FAIRFAX COUNTY BOARD OF SUPERVISORS October 11, 2022

<u>AGENDA</u>		
9:30	Done	Presentations
9:30	Done	Progress Update on Implementation of the Recommendations of the Chairman's Task Force on Equity and Opportunity
10:00	Done	Presentation of the A. Heath Onthank Awards
10:00	Done	Matters Presented by Board Members
10:30	Approved	Public Hearing on the County and Schools' FY 2022 Carryover Review to Amend the Appropriation Level in the FY 2023 Revised Budget Plan
10:30	Done	Items Presented by the County Executive
	ADMINISTRATIVE ITEMS	
1	Approved	Approval of "Watch for Children" Signs as Part of the Residential Traffic Administration Program – Lakevale Drive (Providence District)
2	Approved	Authorization to Advertise a Public Hearing for the De-Creation of Maddux Lane Area Sanitary District for Removal of Refuse/Recycling Collection Service (Dranesville District)
3	Approved	Supplemental Appropriation Resolution AS 23080 for the Fairfax County Economic Development Authority to Accept Grant Funding from the Governor's Agriculture and Forestry Industries Development Fund for Beanstalk Farms, Inc., and Authorization to Use Economic Opportunity Reserve Funding to Meet the Local Cash Grant Requirement and to Execute the Performance Agreement
4	Approved	Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance Grant
5	Approved	Supplemental Appropriation Resolution AS 23002 for the Fairfax County Park Authority to Accept Grant Funding from the Virginia Department of Conservation and Recreation for Improvements to Trail Facilities in Royal Lake Park

FAIRFAX COUNTY BOARD OF SUPERVISORS October 11, 2022

ADMINISTRATIVE
ITEMS
(continued)

	(continued)	
6	Approved	Approval of "\$200 Additional Fine for Speeding" Signs as Part of the Residential Traffic Administration Program – O'Day Drive (Sully District)
7	WITHDRAWN	Authorization to Advertise a Public Hearing on a Proposal to Prohibit Through Truck Traffic on Powhatan Street and Freedom Lane (Dranesville District)
8	Approved	Authorization to Advertise a Public Hearing to Consider Amendments to The Code of the County of Fairfax, Virginia - Chapter 4 (Taxation and Finance), Article 13 (Transient Occupancy Tax)
	ACTION ITEMS	
1	Approved	Adoption of a Resolution to Support the Abandonment and Addition of Portions of Thompson Road (Route 669) (Sully District)
2	Approved	Authorization for the Fairfax County Redevelopment and Housing Authority to Issue Multifamily Housing Revenue Bonds or Notes in an Aggregate Amount Not to Exceed \$3,000,000 to Provide Supplemental Financing for the 148-Unit 4 percent Low Income Housing Tax Credit (LIHTC) Portion of the 274-Unit Ovation at Arrowbrook (Dranesville District)
3	Approved	Approval of a Deed of Easement and Maintenance Agreement between Christopher at the Reserve at Spring Lake, LLC (Christopher), Spring Lake Estates West Community (SLEW1), and Spring Lake West Homeowners Association (SLEW2) (Hunter Mill District)
4	Approved	Amendment of the Board's Written Policy Governing Participation by Electronic Communication of Board Members in Public Meetings
5	Approved	Endorsement of the City of Alexandria's Application for the United States Department of Transportation's FY 2022 Reconnecting Communities Pilot (RCP) Discretionary Grant Program (Mason District)

FAIRFAX COUNTY BOARD OF SUPERVISORS October 11, 2022

		October 11, 2022
	ACTION ITEMS (continued)	
6	Approved	Approval of and Authorization to Execute an Agreement with Capital One Bank (USA), NA, Capital One Tysons Block C Owner, LLC, 1750 Old Meadow, LLC, 1820 Dolley Madison, LLC, SCG Development Partners, LLC, and the Fairfax County Redevelopment and Housing Authority, Associated with Development of Somos at McLean Metro, McLean, Virginia (Providence District)
	INFORMATION ITEMS	
1	Noted	County Holiday Schedule – Calendar Year 2023
	CLOSED SESSION	
	Done	Closed Session
	PUBLIC HEARINGS	
3:30	Approved	Public Hearing on AF 2022-DR-00002 (AR 2006-DR-001-02) (Barbara Lois Whitney TR) (Dranesville District)
3:30	Approved	Public Hearing on SE 2021-PR-00024 (Appletree Montessori) (Providence District)
3:30	Approved	Public Hearing on SE 2022-PR-00007 (Clark Construction Group, LLC) (Providence District)
4:00	Deferred to 12/06/2022 at 3:30p.m.	Public Hearing on SE 2021-MV-00018 (Olde Towne Pet Resort Springfield LLC) (Mount Vernon District)
4:00	Approved	Public Hearing on RZ 2021-PR-00022 (Somos at Tysons LLC) (Providence District)
4:00	Approved	Public Hearing on Amendment to the Code of the County of Fairfax, Chapter 3, County Employees, Article 1, Personnel Administration, Section 3-1-6(b)(2)
4:30	Approved	Public Hearing on Proposed Amendment to Appendix Q (Land Development Services Fee Schedule) of The Code of the County of Fairfax, Virginia (County Code) Re: Exemption from the Fee for Installation of Electric Vehicle Charging (EVC) Equipment for a Trial Period of Eighteen Months



Fairfax County, Virginia BOARD OF SUPERVISORS AGENDA

Tuesday October 11, 2022

9:30 a.m.

PRESENTATIONS

- RESOLUTION To recognize the members of the Longfellow Middle School
 Quiz Bowl team for their outstanding accomplishments. Requested by Supervisor
 Foust.
- RESOLUTION To recognize Reston native Nate Mook for his accomplishments as CEO of World Central Kitchen. Requested by Supervisor Alcorn.
- PROCLAMATION To designate September 15-October 15, 2022 as Hispanic Heritage Month. Requested by Chairman McKay and Supervisor Palchik.
- PROCLAMATION To designate October 9-15, 2022 as Fire Prevention Week.
 Requested by Chairman McKay.

STAFF:

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

Board Agenda Item October 11, 2022

9:30 a.m.

<u>Progress Update on Implementation of the Recommendations of the Chairman's Task</u> <u>Force on Equity and Opportunity</u>

ENCLOSED DOCUMENTS:

Attachment 1: Chairman's Task Force on Equity & Opportunity – Presentation Attachment 2: Chairman's Task Force on Equity & Opportunity Progress Report - Fall 2022

PRESENTED BY:

Karla Bruce, Chief Equity Officer

ATTACHMENT 1

CHAIRMAN'S TASK FORCE ON EQUITY & OPPORTUNITY

PROGRESS UPDATE ON IMPLEMENTATION OF RECOMMENDATIONS

KARLA BRUCE, CHIEF EQUITY OFFICER
OCTOBER 11, 2022



Background

Purpose

The Chairman's Task Force on Equity and Opportunity was convened in September 2020 to better understand the drivers of inequity in Fairfax County and to develop recommendations for accelerating the county's progress towards becoming One Fairfax.

Structure

The Task Force was comprised of community leaders and subject matter experts organized into four committees:

- Cradle to Career Success
- Community Health and Wellness
- Community Safety and Justice
- Equitable Communities

The Work

The insights and recommendations developed by the Task Force were identified as critical to advancing racial and social equity in Fairfax County.

Key Points

- In many ways, the Task Force's recommendations reflected the direction articulated in the Countywide Strategic Plan and Economic Recovery Framework.
- In other ways, the recommendations challenged the county to be more explicit and targeted.
- The Task Force reminds the county that while deliberate action is necessary, it's not just what the county does that is important, but how we do it.
- Four of the twenty recommendations (16, 18, 19, and 20) initially identified as priority for implementation to set the foundation for addressing the other recommendations in the context the Task Force intended.

Recommendation 16: Develop, pilot, and institute Fairfax County equity-based decision-making tools for planning, projects, decision making and resource allocation.

Actions Being Taken:

- Equity Impact Plans outlining specific goals, activities, and performance metrics aligned to the Countywide Strategic Plan and the One Fairfax Policy Areas of Focus, have been completed by county departments/agencies and cross system initiatives. CY 2022 Equity Impact Plans were posted on the county website in May and will be updated annually.
- In February 2022, **Equity Impact Statements** began being included in select Action Items presented to the Board of Supervisors (BOS) and as of September, Equity Impact Statements will now be included on a broader range of items.

Recommendation 18: Establish a Community Advisory Board, with representation by BIPOC (Black, Indigenous, and People of Color) and low-income individuals, to monitor the degree to which each county agency has prioritized the needs of BIPOC and lower income communities.

Actions Being Taken

- Appointments to the One Fairfax Community Roundtable will be initiated in October 2022. The Roundtable will be comprised of Board-appointed magisterial district representatives and community and institutional representatives, appointed by the Chairman. Additional opportunities for the community's engagement will be enabled through the Roundtable's convening of topical, ad-hoc Equity Action Teams formed through a self-nomination process and targeted recruitment to ensure the inclusion of technical expertise and lived experience.
- A role of the Roundtable will be to provide input and feedback in the development and implementation of annual Equity Impact Plans.

Recommendation 19: Demonstrate intentionality in ensuring diverse representation and inclusiveness in power and decision-making.

Actions Being Taken:

- Full implementation of the **Inclusive Community Engagement Framework** is underway with particular investments made to expand language access, virtual access, and digital access.
- NCS will expand Neighborhood College offerings targeting under-represented groups and areas and will ensure graduates are made aware of Board, Authority, and Commission (BAC) vacancies.
- Working with Leadership Fairfax to develop a community leadership capacity building program designed to diversify the pool of residents considered for BAC appointments and other community leadership positions.
- Conducting a demographic analysis of the membership of county BACs and instituting a process for collecting demographic information at the point of appointment with results shared with BOS members annually.

Recommendation 20: Ensure our local leaders, public and private, have the knowledge and capacity to understand the drivers of racial inequity and their contribution to structural racism and use their power to build more equitable communities.

Actions Being Taken:

- Training opportunities are available to county leadership to include Advancing Racial Equity: The Role of Government and the viewing of the documentary Race: The Power of an Illusion with facilitated discussion.
- Leadership Fairfax will offer training and other learning opportunities to the community as well as to county employees and leaders designed to build an understanding of and the capacity to address the patterns of inequitable experiences and outcomes in organizations and in communities and society more broadly.

Other Notable Actions Being Taken:

- **Recommendations 1 & 2 (Early Childhood)** Expanded use of race/ethnicity data and place-based vulnerability data to target and assess strategies.
- Recommendations 3 & 4 (Youth & Young Adults) SCYPT focus on youth and young adults, ages 16-24, who are not in school or working, and high school students at risk for dropping out to improve career readiness opportunities.
- Recommendations 6, 7, & 8 (Public Safety) FCPD and FRD deepening community engagement, conducting implicit bias and other training, and with the Sheriff's office, are working with HCD on strategies to enable more sworn public safety personnel to live in and come from the communities they serve.
- Recommendations 11 & 12 (Housing Affordability) Through new partnerships, policy changes, and greater financial investments expanding the availability of affordable housing, particularly in areas of higher opportunity.

Other Notable Actions Being Taken:

- Recommendation 13 (Human-Centered Design) Implementing key aspects of the Inclusive Community Engagement Framework place and population-focused engagement, digital access, and language access.
- Recommendation 14 (Equitable Distribution of Resources) DPMM is embedding equity considerations early in the procurement planning process and has enhanced an internal Procurement Technical Bulletin to require the participation of small, woman-owned, and minority-owned (SWaM) companies in all applicable solicitations.
- Recommendation 15 (Closing the Racial Wealth Gap) Several strategies being implemented or in planning to include THRIVE, the Vendor Pitch Portal, Fairfax Founders Fund, an Economic Mobility (Guaranteed Income) Pilot, a Food Business Accelerator and Entrepreneurship Center at OMVHS, and the W.I.S.H. Center at Hybla Valley Community Center.

Moving Forward

- County Champions will continue to devise and implement strategies in support of the Task Force recommendations.
- Board members are asked to identify any additional Task Force recommendations they would like to elevate as priority.
- Annual reports on progress will continue to be provided to the BOS.
- As appropriate, recommendations will be integrated and tracked through the implementation of the Countywide Strategic Plan as well through the activities of SCYPT and relevant BOS committees.
- The BAC demographic analysis is anticipated to be completed by Spring 2023.
- Board members will be contacted regarding appointments to the One Fairfax Community Roundtable.

CHAIRMAN'S TASK FORCE ON EQUITY & OPPORTUNITY PROGRESS REPORT – FALL 2022

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
TASK FORCE RECOMMENDATIONS RECOMMENDATION 1: Ensure all families with children under age 5 have access to affordable, quality early childhood programs available through the public and private sectors (centers, family childcare homes and FCPS).	Task Force recommendation aligns with existing plans. Prioritize efforts based on need by geographic area and/or population.	COUNTY CHAMPIONS NCS Office for Children: Anne-Marie Twohie	Multiple strategies are utilized to eliminate barriers to access and affordability and ensure family voices are centered so that the programs and services support the priorities and desired outcomes families want for their children. Eligibility for childcare subsidies has been expanded: a. County income eligibility for the childcare subsidy program has been increased from 275% of the federal poverty level to 350% FPL. b. The state has increased income eligibility to 85% State Median Income through June 30, 2024 c. County and state have expanded eligibility to families looking for work through June 30, 2024 d. The state and County have waived parent co-payments (families' share of the childcare fee) through December 31, 2022 A key strategy for expanding capacity for providing full-time, affordable, quality early childhood programming is to include early childhood facilities in capital projects where space is available and there is a need. The County currently has early childhood projects underway at Kingstowne (78)
			County currently has early childhood projects underway at Kingstowne (78 children), Original Mount Vernon High School (172 children), Willard (124) and Hybla Valley Community Center (75-100 children). A new mapping tool that identifies areas with a low supply of early childhood programs has been developed and can be used as an indicator when evaluating new development of early childhood facilities in combination with household

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			income, ages of children and race/ethnicity data as well as the County's Vulnerability Index when evaluating new development of early childhood facilities.
			In addition, an Early Childhood Facilities \$50 million bond referendum is planned for November 2026.
			The County and FCPS are also partnering with families who are interested in their children participating in a part-time/weekly community based early childhood experience. FCPS is expanding its WeePlay groups, and the County is offering new pre-K groups in partnership with All Ages Read Together. We will track race/ethnicity and primary language data for AART participants.
			To support childcare programs facing fiscal challenges as a result of the pandemic, the County included childcare programs in the ARPA-funded Active and Thriving Community Grant program, awarding grants to over 250 childcare programs. This fall the County's 2022 Child Care Grant program will provide another opportunity for childcare programs to receive grants to support their sustainability. Priority is given to applicants who are serving children in the childcare subsidy program. We will track race/ethnicity and primary language data of family childcare providers who receive a grant.
RECOMMENDATION 2: Ensure all early childhood education (ECE) providers have access to professional development and skill building opportunities, in order to ensure the highest quality ECE services for every child, regardless of setting or program type.	Task Force recommendation aligns with existing plans. Broaden focus to include improving the quality of these jobs through promoting access to living wages and benefits.	NCS Office for Children: Anne-Marie Twohie	Fairfax County is leading implementation of Virginia's new unified early childhood system in the Ready Region Capital Area (RRCA). The system's quality rating system, Virginia Quality B-5 (VQB5) provides a \$2,500/year salary enhancement to teachers in participating childcare programs (centers and family childcare homes). RRCA also provides ongoing professional learning opportunities to programs, including courses on the Classroom Assessment Scoring System (CLASS) observation system and

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			curriculum implementation. In July 2023, all childcare programs receiving public funding will be required to participate in VQB5 and the teacher enhancement will increase to \$3,000/year. The Office for Children is partnering with the Virginia Early Childhood Foundation and the Virginia Department of Education to pilot an Early Educator Fast Track Training program, developed to address the challenges programs have recruiting and retaining teaching staff. The pilot includes 4 weeks of full-time, paid, online and on-the-job training to individuals new to the field of early childhood. Participants will be recruited and matched up with childcare centers in the Ready Region Capital Area to serve as Assistant Teachers. OFC will support the recruitment of programs and participants and Institute for Early Learning staff will provide the 48-hour course which articulates with Northern Virginia Community College's child
			development course. In partnership with Fairfax Futures, OFC is supporting a cohort of educators to earn a Child Development Associate credential. Coursework, coaching and mentoring as well as financial support with the CDA assessment fee is provided. This pilot program is demonstrating positive outcomes and will serve as a model for a long-term strategy for supporting early childhood educators to reach professional goals. We track race/ethnicity and primary language data of participants. OFC's Institute for Early Learning continues to provide equitable learning opportunities for all educators where their voices are heard, and perspectives valued. The Institute for Early Learning:
			 Provides professional learning courses that provide equitable, high-quality learning experiences for childcare providers, educators, directors, or program managers via instructor-led sessions, online courses, or webinars.

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
TASK FORCE RECOMMENDATIONS	RET ACTIONS TO BE TAKEN	COUNT CHAMPIONS	 Creates new content based on current research and trends, and that aligns with CLASS (Classroom Assessment Scoring System) data to ensure educators receive equitable support and resources. Interprets and analyze data to better serve the early childhood learning community in an equitable strategic approach, conducts needs assessments in determining and addressing gaps of professional development services. Increases responsiveness to educator's learning needs and establishing a climate of growth and support. The Office for Children was awarded the Child Development Associate (CDA) Gold Standard by the Council for Professional Recognition. The CDA Gold Standard is a recognition of excellence in early childhood education learning opportunities offered to professionals. Courses offered through the County's Institute for Early Learning are creditable toward the CDA credential and support educators pursuing this credential.
RECOMMENDATION 3: Expand Career and Technical Education offerings through FCPS and community-based providers to be more accessible and to align with projected areas of job demand.	Utilize SCYPT as initial convener through current workgroup with eventual transfer of leadership to FCPS and relevant county agencies to include DFS, DEI, and NCS.	NCS - Successful Children and Youth Policy Team: Jesse Ellis DFS: Michael Becketts DEI: Rebecca Moudry	The Fairfax County Department of Economic Initiatives and the Department of Family Services are developing a program proposal for "Work-Based Learning Opportunity Fund." This proposal is based on Economic Advisory Commission (EAC) recommendations and input from local and regional workforce experts. The Opportunity Fund proposes to incentivize and provide hands-on support to businesses to utilize work-based learning as a solution to their urgent need to onboard, develop and retain skilled workers. The Opportunity Fund will be combined with a Regional Work-Based Learning Collaborative to help qualify candidates that may have less experience or credentials to obtain skills, match employer-sponsored opportunities with qualifying candidates and provide coaching to support to convert those opportunities into permanent job offers. Through the SCYPT, DFS and FCPS are co-leading a cross-sector workgroup that will be developing recommendations to improve career readiness

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			opportunities for youth and young adults. The effort will focus on youth ages 16-24 who are not in school or working, and high school students at risk for dropping out. Recommendations for system improvements and a pilot program will be developed and presented to the SCYPT by this winter.
RECOMMENDATION 4: Engage educators, business, government, and nonprofits, and involving youth and young adults, to align their resources and initiatives to create an education-to-career system that better connects Fairfax's youth ages 16-24 who are not in school or working (opportunity youth) to in-demand careers.	Utilize SCYPT as initial convener with eventual transfer of leadership to Fairfax Futures with their expanded focus to include Opportunity Youth.	NCS - Successful Children and Youth Policy Team: Jesse Ellis DFS: Michael Becketts	Through the SCYPT, DFS and FCPS are co-leading a cross-sector workgroup that will be developing recommendations to improve career readiness opportunities for youth and young adults. The effort will focus on youth ages 16-24 who are not in school or working, and high school students at risk for dropping out. Recommendations for system improvements and a pilot program will be developed and presented to the SCYPT by this winter.
RECOMMENDATION 5: Ensure residents are aware of academic and career enrichment opportunities, early enough and in ways that encourage Blacks and Hispanics to take advantage of them.	Continue with SCYPT efforts to establish Fairfax County as a My Brother's Keeper community to address persistent opportunity gaps facing boys and young men of color, engaging with FCPS, and also building an intentional strategy to also support the success of girls and young women of color.	NCS - Successful Children and Youth Policy Team: Jesse Ellis	Through the SCYPT, a committee has formed to plan and implement the My Brother's Keeper initiative in Fairfax. The committee is co-chaired by Edu-Futuro and the Capital Youth Empowerment Program. Among other topics, the initiative will focus on improving advanced academic and career readiness opportunities for boys and young men of color. Plans for expanding the effort, determining the final priorities, and rolling out the initiative will be developed and presented to the SCYPT this fall.
RECOMMENDATION 6: Create meaningful opportunities for the community to be involved in defining the role of law enforcement and other public safety personnel.	Continue planned FRD Community Risk Reduction and engagement efforts and FCPD community engagement efforts (e.g., iPAC - Integrating Police and Community, realignment of advisory bodies.) Ensure alignment of public safety community engagement efforts	FCPD: James Krause FRD: Clay Dickens	FCPD The FCPD continues to improve upon its ongoing community engagement efforts to include Integrating Police and Community (iPAC), foot patrols in the community segments where the police are called to most frequently by the public. The FCPD also seeks community feedback and input from a number of internal and external councils and groups to include a Faith Based Council, Community Advisory Councils, NAACP, patrol, detective, and professional staff councils. The FCPD is also leveraging technology to gather feedback from the community.

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
	with proposed Inclusive Community Engagement Framework.		FCPD staff coordinate community engagement efforts with other county agencies and are aligning current community engagement efforts with the proposed Inclusive Community Engagement Framework.
			FRD FRD has formed a relationship with the Neighborhood and Community Services Community Impact Unit. FRD's Community Risk Reduction will also play a major role in addressing this recommendation. FRD is in the process of conducting a Community Risk Assessment with the help of our data analytics section. This will direct leadership in FRD to focus on specific community risk reductions where resources will be deployed to help reduce the risk in that community. To ensure the needs of the community are being met, community involvement and input on the risks people face in their geographical community will be part of the process, as FRD is aware that risk may differ from community to community. FRD will leverage various areas in the department, such as the Equity Officer, Life Safety Division, and the Public Information Officer, to help
			with visibility and engagement to gain access and awareness in communities we serve. The following entities will be key in giving the communities the opportunity to be involved: • Interfaith Community • Veterans Community • Community Advisory Boards • Non-profits • NAACP • Chamber(s) of Commerce • FCPS The FCPD continues to improve upon its ongoing community engagement

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			the community segments where the police are called to most frequently by the public. The FCPD also seeks community feedback and input from a number of internal and external councils and groups to include a Faith Based Council, Community Advisory Councils, NAACP, patrol, detective, and professional staff councils. The FCPD is also leveraging technology to gather feedback from the community.
			FCPD staff coordinate community engagement efforts with other county agencies and are aligning current community engagement efforts with the proposed Inclusive Community Engagement Framework.
RECOMMENDATION 7: Implement policies to enable public safety personnel to live in and	Consult with Public Safety leadership to align with planned	FCPD: James Krause	In partnership with Fairfax County Police and Fire & Rescue Departments and the Sheriff's Office, the Department of Housing and Community
come from the communities they serve.	recruitment and retention efforts. Engage HCD and DPD to align with	FRD: Clay Dickens	Development (HCD) established a workgroup to develop strategies that would allow more sworn public safety personnel to live in and come from
	Workforce Housing and Workforce Dwelling Unit policies and plans.	HCD: Regina Coyle	the communities they serve. The areas of focus align with current recruitment and retention efforts within these public safety agencies and could require policy changes.
	Explore the feasibility of employer- assisted homeownership and rental incentives and present findings to the BOS for consideration.		 The policy areas identified for consideration and in progress include: Alignment of local public safety recruitment and retention strategies Public Safety Academy High School curriculum Build awareness to improve existing opportunities and programs (Workforce Dwellings – Magnet Housing) Develop partnership opportunities and programs (Home share- Accessory Living Units - apt. rent reduction) (University and private sector opportunities) Evaluate county land opportunities (Capital projects & acquisitions) Employer-assisted homeownership and rental assistance programs (Benchmark other jurisdictions)

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
RECOMMENDATION 8: Implement trainings	Support FCPD and FRD training	FCPD: James Krause	<u>FCPD</u>
such as implicit bias, cultural competency, and	efforts:		Every sworn officer from the FCPD will have completed Implicit Bias and
community engagement in the public safety	 FCPD – Implicit Bias, 	FRD: Clay Dickens	Procedural Justice training by December 2022. There are currently about
academies and annually for first responder	Procedural Justice,		300 officers remaining who are scheduled to attend this fall. FCPD is
personnel.	Integrating Police and	One Fairfax: Karla Bruce	looking at future training that will support the continuation of ongoing
	Community (iPAC)		training in these areas.
	FRD – Implicit Bias		
			<u>FRD</u>
			The FRD has been researching the most effective way to educate its
			workforce surrounding the topic of implicit bias, due to the uniqueness of
			the fire service. FRD will establish consistent and mandated training that
			reflects FRD's commitment and will allow the department to track learning
			and competency development. Having visible leadership involvement is
			vital in the organization's learning when it comes to learning unfamiliar or
			uncomfortable topics. Staffing and budgetary constraints have been FRD's
			major obstacle in moving forward with this essential training. FRD's
			workforce is understaffed, which has resulted in exuberant overtime cost
			that is a current strain on FRD's overall budget. FRD, like most public
			safety agencies, must stay in a state of readiness for the citizens of Fairfax
			County. The scheduling of this training will take careful planning with
			operations to get all personnel educated on implicit bias. The goal is to
			have equity training yearly on FRD's master calendar, which will eventually
			result in normalizing equity topics will result in a stronger workforce. FRD
			is in the process of drafting a contract for department wide implicit bias
			training. Implicit bias training is projected to start in February 2023.
RECOMMENDATION 9: Develop and	Support FCPD efforts in response to	FCPD: James Krause	The FCPD has identified and has started new training programs that
institutionalize accountability mechanisms that	Use of Force report including		contribute to accountability and building better skill sets for dealing with
monitor and evaluate occurrences of racial	implementation of the ICAT		potential use of force situations. FCPD police officers have started to
profiling and excessive use of force by law	(Integrating Communications,		attend Active Bystandership for Law Enforcement (ABLE) training, and this
enforcement and other first responders.	Assessment, and Tactics) use of		will be completed by the end of 2022. This training was developed by
	force training and other legislative and reform efforts aimed at		researchers and community partners at Georgetown Law and is designed

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
	identifying and addressing disparate outcomes.		to prepare officers to successfully intervene to prevent harm and to create a law enforcement culture that supports peer intervention.
			During the spring of 2023, all FCPD officers will receive Integrating Communications, Assessment, and Tactics (iCAT) training. This training provides officers with the tools, skills, and options they need to defuse a range of critical incidents successfully and safely. This training builds upon pervious training in the areas of critical thinking, crisis intervention, communications, and tactics, and puts them together in an integrated approach.
			The FCPD Office of Data Analytics and Strategic Initiatives (ODASI) works with other bureaus within the department to review data and identify disparate outcomes so that we can adjust practices as needed.
RECOMMENDATION 10: Bring together executive leadership from multiple sectors to create a model for collective, holistic community healthcare delivery to include the county, hospitals, primary care, and other community health providers, Federally Qualified Health Centers, oral and behavioral health providers, public and private health insurers, employers, schools, and community and faith-based organizations.	Convene key health system leaders including the Health Department, the Community Services Board, INOVA, Kaiser, Neighborhood Health, HealthWorks and other identified stakeholders to develop a plan for leveraging federal public health dollars and efficiencies from transition from CHCN to FQHC model.	FCHD: Sara Brinkmoeller	Collaboration continues with the Northern Virginia Health Foundation on approaches to convening partners. Current conversations are focused on the possibility of engaging a hospital system in discussions about coordinating care with safety net providers. There is recognition of the importance of identifying ways to strengthen the coordination between mental health/behavioral health and primary care for lower-income residents, particularly in the aftermath of the COVID pandemic. Health Department and federally qualified health center (FQHC) Executive Leadership meet quarterly to review outcomes and challenges related to access to care for low-income uninsured and underinsured County residents. Leading up to FY 2023, the Health Department completed a
			thorough review of primary care services provided by Neighborhood Health and HealthWorks since the transition of the Community Health Care Network (CHCN) in 2019; this included quality measures, access to care, and financial review. As a result, the contracts were modified to adjust mutual objectives and compensation.

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			Operational efficiencies were realized over the past year through existing collaborative contractual agreements with health safety net providers. As a result of contract savings and federal grant funds made available to the FQHCs, HealthWorks is expanding its ability to provide oral health care to Fairfax County residents with a new clinic co-located with their Herndon health center, set to open in January 2023. Similarly, Neighborhood Health was able to purchase a mobile vaccination vehicle, undertake much needed facility improvements at their health center on Richmond Highway, and establish a new small site in Annadale to serve additional patients.
			Primary care services and dental services that were previously funded through the Consolidated Community Funding Pool were shifted to the Health Department's Health Safety Net budget, freeing up critical funding for direct assistance and other services to address social determinants of health. This change also stabilizes County funding for dental services, which was previously subject to potential significant decreases in support if dental safety net organizations were unable to secure Funding Pool awards.
			Specialty care access has also been a focus of the health safety net since the transition of CHCN. Recent efforts have focused on regular meetings between Medical Directors from the FQHCs, free and reduced care clinics, and staff from Inova to review specialty care access, identify gaps or barriers, and share resources. As the largest hospital system in the County, Inova is a provider of specialty care to low income uninsured and underinsured residents. The specialty care partnership was strengthened to include a reserve source of one-time funding to obtain specialty care services that are in high demand or low supply, such as colonoscopies and colon cancer surgery, diagnostic imaging, and orthopedic surgery. County and Inova staff continue discussions about ways to best optimize these resources, in addition to ways to strengthen specialty care access for individuals utilizing safety net health care services.

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
RECOMMENDATION 11: Aggressively pursue	Task Force recommendation aligns	HCD: Regina Coyle	HCD and the Fairfax County Redevelopment and Housing Authority
strategies to increase the amount of affordable	with existing plans. Ensure		(FCRHA) continue to aggressively pursue new development and
housing and address the affordability of housing	prioritization by geographic areas	FCHD: Anna Ricklin	preservation strategies, respectively, to increase the amount of affordable
for low-income residents (e.g., social	and/or populations adversely		housing and address the affordability of housing for low-income residents
determinants tax, zoning changes to require low-	impacted by social determinants of		throughout Fairfax County.
income housing, lobbying the General Assembly	health, following the principles of		
to pass a Medicaid waiver to authorize housing	Communities of Opportunity.		New Development: In 2022, the Board of Supervisors increased the new
supplements, etc.) as a social determinant of			affordable housing development goals from a minimum of 5,000 new units
health.			by 2034 to a minimum of 10,000 new units by 2034. There are currently
			almost 3,000 new affordable units in the development pipeline. Further,
			the new pipeline development is underway throughout Fairfax County,
			including more than 900 unit in the Tysons Urban Center alone.
			Preservation: Efforts to preserve currently affordable housing units
			throughout Fairfax County are also underway. Over 700 affordable units
			(Braddock, Hunter Mill and Mount Vernon districts) are in the process to
			be or have been renovated recently. In addition, approximately 1,147
			market affordable units have been recently preserved using FCRHA
			financing and other resources, including the Amazon Housing Equity Fund.
			The projects include the Landings (Mount Vernon), Colvin Woods (Hunter
			Mill) and Cityside (Mount Vernon). Finally, an amendment to the Housing
			Element of the Comprehensive Plan is pending review through the public
			hearing process. The amendment is focused on strengthening the policies
			to preserve market affordable housing throughout the County.
			Social Determinants of Health (SDOH) Legislation: One SDOH bill was
			adopted during the 2022 legislative session and signed into law by
			Governor Youngkin. As far as we know, no action has been taken on
			implementation. The bill, which positions the state health department to
			study and recommend actions regarding the social determinants of health,
			does not include taxation. Rather, actions such as taxation or zoning
			changes could be recommended as a next step from data collection. The
			bill was supported by the BOS. A summary reads as follows:

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			HB 229: Coyner, Carrie E. (H62-R): Social determinants of health; VDH shall collect & analyze information including demographic data. Department of Health; social determinants of health. Directs the Department of Health to collect and analyze information, including demographic data, regarding social determinants of health, defined in the bill, and their impact on health risks and health outcomes of residents of the Commonwealth, and to make information regarding social determinants of health, their impact on health, and strategies for addressing social determinants of health to improve health outcomes available to the public on its website.
			Medicaid: Based on preliminary research through contacts at the Centers for Medicare and Medicaid Services (CMS), the state's Medicaid agency would have to apply for a specific Medicaid waiver from CMS to allow Medicaid funds to be used on housing or to address other SDOH (e.g., transportation). CMS does not require such a request to come from a state legislature. Therefore, the legislature would not have to be involved, unless their blessing was required per Virginia code. Examples include waiver #1915c (as applied in California) and #1115 (as applied in North Carolina). Such waivers allow greater flexibility, within certain parameters, for the use of Medicaid dollars.
RECOMMENDATION 12: Promote the use of social impact funds or other investment opportunities to attract capital investment in the built environment of BIPOC and low-income	Leverage corporate and land use industry interest in social justice issues, including their shared interest in expanding housing	HCD: Tom Fleetwood DPD: Michelle Stahlhut	HCD and the FCRHA will continue to identify and leverage private capital for the development of affordable housing in areas of opportunity, and to bring new investment to the county's islands of disadvantage. Examples of recent successes include:
communities to improve and expand housing stock and other neighborhood amenities and require plans to avoid displacement as neighborhoods change.	opportunity and in addressing historically segregated land use patterns to identify roles, strategies, and opportunities to	NCS: Ramona Carroll	<u>Dominion Square West (Hunter Mill District):</u> The Amazon Housing Equity Funds committed to invest \$55 million in the development of 516 new affordable apartment at Dominion Square West in the Tysons Urban Center. Just a short walk from the Spring Hill Silver Line Metro Station, this

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
	foster a more equitable built environment.		project will help low- and moderate-income workers live near the largest concentration of jobs in the county.
	Fully implement the Put Faith in Housing Development initiative to promote the development and/or preservation of affordable housing across Fairfax County, leveraging faith community resources and land.		Murraygate Village (Franconia District): The FCRHA used private equity from the Low-Income Housing Tax Credit Program to conduct a comprehensive rehabilitation of its Murraygate Village apartment community. Murraygate includes 200 units serving households earning 60% of the Area Median Income and below (up to \$85,380 for a family of four).
	Tallu.		To address the issue of displacement, DPD continues to work with HCD on amendments to the Policy Plan of the Comprehensive Plan to support the preservation of affordable housing as well as implementing recommendations from the Manufactured Housing Task Force to ensure existing communities are preserved and/or residents are engaged in any development proposals that may impact their communities.
RECOMMENDATION 13: Require agency operations – systems, processes, and programs –	Support the full implementation of the proposed Inclusive Community	NCS: Pallas Washington	Multiple county agencies (DEI, DFS, Health, HCD, JDRDC, NCS, DPD) are engaged with United Community, the lead social services nonprofit
align with the needs and priorities of clients following the principles of human centered	Engagement Framework to expand county capacity to center the voice	OPA: Greg Licamele	organization serving residents in the southern area of the county, around a shared commitment to transform the area into a "Community of
(client centered/culturally competent) design.	of residents in the planning of services and programs and the design of systems and processes. Pilot the Communities of Opportunity Collective Impact Framework in the Buckman Road area of the Richmond Highway Corridor in partnership with United Community to demonstrate a model for more effectively engaging residents, particularly in	One Fairfax: Karla Bruce	Opportunity," through the Community+ initiative. United Community, with financial support from the Northern Virginia Health Foundation, has convened the county, nonprofits, and other community stakeholders including FACETS, Good Shepherd Housing and Family Services, Neighborhood Health, INOVA – Mt Vernon and INOVA Health System with residents from the communities of Creekside, Colchester, Audubon, and Carydale Village, Murraygate, Sequoyah, and Harmony Place to better understand and address needs identified by residents in the areas of child and youth wellbeing, neighborhood livability, health and wellness, safety, and economic opportunity. Community teams have been established using a collective impact approach to systematically make policy and procedural

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
TASK FORCE RECOVINIENDATIONS	traditionally marginalized communities, in addressing the challenges facing their community.	COUNTY CHAINFIONS	changes to align efforts and resources shifting systems to change community conditions and improve community outcomes. Inclusive Community Engagement Framework The implementation of the Inclusive Community Engagement Framework continues as a multiagency effort to systematically address how residents engage with county government. The framework itself focuses on
			principles and capacity building that will further facilitate inclusive, equitable and authentic community engagement across Fairfax County to ensure all voices, including historically underrepresented communities, are welcome in the county's planning and decision-making processes. Six core principles of engagement have been identified: prioritize equity; establish and maintain trust; develop data-driven processes; establish clear expectations; enable engaged communication; and promote and create accessible government. Several other foundational elements have been developed, including a community engagement spectrum and eight areas of interconnected pillars that must be considered in order to ensure our work is truly inclusive. A new centralized online engagement tool is rolling out to departments that will provide a common user experience for countywide engagement efforts.
			Website Refresh Project A fairfaxcounty.gov website refresh is underway focused on human-centered design. Led by the Department of Information Technology and the Office of Public Affairs, the scope of this project is focused on three areas: 1. Improve design and presentation of information on the homepage (both desktop and mobile) 2. Introduce a new color palette and contemporary design changes for all web pages so information is easier to navigate 3. Enhance the Fairfax Virtual Assistant to a bilingual chatbot by adding Spanish and exploring live chat functionality

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			Spanish Social Media The Office of Public Affairs launched countywide Spanish social media accounts during COVID-19 that are now populated with a variety of information from across the whole government. The content shared on these platforms is not only informative like other county social media channels, but is also culturally competent for our Spanish-speaking residents. Additional Spanish social media channels are also planned for later this calendar year.
RECOMMENDATION 14: Evaluate Fairfax County systems, including the proffer system and the contracting and procurement systems, to promote equitable and transparent asset, investment, and resource distribution countywide.	Pursue specific legislative priorities to enable more equitable and transparent distribution and investment of assets and resources county-wide.	DPMM: Chris McGough DPD: Michelle Stahlhut	The Department of Procurement and Material Management (DPMM) strives to join with vendors and County departments to secure quality goods and services in a timely manner and at a reasonable cost while ensuring that all purchasing actions are conducted fairly and impartially. The pursuit of a more equitable procurement process is built into our mission. In the past year, DPMM launched a new solicitation request system called Acquire. DPMM enhanced the process by requiring departments to address equity in all new contract requests. Embedding equity considerations early into the procurement planning process encourages holistic improvement in areas such as specification development, minimum requirements, advertising strategies, opportunities to unbundle, etc. DPMM has enhanced an internal Procurement Technical Bulletin (PTB) prescribing the process to conduct purchases under \$200,000. The PTB requires a minimum amount of competition – and was enhanced to require the participation of small, woman-owned, and minority-owned (SWaM) companies in all applicable solicitations. Other notable progress related to Recommendation 14 includes: • Collaboration with NCS to add an equity lens to the evaluation criteria of the 2022 CCFP RFP.

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			Enhanced data collection efforts. This includes measuring supplier corporate social responsibility (CSR) – or the way our suppliers operate with regard to diversity, equity, and inclusion. Here is a link to the FY22 report. DPMM has continued a partnership with a company to improve the accuracy of our annual spend reporting by supplier size/ownership. Here is a link to the FY22 report, which shows a slight increase in SWaM spending compared to FY21.
			While DPMM's Equity Impact Plan remains aligned to this recommendation and the development of a more equitable procurement process, department spending decisions, the budgeting process, etc. continue to play a significant role in resource distribution county-wide. DPMM does not make such decisions but will continue to support our partners in this endeavor.
			DPD is committed to fostering an equitable built environment across the county. Proffers are voluntary and the use of these funds are regulated by the state. Proffers must be connected to impacts caused by new development, and must be proportional to that impact. Proffers used to mitigate impacts of new development in one part of the county then offsets the need for the County to use general fund money to mitigate impacts.
RECOMMENDATION 15: Help close the racial wealth gap by building ecosystems that facilitate locally owned investment and economic opportunities for BIPOC.	Support county-wide and place- based efforts to promote community wealth building: • Financial Empowerment Center • Fairfax Founders Fund	DEI: Rebecca Moudry NCS: Pallas Washington One Fairfax: Karla Bruce	The Fairfax County Department of Economic Initiatives is developing the Fairfax THRIVE small business technical assistance grant program, approved by the Board of Supervisors and due to launch in late fall 2022. THRIVE will connect small businesses experiencing negative economic impacts from the pandemic with service(s) they need to help them remain in business, retain employees, and address individual
	Innovation District – Lee District BOS	DFS: Alycia Blackwell	business goals. THRIVE will provide eligible small businesses with business counseling and the most needed technical assistance service(s) to help address economic and consumer shifts brought on by the pandemic and

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
	Original Mount Vernon High School – Pathways to Economic Mobility Thrive Business & Worker Recovery Programs (proposed programs/in development) Implement the Economic Mobility Pilot Project as an investment to alleviate poverty, not just serve it.		support future business planning. A principal component of the THRIVE program will be targeted outreach to and inclusive engagement with minority and diverse business owners. The THRIVE program will issue solicitations for partners to engage directly with diverse communities and support them in accessing the THRIVE program. The Department of Economic Initiatives (DEI) and the Department of Procurement and Material Management (DPMM) launched the new Vendor Pitch Portal (VPP) on August 1, 2022. The VPP is a streamlined, electronic process for interested vendors to promote their products and services to County agencies for consideration. It is expected that the process will increase visibility and equitable opportunity for a wide pool of prospective vendors to connect with potential County agency customers. The Fairfax County Department of Economic Initiatives is developing the Fairfax Founders Fund to provide early capital to startup companies in Fairfax County. The fund will target early-stage technology companies with technical assistance grants to help them prepare for later stage investments. Fairfax County expects the fund will bolster economic development by growing local innovation-based businesses. It will also foster the startup ecosystem by connecting young businesses with funding, local programs, and partners. Targeted outreach will focus on recruiting women, people of color, veterans, and other underrepresented groups in the technology-based business community. DFS, NCS and the One Fairfax team in the Office of the County Executive, are co-leading Fairfax County's Guaranteed Income initiative, referred to as our Economic Mobility pilot. It is currently in a design phase and is expected to begin by early 2023 and conclude no later than December 2024. Using specific criteria developed by a cross-sector design team, the pilot will select an expected 100-150 low-income households with children in specific low-income areas of the county that have household incomes just above the levels that qualify them

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			enough that they struggle to support themselves. Once selected for the pilot, these families will each receive a designated monthly payment to support needs defined by the recipient. The pilot will also offer participating families a range of optional coaching and support services that they can engage in to accelerate progress towards economic mobility and will include a research component to gather qualitative and quantitative data about participants' experience and progress. Fairfax County engages with SkillSource to plan and operate the Educating Youth through Employment Program (EYE), which takes place while the county public schools are out for summer break between June and September and is designed to provide local youth between the ages of 14 and 25 with valuable work and internship experience, an opportunity to explore career options, and experience adjusting to the transition from school to the workforce and/or college. Youth may be placed in public, private or non-profit agencies. Youth are matched to jobs that provide up to 170 hours of work per youth per summer. They are also provided with job support services such as performance evaluation, placement review and monitoring, professional development, personal branding, career exploration, and workshops to youth throughout their work experience. Fairfax County, in partnership with the United Way of the National Capital Area, has a contract with Britepaths to operate the Financial Empowerment Center (FEC) at the Gerry Hyland Building where lowincome people can access a full range of financial services to move themselves out of poverty and achieve long-term financial stability. The FEC brings together the most effective nonprofit and government partners to help clients grow income, build assets, manage debt, and improve credit. FEC clients work with a coach who helps them create a step-by-step plan to set and achieve personal financial goals.

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
			Fairfax County is redeveloping and re-envisioning the Original Mount
			Vernon High School (OMVHS) to be a 'Human Development Center' to
			serve the larger Richmond Highway community. Through the strategic
			alignment of partners and space uses at the OMVHS, the county is
			facilitating the creation of financial sustainability through education and
			workforce development partnering with Fairfax County Public Schools,
			Northern Virginia Community College, and community-based
			organizations. OMVHS will include spaces targeted to hosting early-stage
			entrepreneurs and small business for under-represented groups. As part of
			that, the county, led by the Department of Economic Initiatives, is
			supporting the build-out of a Food Business Accelerator and
			Entrepreneurship Center. An RFI was released in early 2022 and a
			prospective tenant has been selected for lease negotiations. The
			Accelerator will provide a space to operate and grow a food business.
			Efforts at the OMVHS will be driven by the key economic and demographic
			characteristics of the communities surrounding the OMVHS.
			The Workforce Innovation Skills Hub (W.I.S.H.), housed in the recently
			opened Hybla Valley Community Center , will provide training and
			development in the building trades and in-demand technology jobs to help
			residents move into higher-paying jobs complemented by programs and
			services for youth, adults, and families, strategically aligned to provide
			supports and develop the knowledge, skills, and traits essential for life and
			career success.
RECOMMENDATION 16: Develop, pilot, and	Report out on annual Department	One Fairfax: Karla Bruce	Equity Impact Plans, which are annual plans outlining specific goals,
institute Fairfax County equity-based decision-	Equity Impact Plans.	and team	activities, and performance metrics aligned to the Countywide Strategic
making tools for planning, projects, decision making and resource allocation.	Formally incorporate equity	All county departments	Plan and the One Fairfax Policy Areas of Focus, have been completed by
Thaking and resource allocation.	considerations into planning and	with support from the	County departments and cross system initiatives. In May 2022, CY 2022
**TASK FORCE PRIORTY	decision making through the use of	support from the	Equity Impact Plans were posted on the county website at Equity Impact
**TASK FORCE PRIORTY	decision making through the use of		Plans Topics (fairfaxcounty.gov).

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
	Racial Equity Impact Analyses and Equity Impact Statements in Board items.	Department of Clerk Services	In February 2022, a pilot was initiated to include Equity Impact Statements in select Action Items being presented to the Board of Supervisors. In September 2022, that pilot was expanded to be a more thorough assessment of equity impacts for a broader range of Board items. Additionally, DPMM has developed a Policy Review Committee to consistently apply an equity lens to all procurement policy/procedure development. An equity-based review process has been developed, and DPMM expects to formally launch the committee soon.
RECOMMENDATION 17: Develop and operationalize policies and procedures – to include stated goals and quantitative targets – to equitably recruit, hire, mentor, and promote women and people of color, recognizing that representation is different in various systems, professions, and job classes.	Establish a position in HR with a focus on this area for the county government. Collaborate with FCPS to support the recruitment, retention, and promotion of people of color as teachers and administrators.	DHR: Shelley Scianna All county departments with support from HR	The Department of Human Resources is currently recruiting for a Diversity , Equity , and Inclusion Program Manager to serve as a countywide technical advisor and knowledge leader on matters related to diversity, equity, and inclusion in human resources areas (e.g., recruitment, hiring, retention, pay, promotion) and to inform human resources-related policy, practice, programs, and processes within DHR and across departments.
RECOMMENDATION 18: Establish a Community Advisory Board, with representation by BIPOC and low-income individuals, to monitor the degree to which each county agency has prioritized the needs of BIPOC and lower income communities. **TASK FORCE PRIORITY	Establish the One Fairfax Community Roundtable to support the county, under the leadership of the Chief Equity Officer, in the development and implementation of the One Fairfax Strategic Framework and monitoring progress toward established equity goals.	One Fairfax: Karla Bruce Members of the Board of Supervisors	Appointments to the One Fairfax Community Roundtable will be initiated in October 2022. The Roundtable will be comprised of magisterial district representatives appointed by members of the Board of Supervisors and community and institutional representatives, appointed by the Chairman of the Board of Supervisors. Additional opportunities for the community's engagement will be enabled through the Roundtable's convening of topical, ad-hoc Equity Action Teams formed through a self-nomination process and targeted recruitment to ensure the inclusion of technical expertise and lived experience. One role of the Roundtable will be to provide input and feedback to county departments and cross-system initiatives in the development and implementation of annual Equity Impact Plans.

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
RECOMMENDATION 19: Demonstrate	Fully implement the proposed	One Fairfax: Karla Bruce	Full implementation of the Inclusive Community Engagement Framework
intentionality in ensuring diverse representation	Inclusive Community Engagement		is underway with particular investments made to expand language access,
and inclusiveness in power and decision-making	Framework and resource key	NCS: Lloyd Tucker	virtual access, and digital access.
opportunities.	elements – language access, virtual		
	public participation platforms,	Chairman's Office: Amir	NCS continues to implement their Neighborhood College program and will
**TASK FORCE PRIORITY	training, etc.	Abu-El-Hawa	expand offerings targeting under-represented groups and areas and will ensure Neighborhood College graduates are made aware of Board,
	Engage Leadership Fairfax and	Members of the Board	Authority, and Commission vacancies.
	other community groups for	of Supervisors	
	support in expanding and	or supervisors	To foster the participation of low-income communities and communities
	diversifying the pool of candidates		of color in the public policy making process, the county is partnering with
	for consideration for appointment		Leadership Fairfax to develop a community leadership capacity building
	to boards, authorities, and		program designed to diversify the pool of residents considered for
	commissions and other Board-		appointments, helping participants sharpen civic leadership skills, expand
	appointed roles to ensure more		leadership networks, understand complex and intersecting policy
	equitable representation.		dynamics, analyze and plan through an equity lens, and navigate the
	· ·		technical language and culture necessary for potential appointments to
	Request each member of the Board		county Boards, Authorities, and Commissions or other Board-appointed
	of Supervisors conduct a		bodies.
	demographic analysis of their		
	appointments to Boards,		A demographic analysis of the membership of county Boards, Authorities,
	Authorities, and Commissions and		and Commissions is currently underway and a process for collecting
	other Board-appointed positions as		demographic information at the point of appointment will be
	a baseline and actively promote		implemented soon. Results will be shared with Board members annually.
	their appointment of BIPOC and		
	other marginalized groups.		
RECOMMENDATION 20: Ensure our local	Provide opportunities for the Board	One Fairfax: Karla Bruce	Training opportunities are available to county leadership to include
leaders, public and private, have the knowledge	of Supervisors to expand their		Advancing Racial Equity: The Role of Government and the viewing of the
and capacity to understand the drivers of racial	knowledge of the drivers of	Chairman's Office: Amir	documentary Race: The Power of an Illusion with facilitated discussion.
inequity and their contribution to structural	structural racism and the roles and	Abu-El-Hawa	,
racism, and use their power to build more	responsibilities of local government		For community leaders and the leaders of public and private organizations,
equitable communities.	in addressing it.		Leadership Fairfax will offer training and other learning opportunities

TASK FORCE RECOMMENDATIONS	KEY ACTIONS TO BE TAKEN	COUNTY CHAMPIONS	PROGRESS
**TASK FORCE PRIORITY	Expand staff equity training efforts to include executive leadership.		designed to build an understanding of and the capacity to address the patterns of inequitable experiences and outcomes in organizations and in communities and society more broadly.
	Explore opportunities for the county to support the training and capacity building of the community with support from key stakeholders such as the faith community and Leadership Fairfax, etc.		

Chairman's Task Force on Equity & Opportunity Progress Report – September 2022 | 22

10:00 a.m.

Presentation of the A. Heath Onthank Awards

ENCLOSED DOCUMENTS:

None.

PRESENTED BY:

John Townes, Civil Service Commission, Commissioner Michael Coyle, Onthank Award Committee, Chairman Jeffrey McKay, Chairman, Board of Supervisors Bryan J. Hill, County Executive Catherine M. Schafrik, Director, Department of Human Resources

10:00 a.m.

Matters Presented by Board Members

10:30 a.m.

<u>Public Hearing on the County and Schools' FY 2022 Carryover Review to Amend the</u> Appropriation Level in the FY 2023 Revised Budget Plan

ISSUE:

Public Hearing and Board action on the County and Schools' FY 2022 Carryover Review.

RECOMMENDATION:

The County Executive recommends that, after holding a public hearing, the Board approve staff recommendations included in the County and Schools' *FY 2022 Carryover Review*.

TIMING:

The public hearing has been advertised for 10:30 a.m. on October 11, 2022. State law allows the Board to act on proposed amendments to the budget on the same day as the public hearing.

BACKGROUND:

On August 2, 2022, the Board of Supervisors authorized staff to advertise a public hearing scheduled to be held on October 11, 2022, regarding the County and Schools' Carryover Review. Section 15.2-2507 of the <u>Code of Virginia</u> requires that a public hearing be held prior to Board action. Board approval of an amendment to increase the FY 2023 appropriation level can occur immediately following the public hearing.

ENCLOSED DOCUMENTS:

Attachment 1: Summary of FY 2022 Carryover Consideration Items

The FY 2022 Carryover Review was sent electronically on August 2, 2022, and is available at: https://www.fairfaxcounty.gov/budget/fy-2022-carryover-budget-package.

STAFF:

Bryan J. Hill, County Executive Christina Jackson, Chief Financial Officer Philip Hagen, Deputy Director, Department of Management and Budget

SUMMARY OF FY 2022 CARRYOVER CONSIDERATION ITEMS as of September 13, 2022

#	Consideration Item	Request By	Positions	Net Cost/(Savings)
	Collaborate with schools to address permanent restroom facilities in 15 high school stadiums (FCPS to share 1/2 of the cost; cost ranging from \$0.8 to \$1.2 million per bathroom facility).	McKay	0 / 0.0	\$7,500,000
2.	Gum Springs trail enhancements	Storck	0 / 0.0	\$600,000
3.	Huntley Meadows Park sidewalk	McKay/Lusk	0 / 0.0	\$3,500,000
	In order to address the Fairfax County Police Department staffing crisis: a. Extend the Deferred Retirement Option Program (DROP) period from 3 to 5 years for uniformed police employees at the rank of Lieutenant and below who are already in DROP.	Herrity	0 / 0.0	\$2,500,000
	b. Provide \$2.5 million to establish a reserve for one-time bonuses to recruit patrol officers.			
	c. Authorize the Chief of Police to hire back retired officers that are willing to serve on patrol.			
	Data Scientist position to continue the data analysis work and support the functions performed by the Auditor to the Board	Storck	1 / 1.0	\$140,000
	Subtotal FY 2022 Carryover Consi	deration Items:	1 / 1.0	\$14,240,000

Total FY 2023 Impact: 1/1.0 FTE Positions and Total Funding (not including reserves) of \$14,240,000.

10:30 a.m.

Items Presented by the County Executive

ADMINISTRATIVE - 1

<u>Approval of "Watch for Children" Signs as Part of the Residential Traffic Administration Program – Lakevale Drive (Providence District)</u>

ISSUE:

Board endorsement of "Watch for Children" signs as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends approval for the installation of the following:

Three "Watch for Children" signs on Lakevale Drive (Providence District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) be requested to schedule the installation of the approved "Watch for Children" signs as soon as possible.

TIMING:

Board action is requested on October 11, 2022, to help facilitate a prompt installation of the proposed signage.

BACKGROUND:

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

On September 2, 2022, FCDOT received verification from the Providence District Supervisor's Office confirming community support for three "Watch for Children" signs on Lakevale Drive.

FISCAL IMPACT:

Funding in the amount of \$600 is available in Fund 300-C30050, Project 2G25-076-000, Traffic Calming Program.

ENCLOSED DOCUMENTS:

None

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 Nicole Romero, Planning Technician, Traffic Engineering Section, FCDOT

ADMINISTRATIVE - 2

Authorization to Advertise a Public Hearing for the De-Creation of Maddux Lane Area Sanitary District for Removal of Refuse/Recycling Collection Service (Dranesville District)

ISSUE:

Board of Supervisors' authorization to advertise a Public Hearing for the De-Creation of Sanitary Districts for refuse/recycling collection service.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize advertisement of a public hearing at 4:00 p.m. on Tuesday, December 6, 2022, to consider the following change to sanitary districts for refuse/recycling and/or leaf collection service in accordance with the Board of Supervisors' adopted criteria for the creation of Small or Local Sanitary Districts.

Sanitary District	<u>Action</u>	<u>Service</u>	Recommendation
DTA Local District 1-A1 Within Dranesville District (Maddux Lane Area)	De-Create	Refuse & Recycling	Approve

TIMING:

Board of Supervisors' authorization to advertise on October 11, 2022, is required for a Public Hearing to be held on December 6, 2022, at 4:00 p.m.

BACKGROUND:

The administrative responsibility for the Creation/Enlargement/De-Creation/Re-Creation of Small and Local Sanitary Districts in the County of Fairfax for refuse/recycling and/or leaf collection is with the Department of Public Works and Environmental Services. The establishment of sanitary districts is accomplished through the action of the Board of Supervisors at public hearings. Prior to any action by the Board of Supervisors on a proposed small or local sanitary district,

certain relevant standards and criteria must be met in accordance with the Board of Supervisors' adopted criteria for the Creation/Enlargement/De-Creation/Re-Creation of Small and Local Sanitary Districts.

The submitted petition has been reviewed, and it has been determined that the petition should be submitted to the Board of Supervisors for approval.

Staff recommends that the authorization to advertise a public hearing for the de-creation of a portion of Maddux Lane Area sanitary district for refuse/recycling collection be approved. If approved, the modification will become permanent on January 1, 2023.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Summary Sheet

Attachment 2: Data Sheet with Proposed Resolution and Map

(Maddux Lane Area)

STAFF:

Rachel Flynn, Deputy County Executive Christopher S. Herrington, Director, Department of Public Works and Environmental Services (DPWES) Eric Forbes, Deputy Director, DPWES

SUMMARY SHEET

Proposed alterations to the following small Sanitary District for refuse/recycling and/or leaf collection service:

1. De-Create sanitary district in DTA Local District 1-A1 within Dranesville District for the purpose of removing County refuse and recycling collection services to a portion of Maddux Lane Area.

DATA SHEET De-Create Maddux Lane Area DTA Local District 1-A1 Within the Dranesville District

Purpose: To remove County refuse and recycling collection services to a portion of the Maddux Lane area.

- Petition requesting service received July 25, 2022.
- Petition Area: 3 Properties.
- 3 Property Owners in favor.
- 0 Property Owners opposed.
- 0 Non-responsive / unable to contact.
- The Department of Public Works and Environmental Services recommends that the proposed action be approved. If approved, services will be terminated effective January 1, 2023.

NOTICE OF INTENTION TO PROPOSE FOR ADOPTION A RESOLUTION AND A PUBLIC HEARING THEREON TO DE-CREATE MADDUX LANE AREA DTA LOCAL DISTRICT 1-A1 WITHIN DRANESVILLE DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday the 11th day of October, 2022, it was proposed by said Board to adopt a resolution to de-create a district known as DTA Local District 1-A1 within Dranesville District to include a portion of Maddux Lane Area for the purpose of removing refuse/recycling collection to be effective January 1, 2023, and the Clerk of said Board was directed to cause notice thereof by publication once a week for two consecutive weeks in a newspaper published in or having general circulation in said County, together with a notice that at a regular meeting of said Board to be held in the Board Auditorium of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

TUESDAY December 6, 2022 COMMENCING AT 4:00 P.M.

The said Board of Supervisors of Fairfax County, Virginia, will hold a public hearing at which time and place any interested parties may appear and be heard. The full text of the resolution to be adopted is in the following words and figures, to-wit:

WHEREAS, Virginia Code Section *15.2-858*, as amended, provides for, among other things, the Creation by the Board of Supervisors of Fairfax County, Virginia, of a sanitary district by resolution; and

WHEREAS, the Board of Supervisors has been presented with facts and information upon consideration of which said Board, finding the property embraced in the proposed sanitary district will be benefited by de-creating the sanitary district for the purpose of removing refuse/recycling collection for the citizens who reside therein.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the advertisement for the proposed decreation of a sanitary district, pursuant to Virginia Code Section *15.2-858*, as amended, to be known as DTA Local District 1-A1 within Dranesville District District, Fairfax County, Virginia, which said de-creation of the sanitary district shall be described as follows:

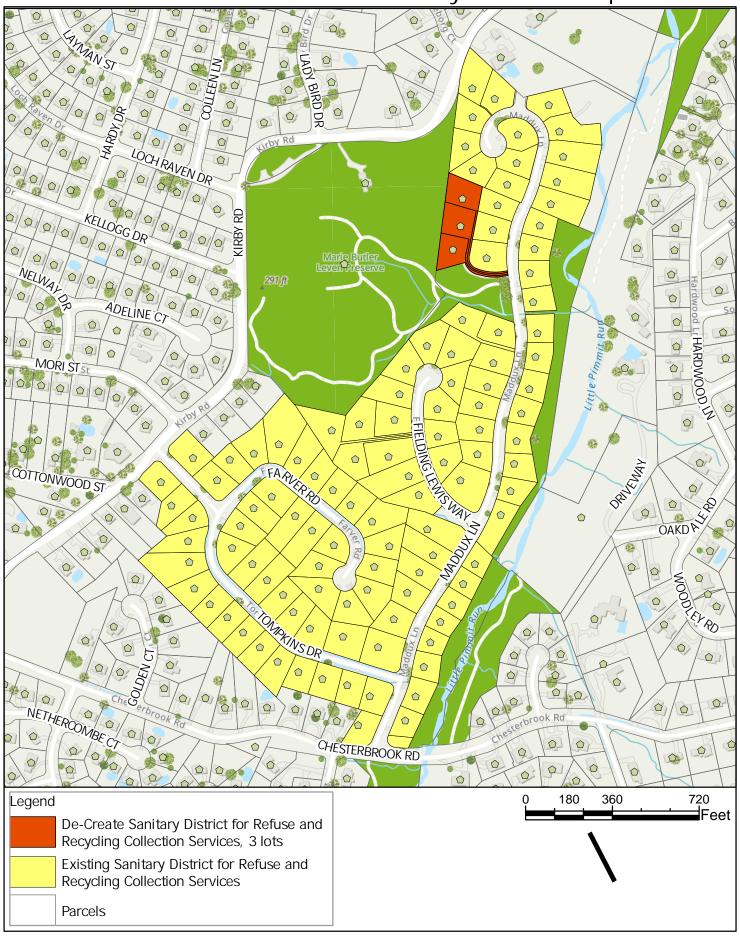
The de-creation of DTA Local District 1-A1 within Dranesville District to include a portion of Maddux Lane Area located in the County of Fairfax, Virginia, and as shown on the attached map.

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Maddux Lane Area in DTA Local District 1-A1 within Dranesville is hereby created to wit:

To remove refuse/recycling collection service for the citizens who reside therein.

Given under my hand this_	day of December, 2022
Jill Cooper	
Clerk to the Board	

Maddux Lane Area Sanitary District Map



Path: G:\pub\DPWES\SWM\ServiceRequests\PetitionMaps\GIS\PetitionMaps_Pro.aprx

ADMINISTRATIVE - 3

Supplemental Appropriation Resolution AS 23080 for the Fairfax County Economic Development Authority to Accept Grant Funding from the Governor's Agriculture and Forestry Industries Development Fund for Beanstalk Farms, Inc., and Authorization to Use Economic Opportunity Reserve Funding to Meet the Local Cash Grant Requirement and to Execute the Performance Agreement

ISSUE:

Board approval of Supplemental Appropriation Resolution AS 23080 for the Fairfax County Economic Development Authority to accept grant funding in the amount of \$100,000 from the Governor's Agriculture and Forestry Industries Development Fund (AFID Grant) for Beanstalk Farms, Inc. Board authorization is requested to allocate \$100,000 from the Economic Opportunity Reserve (EOR) in order to meet the local cash grant requirement. Beanstalk Farms, Inc. will also directly receive \$12,750 from the Virginia Jobs Investment Program for a total award of \$212,750. Funding will contribute to the costs of the relocation and expansion of Beanstalk Farms, Inc.'s new hydroponic indoor growing facility, located at 251 Exchange Place within the Town of Herndon as well as supporting the creation of new jobs and manufacturing. Board authorization is also requested to execute the Performance Agreement (Attachment 1).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors take the following actions in support of the relocation and expansion of Beanstalk Farms, Inc.'s new hydroponic indoor growing facility.

- Approve Supplemental Appropriation Resolution AS 23080 in the amount of \$100,000 from the Commonwealth of Virginia's AFID Grant;
- Authorize \$100,000 from the Economic Opportunity Reserve in order to meet the local cash grant requirement; and
- Authorize the execution of the Performance Agreement substantially in the form of Attachment 1.

TIMING:

Board approval is requested on October 11, 2022.

BACKGROUND:

On July 25, 2017, the Board authorized the evaluation of the use of Fairfax County Economic Development Support Fund (EDSF) to support local matches of AFID Grant awards from the state. On November 21, 2017, the Board encumbered \$500,000 to serve as the local cash grant requirement for successful AFID Grants. As part of the FY 2019 Carryover Review, all previously appropriated EDSF funding, including the County local match for the AFID grants, were transferred to the newly established Economic Opportunity Reserve (EOR) Fund to continue support of County economic development projects.

The Board has approved two local AFID matches from these funds. On September 28, 2018, \$100,000 from the EOR Fund was used as a local match for an AFID Grant to The Winery at Bull Run. On November 17, 2020, \$25,000 was approved for a local AFID Grant match for OmMade Peanut Butter. The remaining \$375,000 in encumbered funds are available for additional AFID grant opportunities.

In 2017, brothers Michael and Jack Ross, both engineers, established Beanstalk to support the growing local foods movement. After completing a six-month technology incubator program with a successful growing prototype in the Silicon Valley, the two returned to Northern Virginia in 2018 where they opened Beanstalk, a contained environment agriculture vertical farm in Fairfax County. Beanstalk reached maximum production capacity at their previous location and required an expansion to meet additional consumer demand. The new hydroponic indoor growing facility located at 251 Exchange Place within the Town of Herndon (Dranesville District) will allow for increased space for new product development and equipment fabrication and maintenance.

The company currently sells leafy greens, herbs and micro greens. They are expanding sales to include mushrooms, tomatoes, and pepper products. Sales are made through direct-to-consumer products and to a large wholesaler for distribution to six Harris Teeter stores.

Beanstalk was awarded an AFID Grant to support a relocation and expansion into their new hydroponic indoor growing facility and to purchase new production equipment to grow and expand its business. The AFID grant award is conditioned upon successful completion of the terms in the Performance Agreement (Attachment 1), which governs the use of the award, and a match by Fairfax County of the funding provided by the Commonwealth through the AFID Grant.

The Commonwealth, Fairfax County, and Beanstalk will agree to the following criteria for the AFID Grant award, which are included in the attached Performance Agreement:

For the purpose of inducing Beanstalk to expand manufacturing, create new jobs, and build out a production facility:

- The Virginia Department of Agriculture and Consumer Services (VDACS) will provide a \$100,000 AFID Grant,
- Virginia Jobs Investment Program will provide \$12,750, and
- Fairfax County will provide a \$100,000 investment from the Economic Opportunity Reserve Fund, as a local cash grant to the AFID Grant.

Beanstalk is then obligated to meet the following performance criteria:

- Make qualified capital expenditures of at least \$2,085,000,
- Create 29 new full-time job at the facility, and,
- Purchase or use \$8,357,105 or 922,125 pounds of net new Virginia-grown agricultural products.

These performance criteria must be met by June 30, 2024. To track progress towards these performance measures, Beanstalk will provide annual reporting to Fairfax County and VDACS over the three-year period.

The EOR local cash grant of the AFID Grant illustrates Fairfax County's commitment to supporting agricultural enterprises and small-scale manufacturers as a critical and growing part of the economy which is included as an element in the County's strategy for economic success.

FISCAL IMPACT:

Funding from the AFID Grant in the amount of \$100,000 will be provided to Fairfax County to be made available to Beanstalk Farms, Inc. The County is required to provide a local cash grant in the amount of \$100,000 which is available from the Economic Opportunity Reserve Fund. Appropriation in the grant fund will be the \$100,000 from the AFID grant; the local cash grant will be expended directly from the Economic Opportunity Reserve Fund. 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. The Beanstalk Farms, Inc. payment schedule has been set forth in the Performance Agreement with metrics that have been agreed upon.

If Beanstalk Farms, Inc. does not achieve its performance metrics as described in the Performance Agreement executed between Fairfax County, the Fairfax County Economic Development Authority, and Beanstalk Farms, Inc. then Beanstalk Farms, Inc. is responsible for paying that portion of the grant that it did not achieve back to Fairfax County. Fairfax County, in turn, will then refund to the Commonwealth of

Virginia, the funds it received from Beanstalk Farms, Inc. Fairfax County will not be held responsible for the financial shortfalls associated with performance metrics not met. Fairfax County will monitor the performance metrics and will provide to the Office of the County Executive information annually on the number of jobs and capital investment achieved during that time.

CREATION OF NEW POSITIONS:

There are no new grant positions associated with this award.

ENCLOSED DOCUMENTS:

Attachment 1: Performance Agreement

Attachment 2: Supplemental Appropriation Resolution AS 23080

STAFF:

Rachel Flynn, Deputy County Executive Rebecca Moudry, Director, Department of Economic Initiatives Scott Sizer, Division Manager, Department of Economic Initiatives Jarrett Haring, Catalytic Projects Associate, Department of Economic Initiatives

ASSIGNED COUNSEL:

Richard F. Dzubin, Assistant County Attorney

GOVERNOR'S AGRICULTURE & FORESTRY INDUSTRIES DEVELOPMENT FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered into this ____ day of _____, 2022, by and among the **FAIRFAX COUNTY**, **VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **BEANSTALK FARMS**, **INC. DBA BEANSTALK** (the "Company"), a Corporation authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE FAIRFAX COUNTY** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$100,000 from the Governor's Agriculture & Forestry Industries Development Fund (an "AFID Grant") through the Virginia Department of Agriculture and Consumer Services ("VDACS") for the purpose of inducing the Company to improve and operate an agriculture and/or forestry processing/value-added facility using Virginia-grown products in the Locality (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, creating a significant number of New Jobs, as hereinafter defined; and using a significant amount of Virginia-Grown Agricultural and Forestal Products, as such capitalized items are hereinafter defined.

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment, New Jobs, and purchase or use of Virginia-Grown Agricultural and Forestal Products;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the AFID Grant, the use of the AFID Grant proceeds, the obligations of the Company regarding Capital Investment, New Job creation, use of Virginia-Grown Agricultural and Forestal Products, and the repayment by the Company of all or part of the AFID Grant under certain circumstances;

WHEREAS, the improvement and operation of the Facility will entail taxable capital expenditures by or on behalf of the Company of approximately \$2,085,000, of which approximately \$1,070,000 will be invested in machinery and tools, approximately \$840,000 will be invested in the construction and/or improvement of a building and site, and approximately \$175,000 will be invested in furniture, fixtures and business personal property;

WHEREAS, the improvement and operation of the Facility will further entail the creation of twenty-nine (29) New Jobs at the Facility;

WHEREAS, the improvement and operation of the Facility will further lead to the use of \$8,357,105 (or 922,125 pounds) of the Virginia-Grown Agricultural and Forestal Products identified in Appendix A during the performance period; and

Page 1 of 13

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, New Jobs, and use of Virginia-Grown Agricultural and Forestal Products constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the AFID Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both the Capital Investment must be in addition to the capital improvements at the Facility as of the date of the Grant Award Date: May 24, 2021. A capital expenditure related to a leasehold interest in real property will be considered to be made "on behalf of the Company" if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least eight years, and the real property would not have been constructed or improved but for the Company's interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as "Capital Investment." The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment.

"Grant Award Date" means May 24, 2021. This is the date from which progress towards the achievement of all Targets begins. Progress towards achievement of Targets before this date will not be counted, unless such progress is approved in writing by VDACS, in consultation with the Locality and Authority.

"Maintain" means that the New Jobs created pursuant to the AFID Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company's employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$68,621. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i)

35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 8 full-time jobs at the Facility as of May 24, 2021 which in 2021 paid an average annual wage of \$95,625. Net new jobs in the Commonwealth for contractors or employees of contractors who provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

"Performance Date" means June 30, 2024. If the Locality, in consultation with the Authority and VDACS, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and the Secretary of Agriculture and Forestry and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least \$2,085,000, to create and Maintain at least twenty-nine (29) New Jobs at an average annual wage of \$68,621 at the Facility, and to purchase or use at least \$8,357,105 of net new Virginia-Grown Agricultural and Forestal Products as defined in Appendix A, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

"Virginia-Grown Agricultural and Forestal Products" means crops, livestock, and livestock products, including field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs, aquaculture, commercially harvested wild fish, commercially harvested wild shellfish, and furs, as well as, timber, pulpwood, posts, firewood, Christmas trees, and other tree and wood products for sale or for farm use, which are grown or produced in Virginia for commercial purposes and to which the Company adds value to at the Facility. The purchase or use of Virginia-Grown Agricultural and Forestal Products at the Facility must be in addition to the annual usage of these products in the year preceding the Grant Award Date.

Section 2. Targets.

The Company will develop and operate the Facility in the Locality, make a Capital Investment of at least \$2,085,000, create and Maintain at least twenty-nine (29) New Jobs at an average annual wage of \$68,621, and purchase or use: \$8,357,105 of net new Virginia-Grown Agricultural and Forestal Products (see Appendix A), at the Facility, all as of the Performance Date. If the dollar amount of new uses of Virginia-Grown Agricultural and Forestal Products is not met, the Company can still achieve the use target by demonstrating they substantively achieved

the same volume of Virginia-Grown Agricultural and Forestal Products they proposed in Appendix A.

The average annual wage of the New Jobs will be at least \$68,621.

The average prevailing wage in the locality in May 2021 is \$92,014.

Section 3. Disbursement of AFID Grant.

The Company will use the AFID Grant proceeds to make building improvements, as permitted by Section 3.2-304(C) of the Virginia Code. The AFID Grant proceeds shall be disbursed in payments as follows:

First Payment: The Company will be eligible for \$50,000 of the \$100,000 AFID Grant following submission of an annual progress report, as required in Section 6 of this Agreement, that demonstrates to the satisfaction of the Locality, the Authority, and VDACS that it has made a Capital Investment of \$1,420,000, created and Maintained at least fourteen (14) New Jobs, and made purchase or use of \$183,670 (or 20,000 pounds) of Virginia-grown agricultural and forestal products (see Appendix A). Such evidence will be subject to verification by the Locality and VDACS. Within 30 days of the verification, VDACS will disburse the AFID Grant proceeds to the Locality. Within 30 days of its receipt of such AFID Grant proceeds, the Locality will disburse such AFID Grant proceeds, the Authority will disburse such AFID Grant proceeds to the Company.

Second Payment: The Company will be eligible for the remaining \$50,000 of the \$100,000 AFID Grant following submission of an annual progress report, as required in Section 6 of this Agreement, that demonstrates to the satisfaction of the Locality, the Authority, and VDACS that it has made a Capital Investment of \$1,985,000, created and Maintained at least twenty-nine (29) New Jobs, and made purchase or use of \$3,103,750 (or 345,000 pounds) of Virginia-grown agricultural and forestal products (see Appendix A). Such evidence will be subject to verification by the Locality, and VDACS. Within 30 days of the verification, VDACS will disburse the remaining AFID Grant proceeds to the Locality. Within 30 days of its receipt of such AFID Grant proceeds, the Authority will disburse such AFID Grant proceeds to the Company.

If the Company should fail to achieve and Maintain the conditions required for the *First Payment* or *Second Payment*, the Company shall receive a *Final Partial Payment* based on its achievement of the Targets at the Performance Date. The amount of the *Final Partial Payment* shall be determined by VDACS after the Performance Date and the submission of an annual report, as required in Section 6 of this Agreement, and will determine what proportion of the total \$100,000 Award will be paid. For purposes of determining the amount of the *Final Partial Payment*, the AFID Grant is to be allocated as \$33,333 (33%) for the Company's Capital Investment Target, \$33,333 (33%) for its Maintain New Jobs Target, and \$33,334 (33%) for its use of Virginia-grown agricultural and forestal products Target. If the Company has met at least

ninety percent (90%) of each of the three Targets at the Performance Date, the Company is eligible for the entire \$100,000 AFID Grant. If the Company has not met at least ninety percent (90%) of each of its three Targets at the Performance Date, the *Final Partial Payment* will be reduced so that the amount paid of the AFID Grant is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date there is a twenty-five percent (25%) shortfall on each Target so that achievement of the Capital Investment is only \$1,563,750, only twenty-two (22) New Jobs have been created and Maintained, and only \$6,267,829 (or 691,594 pounds) of Virginia-grown agricultural and forestal products have been purchased or used, the *Final Partial Payment* will be reduced so that the aggregate amount paid equals twenty-five percent (75%) of the moneys allocated to the Capital Investment Target (\$25,000), twenty-five percent (75%) of the moneys allocated to the New Jobs Target (\$25,000), and twenty-five percent (75%) of the moneys allocated to the purchase or use of Virginia-grown agricultural and forestal products Target (\$25,000).

If the Company receives through the *First Payment* or the *Second Payment* funds greater than what the calculation of the *Partial Final Payment* indicates what the Company is owed, then the Company shall repay the difference to the Locality as described in Section 7(b) below.

Section 4. Break-Even Point; State and Local Government Incentives.

(a) State-Level Incentives: VDACS has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the AFID Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

Category of Incentive:	Total Amount
AFID Grant	\$100,000
Virginia Jobs Investment Program ("VJIP")	\$12,750

The proceeds of the AFID Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs.

(b) *Local-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

Category of Incentive:	Total Amount
Local Cash Grants	\$100.000

If, by the Performance Date, the funds disbursed or committed to be disbursed by the Locality to the Company total less than the \$100,000 AFID Grant awarded to the Company, minus any AFID funds to be repaid under Section 7(b), the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date.

Page **5** of **13**

The proceeds of the Locality's Local Cash Grant may be used by the Company for any lawful purpose.

(c) Other Incentives: This Agreement relates solely to the AFID Grant. The qualification for, and payment of, all State-Level Incentives and Locality-Level Incentives, except for the AFID Grant, will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VDACS of the Company's progress on the Targets. Such progress reports will be provided annually, using a form provided by VDACS, starting June 30, 2022, and at such other times as the Locality, the Authority or VDACS may reasonably require. The first progress report will cover the period from May 24, 2021 to June 30, 2022, the second progress report will cover the period from July 1, 2022 to June 30, 2023, and the third and final progress report will cover the period from July 1, 2023 to June 30, 2024.

With each progress report, the Company shall report to VDACS (i) the amount of taxable expenditures made at the facility for this project, (ii) the number of New Jobs created and Maintained during the reporting period, (iii) the amount purchased and the purchase price paid by the Company, or the fair market value of the Virginia-Grown Agricultural or Forestal Products used, through the prior year. VDACS has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Freedom of Information Act and that such information will be used by VDACS solely in calculating aggregate return on invested capital expenditures, New Jobs created and maintained, and use of Virginia-Grown Agricultural or Forestal Products for purposes of gauging the overall effectiveness of economic development incentives.

The Locality and Company agree to retain all books, records, data and other documents relative to this agreement for a period of three (3) years after the end of this agreement, or until audited by the Commonwealth of Virginia, whichever is sooner. VDACS and its authorized agents, and/or state auditors (both the Auditor of Public Accounts and/or VDACS Internal Auditor) shall have full access to and the right to examine any of said materials and records relating to this agreement during this period.

Section 6. Verification of Targets.

(a) Verification of Capital Investment: The Company must submit copies of fixed assets reports, business personal property tax filings, personal property tax assessment invoices, and real estate tax assessment invoices. The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VDACS the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VDACS solely for verifying satisfaction of the Capital Investment Target. If the Locality, the

Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority, or VDACS may request. If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority, or VDACS, may each require such other documentation, including invoices, or audits as may be required to properly verify the Capital Investment.

(b) Verification of New Jobs and Wages: VDACS will verify New Jobs and wages through the Virginia Employment Commission (VEC). If requested by VDACS, the Company shall provide to VDACS copies of the Company's Employer Quarterly Tax Report (Form FC 20) filings with VEC covering the period from the date of this Agreement through the Performance Date. The forms shall be marked and considered confidential and proprietary and shall be used by VDACS solely for verifying satisfaction of the New Jobs Target. In accordance with the Virginia Code Section 60.2-114, VDACS is entitled to receive the Company's employment level and wage from the Virginia Employment Commission. If the Company wishes to count as New Jobs the employees of contractors, to the extent permitted in the definition of "New Jobs" in Section 1, the Company is responsible for assembling and distributing the documentation necessary to verify such New Jobs, including whether such jobs are net New Jobs in the Commonwealth.

The Company agrees that it will report to VDACS with respect to its employees at a facility-level, rather than at the company-level.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority or VDACS, may each require such other documentation or audits as may be required to properly verify the New Jobs.

(c) Verification of use of Virginia-Grown Agricultural and Forestal Products: The Company must provide to VDACS an accounting system generated report of the amount of Virginia-Grown Agricultural and Forestal Products purchased or used, including the purchase price paid by the Company, or the fair market value of the Virginia-Grown Agricultural or Forestal Products utilized, through the prior year. If the Company wishes to count as used the Virginia-Grown Agricultural and Forestal Products that is not directly purchasing or using, but is instead purchasing from another company which is making the Virginia-Grown Agricultural and Forestal Products, the Company is responsible for assembling and distributing the documentation necessary to verify these purchases.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority, or VDACS, may each require such other documentation, including invoices, or audits as may be required to properly verify the use of Virginia-Grown Agricultural and Forestal Products.

Section 7. Repayment Obligation.

- (a) Determination of Inability to Comply: If the Locality or VDACS determines at any time before the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain at least fifty (50) percent of its Targets by and through the Performance Date (i.e., by making a Capital Investment of at least \$1,042,500 at the Facility, to creating and Maintaining at least fifteen (15) New Jobs at the Facility, or purchasing at least \$4,178,553 of Virginia-Grown Agricultural and Forestal Products by the Performance Date), and if the Locality or VDACS have notified the Company of such determination, the entire AFID Grant must be repaid by the Company to the Locality. Such a determination by the Locality or VDACS will be based on such circumstances as a written acknowledgement by the company, a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates the Company will be unable or is unwilling to satisfy the Targets for the AFID Grant.
- (b) Repayment of AFID Grant: For purposes of repayment, the AFID Grant is to be allocated as \$33,333 (33%) for the Company's Capital Investment Target, \$33,333 (33%) for its New Jobs Target, and \$33,333 (33%) for the Virginia-Grown Agricultural and Forestal Products Target. If the Company has met at least ninety percent (90%) of each of the three Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the AFID Grant. If the Company has not met at least ninety percent (90%) of each of the three of its Targets at the Performance Date, the Company shall repay to the Authority that part of the AFID Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, if the Company meets seventy-five percent (75%) of each performance target, the Company shall repay to the Authority twenty-five percent (25%) of the moneys allocated to the Capital Investment Target (\$8,333) plus, twenty-five percent (25%) of the moneys allocated to the New Jobs Target (\$8,333), and plus twenty-five percent (25%) of the moneys allocated to the purchase or use of Virginia-Grown Agricultural and Forestal Products Target (\$8,333).
- (c) Repayment: The Company shall be liable for any repayment of all or a portion of the AFID Grant, as described in this Section 7. Such repayment shall be due from the Company to the Locality within ninety days of the Performance Date or the Determination Date, as applicable. Any moneys repaid by the Company to the Locality hereunder shall be repaid by the Locality promptly to VDACS for redeposit into the AFID fund. The Locality and the Authority shall use their best efforts to recover all such funds, including legal action for breach of this Agreement. The Locality shall assume primary responsibility for filing and prosecuting any such legal action, and the Authority shall cooperate with the Locality's efforts. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Locality from the Company.
- (d) Failure to Repay: If the Company fails to repay AFID funds following a determination of its liability for repayment pursuant to this Section 7, VDACS may determine that further collection action is required and may refer the matter to the Office of the Attorney General (the "OAG") for collection pursuant to Section 2.2-518 of the Virginia Code. In such event, by

their signatures below, the Locality and the Authority will be deemed to have assigned to the Commonwealth all of their rights, title and interest in and to this Section 7. In any matter referred to the OAG for collection, the Company shall be liable to pay interest, administrative charges, attorney fees and other applicable fees. Interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Performance Date or the Determination Date, as applicable, until paid.

Section 8. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:	with a copy to:
251 Exchange Pl	
Herndon, VA	
20170	
Email: mike@beanstalk.farm	Email:
Attention: Mike Ross	Attention:
if to the Locality, to:	with a copy to:
Department of Economic Initiatives	Office of the County Attorney
12015 Lee Jackson Memorial Highway, Suite	12000 Government Center Pkwy, Suite 549
<u>510</u>	Fairfax, VA 22035
Fairfax, VA 22033	Email: patricia.mccay@fairfaxcounty.gov
Email: ssizer@fairfaxcounty.gov	Attention: Patricia McCay
Attention: Scott Sizer	
if to the Authority, to:	with a copy to:
Fairfax County Economic Development	
<u>Authority</u>	

Page **9** of **13**

8300 Boone Blvd, Suite 450			
Tysons, VA 22182	Email:		
	Attention:		
E '1 CD'1 Of 1			

Email: CRiley@fceda.org Attention: Catherine Riley

if to VDACS, to:

Secretary of Agriculture and Forestry Office of Governor Commonwealth of Virginia 1111 East Broad Street Richmond, Virginia 23219

Attention: AFID

with a copy to:

Attention: AFID

AFID Compliance Coordinator Va Dept. of Agriculture & Consumer Services 102 Governor St., Room 353 Richmond, Virginia 23219

Section 9. <u>Miscellaneous</u>.

- (a) Entire Agreement; Amendments: This Agreement constitutes the entire agreement among the parties hereto as to the AFID Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and the Secretary of Agriculture and Forestry (Secretary).
- (b) Governing Law; Venue: This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the Locality and such litigation shall be brought only in such court.
- (c) *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.
- (d) Severability: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
- (e) Attorney's Fees: Except as provided in Section 7, attorney's fees shall be paid by the party incurring such fees.
- (f) Interpretation of Language: Any potential dispute in language shall be determined by VDACS or the Secretary. For any terms which any party to the Agreement might seek interpretation, the party or parties seeking interpretation must write VDACS or the Secretary describing the need for interpretation and any related context, factual or legal, which the party believes will aid the interpretation. When seeking interpretation, parties must notify all other parties to the Agreement of any interpretation request. Requests must indicate whether the other

Page **10** of **13**

parties consent to the interpretation request. Parties that do not consent to requests may write their own requests for interpretation. All parties shall cooperate with the efforts made by VDACS and the Secretary in making any interpretations and such interpretations shall be conclusive and binding upon all parties to the Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

COUNTY OF FAIRFAX, VIRGINIA

Ву
Name:
Title:
Date:
ECONOMIC DEVELOPMENT
AUTHORITY OF THE COUNTY OF
FAIRFAX, VIRGINIA
D
By
Name:
11tte:
Date:
DELNOTALIZEADIG DIG DDA
BEANSTALK FARMS, INC. DBA
BEANSTALK
D
By
Name:
Title:
Date:

APPENDIX A

Purchase or Use of Virginia-Grown Agricultural and Forestal Products:

PROJECTED AGRICULTURE PURCHASES OR USE										
	Current \$ Value	Current Volume	YEAR 1 \$ Value	YEAR 1 Volume	YEAR 2 \$ Value	YEAR 2 Volume	YEAR 3 \$ Value	YEAR 3 Volume	Net New \$ Value	Net New Volume
Total of all Ag & Forest Products Purchase	\$23,415	2,625	\$183,670	20,000	\$2,920,080	325,000	\$5,323,600	585,000	\$8,357,105	922,125
Packaged Salad Products (pounds)	\$23,415	2,625	\$176,170	19,750	\$2,890,080	324,000	\$5,173,600	\$80,000	\$8,169,605	915,875
Packaged Herbs (pounds)	\$0	0	\$7,500	250	\$30,000	1,000	\$150,000	5,000	\$187,500	6,250
Percentage that is Virginia Grown	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

SUPPLEMENTAL APPROPRIATION RESOLUTION AS 23080

Based on established Board policy effective September 1, 2004, the following award is approved administratively:

BE IT RESOLVED by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2023, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:		
Agency: Fund:	E1616, Economic Development Authority 500-C50000 Federal-State Grant Fund	\$100,000
Grant:	1160017-2023, Beanstalk Farms, Inc.	
Reduce Appropria	ation to:	
Agency: Fund:	G8787, Unclassified Admin 500-C50000 Federal-State Grant Fund	\$100,000
Source of Funds:	Commonwealth of Virginia	\$100,000
A Copy - Teste:		
Jill G. Cooper Clerk for the Board o	f Supervisors	

ADMINISTRATIVE - 4

Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance 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 U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance Grant in the amount of \$128,362. Funding will be used toward the purchase of a Remote Operated Vehicle (ROV) for the Marine Patrol Unit (MPU) in the Police Department. The ROV would allow the Police Department to properly search marine locations using GPS capabilities to log the site of the search and the recovery of any evidence. The grant period for this award is October 1, 2021, to September 30, 2025. No Local Cash Match is required. This grant is an ongoing award that the Police Department receives annually and is included in the FY 2023 Adopted Budget Plan; however, a Board item is required in order to meet grantor requirements. 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 Police Department to apply for and accept funding, if received, from the U.S. Department of Justice, Office of Justice Programs, Edward Byrne Memorial Justice Assistance Grant in the amount of \$128,362. Funding will be used toward the purchase of a Remote Operated Vehicle for the Marine Patrol Unit. 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 a designee appointed by the County Executive to enter into the grant agreement and any related agreements, including but not limited to Federal Subaward Agreements, on behalf of the County.

TIMING:

Board action is requested on October 11, 2022. Due to an application deadline of August 8, 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:

The Fairfax County Police Department is in the Washington, D.C. metropolitan area, also known as the National Capital Region (NCR). The Police Department is comprised of 1,458 sworn police officers, not including the 34 Animal Protection Police Officers and 325 civilian staff and is the largest local law enforcement agency in the Commonwealth of Virginia. The Police Department serves a culturally diverse residential and business population with a residential population of more than 1.2 million. One of the Police Department's responsibilities is to safeguard the public and private waterways within Fairfax County. Due to the overlapping boundaries on the waterways, and the proximity to the nation's Capital, the Police Department's Marine Patrol Unit is frequently called upon to assist neighboring jurisdictions in Virginia and across the NCR during a request for mutual aid.

The Marine Patrol Unit, and surrounding jurisdictions, do not currently have any Remote Operated Vehicles for underwater search and recovery missions. The ROV will allow the Marine Patrol Unit to conduct underwater search and recovery missions as well as evidence recovery while reducing the need to have divers in the water. The ROV has many capabilities, including a sonar, underwater camera, a claw to retrieve items, and a metal detector.

Currently, the Marine Patrol Unit relies on a side scan sonar to find objects underwater. While the side scan sonar is a great tool, the Marine Patrol Unit is limited to using side scan sonar only on larger bodies of water in which it can launch the 20-foot boat. With this limitation, the unit cannot perform searches on small ponds and creeks with limited access or that are too shallow to launch the boat. Additionally, when the Underwater Search and Recovery Team is requested for evidence recovery, the mission frequently involves the recovery of firearms used in violent crimes. To recover the evidence, the divers must descend to the bottom of the requested waterway and hand search through the mud and silt, with limited to zero visibility, attempting to locate the firearm. Many limitations can prevent the diver from finding the firearm, such as restricted air supplies for extensive grid searches, dangerous dive locations with fast-moving waters. The ROV would allow the Police Department to properly search these locations using GPS capabilities to log the site of the search and the recovery of any evidence. This could assist with the prosecution of violent felons while increasing the safety of the divers.

The ROV will help limit divers in the water. In March 2021, the Marine Patrol Unit was called to Lorton, VA, to search a small pond for a drowning victim. Due to the remote location, shallow water, and no place to launch the boat, the Marine Patrol Unit could not search for the body. Because of this, the Dive Team had to search the pond bottom in cold weather to locate the victim. In another event, the Marine Patrol Unit found a drowned victim on the bottom of a lake with the side scan sonar. The body was located in the dark, and the divers could not go into the water due to safety concerns of diving at night. The victim's family had to wait until the following morning for the victim to be recovered.

As part of the grant application process and in accordance with the special conditions of the Justice Assistance Grant program, the grant application must be made available for review by the governing body of the local government during a scheduled meeting open to the public. The application must also be made available to provide an opportunity for citizens to comment. The grant will be made available to the public at the Board meeting as part of this administrative item to comply with the above requirement.

FISCAL IMPACT:

Grant funding in the amount of \$128,362 is being requested for the purchase of a Remote Operated Vehicle for the Marine Patrol Unit in the Police Department. No Local Cash Match is required. This grant does allow the recovery of indirect costs; however, because this funding opportunity is highly competitive, the Police Department 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 anticipated 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 Application

STAFF:

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

Summary of Grant Application

Grant Title: FY 2022 Edward Byrne Memorial Justice Assistance Grant

Funding Agency: Department of Justice, Office of Justice Programs

Applicant: Fairfax County Police Department

Funding Amount: Funding of \$128,362 has been requested.

Proposed Use of Funds: The proposed project is to request funding to purchase a remote

operated vehicle (ROV) for the Police Department's Marine Patrol Unit and Underwater Search and Recovery Unit. The ROV will provide the ability to search more locations without the need to have divers in the water. What was previously an extensive search operation with comprehensive planning and operation plans can be done in much less time. In today's climate of intense public scrutiny, the Marine Patrol Unit and the Underwater Search and Recovery Unit will be able to conduct searches promptly. The ROV will allow officers to locate bodies and evidence without

putting officers at risk.

Performance Measures: The Marine Patrol Unit and Underwater Search and Recovery Unit

are often called upon for mutual aid by other state and local law enforcement agencies for assistance. Whenever the Marine Patrol Unit or Underwater Search and Recovery Unit respond to outside jurisdictions for mutual aid assistance, they utilize their issued equipment. The ROV will be used within Fairfax County's jurisdictional boundaries and throughout the state when mutual aid is requested. The impact of the Police Department acquiring the ROV will keep police officers and surrounding jurisdictions safe.

Grant Period: October 1, 2021 – September 30, 2025

ADMINISTRATIVE - 5

Supplemental Appropriation Resolution AS 23002 for the Fairfax County Park Authority to Accept Grant Funding from the Virginia Department of Conservation and Recreation for Improvements to Trail Facilities in Royal Lake Park

ISSUE:

Board approval of Supplemental Appropriation Resolution AS 23002 for the Fairfax County Park Authority (FCPA) to accept funding in the amount of \$1.0 million from the Virginia Department of Conservation and Recreation that has been made available through the state's American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Fund (SLFRF) allocation. This funding will be utilized for improvements to trail facilities in Royal Lake Park in the Braddock District. The Total Project Estimate is currently \$1.3 million. The remaining \$0.3 million not covered by this grant is available in Fund 30400, Park Authority Bond Construction. The grant period is from March 3, 2021, to December 31, 2024. When grant funding expires, the County is under no obligation to continue funding the program. Given the timing of the award and the need to begin work quickly, the subrecipient agreement was signed by the County Executive in September 2022. Therefore, Board approval of the award and entering into the grant agreement is also requested.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve Supplemental Appropriation Resolution AS 23002 to accept funding from the Virginia Department of Conservation and Recreation made available through the state's ARPA SLFRF allocation in the amount of \$1.0 million. This funding will be utilized for trail-related capital improvement projects at Royal Lake Park in the Braddock District. No Local Cash Match is required. The County Executive also recommends the Board approve the subrecipient agreement between the Virginia Department of Conservation and Recreation and the County.

TIMING:

Board approval is requested on October 11, 2022.

BACKGROUND:

The Coronavirus State and Local Fiscal Recovery Funds program, a part of the American Rescue Plan Act, delivers \$350.0 billion to state, local, and Tribal

governments across the country to support their response to and recovery from the COVID-19 public health emergency.

The SLFRF program provides governments across the country with the resources needed to:

- Fight the pandemic and support families and businesses struggling with its public health and economic impacts
- Maintain vital public services, even amid declines in revenue resulting from the crisis
- Build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity

The final rule – which took effect on April 1, 2022 – provides state and local governments with increased flexibility to pursue a wider range of uses, as well as greater simplicity so governments can focus on responding to the crisis in their communities and maximizing the impact of their funds. The SLFRF program final rule provides additional clarity and flexibility for recipient governments, including expanding the list of uses to respond to COVID-19 and its economic impacts – ensuring states and localities can adapt quickly and nimbly to changing public health and economic needs. This includes clarifying that recipients can use funds for certain capital expenditures to respond to public health and economic impacts and making services like childcare, early education, addressing learning loss, and affordable housing development available to all communities impacted by the pandemic. Royal Lake Park is a highly popular location for outdoor recreation, team sports, and exercise. These funds will be utilized to repair, improve, and expand the facilities in Royal Lake Park, thereby improving the public health opportunities in the Braddock District.

FISCAL IMPACT:

Funding in the amount of \$1.0 million from the Virginia Department of Conservation and Recreation made available from the state's ARPA SLFRF allocation will support the FCPA Capital Improvement Program for trails at Royal Lake Park. No Local Cash Match is required. Indirect cost recovery is allowed but the agency is not requesting the recovery of indirect costs in order to maximize funds available to accomplish the objectives of the project. This action does not increase the expenditure level of the Federal-State Grant Fund as funds are held in reserve for unanticipated awards in FY 2023. The Total Project Estimate is currently \$1.3 million. The remaining \$0.3 million not covered by this grant is available in Fund 30400, Park Authority Bond Construction.

CREATION OF NEW POSITIONS:

No new positions will be created by this grant.

ENCLOSED DOCUMENTS:

Attachment 1: Subrecipient Agreement for the Commonwealth of Virginia American

Rescue Plan Act State and Local Fiscal Recovery Fund Implementation

Attachment 2: Supplemental Appropriation Resolution AS 23002

STAFF:

Christopher A. Leonard, Deputy County Executive
Jai Cole, Executive Director, Fairfax County Park Authority (FCPA)
Sara Baldwin, Deputy Director, FCPA
Aimee L. Vosper, Deputy Director/CBD, FCPA
Michael Peter, Director, Business Administration Division, FCPA
Paul Shirey, Manager, Project Management Branch, FCPA
Tom McFarland, Trails Program Manager, FCPA

SUBRECIPIENT AGREEMENT

FOR THE COMMONWEALTH OF VIRGINIA AMERICAN RESCUE PLAN ACT STATE AND LOCAL FISCAL RECOVERY FUND IMPLEMENTATION

SUBRECIPIENT AGREEMENT BETWEEN

VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION

Fairfax County

600 EAST MAIN STREET, 24TH FLOOR

12000 Government Center Pkwy

RICHMOND, VIRGINIA 23219

and

23219 Fairfax, VA 22030

THIS AGREEMENT ("AGREEMENT") FOR THE COMMONWEALTH OF VIRGINIA'S ("VIRGINIA") AMERICAN RESCUE PLAN ACT ("ARPA") STATE AND LOCAL FISCAL RECOVERY FUND ("SLFRF") IMPLEMENTATION is made and entered into the XX day of September 2022, by and between the VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION ("RECIPIENT"), and the FAIRFAX COUNTY ("Subrecipient") (each a "Party" and jointly the "Parties"). This Agreement shall become effective on the date ("Effective Date") this contract is signed by both parties.

The Award Terms and Conditions of the ARPA SLFRF Agreement sets forth the compliance obligations for Subrecipients pursuant to the SLFRF statute, the Uniform Guidance, Treasury's final rule, and applicable Federal laws and regulations.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Agreement, including the recitals set forth above which are a material part of this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. <u>Acknowledgment of Required Information.</u> In accordance with 2 CFR 200.332 and related Federal requirements for pass-through entities, Subrecipient hereby acknowledges receipt of Exhibit A hereto and the additional information set forth therein.
- 2. <u>Fiscal Agent.</u> The Subrecipient agrees to act as Recipient's fiscal agent as required for the limited purpose of the ARPA SLFRF award.
- 3. <u>Funds Pass-Through</u>. The Recipient agrees to transfer the SLFRF award fund(s) to the Subrecipient promptly upon the Recipient's allotment of such funds from the Department of Planning and Budget ("DPB"); the Recipient's receipt of such funds from the Department of Accounts ("DOA"); and the compliance of the Subrecipient with any and all prerequisites of the acceptance of these funds (i.e. certifications, proof of eligible expenditures, etc.).
- 4. <u>SAM.gov Requirements.</u> Subrecipient is required to register on System for Award Management ("SAM") at https://www.sam.gov pursuant to 2 CFR Part 25. Required SAM.gov information can be found online. Subrecipient must also report the names and

total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the Subrecipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as provided by 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public.

- 5. Reporting and Recordkeeping Requirements. Program and/or project quarterly reporting is required as outlined in Exhibit B. Subrecipients must maintain records and financial documents relating to its services provided under this Agreement for five (5) years after all funds have been expended, termination of this agreement or returned to the Virginia Department of Conservation and Recreation ("DCR"). The DCR, shall have access to all subrecipient's records relating to its services under this Agreement including but not limited to canceled checks, invoices, vouchers, purchase orders, subcontracts, time sheets, mileage records and all other records relating to services and expenditures. Subrecipient agrees to provide the DCR with copies of such records at no expense upon request. Further, Treasury may request transfer of records of long-term value at the end of five years. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats. Subrecipient must agree to provide or make available such records to the DCR upon request. Subrecipient must cooperate and provide reasonable assistance to authorized representatives of the DCR.
- 6. Single Audit. Subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements. Note that the Compliance Supplement provides information on the existing, important compliance requirements that the federal government expects to be considered as a part of such audit. The Compliance Supplement is routinely updated and is made available in the Federal Register and on Office of Management and Budget's (OMB) website: https://www.whitehouse.gov/omb/office-federal-financial-management. Recipients and Subrecipients should consult the Federal Audit Clearinghouse to see examples of Single Audit submissions.

7. **Internal Controls.** Subrecipient must:

- a. Establish and maintain effective internal controls over the SLFRF award that provides reasonable assurance that the Subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.
- b. Comply with Federal statutes, regulations, and the terms and conditions of the SLFRF award.
- c. Evaluate and monitor the non-Federal entity's compliance with statutes, regulations, and the terms and conditions of Federal awards.
- d. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

- e. Take reasonable measures to safeguard protected personally identifiable information.
- 8. <u>Sub-awardee/Vendor Monitoring.</u> The Subrecipient, when passing funds along to another subrecipient (or "Sub-awardee") or contractor, must:
 - a. Ensure that the agreement is clearly identified as a Sub-awardee or subcontractor subaward and includes the requirements of 2 CFR 200.332 referenced herein throughout this Agreement.
 - b. Evaluate each Sub-awardee's risk for noncompliance as required by 2 CFR 200.332
 - c. Monitor the activities of the Sub-awardee, or contractor, as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subawards; that subaward performance goals are achieved; and that all monitoring requirements of 2 CFR 200.332 are met, including reviewing financial and programmatic reports, following up on corrective actions, and issuing management decisions for audit findings. Monitoring must include:
 - i. Reviewing financial and performance reports required by the pass-through entity.
 - ii. Following-up and ensuring that the Sub-awardee, or contractor, takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Sub-awardee, or contractor, from the pass-through entity detected through audits, on-site reviews, and other means.
 - iii. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required.
 - d. Verify that every Sub-awardee is audited as required by 2 CFR 2 CFR 200.332. The Sub-awardee must also develop a subrecipient monitoring plan for its own subrecipients that addresses monitoring of subrecipients to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of the contract, and that performance goals are achieved. The Sub-awardee's monitoring plan of its own subrecipients should include a risk-based assessment to determine the level of oversight, and monitoring activities such as reviewing financial and performance reports, performing site visits, and maintain regular contact with subrecipients. The Sub-awardee must establish requirements to ensure compliance with its own subrecipients as required by 2 CFR 200.332. The Sub-awardee must ensure that transaction with vendors comply with laws, regulations, and provisions of contracts or grant agreements in compliance with 2 CFR 200.332.
- 9. Procurement, Suspension & Debarment. Subrecipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds, are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation;

or after solicitation of a number of sources, competition is determined inadequate. Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Subrecipients must ensure adherence to all applicable local, State, and Federal procurement laws and regulations.

- 10. Civil Rights Compliance. Subrecipient and its vendors or contractors are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23. The Subrecipient further agrees that every subcontract entered into for the performance of any contract or purchase order resulting here from, will contain a provision requiring non-discrimination in employment, service delivery and access, as herein specified binding upon each subrecipient.
- 11. **Repayment of SLFRF Awards.** If the United States or Virginia lawfully requires repayment of some or all of the SLFRF award, Subrecipient agrees to repay such amount to the Recipient for such purpose within twenty (20) days of any such requirement.
- 12. **Return of Unexpended SLFRF Awards.** If all of the SLFRF award is not expended by the end of the identified performance period, Subrecipient is obligated to return unexpended funds to the DCR. The Commonwealth and DCR, shall coordinate to accomplish the return of such funds in a timely manner in accordance with the SLFRF Treasury Final Rule.
- 13. <u>Capital Expenditures.</u> Among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of \$100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).
- 14. **Further Cooperation.** The Parties shall continue to cooperate with each other as reasonably necessary to confirm or bring about the transfers contemplated by this Agreement.
- 15. <u>Term.</u> This Memorandum shall be in effect from the date on which it is executed by the Parties through December 31, 2026.

- 16. <u>Governing Law; Severability</u>. This Agreement shall be construed in accordance with and governed for all purposes by the laws of the Commonwealth of Virginia. If any word or provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other circumstance or the validity or enforceability of any other word or provision.
- 17. **Entire Agreement; Amendments.** This Agreement contains the entire integrated agreement between the Parties as to the subject matter hereof and supersedes all previous written and oral negotiations, commitments, proposals, and writings. No amendments may be made to this Agreement except by a writing signed by both Parties.
- 18. <u>Counterparts</u>; <u>Signatures</u>; <u>Copies</u>. This Agreement may be executed in counterparts, both of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or scanned signature may substitute for and have the same legal effect as an original signature. Any copy of this executed Agreement made by photocopy, facsimile or scanner shall be considered the original for all purposes.
- 19. <u>Authorization</u>. Each Party represents that its execution, delivery and performance under this Agreement have been duly authorized by all necessary action on its behalf, and do not and will not violate any provision of its charter or enabling legislation or result in a material breach of or constitute a material default under any agreement, indenture, or instrument of which it is a party or by which it or its properties may be bound or affected.

IN WITNESS WHEREOF, the Parties hereto have caused the execution of this Agreement as of the date first written above.

By: Matthew Wells Director (804) 786-2289 matthew.wells@dcr.virginia.gov FAIRFAX COUNTY By: Bryan Hill County Executive (703) 324-2531 Brian.Hill@fairfaxcounty.gov

VIRGINIA DEPARTMENT OF

CONSERVATION AND RECREATION

Page 5 of 10

[END OF SIGNATURES]

SUBRECIPIENT AGREEMENT

FOR THE VIRGINIA AMERICAN RESCUE PLAN ACT STATE AND LOCAL FISCAL RECOVERY FUND IMPLEMENTATION

EXHIBIT A

Pass-Through Information Requirements

The following pass-through information requirements pertaining to the subaward to Subrecipient set forth below in satisfaction of 2 CFR 200.332 and per 2 CFR 200.1 of Uniform Guidance. The Federal Award Identification for funds (subaward) addressed by this Agreement is the American Rescue Plan Act State and Local Fiscal Recovery Fund.

- (i) Subrecipient's Name: [Fairfax County Board of Supervisors]
- (ii) Subrecipient's Unique Entity Identifier (UEI): W2ZUFMBDM378
- (iii) Federal Award Identification Number: SLFRP1026.
- (iv) Federal Award Date: July 24, 2022
- (v) Subaward Period of Performance Start and End Date:Start Date is Date of this Memorandum; End Date is December 31, 2026
- (vi) Subaward Budget Period Start and End Date:Start Date is Date of this Memorandum; End Date is December 31, 2026
- (vii) Amount of Federal Funds Obligated by this Action by the Pass-Through Entity to the Subrecipient: \$1,000,000
- (viii) Total Amount of Federal Funds Obligated to the Subrecipient by the Pass-Through Entity Including the Current Financial Obligation: \$1,000,000
- Federal Award Project Description, as Required to be Responsive to the Federal Funding Accountability and Transparency Act (FFATA): Royal Lake Park in Fairfax County, Virginia is a very heavily used park surrounded by a number of large communities such as Kings Park West, Lakepointe, New Lakepointe and Glen Cove. The parks surrounding Royal Lake boast a number of strong attributes that attract those in the Braddock District to its ball fields, basketball courts, playground and exercise equipment. This project will include improvements to the trail network in and around Royal Lake Park, including the replacement of a steel pedestrian bridge, construction of a new stream valley trail, repair of existing trail, appropriate drainage improvements, and related trail and drainage details in various locations in Royal Lake Park and the adjacent Rabbit Branch Stream Valley Park.
- (x) (A) Name of Federal Awarding Agency: U.S. Department of the Treasury

- (B) Name of Pass-Through Entity: <u>Virginia Department of Conservation and</u> Recreation
- (C) Contact Information for Awarding Official of the Pass-Through Entity:

 <u>Matthew Wells, Director, Virginia Department of Conservation and Recreation</u>

 <u>matthew.wells@dcr.virginia.gov</u>
- (xi) Assistance Listings Number (ALN) and Title (the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement):
 ALN 21.027
- (xii) Identification of Whether the Award is R&D: Not R&D Award
- (xiii) Indirect Costs for the Federal Award: <u>Pursuant to the SLFRF Award Terms and Conditions</u>, recipients are permitted to charge both direct and indirect costs to their <u>SLFRF award as administrative costs as long as they are accorded consistent treatment per 2 CFR 200.403</u>. Indirect cost rate for the Federal award (including if the de minimis rate is charged) per §200.414.

SUBRECIPIENT AGREEMENT

FOR THE VIRGINIA AMERICAN RESCUE PLAN ACT STATE AND LOCAL FISCAL RECOVERY FUND IMPLEMENTATION

EXHIBIT B

QUARTERLY REPORTING REQUIREMENTS

Below are the reporting requirements for subawards under \$50,000.

- Obligation amount (if applicable)
- Expenditure amount (if applicable)

Below are the reporting requirements for subawards over \$50,000.

- Unique Entity Identifier (UEI)
- Payee contact information
- Subaward date
- Subaward amount
- Subaward description
- Primary place of performance information
- Quarterly obligation amount
- Quarterly expenditure amount
- Subrecipient gross revenue information
 - o Percentage of gross revenue from Federal contracts (Y/N above 80%)
 - o Amount of gross revenue from Federal contracts (Y/N above \$25,000,000)
- Subrecipient executive compensation details
- Additional programmatic data based on Expenditure Category

SLFRF Key Reporting Deadlines

Below are the federal deadlines for the Project and Expenditure Reports. The Recipient may set advanced deadlines to obtain required reporting information from the Subrecipient, to comply with state-level deadlines.

Table 1: Quarterly Project and Expenditure Reports Due Dates

Report	Year	Quarter	Period Covered	Due Date
1	2021	2-4	March 3 - December 31	January 31, 2022
2	2022	1	January 1 - March 31	April 30, 2022
3	2022	2	April 1 – June 30	July 31, 2022
4	2022	3	July 1 - September 30	October 31, 2022
5	2022	4	October 1 - December 31	January 31, 2023
6	2023	1	January 1 - March 31	April 30, 2023
7	2023	2	April 1 – June 30	July 31, 2023
8	2023	3	July 1 - September 30	October 31, 2023
9	2023	4	October 1 - December 31	January 31, 2024
10	2024	1	January 1 - March 31	April 30, 2024
11	2024	2	April 1 – June 30	July 31, 2024
12	2024	3	July 1 - September 30	October 31, 2024
13	2024	4	October 1 - December 31	January 31, 2025
14	2025	1	January 1 - March 31	April 30, 2025
15	2025	2	April 1 – June 30	July 31, 2025
16	2025	3	July 1 - September 30	October 31, 2025
17	2025	4	October 1 - December 31	January 31, 2026
18	2026	1	January 1 - March 31	April 30, 2026
19	2026	2	April 1 – June 30	July 31, 2026
20	2026	3	July 1 - September 30	October 31, 2026
21	2026	4	October 1 - December 31	March 31, 2027

SUPPLEMENTAL APPROPRIATION RESOLUTION AS 23002

Based on established Board policy effective September 1, 2004, the following award is approved administratively:

BE IT RESOLVED by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2023, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

appropriation is autic	orized and the Fiscal Flamming Resolution is amended acc	cordingly.
Appropriate to:		
Agency: Fund:	P5151, Park Authority 500-C50000 Federal-State Grant Fund	\$1,000,000
Grant:	1CV5103-2021, ARPA SLFRF Royal Lake Park	
Reduce Appropria	ation to:	
Agency: Fund:	G8787, Unclassified Admin 500-C50000 Federal-State Grant Fund	\$1,000,000
Source of Funds:	Virginia Department of Conservation and Recreation,	\$1,000,000
A Copy - Teste:		

Jill G. Cooper

Clerk for the Board of Supervisors

ADMINISTRATIVE - 6

Approval of "\$200 Additional Fine for Speeding" Signs as Part of the Residential Traffic Administration Program – O'Day Drive (Sully District)

ISSUE:

Board endorsement of "\$200 Additional Fine for Speeding" signs as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends approval of the resolution (Attachment I) for the installation of "\$200 Additional Fine for Speeding" signs on the following road:

O'Day Drive between Route 29 and Stone Road (Sully District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) request VDOT to schedule the installation of the approved "\$200 Additional Fine for Speeding" signs (Attachment II) as soon as possible.

TIMING:

Board action is requested on October 11, 2022, to help facilitate a prompt installation of the proposed signage.

BACKGROUND:

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

O'Day Drive, between Route 29 and Stone Road (Sully District), meets the RTAP requirements for posting the "\$200 Additional Fine for Speeding" signs. On August 30, 2022, FCDOT received verification from the Sully District Supervisor's office confirming community support.

FISCAL IMPACT:

For the "\$200 Additional Fine for Speeding" signs, \$500 is to be paid out of the VDOT secondary road construction budget.

ENCLOSED DOCUMENTS:

Attachment I: "\$200 Additional Fine for Speeding" Signs Resolution – O'Day Drive Attachment II: Area Map of Proposed "\$200 Additional Fine for Speeding" Signs – O'Day Drive

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 Nicole Romero, Planning Technician, Traffic Engineering Section, FCDOT

RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP) \$200 ADDITIONAL FINE FOR SPEEDING SIGNS O'DAY DRIVE SULLY 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, October 11, 2022, at which a quorum was present and voting, the following resolution was adopted:

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

WHEREAS, the Fairfax County Department of Transportation has verified that a bona-fide speeding problem exists on O'Day Drive from Route 29 to Stone Road. Such road also being identified as a Local Road; and

WHEREAS, community support has been verified for the installation of "\$200 Additional Fine for Speeding" signs on O'Day Drive.

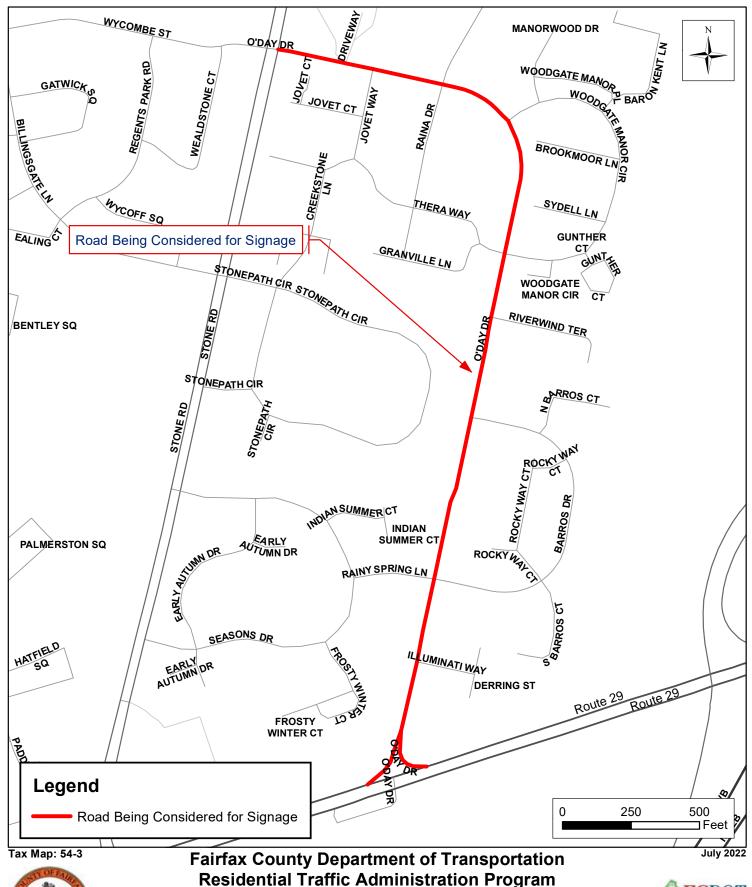
NOW, THEREFORE BE IT RESOLVED that "\$200 Additional Fine for Speeding" signs are endorsed for O'Day Drive from Route 29 to Stone Road.

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

ADOPTED this 11th day of October, 2022.	
A Copy Teste:	

Jill G. Cooper
Clerk for the Board of Supervisors

Attachment II



201

Proposed \$200 Additional Fine for Speeding
O'Day Drive
Sully District

ADMINISTRATIVE - 7

Authorization to Advertise a Public Hearing on a Proposal to Prohibit Through Truck Traffic on Powhatan Street and Freedom Lane (Dranesville District)

ISSUE:

Board authorization to advertise a public hearing, to be held on Tuesday, November 1, 2022, at 4:00 p.m., for the purpose of endorsing the following roads to be included in the Residential Traffic Administration Program (RTAP) for a through truck traffic restriction:

- Powhatan Street between Kirby Road in Fairfax County and Williamsburg Boulevard in Arlington County
- Freedom Lane between Kirby Road and Powhatan Street

RECOMMENDATION:

The County Executive recommends the Board authorize advertisement of a public hearing for the purpose of endorsing Powhatan Street between Kirby Road and Williamsburg Boulevard, and Freedom Lane between Kirby Road and Powhatan Street, to be included in the RTAP for a through truck traffic restriction.

TIMING:

The Board should take action on October 11, 2022, to provide sufficient time for advertisement of the proposed public hearing scheduled for November 1, 2022, at 4:00 p.m.

BACKGROUND:

On September 14, 2021, the Dranesville District Supervisor's Office requested that staff work with the Virginia Department of Transportation (VDOT) to implement a through truck traffic restriction on Powhatan Street between Kirby Road and Williamsburg Boulevard, and on Freedom Lane between Kirby Road and Powhatan Street. A portion of Powhatan Street is within Arlington County. At a meeting on February 3, 2022, Arlington County staff indicated a willingness to review and possibly implement a through truck restriction on the portion of Powhatan Street in their county.

After initially identifying a route for truck traffic displaced from both roads, a public hearing was originally scheduled for September 13, 2022. However, the requesting

community wanted the Fairfax County Department of Transportation (FCDOT) to identify a different route for displaced truck traffic, thus causing the public hearing to be postponed. Once another alternate route for the displaced truck traffic on both roadways was identified, FCDOT presented this alternate route to the requesting community members and Arlington County staff in a meeting on August 29, 2022. The alternate route identified for both Powhatan Street and Freedom Lane would start on Kirby Road, travel along Kirby Road to Old Dominion Drive, continue on Old Dominion Drive into Arlington County to Williamsburg Boulevard, and then continue on Williamsburg Boulevard in Arlington County to reach Powhatan Street (Attachment I). The community members and Arlington County staff deemed this route to be a reasonable alternative for truck traffic, and thus agreed that the County should proceed to a public hearing with this route.

Section 46.2-809 of the *Code of Virginia* requires a local jurisdiction to hold a duly advertised public hearing on any proposal to restrict through truck traffic on a primary or secondary road. Further, a resolution pertaining to prohibiting through truck traffic on a portion of this road (Attachment II) has been prepared for adoption and transmittal to VDOT, which will conduct the formal engineering study of the restriction request.

FISCAL IMPACT:

None.

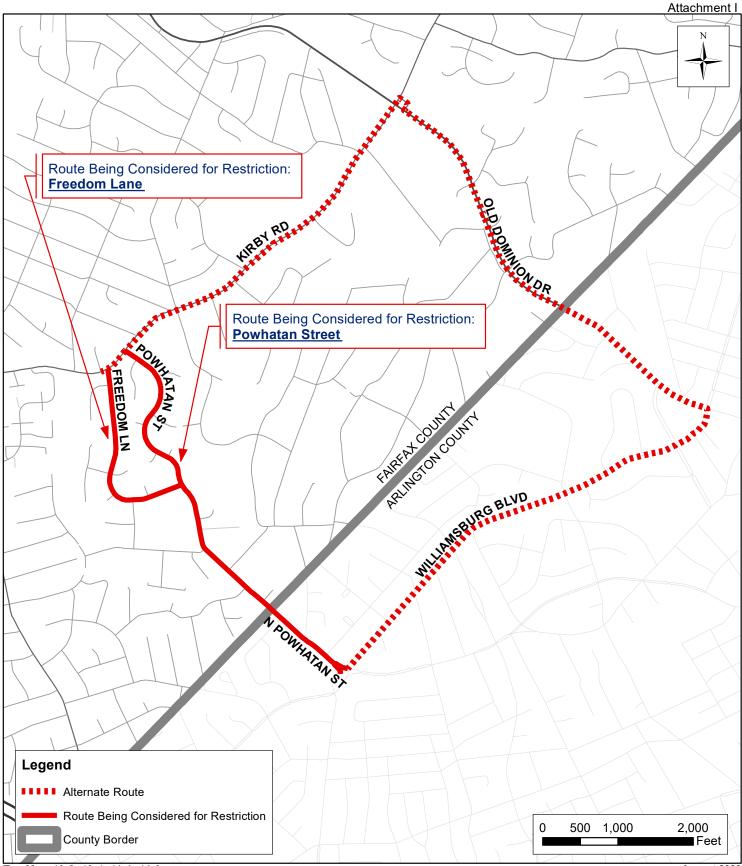
ENCLOSED DOCUMENTS:

Attachment I: Area Map of Proposed Through Truck Traffic Restriction Attachment II: Proposed Resolution to Restrict Through Truck Traffic on Powhatan Street and Freedom Lane

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

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Tax Map:40-2, 40-4, 41-1, 41-3

OF FAIR 1742 PRGINS Fairfax County Department of Transportation Residential Traffic Administration Program Through Truck Restriction Map Powhatan Street & Freedom Lane Dranesville District August 2022



RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)THROUGH TRUCK TRAFFIC RESTRICTION POWHATAN STREET AND FREEDOM LANE DRANESVILLE DISTRICT

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, November 1, 2022, at which a meeting quorum was present and voting, the following resolution was adopted:

WHEREAS, the residents of Fairfax County who live along Powhatan Street and Freedom Lane have expressed concerns regarding the negative impacts associated with through truck traffic on these roads in Fairfax County; and

WHEREAS, the residents of Arlington County who live along Powhatan Street have also expressed concerns regarding the negative impacts associated with through truck traffic on this road in Arlington County; and

WHEREAS, a reasonable alternate route has been identified for Powhatan Street and Freedom Lane starting on Kirby Road, traveling along Kirby Road to Old Dominion Drive, continuing on Old Dominion Drive into Arlington County to Williamsburg Boulevard, and then continuing on Williamsburg Boulevard in Arlington County to reach Powhatan Street; and

WHEREAS, it is the intent of the Fairfax County Board of Supervisors to ensure that the proposed through truck restriction in Fairfax County be enforced by the Fairfax County Police Department; and

WHEREAS, a public hearing was held pursuant to Section 46.2-809 of the *Code of Virginia*;

NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, has determined that in order to promote the health, safety, and general welfare of the citizens of Fairfax County, it is beneficial to prohibit through truck traffic on Powhatan Street and Freedom Lane in Fairfax County, as part of the County's Residential Traffic Administration Program (RTAP).

FURTHER BE IT RESOLVED, that the Commonwealth Transportation Board is hereby formally requested to take necessary steps to enact this prohibition.

ADOPTED this 1st day of November, 2022.

A Copy Teste:	
Jill G. Cooper	
	ard of Supervisors

ADMINISTRATIVE - 8

<u>Authorization to Advertise a Public Hearing to Consider Amendments to The Code of the County of Fairfax, Virginia - Chapter 4 (Taxation and Finance), Article 13 (Transient Occupancy Tax)</u>

ISSUE:

Authorization to advertise a public hearing to consider amendments to *The Code of the County of Fairfax*, Chapter 4, Article 13.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing on November 1, 2022, at 4:30 p.m. to consider adoption of these amendments.

TIMING:

Board action is required on October 11, 2022, to provide sufficient time to advertise the public hearing on November 1, 2022.

BACKGROUND:

The Virginia General Assembly amended and reenacted §§ 58.1-602, 58.1-612.2, 58.1-3819, 58.1-3826, and 58.1-3843 of the Code of Virginia, relating to sales and transient occupancy taxes (TOT) and certain definitions relating to accommodations intermediaries, which include businesses such as Airbnb and Expedia.

While the state code amendments are self-executing, the proposed amendments to Chapter 4, Article 13 of the Fairfax County Code would align the County Code with these new state definitions and amendments. The amendments require an accommodations intermediary that facilitates a rental subject to TOT to collect all applicable taxes and remit them to the Director of the Department of Tax Administration or any of the duly authorized deputies or agents of the Director. For accommodations not facilitated by an accommodations intermediary, the accommodations provider must collect and remit any applicable taxes in accordance with current practice. The amendments also provide that in a transaction involving multiple parties that may be considered accommodations intermediaries, such parties may agree that one party shall be responsible for collecting and remitting the taxes. In such event, the party agreeing to collect and remit such taxes will be the sole party liable for the tax.

The amendments also clarify that the tax is imposed on the entire room charge, which includes any fee charged to the customer and retained as compensation for facilitating the sale.

The proposed amendments to the County Code also include technical, housekeeping changes to provide updated and clarifying language.

FISCAL IMPACT:

The fiscal impact is expected to be positive but cannot be quantified at this time. Once actual collections data is received, staff will reflect the revenue increase in future budget estimates.

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed Ordinance, Redline. Attachment 2 – Proposed Ordinance, Clean.

STAFF:

Christina Jackson, Chief Financial Officer
Jaydeep "Jay" Doshi, Director, Department of Tax Administration (DTA)
Young Tarry, Director, Personal Property and Business License Division, DTA

ASSIGNED ATTORNEY:

Daniel Robinson, Senior Assistant County Attorney

1	AN ORDINANCE AMENDING
2	ARTICLE 13 OF CHAPTER 4 OF THE FAIRFAX COUNTY CODE, RELATING TO
3	TRANSIENT OCCUPANCY TAX
4	
5	Draft of September 6, 2022
6	
7	AN ORDINANCE to amend the Fairfax County Code by amending and
8	readopting Sections 4-13-1, 4-13-2, 4-13-3, 4-13-4, 4-13-5, 4-13-6, 4-13-7,
9	4-13-8, 4-13-9 and 4-13-10, relating to Transient Occupancy Tax.
10	
11	Be it ordained by the Board of Supervisors of Fairfax County:
12 13	1. That Sections 4-13-1, 4-13-2, 4-13-3, 4-13-4, 4-13-5, 4-13-6, 4-13-7, 4-13-8, 4-13-9 and
14	4-13-10 of the Fairfax County Code are amended and readopted as follows:
15	The first function country court and amended and reducepted as follows:
16	Article 13. – Transient Occupancy Tax.
17	
18	Section 4-13-1. Definitions.
19	
20 21	The following words and phrases when used in this Article shall, for the purposes of this
22	Article, have the meanings respectively ascribed to them in this Section, except in those
23	instances where the context clearly indicates a different meaning:
24	instances where the context clearly indicates a different incanning.
25	Accommodations means any room or rooms, lodgings, accommodations, or space at a
26	Lodging Facility for which tax is imposed on the retail sale of the same pursuant to this Article.
27	Doughing I defined for which tak is imposed on the retain safe of the same pursuant to this influence
28	Accommodations fee means the room charge less the discount room charge, if any,
29	provided that the accommodations fee must not be less than \$0.
30	
31	Accommodations intermediary means any person other than an accommodations provider
32	that (i) facilitates the sale of an accommodation and (ii) either (a) charges a room charge to the
33	customer, and charges an accommodations fee to the customer, which fee it retains as
34	compensation for facilitating the sale; (b) collects a room charge from the customer; or (c)
35	charges a fee, other than an accommodations fee, to the customer, which fee it retains as
36	compensation for facilitating the sale. For purposes of this definition, "facilitates the sale"
37	includes brokering, coordinating, or in any other way arranging for the purchase of the right to
38	use accommodations via a transaction directly, including one or more payment processors,
39	between a customer and an accommodations provider.
40	
41	Accommodations intermediary does not include a person:
42	
43	(1) If the accommodations are provided by an accommodations provider operating
44	under a trademark, trade name, or service mark belonging to that person;
45	
46	(2) Who facilitates the sale of an accommodation if (i) the price paid by the

customer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations and (ii) the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodations provider to such person; or

(3) Who is licensed as a real estate licensee pursuant to Article 1 (§ 54.1-2100 *et seq.*) of Chapter 21 of Title 54.1 of the Virginia Code, when acting within the scope of such license.

Accommodations provider means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

County means the County of Fairfax, Virginia.

Director means Director of the Department of Tax Administration or any of duly authorized deputies or agents of the Director.

<u>Discount room charge</u> means the full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.

Hotel-Lodging Facility means any public or private hotel, inn, apartment hotel, hostelry, tourist camp, tourist cabin, tourist home or house, camping grounds, club, motel, rooming house, any place that offers Short-Term Lodging as defined in Article 20, Part 3 of the Fairfax County Zoning Ordinance, or other-lodging place within the County offering lodging accommodations for one or more persons at any one time, and the owner and operator thereof, who, for compensation, furnishes-lodging accommodations to any transients as hereinafter defined.

Person means individuals, firms, partnerships, associations, corporations, persons acting in representative capacity and combinations of individuals of whatever form and character.

Room rental charge means the total charge made to, or total price paid by or for, a transient in a retail sale for the use or possession of accommodations at by any such hotel Lodging Facilityfor lodging and/or space furnished any such transient before taxes. "Room charge" includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name. If the charge made by such hotel to such transient includes any charge for services or accommodations in addition to that of lodging and/or the use of space, then such portion of the total charge as represents only room and/or space rental shall be distinctly set out and billed to such transient by such hotel as a separate item.

Retail Sale means a sale to any person for any purpose other than for resale.

Transient means any person who, for any period of less than thirty consecutive days either at his own expense or at the expense of another, obtains lodging or the use of any

space accommodations in any hotel <u>Lodging Facility</u> as hereinabove defined, for which lodging or use of space a charge is made.

Section 4-13-2. Levy; amount of tax.

- (a) Pursuant to Virginia Code § 58.1-3819, in addition to all other taxes, there is hereby imposed and levied on each and every transient a tax equivalent to two percent of the total amountroom charge paid for room rental_by or for any such transient to any hotel for the use or possession of accommodations; provided however, that the tax imposed by this subsection willshall not be imposed on any transient occupancy in any Lodging Facilityhotel that is located within any town that has imposed a tax on transient occupancy.
- (a)(b) Pursuant to Virginia Code § 58.1-3824, and in addition to the tax imposed by subsection Aa of this Section, in addition to all other taxes, there is hereby imposed and levied-on each and every transient a tax equivalent to two percent of the total amount room charge paid-for room rental_by or for any such transient to any hotel for the use or possession of accommodations regardless of whether the hotel is located within any town that has imposed a tax on transient occupancy. The tax imposed pursuant to this subsection willshall be collected and appropriated for those purposes set forth in Virginia Code § 58.1-3824.

Section 4-13-3. Exemptions.

No tax <u>is shall be payable hereunder on room rental the total room charge paid for accommodations</u> to any hospital, medical clinic, convalescent <u>homehome</u>, or home for the aged.

Section 4-13-4. Collection of tax.

- (a) Every person receiving any payment for room rental with respect to which a tax is levied under this Article-For any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary will be deemed a facility making a retail sale of an accommodation. The accommodations intermediary must collect the tax imposed pursuant to this Article, computed on the total room charge, from the person paying for the accommodations shall collect the amount of tax hereby imposed from the transient on whom the same is levied or from the person paying for such room rental, at the time payment for such room rental accommodations is made and shall be liable for the same.
- (a)(b) For any retail sale of accommodations not facilitated by an accommodation s intermediary, the accommodations provider must collect the tax imposed pursuant to this Article, computed on the total room charge, from the person paying for the accommodations at the time payment for such accommodations is made and shall be liable for the same.

139 Section 4-13-5. Report and remittance of tax.

(a) For any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary must remit the tax imposed pursuant to this Article to the Director.

(b) For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider must remit the tax imposed pursuant to this Article to the Director.

(c) For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of accommodations intermediary, nothing in this Article prohibits such parties from making an agreement regarding which party will be responsible for collecting and remitting the tax, so long as the party so responsible is registered with the Director for purposes of remitting the tax. In such event, the party that agrees to collect and remit the tax will be the sole party liable for the tax, and the other parties to such agreement will not be liable for such tax.

(d) The person collecting any such tax required pursuant to this Article mustshall make out a report on such forms and setting forth such information as the Director may prescribe and require, showing the amount of total room rental charges collected, and the tax required to be collected, and mustshall sign and deliver the same to the Director with a remittance of such tax.

(e) Such reports and remittances <u>mustshall</u> be made monthly on or before the last day of the month and covering the amount of tax collected during the preceding month. If the remittance is by check or money order, it <u>mustshall</u> be payable to the County and all remittances received hereunder by the Director <u>mustshall</u> be promptly delivered to the Director of the Department of Finance.

(a)(f) Each accommodations intermediary must submit to the Director the property addresses and gross receipts for all accommodations facilitated by the accommodations intermediary in Fairfax County on a monthly basis.

Section 4-13-6. Interest and penalties upon failure or refusal to remit tax.

If any person shall accommodations provider or accommodations intermediary fails or refuses to remit to the Director the tax required to be collected and paid under this Article within the time and in the amount specified in this Article, there shall be added to such tax by the Director will add a penalty of five percent, and if the tax shall remains delinquent and unpaid for a period of one month from the date the same is due and payable, interest willshall be charged on the unpaid balance at the applicable interest rate specified in Section 4-20-3. Such interest willshall accrue from the date on which the tax was due and payable.

Section 4-13-7. When the Director to determine the amount of tax due.

If any person required to collect and remit the tax imposed by this Article fails to file a statement and a remittance, or if the Director has reasonable cause to believe that an erroneous statement has been filed, the Director may proceed to determine the amount due to the County <u>pursuant to Va. Code § 58.1-3903</u>. The Director shall provide notice and opportunity to be heard to any person who may become liable for the amount owing prior to any determination by the Director.

Section 4-13-8. Tax immediately due and payable upon cessation of business.

Whenever any person required to collect and pay to the County a tax under Section 4-13-1-shall quits or otherwise disposes of histhe business, any tax payable under the provisions of this Article to the County-shall becomes immediately due and payable, and such person-shall must immediately make a report and pay the tax due.

Section 4-13-9. Powers and duties of Director generally; rules and regulations.

The Director <u>willshall</u> ascertain the name of every person operating a <u>hotelLodging Facility</u> in the County liable for the collection of the tax levied by this Article. The Director <u>shall havehas</u> the power to adopt rules and regulations not inconsistent with the provisions of this Article <u>and the Code of Virginia</u> for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied; and a copy of such rules and regulations <u>willshall</u> be on file and available for public examination in the Director's office during regular office hours. Failure or refusal to comply with any rules and regulations promulgated under this Section-<u>shall be is</u> a violation of this Article.

Section 4-13-10. Penalty for violation of Article.

Any person convicted of willful failure or refusal to file a tax return at the times required by this Article willshall be subject to criminal penalties. If the tax lawfully assessed in connection with the return that was not filed is \$1,000 or less, then such failure or refusal to file willshall be punishable as a Class 3 misdemeanor. If the tax lawfully assessed in connection with the return that was not filed is more than \$1,000, then such failure or refusal to file willshall be punishable as a Class 1 misdemeanor. In determining the penalty to be applied in the event that a person has not filed a tax return as required by this Article, the penalty willshall be based on the amount due to the County as determined by the Director-pursuant to Section 4-13-7. Each such failure or refusal willshall constitute a separate offense. Such conviction willshall not relieve any such person from the payment, collection or remittance of such tax, plus penalties and interests, as provided in this Article.

- 2. That the provisions of this ordinance are severable, and if any provision of this ordinance or any application thereof is held invalid, that invalidity will not affect the other provisions or applications of this ordinance that can be given effect without the invalid provision or application.
- 3. That this Ordinance will become effective on December 1, 2022.

231 232 233	GIVEN under my hand this day of, 2022
234	
235	
236	Jill G. Cooper
237	Clerk for the Board of Supervisors
238	Department of Clerk Services

1	AN ORDINANCE AMENDING
2	ARTICLE 13 OF CHAPTER 4 OF THE FAIRFAX COUNTY CODE, RELATING TO
3	TRANSIENT OCCUPANCY TAX
4 5	Draft of September 6, 2022
6 7	AN ORDINANCE to amend the Fairfax County Code by amending and
8	readopting Sections 4-13-1, 4-13-2, 4-13-3, 4-13-4, 4-13-5, 4-13-6, 4-13-7,
9	4-13-8, 4-13-9 and 4-13-10, relating to Transient Occupancy Tax.
10	
11 12	Be it ordained by the Board of Supervisors of Fairfax County:
13 14 15	1. That Sections 4-13-1, 4-13-2, 4-13-3, 4-13-4, 4-13-5, 4-13-6, 4-13-7, 4-13-8, 4-13-9 and 4-13-10 of the Fairfax County Code are amended and readopted as follows:
16 17	Article 13. – Transient Occupancy Tax.
17 18 19	Section 4-13-1. Definitions.
20	The following words and phrases when used in this Article, for the purposes of this Article,
21	have the meanings respectively ascribed to them in this Section, except in those instances
22	where the context clearly indicates a different meaning:
23	
24	Accommodations means any room or rooms, lodgings, accommodations, or space at a
25	Lodging Facility for which tax is imposed on the retail sale of the same pursuant to this Article.
26 27	Accommodations fee means the room charge less the discount room charge, if any,
28	provided that the accommodations fee must not be less than \$0.
29	provided that the decommodations for mast not be less than 40.
30	Accommodations intermediary means any person other than an accommodations provider
31	that (i) facilitates the sale of an accommodation and (ii) either (a) charges a room charge to the
32	customer, and charges an accommodations fee to the customer, which fee it retains as
33	compensation for facilitating the sale; (b) collects a room charge from the customer; or (c)
34	charges a fee, other than an accommodations fee, to the customer, which fee it retains as
35	compensation for facilitating the sale. For purposes of this definition, "facilitates the sale"
36	includes brokering, coordinating, or in any other way arranging for the purchase of the right to
37	use accommodations via a transaction directly, including one or more payment processors,
38	between a customer and an accommodations provider.
39 40	Accommodations intermediary does not include a person:
41	Accommodutions intermediary does not include a person.
42	(1) If the accommodations are provided by an accommodation provider operating
43	under a trademark, trade name, or service mark belonging to that person;
44	
45	(2) Who facilitates the sale of an accommodation if (i) the price paid by the
46	customer to such person is equal to the price paid by such person to the accommodations

provider for the use of the accommodations and (ii) the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodation provider to such person; or

(3) Who is licensed as a real estate licensee pursuant to Article 1 (§ 54.1-2100 *et seq.*) of Chapter 21 of Title 54.1 of the Virginia Code, when acting within the scope of such license.

Accommodations provider means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

County means the County of Fairfax, Virginia.

Director means Director of the Department of Tax Administration or any of duly authorized deputies or agents of the Director.

Discount room charge means the full amount charged by the accommodation provider to the accommodation intermediary, or an affiliate thereof, for furnishing the accommodations.

 Lodging Facility means any public or private hotel, inn, apartment hotel, hostelry, tourist camp, tourist cabin, tourist home or house, camping grounds, club, motel, rooming house, any place that offers Short-Term Lodging as defined in Article 20, Part 3 of the Fairfax County Zoning Ordinance, or other place within the County offering accommodations for one or more persons at any one time, and the owner and operator thereof, who, for compensation, furnishes accommodations to any transients as hereinafter defined.

Person means individuals, firms, partnerships, associations, corporations, persons acting in representative capacity and combinations of individuals of whatever form and character.

Room charge means the total charge made to, or total price paid by or for, a transient in a retail sale for the use or possession of accommodations at any such Lodging Facility before taxes. "Room charge" includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name.

Retail Sale means a sale to any person for any purpose other than for resale.

Transient means any person who, for any period of less than thirty consecutive days either at his own expense or at the expense of another, obtains accommodations in any Lodging Facility as hereinabove defined, for which a charge is made.

Section 4-13-2. Levy; amount of tax.

(a) Pursuant to Virginia Code § 58.1-3819, in addition to all other taxes, there is hereby imposed and levied a tax equivalent to two percent of the total room charge paid by or

for any such transient for the use or possession of accommodations; provided however, that the tax imposed by this subsection will not be imposed on any transient occupancy in any Lodging Facility that is located within any town that has imposed a tax on transient occupancy.

(b) Pursuant to Virginia Code § 58.1-3824, and in addition to the tax imposed by subsection a of this Section, in addition to all other taxes, there is hereby imposed and levied a tax equivalent to two percent of the total room charge paid by or for any such transient for the use or possession of accommodations regardless of whether the hotel is located within any town that has imposed a tax on transient occupancy. The tax imposed pursuant to this subsection will be collected and appropriated for those purposes set forth in Virginia Code § 58.1-3824.

Section 4-13-3. Exemptions.

No tax is payable hereunder on the total room charge paid for accommodations to any hospital, medical clinic, convalescent home, or home for the aged.

Section 4-13-4. Collection of tax.

(a) For any retail sale of accommodations facilitated by an accommodation intermediary, the accommodations intermediary will be deemed a facility making a retail sale of an accommodation. The accommodations intermediary must collect the tax imposed pursuant to this Article, computed on the total room charge, from the person paying for the accommodations at the time payment for such accommodations is made and shall be liable for the same.

(b) For any retail sale of accommodations not facilitated by an accommodation intermediary, the accommodations provider must collect the tax imposed pursuant to this Article, computed on the total room charge, from the person paying for the accommodations at the time payment for such accommodations is made and shall be liable for the same.

Section 4-13-5. Report and remittance of tax.

 (a) For any retail sale of accommodations facilitated by an accommodation intermediary, the accommodations intermediary must remit the tax imposed pursuant to this Article to the Director.

(b) For any retail sale of accommodations not facilitated by an accommodation intermediary, the accommodations provider must remit the tax imposed pursuant to this Article to the Director.

(c) For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of accommodations intermediary, nothing in this Article prohibits such parties from making an agreement regarding which party will be

responsible for collecting and remitting the tax, so long as the party so responsible is registered with the Director for purposes of remitting the tax. In such event, the party that agrees to collect and remit the tax will be the sole party liable for the tax, and the other parties to such agreement will not be liable for such tax.

(d) The person collecting any such tax required pursuant to this Article must make out a report on such forms and setting forth such information as the Director may prescribe and require, showing the amount of total room charges collected, and the tax required to be collected, and must sign and deliver the same to the Director with a remittance of such tax.

(e) Such reports and remittances must be made monthly on or before the last day of the month and covering the amount of tax collected during the preceding month. If the remittance is by check or money order, it must be payable to the County and all remittances received hereunder by the Director must be promptly delivered to the Director of the Department of Finance.

(f) Each accommodations intermediary must submit to the Director the property addresses and gross receipts for all accommodations facilitated by the accommodation intermediary in Fairfax County on a monthly basis.

Section 4-13-6. Interest and penalties upon failure or refusal to remit tax.

If any accommodations provider or accommodations intermediary fails or refuses to remit to the Director the tax required to be collected and paid under this Article within the time and in the amount specified in this Article, the Director will add a penalty of five percent, and if the tax remains delinquent and unpaid for a period of one month from the date the same is due and payable, interest will be charged on the unpaid balance at the applicable interest rate specified in Section 4-20-3. Such interest will accrue from the date on which the tax was due and payable.

Section 4-13-7. When the Director to determine the amount of tax due.

If any person required to collect and remit the tax imposed by this Article fails to file a statement and a remittance, or if the Director has reasonable cause to believe that an erroneous statement has been filed, the Director may proceed to determine the amount due to the County pursuant to Va. Code § 58.1-3903.

Section 4-13-8. Tax immediately due and payable upon cessation of business.

Whenever any person required to collect and pay to the County a tax under Section 4-13-1 quits or otherwise disposes of the business, any tax payable under the provisions of this Article to the County becomes immediately due and payable, and such person must immediately make a report and pay the tax due.

Section 4-13-9. Powers and duties of Director generally; rules and regulations.

The Director will ascertain the name of every person operating a Lodging Facility in the County liable for the collection of the tax levied by this Article. The Director has the power to adopt rules and regulations not inconsistent with the provisions of this Article and the Code of Virginia for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied; and a copy of such rules and regulations will be on file and available for public examination in the Director's office during regular office hours. Failure or refusal to comply with any rules and regulations promulgated under this Section is a violation of this Article.

Section 4-13-10. Penalty for violation of Article.

Any person convicted of willful failure or refusal to file a tax return at the times required by this Article will be subject to criminal penalties. If the tax lawfully assessed in connection with the return that was not filed is \$1,000 or less, then such failure or refusal to file will be punishable as a Class 3 misdemeanor. If the tax lawfully assessed in connection with the return that was not filed is more than \$1,000, then such failure or refusal to file will be punishable as a Class 1 misdemeanor. In determining the penalty to be applied in the event that a person has not filed a tax return as required by this Article, the penalty will be based on the amount due to the County as determined by the Director. Each such failure or refusal will constitute a separate offense. Such conviction will not relieve any such person from the payment, collection, or remittance of such tax, plus penalties and interests, as provided in this Article.

2. That the provisions of this ordinance are severable, and if any provision of this ordinance or any application thereof is held invalid, that invalidity will not affect the other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

3. That this Ordinance will become effective on December 1, 2022.

GIVEN under my hand this _____ day of _____, 2022

Jill G. Cooper Clerk for the Board of Supervisors Department of Clerk Services

ACTION - 1

Adoption of a Resolution to Support the Abandonment and Addition of Portions of Thompson Road (Route 669) (Sully District)

ISSUE:

Board adoption of the attached resolution supporting abandonment and addition of portions of Thompson Road (Route 669).

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached resolution (Attachment I) supporting the abandonment and addition of portions of Thompson Road.

TIMING:

The Board should take action on October 11, 2022, so that the Virginia Department of Transportation (VDOT) has the support of the Board to finalize the abandonment and addition in the State maintenance inventory.

BACKGROUND:

The Fairfax County Department of Transportation (FCDOT) received a request from VDOT on the abandonment and addition of portions of Thompson Road (Route 669).

VDOT has requested the support of the County by a Board Resolution pursuant to Sections 33.2-912 of the Code of Virginia to abandon a portion of Thompson Road and 33.2-705 of the Code of Virginia to add a portion of Thompson Road. The subject portion of Thompson Road was realigned due to the improvements associated with VDOT Project # 0608-029-301, C503 for West Ox Road (see Attachments II). VDOT is pursuing this request to remove the previously realigned portion of Thompson Road from the Virginia Highway System as well as add the portion of Thompson that was previously constructed.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Resolution

Attachment II: VDOT Project #0608-029-301 Plan Sheets

Attachment III: Route 669 Realignment Sketch Attachment IV: Route 669 Realignment Link Sheet

Attachment V: 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
Gregory Fuller, Jr., Section Chief, FCDOT-Site Analysis Section (SAS)
Michelle Guthrie, Transportation Planner III, FCDOT-SAS
Jeffrey Edmondson, Transportation Planner II, FCDOT-SAS

ASSIGNED COUNSEL:

Randall T. Greehan, Assistant County Attorney

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Fairfax County Government Center at Fairfax, Virginia, on Tuesday, October 11, 2022, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Virginia Department of Transportation has completed the Project #0608-029-301, C-503 which improved West Ox Road (Route 608); and

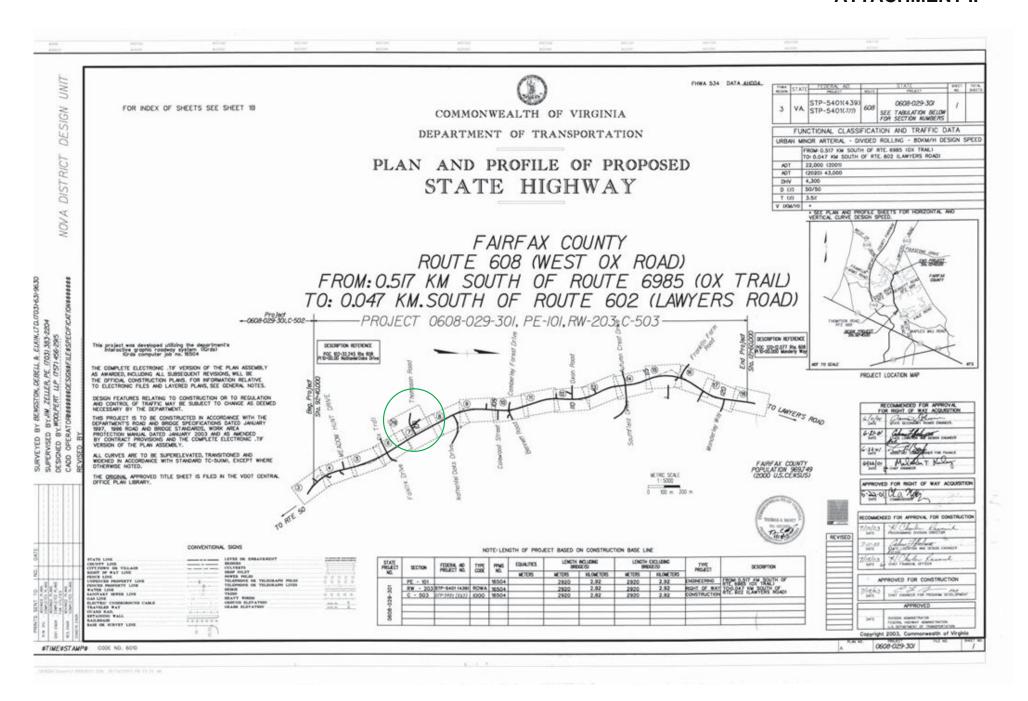
WHEREAS, the project sketch and link sheet, attached and incorporated herein as attachments, defines adjustments required in the Secondary System of State Highways as a result of Project #0608-029-301, C-503; and

WHEREAS, the old alignment of Thompson Road (Route 669), identified on the project sketch and link sheet be abandoned, and the new alignment be added due to the improvement project of West Ox Road; and

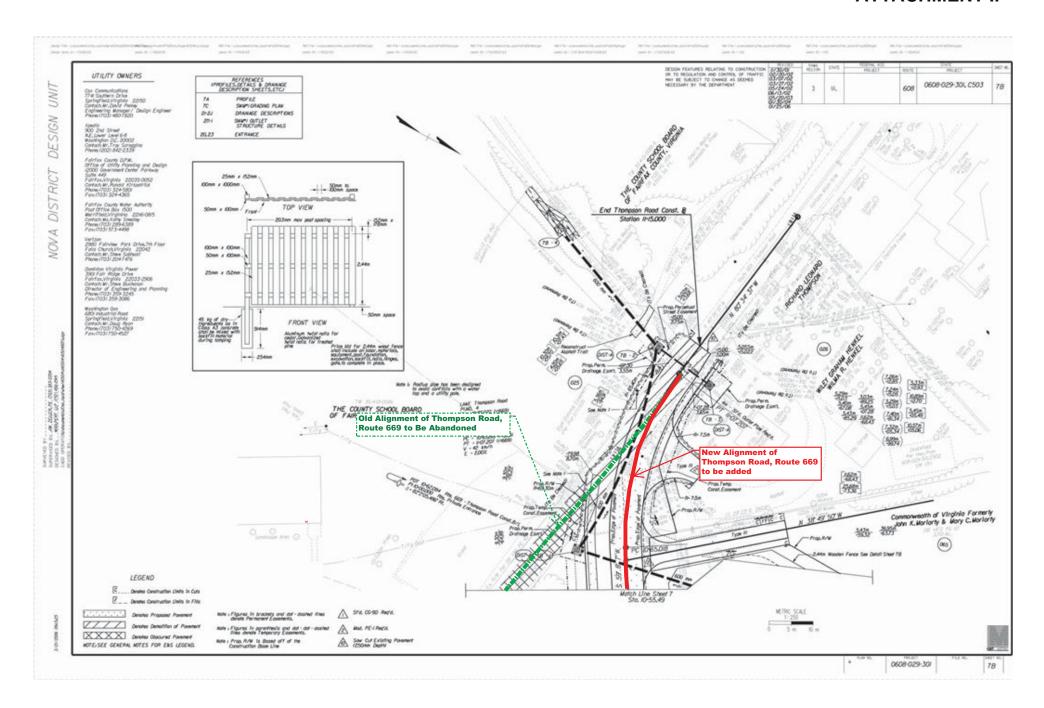
NOW THEREFORE, BE IT RESOLVED, that this Board, hereby requests the Virginia Department of Transportation abandon the old alignment of Route 669, identified as segment A to B on the project sketch and link sheet, from the Secondary System of State Highways, pursuant to §33.2-912 of the Code of Virginia, and add the new alignment of Route 669, identified as segment A to C on the project sketch and link sheet, to the Secondary System of State Highways, pursuant to §33.2-705 of the Code of Virginia. A copy of this resolution will be forwarded to the Resident Engineer for the Virginia Department of Transportation.

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Jili G. Coopei	Clerk to the Board of Supervisors	Jill G. Cooper	

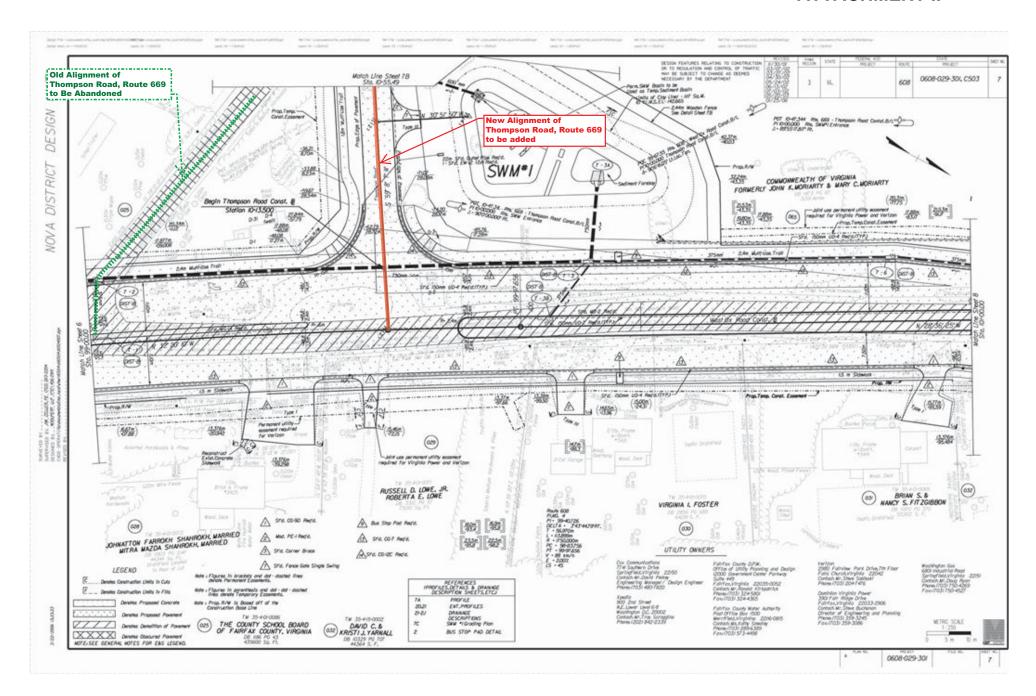
ATTACHMENT II



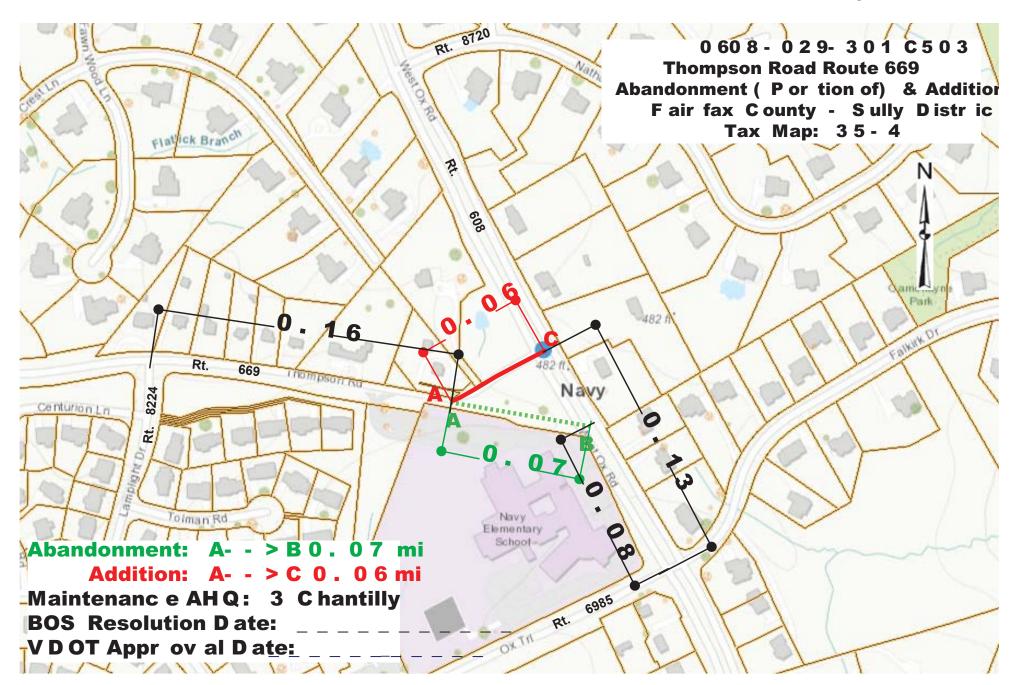
ATTACHMENT II



ATTACHMENT II



ATTACHMENT III



ATTACHMENT IV

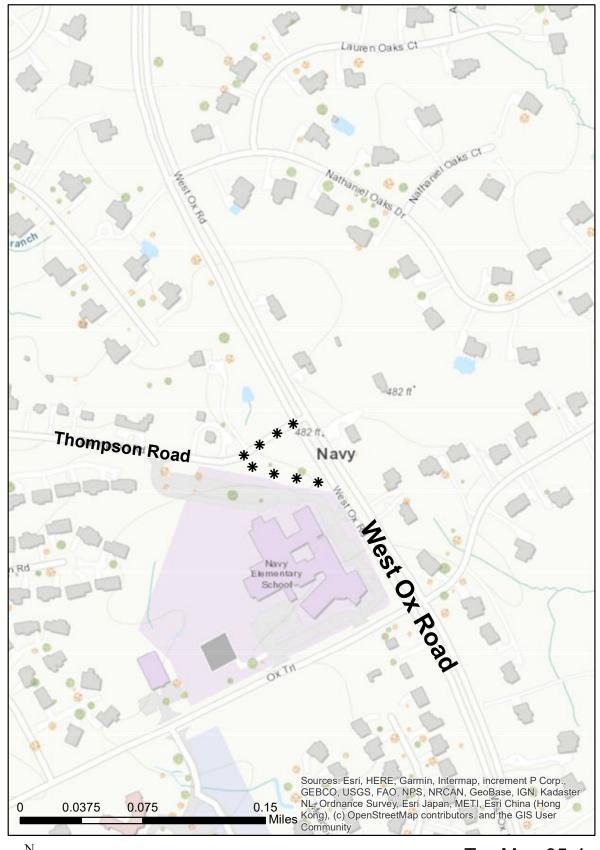
VDOT Project# 0608-029-301, C503 Thompson Road, Route 669 Realignment (Abandonment & Addition)

	Street			(Abandonment 8	-	_
Segment	Name/Route #	Addition	Abandonment	Discontinuance	From	То
A↔B	Thompson Road, Route 669 Old Alignment		0.07 mi		0.16 mi E CL Lamplight Drive, Route 8224	0.07 mi SE to CL West Ox Road, Route 608
A↔C	Thompson Road, Route 669 New Alignment	0.06 mi			0.16 mi E CL Lamplight Drive, Route 8224	0.06 mi NE to CL West Ox Road, Route 608

1

Thompson Road Abandonment and Addition

Sully District





Tax Map 35-4★ Denotes Areas to be Abandoned and Added

ACTION - 2

Authorization for the Fairfax County Redevelopment and Housing Authority to Issue Multifamily Housing Revenue Bonds or Notes in an Aggregate Amount Not to Exceed \$3,000,000 to Provide Supplemental Financing for the 148-Unit 4 percent Low Income Housing Tax Credit (LIHTC) Portion of the 274-Unit Ovation at Arrowbrook (Dranesville District)

ISSUE:

The 148-unit 4 percent Low Income Housing Tax Credit Portion ("4% Project") of the 274-unit Ovation at Arrowbrook project in the Dranesville District ("the Development") is currently under construction and has developed a funding gap of approximately \$3,000,000 due to supply chain shortages resulting from COVID. Additional tax-exempt bonds are required to fund the 4% Project through completion of construction.

RECOMMENDATION:

The County Executive recommends the Board of Supervisors (Board) adopt the proposed resolution (Attachment 1) to fill the Development's funding gap by authorizing the Fairfax County Redevelopment and Housing Authority (FCRHA) to (i) issue private activity tax-exempt bonds in an aggregate amount not to exceed \$3,000,000; and ii) submit an application to Virginia Department of Housing and Community Development (VADHCD) for private activity tax-exempt bond allocation.

TIMING:

Immediate. The Bonds must be issued prior to substantial completion of the 4% Project, estimated to occur in early 2023. To meet this deadline, staff requests the BOS approve the proposed resolution at its October 11, 2022, meeting in order to close on the bonds prior to substantial completion. Project construction is currently over 70% complete.

BACKGROUND:

The Development is being developed by SCG Development Partners LLC ("SCG Development") and consists of 274 units of affordable housing located at the intersection of the future Arrowbrook Centre Drive and Centreville Road in Herndon, Virginia, within a mile of the Innovation Metro Station. The underlying land is subject to the terms of a ground lease with Arrowbrook Centre, LLC as the fee simple owner and ground lease landlord ("Landlord"). The Development is made up of 2 components

being financed with a hybrid structure utilizing (1) a taxable mortgage loan and 9 percent LIHTC for one component of the Development and (2) tax-exempt bonds and four percent LIHTC for the other (4% Project).

Previous Actions

- January 2019: FCRHA approved the preliminary financing plan for the Project and authorized two Housing Blueprint Loans, one for each component of the hybrid structure in the aggregate amount of \$7,744,225.
- June 11, 2020: FCRHA held a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing and authorized (1) the submission to the Board for approval of the issuance of up to \$22.5 million in tax-exempt bonds in connection with the original closing of the transaction; and (2) submission of an application to the VADHCD for the tax-exempt bond allocation for that issuance.
- October 29, 2020: FCRHA approved the final bond resolution for the \$22.5 million tax-exempt bond issuance.
- December 15, 2020: FCRHA issued the original \$22.5 million bonds (the "2020 Bonds").
- May 19, 2022: FCRHA held a TEFRA hearing on the Supplemental Bonds.

Project Ownership Structure

The site is subject to two ground leases to subsidiaries of SCG Development.

- Arrowbrook Apartments I, LLC ("9% Tenant") is the tenant and developer of the 9% LIHTC component of the Development, which consist of 126 units.
- Arrowbrook Apartments II, LLC ("Borrower") is the tenant and developer of the 4% Project, which consists of 148 units. It is the borrower under the loans funded with proceeds from the 2020 Bonds and to be funded with proceeds from the Supplemental Bonds.

SCG Development, together with 9% Tenant and the Borrower, will construct the Development as a leasehold condominium comprised of 2 residential components as well as a separate retail component.

Supplemental Bond Issuance

On December 15, 2020, the 4% Project closed with the 2020 Bonds and an anticipated total eligible basis cost of \$44,411,458. The 2020 Bonds made up 50.66% of the then-

budgeted basis eligible costs. Tax exempt bond proceeds must comprise at least 50% of basis eligible costs for the 4% Project to receive LIHTC on its entire eligible basis; often referred to as the "50% test".

Since the 2020 closing, the 4% Project has experienced many cost increases, primarily related to COVID and supply chain disruptions. SCG Development has worked to secure additional funding sources throughout 2021, including an additional allocation of 9% LIHTC and two VADHCD awards. However, these additional funds are not sufficient to cover the construction cost increases. See the Sources and Uses in Attachment 2 for information on cost increases.

With the current bond amount and increased construction costs, the project does not meet the 50% test. Providing the supplemental bonds of \$3 million will not only cover additional costs but will help the project to meet the 50% test and maintain the available LIHTC equity.

The issuance of the Supplemental Bonds will also enable the 4% Project to benefit from additional LIHTC equity. Recent federal legislation establishes a fixed 4% rate – as opposed to a lower floating rate. For the 4% Project to qualify for the 4% LIHTC Floor, it must receive a loan funded by a supplemental bond issuance that was made after December 31, 2020, and equal to at least 10 percent of the total aggregate tax-exempt bond issuances for the 4% Project. For the 4% Project, the proposed \$3,000,000 in Supplemental Bonds would be 11.76% of the total amount of tax-exempt bonds issued and thus would generate approximately \$4.2 million in additional tax credit equity.

The Supplemental Bonds would be issued as cash collateralized, the same as the original bonds, and would be collateralized with the construction loan and other sources. The bonds would be redeemed at or prior to conversion in December 2023. The main cost adjustments from the Closing Budget to be funded by the Supplemental Bonds and related additional 4 percent LIHTC equity are increased costs related to lumber and supply chain issues. During construction, like in recent FCRHA deals, the Supplemental Bonds will be publicly offered and rated with no risk to the FCRHA. The Supplemental Bonds would also be nonrecourse to the FCRHA.

As noted above, the 4% Project has already been awarded a Blueprint loan. After the Supplemental Bonds, the Borrower will be deferring less of its developer fee on the 4% component while complying with transaction requirements in order to enable SCG to start paying the Blueprint loan sooner from cash flow.

SCG Development is also proposing a \$300,000 up-front pre-payment of the deferred annual bond monitoring fee on the long-term bonds. This would further allow the 4% Project to begin repayments to the Blueprint Loan at least two years earlier than projected at the original project closing and will provide \$156,772 in projected additional payments to the FCRHA through the year 2037.

The Bonds to be Authorized:

SCG Development currently anticipates needing Supplemental Bonds in an aggregate principal amount of up to \$3,000,000. The final Supplemental Bond amount will be determined before closing and upon completion of full underwriting. The FCRHA will request an allocation for private activity tax-exempt bond volume cap from VADHCD.

The proposed bond financing structure calls for the issuance of short-term tax-exempt bonds to provide additional financing for the 4% Project during the remainder of the construction phase.

TIMELINE:

The recent federal legislation resetting the floor of the 4% LIHTC program has created a competitive 4% bond market; it is therefore unlikely that the additional bond allocation will be award this year. The project team is preparing to close according to the below timeline if the bonds become available. If not, then the project team will effectuate closing in early calendar year 2023.

The estimated timetable to bond closing (subject to the availability of 2022 volume cap):

Milestone	Anticipated Date
Loan Underwriting Committee Meeting	Completed
Loan onderwining committee weeting	September 1, 2022
Bond Inducement Resolution	Completed
Bond inducement Resolution	September 1, 2022
ECDUA 2D Committee Meeting	Completed
FCRHA 3P Committee Meeting	September 7, 2022
CCDLIA Approval of Dand Jacuanas	Completed
FCRHA Approval of Bond Issuance	September 15, 2022
Board of Supervisors approval of Bond Issuance	October 11, 2022
Private activity bond application approved and allocation awarded by VADHCD	November 2, 2022

FCRHA Final Bond Resolution	November 18, 2022
Underwriter prices and contracts to purchase/sell the bonds and Bond Purchase Agreement executed	Late November 2022
Final Official Statement	December 2022
Bond Closing	December 15, 2022

FISCAL IMPACT:

The FCRHA will issue \$3,000,000 in supplemental Multifamily Revenue Bonds. The FCRHA has received the application fee of \$5,000 and will receive an issuer's fee estimated at \$30,000 at the time of closing. There will also be an upfront bond monitoring fee of \$10,832 and an annual bond monitoring fee of \$10,000 on the short-term bonds. As noted above, \$300,000 of the long-term bond monitoring fee would be prepaid at conversion, which is normally 0.25 percent per annum of the aggregate principal amount of the bonds outstanding annually until the tax-exempt debt is paid off. These fees will be placed into Fund 81000, FCHRA General Operating.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution Number XX-22

Attachment 2 - Sources and Uses

STAFF:

Christopher A. Leonard, Deputy County Executive

Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)

Anna Shapiro, Deputy Director, Real Estate, Finance and Development, HCD Debashish Chakravarty, Associate Director, Real Estate Finance and Grants Management, HCD

ASSIGNED COUNSEL:

Ryan Wolf, Assistant County Attorney

Authorization for the Fairfax County Redevelopment and Housing Authority to Issue

Multifamily Housing Revenue Bonds or Notes in an Aggregate Amount Not to Exceed

\$3,000,000 to Provide Supplemental Financing for the 148-unit 4 percent Low Income

Housing Tax Credit (LIHTC) Portion of the 274-unit Ovation at Arrowbrook

(Dranesville District)

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia on Tuesday, October 11, 2022, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Fairfax County Redevelopment and Housing Authority (FCRHA) of Fairfax County, Virginia desires to issue, sell, and deliver its tax-exempt multifamily housing revenue bonds or notes (Bonds) in a principal amount not to exceed \$3,000,000 to provide supplemental financing for the multifamily project described below; and

WHEREAS, the FCRHA was established pursuant to Title 36 of the Va. Code Ann. (the Act), and pursuant to Section 36-19 of the Act, the FCRHA is authorized to make loans for assistance in planning, development, acquisition, construction, repair, rehabilitation, equipping or maintenance of commercial, residential or other buildings; provided that prior approval of any such loan by the local governing body shall be required if the building is not located within a housing, redevelopment or conservation area, or a rehabilitation area; and

WHEREAS, the proceeds of the Bonds will be used, along with other sources, to finance the construction and development of 148 residential units comprising the 4 percent Low-Income Housing Tax Credit component of the 274-unit Ovation at Arrowbrook apartments project located in Herndon, VA (the Project); and

WHEREAS, the FCRHA held a public hearing on May 19, 2022, for which public notice was duly given on May 5, 2022 and republished on May 12, 2022; and

WHEREAS, the notices and the public hearing complied with the regulations applicable to tax-exempt bonds under Section 147(f) of the Internal Revenue Code of 1986, as amended (the Code), as well as Va. Code Ann. § 15.2-2606; and

NOW THEREFORE BE IT RESOLVED that the Board:

1. For the purposes and only for the purposes of compliance with Section 147(f) of the Code, the Board does hereby approve the issuance of tax-exempt Bonds for the Project in a principal amount not to exceed \$3,000,000. The Board in no manner assumes any legal or moral obligation for the Bonds. The Bonds will be limited

obligations of the FCRHA and payable from the revenues pledged thereto pursuant to the Trust Indenture or similar instrument to which the Bonds will be issued. As required by the Act, the Bonds shall not be a debt of Fairfax County, Virginia, the Commonwealth of Virginia or any political subdivision thereof (other than the FCRHA) and neither Fairfax County, Virginia, nor the Commonwealth of Virginia or any political subdivision thereof (other than the FCRHA) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the FCRHA pledged thereto under the Indenture. The Bonds shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

The Board expresses no opinion as to the merits of the Project or of its financing.

This Resolution shall take effect immediately.

Adopted the 11th day of October, 2022, by the Fairfax County Board of Supervisors.

	A Copy Teste:
[SEAL]	
	Jill G. Cooper
	Clerk to the Board of Supervisors

Arrowbrook Apartments II	Closing Budget	Updated Budget	Difference		
BUDGET USES					
Acquisition	\$1,000	\$1,000	\$0		
Hard Construction Costs	\$33,312,124	\$34,144,952	\$832,828		
Construction Contingency	\$1,665,656	\$1,665,656	\$0		
Architect and Engineering	\$1,710,397	\$1,895,320	\$184,923		
Soft Costs	\$3,502,698	\$4,159,772	\$657,074		
Financing/Interest	\$5,047,834	\$5,413,923	\$366,089		
Reserves	\$818,977	\$818,977	\$0		
Development Fee	\$3,922,388	\$3,922,388	\$0		
Total Uses	\$49,981,074	\$52,021,988	\$2,040,914		
BUDGET SOURCES					
LIHTC Capital Contributions	\$12,211,000	\$16,452,000	\$4,241,000		
First Mortgage Loan	\$22,500,000	\$22,500,000	\$0		
Taxable Tail	\$6,169,000	\$6,169,000	\$0		
Blueprint Housing Loan	\$5,750,000	\$5,750,000	\$0		
Good Faith Deposit Return	\$573,380	\$571,600	(\$1,780)		
Deferred Developer Fee	\$2,777,694	\$579,388	(\$2,198,306)		
Total Sources	\$49,981,074	\$52,021,988	\$2,040,914		

4% Project Budgets – Comparison of Original and Updated

ACTION - 3

Approval of a Deed of Easement and Maintenance Agreement between Christopher at the Reserve at Spring Lake, LLC (Christopher), Spring Lake Estates West Community (SLEW1), and Spring Lake West Homeowners Association (SLEW2) (Hunter Mill District)

ISSUE:

Board of Supervisors (Board) authorization is requested for the Fairfax County (County) to execute the Deed of Easement and Maintenance Agreement for a Stormwater Management Facility between Christopher, SLEW1, and SLEW2, and the Board of the County, Virginia.

RECOMMENDATION:

The County Executive recommends that the Board approve and authorize the County Executive or his designee to sign the Deed of Easement and Maintenance Agreement for a Stormwater Management Facility between Christopher, SLEW1, and SLEW2, and the Board of the County, Virginia.

TIMING:

Board approval is requested on October 11, 2022.

BACKGROUND:

Christopher is the owner of approximately 13.2 acres located off Floris Lane, Herndon, part of which has been approved for a 21 residential-lot subdivision, with a remaining 2.5 acres reserved for future development (Christopher's Property).

SLEW1 is a residential subdivision adjacent to the Christopher's Property. SLEW1 and the Christopher's Properties are located immediately adjacent to a body of water known as Spring Lake. The lake is owned by Christopher and Spring Lake Estates West. It is a recreational amenity that was not designed or constructed to provide any stormwater control or water quality function. The dam is in need of substantial maintenance.

Spring Lake Estates West is divided into two sections, each of which is governed by a different association. SLEW1 and SLEW2 are responsible for maintaining Spring Lake and its dam. Owners and residents of SLEW1 and SLEW2 use the lake as an amenity, and the future residents in the Christopher's Property will also be able to use the lake.

Christopher is permitted to use Spring Lake to satisfy stormwater management requirements for the development if improvements are made to the lake and SLEW1 and SLEW2 provide their approval. Additionally, Christopher proposed, subject to funding from SLEW1, SLEW2, and the County, must be executed to convey easements, formalize the funding and maintenance for the improvements to Spring Lake, and specify rights to use the lake.

Under the Agreement the County will fund the cost of the water quality improvements that exceed the minimum requirements for the Christopher's Property. The County's share of the total cost is based on the historical cost of nutrient and sediment removal from stormwater facility retrofits constructed by the County. The additional pollutant load reductions for the proposed lake that exceed the minimum requirements are estimated to be 131.2 lbs/yr Total Nitrogen, 5.6 lbs/yr Total Phosphorus, and 80.1 lbs/yr Total Suspended Solids. These additional pollutant load reductions will improve water quality in Horsepen Creek and be used to meet the County's Chesapeake Bay Total Maximum Daily Load requirements in the County's Municipal Separate Storm Sewer permit.

As part of the proposed Agreement, the County will assume long-term maintenance responsibility for the lake after completion of the dam and lake improvements. The County's maintenance obligations are limited to only the lake's functionality as a stormwater management facility.

A summary of the total project estimate is \$1,939,745. The anticipated contribution amounts for each party to the agreement is summarized below:

Fairfax County \$ 596,000.00 Christopher \$1,116,685.55 SLEW1 \$ 20,250.00 SLEW2 \$ 206,809.45

FISCAL IMPACT:

The County's estimated cost of the project is \$596,000. The County will reimburse Christopher for its respective cost of the project in accordance with the terms in the agreement. Funding is currently available in Project SD-000033, Dam Safety and Facility Rehabilitation, Fund 40100, Stormwater Services, for the County's obligation to this Project.

CREATION OF POSITIONS:

No positions will be created.

ENCLOSED DOCUMENTS:

Attachment 1: Deed of Easement and Maintenance Agreement for a Stormwater Management Facility

STAFF:

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

Craig Carinci, Director, DPWES, Stormwater Planning Division

ASSIGNED COUNSEL:

Marc Gori, Assistant County Attorney

Prepared By/Return To:
D. Wyatt Bethel, Esq.
An attorney admitted in Virginia
Virginia State Bar No. 17812
Odin, Feldman & Pittleman PC
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190

Tax Map Reference Nos. 025-1-04-0014C 025-1-04-0009A 025-1-04-0008B 025-1-06-B 025-3-08-C

Deed of Easement and Vacation, anti Maintenance Agreement for Stormwater Management Facility

Spring Lake

This **DEED OF EASEMENT AND VACATION, AND MAINTENANCE AGREEMENT FOR A STORMWATER MANAGEMENT FACILITY** ("Agreement"), is made to be effective as of the _______ day of _______, 2022, by and between CHRISTOPHER ATTHE RESERVE AT SPRING LAKE, LLC, a Virginia limited liability company, its successors and assigns ("Christopher RSL") (index as Grantor and Grantee); SPRING LAKE ESTATES WEST COMMUNITY ASSOCIATION, a Virginia Nonstock corporation, its successors and assigns ("SLEW 1") (index as Grantor and Grantee); SPRING LAKE ESTATES WEST HOMEOWNERS ASSOCIATION, a Virginia Nonstock corporation, its successors and assigns ("SLEW 2") (index Grantor and Grantee); and THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic (the "County") (index as Grantor and Grantee).

RECITALS;

Christopher RSL is the record owner of certain lots and parcels of land containing in the aggregate approximately 10.73358 acres, located at 2711 Floris Lane, Herndon, in Fairfax County, Virginia being Fairfax County Tax Map Parcel Reference Nos. 0251-04-0008B and 0251-04-0009A (together, the "Christopher Property"). Christopher RSL is also the record owner of that certain lot and parcel of and located at 2707 Floris Lane, Herndon, in Fairfax County, Virginia formerly owned by John T. Hutson and Tonya L. Hutson containing approximately 2.4705 acres being Fairfax County Tax Map Parcel Reference No. 0251-04-0014C (the "Additional Property"). Following the approval of its final subdivision plan by the County [filed under RZ/FDP 2019-HM-016], coupled with a boundary line adjustment with the Additional Property, Christopher RSL intends to subdivide and develop initially the Christopher Property into a residential subdivision and community of detached single-family residences comprised of 21 residential lots and the required common area parcel(s) which will comprise Phase 1 of its Reserve at Spring Lake Subdivision project. Subsequently, Christopher RSL shall submit and seek approval from the County of a final subdivision plan for the Additional Property permitting the subdivision and development of at least five (5) additional residential lots for improvement by detached singlefamily residences, together with any required common area parcel(s), which will comprise Phase 2 of its Reserve at Spring Lake Subdivision project. The Christopher Property and the Additional

Property are collectively referred to herein as the "Reserve Property", and the residential subdivision and community of detached single-family residences and residential lots and the required common area parcels developed and subdivided on the Reserve Property is collectively referred to herein as the "Reserve Community". At the subdivision of the Christopher Property, Christopher RSL will establish one property owners association (the "Reserve HOA") under the Virginia Property Owners Association Act, to govern and administer the Reserve Community pursuant to a separate declaration of covenants, conditions and restrictions recorded among the land records of Fairfax County, Virginia (the "Land Records"). Until such time as the Reserve HOA exists as a legal entity and the declaration of covenants, conditions and restrictions for the Reserve HOA is recorded among the said Land Records, all rights and obligations of the Reserve HOA set forth herein shall be granted to, imposed on, and performed by Christopher RSL or its successors and assigns in right, title and interest in the acquisition and development of the Reserve Community. Christopher RSL shall ensure that the declaration of covenants, conditions and restrictions for the Reserve HOA will set forth sufficient easements and reservations or rights to entitle Christopher RSL, its successors and assigns, and the Reserve HOA to fulfill all of its duties and obligations as set forth in this Agreement.

- B. SLEW 1 governs and administers the residential community subdivided and known as Section One (1) of Spring Lake Estates West consisting of lots 1A, 1B, 2A, 3, 4, 5, 6, 7 and 8, and Parcel B, Section 1 Spring Lake Estates, as provided in that certain Declaration of Covenants, Conditions and Restrictions recorded on August 12, 1980 in Deed Book 5459 at Page 0636 among the Land Records, as may be amended and/or supplemented. SLEW 1 is the record owner of Parcel B, Section 1 containing approximately 2.587 acres being Fairfax County Tax Map Parcel Reference No. 0251-06-B ("Parcel B").
- C. SLEW 2 governs and administers the residential community subdivided and known as Section Two (2) of Spring Lake Estates West consisting of lots 1 through 99, inclusive, and Parcels A, B, C, D, and E, Section 2 Spring Lake Estates, as provided in the Declaration of Covenants, Conditions and Restrictions recorded on March 26, 1985 in Deed Book 6116 at Page 1288 among the Land Records, as may have been subsequently amended and/or supplemented. SLEW 2 is the record owner of Parcel C, Section 2 containing approximately 7.0091 acres being Fairfax County Tax Map Parcel Reference No. 0253-08-C ("Parcel C").
- D. The Christopher Property, the SLEW 1 community, and the SLEW 2 community are immediately adjacent and contiguous to a body of water commonly known as Spring Lake (the "Lake") and the Lake is identified by Fairfax County Tax Map Parcel Reference Nos. 0251-04-0008B; 0251-04-0009A; 0251-06-B; and 0253-08-C. SLEW 1, SLEW 2 and Christopher RSL are collectively the owners of the Lake. Only the owners and/or residents of SLEW 1, SLEW 2, and the Christopher Property are currently entitled to enjoy the Lake as an amenity.
- E. The Additional Property is not yet subject to or annexed into either the SLEW 1 or SLEW 2 communities nor does it currently have a right of access to the Lake. As aforesaid the Additional Property is intended upon subdivision to become Phase 2 of the Reserve Community and annexed into the Reserve HOA pursuant to RZ/FDP 2019-HM-016. Provided, however, until the Additional Property is developed as part of the Reserve Community and is annexed into the Reserve HOA, any benefits or rights implied or granted and conveyed for the Additional Property pursuant to this Agreement shall not take effect. If the Additional Property is not developed as

part of the Reserve Community and is not annexed into the Reserve HOA, the definition of Reserve Property, Reserve Community, and Reserve HOA set forth herein shall be deemed amended to exclude the Additional Property.

- F. The Lake's natural dam embankment, which includes its drainage pipes and auxiliary spillway (collectively the "Dam") is collectively owned by SLEW 1 and SLEW 2 as part of their respective common areas. Currently, access is by a 10' wide natural path on Parcel B which extends from the public access street known as Clear Lake Court providing access to the Dam.
- G. The County has informed Christopher RSL that it can use the Lake to satisfy stormwater management requirements of the Reserve Property, starting with the Christopher Property, and the resulting Reserve Community, but only if there is an agreement between Christopher RSL, SLEW 1, SLEW 2, and the County concerning the construction and future maintenance of the County required improvements to the Lake and Dam (the "Improvements") to meet County standards and provisions in order to make the Lake a Stormwater Management Facility for the benefit of the Reserve Community. The Improvements are described in Schedule 1 (as defined herein) attached hereto and made a part hereof by this reference. For purposes of this Agreement, the Stormwater Management Facility includes the Dam, forebays, safety benches, vegetative benches, and other structures or equipment located in the storm drainage easements and stormwater management access easements identified and granted herein that will be used to manage and treat stormwater.
- H. The County has determined that the improvements to and maintenance of the Stormwater Management Facility benefits the County's stormwater management program relative to other alternative stormwater management options available to Christopher RSL in its development of the Reserve Property. The County has agreed that to ensure the public welfare, health, and safety of the residents of the Reserve Property, the SLEW 1, and SLEW 2 communities, that (i) all such parties must contribute to the cost and expense associated with the construction of the Improvements to and for the Stormwater Management Facility; and (ii) following the completion and acceptance of the Improvements, as defined herein in Article III concerning matters of Maintenance, the County will be fully responsible for the future maintenance, repair, and replacement of the Stormwater Management Facility, which will be located in the Stormwater Access Easements and Storm Drainage Easements dedicated herein.
- I. Agreement having been reached among the parties regarding the improvement of the Lake and Dam, and the maintenance of the Lake and Dam as a Stormwater Management Facility, it is the desire and intent of SLEW 1 and SLEW 2 to: grant certain easements, and additionally in the case of SLEW 1 to vacate certain existing easements located on Parcel B, all as provided and depicted (specifically as to SLEW 2) on that certain Plat Showing Granting Of Various Easements On The Property Of SPRING LAKE ESTATES WEST HOMEOWNERS ASSOCIATION dated May 24, 2022, as prepared by Urban Ltd. (the "SLEW 2 Easement Plat"), and (specifically as to SLEW 1) on that certain Plat Showing Granting And Vacation Of Various Easements On The Property Of SPRING LAKE ESTATES WEST COMMUNITY ASSOCIATION dated May 24, 2022, as prepared by Urban Ltd. (the "SLEW 1 Easement Plat"), both attached hereto and made a part hereof by this reference; and to set forth the respective obligations of all of the parties hereto regarding the improvement, use and maintenance of the Lake, Dam, and resulting Stormwater Management Facility for the benefit of all owners and

occupants of the Reserve Property, and of the SLEW 1 and SLEW 2 communities, as the exclusive users of the Lake, all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and undertakings expressed in this Deed of Easement and Vacation, and Maintenance Agreement for Stormwater Management Facility, in addition to other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, their successors and assigns, it is agreed as follows:

ARTICLE I EASEMENTS

1.1 SLEW 2 Easements

Temporary Access and Construction Easement

SLEW 2 hereby grants and conveys to Christopher RSL, and its agents and contractors, a temporary access and construction easement to enter on to Parcel C to construct the Improvements to the Lake and Dam, and in conjunction with the herein below provided easements granted by SLEW 2 to the County of a Stormwater Management Access Easement, a Storm Drainage Easement, and a Restrictive Planting Easement, as provided on the attached SLEW 2 Easement Plat, to construct the access road therein and thereto within the Stormwater Management Access Easement, and to construct a fence adjacent and across the said access road through and across Parcel C generally where the entrance to the access road conjoins with Lake Shore Drive, to prevent the unauthorized entry of other persons (except Christopher RSL and subsequently the County regarding its maintenance responsibilities) on to Parcel C (severally and collectively the "SLEW 2 Temporary Construction Easement"). The foregoing easement(s) shall be subject to the following conditions:

- A. Christopher RSL, at its expense, will construct up to a 15' wide access road within the herein granted Stormwater Management Access Easement in the area that extends from Lake Shore Drive to the Dam as depicted on the SLEW 2 Easement Plat. The access road will be comprised of natural stone, or such other gravel-type material which complies with Public Facilities Manual 6-1306.3F and which is otherwise reasonably approved by the SLEW 2 Board of Directors.
- B. Christopher RSL, at its expense, will install for the benefit of SLEW 2 (i) a "No Parking" sign on Lake Shore Drive at the entrance of the Stormwater Management Access Easement granted to the County herein, subject to VDOT approval; and (ii) a fence with "No Trespassing" signs and locking gate, or other similar security feature approved by the SLEW 2 Board of Directors and the County, generally in the same location to prohibit unauthorized access over and upon Parcel C. The SLEW 2 Board of Directors and Christopher RSL will mutually agree on the final location, style, and color of the fence. The fence and signage will become the property of SLEW 2, and SLEW 2 will be responsible for its maintenance.
- C. The right to use the easement granted herein is limited to the boundaries of the easements granted to the County as shown on the SLEW 2 Easement Plat and to periods of actual construction, and then only to the minimum extent necessary to construct the Improvements, access road, and install the fence. This right does not allow Christopher RSL to erect any building or structure of a permanent nature on any adjoining land or to use any adjoining land that is not

owned by SLEW 2.

- D. Except during times of construction, no construction materials or equipment may be stored in the easement area or upon any adjoining land. SLEW 2 is not a bailee of Christopher RSL's property and Christopher RSL is solely responsible for the safekeeping of its materials and equipment.
- E. Christopher RSL has the right to trim, cut, and remove trees and shrubbery, or other obstructions in or near the easement being granted, deemed by it to interfere with the proper and efficient construction of the Improvements, road, and fence; provided, however, that Christopher RSL may not trim, cut or remove trees or shrubbery or other obstructions on land not owned by SLEW 2, and provided further that, at its own expense, Christopher RSL must restore, as nearly as possible, the premises to their original condition. Such restoration includes the backfilling of trenches, and the reseeding or resodding of any landscaped area except to the extent that such items are to be permanently removed as part of the construction of the road, fence, or Improvements.
- F. Christopher RSL use of the easements granted herein must comply with all laws and all work must be done in accordance with good and workmanlike practices and procedures. Christopher RSL must take all measures to ensure a safe work environment and must secure the site at the end of each day to prevent unauthorized access to the work site.
- G. This temporary construction easement becomes null and void when grading and construction of the road, fence, and Improvements are complete and the County has accepted such Improvements.

Stormwater Management Access Easement

- SLEW 2 hereby grants and conveys to the County a nonexclusive 15' wide Stormwater Management Access Easement over and across Parcel C, as more particularly bounded and depicted and in the locations shown on the SLEW 2 Easement Plat, for ingress and egress by the County to the Stormwater Management Facility for the purpose of inspecting the Improvements and performing its maintenance obligations (the "SLEW 2 Access Easement"). It is understood by the parties that the grant of this easement is subject to the following conditions:
- A. Nothing herein gives the general public the right to access or use the Lake, Parcel C, or any other property owned by SLEW 2.
- B. All physical facilities installed in the easement, excepting the fence but including the road, will be and will remain the property of the County, its successors and assigns.
- C. The County and its agents or assigns have full and free use of the easement for the purposes named, and have all rights and privileges reasonably necessary to the enjoyment and exercise of the easement, including the right of reasonable access to and from the easement and the right to use adjoining land where necessary; provided, however, that this right to use adjoining land only extends to the lands owned by SLEW 2 and such right may only be exercised during periods of actual inspecting, surveying, construction, reconstruction or maintenance of the Stormwater Management Facility, and further, this right does not allow the County to erect any building or structure of a permanent nature on such adjoining land. Provided, however, that this access easement does not authorize the County to enter onto any residential lot in the SLEW 2 subdivision community outside of this easement.

- D. The County has the right to trim, cut, and remove trees and shrubbery, fences, structures, or other obstructions or facilities in or near the easement being granted which are upon the property owned by SLEW 2, deemed by it to interfere with the proper and efficient construction, maintenance, operation or enjoyment of the easement area; provided, however, that the County, at its own expense, must restore, as nearly as possible, the premises within the easement area to their original condition, such restoration to include the backfilling of trenches, the replacement of fences, and the reseeding or resodding of landscaped area except to the extent that such items are to be permanently removed as part of the construction of the Improvements or Maintenance, and also shall not include the replacement of structures, trees or other obstructions. The County shall not trim, cut or remove trees or shrubbery, fences, structures, or other obstructions or facilities that are not on the property of SLEW 2.
- E. SLEW 2 reserves the right to make any use of the easements herein granted that are not inconsistent with the rights herein conveyed or interfere with the use of the easements by the County for the purposes named.

Storm Drainage Easement

- SLEW 2 hereby grants and conveys to the County, a nonexclusive Storm Drainage Easement over and across Parcel C, in the locations and areas shown on and as more particularly bounded and depicted on the SLEW 2 Easement Plat, for the purposes of constructing, operating, maintaining, adding to, altering or replacing present or future Stormwater Management Facilities in furtherance of its Improvements and Maintenance obligations herein provided, plus all necessary inlet structures, manholes, and appurtenances for the collection of stormwaters and its transmission through and across Parcel C (the "SLEW 2 Storm Drainage Easements"). It is understood by the parties that the grant of this easement is subject to the following conditions:
- A. Nothing herein gives the general public the right to access or use the Lake, Parcel C, or any other property owned by SLEW 2.
- B. All storm water drainage, management and appurtenant facilities, plus all inlet structures, manholes and appurtenances installed in the easement will be and will remain the property of the County, its successors and assigns.
- C. All facilities pertaining to the Dam to include, without limitation, but only to the extent actually located within the Storm Drainage Easements, the trash rack, outfall pipe, auxiliary spillway, and safety bench; and all vegetative and safety benches surrounding the Lake which are installed in the easement area will be and will remain the property of the County, its successors and assigns.
- D. The County and its agents or assigns shall have full and free use of the easement for the purposes named, and have all rights and privileges reasonably necessary to the enjoyment and exercise of the easement, including the right of reasonable access to and from the easement and the right to use adjoining land where necessary; provided, however, that this right to use adjoining land only extends to the lands owned by SLEW 2 and such right may only be exercised during periods of actual inspecting, surveying, construction, reconstruction or maintenance of the Stormwater Management Facility, and further, this right does not allow the County to erect any building or structure of a permanent nature on such adjoining land. Provided, however, that this

access easement does not authorize the County to enter onto any residential lot in the SLEW 2 subdivision community outside of this easement.

- E. The County has the right to trim, cut, and remove trees and shrubbery, or other obstructions in or near the easement being granted, deemed by it to interfere with the proper and efficient construction, maintenance, and operation of the Stormwater Management Facility; provided, however, that the County, at its own expense, must restore, as nearly as possible, the premises within the easement area to their original condition, such restoration to include the backfilling of trenches, the replacement of fences, and the reseeding or resodding of landscaped area except to the extent that such items are to be permanently removed as part of the construction of the Improvements or necessary to perform Maintenance, and also shall not include the replacement of structures, trees or other obstructions. The County shall not trim, cut or remove trees or shrubbery, fences, structures, or other obstructions or facilities that are not on the property of SLEW 2.
- F. SLEW 2 reserves the right to make any use of the easements that is not inconsistent with the rights herein conveyed or interfere with the use of the easements by the County for the purposes named. It is expressly understood and agreed that this easement is subject to the right of the owners and occupants of SLEW 2 to fish (not including ice fishing) in the Lake and to operate non-motorized boats.
- G. The County may not construct additional improvements to increase the capacity of the Stormwater Management Facility to treat nutrients and sediment that are conveyed to the facility by stormwater from properties other than SLEW 1, SLEW 2, and the Reserve Community.

Restrictive Planting Easement

- SLEW 2 hereby grants and conveys to the County, a nonexclusive Restrictive Planting Easement over and across Parcel C, in the locations and areas shown on and as more particularly bounded and depicted on the SLEW 2 Easement Plat, for the purposes of promoting the stability of the Dam and/or regulating plant growth within the easement area on the Dam. It is understood by the parties that the grant of this Restrictive Planting Easement is subject to the following conditions:
- A. SLEW 2, and its successors and assigns, shall not place any structure, bulb, plant, tree, or other object within the easement area, except for grasses, without the prior written permission of the County.
- B. SLEW 2, its successors and assigns, does agree to maintain any portion of the herein easement area not located upon or forming a part of the Dam embankment, by mowing, cutting and/or trimming all permitted plantings. The County shall maintain that portion of the herein easement area located upon or forming a part of the Dam embankment or comprising the facilities located within the Storm Drainage Easements. Only in such areas that are to be maintained as aforesaid by SLEW 2, the County shall have the right, but not the obligation, to enter onto such areas in Parcel C to perform such maintenance if SLEW 2 fails to commence such maintenance after ten (10) days written notice, if in the sole judgment of the County, SLEW

- 2 has failed to perform such maintenance. In such case, the costs of such maintenance shall be reimbursed to the County by SLEW 2, its successors and assigns, upon demand.
- C. No clearing or grading shall be permitted within the herein easement area, and the easement area shall not be denuded, defaced, or otherwise disturbed in any manner without the prior written approval of the appropriate agency or department of the County. SLEW 2 otherwise reserves the right to make any use of the herein easement area that will not be inconsistent with the terms and conditions of this easement.

1.2 SLEW 1 Easements

Temporary Access and Construction Easement

SLEW 1 hereby grants and conveys to Christopher RSL, and its agents and contractors, a temporary access and construction easement to enter on to Parcel B to construct the Improvements to the Lake and Dam, and in conjunction with the herein below provided easements granted by SLEW 1 to the County of a Stormwater Management Access Easement, a Storm Drainage Easement, and a Restrictive Planting Easement, as provided on the attached SLEW 1 Easement Plat, to construct the access road therein and thereto within the Stormwater Management Access Easement, and to construct a fence at the entrance of the 10' wide natural path on Parcel B which extends from the public access street known as Clear Lake Court, in order to prevent the unauthorized entry of other persons (except Christopher RSL and subsequently the County regarding its maintenance responsibilities) on to Parcel B (severally and collectively the "SLEW 1 Temporary Construction Easement"). The foregoing easement(s) shall be subject to the following conditions:

- A. Christopher RSL, at its expense, will construct up to a 15' wide access road within the herein granted Stormwater Management Access Easement in the area that extends from Lake Shore Drive towards the Dam as depicted on the SLEW 1 Easement Plat. The access road will be comprised of the same material that is approved for use in the SLEW 2 Access Easement.
- B. Christopher RSL, at its expense, will install for the benefit of SLEW 1 a fence with "No Trespassing" signs mounted on the fence and locking gate, or other similar security feature approved by the SLEW 1 Board of Directors and the County, generally in the location of the entrance of the 10' wide natural path on Parcel B which extends from the public access street known as Clear Lake Court, to prohibit unauthorized access over and upon Parcel B. The SLEW 1 Board of Directors and Christopher RSL will mutually agree on the final location, style, and color of the fence. The fence and signage will become the property of SLEW 1, and SLEW 1 will be responsible for its maintenance.
- C. The right to use the easement granted herein is limited to periods of actual construction, and then only to the minimum extent necessary to construct the Improvements, access road, and install the fence, and this right does not allow Christopher RSL to erect any building or structure of a permanent nature on any adjoining land or to use any adjoining land that is not owned by SLEW 1.
- D. Except during times of construction, no construction materials or equipment may be stored in the easement area or upon any adjoining land. SLEW 1 is not a bailee of Christopher RSL's property and Christopher RSL is solely responsible for the safekeeping of its materials and equipment.
 - E. Christopher RSL has the right to trim, cut, and remove trees and shrubbery, or other

obstructions in or near the easement being granted, deemed by it to interfere with the proper and efficient construction of the Improvements, road, and fence; provided, however, that Christopher RSL, at its own expense, must restore, as nearly as possible, the premises to their original condition. Such restoration includes the backfilling of trenches, and the reseeding or resodding of any landscaped area except to the extent that such items are to be permanently removed as part of the construction of the road, fence, or Improvements.

- F. Christopher RSL use of the easements granted herein must comply with all laws and in accordance with good and workmanlike practices and procedures. Christopher RSL must take all measures to ensure a safe work environment and must secure the site at the end of each day to prevent unauthorized access to the work site.
- G. This temporary construction easement becomes null and void when grading and construction of the road, fence, and Improvements are complete, and the County has accepted such Improvements.

Stormwater Management Access Easement

SLEW 1 hereby grants and conveys to the County a nonexclusive 15' wide Stormwater Management Access Easement over and across Parcel B, as more particularly bounded and depicted and in the locations shown on the SLEW 1 Easement Plat, for ingress and egress by the County to the Stormwater Management Facility for the purpose of inspecting the Improvements and performing its maintenance obligations (the "SLEW 1 Access Easement"). It is understood by the parties that the grant of this easement is subject to the following conditions:

- A. Nothing herein gives the general public the right to access or use the Lake, Parcel B, or any other property owned by SLEW 1.
- B. All physical facilities installed in the easement, excepting the fence but including the road, shall be and will remain the property of the County, its successors and assigns.
- C. The County and its agents or assigns have full and free use of the easement for the purposes named, and have all rights and privileges reasonably necessary to the enjoyment and exercise of the easement, including the right of reasonable access to and from the easement and the right to use adjoining land where necessary; provided, however, that this right to use adjoining land only extends to the lands owned by SLEW 1 and such right may only be exercised during periods of actual inspecting, surveying, construction, reconstruction or maintenance of the Stormwater Management Facility, and further, this right does not to allow the County to erect any building or structure of a permanent nature on such adjoining land. Provided, however, that this access easement does not authorize the County to enter onto any residential lot in the SLEW 1 subdivision community outside of this easement.
- D. The County has the right to trim, cut, and remove trees and shrubbery, fences, structures, or other obstructions or facilities in or near the easement being granted which are upon the property owned by SLEW 1, deemed by it to interfere with the proper and efficient construction, maintenance, operation or enjoyment of the easement area; provided, however, that the County, at its own expense, must restore, as nearly as possible, the premises within the easement area to their original condition, such restoration to include the backfilling of trenches, the replacement of fences, and the reseeding or resodding of landscaped area except to the extent

that such items are to be permanently removed as part of the construction of the Improvements or Maintenance, and also shall not include the replacement of structures, trees or other obstructions.

E. SLEW 1 reserves the right to make any use of the easements herein granted that are not inconsistent with the rights herein conveyed or interfere with the use of the easement by the County for the purposes named.

Storm Drainage Easement

- SLEW 1 hereby grants and conveys to the County, a nonexclusive Storm Drainage Easement over and across Parcel B, in the locations and areas shown on and as more particularly bounded and depicted on the SLEW 1 Easement Plat, for the purposes of constructing, operating, maintaining, adding to, altering or replacing present or future Stormwater Management Facilities in furtherance of its Improvements and Maintenance obligations herein provided, plus all necessary inlet structures, manholes, and appurtenances for the collection of stormwaters and its transmission through and across Parcel B (the "SLEW 1 Storm Drainage Easements"). It is understood by the parties that the grant of this easement is subject to the following conditions:
- A. Nothing herein gives the general public the right to access or use the Lake, Parcel B, or any other property owned by SLEW 1.
- B. All stormwater drainage, management and appurtenant facilities, plus all inlet structures, manholes and appurtenances installed in the easement will be and will remain the property of the County, its successors and assigns.
- C. All facilities pertaining to the Dam to include, without limitation, but only to the extent actually located within the Storm Drainage Easements, the trash rack, outfall pipe, auxiliary spillway, and safety bench; and all vegetative and safety benches surrounding the Lake which are installed in the easement area will be and will remain the property of the County, its successors and assigns.
- D. The County and its agents or assigns shall have full and free use of the easement for the purposes named, and have all rights and privileges reasonably necessary to the enjoyment and exercise of the easement, including the right of reasonable access to and from the easement and the right to use adjoining land where necessary; provided, however, that this right to use adjoining land only extends to the lands owned by SLEW 1 and such right may only be exercised during periods of actual inspecting, surveying, construction, reconstruction or maintenance of the Stormwater Management Facility, and further, this right does not allow the County to erect any building or structure of a permanent nature on such adjoining land. Provided, however, that this access easement does not authorize the County to enter onto any residential lot in the SLEW 1 subdivision community outside of this easement.
- E. The County has the right to trim, cut, and remove trees and shrubbery, or other obstructions in or near the easement being granted, deemed by it to interfere with the proper and efficient construction, maintenance, and operation of the Stormwater Management Facility; provided, however, that the County, at its own expense, must restore, as nearly as possible, the premises within the easement area to their original condition, such restoration to include the backfilling of trenches, the replacement of fences, and the reseeding or resodding of landscaped

area except to the extent that such items are to be permanently removed as part of the construction of the Improvements or necessary to perform Maintenance, and also shall not include the replacement of structures, trees or other obstructions.

- F. SLEW 1 reserves the right to make any use of the easements that is not inconsistent with the rights herein conveyed or interfere with the use of the easements by the County for the purposes named. It is expressly understood and agreed that this easement is subject to the right of the owners and occupants of SLEW 1 to fish (not including ice fishing) in the Lake and to operate non-motorized boats.
- G. The County may not construct additional improvements to increase the capacity of the Stormwater Management Facility to treat nutrients and sediment that are conveyed to the facility by stormwater from properties other than SLEW 1, SLEW 2, and the Reserve Community.

Restrictive Planting Easement

SLEW 1 hereby grants and conveys to the County, a nonexclusive Restrictive Planting Easement over and across Parcel B, in the locations and areas shown on and as more particularly bounded and depicted on the SLEW 1 Easement Plat, for the purposes of promoting the stability of the Dam and/or regulating plant growth within the easement area on the Dam. It is understood by the parties that the grant of this Restrictive Planting Easement is subject to the following conditions:

- A. SLEW 1, and its successors and assigns, shall not place any structure, bulb, plant, tree, or other object with the easement area, except for grasses, without the prior written permission of the County.
- B. SLEW 1, its successors and assigns, does agree to maintain any portion of the herein easement area not located upon or forming a part of the Dam embankment, by mowing, cutting and/or trimming all permitted plantings. The County shall maintain that portion of the herein easement area located upon or forming a part of the Dam embankment or comprising the facilities located within the Storm Drainage Easements. Only in such areas that are to be maintained as aforesaid by SLEW 1, the County shall have the right, but not the obligation, to enter onto such areas in Parcel B to perform such maintenance if SLEW 1 fails to commence such maintenance after ten (10) days written notice, if in the sole judgment of the County, SLEW 1 has failed to perform such maintenance. In such case, the costs of such maintenance shall be reimbursed to the County by SLEW 1, its successors and assigns, upon demand.
- C. No clearing or grading shall be permitted within the herein easement area, and the easement area shall not be denuded, defaced, or otherwise disturbed in any manner without the prior written approval of the appropriate agency or department of the County. SLEW 1 otherwise reserves the right to make any use of the herein easement area that will not be inconsistent with the terms and conditions of this easement.

Vacation of Easement

The County, with the joinder of SLEW 1, does hereby vacate, quitclaim, release, and extinguish all of its right, title, and interest, rights of easement, and rights of way, under, in and to

the easement located on and within the bounds of Parcel B, previously created, established, and granted by deed and plat recorded in Deed Book 11459 at Page 552 among the Land Records as provided and cited on the SLEW 1 Easement Plat, and as shown, labeled, depicted, and designated on the attached SLEW 1 Easement Plat as "EX. STORM DRAINAGE EASEMENT DB. 11459 PG. 552 HEREBY VACATED".

1.3 Christopher RSL Easements

At such time as the record subdivision plan of the Christopher Property (which is currently submitted to the authorities of the County for review and approval, the "Subdivision Plan") is approved by the County, Christopher RSL, in the course of recording the approved Subdivision Plan, shall grant to the County upon then subdivided common area Parcel "A" of The Reserve at Spring Lake Subdivision, a 15' wide stormwater management access easement, and a variable width storm drainage easement, in the locations shown on the Subdivision Plan, with terms and conditions consistent with the terms, provisions and conditions herein provided for the SLEW 2 Access Easement, the SLEW 1 Access Easement, the SLEW 2 Storm Drainage Easements, and the SLEW 1 Storm Drainage Easements.

1.4 Reservation of Rights

The parties hereto reserve to themselves and their respective successors and assigns, the right to grant and reserve additional easements or to vacate or terminate existing easements across any portion of their respective property so long as the granting, vacating, or termination of any easement is consistent with the provisions of this Agreement. If any easement needs to be relocated, the expense of such relocation will be borne by the requesting party.

1.5 Cooperation

Each party hereto must cooperate with the other parties in the performance of this Agreement and not unreasonably interfere with the use and purposes of the easements hereby granted.

ARTICLE II IMPROVEMENT OBLIGATIONS

2.1 General. In order for Christopher RSL to utilize the Lake for purposes of stormwater management for the Reserve Community and the County to receive stormwater management credits, Christopher RSL, SLEW 1, SLEW 2, and the County have agreed on the scope of work to be performed and have established a working final budget for such work (the "Budget"). The Budget is attached hereto as "Schedule 2" and is incorporated herein by this reference. Christopher RSL agrees to construct the Improvements to bring the Lake and Dam in compliance with County-required design standards for such lakes. The approved plans for the Improvements and the scope of work for the Improvements are attached as "Schedule 1" and are incorporated herein. The parties agree that neither Schedule 1 nor Schedule 2 can be materially amended or changed without the agreement and consent of Christopher RSL, SLEW 1, SLEW 2, and the County, which consent may not be unreasonably withheld, conditioned or delayed.

Under no circumstances shall the Lake be designed or constructed such that it qualifies or is otherwise deemed to be a state regulated dam by any agency of the Commonwealth of Virginia. If at any time during the construction of the Improvements to the Dam and Lake as herein provided by Christopher RSL, any inspection or review determines that the pending result of the Improvements will qualify the Lake and Dam as a state regulated dam by any agency of the Commonwealth of Virginia, then the County shall have the right to suspend the funding of its Contribution as provided in Sections 2.3 and 2.4 below until Christopher RSL, at its sole cost and expense, makes the necessary design revisions and construction changes and adjustments reasonably satisfactory to the County upon review and inspection, the result of which shall cause the finished and completed Improvements to the Lake and Dam to not qualify it or otherwise deem it to be a state regulated dam by any agency of the Commonwealth of Virginia.

- Lake & Dam Improvements. Christopher RSL and its agents and contractors in the construction of the Improvements, shall not drain the Lake to perform the Improvements, as described in Schedule 1, except in the immediate area where the Improvements are being made, and then only to the minimum extent necessary and as a temporary condition. If any portion of the Lake must be drained, Christopher RSL must notify SLEW 1 and SLEW 2 in writing at least ten (10) days before the date the Lake is to be drained, the reason, and the expected duration. SLEW 1 and SLEW 2 acknowledge and agree that the Improvements may lower the height of the Dam, which will lower the depth of the Lake to accommodate the changes to the Dam. Any reduction in the depth of the Lake caused by the design and construction of the dam is not a breach of this paragraph / section as an impermissible draining of the Lake.
- Costs and Expenses of Improvements. The total costs of the Improvements are 2.3 anticipated to be One Million Nine Hundred Thirty-nine Thousand Seven Hundred Forty-five and 00/100 Dollars (\$1,939,745.00) as reflected on the Budget attached as Schedule 2. Christopher RSL for itself and on behalf of the to-be-formed Reserve HOA, agrees to contribute and pay a total of One Million One Hundred Sixteen Thousand Six Hundred Eighty-Five and 55/100 Dollars (\$1,116,685.55) towards the overall accrued costs and expenses associated with the construction and completion of the Improvements. Subject to the terms of this Agreement, the County agrees to contribute and pay Five Hundred Ninety-six Thousand and 00/100 Dollars (\$596,000.00) towards the overall accrued costs and expenses associated with the construction and completion of the Improvements. Subject to the terms of this Agreement, SLEW 1 agrees to pay Twenty Thousand Two Hundred Fifty and 00/100 (\$20,250.00) towards the overall accrued costs and expenses associated with the construction and completion of the Improvements. Subject to the terms of this Agreement, SLEW 2 agrees to pay Two Hundred Six Thousand Eight Hundred Nine and 45/100 Dollars (\$206,809.45) towards the overall accrued costs and expenses associated with the construction and completion of the Improvements. The contributions of the parties to this Agreement are collectively referred to as the "Contributions". The herein Contributions of County, SLEW 1, and SLEW 2 shall not be capable of being increased, and in the event the costs of the Improvements as provided in the Budget subsequently increase, or the funds held by the Escrow Agent (as defined below) are insufficient for any reason, it shall be the sole responsibility of Christopher RSL to pay such increase(s) or fund such shortages.

Contingency funds, to the extent not spent, and all other cost savings realized at the conclusion of the construction of the Improvements that are not expended to complete the Improvements will be returned to the County and Christopher RSL based on their proportional

share of their contributions to the Improvements, which for these purposes only is calculated to be 65% to Christopher RSL and 35% to the County, except, for the purpose of calculating Christopher RSL's proportional share, its total contribution to the Improvements is reduced by \$50,502.63 (being the Stormwater Management pro rata share amount that would have been owed). The County's share of the contingency must be returned thirty (30) days after the County's acceptance of the Improvements for maintenance.

Christopher RSL must cause the Improvements to be constructed in accordance with Schedule 1 and shall be responsible for causing the payment of the costs of the Improvements as assessed and billed by the contractors performing the work from the funded Contributions as provided below in Section 2.4.

Christopher RSL will provide SLEW 1 and SLEW 2 with advance notice of the dates and times the County will be inspecting the Improvements work and will permit representatives of SLEW 1 and SLEW 2, at their expense, to attend any meetings and inspections relating to the Improvements.

2.4 <u>Collection of Contributions and Method of Disbursement to Pay for Improvements.</u>

2.4.1 So long as Christopher RSL is not in default of this Agreement, SLEW 1, and SLEW 2, together with Christopher RSL, must all pay in cash their respective share of the Contributions in to escrow with the Escrow Agent as more particularly provided herein below. The due date for the payment of Contributions shall be that date which is thirty (30) days following the date that Christopher RSL makes submission of its subdivision bonding package to the County for approval with regard to Phase 1 of The Reserve at Spring Lake Subdivision upon the Christopher Property ("Bond Submission"). Christopher RSL shall provide written notice to SLEW 1 and SLEW 2 not later than five (5) days prior to the anticipated date of Bond Submission, and thereafter shall provide a second written notice to SLEW 1 and SLEW 2 on the date of actual Bond Submission, naming the specific due date for the payment of Contributions. If any party fails to pay its share of the Contribution, then Christopher RSL is entitled to collect payment from the non-paying party as provided in Section 6.6 below. Any Contribution payment not timely paid by the due date is delinquent and shall accrue a late charge in the amount of one and one-half percent (1.50%) of such amount of the Contribution not paid for each full or partial thirty-day period from the due date until fully paid.

On or before the due date of the payment of Contributions, when making payment of a Contribution, the paying party shall pay (by cashier's check or by wire transfer of funds) its Contribution in escrow to Champion Title & Settlements, Inc. (the "Escrow Agent"), 10306 Eaton Place, Suite 160, Fairfax, Virginia 22030, Attention: Dee Kase, Esq. [703-385-5489, deek@kaselawyers.com]. The paid Contributions shall be aggregated and deposited in a separate non-interest bearing account opened in the name of the Escrow Agent for the benefit of Christopher RSL. Christopher RSL represents and warrants that the Escrow Agent will maintain the Contributions in accordance with the laws of the Commonwealth of Virginia governing the conditions for providing escrow services and maintaining escrow accounts and the terms of this Agreement.

As and when, and from time to time, as construction of the Improvements progresses following the funding of the entirety of the Contributions, when Christopher RSL is presented with a billing invoice from the contractor or contractors performing work for and/or constructing the Improvements, Christopher shall make application to the Escrow Agent for an advance of Contribution proceeds to pay such billing invoice in accordance with the contract of the party seeking payment, but only after making a visual inspection of the Improvements for which payment is sought to confirm and verify that the Improvements are in fact properly constructed and in place and otherwise in accordance with the contractor's general contract and also in accord with the intent and terms of this Agreement and Schedule 1. When making an application to the Escrow Agent for payment, Christopher RSL shall provide the Escrow Agent with true copies of all invoices as rendered by the contractors, subcontractors, materialmen and suppliers seeking payment. Should Christopher RSL be seeking direct reimbursement for costs and expenses already paid by it, evidence of prior payment accompanied by the billing invoices so paid shall be required to be provided by Christopher RSL to Escrow Agent. Escrow Agent shall require that each application for an advance of Contribution proceeds be accompanied by a certificate from Christopher RSL that its agents or employees have made the required visual inspection of the Improvements. In addition, Christopher RSL shall provide to Escrow Agent a waiver and release of mechanic's liens claims regarding all prior completed Improvements work for which payments have been previously made. Provided all of the conditions precedent to an advance provided for above are satisfied by Christopher RSL, the Escrow Agent shall cause the advance of Contributions applied for to be disbursed within three (3) business days of application for payment. All advances shall be made either by check to the order of or by wire transfer to the designated account of the contractor owed payment. When an advance is made of Contribution proceeds by the Escrow Agent, the advance of Contribution proceeds shall be deemed to be made pro rata based on the allocation of Contributions assessed to the parties hereto. No one Contribution of a party shall be spent first or entirely before any other Contribution is expended.

The Escrow Agent shall keep an accounting on file of all of the advances of Contribution proceeds, together with all applications of Christopher RSL for payment with supporting documentation and certifications and lien waivers. In the event any party hereto requests the opportunity to review such records, Escrow Agent shall make same available to the authorized agent of the requesting party at the office of the Escrow Agent for review, within two (2) business days of receiving any such request to review records.

The parties acknowledge that the Escrow Agent shall be conclusively entitled to rely upon the application for advance of Contribution proceeds as made by Christopher RSL. The parties hereto acknowledge that Escrow Agent shall have no liability to any party on account of Escrow Agent's actions (if performed as herein above provided) and in the event of any dispute regarding the Contribution proceeds held on deposit in escrow with the Escrow Agent, the Escrow Agent will either disburse same in accordance with the final order of a court of competent jurisdiction, or deposit or interplead such funds into a court of competent jurisdiction pending a final decision of such controversy. The parties hereto further agree that Escrow Agent shall not be liable for failure to any depository and shall not be otherwise liable except in the event of Escrow Agent's gross negligence or willful misconduct. The Escrow Agent shall be reimbursed its reasonable expenses incurred by the parties proportionate to its allocated share of the total Contributions arising from a dispute with respect to the Contributions received in escrow.

- 2.4.2. So long as Christopher RSL is not in default of this Agreement, the County shall pay its Contribution directly to Christopher RSL in stages as follows:
- (a) Up to \$298,000.00, from time to time, as and when construction of the Improvements progresses, when Christopher RSL is presented with a billing invoice from the contractor or contractors performing work for and/or constructing the Improvements, Christopher shall make application to the County for an advance of Contribution proceeds to pay 35% of such billing invoice in accordance with the contract of the party seeking payment, but only after making a visual inspection of the Improvements for which payment is sought to confirm and verify that the Improvements are in fact properly constructed and in place and otherwise in accordance with the contractor's general contract and also in accord with the intent and terms of this Agreement and Schedule 1. When making an application to the County for payment, Christopher RSL shall provide the County with true copies of all invoices as rendered by the contractors, subcontractors, materialmen and suppliers seeking payment, and other commercially reasonable detail and documentation as may be requested by the County in analyzing the payment request. In addition, the County shall be permitted to inspect the Improvements through the representatives of the County Department of Public Works and Environmental Services (DPWES) as a condition of funding the Contribution payment application / request of Christopher RSL. Should Christopher RSL be seeking direct reimbursement for costs and expenses already paid by it, evidence of prior payment accompanied by the billing invoices so paid shall be required to be provided by Christopher RSL to County. County shall require that each application for an advance of Contribution proceeds from the County be accompanied by a certificate from Christopher RSL that its agents or employees have made the required visual inspection of the Improvements. In addition, Christopher RSL shall provide to County a waiver and release of mechanic's liens claims regarding all prior completed Improvements work for which payments have been previously made. Provided all of the conditions precedent to an advance provided for above are satisfied by Christopher RSL, the County shall cause the advance of the share of its Contribution as applied for to be disbursed within forty-five (45) days of its receipt of the Christopher RSL application for payment. All advances shall be made either by check to the order of or by wire transfer to the designated account of Christopher RSL. When an advance is made of Contribution proceeds by the County, the advance of Contribution proceeds shall be deemed to be made pro rata based on the allocation of Contribution assessed to the County under this Agreement.

Christopher RSL shall keep an accounting on file of all of the advances of Contribution proceeds made by the County, together with all applications of Christopher RSL for payment with supporting documentation and certifications and lien waivers. In the event County requests the opportunity to review such records, Christopher RSL shall make same available to the authorized agent of the County for review, within two (2) business days of receiving any such request to review records

- (b) Up to \$283,100,00 in one lump sum, upon (i) approval by the County of the as-built plan for the Improvements, (ii) the inspection by County Department of Public Works and Environmental Services (DPWES) of the completed Improvements which confirms the satisfactory completion of the Improvements and that the completed Improvements classify the facility as being non-state regulated.
 - (c) Up to the remaining \$14,900.00 in one lump sum at such time as Christopher RSL has

completed to the reasonable satisfaction of the County DPWES any punchlist generated by DPWES in its inspection of the completed Improvements as provided in subparagraph (b) above.

In making this agreement as to the method and staging of the payment of the Contribution of the County and its administration, the County does hereby agree that Christopher RSL can post a separate bond to insure the completion of just the dam improvements and forebays and other Improvements to/of the Lake (the "Spring Lake Improvements Bond"), which Spring Lake Improvements Bond shall be separate, apart and distinct from the bond posted by Christopher RSL for its Reserve at Spring Lake Subdivision developed and constructed on the Christopher Property. The Spring Lake Improvements Bond shall be capable of release by the County at such time as the Improvements are completed and inspected by the County and DPWES, both as provided in subsections (b) and (c) above. Further, with regard to the as-built plan, the as-built plan that is prepared for the Improvements by the engineer of Christopher RSL shall be specific just to the Improvements and will be separate and apart and distinct from the customary as-built plan which the County shall require and would review for the Reserve at Spring Lake Subdivision project of Christopher RSL. The as-built plan for the Improvements will be prepared at such time as Christopher RSL, in conjunction with its own inspections conducted with its general contractor, determines that the Improvements have been completed in compliance and conformance with the design plans for the Improvements and the Dam's embankment has been fine graded.

2.5. Quality of Work; Indemnification; Insurance. In fulfilling its obligations under this Agreement, Christopher RSL must perform its work in a prompt, good and workmanlike manner with due diligence and in conformance with all applicable governmental and quasi-governmental laws, ordinances, and regulations governing the work and in accordance with Schedule 1. All such work must be performed in a manner that minimizes disruption, impairment, or obstruction of access to any portion of the Lake, or otherwise has a material adverse effect on the use and enjoyment of the Lake.

Christopher RSL and its successors and assigns, shall indemnify, defend and hold harmless the County and the officers, directors, agents, and members of SLEW 1 and SLEW 2 from and against any and all claims, suits, judgments, costs and expenses, including reasonable attorney's fees, arising from any claims, suits, damages, including injury or death of person or damage to property, or other liability of any kind that may result from, or arise out of, the Improvements and the utilization of the easements and rights granted herein to Christopher RSL; provided, however, that Christopher RSL is not obligated to indemnify SLEW 2 for damage, expenses, or liability arising from the gross negligence or willful misconduct of SLEW 2, its directors, officers, or agents; and provided further, that Christopher RSL is not obligated to indemnify SLEW 1 for damage, expenses, or liability arising from the gross negligence or willful misconduct of SLEW 1, its directors, officers, or agents. If either SLEW 1 or SLEW 2 fail to timely or fully pay its Contributions under this Agreement, then Christopher RSL is not obligated to fulfill any part of this indemnification to that party, the failure to timely or fully pay being deemed to be a waiver of such indemnification. If any mechanic or materialmen liens are filed or recorded as a result of Christopher RSL's failure or alleged failure, or the failure or alleged failure of its contractors, to pay any of its contractors or materialmen for any services or materials provided in connection with the construction of the road, fence, and Improvements, Christopher RSL shall promptly (but no less than thirty (30) days after lien filing) begin the statutory process specified in Va. Code Section 43-71 to apply for court permission to make payment into court or file a bond in order to release the lien from all affected property of SLEW 1 and SLEW 2.

Before the commencement of any site work, Christopher RSL and its contractors or agents must obtain and maintain a policy or policies of broad form commercial general liability insurance (including bodily injury, personal injury, property damage and coverage for Christopher RSL contractual liabilities hereunder), which may consist of a combination of base liability insurance policies and excess liability (i.e., umbrella) insurance policies, and may be covered under blanket coverage of the insuring party as long as it provides the minimum coverage required hereunder, with a limit of not less than One Million Dollars (\$1,000,000) per occurrence limit, not less than Five Million Dollars (\$5,000,000) general aggregate. The general comprehensive liability policy must include XCU coverage and must (a) be provided by an insurance provider licensed to do business in the Commonwealth of Virginia and having a Best's rating of "A" or better; (b) be primary insurance which will not call upon for defense, contribution of payment, any other insurance effected or procured by any of the parties to this Agreement; (c) provide that the insurer waives the right of subrogation against SLEW 1 and SLEW 2; and (d) name SLEW 1 and SLEW 2 each as an additional insured. Worker's compensation insurance shall be carried as required by law. The policies described above shall provide at least thirty (30) days prior written notice of modification or cancellation be given to SLEW 1 and SLEW 2. Before work on any Improvements begins, Christopher RSL and its contractors and agents must provide SLEW 1 and SLEW 2 with evidence, in the form of certificates of insurance that the insurance required by this section is in effect. Such insurance must remain in effect until one year after the County accepts the Improvements for maintenance. Failure to maintain the insurance required herein is a material breach of this Agreement.

- 2.6 Completion of Work. When the Improvements are accepted by the County for maintenance, Christopher RSL must return any benches and trash cans presently located on the Dam to their original locations, Christopher RSL must restore any existing dedicated pedestrian trails that are disturbed during construction and improvement of the Lake and Dam to their original condition and restore any other disturbed common area of SLEW 1 and SLEW 2 to the condition that existed prior to the work at its sole cost and expense and to the reasonable satisfaction of SLEW 1 and SLEW 2. If Christopher RSL or its contractors fail to restore any property of SLEW 1 and SLEW 2 to the condition that existed prior to such work, the restoration may be performed by SLEW 1 and/or SLEW 2, as the case may be, and Christopher RSL will be required to reimburse SLEW 1 and/or SLEW 2 upon demand, and if not paid, then SLEW 1 and/or SLEW 2 will be entitled to collect payment pursuant to Sections 4.3 below.
- 2.7 <u>Credits</u>. When the Improvements work is accepted by the County for maintenance, the County shall receive all nutrient credits attributable to the Lake as used by the Reserve Property as a stormwater management facility. As a consequence of the foregoing, Christopher RSL does hereby agree that if at any time during the construction of the Improvements a revision of the design plans is deemed necessary, then before Christopher RSL can proceed with such change or revision to the design plans, the (a) County shall be provided the opportunity to review and approve such modification and revision to the design plans to the extent it affects the forebays; and (b) SLEW 1 and SLEW 2 shall be given the opportunity to review and approve such modification and revision to the design plans to the extent the changes or modifications affect Parcel B or Parcel C, respectively.

2.8 Failure to Act. The obligations of Christopher RSL under this Agreement are expressly subject to the approval by the County of Christopher RSL's submitted RZ/FDP 2019-HM-016 site / subdivision plan for the Christopher Property that does not require Christopher RSL to construct stormwater management facilities on the Reserve Property. If the foregoing approval is not granted by the County, this Agreement will be null and void and of no further affect as to the parties. If the County approves Christopher RSL's RZ/FDP 2019-HM-016 site / subdivision plan as aforesaid, but Christopher RSL fails to start and complete the Improvements, the County agrees to draw on its bond to complete the Improvements pursuant to the terms of this Agreement.

ARTICLE III MAINTENANCE OBLIGATIONS

3.1 <u>General</u>. Following completion of the Improvements as set forth on Schedule 1 and acceptance of the Improvements by the County, the continuing maintenance of the Improvements (the "Maintenance") will be performed by the County at the sole cost and expense of the County. The County's maintenance obligations extend only to the functionality of the Lake and Dam as a stormwater management facility; the County will have no obligation to maintain the recreational quality of the Lake.

The County must maintain the Stormwater Management Facility in good working order in accordance with the specific maintenance requirements in accordance with the County's Stormwater Management Ordinance. The County must inspect the Stormwater Management Facility in accordance with the inspection requirements as required under the County's Stormwater Management Ordinance to ensure the Stormwater Management Facility is being properly maintained, is continuing to perform in accordance with the approved design, and conforms to the applicable codes. Additionally, the County must perform such other maintenance as necessary to avoid the Stormwater Management Facility becoming a threat to public health safety or a nuisance as defined in the Codified Ordinances of Fairfax County. If deficiencies are noted, the County must promptly correct those deficiencies at its sole expense and in accordance with their current levels of service and standards. The County will provide advance notice to SLEW 1, SLEW 2, and Christopher RSL and once created, the Board of Directors of the Reserve HOA, of any proposed major land disturbing work or any work that may require draining or dredging of the Lake. The County will promptly provide a copy of any inspection and maintenance report to SLEW 1, SLEW 2, and Christopher RSL and once created, the Board of Directors of the Reserve HOA, upon request.

The County is responsible only for the items of maintenance and repair specifically assumed by the County in this Agreement, and the County has no responsibility to perform any other maintenance or repair work in the Storm Drainage Easements, including, without limitation, any work necessary to preserve the aesthetic or recreational character of the Lake. Specifically, the County has no responsibility for cleaning of the Stormwater Management Facility other than as required herein nor for maintenance of adjacent grounds other than as necessary to maintain the Stormwater Management Facility's effectiveness to manage stormwater runoff.

SLEW 2, SLEW 1, and Christopher RSL and the Reserve HOA, at no cost to the County, may at its option, or shall if legally required per local, state, or federal law, perform all other maintenance and repair work on their respective Restrictive Planting Easement, Storm Drainage

Easements and Stormwater Management Access Easements granted herein as necessary to preserve the aesthetic or recreational character of their land such as, without limitation, mowing and weeding in excess of the County's routine mowing schedule, removal of litter and other debris, algae control, invasive and undesirable vegetation management, and beaver and rodent management, care and maintenance of trees and other vegetation and the maintenance and repair of all facilities and infrastructure not maintained by the County under this Agreement.

3.2. <u>Indemnification</u>. Christopher RSL, and thereafter the Reserve HOA, SLEW 1, and SLEW 2 (collectively, the "Indemnitors") will jointly and severally indemnify, defend and hold harmless the County, its agents and employees ("Indemnitees") from and against any and all third-party claims and damages, including injury or death of any person, relating to or arising out of the recreational use of the Lake; provided, however, that the Indemnitors are not obligated to indemnify, defend or hold harmless any Indemnitee if such claim results from (a) any Indemnitee's breach of this Agreement; (b) the failure of any Indemnitee to maintain the Improvements; or (c) any Indemnitee's gross negligence or willful misconduct. When seeking indemnification under this Agreement, the Indemnitee must give written notice to the Indemnitors within ten (10) days of the assertion of any claim, or the commencement of any action, suit, or proceeding; failure to give such notice shall relieve the Indemnitors of any liability hereunder.

Christopher RSL and thereafter, the Reserve HOA, SLEW 1, and SLEW 2 each agree to obtain and maintain, at their own expense, a policy or policies of general liability insurance with a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and an umbrella policy with a limit of not less than Two Million Dollars (\$2,000,000.00) with such policies naming the County as an additional insured. The policies must be issued by an insurance provider licensed to do business in the Commonwealth of Virginia having a Best's rating of "A" or better and shall provide that at least thirty (30) days prior written notice of modification or cancellation will be given to the County. No policy shall provide that the insurer waives their right of subrogation as to any party obligated to obtain insurance pursuant to this Section. Such insurance must remain in effect for the duration of this Agreement and failure to maintain such coverage upon such terms as provided herein shall constitute a material breach of this Agreement. Any party to this Agreement may request from any other party evidence that the insurance required by this section is in effect.

Upon execution of this Agreement, SLEW 1, SLEW 2, and the Reserve HOA shall be afforded immunity from civil liability as provided in Va. Code Section 62.1-44.15:41.

ARTICLE IV MAINTENANCE COSTS

4.1. Payment of Maintenance Costs. The costs incurred by the County in the performance of its administrative, management, and Maintenance obligations under Article III above and the cost of the selected contractor performing such Maintenance work are referred to as the "Maintenance Costs". The Article III Maintenance Costs shall be solely and exclusively the obligation of the County to pay and neither SLEW 1, not SLEW 2, nor Christopher RSL, nor the Reserve HOA shall be assessed any Maintenance Costs by the County.

ARTICLE V USE OF LAKE

Exclusive Use; Rules and Regulations. The parties hereto agree that the Lake is a private 5.1. facility and amenity of the SLEW 1 community, the SLEW 2 community, and the Christopher Property, and when created the Reserve HOA, and is intended for the exclusive use and access of only the residents and occupants of those properties and the County as limited by this Agreement. SLEW 1, SLEW 2, and Christopher RSL and, when created, the Reserve HOA, agree to reasonably collaborate to create a uniform set of rules and regulations governing the use of the Lake and to grant private easements amongst themselves to use the adjoining trails that surround the Lake. Neither the County nor any owner of the Lake may grant public access to the Lake, apportion their easement rights, or authorize use of the Lake or surrounding trails and land to anyone other than an owner of the Lake or the County without the written consent of all parties. If any lot owner in the SLEW 1 community, the SLEW 2 community, or the Reserve HOA or any other member of an association that owns a portion of the Lake attempts to or does grant their right of use and enjoyment in and to the Lake or any common area surrounding the Lake to any person or entity, the respective association to which the lot owner is a member will seek all available remedies at law and in equity to prohibit such assignment and grant. This provision is construed broadly so that the term "lot owner" is deemed to include any owner of common area or any owner of a subdivided lot, member of the lot owner's household and their tenants, licensees, invitees, guests, and employees and any member of their tenant's household and their licensees, invitees, guests, and employees.

It is understood by the parties that despite the Lake being converted into a Stormwater Management Facility, the County has agreed to allow the owners and occupants of SLEW 1, SLEW 2, and Christopher RSL, and the Reserve HOA thereafter, to use the Lake for fishing (not including ice fishing) and the operation of non-motorized boats. For purposes of this Agreement, non-motorized boats include, without limitation, any vessel capable of being used upon water that is not propelled by machinery such as kayaks, rowboats, canoes, and paddleboats. Paddleboards are not permitted non-motorized boats

ARTICLE VI MISCELLANEOUS

- 6.1. Run With the Land. Subject to the provisions set forth in this Section 6.1, the easements and Improvement and Maintenance obligations set forth herein shall be for the benefit of and shall burden each party, its successors and assigns and all subsequent owners of within the Reserve Community, the SLEW 1 community, and the SLEW 2 community. Upon execution by the parties, this Agreement must be recorded among the Land Records. No party to this Agreement may assign their rights to use and access the Lake or their right to use any easements granted herein to any other person or entity without the prior written consent of all parties. The easements granted herein may not be expanded or used for any purpose not identified herein without the prior written consent of the parties.
- 6.2. <u>Failure to Enforce is No Waiver</u>. The failure to enforce any requirement, restriction or standard herein contained shall not be deemed a waiver of the right to do so thereafter, or in other cases, nor of the right to enforce any other restriction.

- **6.3.** Applicable Law. This Agreement shall be construed in accordance with the laws and judicial precedents in effect in the Commonwealth of Virginia.
- **6.4.** Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance is deemed invalid or unenforceable to any extent, then the remainder of this Agreement or the application of such term, covenant or condition to any other party or circumstance shall not be affected thereby, and each such term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.
- 6.5. <u>Amendment and Termination</u>. This Agreement may be amended or terminated only by written document signed by all of the parties. Any amendment or termination of this Agreement becomes effective only when it is recorded among the Land Records.
- Agreement that continues for ten (10) business days after notice of such violation or breach is given, authorizes a non-breaching party to prosecute a proceeding at law or in equity to obtain any relief afforded under the law. The failure of any party to enforce any provision herein contained does not cause a waiver of the right to enforce any restriction in this Agreement. Any monetary judgment is subject to interest accrual at the then contract rate for Virginia provided in the Code of Virginia, as amended, from the earlier of the date such sum should have been paid or the date such judgment is entered until paid. The prevailing party shall be entitled to recover its incurred legal fees and costs.
- 6.7 No Forfeiture or Reversion. The obligations set forth in this Agreement are to be construed as covenants and not as conditions. A breach or violation of any such covenant shall not result in a forfeiture or reversion of the easements established hereunder or the property interests of the respective parties.
- **6.8** Notices to Parties. Each notice, demand, request, consent, approval, disapproval, designation or other communication that a party is required to give or make or communicate to the other party shall be addressed as follows:

If to Christopher:

Care of Christopher Management, Inc. 10461 White Granite Drive Suite 250 Oakton, Virginia 22124 Attention: E. John Regan, Jr., President Email: johnr@christophercompanies.com

If to Spring Lakes Estates West Community Association:

-	
Attention: President	
Email:	

If to Spring Lakes Estates Wes	st Homeowners Association:
Attention: President	
Email:	
With a copy to:	

Rees Broome, PC c/o Kristen Buck, Esq. 1900 Gallows Road, Suite 700 Tysons Corner, VA 22182 Email: kbuck@reesbroome.com

If to County:

Fairfax County Department of Public Works and Environmental Services Maintenance and Stormwater Management Division Attention: Public Facilities Program 10635 West Drive

Fairfax, VA 22030

Email: DPWES-MSMD-Inspections@fairfaxcounty.gov

Each party may designate a different addressee, address or telephone or facsimile number from time to time; provided, however, it has given at least five (5) days' advance notice of such change of address. Unless specifically stated to the contrary elsewhere in this Agreement, any notice shall be deemed to have been given, made or communicated, as the case may be, (i) upon delivery in the case of personal delivery or (ii) on the date one (1) business day after the same was deposited with a nationally-recognized overnight courier, properly addressed, and fully prepaid for next day delivery, or (iii) on the date electronic delivery is confirmed. However, all notices relating to (a) defaults or claims of default under this Agreement, or (b) change of notice address shall be forwarded by registered or certified mail, return receipt requested as well as deposited with a nationally-recognized overnight courier, properly addressed, and fully prepaid for next day delivery. In the event of an emergency, oral, telephonic notice may be given to the other parties, provided that such oral notice is followed up with a written notice complying with the provisions of this Section 6.8. In any and all events, any notice shall be also sent by electronic delivery to the email address set forth above on the day sent.

6.9. Cost of Legal Proceedings. If any party prevails in any legal action against any other party for a violation or breach of this Agreement, the defaulting party shall pay the costs of such proceeding and the other party's reasonable attorneys' fees. Such sums shall be paid within thirty (30) days after receipt of an invoice therefore from the party entitled to receive such costs.

- 6.10 <u>Cumulative Rights</u>. All rights, remedies and privileges granted to party pursuant to any term, provision, covenant or condition of this Agreement shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the person exercising the same from exercising such other privileges as may be granted to such person by this Agreement or at law or in equity.
- 6.11 <u>Dissolution of Associations</u>. If dissolution of any corporation or homeowners association that is a party to this Agreement, other than incident to a merger or consolidation, the real property of the respective association shall be dedicated to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. If such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any non-profit corporation, trust or other organization to be devoted to similar purposes. Any such dedication or transfer of the common area shall not be in conflict with its designation of common area.
- 6.12 Representation by County. By execution of this Agreement, the County represents and warrants that (i) the conversion of the Lake into the Stormwater Management Facility and the granting of the easements herein do not conflict with Parcel B's or Parcel C's designation of open space; (ii) this Agreement does not conflict with any of the restrictions, conditions, or provisions set forth in SLEW 2's the Deed of Dedication, Subdivision, Easement, and Vacation recorded among the Land Records in Book 6116, at Page 1256, as may be amended, or SLEW 1's Deed of Dedication, Resubdivision and Easement recorded among the Land Records in Book 5459, at Page 0623, as may be amended; and (iii) this Agreement does not conflict with any proffered conditions encumbering the real property owned by SLEW 1 or SLEW 2.
- 6.13 <u>Authority to Execute.</u> The undersigned parties represent and warrant that this Agreement is made and executed pursuant to authority properly granted to them and that they obtained all requisite approvals and consents necessary to enter into this Agreement for it to be legally binding.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Signatures of Parties Hereto Appear on the Following Pages]

#5392574v1 DWB CLEAN Merged Comments Version 9-14-22 Spring Lake Agreement 091239/000001

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement effective as of the date first set forth above.

SPRING LAKE ESTATES WEST HOMEOWNERS

ASSOCIATION, INC. By: _____ COMMONWEALTH OF VIRGINIA COUNTY OF______, to wit: I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that the foregoing Deed of Easement and Vacation and Maintenance Agreement for a Stormwater Management Facility was acknowledged before me this _______ 2022 by _______ of Spring Lake Estates West Homeowners Association, Inc., a Virginia Nonstock Corporation, on behalf of the corporation. GIVEN under my hand and seal this ____day of ______, 2022. **NOTARY PUBLIC** [seal] My commission expires: Registration Number:

[Signatures Continue on Following Pages]

SPRING LAKE ESTATES WEST COMMUNITY ASSOCIATION, INC.

By:
Name:
Its:
COMMONWEALTH OF VIRGINIA
COUNTY OF, to wit:
I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that the foregoing Deed of Easement and Vacation and Maintenance Agreement for a Stormwater Management Facility was acknowledged before me this of Spring Lake Estates West Community Association, Inc., a Virginia Nonstock Corporation, on behalf of the corporation.
GIVEN under my hand and seal thisday of, 2022.
NOTARY PUBLIC
My commission expires: [seal]
Registration Number:

[Signatures Continue on Following Pages]

CHRISTOPHER AT THE RESERVE AT SPRING LAKE, LLC, a Virginia limited liability company

By: Christopher Management, Inc., a Virginia Corporation, its Manager

	ву:	
	E. John Re	egan, Jr., President
COMMONWEALTH OF VIRGINIA		
COUNTY OF, to wit:		
I, the undersigned Notary Public, in and that the foregoing Deed of Easement and Stormwater Management Facility was acknowl 2022 by E. John Regan, Jr., President of Christothe Manager of Christopher At The Reserve at company, on behalf of the corporation.	Vacation and M ledged before me opher Manageme	Maintenance Agreement for a this, nt, Inc., a Virginia corporation,
GIVEN under my hand and seal this	day of	, 2022.
	NOTARY I	PUBLIC
My commission expires:	[seal]	
Registration Number:		

27

[Signatures Continue on Following Pages]

APPROVED AS TO LEGAL FORM	BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
	By:
	Name:
Assistant County Attorney	Title:
COMMONWEALTH OF VIRGINIA	
COUNTY OF, to wit:	
County, Virginia, whose name is signed t Maintenance Agreement for a Stormwa personally acknowledged the same in my j	on behalf of the Board of Supervisors of Fairfax of the foregoing Deed of Easement and Vacation and ter Management Facility appeared before me and
	NOTARY PUBLIC
My commission expires:	[seal]
Registration Number:	

Attachments:

Schedule 1 - Improvements

Schedule 2 - Budget

Easement Plats

Schedule 1 - Improvements

Existing Spring Lake is proposed to be reconstructed and utilized as a regional stormwater management and Best Management Practices facility. The proposed improvements include reconstruction of the existing dam embankment, substantial upgrade of the stormwater control structure and outfall pipe and trash rack, construction of a new 15-foot-wide maintenance access road from Lake Shore Drive, construction of two sediment forebays, construction of auxillary spillway, and construction and placement of safety and vegetative benches around the Lake. Spring Lake must be designed and constructed such that it does not qualify as or is not otherwise determined to be a state regulated dam. The approved design plans for the Spring Lake Improvements are incorporated in the compiled notes contained in the Site Plan and in the Subdivision Plan of Christopher RSL submitted to and approved by the County for the Reserve at Spring Lake Subdivision Project of Christopher RSL planned to be constructed on the Christopher Property.

Schedule 2- Budget

Spring Lake Dam and Forebay Budget April 14, 2022

Spring Lake Dam Budget		<u>ltem</u>
Site work	\$	1,376,200.00
Engineering	\$	150,000.00
Governmental fees	\$	50,000.00
Legal	\$ \$ \$ \$ \$ \$ \$	35,000.00
Fence	\$	25,000.00
environmental	\$	25,325.00
Geotech Engineering	\$	21,000.00
Geotech monitoring	\$	27,240.00
Arborist	\$ \$ \$ \$	5,000.00
Hand removed Trees	\$	25,000.00
Contingency & other(approx 10%)	\$	157,877.00
G&A (3%) (Hard cost only)	\$	42,103.00
Total	\$	1,939,745.00
Christopher Companies (1), (5)		(\$1,057,940.55)
The Reserve at Spring Lakes HOA	\$	(58,745.00) (4)
SLEW 1 upfront contribution Mai.	\$	-
SLEW 2 upfront contribution Mai.	\$	2
Fairfax County	\$	(596,000.00)
Slew 1 & 2 Share	\$	227,059.45
Per lot (108) (2)	\$	2,102.40

- (1) Additional \$50,000 is contingent on Fairfax County increasing their amount to \$596,000.
- (2) SLEW 1 = 9 homes, Slew 2 = 99 Homes.
- (3) Hope to get the County to contribute some of these.
- (4) 20 Years of Maintenance up front contribution.
- (5) Additional \$50,000 for Christopher Phase 2

ContributionS By Group

Christopher / Christopher HOA:

		PE	runit
Christopher Contribution	\$ 1,057,940.55	\$	40,690.02
Christopher HOA	\$ 58,745.00	_ \$	2,259.42

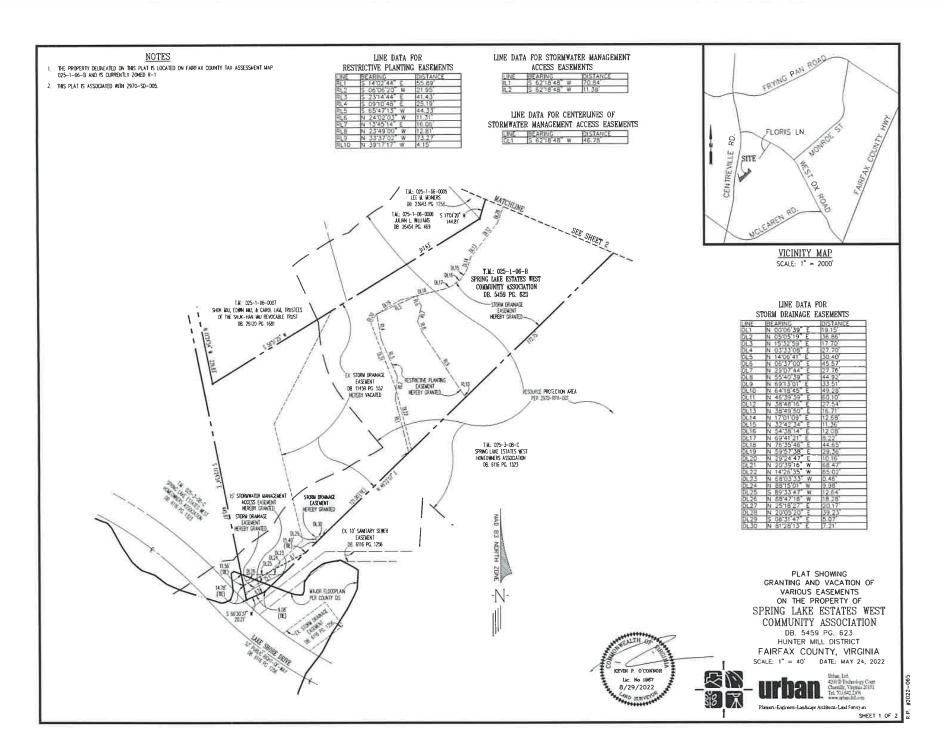
Christopher Contribution	\$	1,116,685.55	\$	42,949.44
SLEW 1				
SLEW 1 Contribution SLEW 1 Maintenance	\$	\$20,250.00	\$ \$	2,250.00
	\$	20,250.00	\$	2,250.00
SLEW 2				
SLEW 2 Contribution SLEW 2 Maintenance	\$	\$206,809.45	\$ \$	2,088.98
	\$	206,809.45	\$	2,088.98
Total:				
Fairfax County	\$	596,000.00	31%	
Christopher	\$	1,116,685.55	58%	
SLEW 1	\$ \$ \$	20,250.00	1%	
SLEW 2	\$	206,809.45	11%	
Total	\$	1,939,745.00	100%	

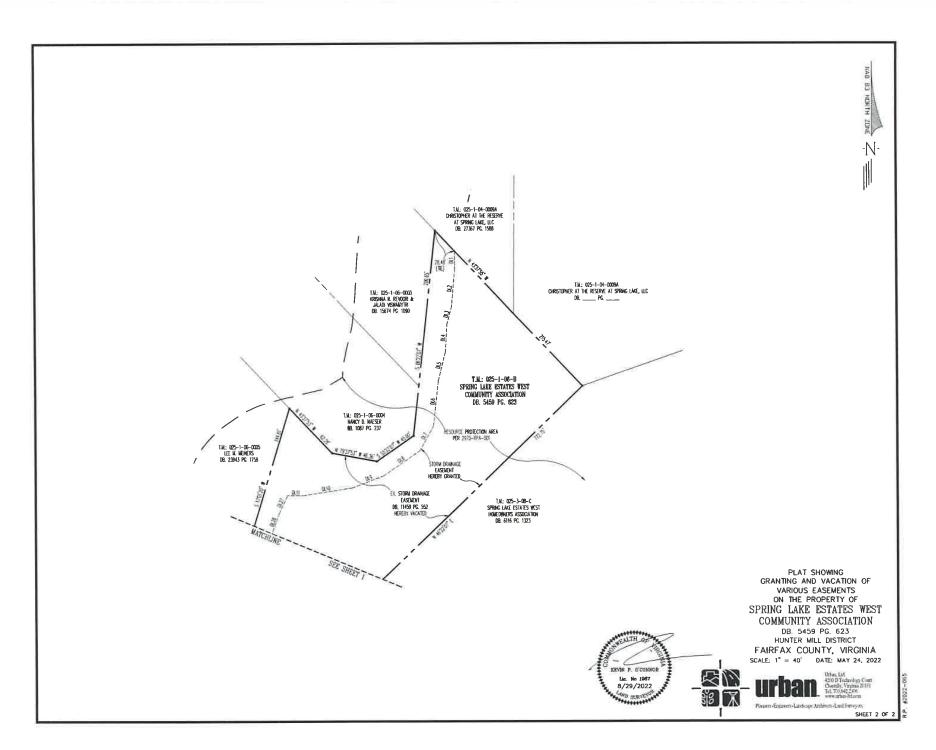
Easement Plats

Attached in following order:

SLEW 1 Easement Plat

SLEW 2 Easement Plat





NOTES

- I. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON FAIRFAX COUNTY TAX ASSESSMENT MAP 025-3-08-C AND IS CURRENTLY ZONED R-3.
- 2. THIS PLAT IS ASSOCIATED WITH 2970-50-005.

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DL82 N 88 22 56 E 6.14	
DL83 IS 72'07'59" E ID.77"	
DL84 S 85'27'59" W 21.04"	

CURVE DATA FOR BOUNDARY LINES

CURVE	RADIUS	IARC LENGTH	ICHORD LENGTH	CHORD BEARING	GELTA ANGLE	TANGENT
C1	383.26	141.29	140,49	N 52'58'41" W	21'07'19,47"	71.46
C2	435.26	242 44	239.32	N 58'22'26" W	31'54'50.52"	124.46

CURVE DATA FOR STORMWATER MANAGEMENT ACCESS EASEMENTS

CURVE	RADIUS	IARC LENGTH	ICHORD LENGTH	CHORD BEARING	DELTA ANGLE	TANGENT
IC1	63.50	35.10	34,65	N 46'28'42" E	31'40'14.41	18.01
IC2	48.50	45.99	44.29	N 35'08'44" E	54'20'09 12"	24.69

CURVE DATA FOR CENTERLINES OF STORMWATER MANAGEMENT ACCESS EASEMENTS

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	ICHORD BEARING	IDELTA: ANGLE	TANGENT
CC1	56.00	39.04	38.26	N 42'20'29 E	39'56'39.34"	20.35

LINE DATA FOR RESTRICTIVE PLANTING EASEMENTS

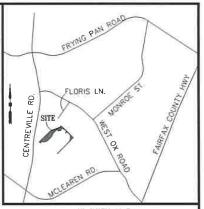
LINE	BEARING	DISTANCE
RL1	N 39'17'17" W	68.61
RL2	N 43'13'23" W	63.30
RL3	N 53'50'28" W	21.18
RL4	N 65'12'13" W	49.24
RL5	S 89'08'46" W	7.53
RL5	S 63'57'03" W	11,50
RL7 RL8	5 85'40'47" W	22.17
RL8	N 25'50'54" E	49.89
RL9	S 88"11"38" E	147.00
RL10	S 38'38'34" E	27.59
RL11	S 31'00'00" W	15,35
RL12	S 29'00'00 E	10.83
RL13	S 89'00'00" E	10.83
RL14	S 43'31'43" E	61.93
RL15	IS 14'02'44" E	21.85

LINE DATA FOR STORMWATER MANAGEMENT ACCESS EASEMENTS

LINE	IBEARING.	DISTANCE
IL1	S 621848 W	(151.56*
11.2	5 6218'48" W	13.02
11.3	S 52"18"48" W	10.76
IL4	5 52'18'48" W	99.06

LINE DATA FOR CENTERLINES OF STORMWATER MANAGEMENT ACCESS EASEMENTS

LINE	BEARING	DISTANCE
CLI	S 62'18'48" W	125.31
1.2	S 52"18"48" W	6.31



VICINITY MAP SCALE: 1" = 2000'

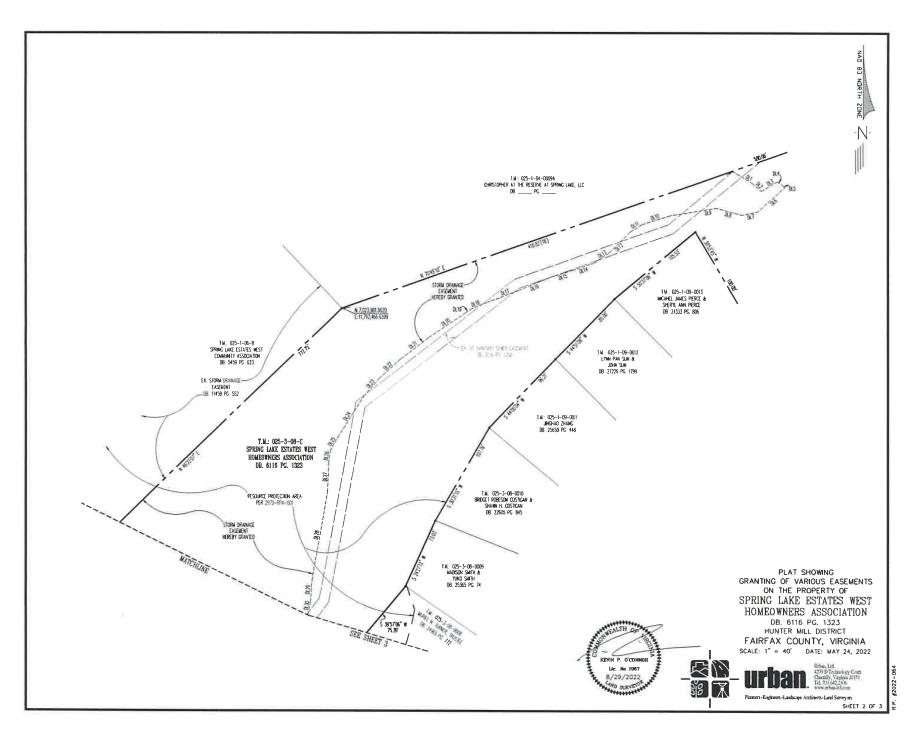
PLAT SHOWING
GRANTING OF VARIOUS EASEMENTS
ON THE PROPERTY OF
SPRING LAKE ESTATES WEST
HOMEOWNERS ASSOCIATION
DB. 6116 PG. 1323
HUNTER MILL DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE: N/A DATE: MAY 24, 2022

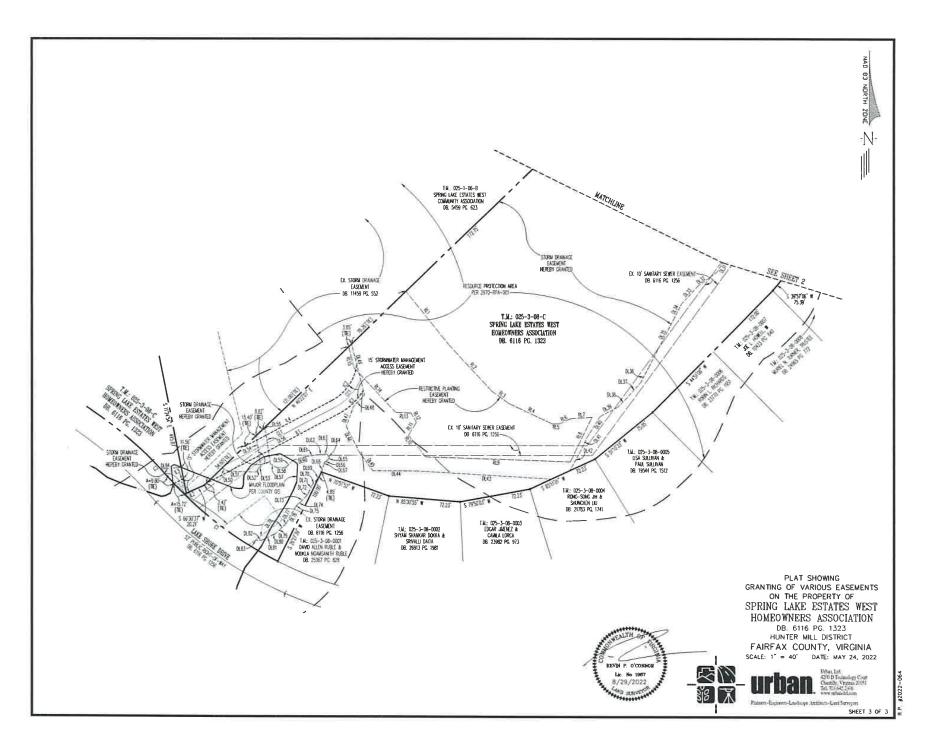
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Urban, Ltd. 4200 D Technology Court Chantilly, Virginia 20151 Tel. 703:642-2366 www.nrban-lidcom

Planuers-Engineers - Landscope Architects - Land Surveyors
SHEET 1 OF 3

KEVIN P. O'CONNOR
Lie. No 1987
8/29/2022





ACTION - 4

Amendment of the Board's Written Policy Governing Participation by Electronic Communication of Board Members in Public Meetings

ISSUE:

Virginia Code § 2.2-3708.3 authorizes the remote participation of members of public bodies in public meetings under certain conditions. On March 24, 2020, the Board adopted a Written Policy Governing Participation By Electronic Communication of Board Members in Public Meetings. On July 13, 2021, the Board amended that Policy due to a legislative change that was effective July 1, 2021. Effective September 1, 2022, the General Assembly further amended Virginia Code § 2.2-3708.3 to allow a member of a public body to participate remotely if that member's principal residence is more than 60 miles from the meeting location. The amendment also requires the public body to create records of requests to participate remotely, and it makes clear that the policy may be extended to committees and subcommittees. The proposed amendments to the Policy reflect these statutory changes.

RECOMMENDATION:

The County Executive Recommends that the Board adopt the Policy for Remote Participation in Meetings (Attachment 2) amending the Board's existing Policy.

TIMING:

Board action is requested on October 11, 2022, to adopt amendments expanding remote participation of Board members in public meetings.

BACKGROUND:

The Virginia Freedom of Information Act (FOIA) generally prohibits meetings of public bodies, including the Board of Supervisors, from being conducted through telephonic, video, electronic, or other electronic communication means where the members of the public body are not physically assembled to discuss or transact public business. Va. Code § 2.2-3707(B). There are two exceptions to this prohibition that are applicable to the Board. First, while under a State of Emergency, the Board may conduct a meeting entirely through electronic means if it is impracticable or unsafe to assemble a quorum in a single location, and the meeting solely addresses the emergency. Va. Code § 2.2-3708.2. Second, individual members may participate remotely in the Board's in-person meetings if they meet the requirements of the Board's Policy for Participation for

Remote Participation in Meetings. The Board's current Policy was adopted on July 13, 2021.

The current Policy allows individual members to participate remotely if:

- (1) A quorum of the public body is physically assembled at a primary meeting location;
- (2) The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary location; and
- (3) The member of the public body requesting remote participation is unable to attend the meeting either due to (1) a temporary or permanent disability or other medical condition that prevents the member's physical attendance; (2) a family member's medical condition that requires the member to provide care for such family member prevents the member's physical attendance; or (3) a personal matter that is identified with specificity.

The 2022 General Assembly amended Va. Code §§ 2-2-3701, -3708.2, and -3708.3, effective September 1, 2022. The amendments:

- (1) Allow a member of a public body to participate remotely if that member's principal residence is more than 60 miles from the meeting location; Va. Code § 2.2-3708.3(B)(3);
- (2) Require the public body to create and maintain records of requests to participate remotely; Va. Code § 2.2-3708.3(D)(1);
- (3) Clarify that the remote location from which the member participates may be identified in the minutes by a general description; Va. Code § 2.2-3708.3(B); and
- (4) Allow a public body to adopt its remote participation policy on behalf of any of its committees, subcommittees, or other entities created to perform delegated functions of the public body or to advise the public body. Va. Code § 2.2-3708.3(D).

The proposed amendments to the Policy reflect these statutory changes. Amending the Board's Policy to reflect the legislative changes is recommended at this time.

EQUITY IMPACT :	
None.	
FIGORI INDAGE	
FISCAL IMPACT:	
None.	

ENCLOSED DOCUMENTS:

Attachment 1- Amended Policy for Remote Participation in Meetings with track changes Attachment 2- Amended Policy for Remote Participation in Meetings clean

STAFF:

Jill Cooper, Clerk to the Board

ASSIGNED COUNSEL:

Sarah L. Annear, Assistant County Attorney

THE FAIRFAX COUNTY BOARD OF SUPERVISORS' POLICY FOR REMOTE PARTICIPATION IN MEETINGS

1. **AUTHORITY AND SCOPE.**

- a. This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.3 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.
- b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or this Board. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2.

2. **DEFINITIONS.**

- a. "Board" means the Fairfax County Board of Supervisors, and any committee or subcommittee of the Board.
 - b. "**Member**" means any member of the Board.
- c. "Remote participation", "remotely participate", or "participate remotely" mean participation by a member of the Board via telephonic, video, or other audio or combined audio and video electronic communication method where the member is not physically assembled with the other members of the Board.
 - d. "Meeting" means a meeting as defined by Va. Code § 2.2-3701.
- e. "**Notify**" or "**notifies**," for purposes of this policy, means actual notice, including, but not limited to, email, text, telephone, or in-person notice.

3. MANDATORY REQUIREMENTS

Regardless of the reasons why the member is participating in a meeting from a remote location by electronic communication means, the following conditions must be met for the member to participate remotely:

- a. A quorum of the Board must be physically assembled at the primary or central meeting location; and
- b. Arrangements have been made for the voice of the remotely participating member to be heard by all persons at the primary or central meeting location. If at any point during the meeting the voice of the remotely participating member is no longer able to be heard by all persons at the meeting location, the remotely participating member shall no longer be permitted to participate remotely.

4. **PROCESS TO REQUEST REMOTE PARTICPATION**

- a. On or before the day of the meeting, and at any point before the meeting begins, the requesting member must notify the Board Chair (or the Vice-Chair if the requesting member is the Chair) or their designee that they are unable to physically attend a meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance, or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, (iii) their principal residence location more than 60 miles from the meeting location, or (ivii) a personal matter and identifies with specificity the nature of the personal matter.
- b. The requesting member shall also notify the Clerk of the Board of their request, but their failure to do so shall not affect their ability to remotely participate.
- c. If the requesting member is unable to physically attend the meeting due to a personal matter, the requesting member must state with specificity the nature of the personal matter. Remote participation due to a personal matter is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. There is no limit to the number of times that a member may participate remotely for the other authorized purposes listed in (i) (iii) above. due to (i) a temporary or permanent disability or other medical condition, or (ii) that of a family member that requires the member to provide care, or (iii) if their principal residence is more than 60 miles from the meeting location.

a temporary or permanent disability or other medical condition or that of a family member that requires the member to provide care.

- d. The requesting member is not obligated to provide independent verification regarding the temporary or permanent disability or other medical condition or the family member's medical condition that prevents their physical attendance at the meeting.
- e. The Chair (or the Vice-Chair if the requesting member is the Chair) or their designee shall promptly notify the requesting member whether their request is in conformance with this policy, and therefore approved or disapproved.

5. PROCESS TO CONFIRM APPROVAL OR DISAPPROVAL OF PARTICIPATION FROM A REMOTE LOCATION

When a quorum of the Board has assembled for the meeting, the Board shall vote to determine whether:

a. The Chair's decision to approve or disapprove the requesting member's request to participate from a remote location was in conformance with this policy; and

b. The voice of the remotely participating member can be heard by all persons at the primary or central meeting location.

6. **RECORDING IN MINUTES:**

- a. If the member is allowed to participate remotely due to a temporary or permanent disability or other medical condition, or a family member's medical condition that requires the member to provide care to the family member, or because their principal residence is located more than 60 miles from the meeting location the Board shall record in its minutes (1) the Board's approval of the member's remote participation; and (2) the remote location from which the member participated.
- b. If the member is allowed to participate remotely due to a personal matter, such matter shall be cited in the minutes with specificity, as well as how many times the member has attended remotely due to a personal matter, and the remote location from which the member participated.
- c. If a member's request to participate remotely is disapproved, the disapproval, including the grounds upon which the requested participation violates this policy or VFOIA, shall be recorded in the minutes with specificity.

7. <u>CLOSED SESSION</u>

If the Board goes into closed session, the member participating remotely shall ensure that no third party is able to hear or otherwise observe the closed meeting.

8. STRICT AND UNIFORM APPLICATION OF THIS POLICY

This policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

This policy shall also apply to the Board's committees and shall replace any policies adopted prior to September 2022.

The Clerk of the Board or Board Chair shall ensure the request is documented and maintain the member's request to participate remotely as required by records retention laws, regulations, and policies.

THE FAIRFAX COUNTY BOARD OF SUPERVISORS' POLICY FOR REMOTE PARTICIPATION IN MEETINGS

1. **AUTHORITY AND SCOPE.**

- a. This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.3 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.
- b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or this Board. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2.

2. **DEFINITIONS.**

- a. "**Board**" means the Fairfax County Board of Supervisors, and any committee or subcommittee of the Board.
 - b. "**Member**" means any member of the Board.
- c. "Remote participation", "remotely participate", or "participate remotely" mean participation by a member of the Board via telephonic, video, or other audio or combined audio and video electronic communication method where the member is not physically assembled with the other members of the Board.
 - d. "Meeting" means a meeting as defined by Va. Code § 2.2-3701.
- e. "**Notify**" or "**notifies**," for purposes of this policy, means actual notice, including, but not limited to, email, text, telephone, or in-person notice.

3. MANDATORY REQUIREMENTS

Regardless of the reasons why the member is participating in a meeting from a remote location by electronic communication means, the following conditions must be met for the member to participate remotely:

- a. A quorum of the Board must be physically assembled at the primary or central meeting location; and
- b. Arrangements have been made for the voice of the remotely participating member to be heard by all persons at the primary or central meeting location. If at any point during the meeting the voice of the remotely participating member is no longer able to be heard by all persons at the meeting location, the remotely participating member shall no longer be permitted to participate remotely.

4. PROCESS TO REQUEST REMOTE PARTICPATION

- a. On or before the day of the meeting, and at any point before the meeting begins, the requesting member must notify the Board Chair (or the Vice-Chair if the requesting member is the Chair) or their designee that they are unable to physically attend a meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance, or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance, (iii) their principal residence location more than 60 miles from the meeting location, or (iv) a personal matter and identifies with specificity the nature of the personal matter.
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- c. If the requesting member is unable to physically attend the meeting due to a personal matter, the requesting member must state with specificity the nature of the personal matter. Remote participation due to a personal matter is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. There is no limit to the number of times that a member may participate remotely due to (i) a temporary or permanent disability or other medical condition, or (ii) that of a family member that requires the member to provide care, or (iii) if their principal residence is more than 60 miles from the meeting location.
- d. The requesting member is not obligated to provide independent verification regarding the temporary or permanent disability or other medical condition or the family member's medical condition that prevents their physical attendance at the meeting.
- e. The Chair (or the Vice-Chair if the requesting member is the Chair) or their designee shall promptly notify the requesting member whether their request is in conformance with this policy, and therefore approved or disapproved.

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- b. If the member is allowed to participate remotely due to a personal matter, such matter shall be cited in the minutes with specificity, as well as how many times the member has attended remotely due to a personal matter, and the remote location from which the member participated.
- c. If a member's request to participate remotely is disapproved, the disapproval, including the grounds upon which the requested participation violates this policy or VFOIA, shall be recorded in the minutes with specificity.

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This policy shall also apply to the Board's committees and shall replace any policies adopted prior to September 2022.

The Clerk of the Board or Board Chair shall ensure the request is documented and maintain the member's request to participate remotely as required by records retention laws, regulations, and policies.

ACTION - 5

Endorsement of the City of Alexandria's Application for the United States Department of Transportation's FY 2022 Reconnecting Communities Pilot (RCP) Discretionary Grant Program (Mason District)

ISSUE:

Board approval is requested of a letter (Attachment 1) supporting an application being submitted by the City of Alexandria to the United States Department of Transportation (USDOT) for the FY 2022 Reconnecting Communities Pilot (RCP) Discretionary Grant Program for their I-395 Bicycle and Pedestrian Bridge at West End Alexandria Feasibility Study.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve Attachment 1, in substantial form, supporting a discretionary federal grant application by the City of Alexandria for USDOT's FY 2022 Reconnecting Communities Pilot (RCP) Program for the I-395 Bicycle and Pedestrian Bridge at West End Alexandria Feasibility Study.

TIMING:

Board of Supervisors' approval is requested on October 11, 2022, to provide the City of Alexandria a letter of support for the application, which was due on October 13, 2022. USDOT is expected to approve projects for its FY 2022 Reconnecting Communities Pilot Program by January 2023.

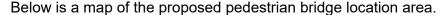
BACKGROUND:

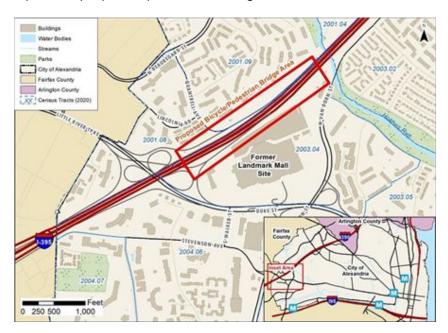
On June 29, 2022, the USDOT released a Notice of Funding Opportunity (NOFO) for FY 2022 RCP Discretionary Grant Program funding to support projects that reconnect communities by removing, retrofitting, or mitigating highways or other transportation facilities that create barriers to community connectivity, including to mobility, access, or economic development. The emphasis is on communities separated by transportation projects in the past.

Fairfax County staff reviewed locations throughout the County to determine whether any would meet the program's criteria but felt that none fit the criteria well. However, County staff was contacted by the City of Alexandria requesting support for their I-395 Bicycle and Pedestrian Bridge at West End Alexandria Feasibility Study project.

The proposed application would be for up to \$300,000 for a study to determine the feasibility of providing a bridge from the redeveloped Landmark Mall Site, which is planned to become West End Alexandria, across Interstate 395 (I-395) to connect to communities to the west. The bridge is anticipated to be located between the I-395/Duke Street Interchange to the south and Holmes Run Stream to the north. The distance across I-395 and the speed of the vehicles make the interstate a significant barrier to pedestrians and cyclists, with only a few key crossing locations at bridges and underpasses in this area. This bridge, when completed, will make bicycle and pedestrian access to the redeveloped Landmark site more convenient to Fairfax County residents in the Lincolnia area and provide residents with safe access to new development in Alexandria. Further, the Census tracts directly west of the interstate in the proposed study area are transportation disadvantaged, economically disadvantaged, and equity disadvantaged; and this proposed bridge would help alleviate inequities through better access to economic opportunities, medical care, groceries, and a transit station servicing future transitways and other high frequency transit.

This connection has been identified in several local and regional plans including the Northern Virginia Transportation Commission's (NVTA's) TransAction Plan and the Transportation Planning Board's (TRB's) Visualize 2045. As a part of this project would impact communities in Fairfax County, staff recommends that the Board support the submission of the grant application.





FISCAL IMPACT:

There is no direct fiscal impact associated with this action.

ENCLOSED DOCUMENTS:

Attachment 1 – Letter Endorsing the City of Alexandria Application for the USDOT FY 2022 Reconnecting Communities Pilot Discretionary Grant Program

STAFF:

Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Noelle Dominguez, Chief, Coordination and Funding Division, FCDOT
Ray Johnson, Chief, Funding Section, FCDOT
Christina Cain, Transportation Planner, Coordination and Funding Division, FCDOT



COUNTY OF FAIRFAX BOARD OF SUPERVISORS FAIRFAX, VIRGINIA 22035

Suite 530 12000 GOVERNMENT CENTER PARKWAY FAIRFAX, VIRGINIA 22035-0071

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

chairman@fairfaxcounty.gov

JEFFREY C. MCKAY CHAIRMAN

October 11, 2022

The Honorable Pete Buttigieg, Secretary U.S. Department of Transportation 1200 New Jersey Avenue SE Washington, DC 20590

Reference: Fairfax County's Letter of Support for the City of Alexandria's FY 2023 Reconnecting Communities Pilot (RCP) Application

Dear Secretary Buttigieg:

On behalf of the Fairfax County Board of Supervisors, I am writing in support of the City of Alexandria's 2022 U.S. Department of Transportation's (USDOT) Reconnecting Communities Pilot (RCP) discretionary grant application for their I-395 Bicycle and Pedestrian Bridge at West End Alexandria Feasibility Study. The Fairfax County border is only approximately half a mile from the proposed bridge location.

The City is seeking \$300,000 funding from USDOT to study the feasibility of a bicycle and pedestrian bridge across I-395 to connect the redeveloped Landmark Mall site, which is planned to become West End Alexandria, to the neighborhoods to the west, thereby providing safe and direct access to jobs and amenities on both sides of the interstate. The distance across I-395 and the speed of the vehicles, along with the fact that there are only a few key crossing locations at bridges and underpasses in the area, make I-395 a significant barrier to pedestrians and cyclists. The bridge is anticipated be located between the I-395/Duke Street Interchange to the south and Holmes Run Stream to the north, providing a needed connection across the heavily used interstate.

This project will make bicycle and pedestrian access to the redeveloped Landmark site more convenient to Fairfax County residents in this area. Further, the Census tracts directly west of the interstate in the proposed study area are transportation disadvantaged, economically disadvantaged, and equity disadvantaged; and this proposed bridge would help alleviate inequities through better access to economic opportunities, medical care, groceries, and a transit station servicing future transitways and other high frequency transit.

Fairfax County and the City of Alexandria have long partnered on various infrastructure projects to benefit the communities, residents, businesses and stakeholders in the region, and we look forward to continuing to do so. For these reasons, we urge your positive consideration of the City's grant application. Should you have questions, please contact Noelle Dominguez at (703) 877-5665 or email noelle.dominguez@fairfaxcounty.gov.

The Honorable Pete Buttigieg October 11, 2022 Page Two

Sincerely,

Jeffrey C. McKay Chairman

cc: Members, Fairfax County Board of Supervisors
Justin Wilson, Mayor of the City of Alexandria
Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Tom Biesiadny, Director, Department of Transportation

ACTION - 6

Approval of and Authorization to Execute an Agreement with Capital One Bank (USA), NA, Capital One Tysons Block C Owner, LLC, 1750 Old Meadow, LLC, 1820 Dolley Madison, LLC, SCG Development Partners, LLC, and the Fairfax County Redevelopment and Housing Authority, Associated with Development of Somos at McLean Metro, McLean, Virginia (Providence District)

<u>ISSUE</u>:

Board approval of and authorization to sign a Workforce Dwelling Unit Swap Agreement (Agreement) between: Capital One Bank (USA), NA, Capital One Tysons Block C Owner, LLC, 1750 Old Meadow, LLC, and 1820 Dolley Madison, LLC (collectively, Capital One); SCG Development Partners, LLC (SCG); and the Fairfax County Redevelopment and Housing Authority (FCRHA), associated with the workforce dwelling unit (WDU) requirement of the Somos at McLean Metro development in the Providence District.

RECOMMENDATION:

The County Executive recommends that the Board approve and authorize his execution of the Agreement substantially in the form attached, with such changes, insertions and omissions as may be approved by the County Executive in consultation with the County Attorney.

TIMING:

Board of Supervisors' action is requested on October 11, 2022.

BACKGROUND:

On October 11, 2022, the Board will consider RZ 2021-PR-00022 – Somos at Tysons LLC (Rezoning Case), for the rezoning and approval of the conceptual and final development plans to permit the mixed-use multi-family residential development known as Somos at McLean Metro (Project), which is located at 1750 Old Meadow Road in McLean, Virginia, at Tax Map No. Tax Map No. 29-4((6))- 100A (Property). SCG, an affiliate of the applicant, is the contract purchaser of the Property. It is anticipated that the Project will include the construction of 453 affordable rental units. The maximum rents shall be affordable to households with incomes at or below 70 percent of the Area Median Income (AMI) as published annually by the U.S. Department of Housing and Urban Development.

Pursuant to Capital One's existing proffers, together with its election to opt into the revised WDU policy, Capital One is obligated to provide a total of 178 WDUs – all affordable at 60 percent of the Area Median Income – on its nearby properties. Under the Agreement, Capital One's WDU obligations will be transferred to the Project site, resulting in the delivery of more affordable housing, and at deeper affordability, more quickly than if they had been developed solely by Capital One. In other words, the Capital One WDUs leverage and unlock the affordable development of the Project.

The Agreement also provides that SCG, as contract purchaser, will convey the Property to the FCRHA at closing. The FCRHA will then lease the Property to SCG under one or more separate ground leases, which will provide for the affordability of the units for a 99-year term.

The Board has previously authorized the FCRHA to provide Project funding for both the acquisition of the Property by the FCRHA as well as a subordinate Blueprint loan to the developer. In addition, the FCRHA has approved both the overall project through the approval of a development agreement and the Blueprint loan.

ENCLOSED DOCUMENTS:

Attachment 1 – Agreement

STAFF:

Christopher A. Leonard, Deputy County Executive

Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)

Anna Shapiro, Deputy Director, Real Estate, Finance and Development, HCD Mark Buenavista, Director, Design, Development, and Construction Division, HCD

ASSIGNED COUNSEL:

Cynthia A. Bailey, Deputy County Attorney Susan L. Timoner, Assistant County Attorney

WORKFORCE DWELLING UNIT SWAP AGREEMENT

This WDU Swap Agreement is made as of this day of	, 2022
("Agreement") by and among Capital One Bank (USA), National Association ("COBNA"),
Capital One Tysons Block C Owner, LLC ("Block C Owner"), 1750 Old Meado	ow, LLC (" 1750
Owner") and 1820 Dolley Madison, LLC ("1820 Owner", collectively with CO	BNA, Block C
Owner and 1750 Owner, "Capital One"), SCG Development Partners, LLC ("SG	$\mathbb{C}\mathbf{G}$ "), Fairfax
County (the "County"), and the Fairfax County Redevelopment and Housing Au	uthority (the
"FCRHA").	•

RECITALS

- A. Capital One owns the following properties, each located in Tysons, Virginia: (1) its headquarters property, identified as Tax Map Nos. 29-4((5))(1) -A thru -F (the "Campus"), (2) the Capital One East (formerly known as Scotts Run North) property, identified as Tax Map Nos. 29-4 ((5))-9, -9A and -10A ("Capital One East"), and (3) 1750 Old Meadow Road, Tysons, VA, identified as Tax Map No. 29-4((6))- 100A ("1750 Old Meadow"). Legal descriptions of the Campus, Capital One East and 1750 Old Meadow are attached as Exhibits A-1, A-2 and A-3, respectively.
- B. The Campus is subject to the Capital One Proffers dated June 29, 2017, PCA 2010-PR-021-02 (as amended, "Campus Proffers") and Capital One East is subject to the Proffers dated May 29, 2015, RZ 2011-PR-009 ("East Proffers"). Under the Campus Proffers and the East Proffers (collectively, the "Capital One Proffers"), the owners of those properties are required to construct and develop on the properties Workforce Dwelling Units ("WDUs"), as more particularly described in the respective Capital One Proffers (the "Capital One WDU Commitment"). It is expected that an aggregate total of up to three hundred fifty-six (356) WDUs would be delivered under the proffers, which is 20% of the estimated total development of 1,779 units for both the Campus and SRN (the "Projected Capital One Units").
- C. Under the policy amendments adopted by the Board of Supervisors on February 23, 2021 (the "Policy Amendments"), the Capital One WDU Commitment can be 178 WDUs (10%) as long as the applicant opts into the Policy Amendments and the WDUs are affordable to residents earning 60% of the area median income ("AMI"). Each of the Capital One Proffers further provides that Capital One reserves the right to enter into separate binding agreements with the appropriate County agency as to the terms and conditions of the administration of the WDUs.
- D. 1750 Old Meadow is not currently subject to proffers.
- E. 1750 Owner entered into an agreement (the "**PSA**") with SCG to sell 1750 Old Meadow to SCG, subject to certain conditions precedent. These conditions include, without limitation, the following:

- (1) three hundred fifty-six (356) (or one hundred seventy-eight (178) under the Policy Amendments) of the multi-family rental housing units to be constructed and developed by SCG on 1750 Old Meadow will be designated as affordable housing and documented in a written agreement (the "1750 Affordability Commitment"), and
- (2) obtaining County agreement that the satisfaction of the 1750 Affordability Commitment on 1750 Old Meadow will fully satisfy the Capital One WDU Commitment (the "**WDU Swap**") as to the Projected Capital One Units. 1750 Owner and SCG acknowledge that the purchase price set forth in the PSA is in consideration of the WDU Swap.
- F. SCG, with 1750 Owner consent, filed an application with the County (RZ/CDP/FDP 2021-PR-00022) regarding (i) rezoning 1750 Old Meadow to the "PTC District" as a multi-family residential property (the "**Rezoning**"), (ii) the 1750 Affordability Commitment, and (iii) the WDU Swap. As part of the Rezoning, Capital One desires to have the County approve the following development options for 1750 Old Meadow:
 - (1) a conceptual development plan (CDP) and final development plan (FDP) option that provides for approximately 460 total residential units with 300 of those units being income restricted at 60% AMI, which would more than satisfy the Tysons WDU policy for the Campus, Capital One East, and 1750 Old Meadow (collectively) under the Policy Amendments (which collectively would only require 224 units at 60% AMI), as more fully described (with unit mix and "pricing") in Exhibit B attached hereto (the "Affordability Rezoning Option"); and
 - (2) a CDP-only option that provides for approximately 460 total residential units which includes the number of WDUs required to meet the Tysons WDU policy in effect at the time of the rezoning for just those approximately 460 units on the 1750 Old Meadow property, with the rest of the units on the 1750 Old Meadow property developed as market rate units (the "Old Meadow Market Rezoning Option"). If 1750 Old Meadow is developed under the Old Meadow Market Rezoning Option, the Capital One WDU Commitment proffers will remain in full effect and there will be no WDU Swap (collectively the "Market Rezoning Option").
- G. The FCRHA has expressed interest in participating in the acquisition and development of 1750 Old Meadow under (i) the terms and conditions of this Agreement and (ii) the terms and conditions of that certain development agreement dated as of the date hereof by and between SCG and the FCRHA (the "**Development Agreement**").
- H. As the Rezoning and this Agreement runs with the land, it is not personal to SCG. Capital One and the County may proceed with the Rezoning and the implementation of this Agreement irrespective of SCG completing the Rezoning and/or consummating Settlement on 1750 Old Meadow in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Capital One, SCG, the County, and the FCRHA agree as follows:

I. TERM. This Agreement will commence on the day hereof and terminate in accordance with its terms and conditions.

II. PSA SETTLEMENT.

- A. **PSA Settlement**. Provided that the Rezoning is approved, Capital One, SCG, the FCRHA and the County expect that closing under the PSA (the "**Settlement**") will occur on or before December 31, 2022 (the "**Settlement Date**"), that the FCRHA will take title to 1750 Old Meadow (SCG must assign its rights under its existing PSA with 1750 Owner to the FCRHA or direct Capital One to convey 1750 Old Meadow to the FCHRA at Settlement), and that SCG must thereafter develop 1750 Old Meadow in accordance with the Affordability Rezoning Option and the Development Agreement.
- B. Effect of Settlement. Upon such Settlement and conveyance of 1750 Old Meadow to the FCRHA, the WDU Swap will become immediately effective on the Settlement Date in accordance with the terms and conditions of this Agreement, and SCG will thereafter develop 1750 Old Meadow in accordance with the Affordability Rezoning Option and the Development Agreement. In such event, this Agreement will terminate immediately after the WDU Swap becomes effective on the Settlement Date and the Determinations (as defined below) are filed without further action of the parties.

C. Expectations Not Met.

- (i) SCG Failure to Close Under PSA. SCG consummating Settlement is not a precondition to Capital One, the FCRHA and the County otherwise proceeding under this Agreement. If SCG and 1750 Owner do not consummate Settlement for any reason, and Capital One delivers notice to the County and the FCRHA regarding such failure, Capital One, at its election, if it obtains approval of the Rezoning, may convey 1750 Old Meadow directly to the FCRHA, under the terms and conditions of (1) the PSA, including the Settlement Date, or (2) an amendment to this Agreement on terms and conditions acceptable to Capital One, the County and the FCRHA. In the event that the FCRHA acquires title to 1750 Old Meadow, the WDU Swap will become immediately effective on the date of conveyance to the FCRHA and this Agreement will thereafter terminate without further action of the parties (except the filing of the Determinations).
- (ii) FCRHA Failure to Take Title at Settlement. If for any reason the FCRHA does not acquire title to 1750 Old Meadow at Settlement, provided that 1750 Owner and SCG have documented to the FCRHA and the County that they are ready, willing, and able to close under the PSA, then at Settlement 1750 Owner and SCG will enter into and record in the public records an agreement that confirms the purchaser's obligations with

respect to the 1750 Affordability Commitment and development of 1750 Old Meadow in accordance with the Affordability Rezoning Option, and its acceptance of the obligation to satisfy the Capital One WDU Commitment on 1750 Old Meadow (the "Agreement Regarding Construction of WDUs"). The County and the FCRHA may, but are not required to, be parties to the Agreement Regarding Construction of WDUs. The terms of the PSA will govern with respect to the terms and conditions to be included in the Agreement Regarding Construction of WDUs; provided, however, that the Agreement Regarding Construction of WDUs must include a private restrictive covenant stipulating that the exclusive use of 1750 Old Meadow must be the Affordability Rezoning Option and terms regarding the County's, and if the FCRHA is a party, the FCRHA's ability to enforce such covenant. Upon the recordation of the Agreement Regarding Construction of WDUs, the WDU Swap will become immediately effective and this Agreement will thereafter terminate without further action of the parties (except the filing of the Determinations).

(iii) Capital One Reservation. In the event that (i) SCG fails to close under the PSA and (ii) the FCRHA does not take title to 1750 Old Meadow in accordance with the terms of Section II.C above, Capital One may thereafter enter into and record an Agreement Regarding Construction of WDUs, which includes the terms described in Section II.C(ii) above, either committing to develop 1750 Old Meadow in accordance with the terms of the Agreement Regarding Construction of WDUs itself or requiring another party who purchases 1750 Old Meadow to develop such property in accordance with such Agreement Regarding Construction of WDUs. Upon the recordation of the Agreement Regarding Construction of WDUs, the WDU Swap will become immediately effective and this Agreement will thereafter terminate without further action of the parties (except the filing of the Determinations).

III. ACKNOWLEDGEMENTS.

A. **Standalone Properties**. Capital One and SCG desire, and the County agrees, that other than the WDU Swap, each of the properties (the Campus, Capital One East and 1750 Old Meadow) must be viewed as a separate and distinct property for purposes of zoning. In other words, the owners of each property will be obligated to satisfy the proffer obligations only for their own properties and may not satisfy any other of their respective proffer obligations offsite (except as otherwise permitted by their respective proffers or applicable public policy). In furtherance of the foregoing, the County acknowledges that the owners of the Campus and Capital One East may develop all of the 1,779 Projected Capital One Units on their respective properties as market rate units, so long as 1750 Old Meadow is conveyed to the FCRHA or an acceptable Agreement Regarding Construction of WDUs is executed. This Agreement does not apply to any residential units developed on the Campus or Capital One East in excess of the 1,779 Projected

- Capital One Units upon which this Agreement is based. Any such units are subject to the terms of Section III.B below.
- B. Capital One Acknowledgement. Capital One acknowledges that the first to occur of (i) the conveyance of 1750 Old Meadow to the FCRHA or (ii) the execution of the Agreement Regarding Construction of WDUs satisfies Capital One's WDU Commitment only with regard to the Projected Capital One Units. Units developed on the Campus or Capital One East in excess of the 1,779 of Projected Capital One Units are not governed by this Agreement and are subject to the WDU Policy and any proffers applicable to those units. WDU obligations derived from those excess units will be located on the Campus or Capital One East or may be relocated under the WDU Policy or a separate agreement.
- IV. FULL SATISFACTION. The County acknowledges and agrees that each of COBNA, Block C Owner, and 1820 Owner will have fully satisfied its obligations with respect to Proffer 59 (except for subparagraph 59C, which is not satisfied by this Agreement) of the Campus Proffers and Proffers 81-82 of the Capital One East Proffers (as applicable) for the Projected Capital One Units upon the first to occur of (1) fee simple conveyance of 1750 Old Meadow to the FCRHA, or (2) delivery to the County of the Agreement Regarding Construction of WDUs executed by (i) Capital One and (ii) if Capital One is not developing 1750 Old Meadow itself under an Agreement Regarding Construction of WDUs, SCG or another purchaser of 1750 Old Meadow. At such time as the WDU Swap becomes effective under this Agreement, the County will promptly file determinations with the Department of Land Development Services indicating the effect of the WDU Swap upon each of 1750 Old Meadow, the Campus and Capital One East (the "Determinations"). In the event that the parties are proceeding under clause (2) with a party other than SCG, Capital One retains the right to satisfy the 1750 Affordability Commitment either by (i) the Affordability Rezoning Option described on Exhibit B or (ii) providing an alternative affordability housing option approved by the County, the FCRHA and Capital One that generally reflects the primary objectives of the Affordability Rezoning Option.

V. DEFAULT AND REMEDIES.

A. **Default, Notice and Cure**. In the event that any party fails to timely perform its obligations under this Agreement, prior to a non-defaulting party exercising any remedy hereunder, one or more non-defaulting party must deliver written notice to the defaulting party and the defaulting party must have a reasonable opportunity to cure the default. The length of the cure opportunity must be reasonable in light of the circumstances and type of default, but in no event may the length of a cure opportunity be less than thirty (30) days, except in the event of an emergency involving imminent harm to any person or imminent substantial damage to property. Nothing in this Agreement will extend the time to perform or the time to cure a default under the PSA or the Development Agreement.

- B. **Injunctive Relief**. In addition to any other remedy available at law, in equity, or otherwise, after the giving of notice and a reasonable opportunity to cure under <u>Section V.A</u>, a non-defaulting party will have the right to seek to enjoin any breach hereunder and/or obtain specific performance of this Agreement by the defaulting party upon meeting its burden of proof of such breach as required by applicable statute or rule of law.
- C. Unique Qualities. Because this Agreement is a unique agreement, the rights and benefits that will accrue to each party by reason of this Agreement are unique, and a non-defaulting party may not be adequately compensated in monetary damages for a defaulting party's failure to comply with its obligations under this Agreement; therefore, each party will have the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that another party violates its obligations under this Agreement (after notice and opportunity to cure).
- D. **Limitation of Liability**. In no event will any party be entitled to consequential or special damages by reason of a default or other non-performance of any party to this Agreement.

VI. CONSTRUCTION; MISCELLANEOUS.

A. Construction of this Agreement.

- (iv) Choice of Law. This Agreement must be deemed to be made, governed by, and construed in accordance with the laws of the Commonwealth of Virginia, without giving effect to the conflict of law principles thereof. The parties agree that any litigation arising out of this Agreement or the attempted termination hereof must be filed exclusively in federal district court located in Virginia or in state court located in Fairfax County, Virginia, and the parties expressly consent to the exercise of personal jurisdiction over them by such courts.
- (v) <u>Paragraph Headings</u>. The paragraph headings are inserted herein only as a matter of convenience and for reference; in no way are they intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.
- (vi) Entire Agreement; Amendments. This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all of the covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of the parties with respect to the subject matter hereof. Notwithstanding the foregoing, nothing in this Agreement amends or modifies the terms of the PSA as between 1750 Owner and SCG or the terms and conditions of the Development Agreement as between SCG and the FCRHA. No alterations, amendments, or modifications to this Agreement will be valid

unless memorialized in an instrument signed by each of the parties hereto. The parties acknowledge and agree that an alteration, amendment, or modification of this Agreement does not necessitate a Proffered Condition Amendment (a "PCA") unless the County Zoning Administrator determines that any such alteration, amendment or modification would not be in substantial conformance with the then existing zoning cases, including all proffers (subject to all applicable appeals), in which case a PCA would be required. Notwithstanding anything in the Capital One Proffers to the contrary, and consistent with Tysons Comprehensive Plan Policy (which allows off-site development of WDUs), the parties further acknowledge that Capital One has the ability to satisfy Proffer 59 (except for subparagraph 59C) of the Campus Proffers and Proffers 81-82 of the Capital One East Proffers by delivering the required WDUs on a property other than the Campus and Capital One East (as appliable).

- (vii) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions will not be affected thereby.
- (viii) <u>Time</u>. Time is of the essence, and every term, covenant, and condition must be deemed to be of the essence hereof.
- (ix) Successors and Assigns. This Agreement will run with the land, and the Agreement or a memorandum of the Agreement will be recorded in accordance with Section VI.B(iv) below, and be binding upon, and will inure to the benefit of, the successors and assigns of COBNA, Block C Owner, 1820 Owner and 1750 Owner (as appliable) and any future owner of the Campus, Capital One East and 1750 Old Meadow (as applicable) and SCG, (as appliable).
- (x) <u>Independent Contractor; No Partnership</u>. Each of the parties to this agreement is an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained will make, or be construed to make, any party a partner of any other party, nor may this Agreement be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.
- (xi) <u>Singular and Plural</u>. Whenever the context so requires, the singular includes the plural, and the plural includes the singular.

B. Miscellaneous.

(i) <u>Waiver</u>. The failure of any party to enforce any of the provisions of this Agreement or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such

provisions, rights or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

- (ii) <u>Rights Reserved by Capital One</u>. Subject to this Agreement and the terms and conditions of the PSA (solely as to 1750 Old Meadow), Capital One will have the right, without the prior consent of any other party, to (i) sell, convey, transfer, lease, mortgage, or encumber the Campus, Capital One East or 1750 Old Meadow; or (ii) file and pursue PCAs, CDPAs, FDPAs, site plans, or other amendments to the Capital One Proffers or the Rezoning.
- (iii) <u>No Assignment by the County</u>. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by the County.
- (iv) <u>Recordation of Agreement</u>. This Agreement must be recorded in the Land Records of Fairfax County, Virginia after execution by the parties hereto.
- (v) <u>Representation</u>. As of the Commencement Date, COBNA, Block C Owner, 1820 Owner, and 1750 Owner are the fee owners of the Campus, Capital One East, and 1750 Old Meadow (as applicable), none of which is encumbered by any mortgage or deed of trust.
- (vi) Notices. Any notice, consent, or other communication given under this Agreement must be in writing and will be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by an overnight courier service that is generally recognized as reliable, and the written records maintained by the courier will be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

If to Capital One: Capital One Bank (USA), N.A.

1680 Capital One Drive McLean, VA 22102

Vice President, WorkPlace Solutions

With a copy to: Capital One Bank (USA), N.A.

1680 Capital One Drive McLean, VA 22102

Chief Counsel – Transactions

If to SCG: SCG Development Partners, LLC

8245 Boone Blvd, Suite 640

Tysons, VA 22182

With a copy to:

If to the County: Fairfax County

County Executive

12000 Government Center Parkway, Suite 552

Fairfax, Virginia 22035

With a copy to: Fairfax County Attorney

Office of the County Attorney

12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035

If to the FCRHA: Fairfax County Redevelopment and Housing Authority

3700 Pender Drive, Suite 300

Fairfax, Virginia 22030

With a copy to: Fairfax County Attorney

Office of the County Attorney

12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035

(vii) As is further described in Section III and VI.B(ii) above, the Rezoning and this Agreement do not change or modify the Capital One Proffers and regardless of the outcome of the Rezoning and the obligations of this Agreement, Capital One retains the ability to exercise those rights enjoyed under the Capital One Proffers.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

CAPITAL ONE BANK (USA), N.A.:	
By:	
Print Name: Title:	Date
CAPITAL ONE TYSONS BLOCK C OWNER,	LLC:
Ву:	
Print Name: Title:	Date
1820 DOLLEY MAIDSON, LLC:	
By:	Date
Print Name: Title:	Date
1750 OLD MEADOW, LLC:	
Ву:	
Print Name: Title:	Date
SCG DEVELOPMENT PARTNERS, LLC:	
Ву:	
Print Name:	Date

	Date
e: Bryan J. Hill	
: County Executive	
RFAX COUNTY REDE	EVELOPMENT AND HOUSING AUTH
RFAX COUNTY REDE	
	EVELOPMENT AND HOUSING AUTH
ne: Thomas Fleetwood	

Exhibits A-1, A-2, A-3 and B Follow:

EXHIBIT A-1

Legal Description of the Campus

Blocks A, B, C, D, E-1, E-2 and F, Parcel A1-A, Westgate Industrial Park, as duly created by that certain Deed of Subdivision recorded among the land records of Fairfax County, Virginia in Deed Book 25544 at Page 27.

EXHIBIT A-2

Legal Description of Capital One East

All that lot or parcel of land situate, lying and being in Fairfax County, Virginia, and more particularly described as follows:

Beginning at a point on the northerly right-of-way of Dolley Madison Boulevard, Route #123, width varies, said point being at the intersection with the westerly right-of-way of the Dulles Airport Access Road, width varies;

Thence departing said Dulles Airport Access Road and running with the said northerly right-ofway of Dolley Madison Boulevard the following courses and distances: S 42 degrees 19' 12" W 173.15 feet to a point; S 47 degrees 20' 23" W 237.29 feet to a point; S 45 degrees 16' 35" W 281.38 feet to a point in the easterly right-of-way of Scotts Crossing, width varies;

Thence departing the northerly right-of-way of Dolley Madison Boulevard and with the easterly right-of-way of Scotts Crossing N 85 degrees 32' 07" W 37.84 feet to a point; N 36 degrees 20' 49" W 179.22 feet to a point; N 06 degrees 50' 34" W 128.67 feet to a point; N 16 degrees 04' 46" E 20.00 feet to a point; N 31 degrees 33' 24" W 87.99 feet to a point; S 59 degrees 39' 21" W 65.00 feet to a point; N 37 degrees 15' 38" W 121.63 feet to a point; N 70 degrees 43' 18" W 242.42 feet to a point on the westerly line of the land of W.O.S.H., Incorporated;

Thence with the westerly and southerly lines of the said land of W.O.S.H., Incorporated N 36 degrees 25' 55" E 160.00 feet to a point; S 53 degrees 34' 09" E 420.00 feet to a point; N 11 degrees 02'02" E 879.23 feet to a point, said point being on the southerly right-of-way of the aforementioned Dulles Airport Access Road;

Thence with the said southerly right-of-way of Dulles Airport Access Road S 65 degrees 55' 55" E 74.72 feet to a point; S 07 degrees 57' 15" E 363.66 feet to a point; S 52 degrees 10" E 407.87 feet to a point; S 03 degrees 15' 25" E 138.32 feet to the point of Beginning and Containing 10.3075 acres of land more or less.

LESS AND EXCEPT, therefrom, that portion of the property containing 701 square feet of land dedicated for public street purposes, by Deed of Dedication and Conveyance recorded in Deed Book 11772 at page 1910, among the Land Records, of Fairfax County, Virginia.

FURTHER LESS AND EXCEPT that portion of the property containing 0.886 acres, more or less, land, taken by the Commonwealth Transportation Commissioner of Virginia by Certificate of Take recorded in Deed Book 20515 at page 568, re-recorded in Deed Book 20770 at page 131, and amended by Amended Certificate of Take recorded in Deed Book 22565 at page 1853, among the Land Records of Fairfax County, Virginia.

FURTHER LESS AND EXCEPT that portion of the property containing 702 square feet of land dedicated for public street purposes, by Deed of Dedication and Conveyance and Grading Agreement and Temporary Construction Easement recorded in Deed Book 24566 at page 517, among the land records of Fairfax County, Virginia.

Together with the covenants, easements and related agreements set forth in the Declaration of Covenants, Easements and Agreements dated December 31, 1992 and recorded among the Land Records of Fairfax County, Virginia in Book 8404, Page 0521, as amended.

As further described on that certain ALTA/NSPS Land Title Survey entitled, "Cleveland 1820 Dolley Madison LLC, Deed Book 21145 Page 100, Providence District, Fairfax County, Virginia," prepared by Kevin P. O'Connor, Urban Ltd., dated March 31, 2019 and last revised April _____, 2019:

BEGINNING AT A POINT ON THE NORTHEAST CORNER OF THE PROPERTY HEREIN DESCRIBED, SAID POINT ALSO A CORNER ALONG THE WESTERLY RIGHT OF WAY OF DULLES AIRPORT ACCESS ROAD, SAID POINT ALSO A CORNER TO THE PROPERTY OF WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, DEED BOOK 23737 PAGE 727;

THENCE DEPARTING SAID RIGHT OF WAY OF DULLES AIRPORT ACCESS ROAD AND RUNNING WITH SAID PROPERTY OF WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY THE FOLLOWING COURSES AND DISTANCES;

SOUTH 43°18'20" WEST A DISTANCE OF 259.17 FEET TO A POINT;

106.19 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 8043.85 FEET AND CHORD BEARING AND DISTANCE OF SOUTH 43°37'41" WEST 106.19 FEET TO A POINT;

65.49 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 3209.09 FEET AND CHORD BEARING AND DISTANCE OF SOUTH 44°59'46" WEST 65.49 FEET TO A POINT;

76.52 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1606.87 FEET AND CHORD BEARING AND DISTANCE OF SOUTH 47°07'40" WEST 76.51 FEET TO A POINT;

115.99 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1323.14 FEET AND CHORD BEARING AND DISTANCE OF SOUTH 51°07'46" WEST 115.95 FEET TO A POINT;

125.81 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1868.41 FEET AND CHORD BEARING AND DISTANCE OF SOUTH 55°53'22" WEST 125.79 FEET TO A POINT, SAID POINT BEING ALONG THE EASTERLY VARIABLE WIDTH RIGHT OF WAY OF SCOTTS CROSSING ROAD, ROUTE #8102;

THENCE DEPARTING SAID PROPERTY OF WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY AND RUNNING WITH THE RIGHT OF WAY OF SCOTTS CROSSING ROAD THE FOLLOWING COURSES AND DISTANCES;

NORTH 39°37'59" WEST A DISTANCE OF 131.20 FEET TO A POINT;

NORTH 06°50'34" WEST A DISTANCE OF 122.94 FEET TO A POINT;

NORTH 16°04'46" EAST A DISTANCE OF 20.00 FEET TO A POINT;

NORTH 31°33'24" WEST A DISTANCE OF 87.99 FEET TO A POINT;

SOUTH 59°39'21" WEST A DISTANCE OF 65.00 FEET TO A POINT;

NORTH 37°15'38" WEST A DISTANCE OF 121.63 FEET TO A POINT;

NORTH 70°43'18" WEST A DISTANCE OF 242.42 FEET TO A POINT, SAID POINT BEING ALONG PHASE 1, THE GATES OF MCLEAN CONDOMINIUM, DEED BOOK 14562 PAGE 264;

THENCE DEPARTING SAID RIGHT OF WAY OF SCOTTS CROSSING ROAD AND RUNNING WITH SAID PHASE 1, THE GATES OF MCLEAN CONDOMINIUM THE FOLLOWING COURSES AND DISTANCES;

NORTH 36°25'55" EAST A DISTANCE OF 160.00 FEET TO A POINT;

SOUTH 53°34'09" EAST A DISTANCE OF 420.00 FEET TO A POINT;

NORTH 11°02'02" EAST A DISTANCE OF 879.23 FEET TO A POINT, SAID POINT BEING ALONG THE AFOREMENTIONED WESTERLY RIGHT OF WAY OF DULLES AIRPORT ACCESS ROAD;

THENCE DEPARTING SAID PHASE 1, THE GATES OF MCLEAN CONDOMINIUM, AND RUNNING WITH SAID RIGHT OF WAY OF DULLES AIRPORT ACCESS ROAD THE FOLLOWING COURSES AND DISTANCES:

SOUTH 65°55'55" EAST A DISTANCE OF 74.72 FEET TO A POINT;

SOUTH 07°57'15" EAST A DISTANCE OF 363.66 FEET TO A POINT;

SOUTH 52°12'10" EAST A DISTANCE OF 407.87 FEET TO A POINT;

SOUTH 03°15'25" EAST A DISTANCE OF 55.95 FEET TO THE POINT OF BEGINNING, AND HAVING AN AREA OF 408,988 SQUARE FEET, OR 9.3892 ACRES, MORE OR LESS.

EXHIBIT A-3

Legal Description of 1750 Old Meadow

ALL THAT CERTAIN lot or parcel of land, together with all easements and appurtenances pertaining thereto, if any, and all the buildings and other improvements situated thereon situate, if any, lying and being in Fairfax County, Virginia, and more particularly described as follows:

Lot 100, Section 1 of the Subdivision of Westgate Research Park, as the same is duly dedicated, platted and recorded in Deed Book 2782 at page 615, among the land records of Fairfax County, Virginia.

EXHIBIT B

Description of Affordability Rezoning Option

[To be attached]

INFORMATION – 1

COUNTY HOLIDAY SCHEDULE - CALENDAR YEAR 2023

A proposed calendar year 2023 Holiday Schedule for Fairfax County Government has been prepared. County employees are authorized 12 ½ holidays in each calendar year (13 ½ every fourth year when Inauguration Day falls on a business day), Monday through Friday. As Christmas Eve (December 24) falls on a Sunday, the Christmas Eve (½ day) holiday will be observed on Friday, December 22, 2023. There are 12 ½ authorized county holidays in 2023.

The proposed holiday schedule for 2023 lists the Federal Government holidays as well as those of the Fairfax County Public Schools. State employees, the Sheriff's Office, and the Courts observe the Commonwealth of Virginia designated holidays.

<u>Unless otherwise directed by the Board of Supervisors, the enclosed will be adopted as</u> the holiday schedule for calendar year 2023.

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed Holiday Schedule – 2023

STAFF:

Bryan J. Hill, County Executive
Ellicia Seard-McCormick, Deputy County Executive for Administration
Catherine M. Schafrik, Human Resources Director

Proposed Holiday Schedule – Calendar Year 2023

HOLIDAY	OBSERVED DAY - DATE	FAIRFAX COUNTY GOVERNMENT	*FAIRFAX COUNTY PUBLIC SCHOOLS	**COMMONWEALTH OF VIRGINIA (2022)	FEDERAL GOVERNMENT
New Year's Day	Monday Jan 2	Х	Х	Х	Х
Martin Luther King, Jr.'s Day	Monday Jan 16	Х	Х	Х	Х
George Washington's Day/Presidents' Day	Monday Feb 20	X	Х	Χ	X
Memorial Day	Monday May 29	X	Х	Χ	Х
Juneteenth	Monday June 19	Х	Х	Х	X
Independence Day	Tuesday July 4	Х	Х	Х	Х
Labor Day	Monday Sept 4	Х	Х	Х	Х
Columbus Day	Monday Oct 9	regular work day	regular work day	Х	Х
Election Day	Tuesday Nov 7	Х	regular work day	Х	regular work day
Veterans Day	Friday Nov 10	Х	regular work day	Х	Х
Additional Time Off	Wednesday Nov 22	regular work day	regular work day	4.0 hours additional time off	regular work day
Thanksgiving Day	Thursday Nov 23	Х	Х	Х	Х
Day After Thanksgiving	Friday Nov 24	Х	Х	Х	regular work day
Christmas Eve	Friday Dec 22	X (half day)	Х	8.0 hours additional time off	regular work day
Christmas Day	Monday Dec 25	Х	Х	Х	Х
Total Holidays		12.5	11	14.5	11

^{*}The actual dates of some holidays may change to accommodate the student calendar.
** Commonwealth of Virginia has not released their holidays for the 2023 calendar year.

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. Pamela Sledge v. Officers Richard Castilon, Michael Scatchard, and Cassandra Zamora, Case No. CL-2022-0012322 (Fx. Co. Cir. Ct.)
 - 2. Orayl Ingram v. Commonwealth of Virginia, City of Fairfax, Virginia, Fairfax County Department of Child Protective Services, Fairfax County Police Department, Fairfax County Commonwealth's Attorney's Office, Commonwealth of Virginia Department of Social Services, Richard Mullins, Jonathan Ortiz, Angie Combs, Steve Descano, Elizabeth Carter, County of Fairfax, Virginia, Case No. 1:22-cv-778 (E.D. Va.)
 - 3. *Al's Towing and Storage, Inc. v. Fairfax County Board of Supervisors*, Case No. CL-2022-0006750 (Fx. Co. Cir. Ct.)
 - 4. *Michelle Evans v. County of Fairfax, Virginia et. al.* Case No. CL-2022-0008631 (Fx. Co. Cir. Ct.)
 - 5. Elio R. Rodriguez and The Hartford Underwriters Insurance Company, as subrogee of Envirogrow Lawn & Landscaping, Inc. v. Michael Anthony Hartsell, Case No. CL-2021-0005154 (Fx. Co. Cir. Ct.)
 - 6. Yenny S. Guevara v. Terry Mincey and Fairfax County, Case No. GV22-012632 (Fx. Co. Gen. Dist. Ct.) and Ruben Marquez Quinteros v. Terry Mincey and Fairfax County, Case No. GV22-012631 (Fx. Co. Gen. Dist. Ct.)
 - 7. Jay Riat, Building Official for Fairfax County, Virginia v. Charles V. Duran, Case No. CL-2022-0012211 (Fx. Co. Cir. Ct.) (Braddock District)

- 8. Jay Riat, Building Official for Fairfax County, Virginia v. Huu D. Tran and Nhanh T. Le, Case No. GV22-006236 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
- 9. Jay Riat, Building Official for Fairfax County, Virginia v. Arsalan Anwar and Aqeel A. Khan, Case No. GV22-009807 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
- 10. Jay Riat, Building Official for Fairfax County, Virginia v. Henry Tuan Nguyen, Case No. GV22-009808 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
- 11. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Robert Sexton, Case No. GV22-010185 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
- 12. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Randal S. Cordes, Case No. CL-2022-0004466 (Fx. Co. Cir. Ct.) (Dranesville District)
- 13. Jay Riat, Building Official for Fairfax County, Virginia v. Great Falls Estates, LLC, Case No. GV22-004386 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
- 14. Jay Riat, Building Official for Fairfax County, Virginia v. Marsha Lynn Cassell and Andrew Lewis Cassell, Case No. GV22-008608 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
- 15. Jay Riat, Building Official for Fairfax County, Virginia v. Debra Carmel and Mason Carmel, Case No. GV22-009562 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
- 16. *Jay Riat, Building Official for Fairfax County, Virginia v. Nikula P. Fernando,* Case No. GV22-009655 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
- 17. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Stephen Patrick MacManus, Case No. GV22-011604 (Fx. Co. Gen Dist. Ct.) (Dranesville District)
- 18. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Alice B. Middleton, Case No. GV22-013468 (Fx. Co. Gen Dist. Ct.) (Dranesville District)
- 19. Jay Riat, Building Official for Fairfax County, Virginia v. Jennifer Mossgrove and John Mossgrove, Case No. GV22-011196 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)

- 20. Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia and Leslie B. Johnson, Fairfax County Zoning Administrator v. Alwadi L.L.C., Case No. CL-2019-0017284 (Fx. Co. Cir. Ct.) (Lee District)
- 21. Leslie B. Johnson, Fairfax County Zoning Administrator v. Sysmall I. Warfield, Case No. CL-2021-0011520 (Fx. Co. Cir. Ct.) (Lee District)
- 22. Leslie B. Johnson, Fairfax County Zoning Administrator v. James J. Weaver, Jr., Case No. CL-2022-0011588 (Fx. Co. Cir. Ct.) (Lee District)
- 23. Jay Riat, Building Official for Fairfax County, Virginia v. Dmitriy O. Minin, Case No. CL-2022-0011671 (Fx. Co. Cir. Ct.) (Lee District)
- 24. Jay Riat, Building Official for Fairfax County, Virginia v. Andrew Hogan and Elizabeth Liberman, Case No. GV22-01633 (Fx. Co. Gen. Dist. Ct.) (Lee District)
- 25. Jay Riat, Building Official for Fairfax County, Virginia v. Diep T. Do and Quang M. Do, Case No. GV22-002246 (Fx. Co. Gen. Dist. Ct.) (Lee District)
- 26. Jay Riat, Building Official for Fairfax County, Virginia v. Analise Latoya Fagan, Case No. GV22-06692 (Fx. Co. Gen. Dist. Ct.) (Lee District)
- 27. Jay Riat, Building Official for Fairfax County, Virginia v. Irene Castillo, Case No. GV22-06948 (Fx. Co. Gen. Dist. Ct.) (Lee District)
- 28. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Leticia Fernandez, Jeff F. Fernandez, Aisha Fernandez and Selina Fernandez, Case No. GV22-008248 (Fx. Co. Gen Dist. Ct.) (Lee District)
- 29. Leslie B. Johnson, Fairfax County Zoning Administrator v. Leticia Fernandez, Jeff F. Fernandez, Aisha Fernandez and Selina Fernandez, Case No. GV22-008187 (Fx. Co. Gen Dist. Ct.) (Lee District)
- 30. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Carlos F. Gonzalez and Nancy E. Gonzalez, Case No. GV22-009805 (Fx. Co. Gen Dist. Ct.) (Lee District)
- 31. Leslie B. Johnson, Fairfax County Zoning Administrator v. Carlos F. Gonzalez and Nancy E. Gonzalez, Case No. GV22-009809 (Fx. Co. Gen Dist. Ct.) (Lee District)
- 32. Jay Riat, Building Official for Fairfax County Virginia v. Carlos F. Gonzalez and Nancy E. Gonzalez, Case No. GV22-009799 (Fx. Co. Gen Dist. Ct.) (Lee District)

- 33. Jay Riat, Building Official for Fairfax County Virginia v. Arsenio G. Suyo, Case No. GV22-013448 (Fx. Co. Gen Dist. Ct.) (Lee District)
- 34. Leslie B. Johnson, Fairfax County Zoning Administrator v. Ramiro Cespedes and Delmy R. Teran, Case No. CL-2022-0007408 (Fx. Co. Cir. Ct.) (Mason District)
- 35. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. William G. Ramey, Jr., Case No. CL-2022-0008885 (Fx. Co. Cir. Ct.) (Mason District)
- 36. Jay Riat, Building Official for Fairfax County Virginia v. Nicholas LRT2 LLC, Case No. GV21-018322 (Fx. Co. Gen Dist. Ct.) (Mason District)
- 37. Jay Riat, Building Official for Fairfax County Virginia v. Bao Quoc Nguyen and Bang Si Nguyen, Case No. GV22-007334 (Fx. Co. Gen Dist. Ct.) (Mason District)
- 38. *Jay Riat, Building Official for Fairfax County Virginia v. Tin H. Truong,* Case No. GV22-010184 (Fx. Co. Gen Dist. Ct.) (Mason District)
- 39. Jay Riat, Building Official for Fairfax County Virginia v. Alberto Sandoval and Martha Sandoval, Case No. GV22-010028 (Fx. Co. Gen Dist. Ct.) (Mason District)
- 40. Jay Riat, Building Official for Fairfax County Virginia v. Tamila Ghonghadze and Nukria Balarjishvili, Case No. GV22-011178 (Fx. Co. Gen Dist. Ct.) (Mason District)
- 41. Jay Riat, Building Official for Fairfax County Virginia v. Victoria H. Bak, Case No. GV22-013191 (Fx. Co. Gen Dist. Ct.) (Mason District)
- 42. Leslie B. Johnson, Fairfax County Zoning Administrator v. Dinos, LLC, Case No. GV22-013430 (Fx. Co. Gen. Dist. Ct.) (Mason District)
- 43. Jay Riat, Building Official for Fairfax County Virginia v. Tigist Mitiku and Mekuria Mulugeta Negia, Case No. GV22-013652 (Fx. Co. Gen Dist. Ct.) (Mason District)
- 44. Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Kara Investment LLC, Case No. CL-2021-0015482 (Fx. Co. Cir. Ct.) (Mount Vernon District)
- 45. Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Douglas 2817, LLC, and Robert Barr, Case No. CL-2021-0009574 (Fx. Co. Cir. Ct.) (Mount Vernon District)
- 46. Jay Riat, Building Official for Fairfax County Virginia v. Piyush J. Goel and Kelli L.

- Goel, Case No. GV22-005334 (Fx. Co. Gen Dist. Ct.) (Mount Vernon District)
- 47. Leslie B. Johnson, Fairfax County Zoning Administrator v. Roya Qaemi, Case No. GV22-013909 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
- 48. *Jay Riat, Building Official for Fairfax County Virginia v. Abdul Nasser Ahmadil,* Case No. GV22-009806 (Fx. Co. Gen Dist. Ct.) (Mount Vernon District)
- 49. Jay Riat, Building Official for Fairfax County Virginia v. Landsdowne Centre, Limited Partnership and Lehem LLC d/b/a PHO BOWL Noodle Restaurant, Case No. GV22-010131 (Fx. Co. Gen Dist. Ct.) (Mount Vernon District)
- 50. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Charles Randall Gentry, Case No. GV22-010642 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
- 51. Jay Riat, Building Official for Fairfax County Virginia v. S. G. Properties LLC, and Lorton Stone, LLC, Case No. GV22-013910 (Fx. Co. Gen Dist. Ct.) (Mount Vernon District)
- 52. Jay Riat, Building Official for Fairfax County Virginia v. Marisol Ferrel, Case No. CL-2022-0006388 (Fx. Co. Cir. Ct.) (Providence District)
- 53. Jay Riat, Building Official for Fairfax County Virginia v. Gul M. Niayz, Case No. GV22-010258 (Fx. Co. Gen Dist. Ct.) (Providence District)
- 54. *Jay Riat, Building Official for Fairfax County Virginia v. Adolfo Parina Sandi,* Case No. GV22-011072 (Fx. Co. Gen Dist. Ct.) (Providence District)
- 55. Leslie B. Johnson, Fairfax County Zoning Administrator v. Mary Street Properties, LLC, Case No. GV22-011603 (Fx. Co. Gen. Dist. Ct.) (Providence District)
- Leslie B. Johnson, Fairfax County Zoning Administrator v. Tysons Ventures, LLC and Sasani Rashidi, Case No. GV22-014021 (Fx. Co. Gen. Dist. Ct.) (Providence District)
- 57. Leslie B. Johnson, Fairfax County Zoning Administrator v. Agatha V. Williams, Case No. GV22-009798 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
- 58. Jay Riat, Building Official for Fairfax County Virginia v. Young Sook Chun and Chong Yel Chun, Case No. GV22-011071 (Fx. Co. Gen Dist. Ct.) (Springfield District)
- 59. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v.

- Connie M. Judge, Case No. GV22-011914 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
- 60. Jay Riat, Building Official for Fairfax County Virginia v. Harrison H. Doh and Rose Aegyeong Doh, Case No. GV22-013433 (Fx. Co. Gen Dist. Ct.) (Springfield District)
- 61. Jay Riat, Building Official for Fairfax County Virginia v. Orange Ltd., L.C., Case No. CL-2022-0011584 (Fx. Co. Cir. Ct.) (Sully District)
- 62. Jay Riat, Building Official for Fairfax County Virginia v. Orange Ltd., L.C., Case No. CL-2022-0011587 (Fx. Co. Cir. Ct.) (Sully District)
- 63. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Michael G. Hicken and Donna Sperry Hicken, Case No. CL-2022-0012153 (Fx. Co. Cir. Ct.) (Sully District)
- 64. Leslie B. Johnson, Fairfax County Zoning Administrator, and Jack W. Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. William M. O'Rourke and Dorothy J. Z. O'Rourke, Case No. CL-2021-0013479 (Fx. Co. Cir. Ct.) (Sully District)
- 65. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Vaidyanathan Ramaswamy & Sarada Ramaswamy, Case No. GV22-006933 (Fx. Co. Gen. Dist. Ct.) (Sully District)
- 66. Jay Riat, Building Official for Fairfax County Virginia v. Arash Saffari Ashtiani and Nahal Moussavi, Case No. GV22-009818 (Fx. Co. Gen. Dist. Ct.) (Sully District)
- 67. Jack Weyant, Property Maintenance Code Official for Fairfax County, Virginia v. Linda M. Giuseppe, Case No. GV22-010259 (Fx. Co. Gen. Dist. Ct.) (Sully District)
- 68. Jay Riat, Building Official for Fairfax County Virginia v. Guesang Jeong and Kyong Ae Hong, Case No. GV22-010260 (Fx. Co. Gen. Dist. Ct.) (Sully District)
- 69. Jay Riat, Building Official for Fairfax County Virginia v. Ahmad Farshid Ghyasi and Maryam Ghyasi, Case No. GV22-013079 (Fx. Co. Gen. Dist. Ct.) (Sully District)

3:30 p.m.

Public Hearing on AF 2022-DR-00002 (AR 2006-DR-001-02) (Barbara Lois Whitney TR) to Permit Renewal of a Previously Approved Agricultural and Forestal District, Located on Approximately 21.8 Acres of Land (Dranesville District)

This property is located at 10607 Beach Mill Road, Great Falls, 22066. Tax Map 03-3 ((1)) 32Z.

PLANNING COMMISSION RECOMMENDATION:

On September 14, 2022, the Planning Commission voted 11-0 (Commissioner Clarke was absent from the meeting) to recommend to the Board of Supervisors approval of AF 2022-DR-00002 and that Appendix F of the Fairfax County Code be amended to renew the Local Agricultural and Forestal District, subject to the ordinance provisions dated August 31, 2022.

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

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Sophia Fisher, Planner, DPD

3:30 p.m.

<u>Public Hearing on SE 2021-PR-00024 (Appletree Montessori, LLC) to Permit a</u> Childcare Center, Located on Approximately 0.94 Acres of Land (Providence District)

This property is located on the South Side of Arlington Boulevard, East of Barkley Drive. Tax Map 48-4 ((1)) 41.

PLANNING COMMISSION RECOMMENDATION:

On July 27, 2022, the Planning Commission voted 9-0 (Commissioners Jimenez, Clarke, and Strandlie were absent from the meeting) to recommend to the Board of Supervisors the following:

- Approval of SE 2021-PR-00024, subject to development conditions consistent with those dated July 27, 2022, as may be amended pursuant to the Planning Commission's discussion related to flexibility of Development Condition Number 8; and
- Approval of the requested modification of the transitional screening along all property lines to the existing vegetation as 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

STAFF

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Kimia Zolfagharian, Planner, DPD

3:30 p.m.

Public Hearing on SE 2022-PR-00007 (Clark Construction Group, LLC) to Permit a Waiver of the Sign Regulations for an Increase in Sign Area, Located on Approximately 7.90 Acres of Land (Providence District)

This property is located at 7900 Westpark Drive, McLean, 22102. Tax Map 29-4 ((7)) 6A.

PLANNING COMMISSION RECOMMENDATION:

On September 14, 2022, the Planning Commission voted 11-0 (Commissioner Clarke was absent from the meeting) to recommend to the Board of Supervisors approval of SE 2022-PR-00007, subject to the proposed development conditions dated August 30, 2022.

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

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Curtis Rowlette, Planner, DPD

To be Deferred to 12/06/2022 at 3:30p.m.

Board Agenda Item October 11, 2022

4:00 p.m.

Public Hearing on SE 2021-MV-00018 (Olde Towne Pet Resort Springfield LLC) to Permit the Existing Outdoor Components Associated With an Existing Indoor Kennel, Located on Approximately 1.67 Acres of Land (Mount Vernon District)

This property is located at 8101 Alban Road, Springfield, 22150. Tax Map99-1 ((17)) 6.

PLANNING COMMISSION RECOMMENDATION:

On September 21, 2022, the Planning Commission voted 11-0 (Commissioner Jimenez was absent from the meeting) to defer the public hearing on SE 2021-MV-00018 to a date certain of November 16, 2022.

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

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Kimia Zolfagharian, Planner, DPD

4:00 p.m.

Public Hearing on RZ 2021-PR-00022 (Somos at Tysons LLC) to Rezone From I-4 and HC to PTC and HC to Permit Mixed-Use Multi-Family Residential Development With up to a 2.68 FAR and Approval of the Conceptual and Final Development Plans, Located on Approximately 4.00 Acres of Land (Providence District)

This property is located at 1750 Old Meadow Road, McLean, 22102. Tax Map 29-4 ((6)) 100A.

PLANNING COMMISSION RECOMMENDATION:

On September 21, 2022, the Planning Commission voted 11-0 (Commissioners Jimenez was absent from the meeting) to recommend to the Board of Supervisors the following:

- Approval of RZ 2021-PR-00022, and the associated Conceptual Development Plan (CDP), subject to the execution of proffered conditions consistent with those dated August 31, 2022;
- Approval of a modification of subsection 2105.6.A(7) of the Zoning Ordinance for the Tysons Urban Center streetscape design in favor of that shown on the CDP;
- Waiver of subsection 2105.6.B(1) of the Zoning Ordinance requiring a minimum district size of ten acres;
- Approval of a modification of subsection 5100.2.C(5) of the Zoning Ordinance to allow a
 parapet wall, cornice or similar projection to exceed the height limit established by more
 than three (3) feet but not more than four (4) feet;
- Approval of a modification of subsection 5108.5.B(1) and 5108.5.B(2) of the Zoning Ordinance for peripheral landscaping of above grade parking structures, as demonstrated on the CDP;
- Approval of a modification of minimum parking space requirements pursuant to subsection 6100.6.B(1)(a) of the Zoning Ordinance;
- Approval of a modification of the loading space requirements set forth in subsection 6101.3 of the Zoning Ordinance in favor of that shown on the CDP;
- Waiver of subsection 8100.7.E(3) of the Zoning Ordinance requiring inter-parcel access to adjoining parcels;

- Approval of a modification of subsection 8100.7.E(4) of the Zoning Ordinance for dedication, construction, or widening of existing roads to that shown on the CDP and proffers;
- Approval of a modification of subsection 8100.7.E(14) of the Zoning Ordinance to permit street lighting to be provided in conformance with the Tysons Urban Design Standards; and
- Approval of Parking Reduction 7788-PKS-002, pursuant to subsection 6100.6.B(1)(a) of the Zoning Ordinance based on the proximity of a mass transit facility, subject to the conditions dated August 22, 2022 and contained in Appendix 10 of the staff report.

In related action, the Planning Commission voted 11-0 (Commissioners Jimenez was absent from the meeting) to approve FDP 2021-PR-00022, subject to development conditions dated September 6, 2022.

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

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Katie Quinn, Planner, DPD

4:00 p.m.

Public Hearing on Amendment to the Code of the County of Fairfax, Chapter 3, County Employees, Article 1, Personnel Administration, Section 3-1-6(b)(2)

ISSUE:

Public hearing to amend Chapter 3, County Employees, Article 1, Personnel Administration, Section 3-1-6 of the Code of the County of Fairfax. On September 13, 2022, the Board of Supervisors approved an emergency ordinance amendment to Section 3-1-6(b)(2) increasing the dollar amount authorized to be paid as a monetary incentive from \$5,000 to \$15,000 and authorized a public hearing for October 11, 2022.

RECOMMENDATION:

The County Executive recommends that the Board hold the public hearing on the County Code amendment.

TIMING:

On September 13, 2022, the Board authorized advertisement of a public hearing on October 11, 2022, at 4:00 p.m.

BACKGROUND:

On September 13, 2022, on Chairman McKay's motion, the Board of Supervisors approved an emergency amendment to Fairfax County Code Section 3-1-6(b)(2) increasing the dollar amount authorized to be paid as a monetary incentive from \$5,000 to \$15,000. Because the amendment to Fairfax County Code Section 3-1-6(b)(2) was passed as an emergency ordinance, it must be adopted in conformity with Va. Code § 15.2-1427 to be effective for more than 60 days.

Staff is in the process of developing a comprehensive hiring incentive program as directed and anticipates providing more information as part of the October 18 Personnel Committee meeting. The full program is anticipated to include four bonus tiers of \$2,500, \$5,000, \$10,000, and \$15,000. Job classes recommended to receive bonuses will be slotted and based upon the number and percentage of current vacancies, the level of incentives provided by market comparators, minimum staffing requirements, life/safety implications, and the impact of vacancies on the agencies' operations.

FISCAL IMPACT:

Per the memorandum to the Board of Supervisors dated September 30, 2022, staff has recommended setting aside \$2.0 million in reserve for hiring incentives as part of the FY 2022 Carryover Review. The Board is scheduled to take action on Carryover at today's meeting. Additional adjustments, including allocations from the reserve, will be provided to the Board and will be included in future budget recommendations as appropriate.

ENCLOSED DOCUMENT:

Attachment 1 – Proposed amendment to Fairfax County Code § 3-1-6(b)(2), Human Resources Director, responsibility and function.

STAFF:

Christina Jackson, Chief Financial Officer Ellicia Seard-McCormick, Deputy County Executive for Administration Catherine M. Schafrik, Director, Department of Human Resources

ASSIGNED COUNSEL:

Karen Gibbons, Deputy County Attorney

Section 3-1-6. Human Resources Director, responsibility and function.

- (a) The Human Resources Director shall serve as head of the Department of Human Resources.
- (b) The Human Resources Director shall have the following functions and responsibilities:
 - (1) To give leadership and to issue procedural instructions and interpretations of this ordinance and Personnel Regulations to department heads and other officials to ensure that the personnel function is administered in accordance with law, regulations and sound principles of public personnel management. To ensure compliance with equal employment opportunity laws and regulations. To stimulate all supervisory personnel to use the most effective methods of utilization and coordination of employee abilities and skills.
 - (2) To conduct open competitive assembled, unassembled or other types of examinations for all original appointments in the competitive service and promotional examinations for all promotional appointments in the competitive service. To conduct appropriate examinations for original and promotional appointments for certain exempt positions, including all project positions and any other exempt positions for which the appointing authority requests such examinations. To publicize all competitive examinations. To recruit qualified personnel for the County's competitive service; provided, that in formulating examinations appointing authorities shall be consulted concerning their personnel requirements and the qualifications necessary to perform the work. With the concurrence of the County Executive and subject to the availability of appropriated funds, to offer monetary awards, up to but not exceeding [\$15,000.00] or five percent of the employee's annual salary, whichever is greater, to current County employees for referring qualified applicants for critical vacant positions in the County service who are subsequently hired and remain in such positions for such period of time as determined by the Director of Human Resources and to successful applicants for such critical positions who remain employed in such period of time as determined by the Director of Human Resources.
 - (3) To establish and as necessary to maintain eligible lists, based on such examinations, for each class of positions in the competitive service to which appointments are to be made when, in the opinion of the Human Resources Director, the volume of appointments warrants the establishment and maintenance of such lists.
 - (4) With the approval of the County Executive, to enter into agreements with other public personnel departments or agencies (local, regional, state or federal) for the joint administration of examinations and the joint use of eligible lists resulting therefrom.
 - (5) To maintain the Position Classification Plan and to prepare and recommend to the County Executive amendments to the Plan.
 - (6) To maintain the Compensation Plan and to prepare and recommend to the County Executive amendments to the Plan.
 - (7) To administer the Position Control and Payroll System.
 - (8) To maintain a roster of central personnel records for all employees in the competitive and exempt services which shall specify as to each such person the class title of all positions held; the current salary or pay rate; any changes in class title, salary or pay; records of performance evaluations, formal disciplinary actions, commendations or awards; and such other data as may be deemed useful or significant in the development of a career service.
 - (9) To direct and enforce the maintenance by all departments of the County of such personnel records of employees in the competitive service as he or she shall prescribe, and to specify the kinds of personnel records to be kept by other public agencies for which the Department of Human Resources provides personnel administration services in accordance with § 3-1-1(c)(2) of this Article.
 - (10) To certify approved appointments and ensure that no payments shall be made to any person through the payroll system unless so certified.

Commented [AJ1]: Dollar amount to be paid as a monetary incentive increased from \$5,000 to \$15,000.

- (11) To assist department heads in developing systematic programs of in-service training for members of the competitive service, for the purpose of bettering their performance and of qualifying them when practicable for consideration when vacancies occur in the service of the County.
- (12) To develop and administer a system of employee performance evaluation and to make information about individual employee performance available to appointing authorities when requested in connection with selection of personnel for appointment, promotion, training, assignment, or other personnel actions and to the Civil Service Commission when requested in connection with appeals or grievance hearings.
- (13) To coordinate employee relations.
- (14) To provide and administer a grievance system as required by State law, and to investigate alleged violations of this Ordinance, Personnel Regulations and other laws and regulations applicable to personnel administration with the Fairfax County Government.
- (15) To develop and administer employee health, safety and welfare activities.
- (16) To confer with the Employees Advisory Council and to cooperate with that council in provision of voluntary recreational, welfare, educational and related activities for the benefit of employees.
- (17) To investigate the operation and effect of this Article, and any amendments thereto hereafter adopted by the Board of Supervisors and the Personnel Regulations adopted thereunder, and report his or her findings and recommendations to the County Executive at least annually.
- (c) The Human Resources Director shall administer all employee benefits programs which may be established by ordinance, under the Personnel Regulations or by a plan adopted by resolution of the Board of Supervisors, unless some other officer, employee, or entity is specifically designated to do so.
 - (1) The term "Employee Benefits Program" shall include, but is not limited to group medical insurance and group term life insurance, and all benefit options offered under a "cafeteria plan" under U.S. Internal Revenue Code § 125, which may be adopted by the Board of Supervisors.
 - (2) The Human Resources Director is specifically delegated the authority, with respect to any employee benefit program established by a plan adopted by the Board of Supervisors by resolution, to make such changes in the benefit options and conditions offered as may be in the interest of the County and its employees, within the limits of funds appropriate and available for such purposes; provided however, no such change shall be of any effect until approved by the Board of Supervisors. In any event, any such change which requires a change in the salary reduction amount under a duly enacted "cafeteria plan" under I.R.C. § 125 shall be of no effect until an appropriate amendment has been made to the Compensation Plan.
- (d) Notwithstanding any other provision of this Code to the contrary, and in addition to any other provisions thereof, the Board authorizes, subject to the availability of appropriated funds, the payment of monetary incentives, awards and bonuses to employees in the County service for exceptional services rendered by employees. Such incentives, awards or bonuses may not exceed \$5,000.00, or five percent of the employee's annual salary whichever is greater. Such incentives, awards and bonuses may be offered and paid for such exceptional services as defined in the procedural directives issued by the County Executive or his/her designee, including, but not necessarily limited to, any or all of the following purposes:
 - (1) Individual incentive awards,
 - (2) Special recognition awards,
 - (3) Work group/excellence awards,
 - (4) Certification/proficiency attainment bonuses,
 - (5) Organization-wide awards,
 - (6) Outstanding performance awards,

- (7) Managerial excellence awards,
- (8) Departmental honors awards,
- (9) Peer awards,
- (10) Spot incentives/awards,
- (11) Suggestion awards, and
- (12) Lead worker incentives

The Human Resources Director shall administer the incentive award and bonus program. The types of incentives, awards and bonuses and the types of exceptional services for which they may be granted, the amount of particular incentives, awards and bonuses, and the selection criteria and process for particular incentives, awards and bonuses shall be set forth in the procedural directives issued by the County Executive. (7-87-3; 26-98-3; 17-01-3; 35-05-3.)

4:30 p.m.

Public Hearing on a Proposed Amendment to Appendix Q (Land Development Services Fee Schedule) of The Code of the County of Fairfax, Virginia (County Code) Re:

Exemption from the Fee for Installation of Electric Vehicle Charging (EVC) Equipment for a Trial Period of Eighteen Months

ISSUE:

Board of Supervisors (Board) approval of a proposed amendment to Appendix Q (Land Development Services Fee Schedule) of the County Code that addresses the fee for installation of EVC equipment and approval of a waiver of the Zoning Ordinance sign permit application fee for EVC. The amendment and fee waiver are necessary to evaluate whether exempting permit fees encourages installation of EVC equipment.

RECOMMENDATION:

The County Executive recommends that the Board approve the proposed amendment as set forth in Attachment 1 and waive the Zoning Ordinance sign permit application fee for EVC as set forth in Attachment 2.

The proposed amendment has been prepared by Land Development Services (LDS) in coordination with the Department of Planning and Development (DPD) and the Office of the County Attorney. The proposed waiver of the sign permit application fee for EVC has been prepared by the DPD.

TIMING:

Board action is requested on October 11, 2022. The Board authorized advertisement of the proposed amendment on September 13, 2022. If adopted by the Board, the amendment and waiver of the sign permit application fee for EVC will become effective at 12:01 a.m. on October 31, 2022.

BACKGROUND:

Carbon-Free Fairfax envisions a future for Fairfax County that is healthy, sustainable, and economically prosperous without greenhouse gas emissions. One of the most important steps that can be taken to reduce greenhouse gas emissions in Fairfax County is to transition to electric vehicles. To ensure public safety, the Uniform Statewide Building Code (USBC) requires permits for all EVC infrastructure construction. Charging spaces also may, on rare occasion, require sign permits.

Exempting EVC installations from permit fees may help incentivize use of electric vehicles. On August 2, 2022, the Board directed staff to prepare amendments to the County Code exempting all electrical, building, and sign permit fees exclusively associated with EVC infrastructure for a trial period of 18 months, effective with the next release of the Planning and Land Use System (PLUS) expected for October 31, 2022. The Board also directed staff to report back to the Board after 12 months on the effectiveness of eliminating permit fees in incentivizing installation of EVC equipment and the budgetary impact of the lost fees. The ability to identify permits for EVC equipment installation is included in the next release of PLUS.

The Zoning Ordinance allows EVC as a permitted accessory use if it meets the use-specific standards in subsection 4102.7.E. Permit review for installation of EVC equipment in garages follows the typical process for electrical systems in buildings. The review process for freestanding EVC stations is more complex.

Applications for permits to install EVC equipment (other than those associated with single-family detached dwellings and single-family attached dwellings with off-street parking) are first reviewed by DPD as part of a streamlined interpretation request through PLUS. This review confirms that the EVC installation meets the criteria in the Zoning Ordinance to classify it as an accessory use. Additionally, DPD evaluates any impacts to parking requirements, parking lot landscaping, and previous zoning approvals.

The following table details permit and fee categories associated with EVC infrastructure:

Application/Permit	Current Fee Category	Authority
Zoning interpretation EVC checklist	No fee	Zoning Ordinance
Electrical permit (residential and commercial)	New circuits and outlets	USBC
Building permit (residential and commercial)	Commercial building permit (for canopies and other structures)	USBC
Sign permit ¹ (only required for signs greater than 1-foot by 1-foot and visible from the street)	Miscellaneous Permits and Approvals, Signs (Table <u>8102.1</u>)	Zoning Ordinance
Site plan/minor site plan ²	Site plan fees	Zoning Ordinance

¹ Each EVC dispenser is allowed to have a digital display area up to one square foot in size. Digital display areas greater than one square foot that are visible from the street are regulated as signs and are subject to Article 7 of the Zoning Ordinance.

² Minor site plans are required for commercial applications which disturb greater than 2,500 sq. ft. or impact landscaping requirements.

An amendment to the Zoning Ordinance is not required to temporarily waive the sign permit fees. The sign permit fees may be waived by the Board for good cause shown under Zoning Ordinance subsection 8102.1, Fee Schedule. It is recommended that the waiver of all EVC sign permit fees during the trial period be approved by a follow-on motion at the time the amendments to the County Code are adopted. Waiver of site plan/minor site plan fees is not proposed at this time. Based on current standards for the size and location of signs and the expected land disturbance, staff believes it is unlikely that an EVC station would require a sign permit or a site plan/minor site plan. Unlike the Zoning Ordinance, there is no authority in the County Code for the Board to waive building and electrical permit fees for this purpose. However, fees may be set at zero with a code amendment. The proposed amendment to the Land Development Services Fee Schedule has been prepared in response to the Board's directive.

To further facilitate and encourage the installation of EVC facilities, LDS staff will create a web page detailing the requirements and permit process for EVC facilities, including standard installation details, and work with the Office of Public Affairs (OPA) to publicize the elimination of the fees and requirements for EVC facilities.

PROPOSED AMENDMENT:

The proposed amendment to Appendix Q of the County Code:

- Sets the fee for installation of EVC equipment at \$0.00.
- Expires after 18 months.

The proposed amendment is included as Attachment 1.

EQUITY IMPACT STATEMENT:

The proposed fee exemption supports a quality built and natural environment that accommodates anticipated growth and change in an economically, socially, and environmentally sustainable and equitable manner that includes mixes of land use that protects existing stable neighborhoods and green spaces, supports sustainability, supports a high quality of life, and promotes employment opportunities, housing, amenities and services for all people, a One Fairfax Policy Area of Focus.

The increase in the number of permits for installation of EVC facilities issued over the last few years indicates that electric vehicles are becoming more prevalent in Fairfax County. Additionally, vehicle manufacturers are producing new models of electric vehicles, at various price points. High gasoline prices have provided an impetus for people to switch to plug-in hybrid and fully electric vehicles in consideration of long-term cost savings. Federal incentives also provide a financial opportunity for consumers to purchase new and used electric vehicles.

An exemption from fees could spur more widespread installation of charging stations at commercial, institutional, and industrial sites to accommodate both customers and employees, who may not be able to charge their vehicles at home. In addition, multifamily developments may also take advantage of the fee exemption to better serve their residents. As a matter of course, staff generally recommends the installation of EVC facilities in entitlement cases, including affordable housing developments. This will benefit all residents of the county, by allowing them to charge their vehicles while going about their daily activities and may encourage some residents to purchase an electric vehicle due to the availability of EVC facilities.

As the installation of EVC equipment occurs throughout the county, PLUS will document the location. The Fairfax County Vulnerability Index (2016-2020) will be overlayed on to a map of the installation sites, showing whether the incentives offered by the fee exemption were pursued in areas of high vulnerability. This map will be included in the report back to the Board at 12 months.

This proposal has the potential to advance equity due to a possible increase in the number of electric vehicle charging stations throughout the county, accommodating Fairfax County residents in their homes, work, and daily activities.

REGULATORY IMPACT:

The proposed amendment incentivizes the installation of EVC equipment by eliminating Building Permit fees and Electrical Permit fees for a trial period of 18 months. The amendment will expire automatically without further action by the Board. Sign Permit fees will be waived by separate action of the Board. The proposed amendment applies to both commercial and residential installations. Staff will report back to the Board after 12 months on the effectiveness of eliminating the fees in incentivizing the installation of EVC equipment.

FISCAL IMPACT:

Currently, the LDS permitting databases do not differentiate EVC equipment installation permits from other electrical and building permit installations. Applicants do not specify

EVC on their building permit applications. Consequently, for this analysis, staff have estimated the number of permitted sites (and stations) during the past 3 years from the number of applications that completed the Zoning Interpretation checklist. This data provides a best estimate and illustrates a steady increase in the number of applications and charging stations installed in the county.

Calendar Year	EVC applications	Charging Stations	Permit Fees
2019	1	20	\$561.60
2020	11	31	\$2,651.01
2021	19	55	\$8,320.80
TOTAL	31	140	\$11,533.41

Staff estimates that granting a full exemption of the fee will affect \$10,000-\$15,000 of revenue in fiscal year 2023 (FY23) and grow at a rate of 100% per year. The lost revenue will not have a significant impact on the adopted LDS budget of approximately \$46 million. Expenditures for permit issuance and inspections by LDS will be absorbed within the Special Revenue Fund (Fund 40200) which is supported by overall fees for services. Because the need for a sign permit is unlikely, any potential lost revenue by DPD will be *de minimus*. Staff will report back to the Board after 12 months on the fiscal impact of exempting the fees.

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed Amendment to Appendix Q (Land Development Services Fee Schedule)

Attachment 2 – Motion for Waiver of Zoning Ordinance Sign Permit Application Fee for Electric Vehicle Charging

STAFF:

Rachel Flynn, Deputy County Executive William D. Hicks, P.E., Director, Land Development Services Tracy Strunk, Director, Department of Planning and Development Leslie B. Johnson, Zoning Administrator

ASSIGNED COUNSEL:

Patrick V. Foltz, Assistant County Attorney

Proposed Amendment to

Appendix Q (Land Development Services Fee Schedule) of The Code of the County of Fairfax, Virginia

Amend Part I (Building Development Fees), Section A (Standard Fees), where insertions are underlined and deletions are struck, to read as follows:

I. BUILDING DEVELOPMENT FEES

The following building development fees to cover the cost of reviewing plans, issuing permits, performing inspections, licensing home improvement contractors and other expenses incidental to the enforcement of the Uniform Statewide Building Code (USBC) and Chapters 61, 64, 65 and 66 of the Code are hereby adopted:

A: STANDARD FEES		
Listed below are standard fees that apply to building, mechanical, electrical, plumbing, fire alarm, fire suppression and fire lane permits. The fees shall apply provided all of the applicable conditions set forth in § 61-1-3 of the Code are met.		
Base fee: The minimum fee charged for any permit. A reduced fee shall apply as noted below.	\$108.00	
Reduced fees:	\$36.00 \$36.00 \$0.00	
3. After-hours re-energization or time-specific inspection fee for each 30 minute period or fraction thereof4. Amendment of permit	\$241.20	
The fee shall be the fee for any equipment added or the fee for any additional work involved, whichever fee is greater. In no case shall the fee be less than:	\$36.00	
5. Annual permit fee (same as base fee)	\$108.00	
6. Asbestos removal/abatement (same as base fee)	\$108.00	
7. Re-inspection fee (same as base fee)	\$108.00	
8. Team inspections		
 Fee if all disciplines (i.e. building, electrical, plumbing, mechanical and/or the Fire Marshal) are involved in inspections Fee paid for each discipline taking part in the inspection, should the 	\$507.60	
inspections not involve all disciplines	\$108.00	
9. Modular residential units, including manufactured homes (Percentage of the regular fee)	50.00%	
10. Non-permitted work	\$108.00	
 11. Permit extensions: Permit authorizing construction of: Interior alteration to an existing building 	\$36.00	
 An addition(s) or exterior alteration(s) to an existing residential structure (R-3, R-4 and R-5 construction) An accessory structure(s) on a residential property (R-3, R-4 and R- 	\$36.00	
5 construction)	\$36.00	
A new structure (other than noted above)	\$241.20	
An addition(s) to a non-residential structure	\$241.20	

Page 1 of 2

Attachment 1

12. Replacement of defective sprinkler heads	\$0.00
13. Radiation, fallout or blast shelter	\$0.00
14. Solar Energy	\$0.00
15. Electric Vehicle Charging Equipment This provision will expire eighteen (18)	
months from the date of adoption or readoption of this provision, unless	\$0.00
the Board of Supervisors expressly authorizes its continuation by an	<u>\$0.00</u>
appropriate amendment to this Article.	

Motion

for

Waiver of Zoning Ordinance Sign Permit Application Fee for Electric Vehicle Charging Background

While Appendix Q of the County Code includes the fees associated with building and electrical permits, the sign permit application fee is located separately in Section 8102 of the Zoning Ordinance. Subsection 8102.1 allows the Board of Supervisors to waive any zoning fee for good cause shown. While no EVC-related sign permits have been received, charging spaces may, on rare occasion, require sign permits. A waiver of this \$95 sign permit application fee in conjunction with the exemption of the EVC-related fees in Appendix Q could help incentivize use of electric vehicles and further the Board's directive in reducing greenhouse gas emissions.

Proposed Action

Therefore, I move that the Board waive all sign permit application fees associated with EVC infrastructure for an 18-month trial period beginning at 12:01 a.m. on October 31, 2022.