

MEMORANDUM OF AGREEMENT
Between
BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
And
COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION
For
DESIGN STANDARDS AND RELATED RESPONSIBILTIES FOR
MAINTENANCE OF STREETS IN THE TYSONS CORNER URBAN CENTER

THIS MEMORANDUM OF AGREEMENT (“**Agreement**”) made and executed this 13th day of September, 2011, by and between the BOARD OF SUPERVISORS, FAIRFAX COUNTY, VIRGINIA, hereinafter referred to as the “**COUNTY**,” and the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the “**DEPARTMENT**,” acting by its Commissioner. The COUNTY and the DEPARTMENT are sometimes hereinafter jointly referred to as “**Parties**”. Such Parties are sometimes hereinafter referred to individually as “**Party**”.

WITNESSETH

WHEREAS, the DEPARTMENT is responsible for the operation and maintenance of all State maintained streets in the COUNTY which have been accepted to the Secondary System of State Highways, hereinafter referred to as “**System**,” pursuant to the Code of Virginia, and

WHEREAS, the COUNTY has adopted an amendment to the Fairfax County Comprehensive Plan for the Tysons Corner Urban Center, as identified in Attachment C and hereinafter referred to as “**Area**,” that provides for a highly urban environment, and

WHEREAS, the COUNTY desires that streets lying within the Area have a distinctly urban character that creates a pedestrian friendly environment, and actively promotes multi-modal and non-motorized travel modes, and

WHEREAS, a critical component of the Comprehensive Plan for this Area is the creation of an urban street grid that is characterized by small grid blocks and high street connectivity in all directions, and

WHEREAS, the implementation of such a grid will occur in stages as new development and redevelopment occurs, and

WHEREAS, special procedures governing the acceptance of new streets into the System have been incorporated into the Virginia Administrative Code through the Secondary Street Acceptance Requirements, hereinafter referred to as “**SSAR**,” and

WHEREAS, the SSAR procedures explicitly recognize the desirability of providing an interconnected roadway network and the frequent necessity of constructing this network in stages as new development and redevelopment occurs, and

WHEREAS, the SSAR procedures establish public benefit criteria for acceptance of secondary streets, including phased and stubbed streets into the System, and

WHEREAS, the creation of a grid of streets that will be phased in as new development and redevelopment occurs establishes a public benefit and necessity of acceptance of phased and stubbed streets into the System for maintenance; and

WHEREAS, the COUNTY desires that the streets within the Area, including phased and stubbed streets be maintained by the DEPARTMENT, and have ownership and usage rights comparable to other State maintained streets in the COUNTY, and

WHEREAS, VDOT's existing geometric Design Standards, hereinafter referred to as "**VDOT Standards**," currently in use by the DEPARTMENT do not sufficiently accommodate many of the urban features associated with the adopted Comprehensive Plan, and

WHEREAS, both the COUNTY and the DEPARTMENT agree that waivers of VDOT Standards, as explicitly permitted by that document, are necessary to accomplish the objectives of the adopted Comprehensive Plan, and

WHEREAS, §33.1-69.001 of the Code of Virginia directs the DEPARTMENT to work in conjunction with COUNTY and the Department of Rail and Public Transport to review new design standards for secondary streets in urban areas, and

WHEREAS, the COUNTY in partnership with the DEPARTMENT has developed Transportation Design Standards for the Tysons Corner Urban Center, dated September 13, 2011, attached herewith as Attachment D, hereinafter referred to as "**Tysons Standards**," and

WHEREAS, the Tysons Standards will supplement, as applicable, existing VDOT Standards, or, as applicable, the provisions of VDOT Standards shall be waived and the Tysons Standards shall control; and

WHEREAS, the Tysons Standards will facilitate implementation of the Comprehensive Plan for the Tysons Corner Urban Center; and.

WHEREAS, the Tysons Standards have been reviewed by staff of the COUNTY and the DEPARTMENT and are found to be acceptable, and

WHEREAS, the DEPARTMENT can agree to special non-VDOT construction that complies with all applicable safety standards, and as long as they are not maintained by DEPARTMENT.

NOW, THEREFORE, in consideration of the mutual premises contained herein, the Parties agree as follows:

SECTION 1

The DEPARTMENT shall:

- (a) Adopt the Tysons Standards for all non-limited access streets lying within the Area that are accepted into the System and maintained by the DEPARTMENT, including those existing at the date of this agreement, and those that may hereafter be submitted for acceptance into the System. The Tysons Standards may be updated periodically consistent with §33.1-69.001 of the Code of Virginia.
- (b) Review plans for new streets, and modifications to existing streets within the Area that may be maintained by the DEPARTMENT, for conformance with the Tysons Standards.
- (c) Approve plans for new streets, and modifications to existing streets within the Area that conform to the Tysons Standards, are in accordance with the established procedures for the DEPARTMENT's maintained streets, and that are consistent with the standards of other Departments of the Commonwealth. Pursuant to this paragraph, the Tysons Standards, Attachment D, are recognized as the adopted standards for streets within the Tysons Area, Attachment C, and shall supplement as applicable, the existing Road and Bridge Standards, or, as applicable, the provisions of the Road and Bridge Standards shall be waived and the Tysons Standards shall control.
- (d) Accept new streets into the System within the Area that conform to existing VDOT Road and Bridge Standards and the Tysons Standards, including phased and stubbed streets that conform to the SSAR, provided that temporary vehicle turnarounds for maintenance and public safety vehicles are accommodated in accordance with the SSAR, and provided that any maintenance of new streets not performed by the DEPARTMENT is assured through separate Permits or other agreements in accordance with SECTION 3 of this Agreement. For purposes of this Agreement, pursuant to the discretionary authority provided in 24VAC30-92-60 and 24VAC30-92-100, the criteria definitions within the SSAR used to bring streets into the secondary system for maintenance are expanded to recognize that creation of a grid of streets within the Tysons Corner Urban Center is an acceptable criterion to establish public benefit and necessity for acceptance of the phased and stubbed streets.
- (e) If Permit conditions and requirements of DEPARTMENT are met, DEPARTMENT shall not withhold, and agrees to issue Permits to the COUNTY and/or private parties, hereinafter referred to as "**Permittees**," for work to be performed on existing or future streets in the Area if such is in conformance with existing VDOT Road and Bridge Standards, the Tysons Standards, and the provisions of this Agreement.
- (f) Maintain existing streets in the Area that have been accepted into the Primary and Secondary System as of the date of this Agreement in accordance with the DEPARTMENT's established guidelines for these streets, subject to the special provisions enumerated in SECTION 3 of this Agreement, and agreed to by both parties.
- (g) Maintain future streets in the Area, including phased and stubbed streets that have been accepted into the Primary and Secondary system in accordance with the SSAR, and in

accordance with the DEPARTMENT's established guidelines for these streets, subject to the special provisions enumerated in SECTION 3 of this Agreement.

- (h) Ensure that its employees and contractors exercise all reasonable care and diligence in protecting specialized and architectural ancillary features and appurtenances within the right-of-way, consistent with standard practice.
- (i) On Secondary Local Streets where the right-of-way has been dedicated in fee simple to the COUNTY, review permit applications for, and give consideration to, placement of subsurface and overhead structures that are not listed in Attachments A and B, such as parking garages, pedestrian or vehicular tunnels, stairway access portals, utility and ventilation shafts, building awnings, and pedestrian bridges and their supporting structures, when such structures are permitted pursuant to development plans approved by the County. Such consideration shall be subject to review and approval by DEPARTMENT, will require issuance of a separate agreement or permit, and is subject to special conditions, waivers of liability, and indemnification. The DEPARTMENT is not obligated to construct, install, operate, maintain, or replace any such feature.

SECTION 2

The COUNTY shall:

- (a) Adopt the Tysons Standards for all non-limited access streets lying within the Area that are accepted into the System and maintained by the DEPARTMENT, including those existing at the date of this agreement, and those that may hereafter be submitted for acceptance into the System.
- (b) Ensure through its development review and approval processes that development that occurs within the Area is in conformance with the Tysons Standards.
- (c) Ensure through its development review and approval process that sufficient provisions and access rights are provided on any new street constructed as a phased or stubbed street, to allow for maintenance and public safety vehicles on such streets to safely turn around at the terminus of the street.
- (d) Ensure that on-street parking is restricted on emergency snow routes in inclement weather such that snow and other material that is removed from roadway surfaces during such periods can be stored in a fashion that does not obstruct travel lanes.

SECTION 3

The PARTIES respectively further agree as follows:

- (a) This Agreement does not place any additional obligation on the COUNTY or the DEPARTMENT to maintain, repair or replace any structure or facility, or any portion thereof, not already existing within the State maintained street right-of-way which has been accepted into the state system of highways.
- (b) This Agreement does not commit the COUNTY or the DEPARTMENT to removal of snow from sidewalks and parking bays, or from travel lanes where plowing is blocked by vehicles.
- (c) The placement of assets including pavement, curb-and-gutter, drainage, signs, signals and signal control systems, structures, and other ancillary features within the State right-of-way shall conform to the Tysons Standards, and the DEPARTMENT's standards for maintenance in effect at the time of site plan review, except as otherwise set forth in paragraph (d).
- (d) The placement of certain ancillary features and appurtenances within the street right-of-way that are not conventionally part of the current standards of the DEPARTMENT as described in paragraph (c) of this section are subject to review and approval by the DEPARTMENT to ensure that such features do not adversely affect the safety of the users of this right-of-way. The DEPARTMENT's review of ancillary features and appurtenances shall be restricted to safety and operational issues, as well as control of outdoor advertising for architectural and aesthetic appearance, except for conformance with Chapter 7 of Title 33.1 of the Code of Virginia. Bus shelters and other structures placed within the right-of-way may require review and/or approval by the State Architecture Review Board, Department of General Services. Facilities and materials included in this paragraph may consist of, but are not exclusively limited to those identified on Attachments A and B of this Agreement. Such facilities when approved by the Department shall be subject to the following:
 1. Any feature described in this paragraph shall be allowed only through the issuance of appropriate permits by the DEPARTMENT and submittal by Permittee of required maintenance bond or other financial security. DEPARTMENT shall establish a reasonable amount for the bond or financial security to cover the replacement or removal of certain ancillary features and appurtenances within the street right-of-way that are not conventionally part of the current standards of the DEPARTMENT.
 2. The DEPARTMENT is not obligated to construct, install, operate, maintain, or replace any such feature.
 3. That all such features will be operated and maintained by the holder of the DEPARTMENT permit for such feature, in a fashion that does not adversely affect the safety of the users of the State maintained street right-of-way.

- (e) The DEPARTMENT will operate and maintain all features meeting the DEPARTMENT's standards as described in paragraph (c) of this section, or as may be permitted pursuant to paragraph (d) of this section, in a fashion consistent with the maintenance and operations practices and procedures followed by the DEPARTMENT throughout Fairfax County.
- (f) In the case where any such feature is altered, damaged, or otherwise rendered unsafe or poses a potential hazard to users of the State maintained street right-of-way such that emergency repair or replacement is necessary, or in the case where in the judgment sole discretion of the DEPARTMENT the operation and maintenance of the feature by others poses a potential hazard, the DEPARTMENT will remedy, at the Permittee cost, the immediate safety hazard through provision of its standard materials, procedures and practices. Such remedial measures shall be non-destructive to surrounding infrastructure, temporary in nature, and will remain in place until suitable replacements are provided and installed by the Permittee under the applicable Permit issued by the DEPARTMENT. Materials provided by the DEPARTMENT installed on an emergency basis that can be re-used will be returned to the DEPARTMENT.
- (g) The DEPARTMENT shall not restrict, prohibit or otherwise hinder the COUNTY's ability to enter into separate agreements with private parties or contractors to maintain, replace, or reconstruct those facilities and materials included in Attachments A and B, in as much as the DEPARTMENT is ultimately not responsible for these activities pursuant to the terms of this agreement, and that such separate agreements shall require compliance with the provisions of paragraph (d).
- (h) All notices shall be in writing, addressed as provided below. All notices shall be made, and be deemed effective, when personally delivered, given by prepaid United States registered or certified mail, return receipt requested, addressee only, or given by overnight mail service, accepted by the addressee or by an employee at the addressee's office. Notices may also be given to such other address or contact person as either Party may direct in writing.

If to COUNTY:
County Executive

Fairfax County, Virginia
12000 Government Center Pkwy
Fairfax, Virginia 22035

With a copy to:
Director, Fairfax County
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 222033

If to DEPARTMENT:

District Administrator
Northern Virginia District
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, Virginia 22030

- (i) The COUNTY or private parties shall not restrict, prohibit or otherwise hinder the DEPARTMENT's ability to construct facilities included in Attachments A and B.
- (j) All of the obligations of the Parties, as the case may be, under this Agreement are subject to the annual appropriation of funds by the General Assembly of Virginia and the Fairfax County Board of Supervisors, as applicable, for the purpose of satisfying the payment and performance of such obligations.
- (k) No provision of this Agreement shall be construed as either Party, explicitly or implicitly, agreeing to indemnify or hold harmless the other Party or any third persons or entities for liability of any nature, except to the extent permitted by Virginia law and required by the laws and regulations of the Commonwealth.
- (l) The failure or delay by one Party to enforce its rights pursuant to this Agreement against the other Party shall not constitute a waiver of such rights.
- (m) The Parties mutually agree and acknowledge that in entering this Agreement that the individuals acting on behalf of the Parties are acting within the scope of their official authority and no breach or violation of the terms of this Agreement shall subject any official, officer, employee or agent of either Party to any personal liability or consequence and no suit to enforce the terms and conditions of this agreement shall be brought against any such individual in his personal capacity by either Party. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
- (n) Unless otherwise provided herein, the Recitals and Attachments are hereby incorporated into this Agreement.
- (o) This Agreement contains the entire agreement of the Parties. No representations, inducements or agreements, oral or otherwise, between the Parties not contained in this Agreement shall be of any force or effect.
- (p) This Agreement shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia.
- (q) Each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. If any provision of this Agreement or the application thereof shall be held invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions shall not be affected thereby.

- (r) The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise.

SECTION IV

- (a) This Agreement shall be effective on the date when it is executed by the Commissioner hereto ("**Effective Date**").
- (b) Nothing in this Agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.
- (c) The COUNTY and DEPARTMENT acknowledge and agree that this Agreement has been agreed to by the Parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any Party.
- (d) This Agreement, when properly executed, shall be binding upon Parties, their successors, and assigns.
- (e) This Agreement may be modified in writing by mutual agreement of both Parties when such modification is executed by duly authorized individuals on behalf of such Parties.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

Attest:

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

Nancy Velms

As to BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

By: Sharon A. Bulova
Sharon A. Bulova, Chairman

Attest:

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF
TRANSPORTATION

Brenda P. Crouch

As to the Commonwealth

By: Gregory A. Whirley
Gregory A. Whirley, Commissioner of Highways

Attachment A

Facilities not included in the standards employed by the DEPARTMENT

1. Decorative and ornamental area and spot lighting features;
2. Decorative and ornamental traffic signals, or other decorative and ornamental traffic appurtenances;
3. Special landscaping materials, planting beds, raised planters, street trees, root cell structures, tree cages, and other decorative landscaping materials (See Attachment B for conceptual graphic examples);
4. Special and decorative roadway or sidewalk paving materials such as stamped concrete or stone pavers, and porous paving;
5. Special drainage features, underground storage and mechanical vault structures, and innovative drainage features such as rain gardens (See Attachment B for conceptual graphic examples);
6. Special signage, such as way finding signs;
7. Street furniture such as benches, trash receptacles, kiosks, outside seating areas, and other similar items;
8. Bus shelters and other transit-related facilities;
9. Parking meters; and
10. Decorative, not standard retaining walls.

