Reports and be authorized to draft Review Reports and other reports. The ED should also help organize and assist the Panel in its public outreach opportunities. Like the Independent Police Auditor, the ED should report directly to the Board of Supervisors and supervise administrative staff that assists the Panel.
- 2) **The Panel's Executive Director should be authorized to monitor FCPD investigations of racial bias or profiling from the onset of the investigation, whether or not an initial complaint has been filed with the Panel.** During such monitoring, the ED may observe interviews and have access to evidence. The ED may suggest that the FCPD conduct additional interviews or further inquiries and data analysis during the investigation. Such monitoring would be consistent with that afforded by the Board of Supervisors to the IPA.
- 3) **The Panel should be given electronic access to redacted Investigation Reports.** A new policy should be adopted by the Board of Supervisors, in consultation with the County Attorney and the FCPD, that allows Panel Members to have electronic access to redacted Investigation Reports. The Panel is cognizant that the Chief of Police is the custodian of FCPD records, and that he has rejected similar Panel requests in the past. However, there is no legal impediment barring the Chief from heeding the Panel's reasonable request. Panel Members simply must be able to conveniently review investigative files outside of normal business hours and outside of a police station. A compromise proposal would be to allow the FCPD to redact all personnel information on records provided electronically and require Panel Members to appear in person at police headquarters to review unredacted versions. Panel Members would still be under the obligation not to disclose privileged information. Providing electronic access ensures: (1) greater accessibility and participation of community members who may not have the resources to volunteer on a Board and travel regularly to the FCPD headquarters and (2) ensures the safety of all parties involved by reducing in person encounters during a pandemic and post-pandemic environment.
- 4) **The Panel should codify in its bylaws a "summary judgment"-like process for disposing of wholly unfounded complaints at the Subcommittee level.** At a minimum, the Bylaws should reflect that the Subcommittee must find the Complaint to be objectively qualified for review. Toward that end, the Panel should formally adopt a four-step process for initial reviews of complaints, and this process must be explicitly stated in amendments to the Bylaws. First, the Subcommittee should determine whether the allegations of the complaint constitute allegations of a serious misconduct or an abuse of authority. Second, if yes, the Subcommittee should determine whether the Investigation Report reveals *any* observable substantiation of the allegations of serious misconduct or an abuse of authority in the complaint. This should be an exacting standard and a sufficiently high bar to avoid the early disposition of not wholly unfounded complaints. Further, this should apply only to the allegations that meet the threshold of serious misconduct or an abuse of authority. If there is *any* observable substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should recommend that the full Panel take up review. Third,

if the Subcommittee finds no substantiation of the allegations of serious misconduct or an abuse of authority, the Subcommittee should consider whether there is *any* reason to believe that the Investigation Report is not complete, thorough, accurate, objective, and impartial. Finally, the Subcommittee should present its findings to the entire Panel for a vote as to whether the Panel should review the Complaint. Thus, there is always a failsafe in that the Panel must make the ultimate determination whether or not to undertake a review.¹

- 5) **The Panel should be authorized, at its discretion, to conduct a review of a completed FCPD investigation of an initial complaint concerning racial bias or profiling without first receiving a Request for Review from the Complainant.** Complaints concerning racial bias seemingly are of particular importance to county residents and thus should all be treated as ripe for independent oversight.
- 6) **The Panel should be given limited investigatory power including the ability to interview and subpoena the Complainant and up to three key witnesses upon the request of six Panel members.** Without full professionalization of the Panel, it cannot be a fully investigatory body. But the Panel would be well-served by having some investigatory powers that allow it to take investigative action wholly independently from the IAB. One idea is to grant the Panel through the Executive Director the ability to conduct witness interviews (and by extension to grant the Panel some subpoena power) but limit the number of interviews that the Panel undertakes. Moreover, such interviews would be discretionary – if the Panel is confident that the Investigation Report as compiled meets its standards, it need not go forward with additional investigation. If the Panel is allowed to choose to conduct its own interview of the Complainant and up to three key witnesses free of IAB involvement, the Panel can demonstrate its independence to the community and to the Complainants themselves, many of whom are skeptical that a wholly police-driven investigation can truly be impartial and objective
- 7) **The Panel's Options for its Review Findings should be expanded and modified.** The Panel should be given five options:
 - a. The Panel can concur with the findings of the FCPD and confirm that the conclusions of the Investigation Report are correct, and that the Investigation was sufficiently thorough, impartial, and objective so as to allow for the conclusion made.
 - b. The Panel can request additional investigation from the FCPD and the FCPD shall within a reasonable time conduct further investigation and provide the Panel with a supplemental report that details the findings of the additional investigation.
 - c. The Panel can exercise the opportunity to conduct its own additional investigation, including interviewing the Complainant and up to three key witnesses using its limited subpoena power.
 - d. The Panel can inform the Board of Supervisors that in the opinion of the Panel, the conclusions of the Investigation Report are incorrect and/or that the investigation is insufficiently thorough, impartial, and objective. so as to allow for an alternative conclusion.

¹ Alternatively, the Board of Supervisors could revisit the Action Item and provide the authority to individual Panelists on a rotating basis to make summary determinations (based on an established criteria). This would allow the Panel as a whole to ensure timeliness in its disposition of complaints.

- e. The Panel can inform the Board of Supervisors about how it would have resolved the investigation.
- 8) **The Panel should consider specific definitions for the terms “correct,” “thorough,” “impartial,” and “objective” that are well defined and understood in the same manner by all members of the Panel.** The specific definitions could be added to the Panel’s Bylaws upon approval by the Board of Supervisors.
- 9) **The Panel should invite rank-and-file FCPD officers to a forum (or to multiple forums) where FCPD officers can ask Panel Members questions and make comments.** The Panel should commit to increasing its interactions with the FCPD rank-and-file and should make itself available for meetings with officers present to ask questions and make comments at least once a year.
- 10) **The Panel should commit to twice-a-year public forums (or more) where members of the public can ask Panel Members questions and make comments.** The Panel should commit to increasing its community outreach opportunities and conducting at least two public forums each year. The Panel should make an effort to have at least one of these public forums covered by the press.
- 11) **The Panel should have an annual training session conducted by the FCPD in which the Panel learns about FCPD policies and procedures.** The content of the training should be developed in consultation with the FCPD.

APPENDIX I: Police Civilian Review Panel Member Biographies

Cheri Belkowitz, Fairfax Station

Ms. Belkowitz is an education attorney who practices throughout Virginia and in Washington, D.C. She is a zealous advocate for children with disabilities and their families in all school-related matters. She represents families in special education law matters arising under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Ms. Belkowitz is active in the special needs community, and she served four terms as Chair of the Fairfax County Public Schools Advisory Committee for Students with Disabilities. She also served as a member of the Fairfax Equity Stakeholders Committee and as a Director on the Board of The Arc of Northern Virginia. Ms. Belkowitz also currently serves as a Board Member of the Fairfax Special Education PTA (SEPTA). She was invited by the Secretary of the Air Force as a civic leader to participate in the National Security Forum at Air War College at Maxwell Air Force Base in Montgomery, Alabama, to share perspectives with senior military officers on strategic leadership, national security, and global security. Among other recognitions, Ms. Belkowitz received the JCC of Northern Virginia Finkelstein Award for her service, leadership, and program development in the special needs community and the SEPTA “Community Champion Award” in 2020 for her exceptional commitment to the special needs community in the public schools. She graduated *cum laude* from Brandeis University, and she earned her Juris Doctor, *magna cum laude*, from Syracuse University College of Law. She served as Notes and Comments Editor of *The Syracuse Law Review* and was a member of the Justinian Honorary Law Society.

James Bierman, McLean (Chair)

Mr. Bierman is a resident of McLean, where he grew up, and is an Attorney Advisor in the Office of the General Counsel at the Department of Homeland Security, where he works on administrative law issues across the Department. Before joining the Federal government, Mr. Bierman was a litigator who represented clients in complex litigation such as antitrust, securities, pharmaceutical defense, false advertising, trade secrets, copyright infringement, trademark infringement, commercial paper, and domestic matters in federal and state courts across the country as well as before federal administrative agencies. Mr. Bierman also maintained a large pro bono practice in which he has represented undocumented immigrants in wage disputes against predatory employers, disabled individuals in Social Security benefit matters, and criminal defendants in state court at both the trial and appellate levels. Further, he advised nonprofits and community organizations in disputes with state and local governments. Before entering private practice, Mr. Bierman served as a law clerk to the Honorable Beverly B. Martin of the U.S. Court of Appeals for the Eleventh Circuit.

Todd L. Cranford, Fairfax

Mr. Cranford, a 15-year Fairfax County resident, is Board Counsel to the Public Company Accounting Oversight Board. Previously, he was the Head of Government Affairs & External Relations for the Financial Accounting Foundation. Mr. Cranford has broad experience in both the public and private sectors, including serving in the enforcement division of the U.S. Securities and Exchange Commission, on Capitol Hill with the House Financial Services Committee, and with the international law firm Patton Boggs LLP. Mr. Cranford is committed to giving back to his community. In addition to service on the Panel, he serves on the boards of the National Domestic Violence Hotline and The Commonwealth Institute for Fiscal Analysis. He is also a member of the 2020 class of Leadership Fairfax and 100 Black Men of Greater Washington, D.C.

Frank Gallagher, Burke

Mr. Gallagher is a U.S. Army veteran and a retired FBI Agent with over 32 years of service. He first moved to Fairfax County in 1977 and was transferred out of the area several times. During his time in the FBI, Mr. Gallagher served as the Deputy Assistant Director of the Criminal Division, Special Agent in Charge of a Field Office and as the Chief Inspector for the FBI. He has lived continuously in Fairfax County for the past 21 years. After his retirement from the FBI, Mr. Gallagher worked for a major global management and information technology consulting firm for 11 years. Subsequent to that he served for two years as the Chairman of the DC Chapter of the Society of Former Special Agents of the FBI. He is a graduate of FBI's National Executive Institute (NEI) and was on the Board of Directors of the NEI Associates for five years. Previously, he was a member of the International Association of Chiefs of Police and served on the Narcotics and Dangerous Drugs Committee. Also, he was on the Board of Directors for the National Center for Missing and Exploited Children. Until recently, he served for six years as the Braddock District representative on the Fairfax County Criminal Justice Advisory Board.

Bryon Garner, Alexandria

Mr. Garner recently served as Lee District representative on the Fairfax Country Redistricting Advisory Committee and member of the City of Alexandria Commission on HIV/AIDS. From 2012-2015, he served on the City of San Diego Community Review Board on Police Practices, which investigated citizen claims against the San Diego Police Department. A nine-year veteran of the U.S. Navy, Mr. Garner earned his Master of Liberal Arts from Johns Hopkins University and is currently a PhD candidate in Interdisciplinary Studies with a Major in Humanities and a certificate in Philosophy and Ethics at Union Institute & University. With over 20 years of government service, Mr. Garner is currently employed by the Department of State.

Dirck A. Hargraves, Esq., Kingstowne (Vice Chair)

Mr. Hargraves has over 25 years of legal, regulatory and legislative experience and is the founder and principal of a public affairs and strategic communications firm that specializes in creating winning public policy campaigns. Mr. Hargraves has a long-held belief in the rule of law and passion for social justice. At the time, he was the youngest president of a local NAACP

Branch, where he sought transparency regarding the use of lethal force after an unarmed drug suspect was fatally shot by the police while fleeing a bust. A Citizen's Police Academy was formed shortly thereafter with NAACP input so that civilians were given a clearer understanding of how police determine when to use lethal force. Mr. Hargraves, also served as legislative counsel to US Representative Sheila Jackson Lee, where he supported the congresswoman on the House Judiciary Committee and at field hearings, including listening to the testimony of African American and Latino law enforcement at the World Trade Center in the aftermath of the Abner Louima police brutality scandal. That field hearing informed Members as they debated the National Police Training Commission Act of 1999, which presciently defined the seemingly intractable challenge of policing when Act found that:

Respect for law and order is the cornerstone of a free society. The rule of law is predicated upon the consent of people who believe the laws are administered fairly, thus commanding respect and confidence. Unjust or discriminatory administration of law by excessive force tends only to create distrust and contempt for the law and law enforcement agencies.

Shirley Norman-Taylor, Lorton

Ms. Norman-Taylor has resided in Fairfax County for the past 21 years. She is licensed to practice as an attorney in Virginia and Washington D.C. The focus of her practice includes Domestic Relations and Criminal and Traffic Defense, however, her greatest joy comes from representing children who are in the Abuse and Neglect system as their Guardian ad litem (GAL). Ms. Norman-Taylor also serves on the Fairfax County School Board's Minority Student Achievement Oversight Committee (MSAOC). Ms. Norman-Taylor is a former military officer and served as a Commander during Operations Desert Shield/Desert Storm.

William Ware, Alexandria

Mr. Ware is a native Virginian and 20-year resident of Fairfax County. His career includes service across several federal community corrections organizations where he has been laser-focused on reentry and supporting positive outcomes for returning citizens. Mr. Ware started his career as a Community Supervision Officer with the Court Services and Offender Supervision Agency (Washington, DC probation and parole). He transitioned to the Army Clemency and Parole Board serving as a Case Analyst and Hearing Examiner for court-martialed soldiers and, in 2019, Mr. Ware was selected as Deputy Chair for the Air Force Clemency and Parole Board. In that capacity, he presided over clemency and parole hearings for court-martialed Airmen and managed operations for the Air Force clemency and parole program. Mr. Ware joined the Probation and Pretrial Services Office at the Administrative Office of the U.S. Courts in 2021 and assumed responsibility for the reentry and Second Chance Act portfolio for the federal probation system. Beyond his federal experience, Mr. Ware has served in volunteer capacities on the Alexandria Sheriff's Office Advisory Board, Alexandria Reentry Council, and Fairfax County Communities of Trust. He holds a BA in Criminal Justice and MS in Criminology.

Janell Wolfe, Fairfax

Ms. Wolfe has resided in Fairfax County for over 30 years. She obtained her J.D. degree from the Antioch School of Law in Washington, D.C. A member of the Virginia, District of Columbia and Supreme Court of the United States bars, Ms. Wolfe was a criminal defense attorney with a solo practice in Arlington, Virginia. She was appointed as a Commissioner in Chancery for the 17th Judicial District of Virginia and served on the Board of Directors for Northern Virginia Legal Services.

Ms. Wolfe has served as a magistrate for Fairfax County. Currently she represents respondents in mental health hearings for Arlington County and is on the Committee of Admissions for the District of Columbia bar.

Ms. Wolfe was selected as a docent in 2010 for the Supreme Court of the United States. She presents lectures in the courtroom of the Supreme Court to visitors and conducts educational tours for guests at the request of the Justices. She also volunteers at the Fairfax County Animal Shelter.



Board Agenda Item
July 19, 2022

CONSIDERATION - 2

Amendments to the Fairfax-Falls Church Community Services Board Bylaws

ISSUE:

Approval of Bylaws for the Fairfax-Falls Church Community Services Board (CSB) with proposed amendments.

TIMING:

Board consideration is requested on July 19, 2022, so that the CSB Bylaws can become effective, as amended.

BACKGROUND:

The Fairfax-Falls Church Community Services Board (CSB) approved the attached Bylaws with proposed amendments at the meeting on June 22, 2022.

Amendments include:

- Revising Article VIII regarding regular meetings of the board meetings to no longer require the board to meet each month. The requirement is now that regular meetings of the board be held not less than nine times per calendar year and are to be scheduled as the board determines by a majority vote at any regular meeting.

The proposed change is not contrary to law or county policy.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Fairfax-Falls Church Community Services Board Bylaws – edits visible

Attachment 2: Fairfax-Falls Church Community Services Board Bylaws

STAFF:

Christopher Leonard, Deputy County Executive
Daryl Washington, Executive Director, CSB

ASSIGNED COUNSEL:

Cynthia L. Tianti, Deputy County Attorney

**Bylaws
of the
Fairfax-Falls Church Community Services Board**

Preamble

Subject to the provisions of:

- A. Chapter 5 (Community Services Boards) of Title 37.2 (Behavioral Health and Developmental Services) of the Code of Virginia, as amended, and,
- B. Joint Resolution adopted by the Board of Supervisors of Fairfax County on April 23, 1969, and by the Councils of the Cities of Fairfax and Falls Church on May 28, 1969, as amended, and,
- C. Other applicable laws and regulations.

The following bylaws apply to, and govern the administration of, the Fairfax-Falls Church Community Services Board.

Article I: Name

As provided by action of the Board of Supervisors of Fairfax County and the Councils of the Cities of Fairfax and Falls Church on August 1, 1978, the name of this board is the FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD, hereinafter referred to as the “BOARD”.

Article II: Purpose

- A. Mental Health, Developmental Disabilities, and Substance Use Disorder Services – In conformity with the provisions of Va. Code § 37.2-500, this board is established as an administrative policy board whose general purpose shall be to ensure and oversee the establishment and operation of local mental health, developmental disabilities, and substance use disorder services.
- B. The core of services provided shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, and other appropriate mental health, developmental disabilities, and substance use disorder services necessary to provide individualized services and supports to persons with mental illnesses, developmental disabilities, or substance use disorders.

Article III: Powers and Duties

- A. Mental Health, Developmental Disabilities, and Substance Use Disorder Services – In order to implement the purpose, set forth in Article II hereof, pursuant to the

requirements of Va. Code § 37.2-504 and in accordance with the actions taken by the Board of Supervisors of Fairfax County and the Councils of the Cities of Fairfax and Falls Church to establish the board as an administrative policy board, the board shall:

1. Review and evaluate all existing and proposed public community mental health, developmental disabilities, and substance use disorder services and facilities available to serve the community and such private services and facilities as receive funds through it and advise the local governing bodies of the political subdivisions that established it as to its findings.
2. Pursuant to Va. Code § 37.2-508, submit to the governing body of each political subdivision that established it, an annual performance contract for community mental health, developmental disabilities, and substance use disorder services for its approval prior to submission of the performance contract to the Virginia Department of Behavioral Health and Developmental Disability Services (“Department”).
3. Within amounts appropriated therefore, provide such services as may be authorized under such performance contract.
4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.
5. Make policies concerning the delivery of services or operation of facilities under its direction or supervision, subject to applicable standards, policies or regulations promulgated by the State Board of Behavioral Health and Developmental Services (“State Board”).
6. Participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, developmental disabilities, and substance use disorder services, according to minimum qualifications established by the Department, and prescribe their duties. The compensation of the executive director shall be fixed by local government in consultation with the board within the amounts made available by appropriation, therefore.
7. Prescribe a reasonable schedule for fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of the same. All fees collected shall be included in the performance contract submitted to the local governing bodies pursuant to subdivision 2 of this subsection and Va. Code § 37.2-508 and shall be used only for community mental health, developmental disabilities, and substance use disorder purposes. The board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under its jurisdiction or supervision consistent with the provisions of Va. Code § 37.2-511 and from responsible third-party payors. The board shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to Va. Code § 37.2-814.
8. Accept or refuse gifts, donations, bequests or grants of money or property from

any source and utilize the same as authorized by the governing bodies of the political subdivisions that established it.

9. Seek and accept funds through federal grants. In accepting such grants, the board shall not bind the governing bodies of the political subdivision that established it to any expenditures or conditions of acceptance without the prior approval of such governing bodies.
10. Have authority, notwithstanding any provision of law to the contrary, to disburse funds appropriated to it in accordance with such regulations as may be established by the governing bodies of the political subdivisions that established it.
11. Develop joint annual written agreements, consistent with policies and procedures established by the State Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Virginia Department for Aging and Rehabilitative Services offices. The agreements shall specify what services will be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.
12. Develop and submit to the local governing body of each political subdivision that established it and to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, developmental disabilities, and substance use disorder services pursuant to Va. Code § 37.2-315.
13. Take all necessary and appropriate actions to optimize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.
14. Institute, singly or in combination with other operating community services boards, administrative policy boards, local government departments with policy-advisory boards, or behavioral health authorities, a dispute resolution mechanism that is approved by the Department. The dispute mechanism enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the board.
15. Notwithstanding the provisions of Va. Code § 37.2-400 or any regulations promulgated thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of such information.
16. Carry out other duties and responsibilities as assigned by the governing body of each political subdivision that established it.

Article IV: Members and Terms of Office

- A. In accordance with Va. Code § 37.2-502 as implemented by the Board of Supervisors of Fairfax County and the Councils of the Cities of Fairfax and Falls Church, the board shall consist of sixteen members, thirteen of whom shall be appointed by the Board of

Supervisors of Fairfax County, one of whom shall be designated by the Office of the Sheriff of Fairfax County; and one of whom shall be appointed by the Council of the City of Fairfax and one by the Council of the City of Falls Church. In accordance with Va. Code § 37.2-501, one-third of the appointments shall be identified consumers or former consumers, or family members of consumers or family members of former consumers, at least one of whom shall be a consumer receiving services. The term of appointment is three years, and a person may serve only three, consecutive full terms.

- B. Vacancies shall be filled for unexpired terms in the same manner as original appointments. Persons appointed to fill a vacancy may serve three additional full terms.
- C. Members are expected to regularly attend all meetings. The board Chair may notify the Clerk to the Board of Supervisors if any board member misses three consecutive board meetings as well as meetings of the standing committee to which the board member has been appointed and this may serve as grounds for removal. Members may be removed from the board in accordance with the appointing authority policies and procedures governing removal from Boards, provided that such policies and procedures are consistent with the requirements of the Virginia Code.
- D. Each member of the board shall serve on at least one Standing Committee. If a board member misses three consecutive committee meetings, the member may be recommended for removal from the committee by the committee through the Committee Chair.
- E. Each member of the board shall conduct himself or herself cordially and appropriately to members of other governmental or private entities, members of the public or CSB staff, when representing the board.

Article V: Officers and Their Duties

A. Officers

The officers of the board shall consist of a Chair, immediate past Chair, Vice Chair, and a Secretary, each of whom shall have such powers and duties as generally pertain to such respective offices, as well as such powers and duties as from time to time may be conferred upon them by the board, and which shall specifically include, but not be limited to, the powers, duties and responsibilities set forth hereinafter in Sections B, C, and D of Article VI.

B. Chair

The Chair shall preside at all meetings of the board; sign or cause to be signed the minutes when approved by the board and such other official documents required of him/her in the course of business of the board; appoint such committees as deemed necessary by the board for its operation and to serve as an *ex officio* member of all committees except the nominating committee; work closely with local public and private facilities, mental health, developmental disabilities, and substance use disorder associations of Virginia, and other groups interested in mental health, developmental disabilities and substance use disorder issues; maintain liaison with the Board of Supervisors of Fairfax County and the Councils of the Cities of Fairfax and Falls Church

and the Department; and keep the Board of Supervisors, City Councils, and the Department's Commissioner advised and fully informed as to the activities and programs of the board.

C. Vice Chair

In the absence of the Chair, the Vice Chair shall perform the duties of the Chair.

D. Immediate Past Chair

In the absence of the Chair and the Vice Chair, the immediate past Chair shall perform the duties of the Chair.

E. Secretary

The Secretary shall sign all policies after they have been approved or amended by the board and perform such other duties as requested by the Chair of the board. The Secretary also regularly reviews and updates the CSB Board Member Orientation Handbook. In the absence of the Chair, the Vice Chair, and the immediate past Chair, the Secretary shall perform the duties of the Chair.

Article VI: Officers' Nomination, Election, and Term of Office

A. Nomination and Election

At its regular meeting in April of each year, the board shall appoint three of its members to serve as a nominating committee. The committee shall submit the name of at least one nominee for each of the offices of Chair, Vice Chair, and Secretary at the June meeting of the board at which meeting the election of officers of the board shall be held.

Nominations also may be made from the floor. Members of the nominating committee shall be eligible for nomination, but no member shall be nominated whose consent to serve has not first been obtained. A majority of those present and voting shall constitute an election.

B. Term of Office

The term of office of all officers shall be for one year, beginning on July 1 following the election, or until their respective successors are elected, but any officer may be removed from office, either with or without cause, at any time by the affirmative vote of a majority of all the members of the board. No officer may serve more than two consecutive terms in the same office.

C. Vacancies

A vacancy in any office arising from any cause may be filled for the unexpired portion of the term as authorized by the board. The filling of a vacancy in office for the unexpired portion of a term will not prevent an officer from serving the two consecutive terms in the same office as proved in (B) above.

D. Absences

In the absence of the Chair, Vice Chair, Secretary and immediate past Chair from any meeting, the board shall select one of its members to act in such capacity during that meeting.

Article VII: Executive Committee, Standing Committees and Ad Hoc Committees

A. Executive Committee

There shall be an Executive Committee of the board. The purpose of the Executive Committee shall be to draft the agenda for the next full board meeting and to administer, subject to the authority and approval of the board, the required and necessary business of the board between regular meetings.

The Executive Committee shall consist of the Chair, past Chairs continuing to serve on the board, Vice Chair, Secretary, and the Chairs of Standing Committees. The Executive Director shall serve as an *ex officio*, non-voting member of the Executive Committee.

B. Standing Committees

Standing Committees shall be the Compliance Committee, the Service Delivery Oversight Committee, and the Fiscal Oversight Committee.

Purpose of the Compliance Committee is to provide oversight and direction to the CSB Compliance Program. Its members are the members of the Executive Committee and Legal Counsel. The Compliance Committee chair will be the current CSB Board Chair or designee.

Purpose of the Service Delivery Oversight and the Fiscal Oversight Committees shall be to review and make recommendations to the full board regarding policies, plans, service delivery proposals, budgets, grants, and such other matters as are referred to them by the board or Executive Committee. Members will be appointed by the Chair for a one-year appointment and may be reappointed to a Committee in subsequent years. The members of these Standing Committee shall elect from among the members a Chair or Co-Chairs for a one-year term. The Chair or Co-Chairs may be re-elected to an additional one-year term by the members.

C. Ad Hoc Committees

Ad Hoc Committees may be established by the full board as needed. Those Committees may be established to address any issue for which the full board determines that the subject matter or issue cannot be adequately addressed by the Standing Committees. The members of each Ad Hoc Committee shall elect from among their members a Chair or Co-Chairs for a one-year term. The Chair or Co-Chairs may be reelected to an additional one-year term by the members.

D. Associate Members for Standing and Ad Hoc Committees

Associate Members for Standing and Ad Hoc Committees are non-voting and may be appointed to each Standing or Ad Hoc Committee. Associate Members are individuals or representatives of organizations and agencies whose work and knowledge are deemed important to the Standing or Ad Hoc Committee. The Standing or Ad Hoc Committee may nominate associated organizations and agencies as Associate Members. These nominations shall be confirmed by a majority vote of the full board at the meeting at which they are nominated, unless, on motion of the board, the vote on confirmation is continued to a subsequent meeting of the full board. The term of each Associate Member shall be for one year from the date of their confirmation by the board. An Associate Member may be reappointed in subsequent or consecutive years to the Standing or Ad

Hoc Committee on which they served. Vacancies may be filled at any time using this same process.

Article VIII: Meetings

A. Regular

Regular meetings of the board shall be held not less than nine (9) times per calendar year each month, to be as scheduled as by the board determines by a majority vote at any regular meeting.

B. Special

Special meetings may be called by the board Chair or upon the request of two members of the board or the Executive Director. With agreement of the majority of board members, a special meeting may be convened. Public notice shall be given in accordance with the Virginia Freedom of Information Act.

C. VFOIA

All meetings shall be open to the public except as provided under the Virginia Freedom of Information Act, Va. Code § 2.23700 *et seq.*, as amended (“VFOIA”). Pursuant to Va. Code § 2.23701, “meeting” or “meetings” means the meetings including work sessions, when sitting physically, or through electronic communications means as permitted by the VFOIA, 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.

D. Quorum and Voting

A quorum is necessary for a vote. A majority of the membership of the board shall constitute a quorum. In making any recommendation, adopting any plan, or approving any proposal, action shall be taken by a majority vote of board members present and voting. Upon the request of any member, the vote of each member on any issue shall be recorded in the minutes. All votes of the board shall be taken during public meetings, and no vote shall be taken by secret or written ballot or proxy.

Article IX: Parliamentary Procedures

Robert’s Rules of Order Newly Revised, latest edition shall govern the board in all cases to which they are applicable and in which they are not inconsistent with these bylaws.

Article X: Amendments

Recommendations to amend, alter or supplement these bylaws may be proposed at any regular meeting of the board. A two-thirds (2/3) vote of those present and voting is needed to send the recommended changes to the Board of Supervisors for their approval for the changes to be effective. Prior to any vote by the board, notice of the proposed changes must be given to each member of the board in writing no less than thirty days prior to the vote.

Approved: _____
CSB Board Chair

Date

**Bylaws
of the
Fairfax-Falls Church Community Services Board**

Preamble

Subject to the provisions of:

- A. Chapter 5 (Community Services Boards) of Title 37.2 (Behavioral Health and Developmental Services) of the Code of Virginia, as amended, and,
- B. Joint Resolution adopted by the Board of Supervisors of Fairfax County on April 23, 1969, and by the Councils of the Cities of Fairfax and Falls Church on May 28, 1969, as amended, and,
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- A. Mental Health, Developmental Disabilities, and Substance Use Disorder Services – In conformity with the provisions of Va. Code § 37.2-500, this board is established as an administrative policy board whose general purpose shall be to ensure and oversee the establishment and operation of local mental health, developmental disabilities, and substance use disorder services.
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Article III: Powers and Duties

- A. Mental Health, Developmental Disabilities, and Substance Use Disorder Services – In

order to implement the purpose, set forth in Article II hereof, pursuant to the requirements of Va. Code § 37.2-504 and in accordance with the actions taken by the Board of Supervisors of Fairfax County and the Councils of the Cities of Fairfax and Falls Church to establish the board as an administrative policy board, the board shall:

1. Review and evaluate all existing and proposed public community mental health, developmental disabilities, and substance use disorder services and facilities available to serve the community and such private services and facilities as receive funds through it and advise the local governing bodies of the political subdivisions that established it as to its findings.
2. Pursuant to Va. Code § 37.2-508, submit to the governing body of each political subdivision that established it, an annual performance contract for community mental health, developmental disabilities, and substance use disorder services for its approval prior to submission of the performance contract to the Virginia Department of Behavioral Health and Developmental Disability Services (“Department”).
3. Within amounts appropriated therefore, provide such services as may be authorized under such performance contract.
4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.
5. Make policies concerning the delivery of services or operation of facilities under its direction or supervision, subject to applicable standards, policies or regulations promulgated by the State Board of Behavioral Health and Developmental Services (“State Board”).
6. Participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, developmental disabilities, and substance use disorder services, according to minimum qualifications established by the Department, and prescribe their duties. The compensation of the executive director shall be fixed by local government in consultation with the board within the amounts made available by appropriation, therefore.
7. Prescribe a reasonable schedule for fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of the same. All fees collected shall be included in the performance contract submitted to the local governing bodies pursuant to subdivision 2 of this subsection and Va. Code § 37.2-508 and shall be used only for community mental health, developmental disabilities, and substance use disorder purposes. The board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under its jurisdiction or supervision consistent with the provisions of Va. Code § 37.2-511 and from responsible third-party payors. The board shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to Va. Code § 37.2-814.

8. Accept or refuse gifts, donations, bequests or grants of money or property from any source and utilize the same as authorized by the governing bodies of the political subdivisions that established it.
9. Seek and accept funds through federal grants. In accepting such grants, the board shall not bind the governing bodies of the political subdivision that established it to any expenditures or conditions of acceptance without the prior approval of such governing bodies.
10. Have authority, notwithstanding any provision of law to the contrary, to disburse funds appropriated to it in accordance with such regulations as may be established by the governing bodies of the political subdivisions that established it.
11. Develop joint annual written agreements, consistent with policies and procedures established by the State Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Virginia Department for Aging and Rehabilitative Services offices. The agreements shall specify what services will be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.
12. Develop and submit to the local governing body of each political subdivision that established it and to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, developmental disabilities, and substance use disorder services pursuant to Va. Code § 37.2-315.
13. Take all necessary and appropriate actions to optimize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.
14. Institute, singly or in combination with other operating community services boards, administrative policy boards, local government departments with policy-advisory boards, or behavioral health authorities, a dispute resolution mechanism that is approved by the Department. The dispute mechanism enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the board.
15. Notwithstanding the provisions of Va. Code § 37.2-400 or any regulations promulgated thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of such information.
16. Carry out other duties and responsibilities as assigned by the governing body of each political subdivision that established it.

Article IV: Members and Terms of Office

- A. In accordance with Va. Code § 37.2-502 as implemented by the Board of Supervisors of Fairfax County and the Councils of the Cities of Fairfax and Falls Church, the board

shall consist of sixteen members, thirteen of whom shall be appointed by the Board of Supervisors of Fairfax County, one of whom shall be designated by the Office of the Sheriff of Fairfax County; and one of whom shall be appointed by the Council of the City of Fairfax and one by the Council of the City of Falls Church. In accordance with Va. Code § 37.2-501, one-third of the appointments shall be identified consumers or former consumers, or family members of consumers or family members of former consumers, at least one of whom shall be a consumer receiving services. The term of appointment is three years, and a person may serve only three, consecutive full terms.

- B. Vacancies shall be filled for unexpired terms in the same manner as original appointments. Persons appointed to fill a vacancy may serve three additional full terms.
- C. Members are expected to regularly attend all meetings. The board Chair may notify the Clerk to the Board of Supervisors if any board member misses three consecutive board meetings as well as meetings of the standing committee to which the board member has been appointed and this may serve as grounds for removal. Members may be removed from the board in accordance with the appointing authority policies and procedures governing removal from Boards, provided that such policies and procedures are consistent with the requirements of the Virginia Code.
- D. Each member of the board shall serve on at least one Standing Committee. If a board member misses three consecutive committee meetings, the member may be recommended for removal from the committee by the committee through the Committee Chair.
- E. Each member of the board shall conduct himself or herself cordially and appropriately to members of other governmental or private entities, members of the public or CSB staff, when representing the board.

Article V: Officers and Their Duties

A. Officers

The officers of the board shall consist of a Chair, immediate past Chair, Vice Chair, and a Secretary, each of whom shall have such powers and duties as generally pertain to such respective offices, as well as such powers and duties as from time to time may be conferred upon them by the board, and which shall specifically include, but not be limited to, the powers, duties and responsibilities set forth hereinafter in Sections B, C, and D of Article VI.

B. Chair

The Chair shall preside at all meetings of the board; sign or cause to be signed the minutes when approved by the board and such other official documents required of him/her in the course of business of the board; appoint such committees as deemed necessary by the board for its operation and to serve as an *ex officio* member of all committees except the nominating committee; work closely with local public and private facilities, mental health, developmental disabilities, and substance use disorder associations of Virginia, and other groups interested in mental health, developmental disabilities and substance use disorder issues; maintain liaison with the Board of

Supervisors of Fairfax County and the Councils of the Cities of Fairfax and Falls Church and the Department; and keep the Board of Supervisors, City Councils, and the Department's Commissioner advised and fully informed as to the activities and programs of the board.

C. Vice Chair

In the absence of the Chair, the Vice Chair shall perform the duties of the Chair.

D. Immediate Past Chair

In the absence of the Chair and the Vice Chair, the immediate past Chair shall perform the duties of the Chair.

E. Secretary

The Secretary shall sign all policies after they have been approved or amended by the board and perform such other duties as requested by the Chair of the board. The Secretary also regularly reviews and updates the CSB Board Member Orientation Handbook. In the absence of the Chair, the Vice Chair, and the immediate past Chair, the Secretary shall perform the duties of the Chair.

Article VI: Officers' Nomination, Election, and Term of Office

A. Nomination and Election

At its regular meeting in April of each year, the board shall appoint three of its members to serve as a nominating committee. The committee shall submit the name of at least one nominee for each of the offices of Chair, Vice Chair, and Secretary at the June meeting of the board at which meeting the election of officers of the board shall be held.

Nominations also may be made from the floor. Members of the nominating committee shall be eligible for nomination, but no member shall be nominated whose consent to serve has not first been obtained. A majority of those present and voting shall constitute an election.

B. Term of Office

The term of office of all officers shall be for one year, beginning on July 1 following the election, or until their respective successors are elected, but any officer may be removed from office, either with or without cause, at any time by the affirmative vote of a majority of all the members of the board. No officer may serve more than two consecutive terms in the same office.

C. Vacancies

A vacancy in any office arising from any cause may be filled for the unexpired portion of the term as authorized by the board. The filling of a vacancy in office for the unexpired portion of a term will not prevent an officer from serving the two consecutive terms in the same office as proved in (B) above.

D. Absences

In the absence of the Chair, Vice Chair, Secretary and immediate past Chair from any meeting, the board shall select one of its members to act in such capacity during that meeting.

Article VII: Executive Committee, Standing Committees and Ad Hoc Committees

A. Executive Committee

There shall be an Executive Committee of the board. The purpose of the Executive Committee shall be to draft the agenda for the next full board meeting and to administer, subject to the authority and approval of the board, the required and necessary business of the board between regular meetings.

The Executive Committee shall consist of the Chair, past Chairs continuing to serve on the board, Vice Chair, Secretary, and the Chairs of Standing Committees. The Executive Director shall serve as an *ex officio*, non-voting member of the Executive Committee.

B. Standing Committees

Standing Committees shall be the Compliance Committee, the Service Delivery Oversight Committee, and the Fiscal Oversight Committee.

Purpose of the Compliance Committee is to provide oversight and direction to the CSB Compliance Program. Its members are the members of the Executive Committee and Legal Counsel. The Compliance Committee chair will be the current CSB Board Chair or designee.

Purpose of the Service Delivery Oversight and the Fiscal Oversight Committees shall be to review and make recommendations to the full board regarding policies, plans, service delivery proposals, budgets, grants, and such other matters as are referred to them by the board or Executive Committee. Members will be appointed by the Chair for a one-year appointment and may be reappointed to a Committee in subsequent years. The members of these Standing Committee shall elect from among the members a Chair or Co-Chairs for a one-year term. The Chair or Co-Chairs may be re-elected to an additional one-year term by the members.

C. Ad Hoc Committees

Ad Hoc Committees may be established by the full board as needed. Those Committees may be established to address any issue for which the full board determines that the subject matter or issue cannot be adequately addressed by the Standing Committees. The members of each Ad Hoc Committee shall elect from among their members a Chair or Co-Chairs for a one-year term. The Chair or Co-Chairs may be reelected to an additional one-year term by the members.

D. Associate Members for Standing and Ad Hoc Committees

Associate Members for Standing and Ad Hoc Committees are non-voting and may be appointed to each Standing or Ad Hoc Committee. Associate Members are individuals or representatives of organizations and agencies whose work and knowledge are deemed important to the Standing or Ad Hoc Committee. The Standing or Ad Hoc Committee may nominate associated organizations and agencies as Associate Members. These nominations shall be confirmed by a majority vote of the full board at the meeting at which they are nominated, unless, on motion of the board, the vote on confirmation is continued to a subsequent meeting of the full board. The term of each Associate Member shall be for one year from the date of their confirmation by the board. An Associate Member may be reappointed in subsequent or consecutive years to the Standing or Ad

Hoc Committee on which they served. Vacancies may be filled at any time using this same process.

Article VIII: Meetings

A. Regular

Regular meetings of the board shall be held not less than nine (9) times per calendar year to be scheduled as the board determines by a majority vote at any regular meeting.

B. Special

Special meetings may be called by the board Chair or upon the request of two members of the board or the Executive Director. With agreement of the majority of board members, a special meeting may be convened. Public notice shall be given in accordance with the Virginia Freedom of Information Act.

C. VFOIA

All meetings shall be open to the public except as provided under the Virginia Freedom of Information Act, Va. Code § 2.23700 *et seq.*, as amended (“VFOIA”). Pursuant to Va. Code § 2.23701, “meeting” or “meetings” means the meetings including work sessions, when sitting physically, or through electronic communications means as permitted by the VFOIA, 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.

D. Quorum and Voting

A quorum is necessary for a vote. A majority of the membership of the board shall constitute a quorum. In making any recommendation, adopting any plan, or approving any proposal, action shall be taken by a majority vote of board members present and voting. Upon the request of any member, the vote of each member on any issue shall be recorded in the minutes. All votes of the board shall be taken during public meetings, and no vote shall be taken by secret or written ballot or proxy.

Article IX: Parliamentary Procedures

Robert’s Rules of Order Newly Revised, latest edition shall govern the board in all cases to which they are applicable and in which they are not inconsistent with these bylaws.

Article X: Amendments

Recommendations to amend, alter or supplement these bylaws may be proposed at any regular meeting of the board. A two-thirds (2/3) vote of those present and voting is needed to send the recommended changes to the Board of Supervisors for their approval for the changes to be effective. Prior to any vote by the board, notice of the proposed changes must be given to each member of the board in writing no less than thirty days prior to the vote.

Approved: _____
CSB Board Chair

Date

Board Agenda Item
July 19, 2022

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. *Jonate Williams v. Fairfax County*, Case No. 1:21-cv-00598 (E.D.Va.)
- 2. *Abrar Omeish v. Sheriff Stacey Ann Kincaid, Officer J. Patrick, and David M. Rohrer*, Case No. 1:21-cv-35 (E.D. Va.)
- 3. *Lamonta Gladney v. Tyler Tyan Timberlake*, Case No. 1:21-cv-287 (E.D. Va.)
- 4. *Sophia D. Alford, et al. v. Fairfax County Department of Family Services – Children, Youth and Families, et al.*; Case No. CL-2021-0002095 (Fx. Co. Cir. Ct.)
- 5. *Tiffanie R. W. Gillis v. Department of Family Services, Youth, Families Division, Child Protective Services*, Case No. CL-2022-0006441 (Fx. Co. Cir. Ct.)
- 6. *Cisco Systems, Inc. v. Board of Supervisors of Fairfax County, Virginia*, Case No. CL-2022-0007328 (Fx. Co. Cir. Ct.)
- 7. *Stewart, Ryan M. v. Fairfax County*, Case No. GV22-006243 (Fx. Co. Gen. Dist. Ct.)
- 8. *April Michelle Marshall, a.k.a. April Norwood v. Alicia A. Adkins, et al.*, Case No. CL-2021-0004405 (Fx. Co. Cir. Ct.)
- 9. *Board of Supervisors of Fairfax County, Virginia v. Srinivas Dasari and Padmaja Phani Dasari*, Case No. CL-2022-0004702 (Fx. Co. Cir. Ct.) (Sully District)
- 10. *Board of Supervisors of Fairfax County, Virginia v. Ajey Bargoti*, Case No. CL-2022-0004703 (Fx. Co. Cir. Ct.) (Sully District)
- 11. *In re: April 20, 2022, Decision of the Board of Zoning Appeals of Fairfax County, Virginia; Addicott Hills Homeowners Association, Inc., Great Falls Citizens*

Board Agenda Item
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- Association, and Farhad Saba v. Stonecrest Home Arts, Inc., and Board of Supervisors of Fairfax County, Virginia, and Addicott Hills Homeowners Association, Inc., Great Falls Citizens Association, and Farhad Saba v. Stonecrest Home Arts, Inc., Board of Supervisors of Fairfax County, Virginia, and Board of Zoning Appeals of Fairfax County, Virginia, Case Nos. CL-2022-0006672, CL-2022-0007036 (Fx. Co. Cir. Ct.) (Dranesville District)*
12. *Brookfield Washington, LLC v. The County of Fairfax, Virginia, The Board of Supervisors of Fairfax County, Virginia, and The Department of Land Development Services of Fairfax County, Virginia, Case No. CL-2022-0008210 (Fx. Co. Cir. Ct.) (Hunter Mill District)*
 13. *Jay Riat, Building Official for Fairfax County, Virginia v. Charles V. Duran, Case No. GV22-006629 (Fx. Co. Gen. Dist. Ct.) (Braddock District)*
 14. *Jay Riat, Building Official for Fairfax County, Virginia v. Gezu D. Kalaye, Case No. GV22-006634 (Fx. Co. Gen. Dist. Ct.) (Braddock District)*
 15. *Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Stephen Patrick MacManus, Case No. GV22-006931 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*
 16. *Jay Riat, Building Official for Fairfax County, Virginia v. Dong Chuel Shim and Bon Suk Shim, Case No. GV22-008024 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*
 17. *Jay Riat, Building Official for Fairfax County, Virginia v. Marsha Lynn Cassell and Andrew Lewis Cassell, Case No. GV22-007336 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)*
 18. *Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Bruce A. Blackerby, Case No. CL-2020-0005195 (Fx. Co. Cir. Ct.) (Hunter Mill District)*
 19. *Jay Riat, Building Official for Fairfax County, Virginia v. Ronald V. Stehman, III and Liza M. Stehman, Case No. GV22-008607 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)*
 20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. John M. Petruncio, Case No. GV22-001321 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)*
 21. *Jay Riat, Building Official for Fairfax County, Virginia v. Nelly Pena, Anabel Garcia and Armino Valera, Case No. GV22-004179 (Fx. Co. Gen. Dist. Ct.) (Lee District)*
 22. *Jay Riat, Building Official for Fairfax County, Virginia v. Rizwan Shah, Case No. GV21-004891 (Fx. Co. Gen. Dist. Ct.) (Lee District)*

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23. *Jay Riat, Building Official for Fairfax County, Virginia v. Theodorus Priftis*, Case No. GV22-009026 (Fx. Co. Gen. Dist. Ct.) (Lee District)
24. *Leslie B. Johnson, Fairfax County Zoning Administrator and Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Kurt W. Kruger*, Case No. CL-2021-0008712 (Fx. Co. Cir. Ct.) (Mason District)
25. *Jay Riat, Building Official for Fairfax County, Virginia v. Miguel A. Giron*, Case No. GV22-000461 (Fx. Co. Gen. Dist. Ct.) (Mason District)
26. *Jay Riat, Building Official for Fairfax County, Virginia v. Bertha Gonzalez, Vladimir A. Gonzalez and Marlene F. Farrell*, Case No. GV22-000966 (Fx. Co. Gen. Dist. Ct.) (Mason District)
27. *Jay Riat, Building Official for Fairfax County, Virginia v. Hien Phong Dang*, Case No. GV22-005081 (Fx. Co. Gen. Dist. Ct.) (Mason District)
28. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Tuan Dang*, Case No. GV22-006229 (Fx. Co. Gen. Dist. Ct.) (Mason District)
29. *Jay Riat, Building Official for Fairfax County, Virginia v. Steuart Backlick Plaza, LLC and Fresh World One, Inc.*, Case No. GV22-006936 (Fx. Co. Gen. Dist. Ct.) (Mason District)
30. *Jay Riat, Building Official for Fairfax County, Virginia v. Mohammed F. Talukder and Momataz Parvin*, Case No. GV22-008609 (Fx. Co. Gen. Dist. Ct.) (Mason District)
31. *Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Ziya Anwar Rahim*, Case No. GV22-008724 (Fx. Co. Gen. Dist. Ct.) (Mason District)
32. *Jay Riat, Building Official for Fairfax County, Virginia v. V-NBC LLC*, Case No. GV21-019281 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
33. *Jay Riat, Building Official for Fairfax County, Virginia v. Charles Randall Gentry*, Case No. GV22-002475 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
34. *Jay Riat, Building Official for Fairfax County, Virginia v. Isela Flores*, Case No. GV22-005080 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
35. *Jay Riat, Building Official for Fairfax County, Virginia v. Kings Crossing Shops, LLC*, Case No. GV22-006633 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
36. *Jay Riat, Building Official for Fairfax County, Virginia v. Meneses Family Trust*, Case No. GV22-008073 (Fx. Co. Gen. Dist. Ct.) (Providence District)

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37. *Jay Riat, Building Official for Fairfax County, Virginia v. Trinh Hoang and Danielle Hoang*, Case No. GV21-016701 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
38. *Jay Riat, Building Official for Fairfax County, Virginia v. Danielle Gilbert*, Case No. GV22-002846 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
39. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Beatrice C. Garcia*, Case No. CL-2022-0004261 (Fx. Co. Cir. Ct.) (Sully District)
40. *Jay Riat, Building Official for Fairfax County, Virginia v. Gail Harris*, Case No. GV22-005090 (Fx. Co. Gen. Dist. Ct.) (Sully District)
41. *Jay Riat, Building Official for Fairfax County, Virginia v. Shun Tak Property, LLC*, Case No. GV22-005088 (Fx. Co. Gen. Dist. Ct.) (Sully District)
42. *Jay Riat, Building Official for Fairfax County, Virginia v. White Bear, LLC*, Case No. GV22-005087 (Fx. Co. Gen. Dist. Ct.) (Sully District)

Board Agenda Item
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3:30 p.m.

Public Hearing on SE 2021-SU-00017 (RP Industrial Owner, LLC) to Permit an Increase in Building Height from 75 Feet up to a Maximum of 102 Feet, Located on Approximately 59.58 Acres of Land (Sully District)

This property is located East of Park Center Road and North of Towerview Road. Tax Map 24-2 ((1)) 12, 12A, 15 and 16.

PLANNING COMMISSION RECOMMENDATION:

On June 22, 2022, the Planning Commission voted 10-0 (Commissioner Sargeant recused himself from the vote and Commissioner Strandlie was not present for the vote) to recommend to the Board of Supervisors the following actions:

- Approval of SE 2021-SU-00017, subject to development conditions dated June 21, 2022;
- Modification of the required number of loading spaces from 20 spaces (five per building) to eight spaces (two per building);
- Modification to allow loading spaces located in the front yard of the site;
- Modifications of the transitional screening yard requirements for the southeastern site boundaries adjacent to Tax Map Parcel 24-2 ((1)) 13A in favor of the landscaping shown on the SE Plat; and
- Modification of the barrier requirement for the southeastern site boundaries adjacent to Tax Map Parcel 24-02 ((1)) 13A in favor of the proposed 8-foot-tall security fence shown on the SE Plat.

ENCLOSED DOCUMENTS:

Additional information available online at:

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

Planning Commission Meetings Video Archive available online at:

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

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STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Emma Estes, Planner, DPD

Board Agenda Item
July 19, 2022

3:30 p.m.

Public Hearing on Proposed Modifications to the Site-Specific Plan Amendment (SSPA) Process

ISSUE:

The Site-Specific Plan Amendment (SSPA) process is a process by which anyone can nominate a change to the County's Comprehensive Plan. The proposed modifications to the process would shorten the overall timeline of the cyclical process, increase the cycle frequency, move to a countywide approach, revise criteria and submission requirements, and increase opportunities for community inclusion and engagement.

PLANNING COMMISSION RECOMMENDATION:

On June 8, 2022, the Planning Commission voted 12-0 to recommend that the Board endorse the proposed changes to the SSPA process as outlined in the enclosed White Paper, with two changes: to move the timeline of the proposed 2022 Countywide nomination period from September 2022 to October 2022, to provide additional time for staff to advertise the changes and upcoming nomination period to the community, and to remove the nomination fee reference in the White Paper from the submission requirements. The White Paper endorsed by the Planning Commission has been updated to reflect recommendations made by the Board of Supervisors (Board), as discussed below.

RECOMMENDATION:

The County Executive recommends that the Board endorse the modifications to the SSPA process as recommended in the enclosed White Paper, dated April 26, 2022, and revised July 5, 2022.

TIMING:

Board action is requested on July 19, 2022, to allow for the new process to begin in October 2022.

BACKGROUND:

Initiated in 2017, the SSPA process involves the review of proposed changes to the Comprehensive Plan called "nominations". The current four-year process alternates between review of nominations in the North County (Dranesville, Hunter Mill,

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Providence, Sully Districts) and the South County (Braddock, Lee, Mason, Mount Vernon, Springfield Districts).

A retrospective of the SSPA process was initiated with a joint meeting of the Planning Commission and the Board on October 12, 2021. Following this meeting, staff conducted community outreach to obtain feedback on potential changes to the process, including a public survey responded to by over 450 participants from across the County, interviews with District SSPA task force chairs and vice chairs, members of the development industry, and other planning participants, and adjacent jurisdictions. The results of this outreach, along with a series of draft recommendations for potential program changes, was presented to the Planning Commission's Land Use Process Review Committee on January 20, 2022, and the Board's Land Use Policy Committee on February 15, 2022. Following these meetings, a working group consisting of two members of the Board and two members of the Planning Commission met with staff in February - March 2022 to consider a range of options for process revisions and provided recommendations on potential changes. The recommendations are detailed in the enclosed white paper and summarized below.

SUMMARY OF SSPA PROCESS MODIFICATIONS:

The proposed modifications would retain the existing three-phase structure (nomination phase, screening phase, evaluation phase), while reducing the overall timeline of review through shorter nomination and screening phases with more flexible and targeted community engagement and a Planning Commission workshop in the screening phase (in lieu of task force meetings and formal Planning Commission hearings, respectively), and a more adaptable engagement model in the evaluation phase targeted to the needs of the specific proposed amendment. The current alternating reviews of the North and South County areas would be replaced with a countywide nomination period every two years to provide more frequent opportunities for nominations to be submitted. Modifications are also proposed to the submission requirements, as well as eligibility and justification criteria, to ensure that more areas of the county are eligible, that the information provided with the nominations can enhance stakeholder's understanding of the proposals, and that the nominations that proceed to the evaluation phase are aligned with County goals. Finally, annual discussions will be held with the Planning Commission and Board to ensure the Comprehensive Plan Amendment Work Program is appropriately balanced to allow for broader planning priorities, such as countywide policy and area studies, as well as site-specific reviews.

OUTREACH ON PROPOSED MODIFICATIONS:

In addition to the outreach that informed development of the recommendations, following the publication of the White Paper on April 26, 2022, staff conducted community outreach to solicit feedback on the proposed changes, including a series of four virtual open houses, meetings with development industry groups and other stakeholder groups. Feedback received during these meetings is provided in the

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Summary of Community Feedback document, linked in the Enclosed Documents section below. Video recordings of the open houses are available at the following link:

<https://www.fairfaxcounty.gov/planning-development/plan-amendments/sspa>

The proposed modifications were discussed at the Planning Commission Land Use Process Review Committee on May 19, 2022. The committee expressed support for the changes, and noted that additional time may be needed to advertise the 2022 nomination period during the summer. Staff concurs and proposes to begin the nomination period in October 2022, which would enable the screening process, to include community meetings and a Planning Commission workshop, to take place in early 2023, ahead of Board action on a revised Comprehensive Plan Amendment Work Program.

The proposed modifications were also discussed at the Board's Land Use Policy Committee on June 14, 2022. Board members expressed support for the new process, with questions about submission requirements for property owner concurrence and the ability to offer exceptions in special circumstances, Board input into the acceptance of nominations, and the public process for the retrospective were discussed. Board comments on these issues are reflected as process modifications in the revised White Paper.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:

Attachment 1: White Paper on Preliminary Recommendations - Modifications to the SSPA Process, dated April 26, 2022 and revised July 5, 2022

Attachment 2: Summary of Community Feedback received on the proposed modifications

Attachment 3: Planning Commission action on the process changes

STAFF:

Rachel Flynn, Deputy County Executive

Leanna O'Donnell, Director, Planning Division (PD), DPD

Meghan Van Dam, Chief, Policy & Plan Development Branch, PD, DPD

Graham Owen, Planner IV, Policy & Plan Development Branch, PD, DPD

Michael Burton, Planner III, Monitoring and Plan Development Branch, PD, DPD

Barbara Byron, Policy Director, Chairman's Office



Recommendations –

Modifications to the SSPA Process

April 26, 2022

REVISED JULY 5, 2022

NOTE: This document was originally published April 26, 2022. Following discussion with the Planning Commission's Land Use Process Review Committee on May 19, 2022, the full Planning Commission on June 8, 2022, and the Board of Supervisor's (Board) Land Use Policy Committee on June 14, 2022, the following changes are proposed to the SSPA process modifications outlined in the document:

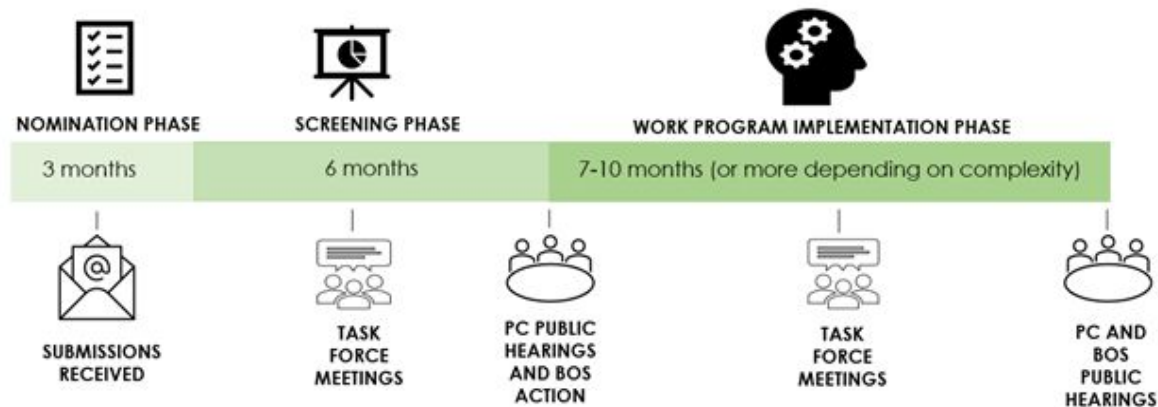
- The Screening phase would begin with Board acceptance/rejection of the nominations via an Action Item at a Board meeting. During this action, the Board may also consider acceptance of nominations on a case-by-case basis that may require flexibility related to the property owners' signature and/or the eligibility criteria that restrict submission of nominations on lands subject to pending and recently adopted land use changes.
- A fee to submit a nomination is no longer proposed.
- The timeline to begin the 2022 Countywide SSPA process Nomination phase would shift from September to October 2022.

These recent changes have been incorporated into in the following document, and are shown in underlined **Bold** font and **Yellow** highlight on pages 8, 10, and 11.

SSPA Retrospective
REVISED July 5, 2022

This paper provides recommendations for changes to the Site-Specific Plan Amendment (SSPA) process, which is one of the ways in which an amendment to the Comprehensive Plan (Plan) can be initiated. The current SSPA process consists of three phases as shown in Figure 1 and described below:

Figure 1: SSPA Process.



- 1) Nomination phase: Anyone may submit a nomination for any site in the County unless the land area is subject to a pending plan amendment, was subject to a plan amendment adopted within the past four years, or if the nomination proposes a change to a countywide policy or system.
- 2) Screening phase: District-appointed community task forces and staff conduct a high-level review of the nominations and provide recommendations as to which nominations should advance for further evaluation as Plan amendments. The Planning Commission holds a public hearing and makes a recommendation on each nomination, after which the Board takes action on which nominations should move forward for further study as part of the Comprehensive Plan Amendment Work Program (Work Program).
- 3) Implementation phase: The community task forces and staff review the specific impacts and considerations for each Plan amendment and provide recommendations on whether they should be adopted into the Comprehensive Plan. This is followed by a public hearing and a recommendation by the Planning Commission on each amendment, after which the Board holds a public hearing and takes action on the proposed amendment.

The SSPA nomination phase opens every two years on an alternating cycle and began in 2017 with the four North County Magisterial Districts (Sully, Providence, Hunter Mill, and Dranesville), followed in 2019 by the five South County Magisterial Districts (Mount Vernon, Mason, Springfield, Braddock, and Lee). The North County cycle Screening phase resulted in four plan amendments out of 10 submissions added for review on the Work Program, with the final amendment from that cohort being adopted on July 13, 2021. The South County cycle began in September 2019 and resulted in eleven plan amendments out of 26 submissions added for review on the Work Program. Two of the Plan amendments from the South County cycle have been adopted, four remain under active review, and five have been deferred.

SSPA Retrospective REVISED July 5, 2022

SSPA Retrospective Initiation

A retrospective of the SSPA process was initiated with a joint meeting of the Planning Commission and the Board on October 12, 2021. Following this meeting, community outreach was conducted in October - November 2021 to obtain feedback on potential changes to the process. The results of this outreach, along with a series of draft recommendations for potential program changes, were presented to the Planning Commission's Land Use Process Review Committee on January 20, 2022 and the Board's Land Use Policy Committee on February 15, 2022. Following these meetings, a working group consisting of two members of the Board and two members of the Planning Commission met with staff in February - March 2022 to consider a range of options for process revisions and provided recommendations on potential changes. The recommendations from this group are detailed in this paper.

SSPA Retrospective Themes

Four themes emerged as initial, high level focus areas where the current process could be improved:

- 1) **Inclusion and community engagement.** Consider ways to engage more intentionally those who live or work near the nominated sites and are thus most potentially impacted by land use changes, including those who may not have participated historically in planning activities.
- 2) **Task force, community, and staff resource demand.** Consider ways to make more efficient use of staff, the community, and the task forces' time by adapting engagement to suit the circumstances presented by the nomination and subsequent study.
- 3) **Plan amendment timeline and prioritization.** Consider ways to reduce the overall timeline of the process to better prioritize nominations that are most in-line with County policies and are likely to be implemented through development, and to offer the ability to better respond to the market.
- 4) **Nomination criteria.** Consider revisions to the criteria used to triage the nominations to better determine those that should go forward.

SSPA Retrospective Outreach

As mentioned above, staff conducted outreach with the key stakeholders and the community at-large to obtain feedback on experiences with the SSPA process. The outreach included interviews with SSPA participants, including individual meetings with Planning Commission and Board members, the chairs and/or vice chairs for all of the SSPA task forces, members of the development community, the land use aides from several supervisor districts, and several Fairfax County agencies. An online community survey was conducted to obtain input from the public, which received over 450 responses from across the county. The results of the survey may be viewed at the following link:

<https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/compplanamend/sspa/retrospective/sspa-survey-responses.pdf>

SSPA Retrospective
REVISED July 5, 2022

Selected survey responses from three main stakeholder groups, 1) task force members, 2) nominators/development industry professionals, and 3) community participants, are provided below and were used to develop the Working Group's recommendations.

Figure 2 provides the responses to a question regarding what types of additional submission items would result in clearer, more understandable nominations, such as a concept plan, pre-submittal nominator engagement with the community, a commitment to file a rezoning with the plan amendment, owner's consent to the nomination, and a submission fee. Submission items that received majority support from the three main stakeholder groups are highlighted in **bold**, with the greatest support for an illustrative concept plan and earlier nominator engagement with the community.

Figure 2. Survey Responses. Nomination Submission Items.

Survey: Submission Items. Which of the following changes to the nomination criteria could result in clearer, more understandable, and better developed nominations? Multiple options may be selected.

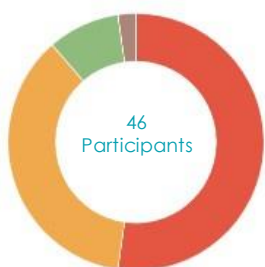
Potential Submission Items	Community	Nominators	TF Members
Conceptual Site Plan	65%	69%	62%
Pre-Submittal Nominator Engagement	80%	42%	71%
Letter of Intent to File Rezoning	38%	58%	40%
Owner's Signature	37%	44%	40%
Submission Fee	26%	22%	31%
Other	7%	14%	7%
Keep the existing criteria only	6%	19%	7%

Figure 3 provides the responses to a question regarding impressions of the overall SSPA cycle length, segmented by the three main stakeholder groups mentioned previously. On the whole, the majority of nominators felt that the process was too lengthy, while the plurality of community participants and task force members felt that the length of the process was about right.

Figure 3. Survey Responses. SSPA Cycle Length.

Survey: SSPA Cycle Length. *Please provide your thoughts on the SSPA cycle's overall length.*

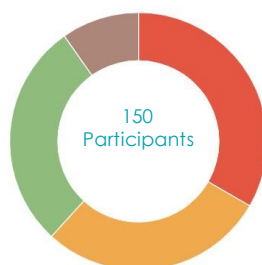
Task Force Members



46
Participants

52% ...about right.
36% ...too lengthy.
9% I do not have an opinion about this.
2% ...too short.

Community Participants



150
Participants

33% ...about right.
28% ...too lengthy.
28% I do not have an opinion about this.
10% ...too short.

Nominators / Industry



47
Participants

50% ...too lengthy.
21% ...about right.
18% I do not have an opinion about this.
11% ...too short.

SSPA Retrospective
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Figure 4 provides the responses to a question about respondents' top three preferred engagement methods for community planning efforts, segmented by the three main stakeholder groups. The preferred engagement method for community participants and nominators was targeted community meetings, whereas the task force members' top preference was for regular task force meetings, followed by targeted community meetings.

Figure 4. Survey Responses. Stakeholder Engagement Preferences.

Survey: Stakeholder Engagement Preferences. Select your top three engagement methods based on your preferences for community planning efforts. Please select only 3 responses.

	Community	Nominators	TF Members
Attending targeted community meetings for nearby residents	60%	49%	64%
Receiving regular email updates	45%	49%	44%
Attending regularly scheduled (bi-weekly) task force meetings	22%	35%	76%
Attending open houses before the nomination period begins	42%	30%	38%
Taking community surveys	41%	30%	13%
Attending open houses during the process	26%	33%	24%
Writing letters to staff, the task force, PC, and/or BOS	20%	28%	4%
Testifying at PC and BOS hearings	14%	19%	11%
Other	1%	2%	0%

Other Jurisdictions

Planning staff from several surrounding jurisdictions in Virginia and Maryland were interviewed to learn how they handle land use proposals on specific sites that require comprehensive plan amendments. Of those that were interviewed, only Arlington and Prince William Counties had a roughly-equivalent process to SSPA, while the rest did not evaluate long-range plan changes at a site-specific level. Arlington and Prince William Counties' site-specific processes require the property owner's consent, fees, and concurrent processing with a rezoning (or, as an alternative, the proposals are considered in the context of a broader small area plan update, roughly equivalent in scope to a Fairfax County planning study for an activity center or corridor). Arlington and Prince William Counties have preliminary phases to their processes similar to the intent of the SSPA Screening phase; however, community engagement during the equivalent of the Screening phase is different than it is in Fairfax County. Arlington County holds a workshop with the Planning Commission which is open to the public, and Prince William County allows open comments at the meeting in which the Board takes action to initiate the plan study.

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Primary Concerns with the Current Process

Based on the stakeholder feedback, community survey, and adjacent jurisdiction interviews, the following primary concerns with the current process were identified:

- The opportunity to submit a nomination is limited to only once every four years, which results in limited opportunities to request consideration of Plan changes and is not adaptable to changing market conditions.
- The process is too lengthy and may result in additional requests for authorization of Comprehensive Plan amendments outside of the regular nomination period.
- Community engagement, particularly in the Screening phase, does not always reach those most affected, and the task force forum may not allow for all stakeholders to be heard, including those most potentially impacted by land use changes. Alternative communication and engagement methods may more effectively disseminate information and gather community feedback.
- Staff and community resources to process SSPAs are often prioritized over other long-range planning work due to the rigid SSPA review schedule.

Goals for Revised Process

In response to the feedback received during the retrospective outreach, the four initial themes were synthesized into two main goals for improvement with the revised process, which the Working Group used to frame its recommendations:

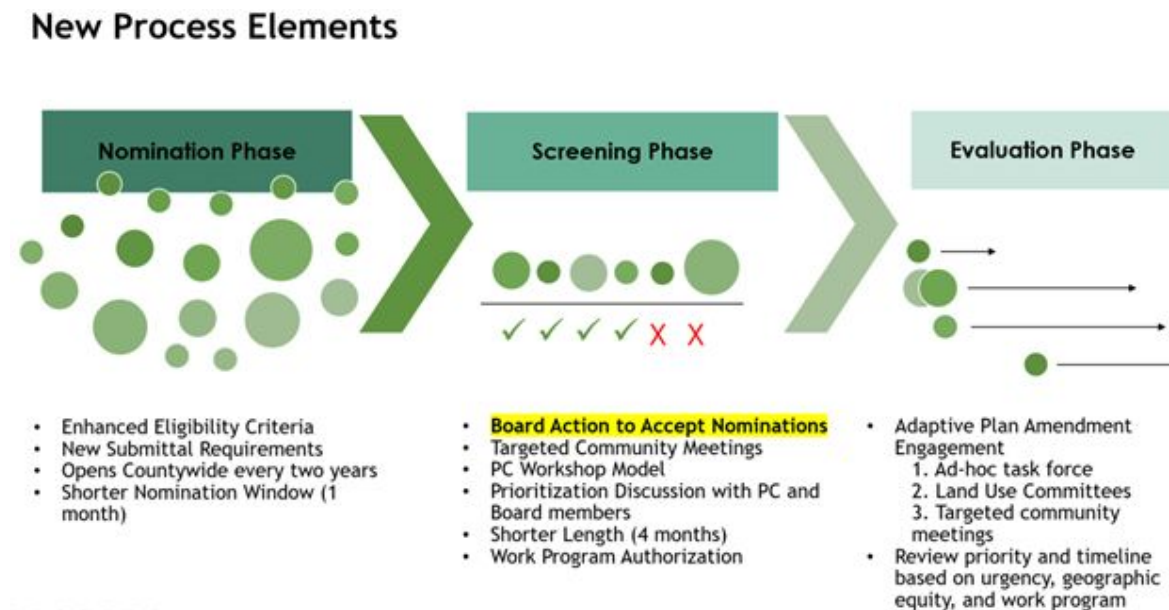
- Goal #1 - Increase inclusion and community engagement.
- Goal #2 - Achieve a better balance between long range planning and site-specific planning, considering the length of time taken, the criteria for nomination, and staff, community, and the Planning Commission's and the Board's resources.

Preliminary Recommendations

The SSPA Working Group developed a series of recommendations that address the themes, goals, and primary concerns identified. The recommendations are shown in Figure 5, below, which is followed by a description of how the revised process is responsive to the goals set forth above.

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Figure 5. Proposed New Process Elements



Goal #1: Increase inclusion and community engagement.

- **Recommended Modifications to the Screening phase**
 - **Through a County Executive Action Item during the screening phase, the Board would take action to accept or reject the individual nominations into the SSPA process, and to accept any requested modifications to the submission criteria, including the owner concurrence. This action would follow initial staff eligibility review, discussion with individual Board members on the nominations in their districts and prior to community engagement on the nominations.**
 - Community engagement during Screening is a priority; however, recognizing the demands placed on community task forces and feedback received on this method, the task force model should be reconsidered for this phase.
 - Targeted community meetings should be held to ensure those living and working near the subject sites are engaged early in the process. Targeted community meetings, which were the preferred method of engagement for most stakeholders when asked in the survey (see Figure 3 above), were thought to provide more appropriate forums for identifying and addressing localized issues.
 - A Planning Commission workshop would take place in lieu of a public hearing for discussion of screening the nominations. The workshop would be open to the public and provide a more deliberative forum for screening with staff and appointed officials to ensure the high-priority nominations are advanced for further review.
 - The Board action on the Work Program would be retained, following the Planning Commission workshop.

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- **Recommended Modifications to the Evaluation phase (previously referred to as the Implementation phase)**
 - Flexibility and adaptability for community engagement should be dependent on the circumstances of the amendment to provide options for the most appropriate means for reviewing the proposed amendment. For example, singular amendments of limited scope and impact could proceed through established means, such as an existing land use committee, or feedback could be obtained from surrounding neighbors via targeted community meetings to ensure participation from those most familiar with the site. Areas receiving multiple Plan amendments in close proximity to one another and containing cumulative considerations, as well as more complex studies (as determined by the scale of the proposed change in the land use mix or density/intensity; the geographic size; or other factors), could be considered by specially appointed task forces.
 - As engagement would be adaptable and would not assume a uniform two-year community task force process for each amendment, the current two-year review timeframes for each cycle would no longer apply; the timelines for amendment review would be based on the circumstances of the amendment and prioritization of Work Program assignments. This will likely result in faster processing for amendments.
 - This adaptive engagement, paired with the more frequent nomination cycle and no uniform end date for the Evaluation phase can also help reallocate community and county resources towards other long-range planning activities outside of the SSPA process. The specific engagement model for each of the nominations that are added to the Work Program would be identified in coordination with the applicable Board member.
 - All amendments would continue to require notification of neighboring properties and advertisement of public hearings before the Planning Commission and Board.

Goal #2: Achieve a better balance between long range planning and site-specific planning, considering the length of time taken, the criteria for nomination, and staff, community, and the Planning Commission's and the Board's resources.

- **Recommended Modifications to the Nomination Phase Frequency**
 - Replace the previous four-year alternating North/South County cycle with a Countywide nomination period held every two years to provide more frequent opportunities for nominations to be submitted, assuming that other recommended changes to the nomination eligibility and justification criteria and submission requirements are also modified. Increasing the frequency of the nomination cycle would also potentially reduce the number of authorizations of site-specific amendments outside of the regular review cycle, providing benefits for the Work Program by steering more site-specific reviews through SSPA, where they can be considered in the aggregate and prioritized.
- **Recommended Modifications to the SSPA Steps and Timeframe**
 - Retain the existing three step structure (Nomination phase, Screening phase, Evaluation phase), and generally, reduce the total timeframe through:
 - A shorter nomination window (reduced from 3 months to 1 month);

SSPA Retrospective
REVISED July 5, 2022

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- Targeted community engagement and Planning Commission workshop at the Screening phase as detailed under Goal #1 (reduced from 6-7 months to 4 months); and,
 - More adaptable community engagement methods at the evaluation phase to suit the needs of the amendment as detailed under Goal #1.
- **Recommended Modifications to the Eligibility Criteria**
 - Modify the eligibility criteria, which are used to determine whether a nomination can be accepted into the SSPA process, as follows:
 - Broaden the range of eligible geography by allowing the nomination of land areas subject to a previous land use plan amendment after two years from the date of adoption (compared to the current four-year requirement);
 - Clarify that land areas are eligible if they are currently or were previously subject to Board action in an amendment with no change to the site's land use recommendation, such as land use mix and/or density/intensity;
 - Retain the current restriction on submissions for changes to countywide policies or systems; and,
 - Retain the current restriction on multiple submissions by a nominator for the same property.
 - **The Board, at its discretion, may add nominations into the process that do not meet the eligibility criterion that eliminates properties that were subject to a land use plan amendment in the prior two years.**
 - **Recommended Modifications to the Submission Items**
 - Require additional submission items beyond the current justification narrative to enhance the community and staff's understanding of the nominations. These additional items would be used to determine a nomination's consistency with the justification criteria provided below, as well as a nomination's prioritization relative to other SSPAs and other long-range planning efforts. Proposed additional submission items are as follows:
 - An illustrative concept plan visually depicting the nomination;
 - Information regarding the nominator's potential development timeline and key factors for engaging the community;
 - The consent of the property owner(s) of the nominated properties;
 - **Submission fee (with a waiver provision) to pay for certain outreach costs associated with the screening phase; and,**
 - Acknowledgement that supportive data and additional analysis may be requested at the Evaluation Phase (for example, Chapter 870 VDOT Transportation Analysis, Environmental Mapping, as applicable).
 - **The Board, at its discretion, may add nominations into the process that do not meet the property owner consent submission requirement.**
 - **Recommended Modifications to the Justification Criteria**
 - Enhance the justification criteria to ensure the nominations include the information required to determine if the proposed amendment is in line with county goals, and of such a high priority or strategic importance that it should warrant site-specific consideration:

SSPA Retrospective
REVISED July 5, 2022

-
- Explain the circumstance, emerging community needs, and/or market changes that would justify the nomination;
 - Explain how the nomination aligns with the broader Comprehensive Plan policies and other Board-adopted policies (for example, the Strategic Plan, One Fairfax Policy, and Communitywide Housing Strategic Plan); and,
 - If a nomination is being re-submitted from a previous SSPA cycle and was not adopted, explain in detail why a change in circumstances (emerging trends, further community outreach, etc.) warrants an additional review.
- **Recommended Modifications to Plan Amendment Prioritization and Monitoring**
 - Conduct periodic discussions/updates with the Planning Commission and Board about the balance of long-range planning activities and staff resources on the Work Program, with a goal of orienting these activities toward broader planning priorities, such as countywide policy studies and area studies. Prioritizing resources for such studies could, in the long run, reduce the need for the site-specific level of analysis.
 - When considering the addition of SSPAs to the Work Program, prioritize nominations that align with county goals and community concerns, address changes in circumstances, and warrant site-specific review due to a strategic importance or a near-term development timeline. Similarly, prioritization should be discussed when site-specific amendments are authorized outside of SSPA in order to demonstrate how resources may need to shift from other long-range planning activities.
 - Monitor the outcomes resulting from the proposed SSPA process changes and make modifications or adjustments as needed following the conclusion of the first countywide cycle.

Next Steps

Should the Board adopt the recommendations in July 2022, it is anticipated that the Countywide nomination period would commence in **October 2022**.

Conclusion

The recommendations for changes to the SSPA process were developed with substantial and substantive input from planning stakeholders and provide an avenue for the County to better address long range planning by ensuring greater flexibility and more efficient use of the SSPA process. The changes, illustrated in Figure 5, would modify, rather than replace, the current process, retaining beneficial elements that have been added over time to organize and prioritize long range planning, while shortening the timeline and gearing community engagement towards the unique circumstances and needs presented by the potential amendments.

Further information on the SSPA Retrospective, including previous presentations to the Planning Commission and Board of Supervisors on the topic, can be viewed at the following link:

<https://www.fairfaxcounty.gov/planning-development/plan-amendments/sspa>

SSPA Retrospective
REVISED July 5, 2022

The results of the SSPA Retrospective Community Survey can be viewed at the following link:

<https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/compplanamend/sspa/retrospective/sspa-survey-responses.pdf>

SSPA Retrospective - Summary of Community Feedback on Proposed Modifications



May 2022

The notes below summarize comments on the proposed modifications to the SSPA process. Comments were received in late April – May 2022 in a series of four public open houses on the proposed changes, as well as meetings with various development industry groups, community groups, and individual planning stakeholders. The comments are arranged by topic, with the stakeholder types identified for context as follows:

- (D) Development Industry Representative
- (T) Task Force Member
- (P) Public Participant/Land Use Committee Member

Countywide Nomination Period Every Two Years

1. Ensure that the nomination form is clear and can be understood and used by member of the public. (P)
2. Greater frequency of the nomination period, paired with the broader eligibility criteria, is a good change. (D)
3. Moving to an annual [countywide] nomination cycle [as opposed to the proposed two-year countywide nomination cycle] would better achieve the goal of steering more amendments to the SSPA cycle, in comparison to out-of-turn amendments. (D)

Screening Phase Community Engagement

4. Whenever possible, cut down on “planner-speak” and use plain language to ensure greater understanding of the process, the proposals, and the issues when providing advertisements, notifications, presentations, and other materials. (T/P)
5. The changes will cut out the community by removing the task force component. (T)
6. The task force model in screening is tough [to understand the level of detail needed] when the focus should be on whether the proposal represents sound land use planning at a high level. (D)
7. Provide the list of nominations on the website, along with maps showing where the nominations are located to ensure people know what is going on around them. (P)
8. Ensure renters are notified of the community meetings. (T/P)
9. Advocates for community members or certain issues should be recognized as stakeholders in the process, not just property owners. (T/P)
10. SSPA remains ultimately a political process. The Planning Commission should have the ability to move nominations forward for further study without concern for political boundaries. (D)

Eligibility Criteria Changes

11. If only one proposal is allowed for sites by a nominator, flexibility should be provided for nominations to propose alternative layouts, variations of land use programs, etc. that are still based on a main idea. The proposal should be allowed to change and adapt throughout the process. Rigid adherence to the initial proposal limits the ability for the proposal to evolve. (D)

Justification Criteria Changes

12. Ensure that the justification criterion "Explain how the proposal responds to changes in circumstances or emerging community concerns" can include market changes. (D)

Submission Requirement Changes

13. Requiring property owners' signature is commendable. (D)
14. Requiring property owners' consent will cut out some community-driven nominations. (T)
15. Guidance will be needed on the level of detail expected for the illustrative plan. The illustrative plan should be general and not an engineered plan. (D)
16. More stringent requirements, paired with the increased frequency of the cycle, should smooth out the number of nominations that are submitted in a given cycle. The changes should also produce more concurrent rezoning cases, which tend to have an easier review process. (D)

Planning Prioritization

17. Issues that are relevant beyond the immediate area of the site should be considered, especially impacts to public facilities. (P)
18. There is a need for enhanced supporting data (for example, stormwater calculations) during the planning process. (P)
19. Issues of general concern that are common amongst SSPA nominations (such as office repurposing, retail and shopping center redevelopment, etc.) could be better addressed through countywide policy, rather than addressing the same issues on multiple sites. (D)
20. Consideration should be given for room on the Work Program for Board authorizations outside of the cycle, not just SSPAs. (D)

Evaluation Phase Community Engagement

21. Uncertainty about the exact outreach type at the Evaluation phase could be an issue since it will not be identified until the Work Program is adopted. Would recommend identifying potential or recommended engagement types during the Screening phase so that the community can have greater certainty about next steps if a nomination is added to the Work Program. (D)
22. There should be intentional outreach to advocates so they know how to participate, the website should be updated to help the public know. (T)

23. Consider ways to intentionally reach out to underserved populations and people under 50 years of age. 75% of planning participants are older residents and we should bring in younger age groups. (P)

Other Topics

24. There may be policy issues related to the post-COVID-19 environment that need to be addressed at a countywide level. (P)
25. HOA Newsletters are a great way to get the word out about planning issues, in addition to district newsletters, and the Department should consider using these for outreach on a regular basis. (P)
26. Areas targeted for growth in the Comprehensive Plan should have far broader plan recommendations to facilitate implementation. (D)
27. Update the SSPA website to make it easier for advocates and members of the public to identify the key issues being considered with the nominations and resulting plan amendments. (T)
28. Enhance community notification on SSPA and other planning efforts by considering regular, public newsletters that provide plain language summaries of what's going on in the planning realm. (T)

**County of Fairfax, Virginia
Planning Commission Meeting
June 8, 2022
Planning Commission Action**

**RECOMMENDATION ON PROPOSED MODIFICATIONS TO THE SITE-SPECIFIC PLAN
AMENDMENT PROCESS**
(Countywide)

During Commission Matters

PLANNING COMMISSION RECOMMENDATION:

On June 8, 2022, the Planning Commission voted 12-0 to recommend endorsement of the proposed modifications to the Site Specific Plan Amendment (SSPA) process, as presented in the White Paper on Preliminary Recommendations, entitled Modifications to the SSPA Process, dated April 26, 2022, with changes to remove the nomination fee referenced in this paper from the submission requirements, and to shift the proposed timeline for the upcoming 2022 Countywide SSPA nomination period to begin in October 2022 in order to provide additional time for staff to advertise the changes and upcoming nomination period to the community.

ATTACHED DOCUMENTS:

White Paper on Preliminary Recommendations - Modifications to the SSPA Process dated April 26, 2022

SS

Board Agenda Item
July 19, 2022

4:00 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Scotts Run Station North (Providence District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of the Scotts Run Station North project, in Project 2G40-057-000, Tysons Grid Streets Developer Contributions in Fund 30040, Contributed Roadway Improvements.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:

On June 7, 2022, the Board authorized advertisement of a public hearing to be held on July 19, 2022, commencing at 4:00 p.m.

BACKGROUND:

The Tysons Comprehensive Plan (2010, amended through 2017) identifies necessary improvements to respond to land development. Among those are new (grid) public streets, ramp connections to I-495 and the Dulles Toll Road, and other capacity improvements. Once acquired, the land currently owned by the Gates of McLean Condominium Unit Owners Association will allow for future construction of an important public grid street identified in the Plan. This future grid street is also part of a future realignment of an existing ramp connection to the Dulles Toll Road. Currently, plans and analyses have been approved and completed to help further infrastructure improvements in this immediate area of Tysons. Additionally, Capital One, the now owner of the formally approved site "Scotts Run Station North" is committed to advancing construction of this planned public street, among others in the vicinity, to frontload critical transportation infrastructure as Tysons East continues to develop. Acquiring this piece of land will enable this process to move forward.

Land rights are required for improvements on one property which has not been acquired by the Land Acquisition Division. The ownership is vested with the Gates of McLean Condominium Unit Owners Association (the Association) which is improved with 624 residential units, and the Association's bylaws state that a majority vote (more

Board Agenda Item
July 19, 2022

than 50 percent) is needed. The Association's legal counsel has deemed that impractical and because the resolution of this acquisition is not feasible, it may be necessary for the Board to utilize quick-take eminent domain powers to commence construction of this project on schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1901 through 15.2-1905 (as amended). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

FISCAL IMPACT:

Funding is available in Project 2G40-057-000, Tysons Grid of Streets Developer Contributions, in Fund 30040, Contributed Roadway Improvements. On October 16, 2012, the Board of Supervisors approved the motion to direct staff to maintain a Tysons Transportation Funding Plan to include construction of the on-site portions of the Grid, as well as for contributions to the Tysons Road Fund to support the construction of off-site portions of the Grid (Attachment C). There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment A – Project Location Map

Attachment B – Resolution with Fact Sheets on the affected parcel with plat showing the interest to be acquired (Attachments 1 and 1A)

Attachment C – Tysons Funding Plan

STAFF:

Rachel Flynn, Deputy County Executive

Tom Biesiadny, Director, Office of Transportation

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

Carey F. Needham, Deputy Director, DPWES, Capital Facilities

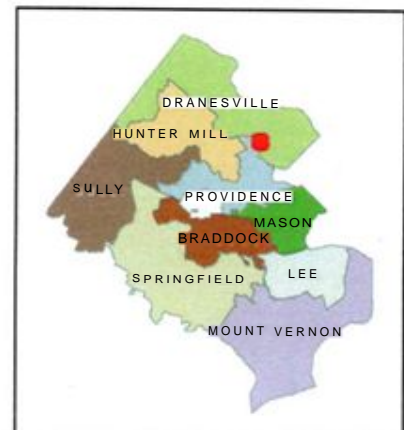
ASSIGNED COUNSEL:

F. Hayden Coddington, Assistant County Attorney



Providence District

Acquisition Area : IIIIKIIIIKIIIIKIIIIII



ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, July 19, 2022, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, certain Project 2G40-057-005, Scotts Run Station North had been approved; and

WHEREAS, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

WHEREAS, the property interests that are necessary have been identified; and

WHEREAS, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than September 3, 2022

NOW THEREFORE BE IT RESOLVED, that the Director, Land Acquisition Division, in cooperation with the County Attorney, is directed to acquire the property interests listed in Attachments 1 through 1A by gift, purchase, exchange, or eminent domain; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of land development of new public (grid) streets, ramp connections to I-495 and the Dulles Toll Road and other capacity improvements as shown and described in the plans of Project 2G40-057-005, Scotts Run Station North, on file in the Land Acquisition Division of the

Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

RESOLVED, that this Board does hereby exercise those powers granted to it by the Code of Virginia and does hereby authorize and direct the Director, Land Acquisition Division, on or after August 19, 2022, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the Code of Virginia as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

RESOLVED, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES
Project 2G40-057-005 – Scotts Run Station North
(Providence District)

<u>PROPERTY OWNER(S)</u>	<u>TAX MAP NUMBER</u>
1. Gates of McLean Condominium Unit Association	029-4-12-CONDO
Address: 1510 Spring Gate Road, McLean, VA 22102	

A Copy – Teste:

Jill G. Cooper
Clerk to the Board of Supervisors

ATTACHMENT 1

AFFECTED PROPERTY

Tax Map Number: 029-4-12-CONDO

Street Address: 1510 Spring Gate Road

OWNER(S): Gates of McLean Condominium Unit Association

INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Deed of Dedication – 25,374 sq. ft.

VALUE

Estimated value of interests and damages:

TWO MILLION NINE HUNDRED NINETEEN THOUSAND FIVE HUNDRED
DOLLARS (\$2,919,500.00)

NOTES

1. THE PROPERTY SHOWN HEREON IS LOCATED ON FAIRFAX COUNTY TAX MAP NUMBER 0294 AND IS ZONED PDH+30 (RESIDENTIAL 30 QU/AC) UNDER THE FAIRFAX COUNTY ZONING ORDINANCE.
2. BOUNDARY AND NORTH INFORMATION SHOWN HEREON IS BASED ON EXISTING LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA AND A FIELD RUN SURVEY PERFORMED BY BOWMAN CONSULTING GROUP LTD. VERTICAL DATUM IS REFERENCED TO THE NAVD 29 DATUM.
3. THE SURVEYED PROPERTIES SHOWN HEREON LIE WITHIN ZONE "X", AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AND ZONE "AE", BASE FLOOD ELEVATIONS DETERMINED, AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP FOR FAIRFAX COUNTY, VIRGINIA, COMMUNITY-PANEL NUMBER 51059 C016GE DATED SEPTEMBER 17, 2010.
4. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS OR OTHER INTEREST IN THE COUNTY REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SHOWN ON THIS PUT.
5. ANY FUTURE EASEMENT OR AUTHORIZATION FOR ELECTRIC CABLE, TELEPHONE OR GAS SERVICES TO BE FURNISHED TO THE PROPERTY SHOWN ON THIS PUN/PUT SHALL COMPLY WITH THE PROVISIONS OF VA. CODE 15.2-2241(6).

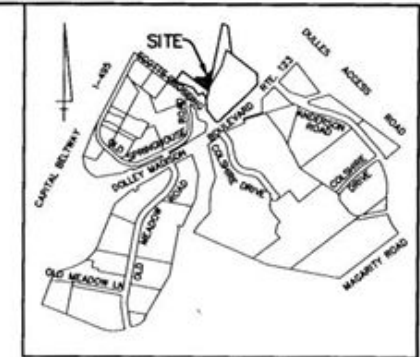
WETLANDS STATEMENT

I HEREBY CERTIFY THAT ALL WETLANDS PERMITS REQUIRED BY LAW WILL BE OBTAINED PRIOR TO COMMENCING LAND DISTURBING ACTIVITIES.

SIGNATURE _____

OWIER/DEVELOPER _____ NAME _____

AGENT	TITLE
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VICINITY MAP
SCALE: 1" = 1000'

THE GATES OF
MCLEAN
CONDOMINIUM UNIT
OWNERS
ASSOCIATION
D.B. 14562 PG. 264

N 45°28'30" E 144.83'

EX. CONSERVATION, FLOODPLAIN
& STORM DRAIN EASEMENTS
D.B. 9674 PG. 622

25,374 S.F OR 0.58250 AC.
HEREBY DEDICATED FOR
PUBLIC STREET PURPOSES

LOT 9
WESTGATE
INDUSTRIAL PARK
PIN: 0294-05-01X18

LOT 9A
WESTGATE
INDUSTRIAL PARK
PIN: 0294-00-0008.4

WE3IGA
NDUSYRLAL PARK
PIN: 0234-05-00104

SURVEYOR'S CERTIFICATE

I, BRENT EVANS, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT I HAVE CAREFULLY SURVEYED THE PROPERLY DELINEATED ON THIS PLOT SUBDIVISION, THAT THIS PROPERTY IS NOW IN THE HANDS OF AN HOA OR CONDOMINIUM UNIT OWNERS ASSOCIATION AS RECORDED IN DEED BOOK 14562 PAGE 164 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA AND THAT ALL COURSES ARE REFERENCED TO VIRGINIA STATE GRID NORTH, VCS 83, NORTH ZONE.

I FURTHER CERTIFY THAT THE UNO SHOWN HEREON UES WITHIN THE BOUNDS OF THE ORIGINAL TRACT AND THAT THIS PUT IS AN ACCURATE REPRESENTATION OF THE SAME. SHOULD BOWMAN CONSULTING GROUP SERVICES BE RETAINED FOR THE PURPOSE OF MONUMENTATION, IRON PIPE WILL BE SET IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF FAIRFAX COUNTY, VIRGINIA.

PUT SHOWING
DEDICATION FOR PUBLIC STREET PURPOSES
THROUGH THE PROPERTY BEING IN THE NAME OF
THE GATES OF MCLEAN CONDOMINIUM UNIT
OWNERS ASSOCIATION
DEED BOOK 14562 PAGE 264
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

APRIL 15, 2021

SCALE: $r=40'$

REVISION

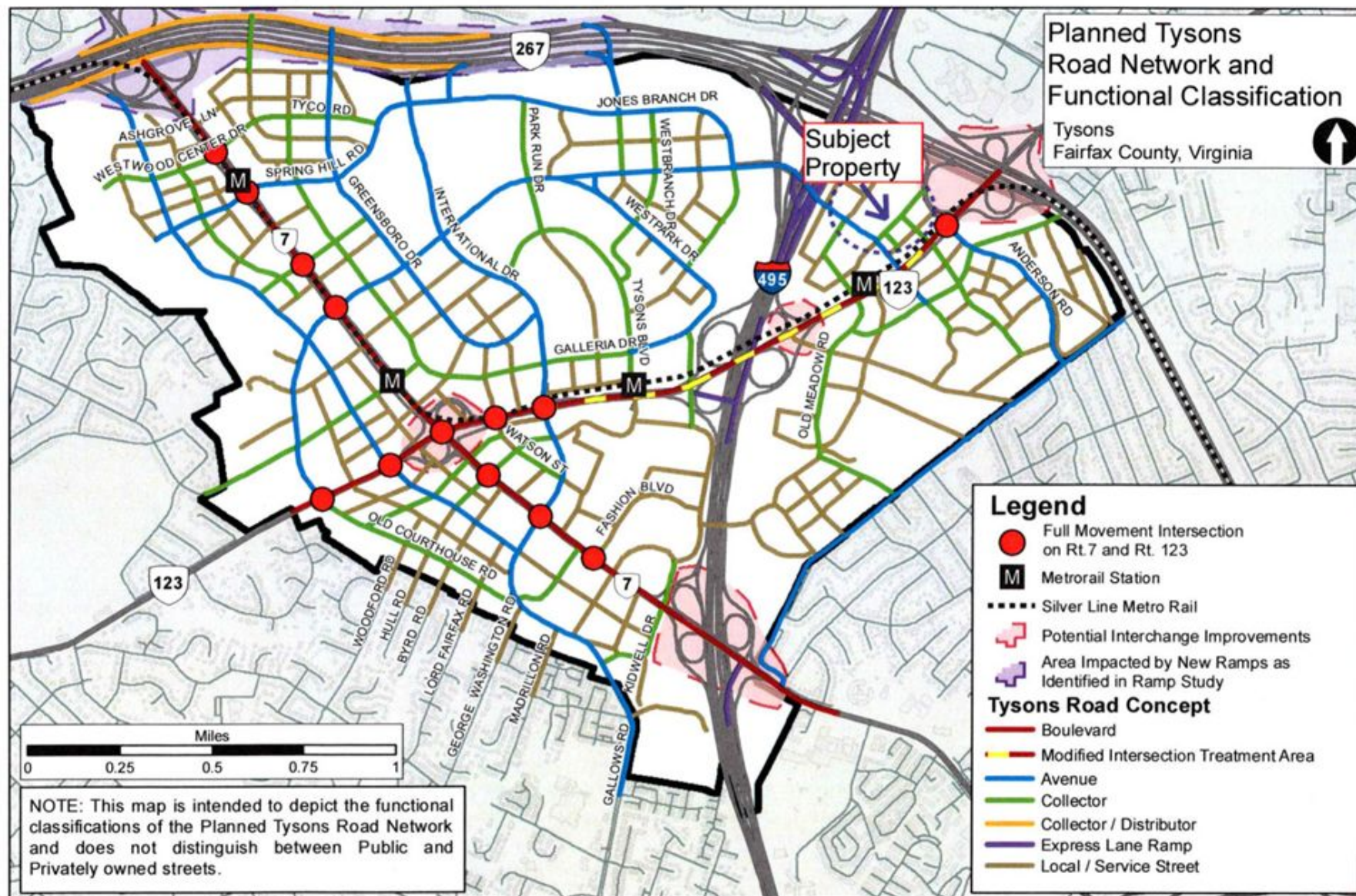
Bowman

Bowman Consulting Group, U.d.
13461 Swire Village Drive, Suite 500
Herndon, VA 20171
Phone: (703) 464-1000
Fax: (703) 461-9720
mmcbowmanconsulting.com

DWC:	P: 7403 - Bert Group Preperim 740U-2Mm (SUB) - Cap One Scottie Run North Arrow	BY: CEP	CHK: BE	QC:
------	--	---------	---------	-----

BCG PROJECT NO:7405-28-0011	TASK:	COUNTY REF NO:	SHEET 1 OF 1
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***OCCALCO**



Board Agenda Item
July 19, 2022

4:00 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Pole Road Crosswalk Improvements (Mount Vernon District)

ISSUE:

Public Hearing on the acquisition of certain land rights necessary for the construction of Project 2G40-088-083, Pole Road Crosswalk Improvements, Fund 40010, County and Regional Transportation Projects.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:

On June 28, 2022, the Board authorized advertisement of a public hearing to be held on July 19, 2022, commencing at 4:00 p.m.

BACKGROUND:

The County is planning to construct infrastructure improvements at the intersection of Pole Road and Sacramento Drive; it includes adding three high visibility crosswalks, modifications to an existing pedestrian refuge island to provide a cut through to the crosswalk, new or rebuilt curb ramps at the northeast, southeast and southwest quadrants, and a sidewalk connection across the median between Pole Road and the Pinewood Lawns Condominiums access road. The design will also include adding advanced/enhanced pedestrian warning signage for the Pole Road crosswalk.

The construction of the project requires the acquisition of land by Dedication for Public Street Purposes.

Negotiations are in progress with the owner of this property; however, because resolution of these acquisitions is not imminent, it may become necessary for the Board to utilize quick-take eminent domain powers to commence construction of this project on schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1901 through 1905 (as amended). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

Board Agenda Item
July 19, 2022

FISCAL IMPACT:

Funding is available in Project 2G40-088-000, County Six-Year Bike and Pedestrian Program, Fund 40010, County and Regional Transportation Projects. This project is included in the Adopted FY 2023 – FY 2027 Capital Improvement Program (with future Fiscal Years to FY 2032), and is included in the Board's Transportation Priorities Plan (TPP) adopted on January 28, 2014, and as amended on December 3, 2019. No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:

Attachment A – Project Location Map
Attachment B – Resolution
Attachment 1 - Fact Sheets on the affected parcels
Attachment 2 - Plat showing interests to be acquired

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Department of Transportation
Christopher Herrington, Director, Department of Public Works and Environmental Services (DPWES)
Carey F. Needham, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:

Hayden Coddington, Assistant County Attorney



ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, July 19, 2022, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, certain Project 2G40-088-083, Pole Road Crosswalk Improvements had been approved; and

WHEREAS, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

WHEREAS, the property interests that are necessary have been identified; and

WHEREAS, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than August 31, 2022.

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 Attachment A by gift, purchase, exchange, or eminent domain; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of constructing infrastructure improvements at the intersection of Pole Road and Sacramento Drive; it includes adding three high visibility crosswalks, modifications to an existing pedestrian

refuge island to provide a cut through to the crosswalk, new or rebuilt curb ramps at the northeast, southeast and southwest quadrants, and a sidewalk connection across the median between Pole Road and the Pinewood Lawns Condominiums access road. The design will also include adding advanced/enhanced pedestrian warning signage for the Pole Road crosswalk as shown and described in the plans of Project 2G40-088-083, Pole Road Crosswalk Improvements on file in the Land Acquisition Division of the Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

RESOLVED, that this Board does hereby exercise those powers granted to it by the Code of Virginia and does hereby authorize and direct the Director, Land Acquisition Division, on or after August 19, 2022, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the Code of Virginia as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

RESOLVED, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES
Project 2G40-088-083, Pole Road Crosswalk Improvements
(Mount Vernon District)

PROPERTY OWNERS

TAX MAP NUMBER

1. Pinewood Lawns Council of Co-Owners

100-4-03-CONDO

Address: N/A

Mailing Address: 5601 Pole Rd, Alexandria, VA 22309

A Copy – Teste:

Jill Cooper
Clerk to the Board of Supervisors

ATTACHMENT 1

AFFECTED PROPERTY

Tax Map Number: 100-4-03-CONDO

Street Address: N/A

OWNERS: Pinewood Lawns Council of Co-Owners

INTERESTS REQUIRED: (As shown on attached plat/plan)

Dedication for Public Street Purposes – 2,448 sq. ft.

VALUE

Estimated value of interests and damages:

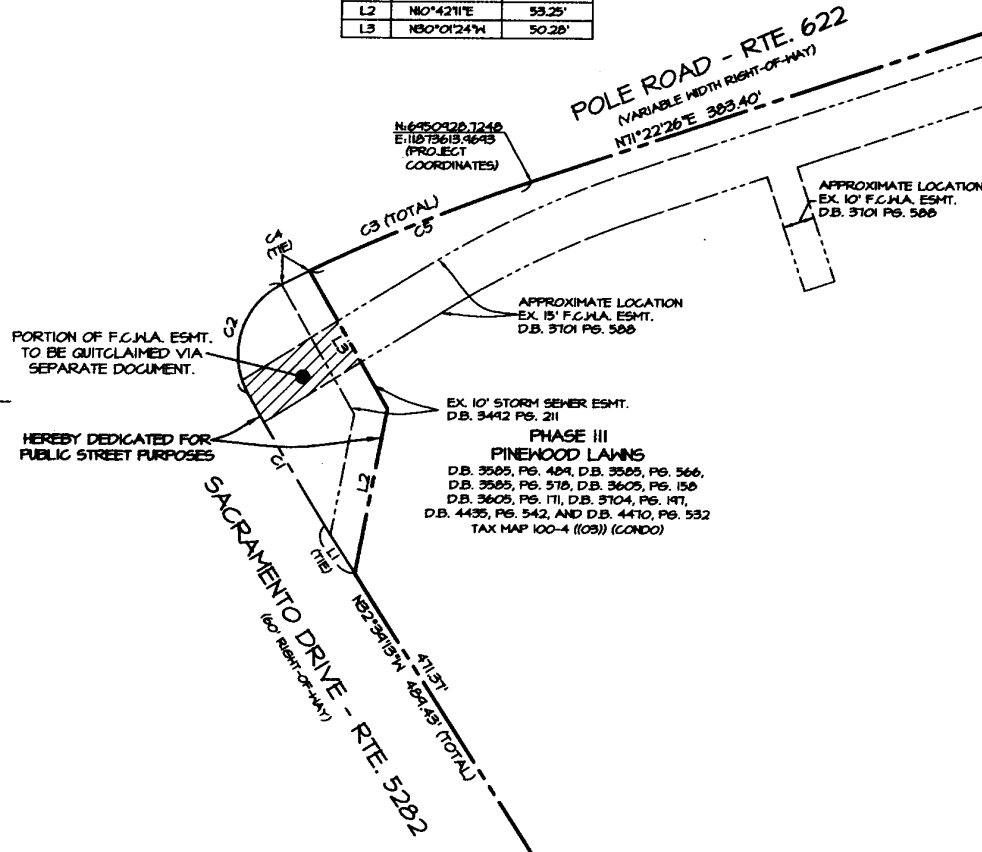
FORTY-TWO THOUSAND FOUR HUNDRED (\$42,400.00)

ATTACHMENT 2

VA STATE
72
GRID NORTH
VCS 84 NORTH ZONE

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE	TANGENT
C1	750.00'	48.78'	N 30°47'25" W	48.77'	3°43'36"	24.40'
C2	25.00'	40.25'	N 17°11'44" E	36.04'	42°14'42"	26.00'
C3	606.98'	85.34'	N 67°20'45" E	85.21'	8°09'21"	42.74'
C4	606.98'	9.74'	N 65°46'49" E	9.74'	0°55'28"	4.90'
C5	606.98'	75.55'	N 67°48'30" E	75.50'	1°01'53"	51.82'

LINE	BEARING	DISTANCE
L1	N82°34'13"W	18.06'
L2	N10°42'11"E	53.25'
L3	N80°01'24"W	50.28'



NOTES:
THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT; THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE NECESSARILY SHOWN HEREON.

THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY; ALL EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.

THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND LIMITED MONUMENT TIES AND DOES NOT REPRESENT AN ACTUAL FIELD RUN BOUNDARY SURVEY.

ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.

THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON TAX ASSESSMENT MAP 100-4 ((03)) CONDO

POLE ROAD CROSSWALK IMPROVEMENTS

PROJECT NUMBER 2640-088-083

FAIRFAX COUNTY, VIRGINIA
DEPT. OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PKWY, FAIRFAX, VIRGINIA

PLAT SHOWING DEDICATION FOR
PUBLIC STREET PURPOSES
THROUGH THE PROPERTY BEING
PHASE III
PINWOOD LAWN CONDOMINIUM
AS DECLARED AND RECORDED AT
D.B. 3585, PG. 484, D.B. 3585, PG. 566,
D.B. 3585, PG. 578, D.B. 3605, PG. 158
D.B. 3605, PG. 171, D.B. 3704, PG. 197,
D.B. 4435, PG. 542, AND D.B. 4470, PG. 532

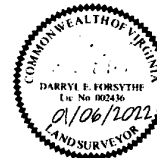
MOUNT VERNON DISTRICT, FAIRFAX COUNTY SHEET 1 OF 1
SCALE: 1"=25' DATE: 01/06/2022 DRAWN BY: KRM

DEDICATION AREA
DEDICATION FOR PUBLIC STREET PURPOSES 2,448 SQ. FT. OR 0.0562 AC.

Scale: 1" = 25'

RA
RICE
ASSOCIATES

PLAT PREPARED BY:
RICE ASSOCIATES
10661 BASKINS WAY
MANASSAS, VA 20109
703-468-3200
WWW.RICESURVEYS.COM



Board Agenda Item
July 19, 2022

4:00 p.m.

Public Hearing on a Proposal to Vacate a Portion of Westbranch Drive (Providence District)

ISSUE:

Public hearing on a proposal to vacate a portion of Westbranch Drive.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached ordinance (Attachment III) for vacation of the subject right-of-way.

TIMING:

On June 7, 2022, the Board authorized the public hearing to consider the proposed vacation for July 19, 2022, at 4:00 p.m.

BACKGROUND:

The applicant, McGuire Woods LLP, on behalf of Arbor Row Project, LLC, is requesting that a portion of Westbranch Drive be vacated under §15.2-2272(2) of the Virginia Code. As a result of the Board's approval of RZ 2011-PR-023, the applicant is seeking this request to complete the redevelopment plans associated with the approved rezoning. The subject area of Westbranch Drive would be incorporated into the redevelopment's building zone and private streetscape area, consistent with the approved zoning case and pending Site Plan.

The subject portion of Westbranch Drive is located along the western side of Westbranch Drive south of the intersection of Westbranch Drive and Westpark Drive. The subject portion of right-of-way is also outside of the vehicular travel lanes and does not impact the overall mileage of Westbranch Drive. Westbranch Drive was originally conveyed to the Board of Supervisors of Fairfax County by virtue of a deed and plat recorded in Deed Book 4040 at Page 333, among the land records of Fairfax County, Virginia. The property that abuts the existing right-of-way to be vacated is currently occupied by Tax Map 0294-07-0010A, to which the land would revert after the vacation. The total area to be vacated is 3,577 square feet.

Board Agenda Item
July 19, 2022

Traffic Circulation and Access

The vacation 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 vacate 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 indicate any opposition to the proposal.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Application Letter
Attachment II: Notice of Intent to Vacate
Attachment III: Ordinance of Vacation
Attachment IV: Metes and Bounds Description
Attachment V: Vacation Plat
Attachment VI: Vicinity Map
Attachment VII: RZ 2011-PR-023 Proffer Excerpt
Attachment VIII: RZ 2011-PR-023 CDP Excerpts

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Jeff Hermann, Division Chief, FCDOT
Greg Fuller, Section Chief, FCDOT
Michelle Guthrie, FCDOT
Jeffrey Edmondson, FCDOT

ASSIGNED COUNSEL:

Randall Greehan, Assistant County Attorney

McGuireWoods LLP
 1750 Tysons Boulevard
 Suite 1800
 Tysons, VA 22102-4215
 Phone: 703.712.5000
 Fax: 703.712.5050
 www.mcguirewoods.com

Michael D. Van Atta
 Direct: 703.712.5335

McGUIREWOODS

mvanatta@mcguirewoods.com

November 19, 2021

Jeff Edmondson
 Fairfax County Department of Transportation
 4050 Legato Rd, Suite 400
 Fairfax, Virginia 22033

Re: Arbor Row Block A Right-of-Way Vacation

Dear Mr. Edmondson,

On behalf of my client, Arbor Row Project, LLC (the current owner of the Property as defined below), I request that the County review the final application for the vacation of right-of-way (ROW) associated with Westbranch Drive.

RZ 2011-PR-023 (the "Rezoning") was approved by the Board of Supervisors (BOS) on November 20, 2012 for the land area commonly known as "Arbor Row", which includes Arbor Row Block A [Tax Map Parcels 29-4 ((7)) 10A and 10B], (the "Property"). The governing proffers (Attachment 1) for the Property reference a 3,428 square foot portion of Westbranch Drive ROW (the "ROW") to be included in the rezoning application area and proposed for future abandonment and/or vacation. The governing Conceptual Development Plan specifically shows an "Area of Vacation" of approximately 3,428 square feet along the Westbranch Road frontage of the proposed redevelopment on Sheet C9.3 (Attachment 2). This Area of Vacation (the "ROW") is also shown on the governing Final Development Plan for the Property (FDP 2011-PR-023-1) on Sheet C7.1 (Attachment 3). A note is provided on Sheet C7.1 that states "Area of right of way dedication/vacation shown on this FDP are approximate. Final areas, location and quantities of street right of way dedication and or vacation are to be determined at time of final site plan". The ROW has recently been resurveyed and the new plat and legal description show the ROW vacation area as approximately 3,577 square feet (see Attachments 4 and 5).


The governing zoning approval shows a range of streetscape improvements within the existing ROW associated with Westbranch Drive. The ROW was originally dedicated to the Board of Supervisor in conjunction with the original Westpark Subdivision pursuant to DB 4040-333 (Attachment 6). The ROW to be vacated is no longer needed for public street purposes and will instead incorporate the approved redevelopment's building zone and private streetscape area, consistent with the approved zoning and pending Site Plan. This ROW vacation was reviewed during the rezoning review process by the Department of Planning and Zoning, FCDOT and VDOT. The VDOT memo has been included as Attachment 7.

Please review this application and do not hesitate to contact me if you have any questions or require additional information. Please also confirm that no public hearing is necessary for the requested vacation of ROW given that the ROW was included as a part of the rezoning subject

November 19, 2021
Page 2

area and was likewise included in the requisite notification and public hearings associated with both the approved Rezoning and the FDP.

Sincerely,



Mike Van Atta
McGuireWoods LLP

Attachments

- Attachment 1: RZ 2011-PR-023 Proffers
- Attachment 2: Sheet C9.3 from CDP
- Attachment 3: Sheet C7.1 from FDP 2011-PR-023
- Attachment 4: Vacation of ROW Plat (clean and with utility overlay)
- Attachment 5: Vacation of ROW Legal Description
- Attachment 6: DB 4040-333
- Attachment 7: RZ 2011-PR-009 – VDOT Memo
- Attachment 8: Vicinity Map

NOTICE OF INTENT TO
ADOPT AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

Westbranch Drive

Providence District,
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on July 19, 2022, at 4:00 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia, pursuant to Virginia Code Ann. § 15.2-2204 and § 15.2-2272(2), vacating a part of the plat of Westpark Subdivision, recorded in Deed Book 4040, at Page 333, on which is shown Westbranch Drive from Westpark Drive to the southernmost corner of Lot 10A, a distance of 450 feet. The road is located adjacent to Tax Map 029-4-07-0010A and is described and shown on the metes and bounds schedule, dated November 17, 2021, and plat, dated June 10, 2014, and revised through November 17, 2021, both prepared by Bowman Consulting Group, Ltd., and both of which are on file in the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600.

All persons wishing to speak on this subject may call the Office of the Clerk to the Board, (703) 324-3151, to be placed on the Speaker's List, or may appear and be heard.

PROVIDENCE DISTRICT.

ADOPTION OF AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

Westbranch Drive

Providence District,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax County, Virginia, on July 19, 2022, at which meeting a quorum was present and voting, the Board, after conducting a public hearing upon due notice given pursuant to Virginia Code Ann. §15.2-2204 and as otherwise required by law, adopted the following ordinance, to-wit:

BE IT ORDAINED by the Board of Supervisors of Fairfax County, Virginia: that Part of the Plat of Westpark Subdivision, recorded in Deed Book 4040 at Page 333, on which is shown Westbranch Drive, from Westpark Drive, to the southernmost corner of Lot 10A, a distance of 450 feet, located on Tax Map 029-4-07-0010A, and described and shown on the metes and bounds schedule and plat prepared by Bowman Consulting Group, Ltd., dated November 17, 2021, and attached hereto and incorporated herein, be and the same is hereby vacated, pursuant to Virginia Code Ann. §15.2-2272(2).

This vacation is subject to any right, privilege, permit, license, 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 currently in use or of record, including the right to operate, maintain, replace, alter, extend, increase, or decrease in size any facilities in the vacated roadway, without any permission of the landowner.

A Copy Teste:

Jill G. Cooper
Clerk to the Board of Supervisors

§15.2-2272(2)



DESCRIPTION OF A VACATION OF RIGHT-OF-WAY

**ON THE RIGHT-OF-WAY OF
WESTBRANCH DRIVE**

Deed Book 4040 Page 333

Fairfax County, Virginia

BEGINNING AT A POINT lying at the intersection of Westpark Drive and Westbranch Drive, as recorded in deed book 4040 at page 333, said point also lying on the northern property line of Lot 10A, Westpark Subdivision, as recorded in deed book 25814 at page 1213; thence running through the existing right-of-way of Westbranch Drive following seven (7) courses and distances

1. **8.60 feet**, along the length of an arc curving to the left having a radius of **5.50 feet**, a central angle of **89°33'56"**, and a chord bearing of **S 03°58'03" E**, and a chord length of **7.75 feet** to a point; thence
2. **S 40°48'56" W**, a distance of **8.35 feet** to a point; thence
3. **S 49°11'04" E**, a distance of **6.59 feet** to a point; thence
4. **S 40°48'56" W** a distance of **372.15 feet** to a point; thence
5. **N 49°11'04" W**, a distance of **9.50 feet** to a point; thence
6. **N 40°48'56" E**, a distance of **375.00 feet** to a point; thence
7. **11.39 feet**, along the length of an arc curving to the left having a radius of **25.00 feet**, a central angle of **26°06'14"**, and a chord bearing of **N 27°45'49" E**, and a chord length of **11.29 feet** to the **POINT OF BEGINNING**.

Containing an area of **3,577 Square Feet** or **0.08211 Acres** of land.

(E1) EX. 10' VEPSCO EASEMENT
D.B. 4498, PG. 249
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)

(E2) EX. UNDERGROUND EASEMENT
D.B. 7280, PG. 1748
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)

(E3) EX. C&P EASEMENT
D.B. 4164, PG. 567
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)

(W1) EX. FAIRFAX COUNTY WATER EASEMENT
D.B. 4077, PG. 16
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)

(W2) EX. FAIRFAX COUNTY WATER EASEMENT
D.B. 4453, PG. 748
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)

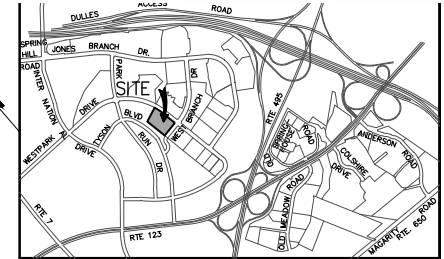
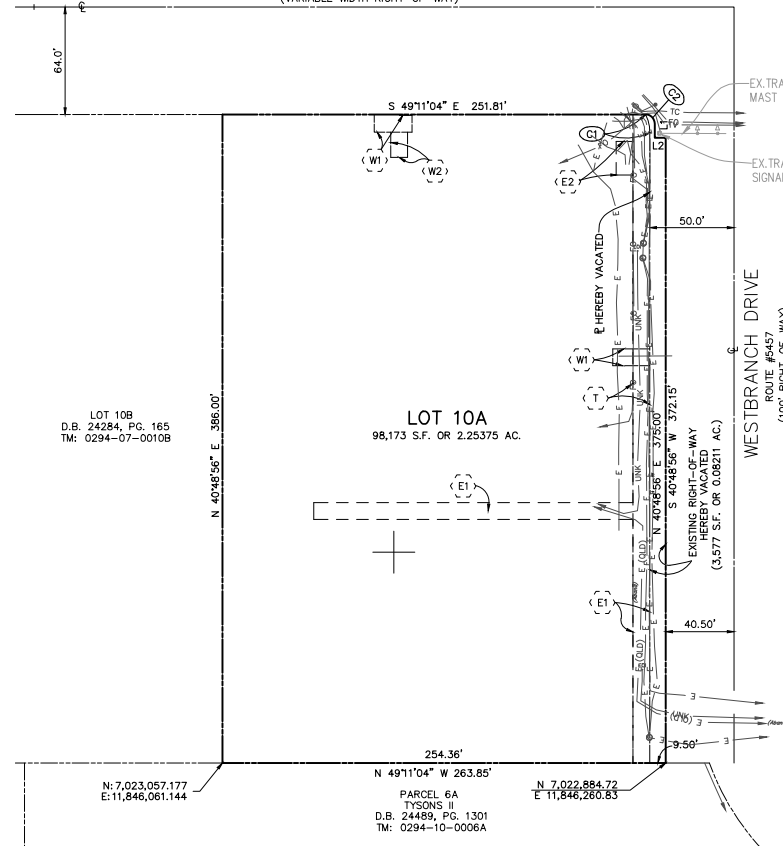
NOTES:

1. THE PROPERTY AS SHOWN HEREON IS LOCATED ON FAIRFAX COUNTY TAX ASSESSMENT MAP NO. 0294-07-0010A AND IS ZONED PTC (PLANNED TYSONS CORNER).
2. THE PROPERTY IS NOW IN THE NAME OF ARBOR ROW PROJECT, LLC. AS RECORDED IN DEED BOOK 25814 AT PAGE 1213 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.
3. THE PROPERTY AS SHOWN HEREON IS SUBJECT TO ALL COVENANTS AND RESTRICTIONS OF RECORD AND THOSE RECORDED HEREWITH.
4. BOUNDARY AND NORTH MERIDIAN INFORMATION AS SHOWN HEREON IS BASED ON EXISTING LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA AND A FIELD SURVEY PERFORMED BY THIS FIRM IN APRIL, 2010. THE HORIZONTAL AS REFERENCED HEREON WAS ESTABLISHED BY STATIC GPS CONTROL METHODS. THE HORIZONTAL DATUM IS REFERENCED TO NAD83 (CORS) EPOCH DATE 2002.00. THE NGS CORS STATIONS USED TO ESTABLISH (INITIALIZE) THE HORIZONTAL DATUM: CORS LOY4 DH3146; LOYB DH7980; LWX1 DH4144 AND USNO A17403. THE HORIZONTAL COORDINATE SYSTEM SHOWN HEREON IS REFERENCED TO VIRGINIA COORDINATE SYSTEM OF 1983 (VCS 83) NORTH ZONE. THE COMBINE SCALE FACTOR IS 0.99994926683 FOR GRID TO GROUND CONVERSION. THE BASE POINT (GPS1) FOR THE PROJECT IS IDENTIFIED WITH COORDINATES OF N: 7023038.5053, E: 11846249.5432 AND THESE COORDINATES ARE THE SAME FOR BOTH GRID AND GROUND.
5. THE PROPERTY SHOWN HEREON LIE IN ZONE "X" (UNSHADED) (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS SHOWN ON F.E.M.A. FLOOD INSURANCE RATE MAP FOR FAIRFAX COUNTY, VIRGINIA, FEMA MAP NO. 51059C0165E, EFFECTIVE DATE SEPTEMBER 17, 2010.
6. THIS PLAN COMPLIES FULLY WITH THE AMENDED CHESAPEAKE BAY PRESERVATION ORDINANCE, AS ADOPTED BY THE BOARD OF SUPERVISORS JULY 11, 2003, EFFECTIVE NOVEMBER 18, 2003.
7. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS OR OTHER INTEREST OF THE COUNTY REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SHOWN ON THIS PLAN.
8. ANY FUTURE EASEMENT OR AUTHORIZATION FOR ELECTRIC, CABLE, TELEPHONE OR GAS SERVICES TO BE FURNISHED TO THE PROPERTY SHOWN ON THIS PLAN/PLAT SHALL COMPLY WITH THE PROVISIONS OF VA. CODE 15.2-2241(6).

AREA TABULATION

LOT 10-A	98,173 S.F. OR 2.25375 AC.
PLUS STREET VACATION OF WESTBRANCH DRIVE	3,577 S.F. OR 0.08211 AC.
TOTAL AREA	101,750 S.F. OR 2.33586 AC.

WESTPARK DRIVE
ROUTE #5061
(VARIABLE WIDTH RIGHT-OF-WAY)



VICINITY MAP
SCALE: 1" = 2000'

EASEMENT LEGEND

- (E1) EX. 10' VERPOO EASEMENT
D.B. 4498, PG. 249
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)
- (E2) EX. UNDERGROUND EASEMENT
D.B. 7280, PG. 1748
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)
- (T) EX. C&P EASEMENT
D.B. 4164, PG. 587
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)
- (W1) EX. FAIRFAX COUNTY WATER EASEMENT
D.B. 4077, PG. 125
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)
- (W2) EX. FAIRFAX COUNTY WATER EASEMENT
D.B. 4453, PG. 748
(TO BE QUITCLAIMED IN ITS ENTIRETY BY SEPARATE INSTRUMENT)

UTILITY LINETYPE LEGEND

- E — UNDERGROUND ELECTRIC
- TV — CABLE TV
- FO — FIBER OPTIC
- T — TELEPHONE
- W — WATER
- TC — TRAFFIC CONTROL
- TFO — TV FIBER OPTIC
- UNK — UNKNOWN UTILITY

PLAT SHOWING
VACATION OF PORTION OF WEST BRANCH DRIVE
ADJACENT TO
LOT 10A
WESTPARK SUBDIVISION
DEED BOOK 25814 PAGE 1213
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

SCALE: 1" = 50'

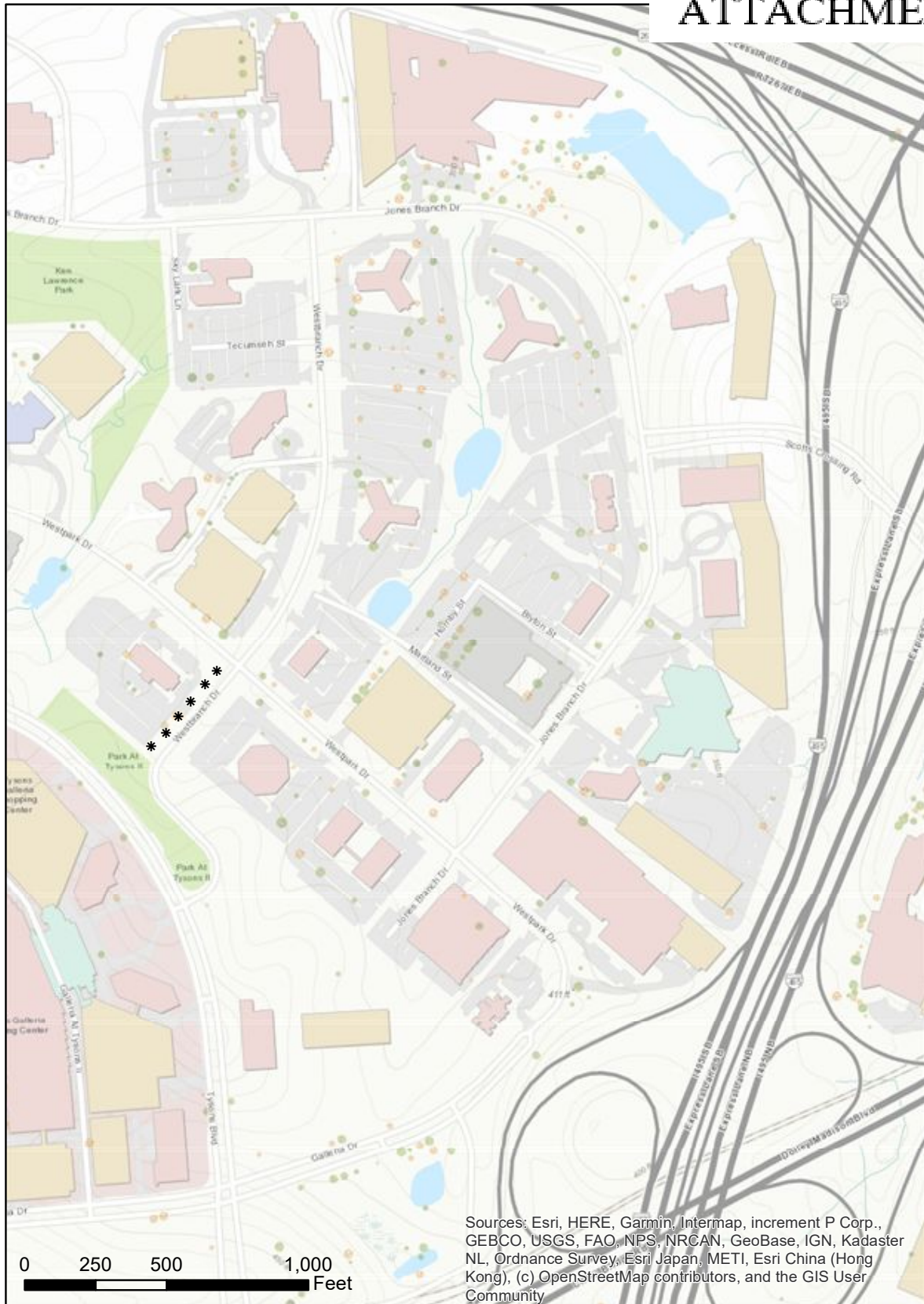
DATE: NOVEMBER 19, 2021

REVISION		<div>Bowman CONSULTING</div> <div>Bowman Consulting Group, Ltd. 14020 Thunderbolt Place, Suite 300 Chantilly, Virginia 20151</div> <div>Phone (703) 464-1000 Fax (703) 468-6720 www.bowmanconsulting.com</div>		
e <u>Bowman Consulting Group, Ltd.</u>				
DWG:		BY: CD	CHK: MK	QC:
BCG PROJECT NO: 7403-26-002		TASK:	COUNTY REF NO:	SHEET 1 OF 1

Westbranch Drive Vacation

Providence District

ATTACHMENT VI



Tax Map 29-4

✱ Denotes Area to be Vacated

**ARBOR ROW
RZ 2011-PR-023**

PROFFER STATEMENT

September 14, 2011

February 24, 2012

May 25, 2012

July 23, 2012

August 31, 2012

September 10, 2012

October 10, 2012

October 16, 2012

October 26, 2012

Rezoning Application RZ 2011-PR-023 (the "Rezoning") has been filed by and on behalf of (i) CITYLINE PARTNERS LLC, as applicant, (ii) FRANKLIN 7903 WESTPARK LLC, GRAYSON 7913 WESTPARK LLC, CAMPBELL-SCOTT WESTPARK LLC, ESSEX 7929 WESTPARK LLC and FREDERICK 8003 WESTPARK LLC, as owners of land identified as Fairfax County Tax Map Parcels 29-4-((7))-1, -2, -3, -9 and -10 (collectively the "Cityline Property"), (iii) AMT-THE ASSOCIATION FOR MANUFACTURING TECHNOLOGY, as owner of land identified as Fairfax County Tax Map Parcel 29-4-((7))-5A (the "AMT Property"), and (iv) the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA (the "Board"), as owner of an approximately 3,428 square foot portion of the Westbranch Drive right-of-way proposed for future abandonment and/or vacation. Such right-of-way, together with the Cityline Property and the AMT Property, are referred to collectively as the "Subject Property." The Rezoning seeks to rezone the Subject Property from the C-3 (proffered), SC and HC Districts to the PTC-Planned Tysons Corner Urban ("PTC"), SC and HC Districts.

Pursuant to Sect. 15.2-2303(A) of the Code of Virginia (1950), as amended, and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978), as amended, the applicant and the property owners on behalf of themselves and their respective successors and/or assigns (referred to hereafter, both collectively and, where appropriate, individually as the "Applicant"), hereby proffer that redevelopment of the Subject Property shall be in accordance with the following conditions (the "Proffers") if, and only if, the Rezoning, as proposed by the Applicant, is granted by the Board. If the Rezoning is granted by the Board, these Proffers shall replace and supersede any and all existing proffered conditions applicable to the Subject Property. In the event the Rezoning is denied by the Board, these Proffers shall immediately be null and void and the previous proffered conditions shall remain in full force and effect.

GENERAL

1. **Substantial Conformance.** Subject to the Proffers and the provisions of Sect. 6-500, Sect. 16-400 and Sect. 18-204 of the Zoning Ordinance of Fairfax County, as amended (the "Zoning Ordinance"), the Subject Property shall be developed in substantial conformance with the proffered elements of the Arbor Row Conceptual Development Plan ("CDP") dated April 26,

RZ 2011-PR-023

October 26, 2012

Page 39

including pedestrian enhancements, as may be required by VDOT and in accordance with the Phasing Sheets, shall be completed prior to opening Jones Branch Drive Extended to traffic.

68. Potential Future Right-Of-Way Vacation Areas. In the event any public street right-of-way that abuts the Subject Property is vacated and/or abandoned subsequent to approval of this Rezoning, such right-of-way area will become zoned to the PTC District pursuant to Sect. 2-203 of the Zoning Ordinance and such right-of-way area may be used, without requiring a PCA, CDPA or FDPA, for utilities and to accommodate sidewalks and streetscape elements consistent with the street sections shown on the CDP and/or with the Tysons Urban Design Guidelines.

69. Pedestrian Enhancements. Any and all crosswalks shown on the CDP and FDPs crossing public streets are conceptual only and subject to VDOT review and approval at site plan.

70. Supplemental Traffic Analyses. At the time of site plan submission for each Block subsequent to approval of this Rezoning, supplemental operational traffic analyses of the points of access to the subject Block shall be provided if required by VDOT. For purposes of this Proffer, such analyses shall only be required if the Block generates more than an additional 100 peak hour directional trips (either inbound or outbound). Such supplemental operational analyses also shall be limited to an assessment of those driveways and/or turn lanes serving the particular Block.

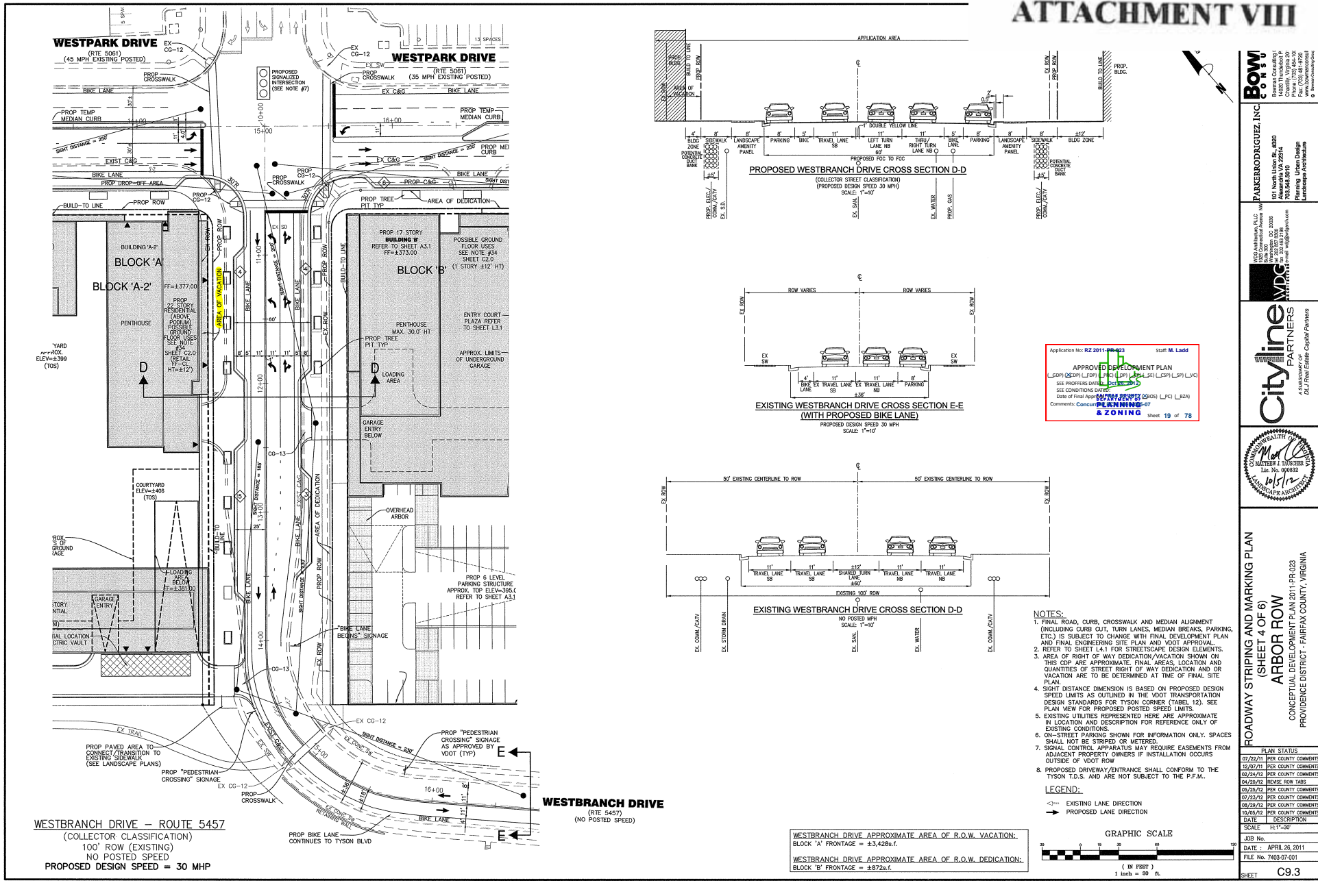
71. Notification Letter. At the time of filing of the first site plan for each of Block A through F, a notification letter shall be sent to the Director of FCDOT. The purpose of this letter is to facilitate coordination with DPWES to ensure site plans are consistent with the Transportation Design Standards.

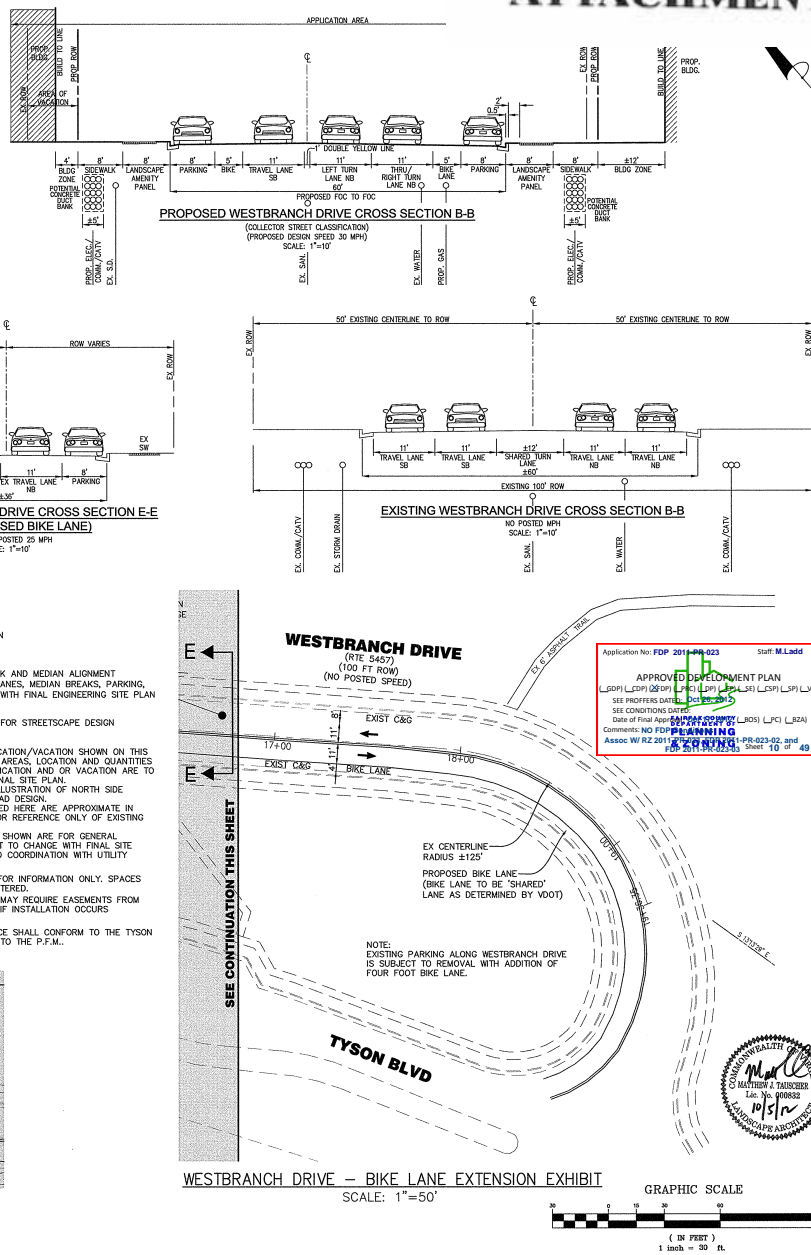
72. Tysons Road Fund Contributions. At the time of issuance of the first RUP or Non-RUP for each new building on the Subject Property, a contribution shall be made to the Tysons Road Fund in the amount of \$6.44 per square foot of non-residential GFA or \$1,000 per residential unit for which the RUP or Non-RUP is requested. Credits shall be allowed against such contributions for the costs of the qualifying off-site intersection improvements provided pursuant to these Proffers. These payments may be made earlier than required pursuant to this Paragraph.

73. Board-Initiated Service District for Table 7 Improvements. The Applicant will support the creation of a Tysons-wide service district by the Board, on its own initiative, for the sole purpose of providing funds to Fairfax County for the private sector's share of the costs of the Table 7 transportation improvements to serve the Tysons Corner Urban Center.

74. Additional Tysons Road Fund Contributions for Table 7 Improvements. The Applicant shall contribute to the Tysons Road Fund the sum of \$5.63 per square foot for all new non-residential GFA on each respective Block, and \$1,000.00 for each residential unit constructed on the Subject Property. The contribution associated with each building shall be

ATTACHMENT VIII





Board Agenda Item
July 19, 2022

4:00 p.m.

Public Hearing on a Proposal to Vacate and Abandon a Portion of Loisdale Road /
Route 789 (Lee District)

ISSUE:

Public hearing on a proposal to vacate and abandon a portion of Loisdale Road / Route 789.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached order (Attachment III) for abandonment and ordinance (Attachment IV) for vacation for the subject right-of-way.

TIMING:

On June 7, 2022, the Board authorized the public hearing to consider the proposed abandonment and vacation for July 19, 2022, at 4:00 p.m.

BACKGROUND:

The applicant, Walsh Colucci Lubeley & Walsh PC, on behalf of Amazon Data Services, Inc., a Delaware limited liability company, is requesting that a portion of Loisdale Road / Route 789 be vacated under §15.2-2006 of the Virginia Code and abandoned under Virginia Code §33.2-909. As a result of the Board's approval of RZ 2021-LE-015/SE 2021-LE-010, the applicant is seeking this request to complete approved plans associated with the rezoning and special exception.

The subject portion of Loisdale Road was dedicated by Deed of Dedication, Easement, and Vacation (Deed Book 23051 Page 1508) in 2013. The applicant proposes to vacate and abandon the subject area of Loisdale Road and utilize the area in the rezoning project (RZ 2021-LE-015) as part of a new single, right-in/right-out access. The applicant will build a new right-turn lane and access on Loisdale Road and close the existing access due to the steep grade on site. It is Staff's position that the requested vacation/abandonment is appropriate because (1) no public necessity exists for the continuance of the section of the secondary highway as a public highway, and (2) the safety and welfare of the public would be served best by abandoning the section of highway.

Board Agenda Item
July 19, 2022

Traffic Circulation and Access

The vacation and abandonment 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 vacate and abandon 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 indicate any opposition to the proposal.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Application Letter of Request
Attachment II: Notice of Intent to Abandon & Vacate
Attachment III: Order of Abandonment
Attachment IV: Ordinance of Vacation
Attachment V: Metes and Bounds Description
Attachment VI: Vacation and Abandonment Plat
Attachment VII: GDP/SE Plat Excerpt
Attachment VIII: Vicinity Map

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Jeff Hermann, Division Chief, FCDOT-Site Analysis & Transportation Planning Division
Greg Fuller, Section Chief, FCDOT-Site Analysis Section (SAS)
Michelle Guthrie, FCDOT-SAS
Jeffrey Edmondson, FCDOT-SAS

ASSIGNED COUNSEL:

Randall Greehan, Assistant County Attorney



**WALSH COLUCCI
LUBELEY & WALSH PC**

H. Mark Goetzman
Phone: 703.528.4700 x5452
Fax: 703.528.6050
mgoetzman@thelandlawyers.com

January 3, 2022

BY E-MAIL AND COURIER

Michelle Guthrie, Jeffrey Edmondson and Gavin Derleth
Fairfax County Department of Transportation
4050 Legato Rd, Ste. 400
Fairfax, VA 22033-2895

Re: Request for Proposed Vacation and Abandonment of a Portion of
Loisdale Road (Route 789), Lee District, Fairfax County, Virginia

Dear Michelle, Jeffrey and Gavin:

This letter constitutes a request and statement of justification to vacate and abandon a portion of Loisdale Road, Route 789, Fairfax County, Virginia. The portion of Loisdale Road to be vacated and abandoned is located in the Lee Magisterial District (hereinafter referred to as the "**Vacation and Abandonment Area**"). This request is made on behalf of Amazon Data Services, Inc., a Delaware limited liability company (the "Applicant").

The Vacation and Abandonment Area to be vacated and abandoned is shown on the plat entitled "Plat Showing Vacation and Abandonment of Loisdale Road and Dedication of Loisdale Road and Newington Road on Parcel One and Parcel Two of the lands of Amazon Data Services, Inc. Lee District Fairfax County, Virginia" (the "Plat") prepared by Kimley-Horn, dated December 15, 2021.

To offer some background, Vacation and Abandonment Area was dedicated for public street purposes, by virtue of that certain Deed of Dedication, Easement, and Vacation recorded in Deed Book 23051 at Page 1508, among the land records of Fairfax County, Virginia. On June 17, 2021, Applicant submitted an application on property identified among the Fairfax County tax map records as 99-2 ((1)) 7A and 8 (the "Subject Property"), which requests a rezoning from the C-3 District to the I-5 District to permit the construction of a data center pursuant to §§ 8100.2.A(1)(c), 4101.3, and 4102.6.A of the Fairfax County Zoning Ordinance (the "Zoning Ordinance"). In conjunction with the rezoning, the Applicant also requests a special exception to allow for an increase in building height above the maximum height permitted in the I-5 District pursuant to § 5100.2.C(8) of the Zoning Ordinance. Fairfax County formally accepted both applications on July 21, 2021, and these applications are referenced as RZ 2021-LE-015 and SE 2021-LE-010, respectively.

As part of proposal for the new data center and in consultation with FCDOT and VDOT, the Applicant will construct a new single, right-in/right-out access point to connect the Subject Property to Loisdale Road. In conjunction with the proposed ingress/egress, the Applicant will build a new right-turn lane on Loisdale Road into the Subject Property and close the existing access, including removal of the existing turn lanes, due to the steep grade between the proposed building and Loisdale Road. The proposed ingress/egress will allow for large tractor-trailer trucks to safely access the site. To accommodate the

ATTORNEYS AT LAW

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

LOUDOUN 703 737 3633 ■ WOODBRIDGE 703 680 4664

{A1015310.DOCX / 1 Justification Letter 010612 000020}

proposed access to Loisdale Road, the Applicant will dedicate 11,070 square feet of right-of-way and requests the abandonment and vacation of 3,260 square feet of existing right-of-way, as shown on the Plat.

The vacation and abandonment of the Vacation and Abandonment Area is requested pursuant to Virginia Code Sections 15.2-2006 and 33.2-909.

I request your review of this application as soon as possible. If you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,

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

A handwritten signature in cursive script, appearing to read "H. Mark Goetzman".

H. Mark Goetzman

cc: Marnina Cherkin
Manfield Mandigora
Jay Reinke
Kyle Bollinger
Lynne Strobel
Kathryn Taylor
Mariana Cifuentes

NOTICE OF INTENT TO
ADOPT AN ORDINANCE VACATING AND AN ORDER ABANDONING
A PART OF A PLAT ON WHICH IS SHOWN

(Loisdale Road – Route 789)

Lee District,
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on July 19, 2022, at 4:00 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia, pursuant to Virginia Code Ann. § 15.2-2204, § 15.2-2006, and § 33.2-909, vacating and abandoning a 3,260 square foot portion of Loisdale Road, which is part of the plat recorded in Deed Book 23051 at Page 1508. The road portion is located along Loisdale Road adjacent to Fairfax County tax parcels 099-2-01-0007-A and 099-2-01-0008 approximately 750 feet north of the Newington Road and Loisdale Road intersection, and is described and shown on the metes and bounds schedule dated January 3, 2022, and on the plat dated April 25, 2022, each prepared by Kimley Horn, both of which are on file in the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600.

All persons wishing to speak on this subject may call the Office of the Clerk to the Board, (703) 324-3151, to be placed on the Speaker's List, or may appear and be heard.

LEE DISTRICT.

ORDER OF ABANDONMENT OF
PORTION OF EXISTING LOISDALE ROAD

LEE DISTRICT,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 19th day of July, 2022, 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 portion of the 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 the portion of existing Loisdale Road (Route 789) comprising a total area of 3,260 square feet, located adjacent to Tax Maps 099-2-01-0007-A and 099-2-01-0008, described on the metes and bounds schedule dated January 3, 2022, and on the plat dated April 25, 2022, each prepared by Kimley Horn, attached hereto and incorporated herein, be and the same are hereby abandoned as a public road pursuant to Virginia Code §33.2-909.

This abandonment 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:

By: Jill G. Cooper
Clerk to the Board

§33.2-909

ADOPTION OF AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN

(Loisdale Road – Route 789)

Lee District,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax County, Virginia, on July 19, 2022, at which meeting a quorum was present and voting, the Board, after conducting a public hearing upon due notice given pursuant to Virginia Code Ann. §15.2-2204 and as otherwise required by law, adopted the following ordinance, to-wit:

BE IT ORDAINED by the Board of Supervisors of Fairfax County, Virginia: that Part of the Plat Showing Street Dedication of Loisdale Road, recorded in Deed Book 23051 at Page 1508, on which is shown Loisdale Road, comprising a total area of 3,260 square feet, located adjacent to Tax Maps 099-2-01-0007-A and 099-2-01-0008, and described and shown on the metes and bounds schedule dated January 3, 2022, and on the plat dated April 25, 2022, each prepared by Kimley Horn, and attached hereto and incorporated herein, be and the same is hereby vacated, pursuant to Virginia Code Ann. §15.2-2006.

This vacation is subject to any right, privilege, permit, license, 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 vacated roadway, without any permission of the landowner.

A Copy Teste:

Jill G. Cooper
Clerk to the Board of Supervisors

§15.2-2006

The Legal Description of the Vacated and Abandon Portion of Loisdale Road Rt. 789 and Newington Road Rt. 877, Fairfax County, Virginia.

Date: January 3, 2022

Area A – Dedication for Public Street Purposes of Loisdale Road

BEGINNING AT A POINT BEING AT THE SOUTHWEST CORNER OF THE NOW OR FORMERLY AMAZON DATA SERVICES, INC., AS ACQUIRED IN DEED BOOK 26901 AT PAGE 0756, AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA, SAID POINT ALSO BEING ON THE EASTERN LINE OF LOISDALE ROAD, ROUTE 789, WIDTH VARIES;

THENCE DEPARTING SAID POINT AND RUNNING 75.64 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 597.89 FEET AND A CHORD THAT BEARS NORTH 00°55'43" WEST 75.59 FEET TO A POINT; THENCE

NORTH 04°05'23" WEST 237.26 FEET TO A POINT; THENCE NORTH 03°56'40" WEST 116.50 FEET TO A POINT; THENCE

NORTH 03°56'40" WEST 96.36 FEET TO A POINT; THENCE NORTH 03°56'40" WEST 61.07 FEET TO A POINT; THENCE

NORTH 19°59'59" EAST 17.24 FEET TO A POINT; SOUTH 03°56'40" EAST 197.30 FEET TO A POINT; THENCE

SOUTH 20°07'31" EAST 59.57 FEET TO A POINT; THENCE SOUTH 03°36'07" EAST 106.69 FEET TO A POINT; THENCE

SOUTH 07°31'10" EAST 12.49 FEET TO A POINT; THENCE SOUTH 01°27'44" WEST 121.92 FEET TO A POINT; THENCE

SOUTH 04°19'33" WEST 32.33 FEET TO A POINT; THENCE

87.81 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 604.89 FEET AND A CHORD THAT BEARS SOUTH 00°22'43" EAST 87.74 FEET TO A POINT; THENCE

13.36 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 368.71 FEET AND A CHORD THAT BEARS NORTH 28°19'55" WEST 13.36 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 7,978 SQUARE FEET, OR 0.1831 ACRES OF LAND.

Area B – Dedication for Public Street Purposes of Newington Road

BEGINNING AT A POINT BEING AT THE SOUTHEAST CORNER OF THE NOW OR FORMERLY AMAZON DATA SERVICES, INC., AS ACQUIRED IN DEED BOOK 26901 AT PAGE 0756, AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA, SAID POINT ALSO BEING ON THE NORTHERN LINE OF NEWINGTON ROAD, ROUTE 877, WIDTH VARIES;

THENCE DEPARTING SAID POINT AND RUNNING NORTH 75°56'46" WEST 2.41 FEET TO A POINT; THENCE NORTH 77°00'49" WEST 82.15 FEET TO A POINT; THENCE

NORTH 80°44'38" WEST 20.26 FEET TO A POINT; THENCE NORTH 71°14'14" WEST 18.16 FEET TO A POINT; THENCE

SOUTH 80°44'38" EAST 38.27 FEET TO A POINT; THENCE SOUTH 77°00'49" EAST 82.28 FEET TO A POINT; THENCE

SOUTH 75°56'46" EAST 2.32 FEET TO A POINT; THENCE SOUTH 11°48'27" WEST 3.00 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 342 SQUARE FEET, OR 0.0079 ACRES OF LAND.

Area C – Dedication for Public Street Purposes of Loisdale Road

BEGINNING AT A POINT BEING AT THE SOUTHWEST CORNER OF THE NOW OR FORMERLY SCHAEFFER INDUSTRIAL LLC, AS ACQUIRED IN DEED BOOK 18965 AT PAGE 1908, AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA, SAID POINT ALSO BEING ON THE EASTERN LINE OF LOISDALE ROAD, ROUTE 789, WIDTH VARIES;

THENCE DEPARTING SAID POINT AND RUNNING SOUTH 44°19'55" EAST 7.65 FEET TO A POINT; THENCE SOUTH 21°46'16" WEST 261.21 FEET TO A POINT; THENCE

501.94 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1108.00 FEET AND A CHORD THAT BEARS SOUTH 08°47'35" WEST 497.66 FEET TO A POINT; THENCE

SOUTH 03°56'40" EAST 26.69 FEET TO A POINT; THENCE NORTH 09°51'30" WEST 18.91 FEET TO A POINT; THENCE

433.84 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1110.00 FEET AND A CHORD THAT BEARS NORTH 07°50'46" EAST 431.08 FEET TO A POINT; THENCE

NORTH 19°02'35" EAST 131.48 FEET TO A POINT; THENCE NORTH 21°46'16" EAST 185.88 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 2,705 SQUARE FEET, OR 0.0621 ACRES OF LAND.

Area D – Vacation of Public Right of Way of Loisdale Road

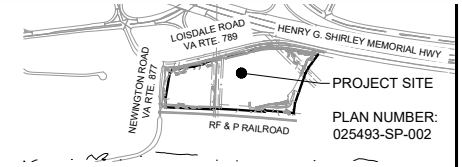
BEGINNING AT A POINT FROM 77.15 FEET NORTH 01°15'35" FROM THE SOUTHWEST CORNER OF THE NOW OR FORMERLY AMAZON DATA SERVICES, INC. AS ACQUIRED IN DEED BOOK 26901 AT PAGE 0756, AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA, SAID POINT ALSO BEING ON THE EASTERN LINE OF LOISDALE ROAD, ROUTE 789, WIDTH VARIES.

THENCE DEPARTING SAID POINT AND RUNNING NORTH 03°56'40" WEST 372.97 FEET TO A POINT; THENCE SOUTH 09°51'30" EAST 101.93 FEET TO A POINT; THENCE

SOUTH 03°56'40" EAST 247.93 FEET TO A POINT; THENCE SOUTH 19°59'59" WEST 25.88 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 3,260 SQUARE FEET, OR 0.0748 ACRES OF LAND.

ATTACHMENT VI



AREA TABULATION			
AREA	TM/DB	AREA (SF)	AREA (AC)
"A"	099-2-01-0008	7,978	0.1831
"B"	099-2-01-0008	342	0.0079
TOTAL PORTION OF PARCEL 099-2-01-008 HEREBY DEDICATED FOR PUBLIC STREET PURPOSES		8,320	0.1910
"C"	099-2-01-0007A	2,705	0.0621
TOTAL PORTION OF 099-2-01-0007A HEREBY DEDICATED FOR PUBLIC STREET PURPOSES		2,705	0.0621
"D"	DB. 23051, PG. 1508	3,260	0.0748
TOTAL PORTION OF EXISTING RIGHT OF WAY HEREBY VACATED AND ABANDONED		3,260	0.0748

LEGEND

- DENOTES THE AREA WITHIN PARCELS 099-2-01-0007A AND 099-2-01-0008 AS RECORDED IN DEED BOOK 22162 AT PAGE 1826 TO BE DEDICATED TO FAIRFAX COUNTY.
 - DENOTES THE AREA AS RECORDED IN DEED BOOK 23051 AT PAGE 1508 AS SHOWN HEREON HEREBY VACATED AND ABANDONED.
- EXISTING PROPERTY LINE
 --- PROPOSED PROPERTY LINE

WETLANDS PERMITS CERTIFICATION

I HEREBY CERTIFY THAT ALL WETLANDS PERMITS REQUIRED BY LAW WILL BE OBTAINED PRIOR TO COMMENCING WITH LAND DISTURBING ACTIVITIES.

SIGNATURE
 OWNER/DEVELOPER MATTHEW DIXON NAME AUTHORIZED SIGNATORY TITLE

NOTE: PERMITS MUST BE PRESENTED TO THE COUNTY INSPECTOR PRIOR TO LAND DISTURBANCE.

NOTES:

- THE PROPERTIES SHOWN HEREON ARE LOCATED ON FAIRFAX COUNTY TAX ASSESSMENT MAP NO. 099-2-01-007A, PARCEL ONE, AND 099-2-01-0008, PARCEL TWO, THE PROPERTIES ARE CURRENTLY ZONED C-3 AND PURSUING REZONING TO I-5 AS PART OF RZ-2021-LE-015.
- THIS PLAT IS SUBJECT TO ANY EASEMENTS AND RESTRICTIONS OF RECORD. ALL PREVIOUSLY RECORDED RIGHTS-OF-WAY, EASEMENTS OR OTHER INTERESTS OF THE COUNTY REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SHOWN ON THIS PLAT.
- THE PLAT OF THE PROPERTY SHOWN HEREON IS REFERENCED TO THE VIRGINIA COORDINATE SYSTEM OF 1983 (VCS 83) NORTH ZONE. US SURVEY FOOT UNITS AS COMPUTED FROM A FIELD RUN BOUNDARY AND HORIZONTAL CONTROL SURVEY THAT TIES THIS BOUNDARY TO STATIC GPS OR VIRTUAL REFERENCE SYSTEM.
- THIS PLAT IS REFERENCED TO VIRGINIA STATE GRID NORTH (NAD 27) PER THE PLAT RECORDED IN DEED BOOK 22162 AT PAGE 1826.
- ALL PREVIOUSLY RECORDED R/W, EASEMENTS OR OTHER INTEREST OF THE COUNTY REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SHOWN ON THIS PLAT.
- "PARCEL ONE" AND "PARCEL TWO" ARE RECORDED IN DEED BOOK 26901 AT PAGE 756.
- ANY FUTURE EASEMENT OR AUTHORIZATION FOR ELECTRIC, CABLE TELEPHONE OR GAS SERVICES TO BE FURNISHED TO THE PROPERTY MUST COMPLY WITH THE PROVISIONS OF 15.2-2241(6) OF THE VIRGINIA CODE.
- AREAS "A" AND "B" (8,380 SQUARE FEET) OF TM #099-2-01-0008, PARCEL TWO AS SHOWN HEREON HEREBY DEDICATED TO FAIRFAX COUNTY.
- AREA "C" (2,705 SQUARE FEET) OF TM #099-2-01-0007A, PARCEL ONE AS SHOWN HEREON HEREBY DEDICATED TO FAIRFAX COUNTY.
- AREA "D" (3,274 SQUARE FEET) OF DEED BOOK 23051 PAGE 1508 AS SHOWN HEREON HEREBY VACATED AND ABANDONED.

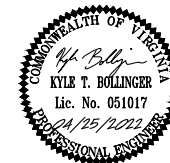
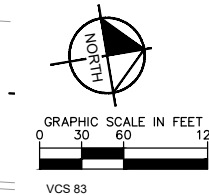
ENGINEER'S CERTIFICATE

I, KYLE BOLLINGER, A DULY LICENSED ENGINEER IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE PROPERTY DELINEATED IN ON THIS PLAT IS AS SHOWN ON A BOUNDARY AND TOPOGRAPHIC SURVEY OF THIS PARCEL BY GRS GROUP, LLC DATED JUNE 4, 2021 AND THAT IT IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND EXPERIENCE AND THAT THE PORTION OF PARCEL TWO SHOWN HEREON WAS DEDICATED FOR PUBLIC USE TO THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA AS RECORDED IN THE DEED BOOK 23051 AT PAGE 1508 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA. THE PROPERTIES SHOWN HEREON ARE NOW IN THE NAME OF AMAZON DATA SERVICES, INC. AS RECORDED IN DEED BOOK 22162 AT PAGE 1826 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

GIVEN UNDER MY HAND AND SEAL THIS 28TH DAY OF DECEMBER, 2021.

KYLE BOLLINGER, P.E.

01/25/2022
 DATE



APPROVED COUNTY OF FAIRFAX LAND DEVELOPMENT SERVICES ADDRESSING REVIEW	
DATE	SITE REVIEWER
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 SEWER.	
DATE	Director, Site Development and Inspection Division or Agent
APPROVED FOR BOARD OF SUPERVISORS FAIRFAX COUNTY, VIRGINIA	
DATE	Director, Land Development Services or Agent
APPROVAL VOID IF PLAT IS NOT OFFERED FOR RECORD ON OR BEFORE	

This document is a copy of the original and is not to be used for any other purpose. It is the responsibility of the user to ensure that the information is accurate and complete. The user is responsible for any errors or omissions. The user is responsible for any damages or losses resulting from the use of this document.

NO.	REVISIONS	DATE	BY

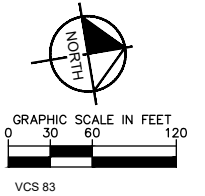
Kimley-Horn
 11400 COMMERCE PARK DR., SUITE 400, RESTON, VA 20191
 PHONE: 703-674-1300 FAX 703-674-1350
 WWW.KIMLEY-HORN.COM

RECORD PLAT SHOWING THE VACATION AND ABANDONMENT OF
 LOISDALE ROAD AND DEDICATION OF LOISDALE ROAD AND
 NEWINGTON ROAD ON PARCEL ONE AND PARCEL TWO OF THE
 LANDS OF AMAZON DATA SERVICES, INC.

LEE ELECTION DISTRICT
 FAIRFAX COUNTY, VIRGINIA

SCALE: AS SHOWN
 DATE: 04/25/2022
 SHEET 1 OF 2

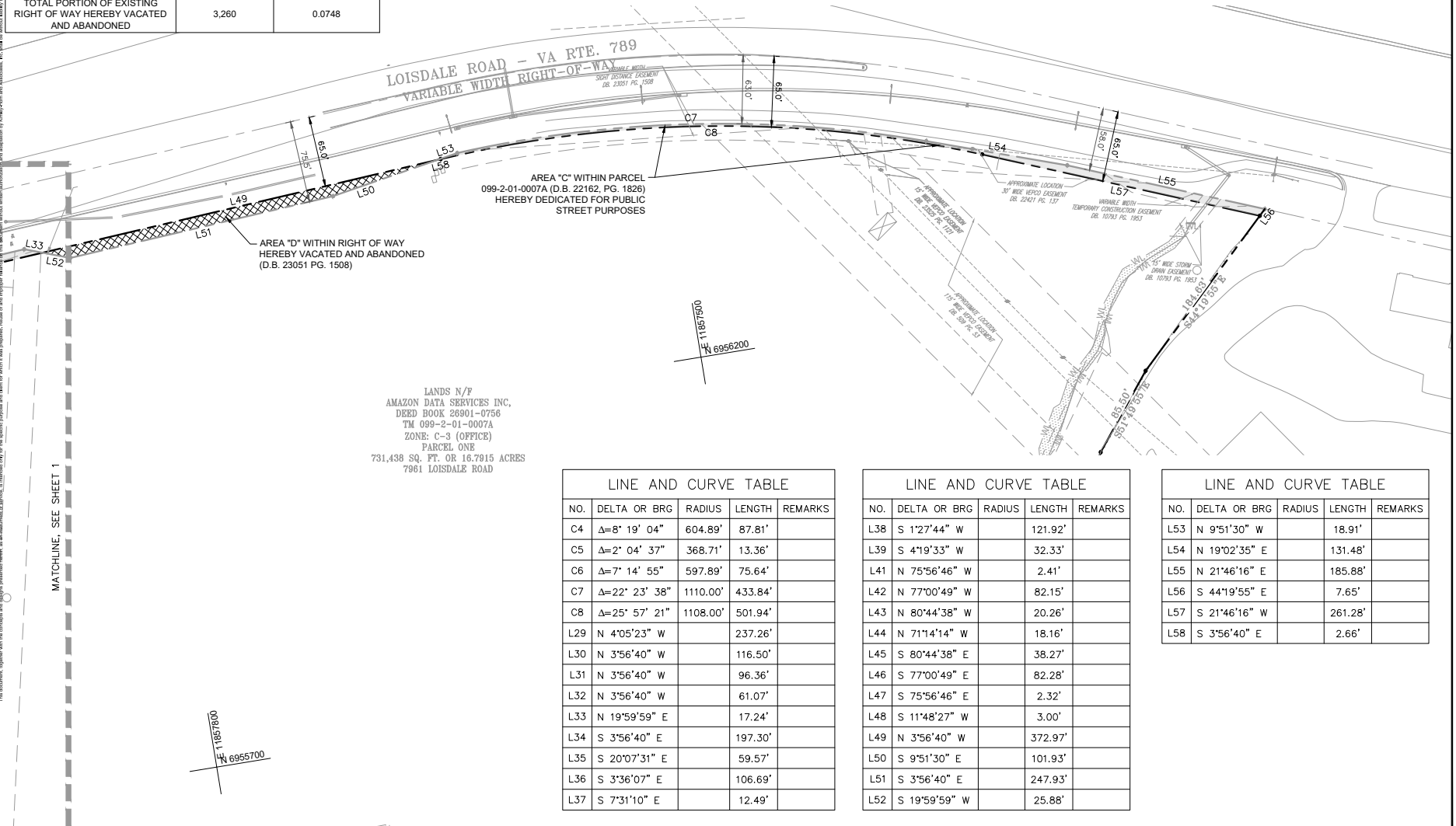
ATTACHMENT VI



AREA TABULATION			
AREA	TM/DB	AREA (SF)	AREA (AC)
"A"	099-2-01-0008	7,978	0.1831
"B"	099-2-01-0008	342	0.0079
TOTAL PORTION OF PARCEL 099-2-01-008 HEREBY DEDICATED FOR PUBLIC STREET PURPOSES		8,320	0.1910
"C"	099-2-01-0007A	2,705	0.0621
TOTAL PORTION OF 099-2-01-0007A HEREBY DEDICATED FOR PUBLIC STREET PURPOSES		2,705	0.0621
"D"	DB. 23051, PG. 1508	3,260	0.0748
TOTAL PORTION OF EXISTING RIGHT OF WAY HEREBY VACATED AND ABANDONED		3,260	0.0748

LEGEND

- DENOTES THE AREA WITHIN PARCELS 099-2-01-0007A AND 099-2-01-0008 AS RECORDED IN DEED BOOK 22162 AT PAGE 1826 TO BE DEDICATED TO FAIRFAX COUNTY.
 - DENOTES THE AREA AS RECORDED IN DEED BOOK 23051 AT PAGE 1508 AS SHOWN HEREON HEREBY VACATED AND ABANDONED.
- EXISTING PROPERTY LINE
 --- PROPOSED PROPERTY LINE



LINE AND CURVE TABLE

NO.	DELTA OR BRG	RADIUS	LENGTH	REMARKS
C4	Δ=8° 19' 04"	604.89'	87.81'	
C5	Δ=2° 04' 37"	368.71'	13.36'	
C6	Δ=7° 14' 55"	597.89'	75.64'	
C7	Δ=22° 23' 38"	1110.00'	433.84'	
C8	Δ=25° 57' 21"	1108.00'	501.94'	
L29	N 4°05'23" W		237.26'	
L30	N 3°56'40" W		116.50'	
L31	N 3°56'40" W		96.36'	
L32	N 3°56'40" W		61.07'	
L33	N 19°59'59" E		17.24'	
L34	S 3°56'40" E		197.30'	
L35	S 20°07'31" E		59.57'	
L36	S 3°36'07" E		106.69'	
L37	S 7°31'10" E		12.49'	

LINE AND CURVE TABLE

NO.	DELTA OR BRG	RADIUS	LENGTH	REMARKS
L38	S 1°27'44" W		121.92'	
L39	S 4°19'33" W		32.33'	
L41	N 75°56'46" W		2.41'	
L42	N 77°00'49" W		82.15'	
L43	N 80°44'38" W		20.26'	
L44	N 71°14'14" W		18.16'	
L45	S 80°44'38" E		38.27'	
L46	S 77°00'49" E		82.28'	
L47	S 75°56'46" E		2.32'	
L48	S 11°48'27" W		3.00'	
L49	N 3°56'40" W		372.97'	
L50	S 9°51'30" E		101.93'	
L51	S 3°56'40" E		247.93'	
L52	S 19°59'59" W		25.88'	

LINE AND CURVE TABLE

NO.	DELTA OR BRG	RADIUS	LENGTH	REMARKS
L53	N 9°51'30" W		18.91'	
L54	N 19°02'35" E		131.48'	
L55	N 21°46'16" E		185.88'	
L56	S 44°19'55" E		7.65'	
L57	S 21°46'16" W		261.28'	
L58	S 3°56'40" E		2.66'	

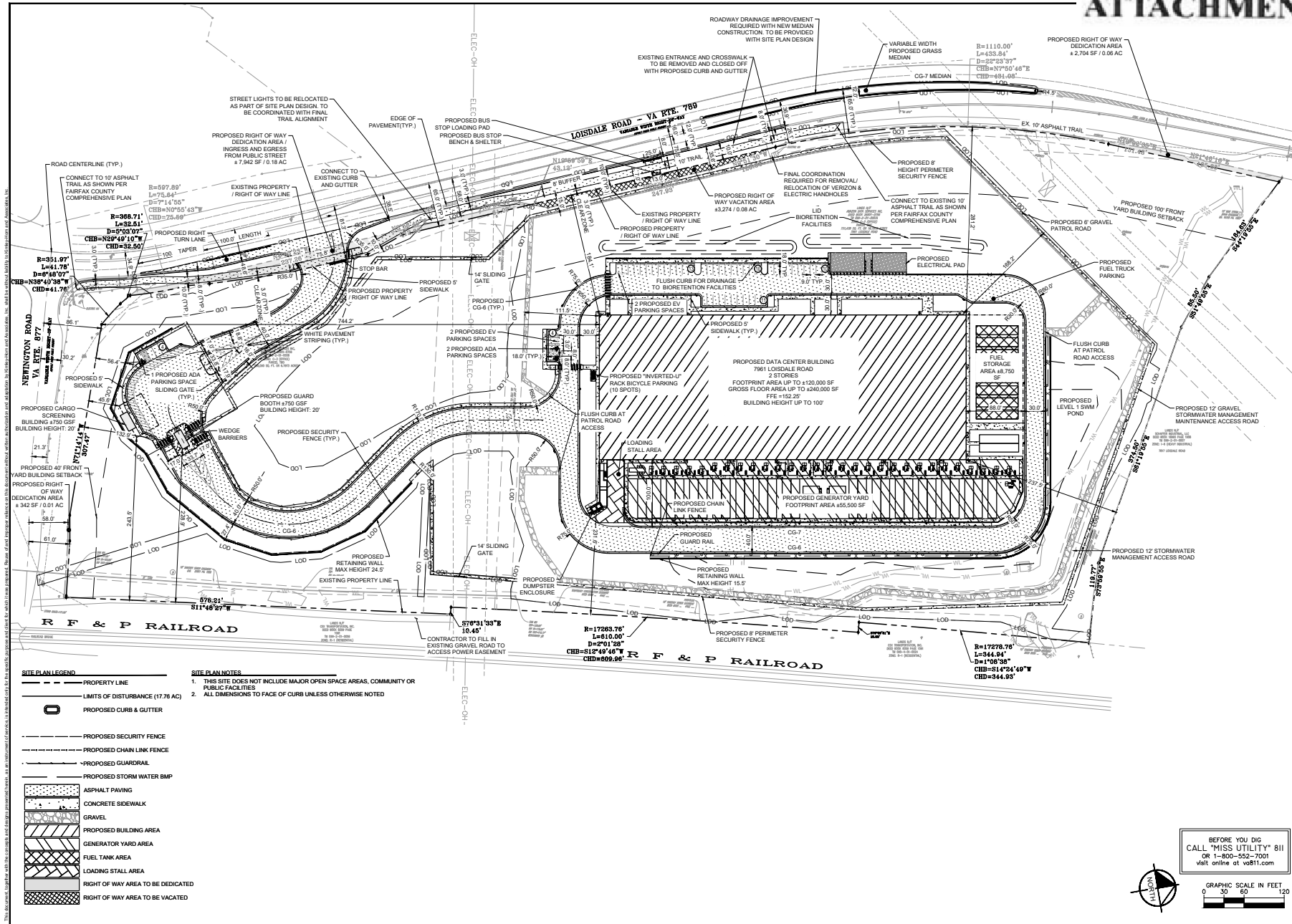
Kimley Horn

11400 COMMERCE PARK DR., SUITE 400, RESTON, VA 20191
 PHONE: 703-674-1300 FAX 703-674-1350
 WWW.KIMLEY-HORN.COM

RECORD PLAT SHOWING THE VACATION AND ABANDONMENT OF LOISDALE ROAD AND DEDICATION OF LOISDALE ROAD AND NEWINGTON ROAD ON PARCEL ONE AND PARCEL TWO OF THE LANDS OF AMAZON DATA SERVICES, INC.

LEE ELECTION DISTRICT
 FAIRFAX COUNTY, VIRGINIA

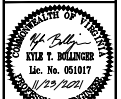
SCALE: AS SHOWN
 DATE: 04/25/2022
 SHEET 2 OF 2



NO.	REVISIONS	DATE

Kimley-Horn

11401 GLENN AVENUE AND ASSOCIATES, INC.
FAIRFAX COUNTY, VA 22031
PHONE: 703.441.8800 FAX: 703.441.8801
WWW.KIMLEY-HORN.COM



KVA PROJECT	110677004
DATE	11/27/2021
SCALE	AS SHOWN
DESIGNED BY	VA
DRAWN BY	CAC
CHECKED BY	CTB

**GENERALIZED DEVELOPMENT
PLAN
& SPECIAL
EXCEPTION PLAT**

**GENERALIZED DEVELOPMENT
PLAN (RZ-2021-LE-015)
& SPECIAL EXCEPTION PLAT
(SE-2021-LE-010)
LOISDALE STATION
FAIRFAX COUNTY, VA
LEE DISTRICT**

C-200

BEFORE YOU DIG
CALL "MISS UTILITY" 811
OR 1-800-552-7001
Visit online at va811.com



GRAPHIC SCALE IN FEET
0 30 60 120

ATTACHMENT VIII



*** Denotes Area to be Vacated and Abandoned**

Board Agenda Item
July 19, 2022

4:30 p.m.

Public Hearing to Lease County-Owned Property at 7936 Telegraph Road to STC Three LLC (Lee District)

ISSUE:

Public hearing to amend a lease with STC Three LLC for the County-owned property at Kingstowne Fire Station located at 7936 Telegraph Road, for the expansion of telecommunications services for public use.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to amend the lease with STC Three LLC for County-owned property at 7936 Telegraph Road.

TIMING:

On June 28, 2022, The Board authorized the advertisement of a public hearing to be held on July 19, 2022, to lease County-owned property at 7936 Telegraph Road to STC Three LLC.

BACKGROUND:

The Board of Supervisors is the owner of the Kingstowne Fire Station facility located at 7936 Telegraph Road on a County-owned parcel identified as Tax Map Number 100-1 ((1)) 16. The site is currently improved with a 150-foot telecommunications monopole positioned at the rear of the property. The County has an existing lease with STC Three LLC for an 864 square foot compound located at the base of the monopole.

Crown Castle, the property manager for Lessee, has approached the County about Lessee's desire to sublease space in the telecommunications compound to direct-broadcast satellite provider DISH TV. To accommodate the ground equipment that DISH TV will need to install in the compound, Crown Castle has negotiated for an expansion of the leasing footprint by 35 square feet for a total leased area of 899 square feet. In exchange, Lessee will contribute thirty percent (30%) of any payments it receives from DISH TV under the sublease to the County as additional rent owed under the master lease.

Crown Castle and County Facilities Management have reviewed the site plan for the DISH TV equipment with staff from the Fire and Rescue Department. As is their current practice, Crown Castle will coordinate its visits to the compound with station personnel beforehand to avoid any impact on public safety operations.

Virginia Code Ann. § 15.2-1800 requires a locality to hold a public hearing before it may lease its real property.

Board Agenda Item
July 19, 2022

FISCAL IMPACT:

The lease currently generates \$51,000 in annual rent revenue. This lease amendment will generate approximately \$3,600 in additional rent during the first year the amendment is in effect. All revenue will be deposited into the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Location Map 1001 01 0016
Attachment 2 – Draft Lease Amendment

STAFF:

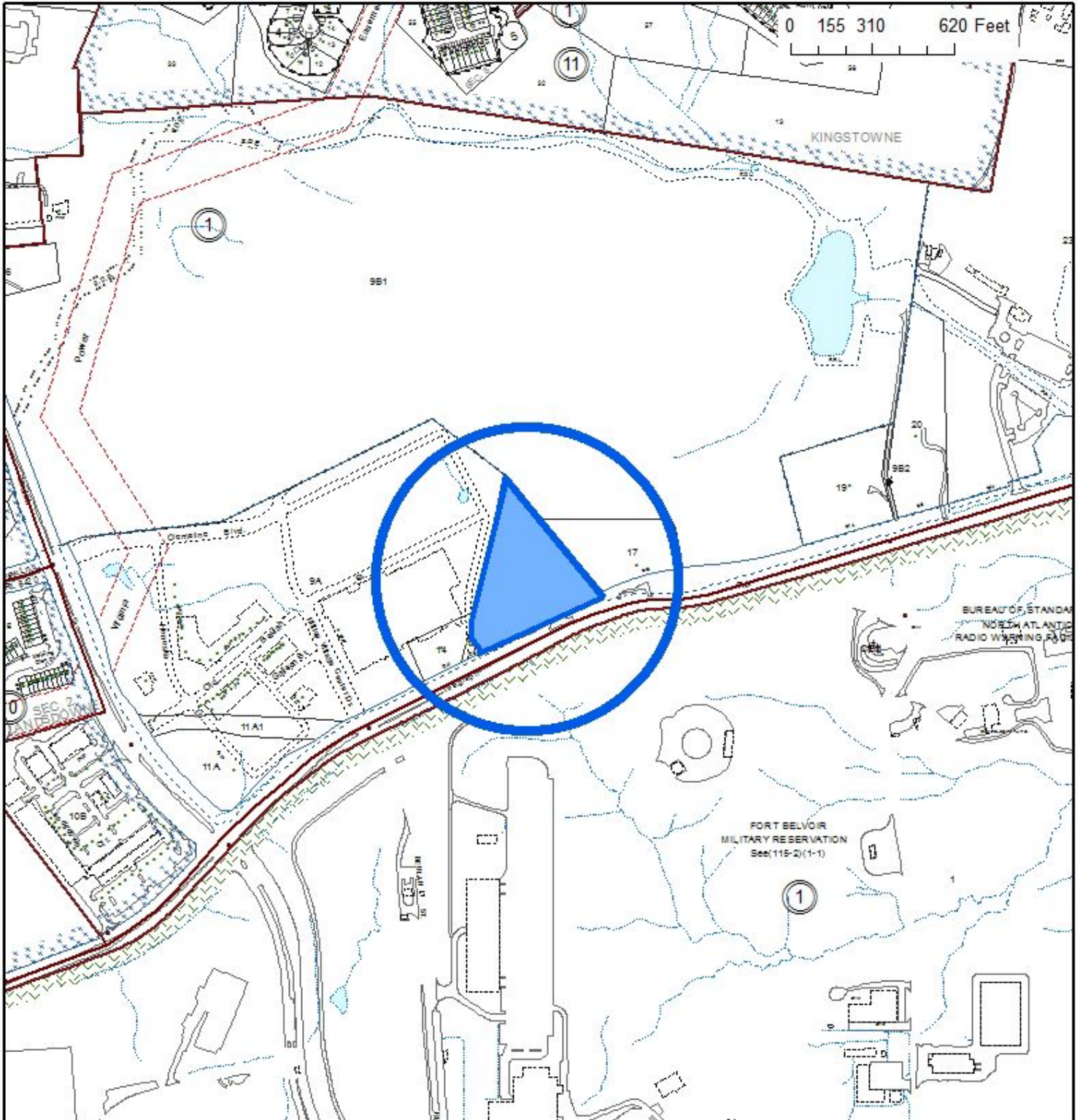
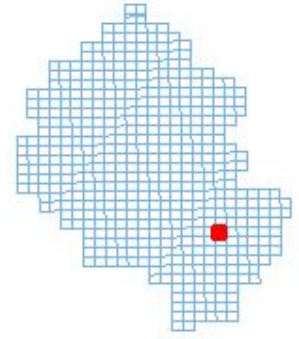
Ellicia L. Seard-McCormick, Deputy County Executive of Administration
José A. Comayagua, Jr., Director, Facilities Management Department
Mike Lambert, Assistant Director, Facilities Management Department

ASSIGNED COUNSEL:

Rick Dzubin, Assistant County Attorney

Kingstowne Fire Station

County Tax Map No.
100-1 ((1)) Parcel 16
Lee District
3.5 Acres



FIRST AMENDMENT TO 2020 REAL PROPERTY DEED OF LEASE AGREEMENT
(BU 876719)

THIS FIRST AMENDMENT TO 2020 REAL PROPERTY DEED OF LEASE AGREEMENT ("First Amendment") is made effective this _____ day of _____, 2022, by and between THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY ("Lessor") and STC THREE LLC, a Delaware limited liability company ("Lessee"), successor in interest to American PCS, L.P., a Delaware limited partnership, trading as American Personal Communications ("Original Lessee"), by and through its Attorney-in-Fact Global Signal Acquisitions II LLC, a Delaware limited liability company.

WHEREAS, Lessor and Original Lessee entered into a 2020 Real Property Deed of Lease Agreement dated June 23, 2020 (as amended and assigned, the "Lease"), whereby Lessor leased to Lessee a portion of land being described as an approximately 864 square feet portion of that property (said leased portion being the "Premises") located at 7936 Telegraph Road (Tax Parcel #1001-01-0016), Alexandria, Fairfax County, Commonwealth of Virginia, and being further described in Book 8859, Page 720 in the Fairfax County Clerk's Office ("Clerk's Office"), together with those certain access, utility and/or maintenance easements and/or rights of way granted in the Lease; and

WHEREAS, the term of the Lease commenced on March 1, 2021, and has an original term, including all Renewal Terms, that will expire on February 28, 2051; and

WHEREAS, Lessor and Lessee now desire to further amend the terms of the Lease as provided herein below.

NOW THEREFORE, in exchange for the mutual promises contained herein, Lessor and Lessee agree to amend the Lease as follows:

1. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Lease. The recitals in this First Amendment are incorporated herein by this reference.

2. Pursuant to Section 20(b) of the Lease, Lessor hereby grants its consent to Lessee to sublease or license a portion of the Premises to Dish Wireless L.L.C. ("Dish") for all uses permitted under the Lease, including, without limitation, installing, operating and maintaining communications equipment, cables and shelters. Dish shall have the same rights of ingress and egress to the Premises, and the provision of utilities thereto, in the same manner and to the same extent as Lessor granted and conveyed to Lessee under the Lease.

3. Lessor hereby leases to Lessee that certain 35 square feet of land shown and described in Exhibit A attached hereto as the "Additional Land 1" and the "Additional Land 2", and described as the "Additional Land 1" and the "Additional Land 2" by metes and bounds on Exhibit B attached hereto, and same shall hereafter be part of the Premises leased to Lessee under the Lease ("Additional Land"). The Premises, from and after the date of this First Amendment, shall be that approximately 899 square feet, as same is cumulatively shown as the "Tower Lease" on Exhibit A attached hereto, and described as the "Tower Lease" by metes and bounds on Exhibit

B attached hereto. The Lease is hereby amended to reflect such increase in the size of the Premises and Exhibit A and Exhibit B attached hereto shall supplement any and all existing descriptions of the Premises.

4. The description and location of the easements and rights of way granted in the Lease for access and utilities are amended to reflect that "Access/Utility Easement" shown in Exhibit A attached hereto and described as the "Access/Utility Easement" by metes and bounds on Exhibit B attached hereto, and Lessor does hereby grant same to Lessee for those uses provided for in the Lease. Exhibit A and Exhibit B attached hereto shall replace any and all existing descriptions of the easements and rights of way for access and utilities granted in the Lease; provided, however, in the event the location(s) of any of Lessee's or its subtenants' or licensees' existing utilities and/or access routes are not depicted or described on Exhibit A or Exhibit B, Lessee's easement rights over such area(s) shall remain in full force and effect.

5. Commencing on the date that Dish commences installation of its equipment into the Additional Land, Lessee agrees to pay to Lessor that Additional Rent required under Section 20(c) of the Lease (the "Dish Additional Rent"). No other rent or additional consideration shall be paid to Lessor arising from leasing the Additional Land or subleasing or licensing to Dish. Should the sublease or license with Dish expire or terminate for any reason, Lessee's obligation to pay the Dish Additional Rent shall cease. Upon such termination, Lessee shall, within a reasonable time, vacate the Additional Land and restore the Additional Land to its original condition, reasonable wear and tear excepted.

6. Section 19 of the Lease is amended by deleting Lessee's notice address and inserting the following:

Lessee: STC Three LLC
c/o Crown Castle USA Inc.
General Counsel
Attn: Legal-Real Estate Department
2000 Corporate Drive
Canonsburg, Pennsylvania 15317-8564

7. Representations, Warranties and Covenants of Lessor. Lessor represents, warrants and covenants to Lessee as follows:

(a) Lessor is duly authorized to and has the full power and authority to enter into this First Amendment and to perform all of Lessor's obligations under the Lease as amended hereby. Lessor has complied with all applicable laws in entering into this First Amendment, including, without limitation, any laws requiring prior public notice or opportunity for bidding on same, and Lessee is relying on such compliance in entering into this First Amendment.

(b) Lessee is not currently in default under the Lease, and to Lessor's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Lessee under the Lease.

(c) Lessor agrees to provide such further assurances as may be requested to carry out and evidence the full intent of the parties under the Lease as amended hereby, and ensure Lessee's continuous and uninterrupted use, possession and quiet enjoyment of the Premises under the Lease as amended hereby.

(d) Lessor acknowledges that the Premises, as defined, shall include any portion of Lessor's property on which communications facilities or other Lessee improvements exist on the date of this First Amendment.

8. IRS Form W-9. Lessor agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Lessee. In the event the Premises is transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Lessee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in rent to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Lessee's request shall be considered a default and Lessee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

9. In all other respects, the remainder of the Lease shall remain in full force and effect. Any portion of the Lease that is inconsistent with this First Amendment is hereby amended to be consistent with this First Amendment. All of the provisions hereof shall inure to the benefit of and be binding upon Lessor and Lessee, and their personal representatives, heirs, successors and assigns. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, it being understood that all parties need not sign the same counterparts.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Lessor and Lessee have signed this instrument under seal, and have caused this First Amendment to be duly executed on the day and year first written above.

LESSOR:

The Board of Supervisors of Fairfax County

By: _____(SEAL)
Print Name: _____
Title: _____

IN WITNESS WHEREOF, Lessor and Lessee have signed this instrument under seal, and have caused this First Amendment to be duly executed on the day and year first written above.

LESSEE:

STC Three LLC,
a Delaware limited liability company

By: Global Signal Acquisitions II LLC,
a Delaware limited liability company
its Attorney-in-Fact

By: _____(SEAL)

Print Name: _____

Title: _____

EXHIBIT A
(ATTACHED HERETO)

Site Name: APC Tower/Kingstowne FD
BU: 876719
PPAB 6997114v1

- 6 -

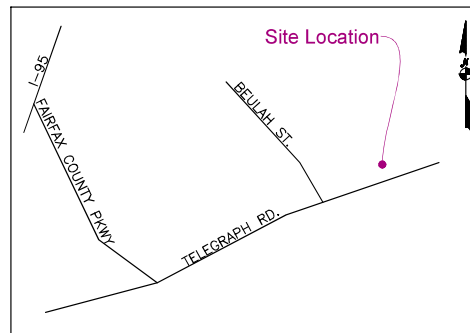
TOWER SURVEY

876719

APC TOWER/KINGSTOWNE FD
7936 TELEGRAPH ROAD
ALEXANDRIA, VA 22315
FAIRFAX COUNTY

LEGEND

Additional Land Building	IP / Rebar Monu	Transformer
Asphalt Pavement	IP / Rebar Monu- Found	Transformer Pad
Contour - Major	Cased Monu	Catch Basin
Contour - Minor	Cased Monu - Found	Inlet
Easement	Traverse Point	Culvert
Guidrail	Survey Point	Utility Vault
Jurisdiction Line	Gravel	Manhole
Property Line	Dirt	Handhole
Property Tie	Concrete	Pull box
Right of Way	Retaining Wall	Pedestal
Setback	Stairs	Riser
Treeline	Door / Gate	Meter
Welland	Double Door / Gate	Valve
Railroad Tracks	Gate - Sliding	Cleanout
Centrelne	Signs	Junction Box
Road Centerline	Mailbox	Pump Station
Stream	Column	Utility Box
Stream (Directional)	Utility Pole	Controller
Channel	Guyed Pole	HVAC
Fence	Pole	Generator
Cable TV	Bollard	
Cable Underground	Fire Hydrant	
Combined Sewer	Flag Pole	
Cable TV & Elec	Shrub	
Cable, Elec. & TV	Tree - Palm	
Electric	Tree - Coniferous	
Electric Underground	Tree - Deciduous	
Fiber	Metal Platform	
Fiber Underground	Fuel Tanks	
Gas	Traffic Signal Controller	
Sewer		
Storm		
Telephone		
Telephone Underground		
Unknown Utility		
Water		
Topo - High Point		
Topo - Low Point		
Breakline		
Match line		
Property Tie		



VICINITY MAP NOT SHOWN TO SCALE

CONTENTS

COVER SHEET
PROPERTY OVERVIEW
ACCESS OVERVIEW
SITE OVERVIEW
LEGAL DESCRIPTIONS

AREA SUMMARY

AREA	SQ. FT.	ACRES
PARENT PARCEL	181,618	4.17
EXISTING TOWER LEASE	864	0.02
ADDITIONAL LAND 1	15	0.0003
ADDITIONAL LAND 2	20	0.0005
TOWER LEASE	899	0.02
ACCESS & UTILITY EASEMENT	7,197	0.17

COORDINATES

LABEL	LAT. LONG
EIP/POC	N:6956127' -E:11865134'
EIP	N:6956346' -E:11865595'

SURVEY PERFORMED FOR:



SURVEY COORDINATED BY:

GEOLINE SURVEYING, INC.
13430 NW 10TH TERRACE, SUITE A, ALACHUA, FL 32615
TELE: (386) 418-0500 | FAX: (386) 462-9986

SURVEY PERFORMED BY:

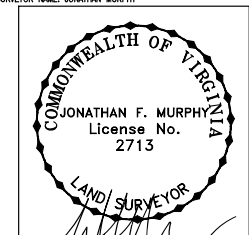
JONATHAN MURPHY, LAND SURVEYOR
6300 LIMOUSINE DRIVE, RALEIGH NC 27617
TELE: (919) 787-7873 | FAX: (919) 400-4442

DRAWN BY: MTS | CHK BY: AMB | JOB NO: 876719

SURVEYOR'S CERTIFICATION:

I hereby certify to STC Three LLC, Crown Castle USA Inc., including its parents, subsidiaries and affiliated entities, and Ameristar Information Network, LLC.

SURVEYOR NAME: JONATHAN MURPHY



SIGNATURE

04/12/2022

AREA ZONING: R-1

FEMA INFORMATION:
THIS PARCEL OF LAND LIES WITHIN FLOOD ZONE X, WHICH IS NOT A SPECIAL FLOOD HAZARD AREA AS PER F.I.R.M. PANEL NUMBER 91059C0385E, EFFECTIVE DATE: 09/17/2010

BASIS OF NORTH:

VA GRID (NORTH ZONE) NAD83

NOTES:

1. SURVEY PERFORMED ON 03/25/2022.
2. DATA PROJECTED IN STATE PLANE COORDINATE SYSTEM [NAD83], WITH [NAD83] VERTICAL DATUM.
3. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. UTILITIES SHOWN HEREON ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.
4. ALL VISIBLE TELECOM EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA UNLESS OTHERWISE NOTED.
5. NOT ALL SYMBOLS ARE DEPICTED TO SCALE.
6. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.

REV	DATE	DESCRIPTION	DRWN

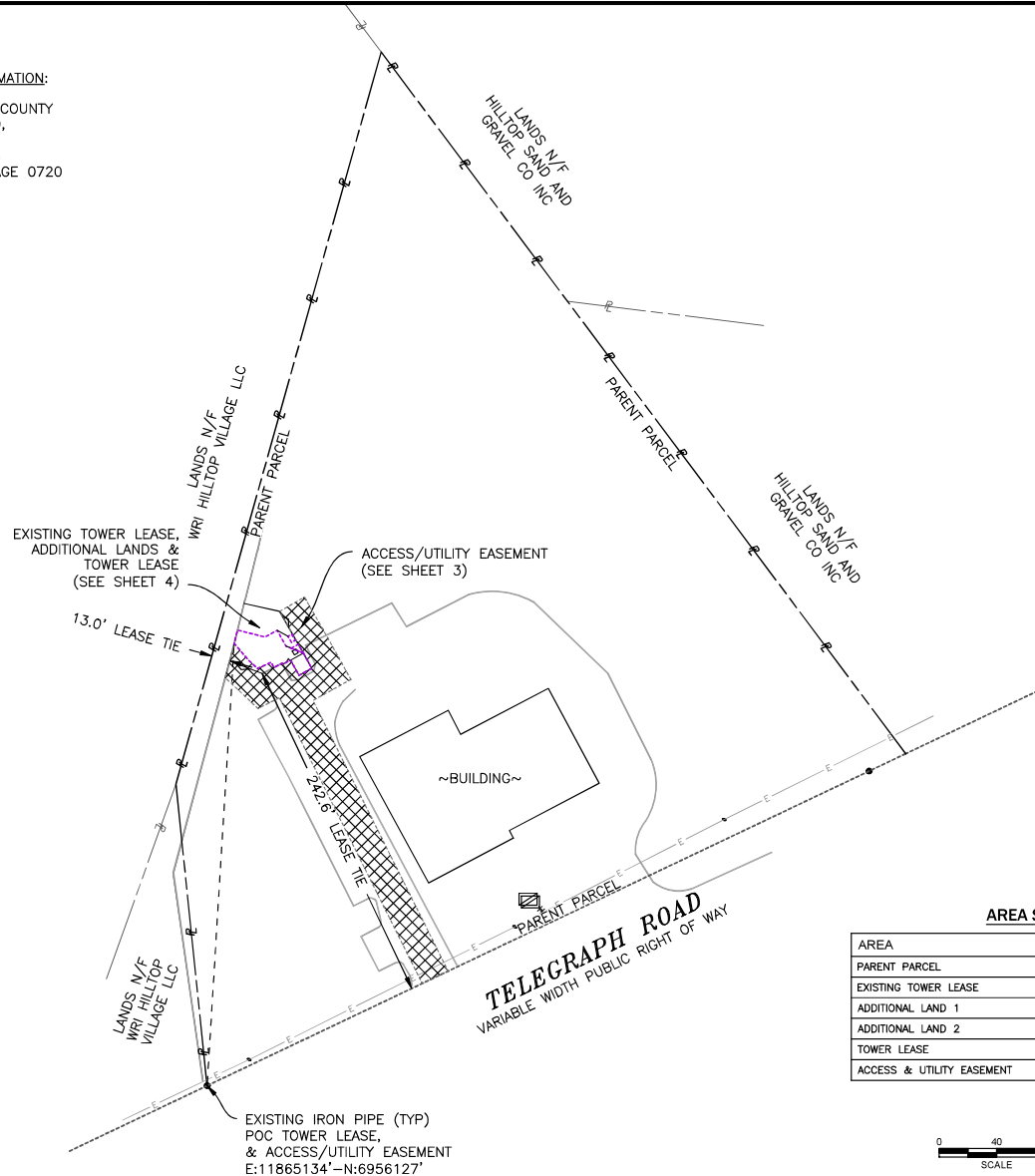
SITE INFORMATION:

Name: APC TOWER/KINGSTOWNE FD
BUN: 876719
Address: 7936 TELEGRAPH ROAD
ALEXANDRIA, VA 22315
County: FAIRFAX COUNTY

TOWER SURVEY

SHEET: COVER SHEET

PARENT PARCEL INFORMATION:
OWNER: BOARD OF
SUPERVISORS FAIRFAX COUNTY
7936 TELEGRAPH ROAD,
ALEXANDRIA, VA 22315
MAP #: 1001 01 0016
DEED BOOK 08859, PAGE 0720



<u>AREA SUMMARY</u>		
AREA	SQ. FT.	ACRES
PARENT PARCEL	181,618	4.17
EXISTING TOWER LEASE	864	0.02
ADDITIONAL LAND 1	15	0.0003
ADDITIONAL LAND 2	20	0.0005
TOWER LEASE	899	0.02
ACCESS & UTILITY EASEMENT	7,197	0.17

0 40 80 FT
SCALE

SURVEY PERFORMED FOR:



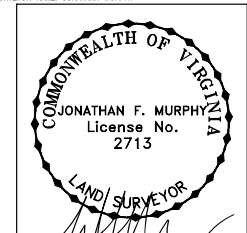
1500 Corporate Drive
Canonsburg, PA 15317

SURVEY COORDINATED BY:
GEOLINE SURVEYING, INC.
 13430 NW 10TH TERRACE, SUITE A, ALACHUA, FL 32615
 TELE: (386) 418-0500 | FAX: (386) 462-9986

SURVEY PERFORMED BY:
JONATHAN MURPHY LAND SURVEYOR
6300 LIMOUSINE DRIVE RALEIGH NC 27617
TELE: (919) 787-7873 | FAX: (919) 400-4442

DRAWN BY: MTS	CHK BY: AMB	JOB NO.: 876719
---------------	-------------	-----------------

SURVEYOR'S CERTIFICATION:
I hereby certify to STC Three LLC, Crown Castle USA Inc.,
including its parents, subsidiaries and affiliated entities, and
Ameristar Information Network, LLC.
SURVEYOR NAME: JONATHAN MURPHY



SIGNATURE
04/12/2022

AREA ZONING: R-1

FEMA INFORMATION:
THIS PARCEL OF LAND LIES WITHIN FLOOD ZONE X WHICH
IS NOT A SPECIAL FLOOD HAZARD AREA AS PER F.I.R.M.
PANEL NUMBER: 51059C0385E, EFFECTIVE DATE: 09/17/2010

BASIS OF NORTH:
VA GRID (NORTH ZONE) NAD83

NOTES:

1. SURVEY PERFORMED ON 03/25/2022.
2. DRAIN PROJECT IN STATE PLAT COORDINATE SYSTEM [NAD83], WITH [NAD83] VERTICAL DATUM.
3. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. UTILITIES SHOWN HEREON ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.
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5. NOT ALL SYMBOLS ARE DEPICTED TO SCALE.
6. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.

REV	DATE	DESCRIPTION	DRWN

SITE INFORMATION:	
-------------------	--

Name	APC TOWER/KINGSTOWNE FD
------	-------------------------

Name	ALC TOWER/KINGSTOWNE TD
BUN	876719

Address	7936 TELEGRAPH ROAD
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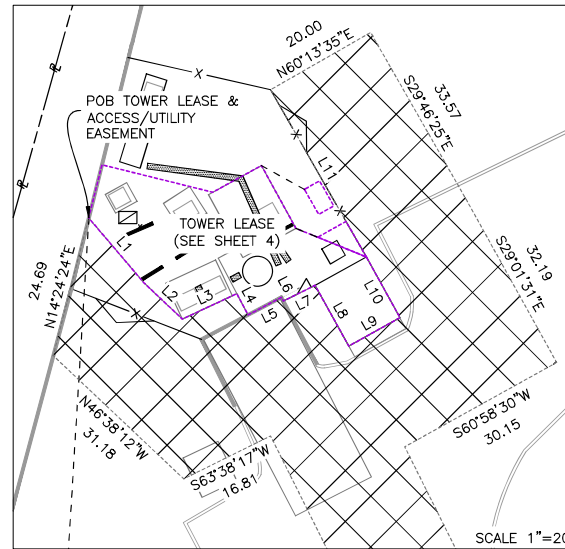
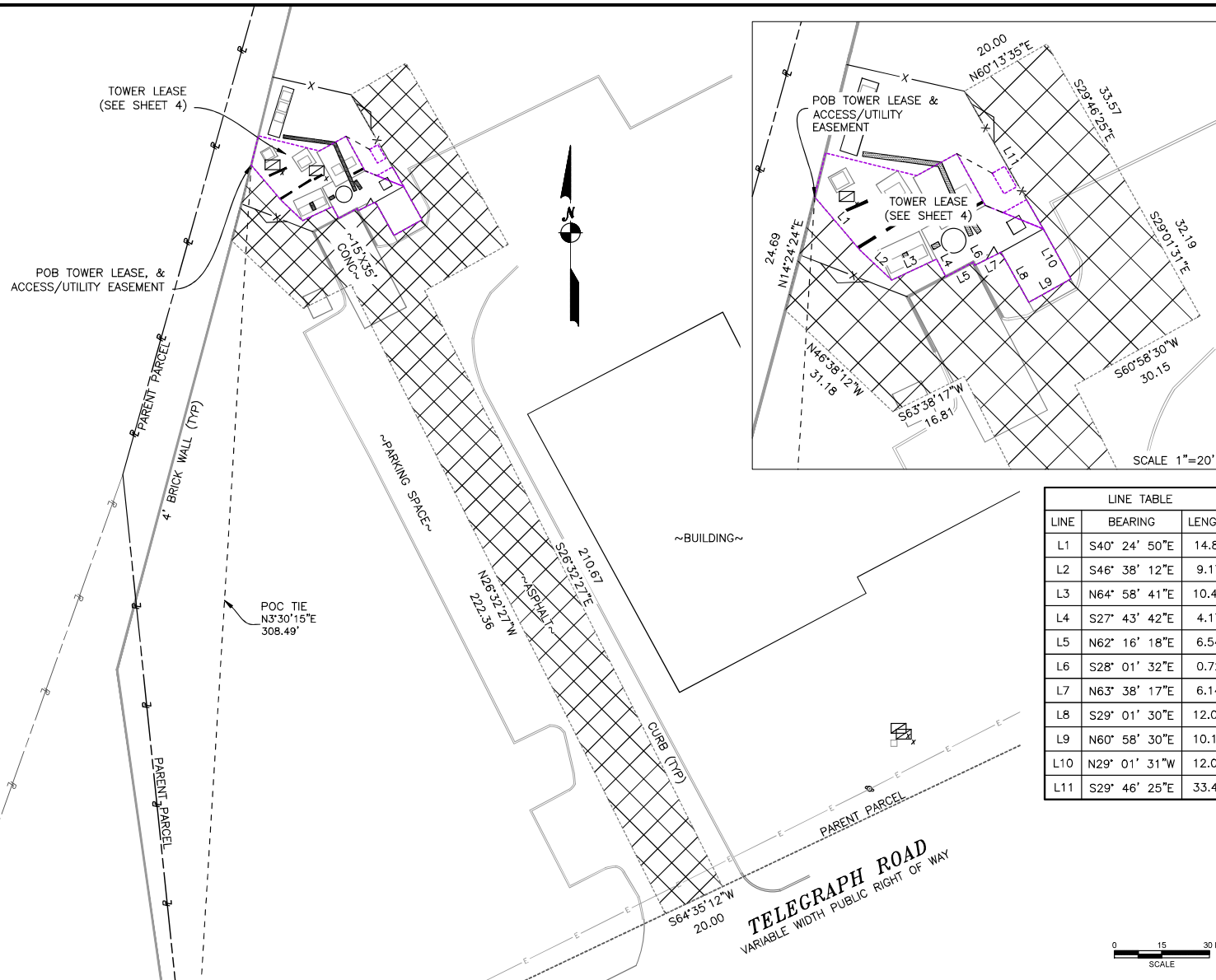
Address 7550 TELEGRAPH ROAD
ALEXANDRIA, VA 22315

	ALEXANDRIA, VA 22304
County	FAIRFAX COUNTY

TOWER SURVEY

SHEET: PROPERTY OVERVIEW

DWG NAME: 876719 APC TOWER-KINGSTOWNE TO UPDATE 2022.dwg



LINE TABLE		
LINE	BEARING	LENGTH
L1	S40° 24' 50"E	14.81
L2	S46° 38' 12"E	9.17
L3	N64° 58' 41"E	10.45
L4	S27° 43' 42"E	4.17
L5	N62° 16' 18"E	6.54
L6	S28° 01' 32"E	0.72
L7	N63° 38' 17"E	6.14
L8	S29° 01' 30"E	12.06
L9	N60° 58' 30"E	10.17
L10	N29° 01' 31"W	12.06
L11	S29° 46' 25"E	33.44

SURVEY PERFORMED FOR:

CROWN CASTLE
1500 Corporate Drive
Canonsburg, PA 15317

SURVEY COORDINATED BY:
GEOLINE SURVEYING, INC.
13430 NW 10TH TERRACE, SUITE A, ALACHUA, FL 32615
TELE: (386) 418-0500 | FAX: (386) 462-9986

SURVEY PERFORMED BY:
JONATHAN MURPHY, LAND SURVEYOR
6300 LIMOUSINE DRIVE RALEIGH NC 27617
TELE: (919) 787-7873 | FAX: (919) 400-4442

DRAWN BY: MTS | CHK BY: AMB | JOB NO: 876719

SURVEYOR'S CERTIFICATION:
I hereby certify to STC Three LLC, Crown Castle USA Inc.,
including its parents, subsidiaries and affiliated entities, and
Ameristar Information Network, LLC,
SURVEYOR NAME: JONATHAN MURPHY

COMMONWEALTH OF VIRGINIA
JONATHAN F. MURPHY
License No. 2713
LAND SURVEYOR
SIGNATURE
04/12/2022

AREA ZONING: R-1

FEMA INFORMATION:
THIS PARCEL OF LAND LIES WITHIN FLOOD ZONE X, WHICH
IS NOT A SPECIAL FLOOD HAZARD AREA AS PER F.I.R.M.
PANEL NUMBER 91059C0385E, EFFECTIVE DATE: 09/17/2010

BASIS OF NORTH:
VA GRID (NORTH ZONE) NAD83

NOTES:
1. SURVEY PERFORMED ON 03/25/2022.
2. DATA PROJECTED IN STATE PLANE COORDINATE SYSTEM
[NAD83], WITH [NAD83] VERTICAL DATUM.
3. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO
LOCATE UNDERGROUND UTILITIES. UTILITIES SHOWN
HEREON ARE LIMITED TO AND ARE PER OBSERVED
EVIDENCE ONLY.
4. ALL VISIBLE TELECOM EQUIPMENT AND IMPROVEMENTS
ARE CONTAINED WITHIN THE DESCRIBED AREA UNLESS
OTHERWISE NOTED.
5. NOT ALL SYMBOLS ARE DEPICTED TO SCALE.
6. THIS SURVEY DOES NOT REPRESENT A BOUNDARY
SURVEY OF THE PARENT PARCEL.

REV	DATE	DESCRIPTION	DRWN

SITE INFORMATION:
Name APC TOWER/KINGSTOWNE FD
BUN 876719
Address 7936 TELEGRAPH ROAD
ALEXANDRIA, VA 22315
County FAIRFAX COUNTY

TOWER SURVEY
SHEET: ACCESS OVERVIEW

DWG NAME: 876719 APC TOWER-KINGSTOWNE TO UPDATE 2022.dwg

LINE TABLE		
LINE	BEARING	LENGTH
L12	N27° 43' 42"W	0.72
L13	N60° 13' 35"E	3.00
L14	S29° 46' 25"E	5.00
L15	S60° 13' 35"W	3.00
L16	N29° 46' 25"W	5.00
L17	N60° 58' 35"E	5.64
L18	S29° 46' 24"E	7.09
L19	N67° 58' 52"W	9.11

POB
EXISTING TOWER LEASE,
TOWER LEASE &
ACCESS/UTILITY EASEMENT

POC TIE
N3°30'15"E
308.49'

POC TIE
N14°08'07"E
9.51'

POC TIE
S76°03'51"E
19.81'

POC TIE
N61°15'42"E
9.64'

POC TIE
S60°57'02"E
8.54'

POC TIE
S67°58'52"E
4.06'

S67°58'52"E
13.17'

N40°24'50"W
14.81'

N46°38'12"W
9.17'

S64°58'41"W
10.45'

N27°43'42"W
4.17'

S62°16'18"W
6.54'

S63°38'17"W
6.14'

N29°01'30"W
12.06'

10'X12' BUILDING

POB ADDITIONAL LAND 2

POB ADDITIONAL LAND 1

ACCESS/UTILITY
EASEMENT


CURB (TYP)

~15'X35' CONC~

ACCESS/UTILITY
EASEMENT



SURVEY PERFORMED FOR:



1500 Corporate Drive
Canonsburg, PA 15317

SURVEY COORDINATED BY:

GEOLINE SURVEYING, INC.
13430 NW 10TH TERRACE, SUITE A, ALACHUA, FL 32615
TELE: (386) 418-0500 | FAX: (386) 462-9986

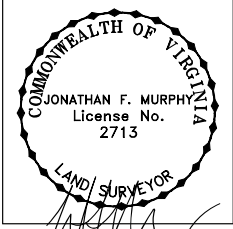
SURVEY PERFORMED BY:

JONATHAN MURPHY, LAND SURVEYOR
6300 LIMOUSINE DRIVE RALEIGH NC 27617
TELE: (919) 787-7873 | FAX: (919) 400-4442

DRAWN BY: MTS | CHK BY: AMB | JOB NO: 876719

SURVEYOR'S CERTIFICATION:

I hereby certify to STC Three LLC, Crown Castle USA Inc.,
including its parents, subsidiaries and affiliated entities, and
Ametris Information Network, LLC,
SURVEYOR NAME: JONATHAN MURPHY



SIGNATURE
04/12/2022

AREA ZONING: R-1

FEMA INFORMATION:

THIS PARCEL OF LAND LIES WITHIN FLOOD ZONE X, WHICH
IS NOT A SPECIAL FLOOD HAZARD AREA AS PER F.I.R.M.
PANEL NUMBER: 1059C0385E, EFFECTIVE DATE: 09/17/2010

BASIS OF NORTH:

VA GRID (NORTH ZONE) NAD83

NOTES:

1. SURVEY PERFORMED ON 03/25/2022.
2. DATA PROJECTED IN STATE PLANE COORDINATE SYSTEM [NAD83], WITH [NAD83] VERTICAL DATUM.
3. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. UTILITIES SHOWN HEREON ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.
4. ALL VISIBLE TELECOM EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA UNLESS OTHERWISE NOTED.
5. NOT ALL SYMBOLS ARE DEPICTED TO SCALE.
6. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.

REV	DATE	DESCRIPTION	DRWN

SITE INFORMATION:

Name	APC TOWER/KINGSTOWNE FD
BUN	876719
Address	7936 TELEGRAPH ROAD ALEXANDRIA, VA 22315
County	FAIRFAX COUNTY

TOWER SURVEY

SHEET: SITE OVERVIEW

DWG NAME: 876719.DWG TOWER-ADDITIONAL TOWER TO TOWER 2022.dwg

LEGAL DESCRIPTION: EXISTING TOWER LEASE (CREATED BY THIS OFFICE)

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS: COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134 -AND- N: 6956127;

THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO THE POINT OF BEGINNING;

THENCE, N 14° 08' 07" E FOR A DISTANCE OF 9.51 FEET TO A POINT;
THENCE, S 76° 03' 51" E FOR A DISTANCE OF 19.81 FEET TO A POINT;
THENCE, N 61° 15' 42" E FOR A DISTANCE OF 9.64 FEET TO A POINT;
THENCE, S 28° 44' 18" E FOR A DISTANCE OF 12.46 FEET TO A POINT;
THENCE, S 67° 58' 52" E FOR A DISTANCE OF 13.17 FEET TO A POINT;
THENCE, S 29° 01' 30" E FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, S 60° 58' 28" W FOR A DISTANCE OF 10.17 FEET TO A POINT;
THENCE, N 29° 01' 30" W FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, S 63° 38' 17" W FOR A DISTANCE OF 6.14 FEET TO A POINT;
THENCE, N 27° 43' 42" W FOR A DISTANCE OF 0.72 FEET TO A POINT;
THENCE, S 62° 16' 18" W FOR A DISTANCE OF 6.54 FEET TO A POINT;
THENCE, N 27° 43' 42" W FOR A DISTANCE OF 4.17 FEET TO A POINT;
THENCE, S 64° 58' 41" W FOR A DISTANCE OF 10.45 FEET TO A POINT;
THENCE, N 46° 38' 12" W FOR A DISTANCE OF 9.17 FEET TO A POINT;
THENCE, N 40° 24' 50" W FOR A DISTANCE OF 14.81 FEET TO THE POINT OF BEGINNING CONTAINING 864 SQFT -OR- 0.02 ACRES.

LEGAL DESCRIPTION: ADDITIONAL LAND 1 (CREATED BY THIS OFFICE)

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS: COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134 -AND- N: 6956127;

THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO A POINT ON AN EXISTING 864 TOWER LEASE;

THENCE, ALONG SAID LEASE, N 14° 08' 07" E FOR A DISTANCE OF 9.51 FEET TO A POINT;
THENCE, S 76° 03' 51" E FOR A DISTANCE OF 19.81 FEET TO A POINT;
THENCE, N 61° 15' 42" E FOR A DISTANCE OF 9.64 FEET TO A POINT;
THENCE, DEPARTING SAID LEASE, S 60° 57' 02" E FOR A DISTANCE OF 8.54 FEET TO THE POINT OF BEGINNING;
THENCE, N 60° 13' 35" E FOR A DISTANCE OF 3.00 FEET TO A POINT;
THENCE, S 29° 46' 25" E FOR A DISTANCE OF 5.00 FEET TO A POINT;
THENCE, S 60° 13' 35" W FOR A DISTANCE OF 3.00 FEET TO A POINT;
THENCE, N 29° 46' 25" W FOR A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING CONTAINING 15 SQFT -OR- 0.0003 ACRES.

LEGAL DESCRIPTION: ADDITIONAL LAND 2 (CREATED BY THIS OFFICE)

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS: COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134 -AND- N: 6956127;

THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO A POINT ON AN EXISTING 864 TOWER LEASE;

THENCE, ALONG SAID LEASE, N 14° 08' 07" E FOR A DISTANCE OF 9.51 FEET TO A POINT;
THENCE, S 76° 03' 51" E FOR A DISTANCE OF 19.81 FEET TO A POINT;
THENCE, N 61° 15' 42" E FOR A DISTANCE OF 9.64 FEET TO A POINT;
THENCE, S 28° 44' 18" E FOR A DISTANCE OF 12.46 FEET TO A POINT;
THENCE, S 67° 58' 52" E FOR A DISTANCE OF 4.06 FEET TO THE POINT OF BEGINNING;
THENCE, DEPARTING SAID LEASE, N 60° 58' 35" E FOR A DISTANCE OF 5.64 FEET TO A POINT;
THENCE, S 29° 46' 24" E FOR A DISTANCE OF 7.09 FEET TO A POINT;
THENCE, N 67° 58' 52" W FOR A DISTANCE OF 9.11 FEET TO THE POINT OF BEGINNING CONTAINING 20 SQFT -OR- 0.0005 ACRES.

LEGAL DESCRIPTION: TOWER LEASE (CREATED BY THIS OFFICE)

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS: COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134 -AND- N: 6956127;

THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO THE POINT OF BEGINNING;

THENCE, N 14° 08' 07" E FOR A DISTANCE OF 9.51 FEET TO A POINT;
THENCE, S 76° 03' 51" E FOR A DISTANCE OF 19.81 FEET TO A POINT;
THENCE, N 61° 15' 42" E FOR A DISTANCE OF 9.64 FEET TO A POINT;
THENCE, S 28° 44' 18" E FOR A DISTANCE OF 12.46 FEET TO A POINT;
THENCE, S 67° 58' 52" E FOR A DISTANCE OF 4.06 FEET TO A POINT;
THENCE, N 60° 58' 35" E FOR A DISTANCE OF 5.64 FEET TO A POINT;
THENCE, S 29° 46' 24" E FOR A DISTANCE OF 7.09 FEET TO A POINT;
THENCE, S 29° 01' 30" E FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, S 60° 58' 28" W FOR A DISTANCE OF 10.17 FEET TO A POINT;
THENCE, N 29° 01' 30" W FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, S 63° 38' 17" W FOR A DISTANCE OF 6.14 FEET TO A POINT;
THENCE, N 27° 43' 42" W FOR A DISTANCE OF 0.72 FEET TO A POINT;
THENCE, S 62° 16' 18" W FOR A DISTANCE OF 6.54 FEET TO A POINT;
THENCE, N 27° 43' 42" W FOR A DISTANCE OF 4.17 FEET TO A POINT;
THENCE, S 64° 58' 41" W FOR A DISTANCE OF 10.45 FEET TO A POINT;
THENCE, N 46° 38' 12" W FOR A DISTANCE OF 9.17 FEET TO A POINT;
THENCE, N 40° 24' 50" W FOR A DISTANCE OF 14.81 FEET TO THE POINT OF BEGINNING CONTAINING 884 SQFT -OR- 0.02 ACRES.

TOGETHER WITH AN AREA DESCRIBED HEREIN AS 'ADDITIONAL AREA 1', SAID AREA CONTAINS 15 SQFT -OR- 0.0003 ACRES, GIVING THE TOTAL TOWER LEASE AREA OF 899 SQFT -OR- 0.02 ACRES.

LEGAL DESCRIPTION: ACCESS/UTILITY EASEMENT (CREATED BY THIS OFFICE)

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS: COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134 -AND- N: 6956127;

THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO A POINT ON AN EXISTING 864 SQFT TOWER LEASE, BEING THE POINT OF BEGINNING;
THENCE, ALONG SAID TOWER LEASE, S 40° 24' 50" E FOR A DISTANCE OF 14.81 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, S 46° 38' 12" E FOR A DISTANCE OF 9.17 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 64° 58' 41" E FOR A DISTANCE OF 10.45 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, S 27° 43' 42" E FOR A DISTANCE OF 4.17 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 62° 16' 18" E FOR A DISTANCE OF 6.54 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, S 28° 01' 32" E FOR A DISTANCE OF 0.72 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 63° 38' 17" E FOR A DISTANCE OF 6.14 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, S 29° 01' 30" E FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 60° 58' 30" E FOR A DISTANCE OF 10.17 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 29° 01' 31" W FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, DEPARTING SAID TOWER LEASE, N 29° 46' 25" W FOR A DISTANCE OF 33.44 FEET TO A POINT;
THENCE, N 60° 13' 35" E FOR A DISTANCE OF 20.00 FEET TO A POINT;
THENCE, S 29° 46' 25" E FOR A DISTANCE OF 33.57 FEET TO A POINT;
THENCE, S 29° 01' 31" E FOR A DISTANCE OF 32.19 FEET TO A POINT;
THENCE, S 60° 58' 30" W FOR A DISTANCE OF 30.15 FEET TO A POINT;
THENCE, S 26° 32' 27" E FOR A DISTANCE OF 210.67 FEET TO A POINT ON THE PREVIOUSLY MENTIONED RIGHT OF WAY;

THENCE, ALONG SAID RIGHT OF WAY, S 64° 35' 12" W FOR A DISTANCE OF 20.00 FEET TO A POINT;
THENCE, DEPARTING SAID RIGHT OF WAY, N 26° 32' 27" W FOR A DISTANCE OF 222.36 FEET TO A POINT;
THENCE, S 63° 38' 17" W FOR A DISTANCE OF 16.81 FEET TO A POINT;
THENCE, N 46° 38' 12" W FOR A DISTANCE OF 31.18 FEET TO A POINT;
THENCE, N 14° 24' 24" E FOR A DISTANCE OF 24.69 FEET TO A POINT ON THE PREVIOUSLY MENTIONED TOWER LEASE, SAID POINT BEING THE POINT OF BEGINNING CONTAINING 7,197 SQFT -OR- 0.17 ACRES.

SURVEY PERFORMED FOR:



1500 Corporate Drive
Canonsburg, PA 15317

SURVEY COORDINATED BY:

GEOLINE SURVEYING, INC.
13430 NW 10TH TERRACE, SUITE A, ALACHUA, FL 32615
TELE: (386) 418-0500 | FAX: (386) 462-9986

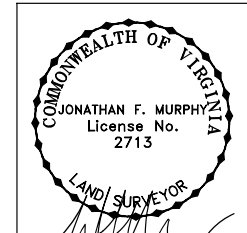
SURVEY PERFORMED BY:

JONATHAN MURPHY LAND SURVEYOR
6300 LIMOUSINE DRIVE RALEIGH NC 27617
TELE: (919) 787-7873 | FAX: (919) 400-4442

DRAWN BY: MTS | CHK BY: AMB | JOB NO.: 876719

SURVEYOR'S CERTIFICATION:

I hereby certify to STC Three LLC, Crown Castle USA Inc., Including its parents, subsidiaries and affiliated entities, and Ameristar Information Network, LLC.
SURVEYOR NAME: JONATHAN MURPHY



SIGNATURE
04/12/2022

AREA ZONING: R-1

FEMA INFORMATION:

THIS PARCEL OF LAND LIES WITHIN FLOOD ZONE X, WHICH IS NOT A SPECIAL FLOOD HAZARD AREA AS PER F.I.R.M. PANEL NUMBER: 91059C0385C. EFFECTIVE DATE: 09/17/2010

BASIS OF NORTH:

VA GRID (NORTH ZONE) NAD83

NOTES:

1. SURVEY PERFORMED ON 03/25/2022.
2. DATA PROJECTED IN STATE PLANE COORDINATE SYSTEM [NAD83], WITH [NAD83] VERTICAL DATUM.
3. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. UTILITIES SHOWN HEREON ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.
4. ALL VISIBLE TELECOM EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA UNLESS OTHERWISE NOTED.
5. NOT ALL SYMBOLS ARE DEPICTED TO SCALE.
6. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.

REV	DATE	DESCRIPTION	DRWN

SITE INFORMATION:

Name | APC TOWER/KINGSTOWNE FD
BUN | 876719
Address | 7936 TELEGRAPH ROAD
ALEXANDRIA, VA 22315
County | FAIRFAX COUNTY

TOWER SURVEY

SHEET: LEGAL DESCRIPTION

EXHIBIT B

EXISTING TOWER LEASE

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS:

COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134' -AND- N: 6956127';

THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO THE POINT OF BEGINNING;

THENCE, N 14° 08' 07" E FOR A DISTANCE OF 9.51 FEET TO A POINT;

THENCE, S 76° 03' 51" E FOR A DISTANCE OF 19.81 FEET TO A POINT;

THENCE, N 61° 15' 42" E FOR A DISTANCE OF 9.64 FEET TO A POINT;

THENCE, S 28° 44' 18" E FOR A DISTANCE OF 12.46 FEET TO A POINT;

THENCE, S 67° 58' 52" E FOR A DISTANCE OF 13.17 FEET TO A POINT;

THENCE, S 29° 01' 30" E FOR A DISTANCE OF 12.06 FEET TO A POINT;

THENCE, S 60° 58' 28" W FOR A DISTANCE OF 10.17 FEET TO A POINT;

THENCE, N 29° 01' 30" W FOR A DISTANCE OF 12.06 FEET TO A POINT;

THENCE, S 63° 38' 17" W FOR A DISTANCE OF 6.14 FEET TO A POINT;

THENCE, N 27° 43' 42" W FOR A DISTANCE OF 0.72 FEET TO A POINT;

THENCE, S 62° 16' 18" W FOR A DISTANCE OF 6.54 FEET TO A POINT;

THENCE, N 27° 43' 42" W FOR A DISTANCE OF 4.17 FEET TO A POINT;

THENCE, S 64° 58' 41" W FOR A DISTANCE OF 10.45 FEET TO A POINT;

THENCE, N 46° 38' 12" W FOR A DISTANCE OF 9.17 FEET TO A POINT;

THENCE, N 40° 24' 50" W FOR A DISTANCE OF 14.81 FEET TO THE POINT OF BEGINNING CONTAINING 864 SQFT -OR- 0.02 ACRES.

ADDITIONAL LAND 1

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS:

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THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO A POINT ON AN EXISTING 864 TOWER LEASE;

THENCE, ALONG SAID LEASE, N 14° 08' 07" E FOR A DISTANCE OF 9.51 FEET TO A POINT;

THENCE, S 76° 03' 51" E FOR A DISTANCE OF 19.81 FEET TO A POINT;

THENCE, N 61° 15' 42" E FOR A DISTANCE OF 9.64 FEET TO A POINT;

THENCE, DEPARTING SAID LEASE, S 60° 57' 02" E FOR A DISTANCE OF 8.54 FEET TO THE POINT OF BEGINNING;

THENCE, N 60° 13' 35" E FOR A DISTANCE OF 3.00 FEET TO A POINT;

THENCE, S 29° 46' 25" E FOR A DISTANCE OF 5.00 FEET TO A POINT;

THENCE, S 60° 13' 35" W FOR A DISTANCE OF 3.00 FEET TO A POINT;

THENCE, N 29° 46' 25" W FOR A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING CONTAINING 15 SQFT -OR- 0.0003 ACRES.

EXHIBIT B
(CONTINUED)

ADDITIONAL LAND 2

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS:

COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134' -AND- N: 6956127'; THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO A POINT ON AN EXISTING 864 TOWER LEASE;
THENCE, ALONG SAID LEASE, N 14° 08' 07" E FOR A DISTANCE OF 9.51 FEET TO A POINT;
THENCE, S 76° 03' 51" E FOR A DISTANCE OF 19.81 FEET TO A POINT;
THENCE, N 61° 15' 42" E FOR A DISTANCE OF 9.64 FEET TO A POINT;
THENCE, S 28° 44' 18" E FOR A DISTANCE OF 12.46 FEET TO A POINT;
THENCE, S 67° 58' 52" E FOR A DISTANCE OF 4.06 FEET TO THE POINT OF BEGINNING;
THENCE, DEPARTING SAID LEASE, N 60° 58' 35" E FOR A DISTANCE OF 5.64 FEET TO A POINT;
THENCE, S 29° 46' 24" E FOR A DISTANCE OF 7.09 FEET TO A POINT;
THENCE, N 67° 58' 52" W FOR A DISTANCE OF 9.11 FEET TO THE POINT OF BEGINNING CONTAINING 20 SQFT -OR- 0.0005 ACRES.

TOWER LEASE

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS:

COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134' -AND- N: 6956127'; THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO THE POINT OF BEGINNING;
THENCE, N 14° 08' 07" E FOR A DISTANCE OF 9.51 FEET TO A POINT;
THENCE, S 76° 03' 51" E FOR A DISTANCE OF 19.81 FEET TO A POINT;
THENCE, N 61° 15' 42" E FOR A DISTANCE OF 9.64 FEET TO A POINT;
THENCE, S 28° 44' 18" E FOR A DISTANCE OF 12.46 FEET TO A POINT;
THENCE, S 67° 58' 52" E FOR A DISTANCE OF 4.06 FEET TO A POINT;
THENCE, N 60° 58' 35" E FOR A DISTANCE OF 5.64 FEET TO A POINT;
THENCE, S 29° 46' 24" E FOR A DISTANCE OF 7.09 FEET TO A POINT;
THENCE, S 29° 01' 30" E FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, S 60° 58' 28" W FOR A DISTANCE OF 10.17 FEET TO A POINT;
THENCE, N 29° 01' 30" W FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, S 63° 38' 17" W FOR A DISTANCE OF 6.14 FEET TO A POINT;
THENCE, N 27° 43' 42" W FOR A DISTANCE OF 0.72 FEET TO A POINT;
THENCE, S 62° 16' 18" W FOR A DISTANCE OF 6.54 FEET TO A POINT;
THENCE, N 27° 43' 42" W FOR A DISTANCE OF 4.17 FEET TO A POINT;
THENCE, S 64° 58' 41" W FOR A DISTANCE OF 10.45 FEET TO A POINT;
THENCE, N 46° 38' 12" W FOR A DISTANCE OF 9.17 FEET TO A POINT;
THENCE, N 40° 24' 50" W FOR A DISTANCE OF 14.81 FEET TO THE POINT OF BEGINNING CONTAINING 884 SQFT -OR- 0.02 ACRES.

Site Name: APC Tower/Kingstowne FD
BU: 876719
PPAB 6997114v1

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EXHIBIT B
(CONTINUED)

TOGETHER WITH AN AREA DESCRIBED HEREIN AS "ADDITIONAL AREA 1", SAID AREA CONTAINS 15 SQFT -OR- 0.0003 ACRES, GIVING THE TOTAL TOWER LEASE AREA OF 899 SQFT -OR- 0.02 ACRES.

ACCESS/UTILITY EASEMENT

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE CITY OF ALEXANDRIA, COUNTY OF FAIRFAX, STATE OF VIRGINIA, DESCRIBED IN DEED BOOK 08859, PAGE 0720, FURTHER DESCRIBED AS:

COMMENCING FROM AN EXISTING IRON PIPE, FOUND ON THE SOUTHERN MOST PROPERTY CORNER OF SAID PARCEL, ALSO LYING ON THE NORTHERN RIGHT OF WAY OF TELEGRAPH ROAD, AND HAVING VIRGINIA (NORTH ZONE) STATE PLANE COORDINATES E: 11865134' -AND- N: 6956127'; THENCE, DEPARTING SAID RIGHT OF WAY, N 03° 30' 15" E FOR A DISTANCE OF 308.49 FEET TO A POINT ON AN EXISTING 864 SQFT TOWER LEASE, BEING THE POINT OF BEGINNING;
THENCE, ALONG SAID TOWER LEASE, S 40° 24' 50" E FOR A DISTANCE OF 14.81 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, S 46° 38' 12" E FOR A DISTANCE OF 9.17 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 64° 58' 41" E FOR A DISTANCE OF 10.45 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, S 27° 43' 42" E FOR A DISTANCE OF 4.17 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 62° 16' 18" E FOR A DISTANCE OF 6.54 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, S 28° 01' 32" E FOR A DISTANCE OF 0.72 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 63° 38' 17" E FOR A DISTANCE OF 6.14 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, S 29° 01' 30" E FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 60° 58' 30" E FOR A DISTANCE OF 10.17 FEET TO A POINT;
THENCE, ALONG SAID TOWER LEASE, N 29° 01' 31" W FOR A DISTANCE OF 12.06 FEET TO A POINT;
THENCE, DEPARTING SAID TOWER LEASE, N 29° 46' 25" W FOR A DISTANCE OF 33.44 FEET TO A POINT;
THENCE, N 60° 13' 35" E FOR A DISTANCE OF 20.00 FEET TO A POINT;
THENCE, S 29° 46' 25" E FOR A DISTANCE OF 33.57 FEET TO A POINT;
THENCE, S 29° 01' 31" E FOR A DISTANCE OF 32.19 FEET TO A POINT;
THENCE, S 60° 58' 30" W FOR A DISTANCE OF 30.15 FEET TO A POINT;
THENCE, S 26° 32' 27" E FOR A DISTANCE OF 210.67 FEET TO A POINT ON THE PREVIOUSLY MENTIONED RIGHT OF WAY;
THENCE, ALONG SAID RIGHT OF WAY, S 64° 35' 12" W FOR A DISTANCE OF 20.00 FEET TO A POINT;
THENCE, DEPARTING SAID RIGHT OF WAY, N 26° 32' 27" W FOR A DISTANCE OF 222.36 FEET TO A POINT;
THENCE, S 63° 38' 17" W FOR A DISTANCE OF 16.81 FEET TO A POINT;
THENCE, N 46° 38' 12" W FOR A DISTANCE OF 31.18 FEET TO A POINT;
THENCE, N 14° 24' 24" E FOR A DISTANCE OF 24.69 FEET TO A POINT ON THE PREVIOUSLY MENTIONED TOWER LEASE, SAID POINT BEING THE POINT OF BEGINNING CONTAINING 7,197 SQFT -OR- 0.17 ACRES.