

SAMPLE PROFFERS: TYSONS MODERATE TDM PROGRAM

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, to be paid at Site Plan, for the establishment of this future TMA based on a participation rate of \$0.02 per gross square foot of new office and new residential uses to be constructed on the Subject Property.
- B. The Applicant shall participate in or otherwise become associated with a larger Transportation Management Association should one be established for this area. 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.
- 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.

2. 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. 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.
- 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”). 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. 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.

- D. 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 based on the following table:

Tyson's 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%

For purpose of this proffer, the trip reduction goals for this development fall within the category of **X to X Mile** from the Metro Station.

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 TPM 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.

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 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. Annual Report and Budget. Every calendar year, 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. Any changes to the TDM Plan shall be highlighted in this report.

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, 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 the TDM Plan.

- (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 initial submission of the TDM Budget. All interest earned on the principal shall remain in the TDM Account and shall be used by the TPM for TDM purposes.

- (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:

Maximum Trips Exceeded	Remedy Expenditure
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 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.
- 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:

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