

## SAMPLE PROFFERS – TYSONS URBAN CENTER MAJOR DEVELOPMENT

### TRANSPORTATION DEMAND MANAGEMENT (“TDM”)

1. Tyson's Transportation Management Association. The Applicant shall contribute towards the establishment of a future transportation management association (the “TMA”), which may be established for the Tysons Corner Urban Center and to which all other Tysons property owners will also contribute.

- A. The Applicant shall make a one-time contribution to the County for the establishment of this future TMA based on a participation rate of \$0.10 per gross square foot of new office uses and \$0.05 per gross square foot of new residential uses to be constructed on the Subject Property.
- B. Twenty-five (25) percent of the total contribution to the TMA shall be paid upon site plan approval of the first new building to be constructed on the Subject Property. The remaining seventy-five percent (75%) of the total contribution shall be paid in three (3) equal installments prior to the issuance of the first RUP or Non-RUP for the first three (3) new buildings, but in any event no later than ten (10) years from the date of rezoning approval.
- C. If subsequent to the approval of this rezoning, FCDOT approves the TMA as the administrator of TDM programs for the Tysons Corner Urban Center, then the Applicant may, in its sole discretion, join or otherwise become associated with such entity and transfer some functions of this TDM Program to the TMA. Further, if determined by FCDOT that a proactive, private TDM program is no longer necessary, the TDM structure in this Proffer may be rendered null and void in whole or in part without the need for a PCA.
- D. If the TMA has not been established within three (3) years after the approval of this Rezoning, this Proffer shall be null and void with no further effect on the Subject Property. Further, any funds contributed to the TMA would then be returned to the Applicant that paid such funds.

2. TDM Administrative Group. The Applicant shall establish a TDM Administrative Group (the “AG”) to fund, implement and administer the transportation demand management program (the “TDM Program”) for the Subject Property as described more fully below. The AG shall include, at a minimum, one representative for each **Block, Building or Group of Buildings**. Prior to approval of the first site plan for new development on the Subject Property, evidence shall be provided to FCDOT that the AG has been established.

3. 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”). 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.

- 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. Trip Reduction Objective. The objective of this TDM Program shall be to reduce the vehicle trips generated by residents and office tenants of the Subject Property (i.e., not including trips from hotel and retail uses), during weekday peak hours associated with the adjacent streets as more fully described in the TDM Plan, by meeting the percentage vehicle trip reductions established by the Comprehensive Plan as set forth below. These trip reduction percentages shall be multiplied by the total number of residential and office vehicle trips that would be expected to be generated by the uses developed on the Subject Property as determined by the application of the Institute of Traffic Engineers, 8th Edition, Trip Generation rates and/or equations (the “ITE Trip Generation”), and the number of trips determined by the product of such equation shall be referred to herein as the “Maximum Trips After Reduction.” For purposes of this calculation, the maximum number of dwelling units or the total gross square footage of office uses proposed to be constructed in each building on the Subject Property as determined at the time of site plan approval for each building shall be applied to the calculation described in the preceding sentence. The target reductions shall be based on the following table:

**Tysons Corner Trip Reduction Goals**

Square Feet of GSA in Tysons	Distance from Metro Station			
	0 to 1/8 Mile	1/8 to 1/4 Mile	1/4 to 1/2 Mile	Beyond 1/2 Mile
	Trip Reduction Goal			
Up to 65,000,000	45%	35%	30%	25%
65,000,000	50%	40%	35%	30%
84,000,000	55%	45%	40%	35%
90,000,000	58%	48%	43%	38%
96,000,000	60%	50%	45%	40%
105,000,000	63%	53%	48%	43%
113,000,000+	65%	55%	50%	45%

The trip reduction goals outlined above are predicated on the achievement of specific development levels within the Tysons Corner Urban Center as

anticipated in the Comprehensive Plan. Prior to undertaking trip measurements, the AG shall provide the County with a summary of the then existing development levels in Tysons Corner (based on RUPs and Non-RUPS issued) in order to determine the appropriate vehicle trip reduction goal.

If through an amendment to the Comprehensive Plan, the Board should subsequently adopt a goal for trip reductions that is lower than that committed to in this Proffer, then the provisions of this Proffer shall be adjusted accordingly without requiring a PCA.

- C. 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. If not previously appointed, the AG shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for X. If not previously appointed, the TPM shall be appointed by the AG 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 AG shall notify FCDOT and the District Supervisor 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 thereafter but no later than (select date – January 1-May 15), the TPM shall submit an Annual Report, which may revise the Annual Budget in order to incorporate any new construction on the Subject Property. The Annual Report shall include, at a minimum, the details outlined in the Annual Report Template provided by FCDOT.

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. Thereafter, the TPM, in conjunction with each annual report summarizing the results of the TDM Program to be submitted no later than **Selected Date** (the “Annual Report”), shall update the Annual Report and TDM Budget for each succeeding calendar year, modify or enhance program elements and establish a budget to cover the costs of implementation of the program for such year. The expected annual amounts of the TDM Budget are further described in Section 7.0 of the TDM Plan.

- (iii) TDM Account. If not previously established, the AG, through 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. The TDM Account shall be funded by the AG, through the TPM. The documents that establish the AG shall provide that the TDM Account shall not be eliminated as a line item in the governing budget and that funds in the TDM Account shall not be utilized for purposes other than to fund TDM strategies/programs and/or specific infrastructure needs as may be approved in consultation with FCDOT.
- (iv) 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.
- (v) 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 \$0.40 per gross square foot of new office uses and \$0.30 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.

- (vi) 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.
  
- (vii) TDM Penalty Fund. The “TDM Penalty Fund” is an account into which the AG shall, through the TPM, deposit penalty payments as may be required to be paid pursuant to this Proffer for non-attainment of trip reduction goals. The County may withdraw funds from the TDM Penalty Fund for the implementation of additional TDM Program elements/incentives and/or congestion management associated with X, or with the TPM’s approval, for other TDM-related improvements or programs within Tysons Corner. To secure the AG’s obligations to make payments into the TDM Penalty Fund, the AG shall provide the County with a letter of credit or a cash escrow as further described below.

Prior to the issuance of the first RUP or Non-RUP for each new building on the Subject Property, the AG shall:

- a. Establish the TDM Penalty Fund, if not previously established by the TPM, and/or
  
- b. Deliver to the County a clean, irrevocable letter of credit issued by a banking institution approved by the County or escrow cash in an interest-bearing account with an escrow agent acceptable to DPWES to secure the AG’s obligations to make payments into the TDM Penalty Fund (the “Letter(s) of Credit or Cash Escrow(s)”). The Letter(s) of Credit or Cash Escrow(s) shall be issued in an amount equal to \$0. 10 for each square foot of new office GFA or \$0.05 for each square foot of new residential GFA shown on the approved site plan for each new building on the Subject Property. Until the Letter(s) of Credit or Cash Escrow(s) has been posted, the figures in the preceding sentence shall be adjusted annually from the first day of the calendar month following the date on which the first RUP or Non-RUP, as the case may be, for the first new building on the Subject Property has been issued in accordance

with **Proffer X** using the date of rezoning approval as the base year. Once the Letter(s) of Credit or Cash Escrow(s) has been posted, there shall be no further adjustments or increases in the amount thereof. The Letter(s) of Credit or Cash Escrow(s) shall name the County as the beneficiary and shall permit partial draws or a full draw. The foregoing stated amount(s) of the Letter(s) of Credit or Cash Escrow(s) shall be reduced by the sum of any and all previous draws under the Letter(s) of Credit or Cash Escrow(s) and payments by the AG (or the TPM) into the TDM Penalty Fund as provided below.

- (viii) **Monitoring.** The AG 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 Stabilization show that the applicable trip reduction goals for the Subject Property have been met. At such time and notwithstanding Paragraph H 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.

**D. Remedies and Penalties.**

- (i) **Pre-Stabilization.** 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%	1% of Remedy fund
3.1% to 6%	2% of Remedy Fund
6.1% to 10%	4% of Remedy Fund
Over 10%	8% of Remedy Fund

- b. If the results of the Vehicular Traffic Counts conducted during Pre-Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table below, then a portion of the Remedy Fund as outlined in the same table below shall be released back to the building owner(s) through the AG. The amount released will be relative to the amount contributed by those buildings constructed and occupied at the time of Vehicular Traffic Counts. Any funds remaining in the Remedy Fund after such release will be carried over to the next consecutive three (3) year period.

**Remedy Fund Release Chart**

<b>Up to 65,000,000 Square Feet of GSA in Tysons</b>	
<b>Meet or Exceed Trip Goal for 3 Years By:</b>	<b>Cumulative % Remedy Fund Returned</b>
<b>(Meet) 0 - 4.9%</b>	<b>30%</b>
5% - 10%	50%
10.1% - 15%	65%
15.1% - 18%	80%
18.1 - 20%	90%
<b>Reach Final Goal</b>	<b>100%</b>

  

<b>65-84,000,000 Square Feet of GSA in Tysons</b>	
<b>Meet or Exceed Trip Goal for 3 Years By:</b>	<b>Cumulative % Remedy Fund Returned</b>
<b>(Meet) 0 - 4.9%</b>	<b>50%</b>
5% - 10%	65%
10.1% - 13%	80%
13.1% - 15%	90%
<b>Reach Final Goal</b>	<b>100%</b>

  

<b>84-90,000,000 Square Feet of GSA in Tysons</b>	
<b>Meet or Exceed Trip Goal for 3 Years By:</b>	<b>Cumulative % Remedy Fund Returned</b>
<b>(Meet) 0 - 4.9%</b>	<b>65%</b>
5% - 8%	80%
8.1% - 10%	90%
<b>Reach Final Goal</b>	<b>100%</b>

  

<b>90-96,000,000 Square Feet of GSA in Tysons</b>	
<b>Meet or Exceed Trip Goal for 3 Years By:</b>	<b>Cumulative % Remedy Fund Returned</b>
<b>(Meet) 0 - 4.9%</b>	<b>80%</b>
5% - 8%	90%
<b>Reach Final Goal</b>	<b>100%</b>

  

<b>96-113,000,000 Square Feet of GSA in Tysons</b>	
<b>Meet or Exceed Trip Goal for 3 Years By:</b>	<b>Cumulative % Remedy Fund Returned</b>
<b>(Meet) 0 - 4.9%</b>	<b>90%</b>
5%	100%

  

<b>113,000,000+ Square Feet of GSA in Tysons</b>	
<b>Meet or Exceed Trip Goal for 3 Years By:</b>	<b>Cumulative % Remedy Fund Returned</b>
<b>(Meet) 0 - 4.9%</b>	<b>100%</b>

- c. There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the Remedy Fund will be released to the



AG for final distribution to the owners once three consecutive annual Vehicular Traffic Counts conducted after Stabilization show that the trip reduction goals have been met.

(ii) Following Stabilization.

- a. *Remedies.* If the TDM Program monitoring, as evidenced by the Vehicular Traffic Counts outlined above, reveals that the Maximum Trips After Reduction for the Subject Property is exceeded, 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 and funded by the Remedy Fund (if available) as may be necessary, commensurate with the extent of deviation from the Maximum Trips After Reduction goal as set forth in accordance with the expenditure schedule outlined above.
- b. If the results of the traffic counts conducted upon Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table above, then any remaining Remedy Funds shall be released back to the building owner(s) through the AG.
- c. *Penalties.* If despite the implementation of remedial efforts, the applicable Maximum Trips After Reduction (based on the existing and approved development levels in the Tysons Corner Urban Center as described in Proffer X.) are still exceeded after three (3) consecutive years, then, in addition to addressing further remedial measures as set forth in this Proffer, the TPM shall be assessed a penalty according to the following:

<b>Exceeded Trip Goals</b>	<b>Penalty</b>
Less than 1%	No Penalty Due
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

- (iii) The AG through the TPM shall make the payments required by this Proffer into the TDM Penalty Fund upon written demand by the County, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. If the AG fails to make the required penalty payment to the TDM Penalty Fund within thirty (30) days after written demand, the County shall have the ability to withdraw the penalty amount directly from the Letter(s) of Credit or Cash Escrow(s).
- (iv) The maximum amount of penalties associated with the Subject Property, and the maximum amount the AG shall ever be required to pay pursuant to

the penalty provisions of this Proffer, including prior to and after Stabilization, shall not in the aggregate exceed the amount of the Letter(s) of Credit or Cash Escrow(s) determined and computed pursuant to the provisions of the above Proffer. There is no requirement to replenish the TDM Penalty Fund at any time. The Letter(s) of Credit and/or any cash left in the Cash Escrow(s) (either Penalty and/or Remedy Funds) shall be released to the AG once three (3) consecutive counts conducted upon Stabilization show that the Maximum Trips After Reduction have not been exceeded.

- E. 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.
- F. 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 AG 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.
- G. Continuing Implementation. The AG through the TPM shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer. The AG through the TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
- H. 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.
- I. 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 AG shall be subject to a penalty of \$100 per day not to exceed \$36,500 for any one incident. Such penalty shall be payable to Fairfax

County to be used for multimodal, transit, transportation, or congestion management improvements within the vicinity of the Subject Property, or with the TPM's approval, for other TDM-related improvements or programs within Tysons Corner.

4. Transportation Demand Management for Retail/Hotel Uses. As provided in the above Proffer, certain components of the TDM Plan are applicable to and will benefit the proposed retail/hotel uses on the Subject Property. Therefore, the Applicant will provide an additional TDM program tailored to specifically serve the Retail/Hotel Uses (the "Retail/Hotel TDM Program"). In no event will penalties be assessed against any Retail/Hotel Uses, which may be established on the Subject Property.
  - A. Goals of the Retail/Hotel TDM Program. Because tenants of the Retail stores and Hotels and their employees work hours that are atypical of the standard work day, these tenants and their employees do not necessarily travel to and from the Subject Property during Peak Hours. Given this, the Retail/Hotel TDM Program shall encourage Retail tenants, Hotel Guests and the Retail/Hotel employees to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle ("non-SOV") modes of transportation to travel to and from the Subject Property rather than focusing on the specific trip reductions during the weekday AM or PM Peak Hours.
  - B. Components of the Retail/Hotel TDM Program. The Retail/Hotel TDM Program shall include, at a minimum, the components applicable to the Subject Property that are described in this Proffer and the additional components provided below. These additional components may be subsequently amended by mutual agreement between the Applicant and FCDOT. All amendments to the components of the Retail/Hotel TDM Program contained in this Proffer shall be approved by FCDOT and will not require a PCA. The Retail/Hotel TDM Program components are further described in the TDM Plan.
  - C. Employee/Tenant Meetings. The TPM shall hold, at a minimum, an annual TDM meeting with the Retail store tenants and Hotel Managers, and their respective employees, to review the available transit options, changes in transit service and other relevant transit-related topics. Based on these meetings, the TPM shall work with Fairfax County to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to the Subject Property tenants and their employees.
  - D. Regional TDM Programs. The TPM shall make information available to Retail store tenants, Hotel Guests and the Retail/Hotel employees about regional TDM programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.

- E. Retail/Hotel TDM Program Participation Outreach. The TPM shall endeavor in good faith to encourage participation by Retail store tenants and Hotel Management in the Retail/Hotel TDM Program, including the encouragement of a financial participation by such tenants through their direct offering of transit benefit programs and transit incentives to their employees. Actions taken by the TPM and Property management in furtherance of this objective may include dissemination of information to, and solicitation of participation from, the tenant's in-store management and executives or officers at their headquarters offices, at appropriate intervals. The TPM shall include a report to the County with respect to the activities described in the TDM Proffer as part of the Annual Report to be filed with the County. This report shall include detailed accounts of the outreach efforts and the feedback and response from the tenants.

**COMMON ABBREVIATIONS LIST:**

**AG:** Administrative Group

**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