

**INTERIM AGREEMENT
(Bowman Towne Court)**

THIS INTERIM AGREEMENT (this “**Agreement**”) is made and entered into as of the ____ day of October, 2022 (the “**Effective Date**”), by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**FCRHA**”), and **FOULGER-PRATT DEVELOPMENT, LLC**, a Maryland limited liability company (the “**Developer**,” and together with the FCRHA, collectively, the “**Parties**”).

RECITALS

R-1 The FCRHA is the fee simple owner of a 2.89-acre property located along Bowman Towne Court, in the Hunter Mill District, having Fairfax County Tax Map number 0171 01 003E, and being further described on the attached Exhibit A (the “**FCRHA Property**”). The Fairfax County Board of Supervisors (the “**Board**”) owns the adjacent 8.44-acre parcel, located along Cameron Glen Drive, in the Hunter Mill District, having Fairfax County Tax Map number 0171 01 0014B, and being further described on the attached Exhibit B (the “**Board Property**”).

R-2 There is an existing 30-townhome Rental Assistance Demonstration community located on the FCRHA Property. The Board Property, on which the Reston Police Station and the North County Governmental Center are located, includes a surface parking lot servicing the Police Station of which approximately 1.6 acres can be utilized for development of affordable housing. The Board Property is undergoing initial steps in the subdivision process to create a separate 1.6-acre parcel (the “**Parking Property**”), which will be conveyed to the FCRHA should the Project (as defined below) go forward. The FCRHA Property and the Parking Property are, hereinafter, referred to collectively as the “**Property**”.

R-3 On October 29, 2021, Fairfax County received an unsolicited proposal from Developer under the Virginia Public Private Education Facilities and Infrastructure Act of 2002, as amended (the “**PPEA**”), for the redevelopment of the Property to provide an approximately 40,000 square foot new regional library and approximately 350 affordable housing units in two buildings with structured parking (the “**Project**”). The Developer’s submission can be viewed at the following Fairfax County web site: <https://www.fairfaxcounty.gov/procurement/ppea> .

R-4 In March, 2022, the Fairfax County Department of Procurement and Material Management (“**Purchasing Agent**”) issued a Notice of Receipt of an Unsolicited Proposal and advertised for competing proposals.

R-5 The Purchasing Agent notified Developer on July 26, 2022, that it had been selected as the top offeror and recommended commencement of negotiations.

R-6 In recognition of the complexity of the proposed Project, the Parties desire to enter into this Agreement in order for Developer to (i) initiate community outreach and collaboration, (ii) begin working with Fairfax County staff on the various elements of the proposed Project, and (iii) begin the zoning and land use approvals process.

R-7 In full recognition that the Parties do not have a final agreement regarding the Project, that the Parties may be unsuccessful in concluding a final agreement regarding the Project, and that the FCRHA does not own the Parking Property, the FCRHA has agreed to allow the Developer the right, at the Developer's sole risk and expense, to access the FCRHA Property and to pursue the process required to obtain the Land Use Approvals (as defined below) with respect to the Property and the Project in accordance with the terms hereof. The FCRHA anticipates getting approval from the Board for the Developer to access the Parking Property, and upon further Board approval, the Board Property will be subdivided and the Parking Property will be deeded to the FCRHA.

NOW, THEREFORE, in consideration of the Recitals, which are incorporated into this Agreement by reference, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Term of Agreement. This Agreement will commence on the Effective Date and, unless otherwise terminated in accordance with the terms of Section 5 below, will terminate upon the execution by the Parties of a comprehensive agreement for the Project ("**Comprehensive Agreement**") in accordance with the terms of the PPEA.

2. Milestone Schedule. Promptly following the Effective Date, the Developer, working in close coordination with the FCRHA and the Hunter Mill District Supervisor's office, will develop a schedule identifying each milestone in the Land Use Approvals process and the date by which each such milestone is anticipated to be met, including, without limitation, Board approval to include the Parking Property as part of the Project (the "**Land Use Approvals Milestone Schedule**").

3. Community Outreach.

a. From and after the Effective Date, the Developer, working in close coordination with the FCRHA and the Hunter Mill District Supervisor's office, will develop a comprehensive community outreach program to engage community stakeholders including, but not limited to, existing Bowman Towne Court residents, residents in surrounding neighborhoods, Reston Association, Reston Town Center Association, Reston Town Center North Public Facilities Community Task Force, Reston Planning & Zoning, and the Reston Design Review Board (the "**Community Outreach Program**"). The Community Outreach Program will identify the strategy for engaging community stakeholders, identify the specific actions to be undertaken by the Developer to implement such strategy, and include a schedule for undertaking such actions.

b. The Community Outreach Program shall provide for community outreach sessions that are flexible in format, including a mix of both virtual and in-person meetings. To the extent reasonably required to ensure meaningful participation by residents within the community, translation and/or interpretation services shall be provided by the Developer as needed. The Developer will prepare presentations, lead outreach sessions, and include relevant development team subject matter experts to participate as needed.

c. The Community Outreach Program shall provide for community outreach and stakeholder engagement sessions to begin prior to filing a zoning application and to continue through the Land Use Approvals process, design, permitting, and construction.

d. The Developer acknowledges and agrees that the Developer shall not file a rezoning application until after the Developer has completed initial community outreach efforts in accordance with the Community Outreach Program.

4. Designation of the Developer as Agent.

a. The FCRHA designates the Developer as its agent for the limited purpose of commencing land use planning, design, and other activities necessary to pursue a Comprehensive Plan amendment and rezoning with respect to the Property and the Project (the “**Land Use Approvals**”), subject to the terms and conditions set forth in this Agreement, and the Developer accepts such designation.

b. The Developer will work in close coordination with Department of Housing and Community Development staff to prepare rezoning application documents ahead of filing. The land use application for this Project may only be submitted following initial consultation with Fairfax County regulatory staff and the community in accordance with the Community Outreach Program, and after obtaining the explicit authorization of the FCRHA.

c. The Developer acknowledges that the FCRHA does not own the Parking Property and that all Land Use Approvals contemplated by this Agreement will be contingent upon Board approval to include the Parking Property as part of the Project.

d. The agency created by this Section 4 is temporary and will immediately terminate upon any termination of this Agreement in accordance with the terms of Section 6 below. Upon termination of this Agreement, the Developer will immediately cease all work with respect to the Land Use Approvals and, thereafter, the Developer will have no further duty, obligation, or right to pursue the Land Use Approvals on behalf of the FCRHA.

5. Agreement Regarding Land Use Approvals Process.

a. The Developer will consult and coordinate with the FCRHA designated PPEA review and negotiation team (the “**PPEA Team**”) regarding the design of the Project and regarding all submissions to be made in connection with the Land Use Approvals. The Developer will provide the PPEA Team a copy of all submissions to be made in connection with the Land Use Approvals for the PPEA Team’s review and approval a minimum of twenty (20) business days prior to the Developer’s anticipated filing with or submission of the same to the applicable governmental agencies. Approval of such submissions will be in the PPEA Team’s sole but reasonable discretion; provided, however, following the PPEA Team’s approval of any such submissions, the PPEA Team may not withhold approval of subsequent submissions if such submissions are consistent in all material respects with prior approved submissions. If the PPEA Team fails to notify the Developer in writing of either its approval or disapproval of any such submissions within twenty (20) business days after its receipt of the request from the Developer, then the Developer may proceed with the submission in accordance with the Land Use Approvals

Milestone Schedule; however, such submission will not be deemed to be approved by the PPEA Team. Any PPEA Team approval of submissions by the Developer will be in the PPEA Team's capacity as an advisory body to the FCRHA and Board as the current landowners, and will not be construed to imply approval by Fairfax County, nor will it be construed as requiring any future approvals by the FCRHA. The Developer will not make any submissions in connection with the Land Use Approvals unless such submissions are made in strict accordance with this Section 5.

b. The FCRHA will reasonably cooperate with the Developer in the pursuit of the Land Use Approvals, and the Developer will not be obligated to reimburse the FCRHA for any staff costs or third-party costs incurred by FCRHA in connection with review of the Land Use Approvals.

c. It is further acknowledged and understood that the Land Use Approvals will require the execution of proffered conditions and concurrence with development conditions by the Developer and the FCRHA. The Developer and the FCRHA will consult and coordinate as to the substance of such proffered conditions and development conditions. The FCRHA's approval and execution of proffered conditions will be in the FCRHA's sole and absolute discretion; provided, however, that such approval and execution will not be unreasonably withheld with respect to proffered conditions that are reasonably related to elements of Land Use Approvals submissions previously approved by the FCRHA. The Developer will be solely responsible for all compliance with such proffered conditions if it proceeds with the Project, other than those proffered conditions relating solely to the operation of the library component of the Project or the remainder of the Board Property not included in the Parking Property.

d. In performing its obligations under this Agreement, the Developer will at all times comply with, and cause its submissions in connection with the Land Use Approvals to comply with Fairfax County requirements in its governmental and regulatory capacity and the requirements of this Agreement.

e. The Developer will be responsible for all costs associated with the Land Use Approvals and the FCRHA will not be obligated to reimburse the Developer for any costs associated with the Land Use Approvals, unless separately agreed to by the Parties. Upon any termination of this Agreement pursuant to Section 6(c), the Developer will (i) assign all of its rights and interests (if any) in and to any obtained Land Use Approvals, and deliver originals or copies of any and all other publicly- available documents related to the same to the FCRHA, and (ii) assign to the FCRHA all of its rights and interests to, and provide and deliver to the FCRHA, any and all publicly-available work product produced by the Developer and its contractors and consultants associated with the obtained Land Use Approvals and the Project, together with any third-party consents necessary therefor, but excluding from such assignment any and all confidential and/or proprietary work product (collectively, the foregoing will be referred to as the **"Assignable Work Product"**).

f. During the term of this Agreement, the Developer and its agents may access the FCRHA Property upon at least five (5) business days' prior notice to the FCRHA for purposes of conducting its initial due diligence to determine the feasibility of the Project and to perform its obligations under this Agreement. Developer's notice will include a description of the due

diligence work to be performed on the FCRHA Property, the proposed date and time and/or dates and times for the performance of such due diligence work, and, to the extent such due diligence work involves any invasive testing, the Developer's proposed plan for restoration of that portion of the FCRHA Property impacted by such testing. The Parties acknowledge and agree that the sole purpose of the Developer's notice is to allow the FCRHA to coordinate and plan the Developer's and its agents' access to the FCRHA Property with the Developer prior to the Developer's and its agents' entry upon the FCRHA Property so as to minimize any disruption that such due diligence work may cause to the residents of the FCRHA Property. The Parties further acknowledge and agree that the FCRHA shall not have the right to approve the due diligence work identified in the Developer's notice, including, without limitation, any invasive testing ordinarily and customarily performed by developers of similar projects or ordinarily and customarily required by lenders or other funding sources providing financing for similar projects; however, any other invasive testing shall require the prior written consent of the FCRHA, which consent will not be unreasonably withheld, conditioned, or delayed.

Any entry on the FCRHA Property pursuant to this Section 5(f) is subject to the following:

(1) The Developer, at its own expense, will restore to its original condition, as nearly as possible, any land that is disturbed by the Developer through any work carried out under this Agreement. The Developer will promptly clean up mud, dirt, and debris on the FCRHA Property resulting from the Developer's activities. If a spill or dumping of materials occurs, the Developer will immediately clean up the materials in accordance with applicable laws.

(2) The Developer will use reasonable, good faith efforts to not disrupt the residents of the FCRHA Property and the Developer may not store equipment on the Property without the FCRHA's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(3) The Developer will be responsible for compliance with all applicable laws, regulations, and any environmental impact assessment requirements.

(4) The FCRHA will have the right to have agents of the FCRHA accompany the Developer on the Property.

(5) The Developer's access to conduct the foregoing investigations will be between the hours of 8:00 a.m. and 8:00 p.m. on weekdays and from 9:00 a.m. to 9:00 p.m. weekends and Fairfax County holidays.

(6) The Developer will notify and coordinate access with Marwan Mahmoud, Fairfax County Department of Housing and Community Development: 703-732-7986; Marwan.Mahmoud@FairfaxCounty.gov.

g. The Developer will notify the PPEA Team, through the designated FCRHA staff project coordinator, of its need to access the Parking Property to perform any necessary due

diligence and, following receipt of such notice, the FCRHA will secure any necessary approvals from the Board for such access. Developer acknowledges that the Board currently uses the Parking Property as a secure lot to park certain Board-owned police vehicles and other vehicles and will continue to use the Parking Property until it relocates these vehicles to another site. To the fullest extent possible, Developer will ensure that its diligence activities on the Parking Property do not interfere with the Board's operations on the Parking Property.

6. Termination.

a. The FCRHA may terminate the agency granted to the Developer, at any time and for any reason. The FCRHA will give written notice to the Developer if the FCRHA elects to terminate this Agreement pursuant to this Section 6(a), whereon this Agreement will immediately terminate except for the Developer's indemnification obligations set forth in Section 8.

b. The Parties shall use good faith efforts to reach mutual agreement upon the terms and conditions of the Comprehensive Agreement in a timely fashion; however, if the Parties are unable to reach agreement upon the terms and conditions of the Comprehensive Agreement by 11:59 p.m. eastern time on August 15, 2023 (or such later date as may be mutually agreed upon, in writing, by the Parties), this Agreement will automatically terminate as of such date and the Parties will have no further rights or obligations hereunder except for the Developer's obligations with regard to the indemnification set forth in Section 8.

c. The Developer may also terminate this Agreement at an earlier date if it reasonably determines that the Project is infeasible. Thereafter, the Parties will have no further rights or obligations hereunder, except for the Developer obligations with regard to the Assignable Work Product, as described in Section 5(e), and the indemnification set forth in Section 8.

7. Insurance. The Developer will maintain a commercial general liability insurance policy insuring the FCRHA, its agents, contractors, subcontractors, and invitees, as well as Fairfax County, against any liability arising out of the Developer's activities under this Agreement. The insurance will be maintained for personal injury and property damage liability adequate to protect the FCRHA and Fairfax County against liability for injury or death of any person arising from Developer's activities in connection with (i) the Land Use Approvals or (ii) the use, operation and condition of the Property, in an amount not less than one million dollars (\$1,000,000) per occurrence (subject to a commercially reasonable deductible, as determined by the Developer). Prior to entering the Property, the Developer will provide the FCRHA with a Certificate of Insurance evidencing this insurance and showing the FCRHA and Fairfax County as additional insureds.

8. Indemnification. The Developer will indemnify and save harmless the FCRHA, its officers, employees and visitors and Fairfax County, its Board members, officers, and employees (the "Indemnified Parties"), from and against any claims, loss, cost, damages, or liability of any kind caused by the Developer, its agents, contractors, subcontractors, or invitees, in connection with the work performed under this Agreement, or failure to perform such work, including without limitation the obligations set forth in Section 5(f) and 5(g), except to the extent of the gross

negligence or willful misconduct of any of the Indemnified Parties. For avoidance of doubt, the FCRHA acknowledges and agrees that the Developer shall have no obligation to indemnify the Indemnified Parties for any claims, loss, cost, damages, or liability arising from any pre-existing conditions discovered on the Property by the Developer, its agents, contractors, subcontractors, or invitees, including without limitation, any pre-existing environmental conditions. This provision will survive the termination of this Agreement.

9. Miscellaneous.

a. Subject to the Developer's compliance with the Community Outreach Program, the FCRHA and the Developer will continue to negotiate in good faith certain other documents necessary to complete the Comprehensive Agreement and to effectuate the Project.

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

c. Should any provision of this Agreement require judicial interpretation, the Parties agree and stipulate that the court interpreting or considering same will not apply the presumption that the terms hereof will be more strictly construed against a Party by reason of any rule or conclusion of law that a document should be construed more strictly against the Party who itself or through its agents prepared the same, it being agreed that all Parties have participated in the preparation of this Agreement and that each Party had full opportunity to consult legal counsel of its choice before its execution of this Agreement.

d. This Agreement may be executed in two or more counterparts, each of which will constitute one and the same instrument. This Agreement may be executed as facsimile or pdf originals, and each copy of this Agreement bearing the facsimile or pdf transmitted signature of any party's authorized representative shall be deemed to be an original.

e. No person or other entity will be a third-party beneficiary of this Agreement; provided, however, the Parties acknowledge and agree that the Board, acting on behalf of its members, Fairfax County, and Fairfax County's officers and employees, shall have the right enforce Developer's insurance and indemnification obligations in Sections 7 and 8 above.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGES]

FCRHA:

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING
AUTHORITY, a political subdivision of the Commonwealth of
Virginia**

By: _____
Thomas E. Fleetwood, Assistant Secretary

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DEVELOPER:

FOULGER-PRATT DEVELOPMENT, LLC, a Maryland limited liability company

By: _____

Printed Name: _____

Title: _____

EXHIBIT A – PROPERTY DESCRIPTION

EXHIBIT B – BOARD PROPERTY DESCRIPTION