

## SAMPLE PROFFERS: NON-TYSONS TOD FULL TDM PROGRAM

### TRANSPORTATION DEMAND MANAGEMENT (“TDM”)

1. Transportation Demand Management. This Proffer sets forth the programmatic elements of a transportation demand management program that shall be implemented by the Applicant, and subsequently, as appropriate, the property owner or Condominium Owners Association (COA), to encourage the use of transit (Metrorail and bus), other high-occupant vehicle commuting modes, walking, biking and teleworking, all in order to reduce automobile trips generated by the residential and or commercial uses constructed on the Property
  - A. Definitions. For purposes of this Proffer, “Stabilization” shall be deemed to occur one (1) year following issuance of the last initial RUP or Non-RUP for the final new building to be constructed on the Subject Property. “Pre-stabilization” shall be deemed to occur any time prior to Stabilization.
  - B. Transportation Demand Management Plan. The proffered elements of the TDM Program as set forth below are more fully described in the X Transportation Demand Management Plan prepared by Firm, dated Date, (the “TDM Plan”). A copy of the cover sheet and table of contents of the TDM Plan is attached hereto as Exhibit X. It is the intent of this Proffer that the TDM Plan will adapt over time to respond to the changing transportation related circumstances of the Subject Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth in these Proffers. Accordingly, modifications, revisions, and supplements to the TDM Plan as coordinated with FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.
  - C. Transportation Management Association. The Applicant shall participate in or otherwise become associated with a larger Transportation Management Association should one be established for this area.
  - D. Trip Reduction Goals. The objective of the TDM Plan shall be to reduce the number of weekday peak hour vehicle trips generated by the residential uses located within the Property through the use of mass transit, ridesharing and other strategies including but not limited to those outlined in the TDM Strategic Plan. In addition, the implementation of enhanced pedestrian and bicycle connections/facilities will provide safe and convenient access to nearby Metrorail and bus facilities thereby encouraging commuting options other than the automobile to residents, employees and visitors to the Property.
    - (i) Baseline. The baseline number of weekday peak hour residential vehicle trips for the proposed units within the Property against which the TDM Goals (as defined in subparagraph D.ii) will be measured shall be derived upon the number of residential units site plan approved, constructed and

occupied on the Property as part of the proposed development at the time traffic counts are conducted in accordance with subparagraph H.1.or as qualified below and using the trip generation rates/equations applicable to such residential uses as set forth in the Institute of Transportation Engineers, Trip Generation, 8th Edition for Land Use Code = **XX**. In the event at Build Out, the Applicant has constructed fewer than **AAA** multifamily residential units as part of the proposed development, then the Baseline Trip generation numbers applicable upon Build Out shall be calculated as if **AAA** residential units had actually been constructed as reflected in the Traffic Impact Study for the **Applicant** prepared by **Firm** dated **DATE, YEAR**.

- (ii) TDM Goal. The TDM strategies shall be utilized to reduce the peak hour vehicular trips by a minimum of **xxx-xxx** percent (**XX**%) for the residential uses.

E. Process of Implementation. The TDM Program shall be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein as coordinated with FCDOT can be made without requiring a PCA.

- (i) TDM Program Manager. The applicant shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for **Subject Property/COA**. If not previously appointed, the TPM shall be appointed by no later than sixty (60) days after the issuance of the first building permit for the first new building to be constructed on the Subject Property. The TPM duties may be part of other duties associated with the appointee. The TPM shall notify FCDOT in writing within 10 days of the appointment of the TPM. Thereafter the AG shall do the same within ten (10) days of any change in such appointment.
- (ii) Annual Report and Budget. The TPM shall prepare and submit to FCDOT an initial TDM Work Plan (“TDMWP”) and Annual Budget no later than 180 days after issuance of the first building permit for the first new building on the Subject Property. Every calendar year after the first issuance of RUP or Non-RUP, and no later than **(select date – January 1-May 15)**, the TPM shall submit an Annual Report, based on a report template provided by FCDOT, which may revise the Annual Budget in order to incorporate any new construction on the Subject Property.

The Annual Report and Budget shall be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the Annual Report and Budget shall be deemed approved and the program elements shall be implemented. If FCDOT responds with comments on the Annual Report and Budget, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County's comments. Thereafter, but in

any event, no later than thirty (30) days after the meeting, the TPM shall submit such revisions to the program and/or budget as discussed and agreed to with FCDOT and begin implementation of the approved program and fund the approved TDM Budget.

- (iii) TDM Account. The TPM shall establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia (the “TDM Account”) within 30 days after approval of the TDMWP and TDM Budget. All interest earned on the principal shall remain in the TDM Account and shall be used by the TPM for TDM purposes.

Funding of the TDM Account shall be in accordance with the budget for the TDM Program elements to be implemented in a year's TDMWP. In no event shall the TDM Budget exceed \$\$\$\$ (this amount shall be adjusted annually from the date of rezoning approval for the Subject Property (the “Base Year”) and shall be adjusted on each anniversary thereafter of the Base Year in accordance with Proffer X. The TPM shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account shall be replenished annually thereafter following the establishment of each year's TDM Budget. The TDM Account shall be managed by the TPM.

- (iv) TDM Remedy Fund. At the same time the TPM creates and funds the TDM Account, the TPM shall establish a separate interest bearing account (referred to as the “TDM Remedy Fund”) with a bank or other financial institution qualified to do business in Virginia. Funding of the TDM Remedy Fund shall be made one time on a building by building basis at the rate of \$0.20 per gross square foot of new office uses and \$0.10 per gross square foot of new residential uses on the Subject Property. Funding shall be provided by the building owners prior to the issuance of the first initial RUP or Non-RUP for each applicable new building. This amount shall be adjusted annually from the date of rezoning approval of the Subject Property (the “Base Year”) and shall be adjusted on each anniversary thereafter of the Base Year as permitted by VA. Code Ann. Section 15.2-2303.3. Funds from the TDM Remedy Fund shall be drawn upon only for purposes of immediate need for TDM funding and may be drawn on prior to any TDM Budget adjustments as may be required.

- (v) TDM Incentive Fund. The “TDM Incentive Fund” is an account into which the building owners, through the TPM, shall deposit contributions to fund a multimodal incentive program for initial purchasers/lessees within X. Such contributions shall be made one time on a building by building basis at the rate of \$0.02 per gross square foot of new office or residential uses to be constructed on the Subject Property and provided

prior to the issuance of the first RUP or Non-RUP for each individual building. In addition to providing transit incentives, such contributions may also be used for enhancing/providing multimodal facilities within and proximate to the Subject Property.

- (vi) Monitoring. The TPM shall verify that the proffered trip reduction goals are being met through the completion of Person Surveys, Vehicular Traffic Counts of residential and/or office uses and/or other such methods as may be reviewed and approved by FCDOT. The results of such Person Surveys and Vehicular Traffic Counts shall be provided to FCDOT as part of the Annual Reporting process. Person Surveys and Vehicular Traffic Counts shall be conducted for the Subject Property beginning one year following issuance of the final initial RUP or Non-RUP for the first new building to be constructed on the Subject Property. Person Surveys shall be conducted every three (3) years and Vehicular Traffic Counts shall be collected annually until the results of three consecutive annual traffic counts conducted upon Build Out show that the applicable trip reduction goals for the Subject Property have been met. Any time during which Person Survey response rates do not reach 20%, FCDOT may request additional surveys be conducted the following year. At such time and notwithstanding Paragraph X below, Person Surveys and Vehicular Traffic Counts shall thereafter be provided every five (5) years. Notwithstanding the aforementioned, at any time prior to or after Stabilization, FCDOT may suspend such Vehicle Traffic Counts if conditions warrant such.

F. Remedies.

- (i) If the Maximum Trips After Reduction for the Subject Property is exceeded as evidenced by the Vehicular Traffic Counts outlined above, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and annual TDMWP.
  - a. Such remedial measures shall be funded by the Remedy Fund, as may be necessary, and based on the expenditure program that follows:

<b>Maximum Trips Exceeded</b>	<b>Remedy Expenditure</b>
Up to 1%	No Remedy needed
1.1% to 3%	3% of Remedy fund
3.1% to 6%	6% of Remedy Fund
6.1% to 10%	10% of Remedy Fund
Over 10%	15% of Remedy Fund

- b. There is no requirement to replenish the TDM Remedy Fund at any time. Upon expiration of the Applicant Control Period, the Applicant shall transfer any funds remaining in the Remedy Fund to the COA or successor developer/management company for TDM purposes.
- G. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct additional Vehicular Traffic Counts (pursuant to the methodology set forth in the TDM Plan) within 90 days to determine whether in fact such objectives are being met. If any such Vehicular Traffic Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.
- H. Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined in **Proffer X**, the Applicant may request that FCDOT review the vehicle trip reduction goals established for the Subject Property and set a revised lower goal for the Subject Property consistent with the results of such surveys and vehicular traffic counts provided for by this Proffer. In the event a revised lower goal is established for the Subject Property, the Maximum Trips After Reduction shall be revised accordingly for the subsequent review period without the need for a PCA.
- I. Continuing Implementation. The TPM shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer. The TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
- J. Notice to Owners. All owners of the Subject Property shall be advised of the TDM Program set forth in this Proffer. The then current owner shall advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), shall be included in all initial and subsequent purchase documents.
- K. Enforcement. If the TPM fails to timely submit a report to FCDOT as required by this Proffer, the TPM will have sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not submitted the delinquent report, then the applicant shall be subject to a penalty of \$75 per day not to exceed \$27,375 for any one incident. Such penalty shall be payable to Fairfax County.

**COMMON ABBREVIATIONS LIST:**

**COA:** Condominium Owner's Association

**FCDOT:** Fairfax County Department of Transportation

**HOA:** Homeowner's Association

**PCA:** Proffered Condition Amendment

**TDM:** Transportation Demand Management

**TMA:** Transportation Management Association

**TPM:** TDM Program Manager

**UOA:** Unit Owners Association