

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
June 19, 2018**

**AGENDA**

8:30	<b>Held</b>	Reception for the A. Heath Onthank Award, J. Lambert Conference Center, Reception Area
9:30	<b>Done</b>	<a href="#">Presentations</a>
10:00	<b>Done</b>	<a href="#">Presentation of the A. Heath Onthank Award</a>
10:10	<b>Done</b>	<a href="#">Presentation of the Architectural Review Board</a>
10:20	<b>Done</b>	<a href="#">Presentation of the History Commission Report</a>
10:30	<b>Done</b>	<a href="#">Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups</a>
10:40	<b>Done</b>	<a href="#">Items Presented by the County Executive</a>

**ADMINISTRATIVE  
ITEMS**

1	<b>Approved</b>	<a href="#">Authorization to Advertise a Public Hearing to Consider an Ordinance to Amend and Readopt Fairfax County Code Appendix D – Industrial Development Authority</a>
2	<b>Approved</b>	<a href="#">Approval of “Watch for Children” Signs as Part of the Residential Traffic Administration Program (Dranesville, Providence and Springfield Districts)</a>
3	<b>Approved</b>	<a href="#">Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the West Potomac Residential Permit Parking District, District 36 (Mount Vernon District)</a>

**ACTION ITEMS**

1	<b>Approved</b>	<a href="#">Approval of a Memorandum of Understanding Between the Fairfax County Police Department and the United States Department of Justice Drug Enforcement Administration</a>
2	<b>Approved</b>	<a href="#">Authorization of Economic Development Support Funding for the Downtown Herndon Redevelopment Project (Dranesville District)</a>
3	<b>Deferred to 7/10/2018</b>	<a href="#">Adoption of a Resolution of Support for Interchange Modification Report (IMR) for Route 267 (Dulles Airport Access Road) and Route 123 (Dolley Madison Boulevard) (Providence District)</a>
4	<b>Approved</b>	<a href="#">Changes to the Fairfax County Purchasing Resolution</a>

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
June 19, 2018**

**ACTION ITEMS  
(Continued)**

- |    |                 |   |
|----|-----------------|---|
| 5  | <b>Approved</b> | Approval of the Fall 2018 Bond Referendum for Public Safety   |
| 6  | <b>Approved</b> | Approval of SmarTrip® Conversion and Metrobus Pilots for the Free Student Bus Pass Program  |
| 7  | <b>Approved</b> | Approval of Additional Funding for the Route 7 Widening Project from Jarrett Valley Drive to Reston Avenue  |
| 8  | <b>Approved</b> | Approval of a Standard Project Agreement with the Virginia Department of Transportation for the I-495 Pedestrian Overpass from Tysons One Place to Old Meadow Road (Providence District)  |
| 9  | <b>Approved</b> | Approval of Amendment to SmarTrip Operations Funding Agreement (OFA)  |
| 10 | <b>Approved</b> | Approval of the Proposed Consolidated Plan One-Year Action Plan for FY 2019   |
| 11 | <b>Approved</b> | Approval of a One Year Extension to the Washington Metropolitan Area Transit Authority's (WMATA) Capital Funding Agreement, Use of Bond Premium Proceeds from the FY 2018 WMATA Bond Sale for FY 2019; and Opt Out of Long Term Debt to be Issued by WMATA in FY 2019 |

**CONSIDERATION  
ITEMS**

- |       |                  |   |
|-------|------------------|---|
| 1     | <b>Withdrawn</b> | Appeal of K2NC, LLC, from a Decision of the Exception Review Committee Pursuant to the Chesapeake Bay Preservation Ordinance for 4104 Woodlark Drive; Fairfax Hills, Section 1, Lot 42; Tax Map No. 059-4-10-0042 (Braddock District) |
| 10:50 | <b>Done</b>      | Matters Presented by Board Members  |
| 11:40 | <b>Done</b>      | Closed Session  |

**PUBLIC HEARINGS**

- |      |                 |   |
|------|-----------------|---|
| 3:00 | <b>Approved</b> | Joint Public Hearing on the Proposed Virginia Department of Transportation Six-Year Secondary System Construction Program for Fiscal Years 2019 Through 2024 and FY 2019 Budget |
|------|-----------------|---|



**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
June 19, 2018**

**PUBLIC HEARINGS  
(Continued)**

3:30	<b>Approved</b>	Public Hearing on RZ 2018-SP-001 (Jag Development Company, LLC) (Springfield District)
3:30	<b>Approved</b>	Public Hearing on PCA 2010-PR-022-02/CDPA 2010-PR-022 (The Boro II-C Developer, L.P.) (Providence District)
3:30	<b>Approved</b>	Public Hearing on SE 2017-PR-029 (The Boro II-C Developer, L.P.) (Providence District)
3:30	<b>Public hearing deferred to 7/10/18 at 3:30 p.m.</b>	Public Hearing on PCA/CDPA 2017-DR-014 (Stanley Martin Companies, LLC) (Dranesville District)
4:00	<b>Approved</b>	Public Hearing to Consider Adopting an Ordinance Expanding the Oakton Residential Permit Parking District, District 19 (Providence District)
4:00	<b>Approved</b>	Public Hearing to Lease County-Owned Property at 1500 Shenandoah Road to A Child's Place, Inc. (Mount Vernon District)
4:00	<b>Approved</b>	Public Hearing on Proposed Amendments to the Code of the County of Fairfax, Virginia - Chapter 30 (Minimum Private School and Child Care Facility Standards), Article 1 (In General) and Article 3 (Home Child Care Facilities)
4:00	<b>Public hearing deferred to 7/10/18 at 4:30 p.m.</b>	Public Hearing on a Proposed Zoning Ordinance Amendment Re: Short-Term Lodging Uses (Residential Owner/Renter Operated Dwelling Only) and a Proposed Amendment to Chapter 4 of the Fairfax County Code
4:30	<b>Approved</b>	Public Hearing on Amendments to the Code of the County of Fairfax, Chapter 82, Motor Vehicles and Traffic
4:30	<b>Approved</b>	Public Hearing for the De-Creation of Small and Local Sanitary Districts for Discontinuing Vacuum Leaf Collection Service (Mason and Dranesville Districts)
4:30	<b>Held</b>	Public Comment

**REVISED**



*Fairfax County, Virginia*  
**BOARD OF SUPERVISORS**  
**AGENDA**

**Tuesday**  
**June 19, 2018**

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9:30 a.m.

**REPORT AND RECOGNITION**

Report by the Student Human Rights Commission and recognition of the 2018 recipients of the student Fair Housing Art and Writing Contest

**PRESENTATIONS**

- PROCLAMATION – To designate June 2018 as Homeownership Month in Fairfax County. Requested by Supervisor Smith.
- CERTIFICATE – To recognize the Lake Braddock Theatre from Lake Braddock Secondary School for winning the Virginia High School League Class 6 One Act Play State Championship. Requested by Supervisor Cook.
- CERTIFICATE – To recognize Chantilly High School and McLean High School for receiving 2018 First Amendment Press Freedom Awards. Requested by Supervisors Smith and Foust.

— more —

Board Agenda Item  
June 19, 2018

- CERTIFICATE – To recognize the CyberPatriot Teams from Chantilly High School and Frost Middle School for winning first place in their respective divisions of the Air Force Association National Youth Cyber Defense competition. Requested by Supervisors Cook, Herrity and Smith.
- CERTIFICATE – To recognize Woodson High School Women’s Lightweight 8 Crew and the Women’s Junior 8 Crew for winning the Virginia Scholastic Rowing Association 2018 state championships. Requested by Supervisors Cook, Gross, Herrity and Smith.
- CERTIFICATE – To recognize the Peterson Companies for donating space for active shooting training. Requested by Supervisor Herrity.
- RESOLUTION – To recognize Knox Singleton for his years of service to Fairfax County. Requested by Supervisor Herrity.
- RESOLUTION – To congratulate the Greater Reston Chamber of Commerce for its 35th anniversary. Requested by Supervisor Hudgins.

STAFF:

Tony Castrilli, Director, Office of Public Affairs

Bill Miller, Office of Public Affairs

Lisa Connors, Office of Public Affairs

Board Agenda Item  
June 19, 2018

10:00 a.m.

Presentation of the A. Heath Onthank Awards

ENCLOSED DOCUMENTS:

None

PRESENTED BY:

Honorable Thomas Garnett, Jr., Civil Service Commission, Commissioner  
Clarke V. Slaymaker, II, Onthank Award Committee, Chairman  
Sharon Bulova, Chairman, Board of Supervisors  
Bryan J. Hill, County Executive  
Cathy Spage, Director, Human Resources

Board Agenda Item  
June 19, 2018

10:10 a.m.

Presentation of the Architectural Review Board

ENCLOSED DOCUMENTS:

Attachment 1 - Report to be presented at the Board meeting.

PRESENTED BY:

John A. Burns, Chairman, Architectural Review Board  
Christopher Daniel, Vice-Chairman, Architectural Review Board

# FAIRFAX COUNTY ARCHITECTURAL REVIEW BOARD

## ANNUAL REPORT 2017 (OCTOBER 1, 2016-SEPTEMBER 30, 2017)

### Historic Overlay Districts of Fairfax County, Virginia



June 6, 2018

Prepared by:

Laura B. Arseneau, AICP, Historic Preservation Planner, Department of Planning and Zoning  
in consultation with the Fairfax County Architectural Review Board



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## Architectural Review Board Chairman's Statement

I am pleased to introduce the first annual report issued by the Fairfax County Architectural Review Board (ARB). It was made possible by our designated county staff to manage the county's heritage resources responsibilities as a Certified Local Government. We appreciate the Board of Supervisors' approval of additional ARB county staff in the 2019 county budget. This position will be vital to the ARB as they will make it possible in 2018 for the ARB to receive staff reports for projects under review.

The character of the existing Historic Overlay Districts (HOD) in Fairfax County is unique. Most are, or were, rural with one or a handful of significant buildings with surrounding contributing buildings. They are not traditional, densely developed, urban historic districts. As the county has grown, and the county Comprehensive Plan has evolved, these historically rural landscapes have become developed, or at least planned for development. As a result, the ARB reviews many projects proposing new development within the HODs, and must focus on the compatibility of new construction with the historic character of the districts. The ARB and county staff are working to develop new design guidelines to provide consistent, county-wide, guidance, and to more clearly describe the unique character-defining features in each HOD.

With the exception of Lake Anne Village Center in Reston, HODs protect heritage resources from the 18th and 19th centuries. Although not designated, the former D.C. Department of Corrections Lorton Prison property in Lorton, which includes the Laurel Hill Adaptive Reuse Area and the Workhouse Arts Center properties, functions as an HOD and is an example of the character of future HODs. As the county moves further into the 21st century, for the first time, Fairfax County faces intensifying redevelopment pressures impacting its late 20th century heritage. This is most evident in the Transit Oriented Development areas around the new Silver Line Metro stations, but is also evident in other areas of the county. There are several identified potential historic overlay districts with 20th century heritage, including the Holmes Run Acres and Hollin Hills neighborhoods, both already listed in the National Register of Historic Places, and the Center for Educational Associations in Reston (see Figure 1).



Figure 1- DECA Building, Reston

Continuing its mission of identification and preservation the ARB is uniquely poised to assist the county in identifying and protecting its 20th century heritage resources, and to help the county assure that future generations will know and understand the Fairfax County of today.

John A. Burns, Chairman





## Overview

### ARCHITECTURAL REVIEW BOARD (ARB)

As defined in Sect. 19-301 of the Zoning Ordinance the purpose of the ARB, as a regulatory body, shall be to “administer the provisions of Part 2 of Article 7 [Historic Overlay Districts] and to advise and assist the Board of Supervisors in its efforts to preserve and protect historic, architectural, and archaeological resources in the County.”

### HISTORIC OVERLAY DISTRICTS (HOD)

Section 7-201 of the Zoning Ordinance states:

“Historic Overlay Districts are created for the purpose of promoting the general welfare, education, economic prosperity, and recreational pleasure of the public, through the identification, preservation, and enhancement of those buildings, structures, neighborhoods, landscapes, places, and areas that have special historical, cultural, architectural, or archaeological significance as provided by Sect. 15.2-2306 of the Code of Virginia, as amended and which have been officially designated by the Board of Supervisors.

Regulations within such districts are intended to protect against destruction of or encroachment upon such areas, structures, and premises; to encourage uses which will lead to their continuance, conservation and improvement in accordance with the following purposes:

1. To preserve and improve the quality of life for residents of the County by protecting and preserving familiar visual elements in the district.
2. To promote tourism by protecting heritage resources attractive to visitors to the County and thereby supporting local business and industry.
3. To promote the upkeep and rehabilitation of significant older structures and encourage appropriate land use planning and development that will enhance both the economic viability and historic character of the district.
4. To educate residents of the County about the heritage resources within the district and to foster a sense of pride in this heritage.
5. To foster local heritage resource identification and preservation efforts and to encourage the nomination by their owners of qualified properties for listing on the National Register of Historic Places and the Virginia Landmarks Register.

6. To prevent, within the district, the encroachment of new buildings or structures, and additions or attachments, which are architecturally incongruous with the visual and historic character of the district.

7. To ensure that new development within the district is appropriate and that new structures are well designed.”

In 1969, the Board of Supervisors amended the Zoning Ordinance to allow for the establishment of Historic Overlay Districts. Between 1970 and 1984, thirteen districts were created (See Figure 1). The purpose of the overlay districts is to provide regulations over and above those found in the standard zoning districts to better protect those unique areas, sites, and buildings that are of special architectural, historic, or archaeological value to residents and visitors. The districts promote the general welfare, education, and recreational pleasure of the public, through the perpetuation of those general areas or individual structures and premises that have been officially designated by the Board of Supervisors as having historic, architectural, or cultural significance.

These heritage resources continue to be recognized as major contributors to the quality of life in Fairfax County and to its reputation as one of the major centers for cultural tourism in Virginia and the United States. Following is a list and map of Fairfax County’s Historic Overlay Districts (and corresponding Supervisor Districts). It should be noted that the Former Lorton Prison is not designated as a Historic Overlay District in the Zoning Ordinance. More information about the former Lorton Prison property is discussed on page 7.

The thirteen established Historic Overlay Districts include:

1. **Bull Run Stone Bridge (Sully)**
2. **Centreville (Sully)**
3. **Colvin Run Mill (Dranesville)**
4. **Dranesville Tavern (Dranesville)**
5. **Huntley (Lee)**
6. **Lake Anne Village Center (Hunter Mill)**
7. **Langley Fork (Dranesville)**
8. **Mount Air (Mount Vernon)**
9. **Pohick Church (Mount Vernon)**
10. **Robey’s Mill (Springfield)**
11. **Saint Mary’s Church (Springfield and Braddock)**
12. **Sully (Sully)**
13. **Woodlawn (Mount Vernon)**

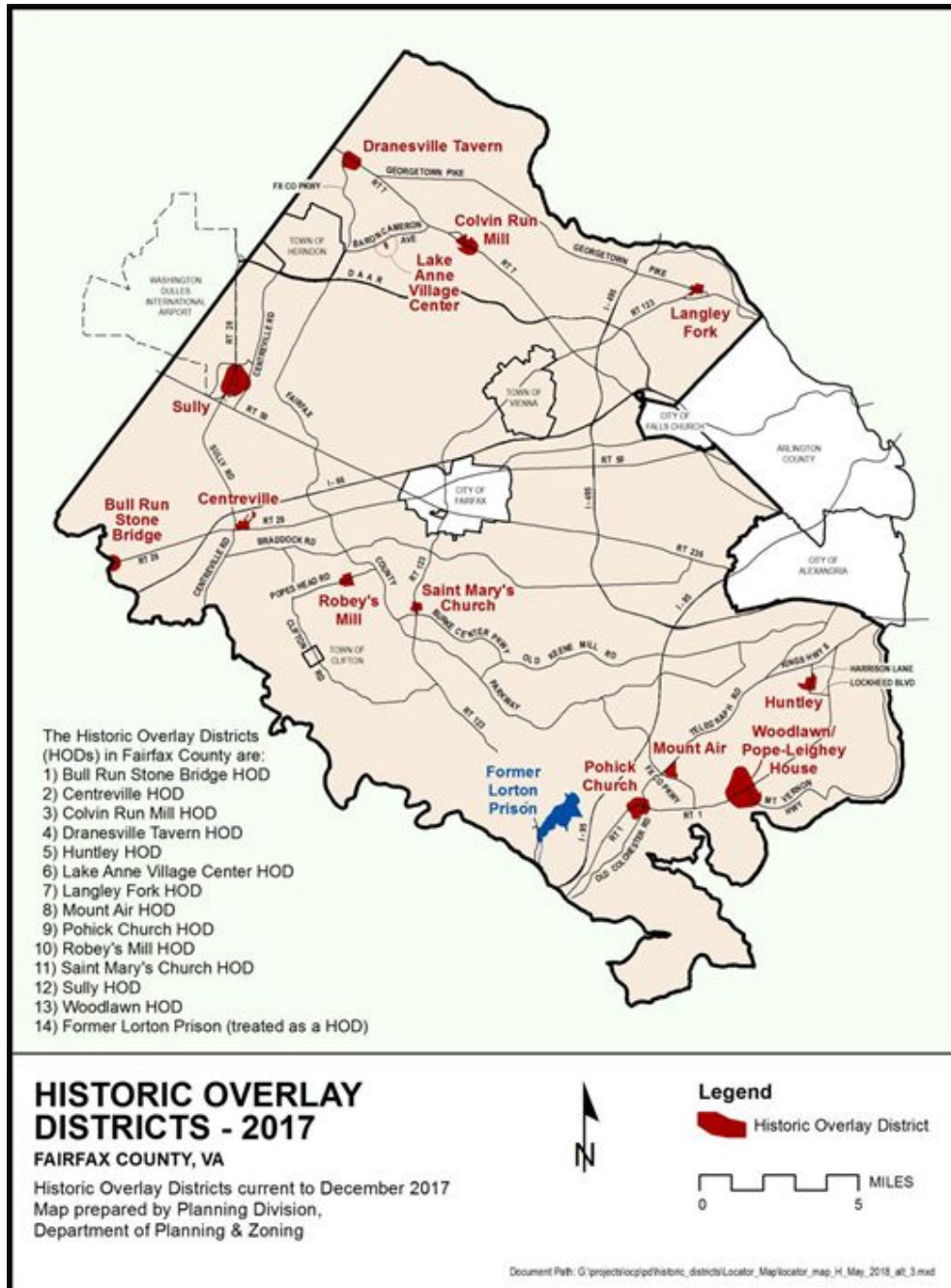


Figure 2- Historic Overlay Districts



## LAUREL HILL/FORMER LORTON PRISION

In addition to the 13 established Historic Overlay Districts, under the Memorandum of Agreement (MOA) that outlined requirements for the transfer of the property to the county, a portion of the former D.C. Department of Corrections at Lorton (Lorton Prison) property in the Mount Vernon District also has specific review authority by the Architectural Review Board, and is treated as an Historic Overlay District (see Figure 3).

On July 15, 2002, Fairfax County received title to the former D.C. Department of Corrections facility at Lorton. The transfer was made possible through the Lorton Technical Corrections Act which was passed by Congress in October 1998, and required the county to develop a Reuse Plan that would maximize use of land for open space, parkland or recreation prior to the county acquiring the property. The Memorandum of Agreement (MOA) sets forth the review process and other requirements for the redevelopment of the property. The MOA signatories include the General Services Administration, Fairfax County, the Fairfax County Park Authority, Fairfax County Public Schools, the South County Federation, the Lorton Heritage Society, the Northern Virginia Regional Park Authority, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation.

Prior to the approval of the Reuse Plan, the General Services Administration, in cooperation with Fairfax County and the District of Columbia, initiated the environmental cleanup of the property and ensured the requirements of the National Historic Preservation Act were addressed.

Under the MOA, the area identified as a National Register-eligible Historic District is to be treated as a Fairfax County Historic Overlay District (HOD) subject to the county's Zoning Ordinance; Part 2, 7-200. Since the transfer of the property in 2002, the Eligible District has been treated as a local HOD. Rezoning, rehabilitation, demolition and new construction within the Eligible District have all been subject to review by the County's Architectural Review Board (ARB) as stipulated in the MOA.

County staff is currently developing and reviewing the process to create a county historic district in the Laurel Hill Area, a requirement of the MOA.

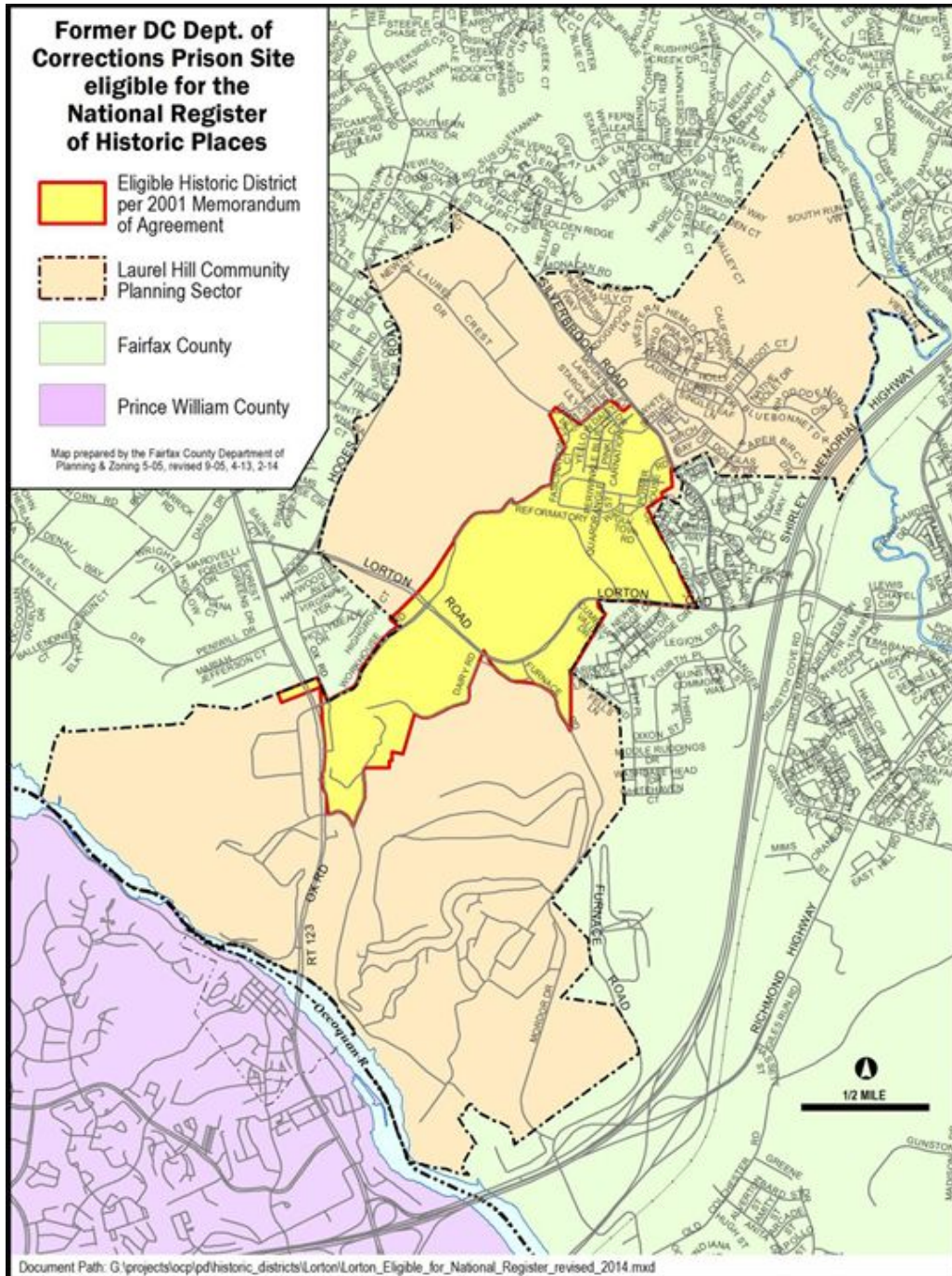


Figure 3- Former Lorton Prison Property treated as an Historic Overlay District per the MOA



## Accomplishments- By the Numbers

Section 19-307 of the Zoning Ordinance outlines the ARB duties, which include:

- Review and approval of applications for building permits and sign permits;
- Review and make recommendations on all rezoning applications, site plans, subdivision plat and grading plans in Historic Overlay Districts;
- Propose establishment and revisions of Historic Overlay Districts;
- Assist and advise the BOS, Planning Commission and other agencies in matters involving historic, architectural cultural or archeological significant sites;
- Advise owners of historic building and structures; and
- Work with the History Commission, the Virginia Department of Historic Resources, the National Trust of Historic Preservation, and other preservation groups.

In the last year, the ARB completed the 52 reviews. Figure 4 illustrates the number of each case type, with most the reviews being building permits followed by site and grading plans.

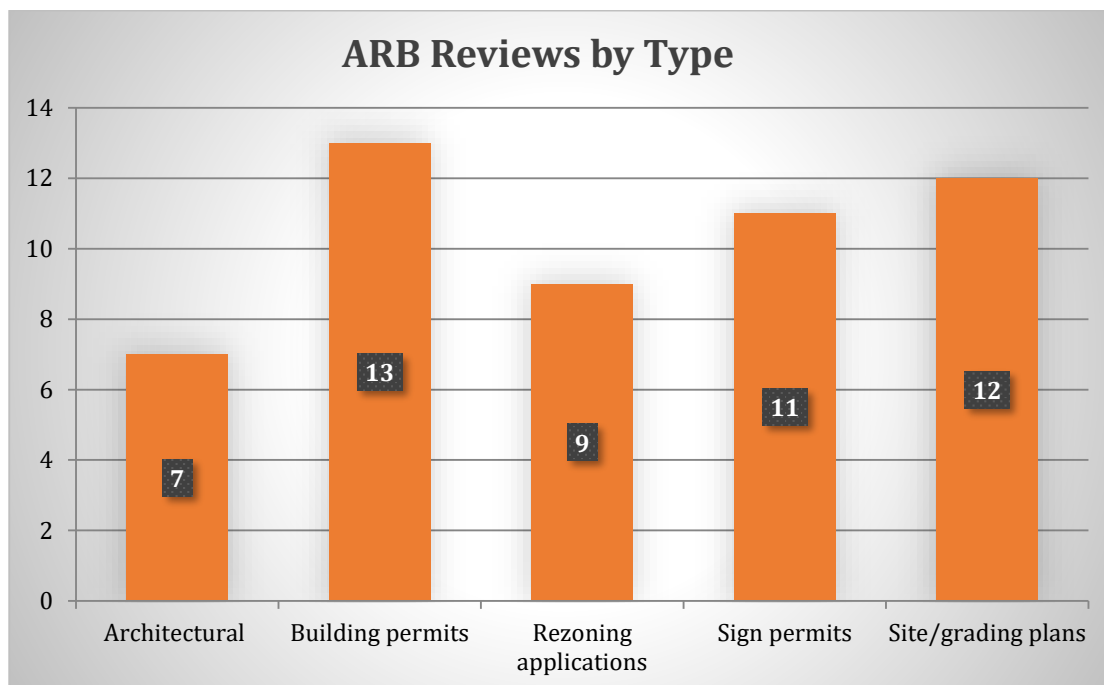


Figure 4- ARB Reviews by Type

Of the 52 cases reviewed, 18 of the cases were in the Mount Vernon Supervisor District and 14 were located in the Dranesville District (Figure 5). Please note that Braddock and Springfield Districts are combined because St. Mary’s Historic Overlay District straddles the district boundary line. There were no cases reviewed in the Mason or Providence Districts.

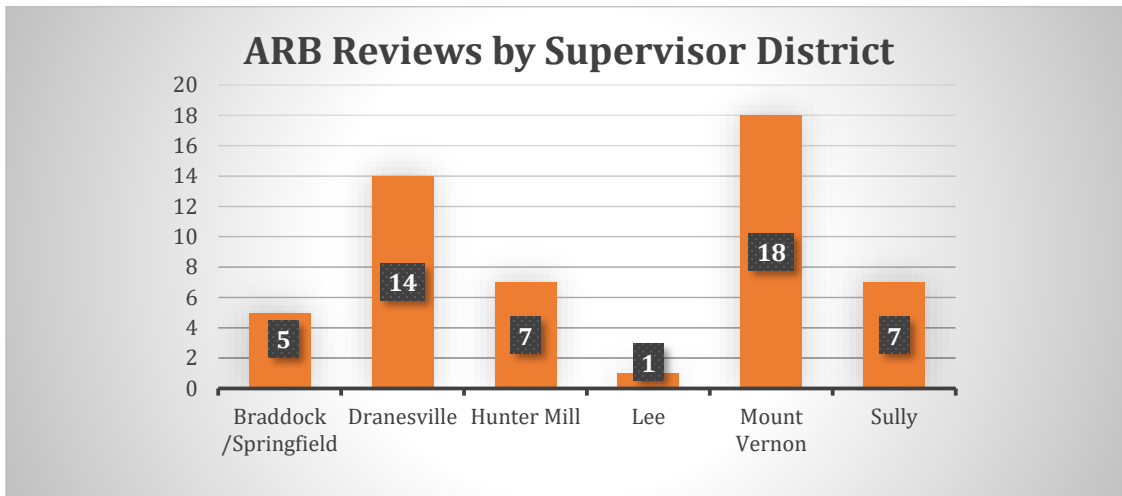


Figure 5- ARB Reviews by Supervisor District

There are 13 Historic Overlay Districts. As demonstrated in Figure 6, the ARB reviewed the most cases in the Lorton/Laurel Hill and the Langley Fork HOD. The ARB did not review any cases in the Bull Run Bridge, Mount Air or Robeys Mill HODs.

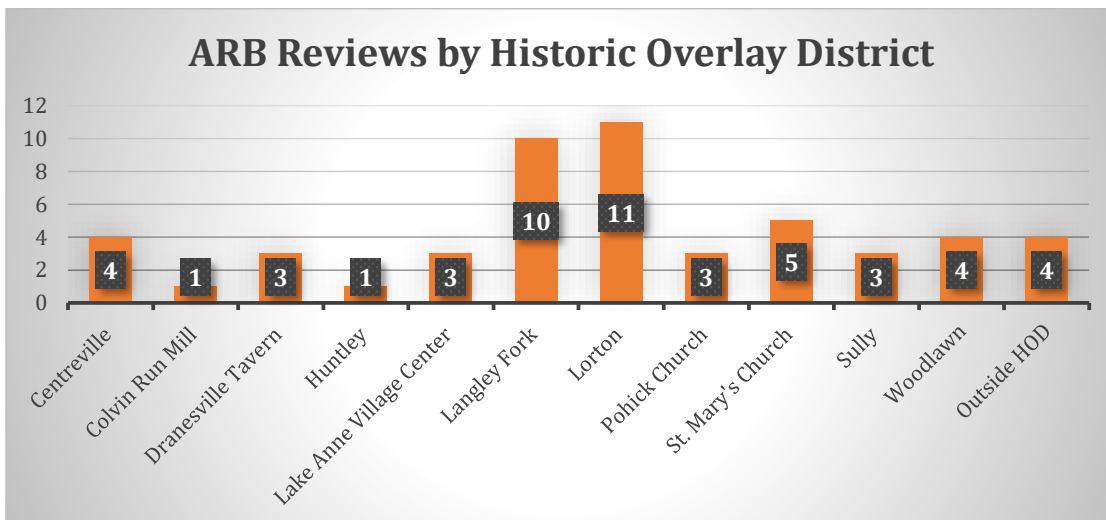


Figure 6- ARB Reviews by HOD

## 2017 Accomplishment Highlights

In addition to the rezonings, building permits and sign plans outlined above, the ARB reviews a wide range of development cases and comments on architectural, cultural, and archeological issues. The ARB focuses primarily on the visual impact the new construction or development will have on historic structures or vistas within the Historic Overlay Districts. Below is a list of items that highlight a few major accomplishments of the ARB during the October 2016-2017 reporting period.

### **Laurel Hill Adaptive Reuse Area (Mount Vernon District)**

#### 1. New Construction- Single Family Dwellings and Townhomes

In October 2016, the ARB recommended approval for the architectural design of new townhouses and single family detached dwellings in the Liberty development located in the Laurel Hill Adaptive Reuse Area. The application was for single family dwellings and townhouses totaling one-hundred four units. Through several workshop sessions and then action items, the ARB reviewed the height, style, and materials of the proposed dwellings to ensure their compatibility with the historic features of the Laurel Hill Adaptive Reuse Area (now known as “Liberty”).

#### 2. Comprehensive Sign Plan Review

In January 2017, the ARB recommended approval of a Comprehensive Sign Plan (CSP) for the Laurel Hill Adaptive Reuse Area, (Liberty) which contained a variety of signage types to help promote and navigate the site with specific signage proposed for entry and wayfinding, retail and commercial uses, and residential uses. The ARB reviewed the style, color and materials of the proposed signage in order to protect the character and integrity of the historic district and by ensuring that the signs reflect a historically appropriate appearance.

#### 3. Roadways

In March 2017, the ARB approved a proposal from FCDOT to improve an existing two-lane roadway identified as Giles Run Road (now Snowden Ashford Road), which serves as the entrance to the Adaptive Reuse Area from Lorton Road. The road is identified as a contributing structure, RT-19, to the DC Workhouse and Reformatory National Register Historic District and the proposal was for new asphalt surfacing of the existing road, widened gravel shoulders to 6 feet, installation of a new metal guardrail to be painted brown and construction of an 8 feet wide asphalt shared use path at the east side of the road. The ARB discussed the impact on archeological resources, the importance of landscaping along the road, and how to best limit the impact of the road improvement on the existing character of the road.



## Nominations for the National Register of Historic Places

### 1. Original Mount Vernon High School (Mount Vernon District)

The Original Mount Vernon High School (OMVHS) is a historically significant building located at 8333 Richmond Highway, Alexandria, in the Mount Vernon Magisterial District of Fairfax County.

Although deemed significant, it is not designated as protected by the County's Historic Overlay Districts and the Fairfax County Architectural Review Board (ARB). The property was listed in the Fairfax County Inventory of

Historic Sites in the early 1990s. The Virginia Department of Historic Resources (VDHR) determined the property eligible for listing in the National Register of Historic Places in 1987. The nomination for inclusion in the National Register was completed by a consultant for Fairfax County and submitted on the county's behalf to the Virginia Department of Historic Resources. The ARB aided the preservation of OMVHS through their professional comment and review of the National Register nomination. VDHR listed the site as Virginia Historic Landmark in December 2017. The OMVHS was approved by the National Park Service for inclusion in the National Register of Historic Places in May 2018.



Figure 7- OMVHS National Register Photo

### 2. Floris National Register Historic District (Hunter Mill District)

In December 2016, the ARB reviewed a rezoning and special exception proposal in the Floris National Register Historic District (FNRHD). Scimores Academy proposed to rezone 5.63 acres of the property and proposed to construct a private school of special education for arts and music while retaining certain historic resources on site including: Stover (Lee) house; Floris United Methodist Church; Parcel 20 Fox house; and Parcel 21 Higgins House. The ARB considered the appropriateness of the development, including required site improvements such as parking and access, along with building mass and scale as it impacts the historic integrity of the FNRHD. The FNRHD nomination was prepared as mitigation for the construction project to improve the existing Centreville Road. The ARB supported the proposal to amend the NR nomination and agreed with the state's recommendation to amend the National Register nomination by expanding the area of significance and period of significance for the FNRHD to

include the post-1960 Frying Pan Farm Park, a historic post-1960 public agricultural history farm park. The ARB believed it would strengthen its overall integrity and increase the count of contributing resources.

### 3. Lake Anne Village Center National Register Nomination (Hunter Mill District)

In March 2017, the ARB reviewed the proposed Lake Anne Village Center National Register nomination. The ARB recommended that the Lake Anne Village Center be placed on the state and national register of historic sites, in particular because of its national significance, specifically its exemplary demonstration of planning principles and mid-century modern architecture. The Lake Anne Village Center Historic District was listed on the National Register on June 5, 2017.

#### **Rehabilitation (Dranesville District)**

In April 2017, the ARB reviewed a proposal and recommended approval at the Langley Ordinary, identified as a historic property in the HOD and contributing to the Langley Fork National Register Historic District. Previously, the ARB approved the construction of a new two-story, three-car garage with a one-story shed at the south and a one-story hyphen (enclosed walkway) connecting the historic dwelling to the new garage. The proposal would remove and replace elements of new construction previously approved by the ARB. The goals of the rehabilitation were partly for owner preference but also to address maintenance issues as water had been infiltrating between the main structure of the house and the porch. There would be no alterations to the main façade, nor would there be any visual impacts from the historic byway or contributing structures. The ARB reviewed a number of resubmissions and had concerns about the architectural style, materials, and the overall negative impact of the new design on the existing structure. These concerns were ultimately mitigated and the application was approved by the ARB in October 2017.

#### **New Construction in HODs (Dranesville District)**

Also in April 2017, the ARB reviewed a proposal and recommended approval for a new single-family residence partially located in the Dranesville Historic Overlay District (HOD). The proposed house was a two-story, multi-gable roof with asphalt shingles, brick veneer at the front façade and gray/green vinyl siding at the other three facades. The ARB reviewed the proposal and considered viewsheds and compatibility of scale, materials, and massing to the Dranesville Tavern historic site, the viewshed from nearby Route 7, the materials of the new dwelling on all of the facades, and the color palette of the new dwellings.

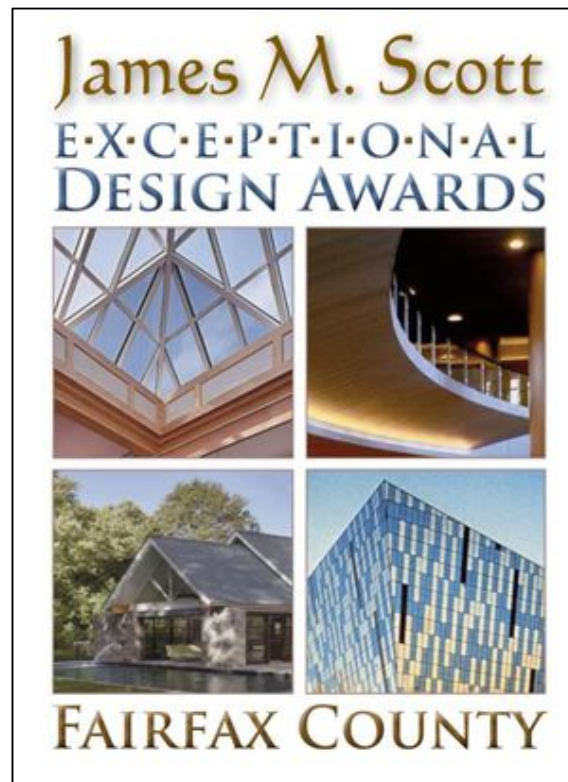
## Zoning Ordinance Amendment- Small Cell Telecommunications Facilities

In May 2017, the ARB reviewed a proposed Zoning Ordinance Amendment prepared in response to Senate Bill 1282, which was adopted by the 2017 Virginia General Assembly. This legislation allows localities to require Zoning Administrator approval of a zoning permit for the installation of a small cell facility by a wireless services provider or wireless services infrastructure provider on an existing structure or a structure approved for installation and to charge reasonable fees for the processing of such permits. If the small cell facilities are located in a Historic Overlay District (HOD) then the permit would be sent to the ARB for review. There are examples of major thoroughfares, for example Route 28 near the Sully Historic Site and HOD that already have light poles in the existing viewsheds. The ARB discussed the required review timeline of 60 days and the interference with the normal ARB review timelines. As a result, the ARB is currently designing specific guidelines that would help the ARB review aesthetic issues of the small cell antenna and avoid potential conflict with historic sites and HOD's to allow for adequate ARB review for small cell facilities while still meeting the state mandates.

### James M. Scott Exceptional Design Award Committee Participation

Established in 1985, the Fairfax County Exceptional Design Awards recognize achievement in the total design of a building and its site. The awards aim to raise awareness of outstanding planning and design projects among design professionals and the general public. The design awards program is sponsored by the Fairfax County Board of Supervisors and administered by the County's Department of Planning and Zoning in cooperation with the County Architectural Review Board and the Northern Virginia Chapter of the American Institute of Architects.

Each year, one member of the ARB volunteers to serve on the Exceptional Design Award Committee. In 2017, Mr. John A. Burns served as the chair.





## Recognition

In September 2017, Mr. Richard C. Bierce received a Distinguished Achievement Award from the American Institute of Architects (AIA) Virginia Chapter. The website states that: “The Award for Distinguished Achievement signals distinguished achievement by an architect in any one of the following categories: design, practice, education, service as “citizen architect” and service to the profession; and thus, may serve as an accolade for the work of an entire career or recognize the current accomplishments of a younger leader. An architect and preservation consultant, Richard Bierce has dedicated his career to the preservation of Virginia’s rich architectural legacy. From serving as Alexandria’s historic resources director to a decade’s tenure with the National Trust for Historic Preservation to his own consultancy, his efforts on behalf of many of the Commonwealth’s historic treasures have had immeasurable impact of an entire career ...” (source: <https://www.aiava.org/tag/aia-virginia-honors/>).

In addition, after 15 years of working for the Fairfax County Department of Planning and Zoning as a Senior Historic Preservation Planner and ARB Administrator, Mrs. Linda Blank retired in January 2018. Mrs. Blank worked on several notable projects throughout her tenure including the master planning and redevelopment of the Laurel Hill Adaptive Reuse Area, the expansions of the Centreville Historic Overlay District and the Langley Fork Historic Overlay District, as well as having a major influence on the preservation of historic houses including the Silas Burke House.

## ARB Members 2016-2017



In the first row, from the left: Ms. Susan W. Notkins, Ms. Elise Ruff Murray, Mr. John A. Burns, Ms. Michele C. Aubry; in the second row: Mr. Robert W. Mobley, Mr. C. Richard Bierce, Mr. Christopher Daniel, and Mr. Jason D. Sutphin. Not pictured: Mr. Joseph Plumpe and Mr. John A. Carter.

### MICHELE C. AUBRY (TREASURER)

Mrs. Michele C. Aubry was appointed to the Fairfax County Architectural Review Board on October 19, 2009. Ms. Aubry worked as an archaeologist for the National Park Service for 32 years until her retirement in November 2009. In addition to developing federal regulations for federally owned archaeological collections and developing standards for the governmental archaeology job series, she assisted in the development of the *NPS Abandoned Shipwreck Act Guidelines*, served as a U.S. Delegate to develop the *UNESCO Convention on the Protection of the Underwater Cultural Heritage* and participated in international negotiations resulting in agreements for protection of the *RMS Titanic* and *La Belle* shipwreck sites. In recognition of these and other accomplishments, Ms. Aubry received the Department of the Interior's Superior Service Award in June 2008. Ms. Aubry holds an A.B. (*cum laude*) in Sociology and Anthropology from Occidental College (Los Angeles), and a M.A. in Anthropology from the University of California (Riverside).

Ms. Aubry has served on the governor-appointed Maryland Advisory Committee on Archaeology, and a former committee chair (publicity) of the Mount Vernon Genealogical Society. In January 2018, Ms. Aubry was inducted into the Kate Waller Barrett Chapter and the National Society of the Daughters of the American Revolution. A native of California, Ms. Aubry moved to Virginia in 1978. She lives with her husband in the Mount Vernon District of Fairfax County on land formerly part of George and Martha Washington's Union Farm.

### C. RICHARD BIERCE, AIA

Mr. Richard Bierce was appointed to the Fairfax County Architectural Review Board in 1986 and has served as both chairman and vice-chairman. Mr. Bierce started his own practice in 1989 as Historical Architect and Preservation Consultant and worked on projects that included assessing damage to historic properties after hurricanes in the USVI and Puerto Rico, evaluating significance of early 20 century schools in Tampa, Florida and restoring St. Paul's Church in Alexandria, Virginia. Mr. Bierce received Master's Degree in Architecture from Columbia University and a Bachelor's Degree in Architecture from the University of Arizona. Mr. Bierce has also worked for the National Trust for Historic Preservation and for the City of Alexandria. Mr. Bierce is a member of the American Institute of Architects, the Association for Preservation Technology International and a member of US-ICOMOS.

### JOHN A. BURNS, FAIA (CHAIR)

Mr. John A. Burns, FAIA, FAPT, LEED AP, currently serves as Chief Appeals Officer for Cultural Resources at the National Park Service, and is responsible for deciding appeals of projects that were denied certification under the Federal Rehabilitation Tax Incentives Program. Prior to that, he served as Assistant Director for the Heritage Preservation Assistance programs of the National Park Service. Beginning his Park Service career as a draftsman for the Historic American Buildings Survey, John eventually became Chief for the HABS, HAER and HALS programs. He earned both a Bachelor of Architecture and a BA in Art/Architectural History at Penn State. A licensed architect and long-time member of the AIA Historic Resources Committee, John has lectured and written extensively on preservation topics, co-authored *Yesterday's Houses of Tomorrow* and *Hollin Hills: Community of Vision*, and edited and co-authored *Recording Historic Structures*. Locally, John was the first president of APT|DC, and has served on architectural review boards in Arlington and Fairfax Counties and Hollin Hills (and co-authored the Hollin Hills Design Review Guidelines). Currently, he is Chairman of the Fairfax County Architectural Review Board, serves on the Hollin Hills Design Review Committee, chairs the Historic Resources Committee of the AIA Northern Virginia Chapter, and serves on the board of DOCOMOMO|DC.



### JOHN A. CARTER

Mr. John Carter was a member of the ARB from February through December of 2017. As well as being a member of the Architectural Review Board (ARB), Mr. Carter has served on the Hunter Mill District Land Use Committee (HMDLUC), and the citizen advisory group (zMOD) for the modification of the Fairfax County Zoning Ordinance. Mr. Carter also served on the Board of the Washington Plaza Cluster Association at Lake Anne Village in Reston for ten years. He has lived in Reston, Virginia for over forty years.

Mr. Carter is a licensed architect in Virginia, and a member of the American Planning Association, and the American Institute of Architects. He has a Master of Planning from the University of Virginia, a Master of Architecture in Urban Design from Virginia Tech, and a Bachelor of Architecture with Distinction from Arizona State University.


Commissioner Carter was employed for over 35 years with the Montgomery County Planning Department of the Maryland-National Capital Park and Planning Commission. Mr. Carter was also employed for five years as an associate with Perkins and Will Architects in Washington, D.C.

### CHRISTOPHER DANIEL (VICE CHAIR)

Mr. Christopher Daniel has a background in Architectural History and Archaeology. Mr. Daniel holds a Master's in Historic Preservation from the University of Georgia and a Bachelor's in Anthropology with Minor in Geology and Certificate in Archaeological Sciences from the University of Georgia. In his professional capacity, Mr. Daniel serves as Program Analyst at the Advisory Council on Historic Preservation (ACHP) providing Section 106 case review for the Maritime Administration, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, the U.S. Army Corps of Engineers – Civil Works Branch, and the U.S. Forest Service. Prior to his employment at the ACHP, Mr. Daniel spent five years as the Cultural Resource Manager for U.S. Army Garrison Fort Belvoir, located in Fairfax County. Christopher lives with his wife, Nicole, and son, Nicholas, in Reston.

### ELISE RUFF MURRAY, HISTORY COMMISSION- EX-OFFICIO

Ms. Elise Ruff Murray grew up and resides Vienna, Virginia. She earned a BA in History from the University of Virginia and is interested in archaeology, history and preservation. After working for a year and a half on an archaeology project in Northeastern Mississippi, she worked as an economic consultant advising on anti-trust and commercial litigation matters for over 20 years. A member of the Fairfax County History Commission since 1983, Ms. Murray has served as the Commission's *ex officio* member of the Architectural Review Board since 1992. On the Commission, she has served as chairman, treasurer and vice chairman. She is the chair of the Inventory of Historic Sites Committee and serves on the Awards, Bylaws, Markers and Publications Committees. Ms. Murray serves on the



boards of the Historical Society of Fairfax County and the Friends of the Virginia Room. In addition, she coordinates the Fairfax History area at Celebrate Fairfax.

#### JOSEPH PLUMPE, ASLA

Mr. Joseph Plumpe founded STUDIO39 Landscape Architecture, P.C., located in Alexandria, VA, in 1993. He serves as President and Principal Landscape Architect. In this role, he is responsible for oversight of all projects from conception and coordination through the implementation of design decisions.

In his 33 years of experience, Mr. Plumpe has used his extensive background knowledge of outdoor spaces to craft a wide variety of compelling projects involving mixed-use, federal, office, education, residential, and hospitality projects.

Mr. Plumpe serves on the Fairfax County, Virginia Architectural Review Board and is an instructor at George Washington University's Landscape Design Certificate Program. He earned a Bachelor of Science in landscape architecture from Ohio State University. He is a member of several professional organizations, including the American Society of Landscape Architects, Urban Land Institute, and U.S. Green Building Council.


#### ROBERT W. MOBLEY, AIA

Mr. Robert Wilson Mobley, AIA has practiced architecture in Fairfax County since 1969 and has been a member of the ARB since 1977. He earned a Bachelor's Degree in architecture from Virginia Polytechnic Institute and is currently an emeritus member of the American Institute of Architects (AIA) and the US. Green Building Council. In addition to formerly serving on the Board of Directors for local chapters and regional chapters of the AIA, he has served on a number of task forces and design juries. In 2007, he received the AIA Award of Honor from the Northern Virginia Chapter. Mr. Mobley has received several awards from both the AIA and Fairfax County including awards for his work at Wolf Trap Farm Park, the restoration of Great Falls historic schoolhouse and a Sears-Roebuck house- also in Great Falls.

#### SUSAN W. NOTKINS

Mrs. Susan Woodward Notkins, AIA has practiced architecture in her own firm, Susan Woodward Notkins Architects, PC in McLean, VA since 1974, completing more than 375 projects. She has degrees in Architecture from the University of Maryland and in Politics and Russian Area Studies from Hollins University in VA. Ms. Notkins taught in the architecture school while establishing her own practice. Her work has been published in local, regional and national venues and has received numerous design awards, including the Fairfax County Design Award four times. Ms. Notkins has served as member and chairman a total of 26 years on the Fairfax County Architectural Review Board, beginning her first term





in 1983. She also has served on the Board of Directors of the Northern VA Chapter of Architects and the VA Society of Architects and was a member of the board of The Potomac Conservancy for 9 years. She has chaired the Design Subcommittee of the Fairfax County Telecommunications Task Force since 1996 and developed, with staff and industry ‘cellular antenna location’ regulations for the County.

JASON D. SUTPHIN

Mr. Jason Sutphin is a graduate of George Mason University, having studied history and public administration, and currently is a Division Chief that manages the land development review and entitlement process and architectural review for the City of Fairfax. His family has resided in the greater Fairfax area for several generations, and he and his wife chose the Sully District as their home. He has served on the ARB since 2009, and was chairman for three years from 2013-2016.



**Department of Planning and Zoning**

Planning Division

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Fairfax, Virginia 22035-5509

Phone 703-324-1380

[www.fairfaxcounty.gov/planning-zoning](http://www.fairfaxcounty.gov/planning-zoning)

June 6, 2018

Board Agenda Item  
June 19, 2018

10:20 a.m.

Presentation of the History Commission Annual Report

ENCLOSED DOCUMENTS:

Attachment 1 - Report to be presented at the Board meeting.

PRESENTED BY:

Carole Herrick, Former Chairman of the Fairfax County History Commission

**Fairfax County  
History Commission  
Annual Report  
2017**



*The Armorial Bearings and Supporters of  
**THOMAS 6<sup>TH</sup> LORD FAIRFAX**  
as recorded at the College of Arms, London*

*Windsor Herald and Registrar*

**Fairfax County History Commission**

Mailing Address:

Fairfax County History Commission  
10360 North Street  
Fairfax, Virginia 22030

**[www.fairfaxcounty.gov/history-commission](http://www.fairfaxcounty.gov/history-commission)**

June 15, 2018



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## CHAIRMAN’S REPORT

Fairfax County’s 275th anniversary, celebrated throughout 2017, provided many opportunities for the Fairfax County History Commission to increase public awareness of the county’s rich heritage.

History commissioners Gretchen Bulova and Mary Lipsey served on the seven member county-wide commemorative steering committee, which was chaired by Commissioner Bulova. This steering committee devoted all of 2017 to promoting this celebration, beginning in January with a display of weights and measurements at the Fairfax County Government Center. Throughout the year, the entire county was involved with historical events such as musicals, lectures, and bus tours. Videos highlighting the history of Fairfax County were produced in collaboration with Channel 16 and an American Revolutionary plaque was added to the War Memorial on the front lawn of the historic courthouse.

The highlight of the commemoration was the opening of the Historically Fairfax Fair by Lord Nicholas Fairfax, 14th Lord Fairfax of Cameron, who traveled from England in June to kick off the signature event, which took place on the grounds of the Fairfax Courthouse. The festival brought together more than 80 historical societies, museums, and historic site personnel for historically themed exhibits, living history demonstrations, and talks. Participation at the History Commission’s tent was lively due to an outstanding display of historical photos and a large map produced by George Mason University students of Fairfax County historical roadside markers. Also, on display was an index compiled by the History Commission listing the hundreds of oral histories archived throughout the county. The index includes the name of each interviewee, a brief description of the interview, and where the oral history is archived. Besides handing out informational material about the commission, history commissioners listened to and answered questions throughout the day.

While the 275th Anniversary was not a direct History Commission activity per se, all of the commissioners were actively involved in participating or promoting the commemoration’s various activities. This did not distract from commission priorities, but enhanced them. Under the guidance of Debbie Robison, three new Fairfax County historical roadside markers were installed and dedicated: Sydenstricker Schoolhouse, McAtee’s Tavern, and Mt. Pleasant Baptist Church. The Cross Farm Marker was replaced with revised text. The Commission also partially funded a Virginia state historic marker, titled “U. S. Army Map Service,” at a former Nike Missile site proposed by the Great Falls Analemma Society.

The 13th annual Fairfax County History Conference titled “Fairfax County Hosts 275 Years of History – A Look Back at Our Homes, Occupations, Schools, and Transportation” was well attended. Once again Lynne Garvey-Hodge chaired this outstanding event. Three awards were presented: Nathaniel Lee received the Nan Netherton Award, Melanie Manikas and Mary Ellen Zavaleta were honored with the Distinguished Service Award, and the Mary Fahringer Award went to the Bull Run Civil War Round Table.

The county’s Resident Curator Program got off to a strong start. Robert Beach and Elise Murray represented the commission on the Community Technical Advisory Committee (CTAC) which oversees the Resident Curator Program for historic properties. The lease signing for the Stempson House, the first of the county’s Resident Curator Program, took place December 5, 2017.

The financial transition of the commission’s fiscal operations went smoothly thanks to treasurer, Phyllis Walker Ford. All of the commission’s funds are now maintained through the county’s financial system FOCUS and administered by the staff of the Department of Planning and Zoning and the Fairfax County Park Authority.

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As usual, the commission listened to presentations by several individuals/organizations seeking advice, requesting financial assistance, or providing the commissioners information about historic and cultural sites. Several commissioners gave lectures or presentations before various groups, many of which included newer residents within the county, seniors, and school age children. This is possibly the most productive manner in which to make citizens aware of, appreciate, and learn about the history of the county in which they live. Even though Fairfax County does not have any Confederate monuments, the Commission monitored the numerous discussions across the country concerning such memorials and how best to deal with them. The Commissioners thought it best to adhere to the statement issued by the National Trust for Historic Preservation that says, “We should always remember the past, but we do not necessarily need to revere it.”

The Fairfax County History Commission continues to work with many entities to include the Virginia Room, Fairfax County Park Authority, Fairfax County Planning and Zoning, and the Architectural Review Board. All the Commissioners appreciate Fairfax County’s Board of Supervisors continued efforts in supporting the History Commission’s mission. We thank you.

Carole L. Herrick, Chair

2107 Fairfax County History Commission

Carole L. Herrick, Chair  
 Anne Stuntz, Vice-Chair  
 Steve Sherman, Secretary  
 Phyllis Walker Ford, Treasurer

Anne Barnes	Esther W. McCullough
Robert E. Beach	Elise Ruff Murray
Gretchen Bulova	Barbara Naef
Glenn Fatzinger	Barbara Peters
Lynne Garvey-Hodge	Debbie Robison
Michael Irwin	Page Shelp
Mary Lipsey	Jordan Tannenbaum
Sallie Lyons	



## OVERVIEW

The Fairfax County Board of Supervisors officially created the Commission in 1969. It grew out of the Landmarks Preservation Committee established in 1965. There are 20 members. The Commission meets on the first Wednesday of each month. All meetings are open to the public. An independent contractor prepares minutes. In addition to the regular meetings, members put in many volunteer hours each month on the Commission’s committees.

The Commission carries out the Board of Supervisors’ mandate in various ways:

- The Commission maintains the Fairfax County Inventory of Historic Sites, which included 368 sites at the end of 2017.
- The Commission advises the Board of Supervisors and appropriate agencies on matters involving the history of the county in the following ways:
  - Works closely with the Department of Planning and Zoning; the Architectural Review Board; the Park Authority, especially the Cultural Resource Management and Protection programs; and the Fairfax County Public Library system, especially the Virginia Room.
  - Proposes and monitors Historic Overlay Districts. A member of the Commission, Elise Ruff Murray, serves in an *ex officio* capacity on the Architectural Review Board.
  - The Commission is consulted on development or demolition of old or historic structures, whether on the Fairfax County Inventory of Historic Sites or not.
  - Advises the State Review Board and Historic Resources Board about historic and cultural sites recommended for inclusion on the National Register.
  - Participates in matters under Section 106 of the National Historic Preservation Act, which requires federal agencies to take into account the effects of their undertakings on historic properties, including cell phone tower applications. Sallie Lyons is representing the Commission in the Section 106 review process for the Route One improvements at Fort Belvoir. The History Commission has become a consulting party on the review of the proposed Floris Conservatory for Fine Arts in the Floris Historic District and of the Soapstone Connector project with Association Drive of particular concern. Jordan Tannenbaum is the lead on both projects with Barbara Naef as the alternate
- In order to generally promote the public interest in all matters bearing on the history of Fairfax County, the Commission:
  - Cooperates with the Fairfax County Public Schools, Northern Virginia Community College and George Mason University in local history activities.
  - Provides advice and assistance to local historical societies, churches and citizens' groups on matters of historic preservation.
  - Assists in negotiations for preservation easements.
  - Pays special attention to the possibilities for tax incentives for preserving historic properties.
  - Promotes the establishment of volunteer citizen special interest groups.
  - Attends meetings, conferences and seminars for continuing education.
  - Participates with other state, national and local organizations in joint programs. Carole Herrick represents Fairfax County on the War of 1812 Bicentennial Commemoration Planning Committee for the region—Maryland, D.C. and Northern Virginia. Gretchen Bulova chairs the county’s 275th anniversary steering committee. In addition, Mary Lipsey serves the steering committee.
  - Acts as a liaison with public and private historical agencies in the county and on the state and national levels.

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- Supports and encourages activities at all educational levels that will stimulate interest in the archeological and historical background of Fairfax County.
- Supports oral history programs in Fairfax County.
- Supports the collections of the Virginia Room of the City of Fairfax Regional Library and the preservation of materials held therein. The Commission makes an annual grant to the Virginia Room for preservation and research materials.
- Supports the Park Authority Cultural Resources Management and Protection programs (CRMP) that include the county archaeology program. The Commission makes grants to the Cultural Resource Management Branch for interns and consultants.
- Specific programs to promote the public interest in all matters bearing on history in Fairfax County include:
  - Fairfax County’s Historical Marker Program that marks appropriate historical sites throughout the county.
  - Awards programs to honor achievements in Fairfax County history and historic preservation.
  - Annual History Conference to educate county citizens about Fairfax county history.
  - Compiles and makes available to the public a list of local historians willing to speak on a variety of topics related to the history of Fairfax County.
  - Provides a juror for the annual Fairfax County Exceptional Design Award.
- Since 1969 the Commission has contributed the following to the county:
  - Completed a program to index, abstract and microfiche early Circuit Court Records.
  - Prompted the creation of the Fairfax County Records Management Program.
  - Initiated the establishment of the County Archaeology program.
  - Published three books on Fairfax County history.
  - Prepared property identification maps and a census of Fairfax County in 1860.

### **COMMEMORATION OF THE FOUNDING OF FAIRFAX COUNTY**

2017 marked the 275th anniversary of the founding of Fairfax County. The county was formed from the northern part of Prince William County and named for Thomas Lord Fairfax, the 6th Lord Fairfax of Cameron. To commemorate this anniversary, Chairman of the Board of Supervisors, Sharon Bulova, formed a steering committee. Two members of the History Commission (Gretchen Bulova and Mary Lipsey) served on this steering committee along with representatives from Visit Fairfax, the Park Authority, the City of Fairfax, the Sheriff’s Department (also celebrating their 275th anniversary), and local history organizations. Together, this committee planned a successful series of history-related events throughout the County in 2017. The signature event for the 275th Commemoration, the Historically Fairfax Fair, was held on June 17th on the grounds of the historic Fairfax County Courthouse.

The History Commission's 275th committee contributed two initiatives to the commemoration – the compilation of oral histories taken of citizens of Fairfax County and the annual History Conference. Members of this committee include Carole Herrick (chair), Anne Stuntz, Phyllis Walker Ford, Steve Sherman, and Lynne Garvey-Hodge.

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## FAIRFAX COUNTY RESIDENT CURATOR PROGRAM

In 2017, the Resident Curator Program continued forward with implementation of the pilot program for the first three selected properties: Ellmore Farmhouse at Frying Pan Park in Herndon, Turner Farm in Great Falls, and Stempson House in Lorton.

The one application received for Ellmore Farmhouse was not viable and the property will be advertised again. A proposal for Turner Farmhouse was accepted, yet remains in the review process. However, a proposal for Stempson House was accepted and the lease was signed on December 5, 2017.

The program will move forward with Ash Grove, in Tysons Corner and Lahey Lost Valley, outside Vienna; followed by Hannah P. Clark/Enyedi House in Colchester and John and Margaret White Gardens in Annandale. Staff continues to work on additional properties preparing historic site reports and treatment plans, conducting archaeology and evaluating utilities.

While the Commission receives regular briefings, currently its role in the Resident Curator process is limited to potentially serving on the five-person application evaluation team as “a representative from a relevant county board such as the Architectural Review Board, Fairfax County History Commission, etc.”

Robert Beach (chair), Gretchen Bulova, Michael Irwin and Barbara Naef have served on the Commission’s Resident Curator Program Committee since 2011.

### WEBSITE

In addition to providing History Commission members’ contact information, the History Commission’s web page describes the various programs the Commission offers to promote interest in local history extending from pre-history to the recent past. The History Commission’s Publication Grant encourages the sharing of local history research. The Awards Programs recognize individuals and groups for their efforts in researching or promoting history. Procedures and application forms for the Publication Grant and the Awards Programs are available online. Promotional information on the annual Fairfax County History Conference is placed on the website as it becomes available each year. Guidelines and nomination procedures for Fairfax County historical roadside markers can also be accessed online.

In addition, a historical resources page provides information on property owners in 1860, lists of Board of Supervisors members, and links to the Fairfax County Inventory of Historic Sites and a database of Fairfax County historical markers.

In 2017, three publications were added to the resources page: *Beginning at a White Oak* by Beth Mitchell with accompanying map, *Colchester: Colonial Port on the Potomac* by Edith Moore Sprouse, and *Legato School: A Centennial Souvenir* by Tony Wrenn, Virginia B Peters, and Edith Moore Sprouse.

The website serves as an easy, up to date and readily available tool for anyone interested in our County’s history. Debbie Robison manages the website. The webmasters are Greg Chase and Thomas Lee with the Department of Planning and Zoning. ([www.fairfaxcounty.gov/history-commission](http://www.fairfaxcounty.gov/history-commission))

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## THIRTEENTH ANNUAL HISTORY CONFERENCE

### FAIRFAX COUNTY IS HOST TO 275 YEARS OF HISTORY - A LOOK BACK AT OUR: HOMES, OCCUPATIONS, SCHOOLS AND TRANSPORTATION IN PROGRESS

The 13th Annual History Conference, which was part of the History Commission's contribution to the Commemoration of the 275th anniversary of the County's founding, was held on Veterans Day, Saturday, November 11, 2017 at the Stacy C. Sherwood Community Center in the City of Fairfax. The well-attended conference, included exhibits, authors and a trivia contest with prizes. Jason's Deli provided a continental breakfast and delicious lunch. The day was filled with visiting dignitaries, local county leaders and presentations by local and nationally known historians.

Welcome & Opening Remarks: Sharon Bulova, Chairman, Fairfax County Board of Supervisors and Congressman Gerry Connolly, 11th District, Virginia

Honoring Our Veterans:

BG Creighton W. Abrams, Jr., USA Ret., Executive Director, Army Historical Foundation

Boy Scout Troop Color Guard

Awards Presentation (See below.)

Speakers:

Homes & Communities

Susan Hellman, Director, Carlyle House, Alexandria, Virginia, "I Like Your Style, Dude (Architectural Styles of Fairfax County)"

Elizabeth Didiano, Executive Director, Reston Historic Trust & Museum, "Reston: Visioning and Building a 'New Town'"

Ron Chase, Director, Gum Springs, Museum, "Advancing the Dream, Fairfax County's First African American Community"

Occupations

Jon Vrana, Historical Re-enactor, "Meet Silas Burke, Farmer, Local Leader and Orange & Alexandria Railroad Director"

Delegate Ken Plum, Virginia House of Delegates, "Fairfax County's 20th Century Workforce"

Schools

Brent Leggs, Senior Field Officer, Washington DC Field Office of the National Treasure and Harvard Loeb Fellow, "Rosenwald Schools of Fairfax County"

Lynne Garvey-Hodge, Fairfax County History Commission and Historical Re-enactor, "Ivakota and the Occoquan Workhouse"

Susan Gray, Director, Fairfax Museum and Visitor Center, "Fairfax County Schools and Change"

Transportation

"The Road to Happiness," Ford Motor Co. 1924 silent short promotional film

Chris Sperling, Senior Archaeologist, Fairfax County Park Authority, "Corduoy Roads"

Joe Marinucci, Fairfax County historian, "Streets, Streams & Settlements"

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## AWARDS PROGRAMS

The Fairfax County History Commission maintains awards programs to honor research and achievements in Fairfax County history and historic preservation:

- Heritage Awareness Awards: Established in 1995, this program is designed to stimulate and reward original research in Fairfax County history using standard social, political and economic sources in written narrative form, a nomination to the National Register of Historic Places or a video documentary.
- Recognition Awards: To recognize contributions of individuals and groups to the preservation of history in Fairfax County.

These programs are open to the public. A full description of the programs, along with rules and requirements can be found on the Commission’s website. ([www.fairfaxcounty.gov/history-commission/awards-programs](http://www.fairfaxcounty.gov/history-commission/awards-programs))

At the annual History Conference on November 11, 2017, Congressman Gerry Connolly and Fairfax County Board of the Board of Supervisors Chairman Sharon Bulova presented the following awards. A posting in the Congressional Record marked the day.

- Distinguished Service Award to Melanie Manikas and Mary Ellen Zavaleta, fourth grade teachers at Cherry Run Elementary School, for their leadership in guiding their students, the Cherry Run Time Trekkers, in creating a well-documented and researched video, “The History of Burke, Virginia.”
- Mary Fahringer Award (\$500) for outstanding education and historical research was awarded to the Bull Run Civil War Round Table for their *25th Anniversary Commemorative Catalogue*. The *Catalogue* includes 293 lectures and 128 tours, along with assistance in the placement of over 70 historical marker/kiosk panels, and demonstrates the organization’s role in the community in research and education.
- The Nan Netherton Award (\$500) was presented to Nathaniel Lee for his well-researched and interesting book, *The Iron Road of Franconia*, a history of the Richmond, Fredericksburg and Potomac Railroad, which connected Franconia to the rest of Virginia and to Washington, D.C.

## CULTURAL RESOURCE MANAGEMENT AND PROTECTION BRANCH GRANTS

The Commission provides grants to the Park Authority Cultural Resource Management and Protection Branch (CRMP). Over the years, the grants have funded a variety of history-related projects including data entry, archival supplies and interns. The Commission did not make a grant in 2017; however, one is in progress for 2018.

## PUBLICATIONS

The History Commission has three projects remaining: reprinting *Beginning at a White Oak*; an update and reprint of *Mount Air*; and publishing *Fairfax County in 1860: A Collective Biography*.

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## BUDGET

### Fairfax County History Commission

#### Income and Expenses

#### FY 2017, Estimated FY 2018 and Actual First Half FY 2018

	<u>FY 2017</u>	<u>Estimated FY 2018</u>	<u>First Half FY 2018</u>
Beginning Balance July 1	\$47,195	\$48,989	\$48,989
Income:			
Fairfax County	\$21,013	\$21,013	\$21,013
Interest Earned	—	—	205
Marker Proffer Funds	—	—	4,000
Total, Income	<u>\$21,013</u>	<u>\$21,013</u>	<u>\$25,218</u>
Total Available	\$68,208	\$70,002	\$74,207
Operating Expenses	\$19,219	\$25,000	\$7,338
Accruals for Ongoing Programs	—	\$45,012	—
Ending Balance June 30	<u>\$48,989</u>		

The funds of the Fairfax County History Commission are maintained through FOCUS, and administered by staff of the Department of Planning and Zoning and the Fairfax County Park Authority.

Major expenditures in FY 2017 were minutes recording and transcription, the history conference, historical roadside markers and marker maintenance. Unspent funds from previous years have been committed to historical roadside markers and their maintenance, archaeology grants, publications, and preservation and oral history programs.

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## HISTORICAL MARKERS

Fairfax County's Historical Marker Program began in January 1998 when the History Commission approved a design and agreed to fund a distinctive historical roadside marker for Fairfax County. While this marker is generally modeled after Virginia's roadside markers, by state code it must have a distinctive appearance. With colors derived from George Washington's Fairfax Militia uniform, these buff and blue roadside markers emblazoned with the Fairfax County seal stand ten feet from ground level.

In the twenty years the program has existed, the History Commission has approved the installation of 59 historical roadside markers (including six state markers). Many requests for historical markers are initiated by the public, which provides for approximately one half of the funding. Some markers, including those requested by developers, are funded entirely by the requesting party. All requests are reviewed by a committee for historical accuracy, historical significance, and editorial continuity before being submitted to the entire Commission for approval.

During the 2012 calendar year, the Commission agreed to limit the funding of historical markers to the equivalent cost of two markers due to budget restraints. The current cost of fabricating a marker is \$2,110.

Two markers were approved in 2017: Mount Pleasant Baptist Church and Cross Farm. The Mount Pleasant Baptist Church marker highlights the history of one of the first post-civil war churches established for African Americans, many of whom were formerly enslaved individuals. Construction of the original church edifice was partially supported by the Freedmen's Bureau. One-half of the cost of the Mount Pleasant Baptist Church marker was funded by the church. The Cross Farm marker text replaced the Cross Farmhouse marker to better reflect the history of the property. Four markers were installed in 2017: Sydenstricker Schoolhouse, McAtee's Tavern, Mount Pleasant Baptist Church, and Cross Farm. Serving on the Marker Committee are Debbie Robison (present Chair), Anne Barnes, Michael Irwin, Mary Lipsey, Esther McCullough, Elise Ruff Murray, Page Shelp, and Barbara Peters.

## ETHNIC

The Ethnic Committee was formed in the fall of 1997 in response to the increasing demographic diversity of Fairfax County's population. The one hundred languages spoken within schools show the diversity of the population. It has been estimated that in less than fifty years the county's white population will drop below 50 percent. The committee set as a goal to explore the ways in which more ethnic segments might be encouraged to record their experiences and community history since their arrival in Northern Virginia.

In 2004, at the suggestion of then-Chairman Connolly, the Commission formed a subcommittee of the Ethnic Committee to create a program for recording and presenting oral history in Fairfax County. The Oral History subcommittee offers support to groups in Fairfax County seeking to record and collect oral histories. In cooperation with the staff of the Virginia Room, a project is being developed to encourage community groups to collect oral history in their districts. The Virginia Room will serve as a repository for the oral history offerings.

The members of this committee are Esther McCullough (chair), Anne Barnes, Sallie Lyons, Lynne Garvey Hodge, Anne Stuntz and Phyllis Walker Ford.

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## INVENTORY OF HISTORIC SITES

The Fairfax County Inventory of Historic Sites is one of the History Commission’s longest standing responsibilities. It serves as both a planning tool and an honorific. The Comprehensive Plan includes the Inventory sites in the Heritage Resources section of each Planning District.

The regular Comprehensive Plan Amendment to update the Inventory tables, references to Inventory sites in the text and other technical corrections is scheduled to come before the Planning Commission in June 14, 2018 and the Board of Supervisors on July 31, 2018. In addition to the usual additions and revisions, 17 sites have been removed from the active Inventory because after a great deal of consideration they were found to no longer have either architectural or archaeological integrity. The records for these sites will be archived.

As of December 2017, the Inventory stood at 368 listings, including the addition below:

### Addition to the Inventory of Historic Sites

**2017**

Site Name	Location/Vicinity	District	Date Added
Hannah P. Clark/Enyedi House	10605 Furnace Road, Lorton - Old Colchester Park and Preserve	Mount Vernon	10/4/2017

The current Inventory list along with its background, nomination forms and research guidelines are accessible to staff and the general public on the county website. An Inventory nomination form, instruction guide and example are also available. (<https://www.fairfaxcounty.gov/planning-zoning/historic/inventory-historic-sites>)

In April 2016, Stephanie Goodrich joined the DPZ staff as a Heritage Resources Planner and served as the Commission’s liaison until she left the county in May 2017. Denice Dressel, who had been working with the Park Authority on the Resident Curator Program, took her place in September 2017.

Elise Ruff Murray (chair), Sallie Lyons, Barbara Naef, Debbie Robison, Anne Stuntz and Jordan Tannenbaum serve on the Inventory Committee, in cooperation with Denice Dressel of DPZ.

## SPEAKERS BUREAU

At the Board of Supervisors request, the Commission compiled a list of people willing to speak on topics related to Fairfax County history. The resulting Speakers Bureau List includes a variety of countywide history topics with related speakers and contact information, including name, email address and phone number.

Members of the Fairfax County History Commission continue to be active in speaking before various civic, community and historic groups.

**Anne Barnes** presents talks on Fairfax County’s historic Shiloh Baptist Church, Mason Neck, Virginia, to interested audiences.

**Gretchen Bulova** lectured to numerous community and history organizations in 2017 about the history of Alexandria and the original Fairfax County weights and measures. She also participated in several Channel 16 and Fairfax Cable Access shows to promote the history of Fairfax County and the 275th Commemoration activities.

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**Carol Herrick** gives lectures on Northern Virginia, particularly the McLean area, and for many years has been part of the "Lifetime Learning Program" sponsored by the McLean Community Center.

**Lynne Garvey-Hodge** re-enacts a number of key historical American women. Her signature character is Progressive Era Suffragist Mrs. Robert Walker. She performs for numerous community events, educational groups, Cox Cable Channel 10, Fairfax County Channel 16 and women's associations, traveling throughout Virginia to do so. Ms. Garvey-Hodge also performs two additional characters: Angelina Grimké an early 19th century abolitionist and Quaker women's rights activist from South Carolina; and from the Gilded Age and early days of America's railroad industry, Mrs. John Henry Devereux, wife of railroad magnate and Civil War general, John Henry Devereux. Lynne also speaks on the history and background of the historic Town of Clifton. Further, she speaks to local educational forums and civic organizations on "Women of the Progressive Era in Fairfax County," "The Lorton Reformatory and Progressive Era in Fairfax County," "Victorian Mourning Customs," "Stories in Stone – Understanding Cemetery Iconography" and "The Story of Ivakota, National Florence Crittendon Mission."

**Mary Lipsey** continues to provide presentations on a variety of topics related to the "Braddock's True Gold" project, local history, women's history and firsts in American history.

**Sallie Lyons** promotes preservation and archeological and historical research in the old town of Colchester, Old Colchester Park and Preserve, and Mason Neck, speaking frequently to groups and at the History Conference.

**Debbie Robison** gives talks on researching county history, discovering mills in Fairfax County, construction of the Little River Turnpike, early Fairfax County settlement and the establishment of post-Civil War schools for African Americans. In 2017, she made a presentation to the Cub Run Stream Valley Park Volunteer Team on the history of three mills along Cub Run and to the Historic Centreville Society on early settlement of the southwestern portion of Fairfax County.

**Anne Stuntz** speaks on the history of Vienna and its environs.

**Phyllis Walker Ford** speaks on the history of Franconia and Laurel Grove School.

**Jordan Tannenbaum** gives lectures on the federal Historic Preservation program in general and gave a lecture on the National Historic Preservation Act of 1966 in Falls Church as part of the 50th Anniversary of the National Historic Preservation Act.

## OUTREACH ACTIVITIES

Fairfax County History Commission members continue to be active in a variety of ways in the community. The following summary, though not a comprehensive list, highlights the wide variety of outreach activities performed by Commission members.

Architect member, **Robert E. Beach**, AIA, LEED, AP, BD+C, designed the Turning Point Suffragist Memorial, which will be located in Occoquan Regional Park in Lorton and will pay tribute to the women who endured harsh imprisonment to secure voting rights for women and is continuing his activities in the development of the memorial plans. **Lynne Garvey-Hodge** serves on the National Board of Directors for the project.

**Gretchen Bulova** serves as the Vice President (Planning and Resources) on the Virginia Association of Museum's (VAM) Board, and organizes VAM's Advocacy Day for Virginia Museums in Richmond. She is a Governor's appointee to the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

**Glenn Fatzinger and Sallie Lyons** are cofounders of the Mount Vernon Regional Historical Society.

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**Carole Herrick** served as chair of “An Afternoon with the Madisons,” a War of 1812 bicentennial event held at the McLean Community Center exactly 200 years to the day after the British invaded and burned the City of Washington. She portrayed Dolley Madison, Montpelier’s John Douglas Hall represented James Madison, and Roger Mudd stepped in as the honorary chair. She was chair of “McLean Remembers the Civil War,” an all-day event commemorating 150 years of the beginning of the Civil War, held at the McLean Community Center on October 22, 2011. She is a past and current president of the McLean Historical Society. Besides authoring several books, Carole researches history and writes articles about historical sites and events for *Viva Tysons* magazine and other publications.

**Lynne Garvey-Hodge** has served on the Town of Clifton Historic Preservation Committee, which she initiated; she has served as chair of the Clifton Betterment Association’s Clifton Oral History Project; and chaired the Clifton Community Woman’s Club Spring Homes Tour in 2011 and her historic 1880s home on Blue Dan Lane was on their 2012 tour.

**Lynne Garvey-Hodge** and **Mary Lipsey** co-founded the non-profit Fairfax County Cemetery Preservation Association, Inc. in 2008, whose goal is to preserve and protect family cemeteries in Fairfax County. Both continue as directors and active members.

**Sallie Lyons** formed and incorporated the Friends of Fairfax County Archaeology and Cultural Resources, FOFA, supporting the Cultural Resource Management and Protection Branch of the Park Authority. **Barbara Naef** was among the charter members.

**Sallie Lyons** continues to promote preservation and archaeology in Colchester. She is an active member of the Lorton Heritage Society, Preservation Virginia and the Northern Virginia Chapter of the Archaeological Society of Virginia, and interfaces with Gunston Hall in many activities.

**Barbara Naef** continues to participate in the Park Authority American Alliance of Museums (AAM) reaccreditation project, working as a volunteer consultant with staff of the Resource Management Division charged with this multi-year effort. She also serves as liaison with the Reston Museum & Historic Trust as opportunities arise for joint projects.

**Debbie Robison** continues to research local history and write articles about historical sites and events in Fairfax County. In addition, she regularly assists the public by answering research questions. She is a member of the Historic Centreville Society Board.

**Anne Stuntz** serves as the president of Historic Vienna, Inc. She is on the Sully Foundation, Historical Society of Fairfax County, Flint Hill Cemetery Association and Friends of the Virginia Room boards.

**Phyllis Walker Ford** serves as President of the board of directors for Laurel Grove School Association, the governing body of Laurel Grove School Museum. She also serves as Vice President-Education on the board of directors of Franconia Museum.

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## BIOGRAPHICAL SKETCHES

A brief examination of the background of the Fairfax County History Commission reveals a wide and diverse variety of backgrounds that members bring to their work.

**Anne M. Barnes**—is a longtime Fairfax County resident who lives with her husband, Edward, on Mason Neck, Virginia. She received a BS in Criminal Law from Savannah State College and a MA in Government from Johns Hopkins University. She worked on an archeological project in South Carolina in the mid-1980s. She is a former Marine Corps Officer, U.S. Congressional staffer, American History teacher and is currently the Resource Director for a federal and strategic training center. She served as Vice Chairman of the History Commission in 2006-2008 and as Treasurer in 2010-2012. She is currently the chairman of the Bylaws and Budget Committees.

**Robert E. Beach**—after receiving his Bachelor of Architecture from Pratt Institute in New York in 1982, he practiced architecture in several notable New York City and Washington area architecture firms. In 1989, he started his own practice in Falls Church, which provides design services for historic architectural restorations at the local, state and national levels. Mr. Beach has served as the Architect member of the Commission since 2000, as Vice Chairman in 2004–2005, and as Chairman in 2006–2008, as the Chairman of the Fairfax County Resident Curator Program Committee and multiple times on behalf of the Commission as a juror for the Fairfax County Exceptional Design Awards. Professionally, Mr. Beach is a member of the American Institute of Architects (AIA), has served as a local Chapter Board member and represented the AIA Northern Virginia Chapter Board and at the State level as an AIA Virginia Director. He is also a Leadership in Energy and Environmental Design Accredited Professional (LEED, AP, BD+C) specializing in building design and construction and is a member of the United States Green Building Council (USGBC). Mr. Beach is a Georgetown University Architectural Thesis Advisor in the Real Estate and Urban Design Studies Graduate Program. In addition, he is a Boy Scouts of America Architecture and Aviation Merit Badge Counselor and is a licensed instrument rated private pilot who volunteers flight time for Angel Flights several times a year. On November 7th, 2014, Mr. Beach was presented with the Distinguished Achievement Award from the Virginia Society of the American Institute of Architects (AIA Virginia). On March 27, 2015, Mr. Beach was presented with the 2015 Pratt Institute Alumni Achievement Award. These two awards recognized Mr. Beach for the full body of his design work including the Turning Point Suffragist Memorial, which will honor the lives of the suffragists who worked for the passage of the 19th Amendment giving women the right to vote. Mr. Beach also served as a board advisor to the Science Museum of Virginia from the spring of 2011 until December 2015 for restoration of the National Register listed historic mid-century modern Rice House designed by Richard Neutra in Richmond, Virginia. Bob lives in Fairfax, Virginia.

**Gretchen M. Bulova**— from the Braddock District, brings a wealth of museum experience to the Commission. She holds a BA in Anthropology and a BA in Classical Studies from the College of William and Mary and an MA in Museum Studies from The George Washington University. Ms. Bulova is the Deputy Director for the Office of Historic Alexandria, Virginia and the Director of the Stabler-Leadbeater Apothecary Museum in Alexandria, Virginia. She specializes in the interpretation of late 18th-century material culture and lectures widely on a variety of topics related to Alexandria and Gadsby’s Tavern and is active in the local museum community. Ms. Bulova is Vice-President for Planning and Resources for the Virginia Association of Museums Board, and is President of the Historic House Museums Consortium of Washington, DC. Ms. Bulova is committed to the preservation of local history and inspiring the next generation to love museums and our nation’s rich heritage. Elected the Commission’s Chairman in 2012, she served through 2014. She served as the Chair of the Fairfax County 275th Commemoration.

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**Glenn Fatzinger**—graduated from Lafayette College with a BA degree in History, and after serving as a US Army Officer, completed an MA degree in History from Penn State University where he held a graduate teaching assistantship in the Department of History. He later completed an Ed.D. degree from George Washington University and AAS degrees in Business Management and Legal Assisting from Northern Virginia Community College (NOVA). Dr. Fatzinger’s federal government employment career included serving as a civilian historian for the US Air Force; a technical assistance specialist for the Economic Development Administration in the Department of Commerce; an education specialist with the Army Engineer School at Ft. Belvoir; and a writer-editor for the US Army Intelligence and Threat Analysis Center where he was awarded the Army Achievement Medal for Civilian Service. After retiring from the federal government, Dr. Fatzinger has taught business courses for more than 20 years at Marymount and Strayer Universities and is currently Adjunct Assistant Professor of History at the NOVA Alexandria Campus where he teaches Western Civilization and early American History. Dr. Fatzinger has had a wide range of civic experience. He represented the Mount Vernon District on the Fairfax County Park Authority for four years that included acquiring Civil War Fort Willard and the Grist Mill Park and building the indoor ice rink-swimming pool at the Mount Vernon Recreation Center. Dr. Fatzinger also served eight years on the NOVA College Board, including five as Board Chairman, and while on the Board, he co-founded the NOVA Educational Foundation that built the Ernst Center on the Annandale Campus and the Schlesinger Performing Arts Center on the Alexandria Campus. He was recently inducted into the NOVA Alumni Federation’s Hall of Fame for Outstanding Service to the College. In addition, Dr. Fatzinger is an accomplished musician who played 12 years in the Washington Redskins Marching Band and currently plays in the 80-piece NOVA Alexandria Campus Band and the Mount Vernon Community Band.

**Phyllis Walker Ford**—appointed in February 2009, earned a BA in Business Administration from Bluefield State College, Bluefield, West Virginia and a MBA from Trinity University, Washington, D.C., leading to sixteen years in the telecommunications industry. She served as the commission’s Secretary in 2010 and is currently Treasurer. Phyllis, a direct descendent of the family who donated land in 1881 for the Laurel Grove Colored School, a school to serve the African American children in the Franconia area, was instrumental in restoring the school, establishing a museum and searching out its history. She is President of the Laurel Grove School Association, the governing body of Laurel Grove School Museum. She serves as Vice President on the Franconia Museum Board of Directors. She is researching the history of African American families who were enslaved on properties in the Franconia Area and owned land in 1860. She is participating in “Cast the Net,” a \$150,000 grant project award from the Institute of Museum and Library Services. This multi-state museum project benefits African American museums and cultural organizations in Florida, Georgia, North Carolina and Virginia and aids in the development of sustainable statewide networks. Throughout the year, Phyllis presents talks on Historic Laurel Grove Colored School and Franconia local history to scouting groups, civic associations, chamber of commerce members and other community groups or museums. In December of 2015, Hanna Freece, Curator at Mount Vernon notified Ms. Ford that she has ancestors who were enslaved on Dogue Run Farm. She has worked with Mount Vernon researchers to learn about Dick and Charity Jasper whose marriage at Dogue Run Farm was recognized by George Washington. The family remained on Dogue until freed by Mrs. Washington in 1801, two years after her husband’s death. It is documented that Dick and his son Morris returned to Mount Vernon in 1835 to work on Washington’s Tomb. Her research is continuing and connecting to others who were part of the enslaved community at Mount Vernon. The Mount Vernon Estate opened a new exhibit October 2016, “Lives Bound Together-Slavery at George Washington’s Mount Vernon.” At the end of the exhibit is a video of descendants of some of the Mount Vernon enslaved where Phyllis shares her thoughts on Dick and Charity Jasper.

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**Carole Herrick**—as a nationally ranked tennis player, Carole attended Los Angeles State College, where she received her BA in history. In 2012, she was inducted into the National Women’s Intercollegiate Tennis Hall of Fame. She served nine years on the Governing Board of the McLean Community Center, followed by four years as Chair of Friends of the McLean Community Center, of which she continues as a board member. Carole chaired the Fairfax County History Commission 2015-2017 and is currently president of the McLean Historical Society, two organizations which help to identify, document, record, and preserve the county’s historic past. For several years, she chaired McLean & Great Falls Celebrate Virginia, an organization that sponsored large-scale signature events in connection with the history of the McLean area: the 400th anniversary of the founding of Jamestown, the 100th anniversary of McLean, the 150th anniversary of the beginning of the Civil War, and the 200th anniversary of the burning of America’s capital city on August 24, 1814, during which the Madison’s escaped into Fairfax County. Carole served on the Fairfax County 2007 Community Citizens Planning Committee and the Salona Task Force Committee. She has received numerous accolades that include The Heartbeat of Rotary and the Friend in Deed awards. She was honored in 2016 to be the honorary chair for the 50th anniversary of the Women’s Club of McLean. In 2017 she received the Mary Kingman – Pillar of McLean award from the McLean Chamber of Commerce. Carole is a highly regarded speaker and has written numerous articles for publication about the Northern Virginia area, along with authoring eight books.

**Lynne Garvey-Hodge**—has been a resident of Fairfax County for 33 years and has been a resident of Clifton, Virginia for 18 years, where she is active in preserving the historicity of Clifton. She has a Bachelor of Fine Arts from the University of Colorado, majoring in art history, an MPA (Masters in Public Administration) with a major in Human Resources also from the University of Colorado and a MTS (Masters in Theological Studies) from Wesley Theological Seminary (where she completed her thesis on “Corporate Ethics”). She re-enacts Progressive Era Suffragist Mrs. Robert Walker; Angelina Grimké, an early 19th century, abolitionist and Quaker women’s rights activist from South Carolina; and from the Gilded Age and early days of America’s railroad industry, Mrs. John Henry Devereux (wife of railroad magnate and Civil War General John Henry Devereux). Ms. Garvey-Hodge has published a book for Arcadia Publishers' Images of America Series, *Clifton* in 2009. She is in her sixth consecutive term on the Commission. She served as chair in 2004 and 2005 and represented the Commission on the Exceptional Design Awards jury in 2005, 2006 and 2008. She spearheaded efforts to launch the First Annual Fairfax County History Conference in 2005 and has chaired the History Conference Committee since 2006. She is, also, the chair of the Awards Committee and sits on the Ethnic/Oral History, Advocacy and Bylaws Committees. She is the co-founder and an officer of the Fairfax County Cemetery Preservation Association, Inc. Lynne is a member of the Bull Run Civil War Round Table, Historic Centreville Society, Clifton Community Woman’s Club, the Burke Historical Society and the Fairfax Station Railroad Museum.

**Michael R. Irwin**—has been a resident of Fairfax County for over 20 years. Born in Pennsylvania, he grew up with a deep interest in American History. In high school he was a volunteer with the Pennsylvania State Museum and Historical Commission working in the registrar’s office at the William Penn Memorial Museum in Harrisburg, and in college served an internship in the same office. He graduated from Dickinson College in Carlisle, Pa., with a BA in History (concentration in American History), a minor in Fine Arts History. Since moving to Virginia, he can often be found at the Smithsonian Institution or one of the other historic venues in the greater Washington area. His main interests are the World War II period, especially the war's impact on social structures on the home front and early American industrial history.

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**Mary Lipsey**—was born in Atlanta and raised in Fairfax County. She received a BA in History and Sociology from Mary Washington College (1972) and a Masters in Middle School Education from Virginia Tech (1989). In June 2003, she retired after 30 years of teaching seventh grade American History in the Fairfax County Public Schools. She has been a volunteer docent for the American History Museum of the Smithsonian since 1980 and for the National Archives since 2004. Her interest in local history has found outlets through co-authoring *Braddock's True Gold* and speaking to senior citizens groups. As a member of the Commission, she serves on the Markers and History Conference Committees. She is a founder and former president of the non-profit Fairfax County Cemetery Preservation Association, Inc., whose goal is to preserve and protect family cemeteries in Fairfax County. Mary is also an active volunteer with her community and a local park. She has published *A Christmas Flight: Aviation Pioneer Dr. Christmas* and *Aviation: From Curiosity to Reality*.

**Sallie Lyons**—a native North Carolinian, she grew up in University Park, Maryland. She received an AB in Art History from Duke University, worked at the Library of Congress and held a teaching assistantship in anthropology as a graduate student at the University of Maryland. She did urban archaeological excavation in Winchester, the capital of Saxon England. She moved to Mount Vernon District in 1970, living on Brick Yard Point in Wellington Villa until moving to the old town of Colchester on Mason Neck in 1984. Living on two potential archeological sites made her keenly aware of history and preservation in the Mount Vernon area. She has spent over 25 years supporting preservation and research in Colchester, Mason Neck and Lorton. Partnered with her late husband, Gerald Lyons, she founded Lyonshare Studios, LLC, a technical computer graphics company that provides illustrative and word support for planning, preservation, publication and other technical fields. She was founder and president through 2015 of FOFA, the Friends of Fairfax County Archaeology and Cultural Resources, supporting the Cultural Resource Management and Protection Branch of the Fairfax County Park Authority. With fellow Commission member Glen Fatzinger, she is now co-chairing creation of the Mount Vernon Regional Historical Society. She is an active member of the Northern Virginia Chapter of the Archaeological Society of Virginia, the Lorton Heritage Society, the Seeds of Independence Committee of Gunston Hall, and several other local and state archaeology and history organizations.

**Esther W. McCullough**—grew up in Longview, Texas and received her Bachelor of Science in Clothing and Textiles from North Texas State University (now The University of North Texas). After moving to Fairfax County in 1996, she could not find information on the history of African-Americans in the area, so she created a brochure, “African-American Sites in Fairfax County before 1900.” She is the chair of the Ethnic Committee and sits on the Marker Committee and the History Conference Committee. She served as the Secretary of the Commission from 2004–2007. She has led sessions on oral history at more than one History Conference. Scrapbooking memories and preserving history are two things that she treasures. She has led workshops for senior citizens in nursing homes using scrapbooking techniques. Esther volunteers throughout Fairfax County. She works tirelessly with history and seniors at her church, the first Baptist Church of Vienna.

**Elise Ruff Murray**—was born in Key West, Florida, grew up in Vienna, Virginia and resides in Vienna again. She earned a BA in History from the University of Virginia and is interested in archaeology, history and preservation. After working for a year and a half on an archaeology project in Northeastern Mississippi, she worked as an economic consultant advising on anti-trust and commercial litigation matters for over 20 years. A member of the Fairfax County History Commission since 1983, Ms. Murray has served as the Commission’s ex officio member of the Architectural Review Board since 1992. On the Commission, she served as chairman, treasurer and vice chairman. She is the chair of the Inventory of Historic Sites Committee and serves on the Awards, Bylaws, Markers and Publications Committees. Ms. Murray serves on the boards of the Historical Society of Fairfax County and the Friends of the Virginia Room. In addition, she coordinates the Fairfax History area at Celebrate Fairfax.

**Barbara M. Naef**—has been a resident of Reston since 1968. She earned a BA in History from Duke University and a MA in American History from the University of Delaware. She retired in 2002 after 23 years working to preserve and interpret our county history at the Fairfax County Park Authority. She continues to work as a volunteer for the Park Authority, support various local history groups, and has been a docent at the Smithsonian Museum of American History for over 25 years. The Archaeologist Representative on the Commission, as Stewardship Manager in the Park Authority Resource Management Division, she became supervisor of the county archaeology program when it was transferred to the Park Authority in 1996. She serves on the Inventory of Historic Sites Committee, Budget Committee, the annual History Conference Planning and Implementation Committee and the Resident Curator Program Committee.

**Barbara Peters**—from Mason District, who joined the Commission in 2017, has been a Fairfax County resident for 36 years. She received her BA from Oakland University in Rochester, Michigan and MA in Library Science from the University of Michigan in Ann Arbor, MI. Before settling in Fairfax, she resided in Paraguay, Venezuela and Thailand. She has been active in local civic activities for 30 years including service as an Election Officer. She retired in 2016 as the branch manager of the Thomas Jefferson Library in Fairfax County.

**Debbie Robison**—lives in Centreville and is a long-time resident of Fairfax County. She manages the historic preservation/restoration program for a local architectural and engineering firm. Ms. Robison holds a Bachelor of Science degree from VA Tech and a Historic Preservation Certificate from NOVA. She is active in Centreville historical matters. Her interest in researching local history has resulted in her authoring numerous articles about general aspects of northern Virginia’s past and the history of specific sites. To promote preservation and facilitate local history education, Ms. Robison hosts a website, [www.novahistory.org](http://www.novahistory.org). She served as the Commission’s Chairman 2009-2011.

**Page S. Shelp**—who stepped down in 2017, while originally from California, has lived in Fairfax County for most of her adult life, moving west from Falls Church and McLean to Great Falls. She received her Bachelor's degree in History and in Art History from Colorado Woman's College, her Secondary School Education Teaching credentials in history and in English at Mills College and her Master's degree from Georgetown University. She has taught history, but spent the greater part of her career (25 years) as the executive director of the McLean Community Center where she became especially interested in and involved with local history and the preservation of community institutions.

**Steven Sherman**—was born in Washington, D.C. and raised in Arlington, Virginia. He has lived in Northern Virginia for over 60 years, graduated from Wakefield High School in 1964 and attended Morris Harvey College in Charleston, West Virginia and Northern Virginia Community College in Annandale, Virginia, where he majored in Accounting and History. He is President/Broker of Sherman Properties, Inc., located in Franconia and has been in the real estate business for the past 40 years. Since 1984, he has owned the historic “Five Oaks Estates” manor house built in 1910 located off Blake Lane in Fairfax County. Steve is the president of HMS Productions, which made a 90-minute documentary “Mosby’s Combat Operations in Fairfax County.” Steve was a producer of the film along with his partners Don Hakenson and Chuck Mauro. HMS productions also made a book on “Mosby’s Combat Operations in Fairfax County.” He is the former secretary of the Board of Directors of Celebrate Fairfax, served on the Board of Directors of the Franconia Museum for 13 years and is a past president. Mr. Sherman served as the Commission’s secretary in 2011, served as Vice Chairman from 2012 through 2014, and is again the Commission’s Secretary.

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**Anne Stuntz**—grew up in Vienna, Virginia and comes from a family of historians and genealogists. She has a degree in art history from Princeton University and an MBA from Columbia University. After a career in finance on Wall Street and in the City of London, Anne returned to her historic family home in Vienna with her husband and three sons, and is devoted to preserving the history of the area. She is president of Historic Vienna Inc. She is active with the Historical Society of Fairfax County, the Sully Foundation, Flint Hill Cemetery Association, Friends of the Virginia Room and the Fitzhugh Families of Virginia. She served as Vice Chairman of the History Commission from 2015-2017 and serves as Chairman in 2018.

**Jordan Tannenbaum**—grew up in Morristown, NJ but has lived in Fairfax County for the past 23 years. He earned a BA in History from Brandeis University in Waltham, MA, a JD from American University's Washington College of Law and is a member of the District of Columbia Bar. Following graduation from Brandeis, he began working for the U.S. Advisory Council on Historic Preservation (ACHP). After a decade with the Council, he changed careers and entered the fundraising field. His first job was with his undergraduate alma mater. Since then, Tannenbaum has held senior fundraising positions with Georgetown University, the Wharton School of the University of Pennsylvania and the Hillel Foundation. He is currently the Chief Development Officer for the U.S. Holocaust Memorial Museum. He also spent 27 years in the JAG Corps of the U.S. Army Reserve, retiring as a Lieutenant Colonel. His decorations include the Legion of Merit, the Meritorious Service Medal and four awards of the Army Commendation Medal. Tannenbaum is on the Advisory Board of the Army Historical Foundation and in July of 2016 was appointed by President Obama to the ACHP bringing his preservation career full circle. Jordan is on the History Conference and Awards Committees.

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Board Agenda Item  
June 19, 2018

10:30 a.m.

Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard June 19, 2018  
(An updated list will be distributed at the Board meeting.)

STAFF:

Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

**FINAL COPY**

**APPOINTMENTS TO BE HEARD JUNE 19, 2018**  
**(ENCOMPASSING VACANCIES PROJECTED THROUGH JULY 2, 2018)**  
 (Unless otherwise noted, members are eligible for reappointment)

**A. HEATH ONTHANK MEMORIAL AWARD SELECTION COMMITTEE**  
**(1 year)**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
VACANT (Formerly held by Ronald Copeland; appointed 1/05-1/17 by Hudgins) Term exp. 1/18 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
Eileen J. Garnett (Appointed 1/03-2/17 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason

**ADVISORY SOCIAL SERVICES BOARD**  
**(4 years – limited to 2 full consecutive terms)**

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
VACANT (Formerly held by Francine Ronis; appointed 2/16 by L. Smyth) Term exp. 9/17 <i>Resigned</i>	Providence District Representative	<b>Ryan P. Karr</b>	L. Smyth	Providence

**AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Sean Perryman; appointed 3/17 by Cook) Term exp. 5/18 <i>Resigned</i>	Citizen Representative	<b>Renko R. Hardison</b> (McKay)	By Any Supervisor	At-Large
Mark Drake (Appointed 2/09-5/12 by McKay) Term exp. 5/16	Engineer/Architect/ Planner #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 <i>Resigned</i>	Lending Institution Representative		By Any Supervisor	At-Large

**AIRPORTS ADVISORY COMMITTEE (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by George Page; appointed 1/05-1/16 by Hudgins) Term exp. 1/19 <i>Resigned</i>	Hunter Mill Business Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Sherri D. Jordan; appointed 10/08-1/15 by Hyland) Term exp. 1/18 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon

**ARCHITECTURAL REVIEW BOARD (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Charles Bierce; appointed 11/86 by Egge; 8/89-9/13 by Hyland; 10/16 by Storck) Term exp. 9/19 <i>Resigned</i>	Architect #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Robert W. Mobley; appointed 10/77-9/92 by Alexander; 3/04-9/15 by Gross) Term exp. 9/18 <i>Resigned</i>	Related Professional Group #1 Representative	<b>Kaye Orr</b> (Gross)	By Any Supervisor	At-Large
VACANT (Formerly held by John A. Carter; appointed 2/17 by Hudgins) Term exp. 9/18 <i>Resigned</i>	Related Professional Group #4 Representative		By Any Supervisor	At-Large

**ATHLETIC COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Karin Stamper; appointed 9/09-4/16 by McKay) Term exp. 4/18 <i>Resigned</i>	Lee District Alternate Representative		McKay	Lee
VACANT (Formerly held by Terry Adams; appointed 11/11-7/13 by Gross) Term exp. 6/15	Mason District Alternate Representative		Gross	Mason
Mr. Chip Chidester (Appointed 3/10-10/15 by Bulova) Term exp. 10/17	Member-At-Large Alternate Representative		Bulova	At-Large Chairman
Michael W. Thompson (Appointed 1/09-9/16 by Herrity) Term exp. 6/18	Springfield District Principal Representative	<b>Michael W. Thompson</b>	Herrity	Springfield
Jane Dawber (Appointed 3/13-9/16 by Hudgins) Term exp. 6/18	Women's Sports Alternate Representative		By Any Supervisor	At-Large
Jenni R. Cantwell (Appointed 9/10-6/16 by Herrity) Term exp. 6/18	Women's Sports Principal Representative	<b>Jenni R. Cantwell</b> (Herrity)	By Any Supervisor	At-Large

**BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Ken Balbuena (Appointed 9/11-6/17 by Bulova) Term exp. 6/18	At-Large Chairman’s Representative	<b>Ken Balbuena</b>	Bulova	At-Large Chairman’s
Andrew R. Miller (Appointed 1/15-7/17 by Cook) Term exp. 6/18	Braddock District Representative		Cook	Braddock
Barbara Glakas (Appointed 1/12-6/17 by Foust) Term exp. 6/18	Dranesville District Representative	<b>Barbara Glakas</b>	Foust	Dranesville
Therese Martin (Appointed 2/13-6/17 by Hudgins) Term exp. 6/18	Hunter Mill District Representative	<b>Therese Martin</b>	Hudgins	Hunter Mill
Linda J. Waller (Appointed 9/16-6/17 by McKay) Term exp. 6/18	Lee District Representative	<b>Linda J. Waller</b>	McKay	Lee
VACANT (Formerly held by Judith Fogel; appointed 6/12-5/15 by Gross) Term exp. 6/16 Resigned	Mason District Representative		Gross	Mason
Roberta Kelley Paul (Appointed 7/17 by Storck) Term exp. 6/18	Mount Vernon District Representative	<b>Roberta Kelley Paul</b>	Storck	Mount Vernon
Emilie F. Miller (Appointed 7/05-7/17 by Smyth) Term exp. 6/18	Providence District Representative	<b>Emilie F. Miller</b>	L. Smyth	Providence

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**BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)**  
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joshua D. Foley; appointed 9/13-6/16 by Herrity) Term exp. 6/17 Resigned	Springfield District Representative		Herrity	Springfield
VACANT (Formerly held by Olga Hernandez; appointed 9/04-6/15 by Frey; 7/16-7/17 by K. Smith) Term exp. 6/18 Resigned	Sully District Representative	<b>Debbie Kilpatrick</b>	K. Smith	Sully

**BOARD OF BUILDING AND FIRE PREVENTION CODE APPEALS (4 years)**

(No official, technical assistant, inspector or other employee of the DPWES, DPZ, or FR shall serve as a member of the board.)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Susan Kim Harris; appointed 5/09-2/11 by Hudgins) Term exp. 2/15 Resigned	Alternate #4 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Gita Amiri; appointed 2/12-2/14 by Frey) Term exp. 2/18 Resigned	Design Professional #6 Representative	<b>Rob Fisher</b> (K. Smith)	By Any Supervisor	At-Large

**CHESAPEAKE BAY PRESERVATION ORDINANCE  
EXCEPTION REVIEW COMMITTEE (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Grant Sitta; appointed 9/10-9/15 by Gross) Term exp. 9/19 <i>Resigned</i>	Mason District Representative		Gross	Mason

**CHILD CARE ADVISORY COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Mercedes O. Dash (Appointed 3/15 by L. Smyth) Term exp. 9/17	Providence District Representative		L. Smyth	Providence

**CITIZEN CORPS COUNCIL, FAIRFAX COUNTY  
(2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jade Harberg (Appointed 7/16 by Bulova) Term exp. 5/18	At-Large Chairman's Representative	<b>Jade Harberg</b>	Bulova	At-Large Chairman's
Patrick J. Scott (Appointed 10/16 by Hudgins) Term exp. 5/18	Hunter Mill District Representative		Hudgins	Hunter Mill
Nicholas Ludlum (Appointed 1/17 by L. Smyth) Term exp. 5/18	Providence District Representative		L. Smyth	Providence



**CIVIL SERVICE COMMISSION (2 years)**

[NOTE: The Commission shall include at least 3 members who are male, 3 members who are female, and 3 members who are from a member of a minority group.]

Current Membership: Males - 9      Females – 3      Minorities: 5

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ronald Copeland; appointed 9/04-1/17 by Hudgins) Term exp. 12/18 <i>Resigned</i>	At-Large #2 Representative		By Any Supervisor	At-Large
Rosemarie Annunziata (Appointed 10/05-1/08 by Connolly; 12/09-1/16 by Bulova) Term exp. 12/17	At-Large #3 Representative		By Any Supervisor	At-Large

**COMMISSION FOR WOMEN (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Kathryn McDaniel; Appointed 10/14-12/17 by Herrity) Term exp. 10/20 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield

**COMMISSION ON AGING (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Steve Gurney; appointed 3/17 by Hudgins) Term exp. 5/18 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Robert Kuhns; appointed 2/15 by Hyland; 9/16 by Storck) Term exp. 9/18 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon

**CONSUMER PROTECTION COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Rodney Woodruff; appointed 4/16 by K. Smith) Term exp. 7/18 <i>Resigned</i>	Fairfax County Resident #7 Representative		By Any Supervisor	At-Large

**CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Robert Gehring; appointed 1/14-2/15 by Hudgins) Term exp. 2/18 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

**CONFIRMATION OF:**

- Ms. Paige Valentine as the League of Women Voters Alternate Representative

**DULLES RAIL TRANSPORTATION IMPROVEMENT  
DISTRICT ADVISORY BOARD, PHASE I (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Thomas D. Fleury (Appointed 6/01-3/14 by L. Smyth) Term exp. 3/18	At-Large #5 Representative		By Any Supervisor	At-Large
Michael J. Cooper (Appointed 3/04-3/14 by L. Smyth) Term exp. 3/18	At-Large #6 Representative		By Any Supervisor	At-Large

**ECONOMIC ADVISORY COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Mark Silverwood; appointed 1/09-11/14 by Hudgins) Term exp. 12/17 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

**CONFIRMATION NEEDED:**

- Ms. Niki L. Zimmerman as the At-Large #14 Representative

**ECONOMIC DEVELOPMENT AUTHORITY (EDA) (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Christian Deschauer (Appointed 6/16 by Bulova) Term exp. 6/18	At-Large #3 Citizen Representative	<b>Christian Deschauer</b> (Bulova)	By Any Supervisor	At-Large
Ronald C. Johnson (Appointed 11/01- 6/02 by Hanley; 7/06 by Connolly; 6/10- 6/14 by Bulova) Term exp. 6/18	At-Large #4 Citizen Representative		By Any Supervisor	At-Large

**ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
John William Ewing (Appointed 5/16 by Bulova) Term exp. 3/18	Citizen #2 Representative	<b>Howard J. Guba</b> (Bulova)	By Any Supervisor	At-Large

**ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) (3 years)**

**CONFIRMATION NEEDED:**

- Ms. Krystyna Hesser as the Student Representative

**FAIRFAX AREA DISABILITY SERVICES BOARD**  
**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**  
 [NOTE: Persons may be reappointed after being off for 3 years. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members. For this 15-member board, the minimum number of representation would be 5.]

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Timothy W. Lavelle (Appointed 4/09- 12/14 by Bulova) Term exp. 11/17 <i>Not eligible for reappointment</i>	At-Large #2 Business Community Representative		By Any Supervisor	At-Large

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**FAIRFAX AREA DISABILITY SERVICES BOARD**  
**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**  
 continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Harriet Epstein; appointed 5/10-12/16 by L. Smyth) Term exp. 11/19 <i>Resigned</i>	Providence District Representative		L. Smyth	Providence

**FAIRFAX COUNTY CONVENTION AND VISITORS CORPORATION**  
**BOARD OF DIRECTORS (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Paul Gilbert (Appointed 6/09-6/15 by Bulova) Term exp. 6/18 <i>(Not eligible for reappointment)</i>	At-Large Chairman's		Bulova	At-Large Chairman's
Sam Misleh (Appointed 6/15 by McKay) Term exp. 6/18	Lee District Representative	<b>Sam Misleh</b>	McKay	Lee
Fouad Qreitem (Appointed 9/12-7/15 by Herrity) Term exp. 6/18 <i>(Not eligible for reappointment)</i>	Springfield District Representative		Herrity	Springfield
Holly Williamson (Appointed 10/15 by Frey) Term exp. 6/18	Sully District Representative	<b>Holly Williamson</b>	K. Smith	Sully

**FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD**

**(3 years – limited to 3 full terms)**

[NOTE: In accordance with *Virginia Code* Section 37.2-501, "prior to making appointments, the governing body shall disclose the names of those persons being considered for appointment." Members can be reappointed after 1 year break from initial 3 full terms, VA Code 37.2-502.

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Daria Akers (Appointed 11/16 by Bulova) Term exp. 6/18	At-Large Chairman's Representative	<b>Daria Akers</b> <i>(Nomination announced on May 15, 2018)</i>	Bulova	At-Large Chairman's
Molly E. Long (Appointed 12/14- 6/15 by Cook) Term exp. 6/18 <i>Resignation eff. 6/18</i>	Braddock District Representative	<b>Rachna S. Heizer</b> <i>(Nomination announced on May 15, 2018)</i>	Cook	Braddock
Bettina Lawton (Appointed 1/16 by Hudgins) Term exp. 6/18	Hunter Mill District Representative		Hudgins	Hunter Mill
Suzette Kern (Appointed 9/12-6/15 by McKay) Term exp. 6/18	Lee District Representative	<b>Suzette Kern</b> <i>(Will be confirmed on July 31, 2018)</i>	McKay	Lee

**HEALTH SYSTEMS AGENCY BOARD**  
**(3 years - limited to 2 full terms, may be reappointed after 1 year lapse)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Richard T. Hartman (Appointed 2/14 by Bulova) Term exp. 6/17	Consumer #1 Representative	<b>Linda Shealey Cook</b> (Bulova)	By Any Supervisor	At-Large
Sally Patterson (Appointed 7/12-7/16 by Bulova) Term exp. 6/18	Consumer #3 Representative	<b>Sally Patterson</b> (Bulova)	By Any Supervisor	At-Large
Batul N. Alsaigh (Appointed 7/12-9/15 by Foust) Term exp. 6/18 <i>(Not eligible for reappointment, need 1 year lapse)</i>	Consumer #5 Representative		By Any Supervisor	At-Large
Veronica C. Doran (Appointed 7/17 by Cook) Term exp. 6/18	Provider #1 Representative	<b>Veronica C. Doran</b> (Cook)	By Any Supervisor	At-Large
Dave Lucas (Appointed 12/10-9/15 by Hyland) Term exp. 6/18	Provider #2 Representative		By Any Supervisor	At-Large
Fizzah Z. Gocke (Appointed 12/12-6/15 by McKay) Term exp. 6/18 <i>(Not eligible for reappointment, need 1 year lapse)</i>	Provider #3 Representative		By Any Supervisor	At-Large

<b>HISTORY COMMISSION (3 years)</b>		
[NOTE: The Commission shall include at least one member who is a resident from each supervisor district.] Current Membership:		
Braddock - 3	Lee - 2	Providence - 1
Dranesville - 2	Mason - 1	Springfield - 2
Hunter Mill - 3	Mt. Vernon - 2	Sully - 2

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Carole L. Herrick (Appointed 6/06 by DuBois; 6/09-7/15 by Foust) Term exp. 6/18 <i>Dranesville District Resident</i>	At-Large #1 Representative	<b>Carole L. Herrick</b> (Foust)	By Any Supervisor	At-Large
VACANT (Formerly held by Naomi D. Zeavin; appointed 1/95 by Trapnell; 1/96-11/13 by Gross) Term exp. 12/16 <i>Mason District Resident Resigned</i>	Historian #1 Representative		By Any Supervisor	At-Large

<b>HUMAN RIGHTS COMMISSION (3 years)</b>				
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<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Daoud Khairallah (Appointed 11/05-9/14 by Gross) Term exp. 9/17	At-Large #8 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Mona Malik; appointed 4/14-2/18 by Bulova) Term exp. 9/20 <i>Resigned</i>	At-Large #9 Representative	<b>Raul Torres</b> (Bulova)	By Any Supervisor	At-Large



**HUMAN SERVICES COUNCIL (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Adrienne M. Walters; appointed 3/14 by L. Smyth) Term exp. 7/17 <i>Resigned</i>	Providence District #2 Representative		L. Smyth	Providence

**INFORMATION TECHNOLOGY POLICY ADVISORY COMMITTEE (ITPAC)  
(3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Richard Grams; appointed 3/17 by Storck) Term exp. 12/19 <i>Resigned</i>	Mount Vernon District Representative		Storck	Mount Vernon

**LIBRARY BOARD  
(4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Michael Donovan; appointed 1/14-7/17 by Cook) Term exp. 7/21 <i>Resigned</i>	Braddock District Representative	<b>Brian D. Engler</b>	Cook	Braddock

**MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Gary Hurst; appointed 1/10-2/16 by L. Smyth) Term exp. 1/20 <i>Resigned</i>	Developer Representative		By Any Supervisor	At-Large

**NORTHERN VIRGINIA COMMUNITY COLLEGE BOARD  
(4 years – limited to 2 full terms)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jennifer C. McGarey (Appointed 1/13-6/14 by Cook) Term exp. 6/18	Fairfax County #2 Representative	<b>Jennifer C. McGarey</b> (Cook)	By Any Supervisor	At-Large

**OVERSIGHT COMMITTEE ON DISTRACTED AND  
IMPAIRED DRIVING (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by William Uehling; appointed 3/10-7/12 by Bulova) Term exp. 6/15 <i>Resigned</i>	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 <i>Resigned</i>	Dranesville District Representative		Foust	Dranesville

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**OVERSIGHT COMMITTEE ON DISTRACTED AND  
IMPAIRED DRIVING (3 years)**

continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Adam Parnes; appointed 9/03-6/12 by Hudgins) Term exp. 6/15 Resigned	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Jeffrey Levy; Appointed 7/02-6/13 by Hyland) Term exp. 6/16 Resigned	Mount Vernon District Representative		Storck	Mount Vernon
VACANT (Formerly held by Tina Montgomery; appointed 9/10-6/11 by L. Smyth) Term exp. 6/14 Resigned	Providence District Representative		L. Smyth	Providence

**POLICE OFFICERS RETIREMENT SYSTEM BOARD OF TRUSTEES (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
James E. Bitner (Appointed 5/17 by Bulova) Term exp. 6/18	Citizen At-Large #3 Representative		By Any Supervisor	At-Large

**RESTON TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD**  
 The Board of Supervisors established the advisory board on April 4, 2017  
 There will be a total of 14 members on this advisory board. The appointees would serve  
 for 4 year terms from April 4, 2017

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
NEW POSITION	Residential Owners and HOA/Civic Association #1 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #2 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #3 Representative		Foust or Hudgins	At-Large
VACANT (Formerly held by Tyler Aaron Hall; appointed 9/17 by Hudgins) Term exp. 9/21 <i>Resigned</i>	Apartment or Rental Owner Associations Representative		Hudgins	At-Large

**ROAD VIEWERS BOARD (1 year)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08-11/13 by Herrity) Term exp. 12/14 <i>Resigned</i>	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by L. Smyth) Term exp. 12/12 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large

**SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Kara Caldwell; appointed 1/18 by Herrity) Term exp. 12/20 <i>Resigned</i>	Springfield District Representative	<b>Grace Chung Becker</b>	Herrity	Springfield

**SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Emily Huaroco (Appointed 10/16 by Hudgins) Term exp. 3/18	Fairfax County #5 Representative		By Any Supervisor	At-Large

**TENANT LANDLORD COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Michael Congleton; appointed 7/13-2/17 by Herrity) Term exp. 1/20 <i>Resigned</i>	Citizen Member #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by L. Smyth) Term exp. 1/14 <i>Deceased</i>	Condo Owner Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Angelina Panettieri; appointed 6/11-1/15 by L. Smyth) Term exp. 1/18	Tenant Member #1 Representative		By Any Supervisor	At-Large

**TRANSPORTATION ADVISORY COMMISSION (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Linda D. Sperling (Appointed 12/17 by Bulova) Term exp. 6/18	At-Large Representative	<b>Linda D. Sperling</b> (Bulova)	By Any Supervisor	At-Large
Kevin Morse (Appointed 6/10-6/16 by Cook) Term exp. 6/18	Braddock District Representative	<b>Kevin Morse</b>	Cook	Braddock
Michael Champness (Appointed 9/13-6/16 by Foust) Term exp. 6/18	Dranesville District Representative	<b>Michael Champness</b>	Foust	Dranesville

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**TRANSPORTATION ADVISORY COMMISSION (2 years)**  
continued

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
<p>Jenifer Joy Madden (Appointed 9/06-6/16 by Hudgins) Term exp. 6/18</p>	<p>Hunter Mill District Representative</p>	<p><b>Jennifer Joy Madden</b></p>	<p>Hudgins</p>	<p>Hunter Mill</p>
<p>VACANT (Formerly held by Harry Zimmerman; appointed 6/04-6/06 by Kauffman; 6/08- 6/16 by McKay) Term exp. 6/18 <i>Resigned</i></p>	<p>Lee District Representative</p>		<p>McKay</p>	<p>Lee</p>
<p>Roger Hoskin (Appointed 5/96-6/16 by Gross) Term exp. 6/18</p>	<p>Mason District Representative</p>	<p><b>Roger Hoskin</b></p>	<p>Gross</p>	<p>Mason</p>
<p>Michael Shor (Appointed 3/16 by Storck) Term exp. 6/18</p>	<p>Mount Vernon Representative</p>		<p>Storck</p>	<p>Mount Vernon</p>
<p>Micah Himmel (Appointed 6/13-7/16 by L. Smyth) Term exp. 6/18</p>	<p>Providence District Representative</p>		<p>L. Smyth</p>	<p>Providence</p>
<p>Eric Thiel (Appointed 3/04-6/06 by McConnell; 6/08- 7/16 by Herrity) Term exp. 6/18</p>	<p>Springfield District Representative</p>	<p><b>Eric Thiel</b></p>	<p>Herrity</p>	<p>Springfield</p>
<p>Jeff Parnes (Appointed 9/03-5/14 by Frey; 6/16 by K. Smith) Term exp. 6/18</p>	<p>Sully District Representative</p>	<p><b>Jeff Parnes</b></p>	<p>K. Smith</p>	<p>Sully</p>

**TREE COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Thomas D. Fleury (Appointed 1/17 by L. Smyth) Term exp. 10/17	Providence District Representative		L. Smyth	Providence

**TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD  
(2 YEARS)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Molly Peacock; appointed 2/13-1/15 by L. Smyth) Term exp. 2/17 <i>Resigned</i>	Providence District Representative #2		L. Smyth	Providence

**UNIFORMED RETIREMENT SYSTEM BOARD OF TRUSTEES (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Frank Henry Grace (Appointed 5/01-6/02 by Hanley; 10/06 by Connolly; 7/10-7/14 by Bulova) Term exp. 7/18	Citizen appointed by BOS #1 Representative		By Any Supervisor	At-Large
Shaughnessy Glennon Pierce; appointed 9/13-6/14 by Hudgins) Term exp. 6/18	Citizen appointed by BOS #2 Representative	<b>Shaughnessy Glennon Pierce</b> (Hudgins)	By Any Supervisor	At-Large



**VOLUNTEER FIRE COMMISSION (2 years)**

**CONFIRMATIONS NEEDED:**

- Chief Thomas Warnock as the Volunteer Fire Chief's Association #1 Representative
- Mr. Gerald B. Strider as the Zone I Representative
- Chief Timothy G. Fleming as the Zone II Representative

**WATER AUTHORITY (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Anthony H. Griffin (Appointed 5/12-6/15 by Bulova) Term exp. 6/18	At-Large Chairman's Representative	<b>Anthony H. Griffin</b>	Bulova	At-Large Chairman's
J. Alan Roberson (Appointed 8/09-6/15 by Cook) Term exp. 6/18	Braddock District Representative	<b>J. Alan Roberson</b>	Cook	Braddock
Frank Begovich (Appointed 9/04-6/06 by Kauffman; 6/09- 6/15 by McKay) Term exp. 6/18	Lee District Representative	<b>Frank Begovich</b>	McKay	Lee

**WETLANDS BOARD (5 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Deana M. Crumbling (Appointed 1/14 by Bulova) Term exp. 7/16	Alternate #1 Representative		By Any Supervisor	At-Large

Board Agenda Item  
June 19, 2018

10:40 a.m.

Items Presented by the County Executive

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Consider an Ordinance to Amend and Readopt Fairfax County Code Appendix D – Industrial Development Authority

ISSUE:

Authorization to advertise a public hearing to consider an ordinance to amend and readopt Fairfax County Code Appendix D – Industrial Development Authority, to update references to state law and remove obsolete provisions.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing on Tuesday, July 31, 2018, at 4:00 p.m. to consider this ordinance.

TIMING:

Board action is requested on June 19, 2018, to provide sufficient time to advertise the public hearing on the proposed ordinance on July 31, 2018, at 4:00 p.m.

BACKGROUND:

Appendix D was originally enacted on October 28, 1974. It has not been updated since that date. As a result, it contains outdated references to the Virginia Code and obsolete information regarding initial Board membership and acquisition of the Commonwealth Doctors Hospital. The proposed amendments update references to state law and remove the obsolete information. The proposed revisions make no substantive changes to the existing ordinance. The Industrial Development Authority is used primarily as a financing conduit for the Inova Hospital network to issue revenue bonds to finance and refinance debt issued for its various facilities.

FISCAL IMPACT:

No impact.

ENCLOSED DOCUMENTS:

Attachment 1 – Va. Code Ann. § 15.2-4903 and -4904  
Attachment 2 – Proposed Ordinance

STAFF:

Joe Mondoro, Chief Financial Officer, Department of Management and Budget  
Joe LaHait, Debt Coordinator, Department of Management and Budget

ASSIGNED COUNSEL:

Martin R. Desjardins, Assistant County Attorney, Office of the County Attorney

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 49. Industrial Development and Revenue Bond Act

### § 15.2-4903. Creation of industrial development authorities.

A. The governing body of any locality in the Commonwealth is hereby authorized to create by ordinance a political subdivision of the Commonwealth, with such public and corporate powers as are set forth in this chapter. Any such ordinance may limit the type and number of facilities that the authority may otherwise finance under this chapter, which ordinance of limitation may, from time to time, be amended. Louisa County may, by ordinance, authorize an authority created or established under this chapter to acquire, own, operate, and regulate the use of airports, landing fields, and facilities, and other property incident thereto, including such facilities and property necessary for the servicing of aircraft. In the absence of any such limitation, an authority shall have all powers granted under this chapter.

B. The name of the authority shall be the Industrial Development Authority of (the blank spaces to be filled in with the name of the locality which created the authority, including the proper designation thereof as a county, city or town).

C. Notwithstanding subsection B, for any authority authorized by this section, the name of the authority may be the Economic Development Authority of (the blank space to be filled in with the name of the locality that created the authority), if the governing body of such locality so chooses.

D. The authority jointly created by the Town of South Boston and Halifax County pursuant to § 15.2-4916 may be named the Economic Development Authority of Halifax, Virginia, or such other name as the governing bodies of the Town of South Boston and Halifax County shall choose in the concurrent resolutions creating such authority.

1966, c. 651, § 15.1-1376; 1975, c. 254; 1997, c. 587; 1999, c. 157; 2000, c. 398; 2001, cc. 5, 6, 730; 2002, cc. 169, 680, 725; 2003, cc. 159, 343, 345, 350, 357; 2004, cc. 292, 782, 933; 2016, cc. 164, 312; 2017, c. 560.

**Attachment 1**

Code of Virginia  
 Title 15.2. Counties, Cities and Towns  
 Chapter 49. Industrial Development and Revenue Bond Act

**§ 15.2-4904. Directors; qualifications; terms; vacancies; compensation and expenses; quorum; records; certification and distribution of report concerning bond issuance.**

A. The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors, appointed by the governing body of the locality. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms and one being appointed for a four-year term. Subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

Notwithstanding the provisions of this subsection, the board of supervisors of Wise County may appoint eight members to serve on the board of the authority, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Henrico County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Roanoke County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Mathews County may appoint from five to seven members to serve on the board of the authority, the town council of the Town of Saint Paul may appoint 10 members to serve on the board of the authority, with terms staggered as agreed upon by the town council, however, the town council may at its option return to a seven member board by removing the last three members appointed, the board of supervisors of Russell County may appoint nine members, two of whom shall come from a town that has used its borrowing capacity to borrow \$2 million or more for industrial development, with terms staggered as agreed upon by the board of supervisors and the town council of the Town of South Boston shall appoint two at-large members, Page County may appoint nine members, with one member from each incorporated town, one member from each magisterial district, and one at-large, with terms staggered as agreed upon by the board of supervisors, Halifax County shall appoint five at-large members to serve on the board of the authority jointly created by the Town of South Boston and Halifax County pursuant to § 15.2-4916, with terms staggered as agreed upon by the governing bodies of the Town of South Boston and Halifax County in the concurrent resolutions creating such authority, the town council of the Town of Coeburn may appoint five members to serve on the board of the authority, with terms staggered as agreed upon by the town council, the city council of Suffolk may appoint eight members to serve on the board of the authority, with one member from each of the boroughs, and one at-large member, with terms staggered as agreed upon by the



city council, the City of Chesapeake may appoint nine members, with terms staggered as agreed upon by the city council; however, in the City of Chesapeake, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Chesapeake Economic Development Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Chesapeake Economic Development Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Chesapeake Economic Development Authority member shall work for the Authority within one year after serving as a member. The city council of the City of Norfolk may appoint 11 members, with terms staggered as agreed upon by the city council, and the board of supervisors of Louisa County may appoint directors to serve on the board of the authority for terms coincident with members of the board of supervisors.

A member of the board of directors of the authority may be removed from office by the local governing body without limitation in the event that the board member is absent from any three consecutive meetings of the authority or is absent from any four meetings of the authority within any 12-month period or upon unanimous vote of the board of supervisors. In any such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § 49-1.

C. No director shall be an officer or employee of the locality except (i) in a town with a population of less than 3,500 where members of the town governing body may serve as directors provided they do not constitute a majority of the board, (ii) in Buchanan County where a constitutional officer who has previously served on the board of directors may serve as a director provided the governing body of such county approves, and (iii) in Frederick County where the board of supervisors may appoint one of its members to the Economic Development Authority of the County of Frederick, Virginia. Every director shall, at the time of his appointment and thereafter, reside in a locality within which the authority operates or in an adjoining locality. When a director ceases to be a resident of such locality, the director's office shall be vacant and a new director may be appointed for the remainder of the term.

D. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, who shall continue to hold such office until their respective successors are elected. The directors shall receive no salary but may be compensated such amount per regular, special, or committee meeting or per each official representation as may be approved by the appointing authority, not to exceed \$200 per meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

E. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board.

F. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § 30-140, it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

Two copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary or assistant secretary of the authority. One copy shall be furnished to the governing body of the locality and the other copy mailed to the Department of Small Business and Supplier Diversity.

1966, c. 651, § 15.1-1377; 1979, c. 35; 1980, c. 304; 1982, c. 463; 1983, c. 514; 1984, c. 750; 1987, c. 368; 1990, c. 87; 1993, c. 896; 1996, cc. 589, 599; 1997, c. 587; 1999, cc. 337, 408, 414; 2000, c. 963; 2001, c. 121; 2003, cc. 347, 357; 2006, c. 687; 2007, cc. 283, 338; 2008, c. 619; 2009, cc. 199, 200, 460, 597; 2012, cc. 337, 352; 2013, c. 482; 2014, cc. 381, 382; 2016, c. 414; 2017, cc. 541, 557, 560.

1 PROPOSED ORDINANCE TO AMEND AND READOPT APPENDIX D – INDUSTRIAL  
2 DEVELOPMENT AUTHORITY – OF THE FAIRFAX COUNTY CODE TO  
3 INCORPORATE CHANGES IN THE RELEVANT CODE PROVISIONS UNDER VA.  
4 CODE § 15.2-4900, *et seq.* AND REMOVE OBSOLETE PROVISIONS  
5

6 AN ORDINANCE to amend and readopt Appendix D – Industrial Development Authority  
7 – of the Fairfax County Code to incorporate changes in the relevant code provisions  
8 under Virginia Code § 15.2-4900, *et seq.* and remove obsolete provisions.  
9

10 Be it ordained by the Board of Supervisors of Fairfax County:

11  
12 **1. That Appendix D of the Fairfax County Code is amended and readopted:**

13  
14 **Section 1. - There is hereby created the “Industrial Development Authority of  
15 Fairfax County, Virginia.”**

16  
17 **Section 2.**

18  
19 The members of the Board of Directors of the Authority shall be residents of Fairfax  
20 County, to be appointed, qualified, and serve for such terms composed as required  
21 under Virginia law. of seven (7) members, who shall be residents of Fairfax County.  
22 ~~The members shall be appointed by the Board of Supervisors. The initial members of~~  
23 ~~the Board of Directors and the expiration of their respected terms of office shall be as~~  
24 ~~follows:~~

Member	Expiration of Term
<del>Frank C. Watters</del>	<del>October 28, 1975</del>
<del>Joseph T. Flakne</del>	<del>October 28, 1975</del>
<del>Thomas M. Stanners</del>	<del>October 28, 1976</del>
<del>Virginia E. McEneaney</del>	<del>October 28, 1976</del>
<del>Jeane Brockway</del>	<del>October 28, 1977</del>
<del>Robert MacCallum</del>	<del>October 28, 1977</del>
<del>Charles E. Crouch</del>	<del>October 28, 1978</del>

25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35 ~~Subsequent appointments shall be for terms of four (4) years, except appointments to~~  
36 ~~fill vacancies which shall be for the unexpired terms.~~

37  
38 **Section 3.**

39  
40 The Authority is hereby authorized to exercise all the powers granted by the Industrial  
41 Development and Revenue Bond Act, ~~being Chapter 3349, Title 15.1~~ 15.2 of the Code  
42 of Virginia; including the power to issue revenue bonds of the Authority for the purpose  
43 of providing funds to pay the cost, as defined in said Act, of acquiring all the business,  
44 assets, properties and good will of Commonwealth Doctors Hospital, Inc., and its two



45 ~~subsidiaries, subject to certain liabilities;~~ provided, however, that the Authority may not  
46 issue ~~other revenue~~ bonds without the approval of a majority of the members of the  
47 Board of Supervisors. ~~When the revenue bonds and all other obligations of the~~  
48 ~~Authority with respect to Commonwealth Doctors Hospital have been fully paid or met,~~  
49 ~~the title of all funds and properties of Commonwealth Doctors Hospital shall vest in~~  
50 ~~Fairfax County. The Authority is hereby authorized and directed to lease~~  
51 ~~Commonwealth Doctors Hospital to the Fairfax Hospital Association upon such terms~~  
52 ~~and conditions as are mutually acceptable to the Authority, the Board of Supervisors~~  
53 ~~and the Association.~~

54

55 **2. That this ordinance shall become effective upon adoption.**

56

57

58 GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

59

60

61

62

63

\_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Directors

Board Agenda Item  
June 19, 2018

ADMINISTRATIVE - 2

Approval of “Watch for Children” Signs as Part of the Residential Traffic Administration Program (Dranesville, Providence and Springfield Districts)

ISSUE:

Board endorsement of “Watch for Children” signs as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends approval for “Watch for Children” signs on the following road:

- One ‘Watch for Children’ sign on Anderson Road (Dranesville District)
- One ‘Watch for Children’ sign on Pimmit Drive (Dranesville District)
- One ‘Watch for Children’ sign on Fairfax Farms Road (Providence District)
- One ‘Watch for Children’ sign on Valley Road (Providence District)
- One ‘Watch for Children’ sign on Waples Glen Court (Providence District)
- One ‘Watch for Children’ sign on Prosperity Avenue (Providence District)
- One ‘Watch for Children’ sign on Sandstone Way (Springfield District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) schedule the installation of the approved “Watch for Children” signs as soon as possible.

TIMING:

Board action is requested on June 19, 2018.

BACKGROUND:

The RTAP allows for installation of “Watch for Children” signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. FCDOT reviews each request to ensure the proposed signs will be effectively located and will not be in conflict with any other traffic control devices. On April 12, 2018 (Fairfax Farms Road, Valley Road & Waples Glen Court, Providence District), April 23, 2018 (Sandstone Way, Springfield District), April 30, 2018 (Prosperity Avenue, Providence District) and May 2, 2018 (Anderson Road & Pimmit Drive, Dranesville

Board Agenda Item  
June 19, 2018

District), FCDOT received verification from the appropriate local supervisor's office confirming community support for the referenced "Watch for Children" signs.

FISCAL IMPACT:

Funding in the amount of \$2,000 for the requested "Watch for Children" signs is available in Fund 2G25-076-000, General Fund, under Job Number 40TTCP.

ENCLOSED DOCUMENTS:

None

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric M. Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Steven K. Knudsen, Transportation Planner, Traffic Engineering Section, FCDOT

Board Agenda Item  
June 19, 2018

ADMINISTRATIVE - 3

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance  
Expanding the West Potomac Residential Permit Parking District, District 36  
(Mount Vernon District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix G of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to expand the West Potomac Residential Permit Parking District (RPPD), District 36.

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing.

TIMING:

The Board should take action on June 19, 2018, to advertise a public hearing for July 31, 2018, at 4:30 p.m.

BACKGROUND:

Section 82-5A-4(a) of *The Code of the County of Fairfax, Virginia*, authorizes the Board to establish RPPD restrictions encompassing an area within 2,000 feet walking distance from the pedestrian entrances and/or 1,000 feet from the property boundaries of an existing or proposed high school, existing or proposed rail station, or existing Virginia college or university campus if: (1) the Board receives a petition requesting the establishment or expansion of such a District, (2) such petition contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block face of the proposed District, and (3) the Board determines that 75 percent of the land abutting each block within the proposed District is developed residential. In addition, an application fee of \$10 per address is required for the establishment or expansion of an RPPD.

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Staff has verified that the petitioning blocks are within 2,000 feet walking distance from the pedestrian entrances and/or 1,000 feet from the property boundary of West Potomac High School, and all other requirements to expand the RPPD have been met.

FISCAL IMPACT:

The cost of sign installation is estimated to be \$3,000. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Amendment to the Fairfax County Code  
Attachment II: Map Depicting Proposed Limits of RPPD Expansion

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT  
Neil Freschman, Chief, Traffic Engineering Section, FCDOT  
Henri Stein McCartney, Sr. Transportation Planner, FCDOT  
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNCIL:

F. Hayden Codding, Assistant County Attorney

Proposed Amendment

Amend *The Code of the County of Fairfax, Virginia*, by adding the following street in Appendix G-36, Section (b), (2), West Potomac Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

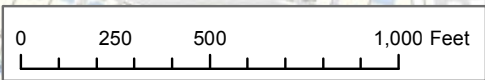
*Cavalier Drive (Route 1334):*

From Harvard Drive to Beacon Hill Road

*Olmi Landrith Drive (Route 1337):*

From Cavalier Drive to Fordham Drive

Fairfax County Department of Transportation  
Residential Permit Parking District  
West Potomac (36)  
Mount Vernon District



----- Proposed RPPD Restriction  
—— Existing West Potomac RPPD Restriction

Board Agenda Item  
June 19, 2018

ACTION - 1

Approval of a Memorandum of Understanding Between the Fairfax County Police Department and the United States Department of Justice Drug Enforcement Administration

ISSUE:

Board approval of a Memorandum of Understanding (MOU) between the Fairfax County Police Department and the United States Department of Justice Drug Enforcement Administration (DEA) Task Force authorizing the assignment of one detective to the DEA Task Force. The detective will be physically detailed to and work out of the Northern Virginia area office.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the Chief of Police to sign the Memorandum of Understanding between the Police Department and the DEA Task Force (HIDTA Task Force Group 5 (12)).

TIMING:

Board action is requested on June 19, 2018.

BACKGROUND:

In supporting the regional effort toward intervention and suppression of trafficking in narcotics and dangerous drugs, the Fairfax County Police Department recognizes the need to continue to be a lead agency within the DEA Task Force. A similar MOU was approved by the Board on September 20, 2016. The new MOU is due to FCPD reallocating detectives to better combat the opioid crisis in Fairfax County, and the reorganization of the DEA Task Force. While the prior MOU resulted in the assignment of one FCPD detective to the Task Force, the restructured MOU only requires FCPD to have one detective assigned to the Task Force.

Participating in a partnership with the Task Force will allow the Department to recoup some fixed expenses such as rental vehicles, radios, and some overtime. Under this agreement, the DEA Task Force and the Fairfax County Police will work to facilitate sharing information to suppress and disrupt drug trafficking, gather and report intelligence data relative to narcotics activities, and conduct undercover operations associated with the culture of illegal narcotics and drug trafficking.



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The assigned Fairfax County detective will be a full-time member of the DEA Task Force engaged in specific, directed investigations and intelligence gathering designed to support the prosecution and disruption of narcotics crime in the Northern Virginia area.

FISCAL IMPACT:

None

ENCLOSED:

Attachment 1: Funded State and Local Task Force Agreement 2018 between Fairfax County Police Department and the Drug Enforcement Administration

Attachment 2: 2016 State and Local Task Force Agreement between Fairfax County Police Department and the Drug Enforcement Administration

STAFF:

David M. Rohrer, Deputy County Executive  
Colonel Edwin C. Roessler Jr., Chief of Police

Assigned Counsel:

Kimberly P. Baucom, Senior Assistant County Attorney

**PROGRAM - FUNDED STATE AND LOCAL TASK FORCE AGREEMENT  
Fairfax County Police Department**

This agreement is made this 1st day of July 2018, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the Fairfax County Police Department (hereinafter "FCPD"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the Washington, DC area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of Washington, DC, the parties hereto agree to the following:

1. The HIDTA Task Force Group 5 (12) will perform the activities and duties described below:
  - a. disrupt the illicit drug traffic in the Washington, DC area by immobilizing targeted violators and trafficking organizations;
  - b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and
  - c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the District of Columbia.
2. To accomplish the objectives of the HIDTA Task Force Group 5 (12), the FCPD agrees to detail one (1) experienced officer to HIDTA Task Force Group 5 (12) for a period of not less than two years. During this period of assignment, the FCPD officer will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.
3. The FCPD officer assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.
4. The FCPD officer assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. Section 878.
5. To accomplish the objectives of the HIDTA Task Force Group 5 (12), DEA will assign four (4) Special Agents to the Task Force. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agents and the officer assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.

6. During the period of assignment to the HIDTA Task Force Group 5 (12), the FCPD will remain responsible for establishing the salary and benefits, including overtime, of the officer assigned to the Task Force, and for making all payments due them. DEA will, subject to availability of funds, reimburse the FCPD for overtime payments made by it to the officer assigned to the HIDTA Task Force Group 5 (12) for overtime, up to a sum equivalent to 25 percent of the salary of a GS-12, step 1, (RUS) Federal employee (currently \$18,042.00), per officer. ***Note: Task Force Officer's overtime "shall not include any costs for benefits, such as retirement, FICA, and other expenses."***

7. In no event will the FCPD charge any indirect cost rate to DEA for the administration or implementation of this agreement.

8. The FCPD shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.

9. The FCPD shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The FCPD shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of three (3) years after termination of this agreement, whichever is later.

10. The FCPD shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H and I.

11. The FCPD agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061/6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The FCPD acknowledges that this agreement will not take effect and no Federal funds will be awarded to the FCPD by DEA until the completed certification is received.

12. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the FCPD shall clearly state: (1) the percentage of the total cost of the program or project which will be financed with Federal money and (2) the dollar amount of Federal funds for the project or program.

13. The term of this agreement shall be effective from the date in paragraph number one until July 1, 2020. This agreement may be terminated by either party on thirty days' advance written notice. Billing for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by FCPD during the term of this agreement.

For the Drug Enforcement Administration:

\_\_\_\_\_  
Karl C. Colder  
Special Agent in Charge  
Washington Division

Date: \_\_\_\_\_

For the Fairfax County Police Department:

\_\_\_\_\_  
Edwin C. Roessler, Jr.  
Chief  
Fairfax County Police Department

Date: \_\_\_\_\_

**PROGRAM - FUNDED STATE AND LOCAL TASK FORCE AGREEMENT  
Fairfax County Police Department**

This agreement is made this 1st day of October 2016, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the Fairfax County Police Department (hereinafter "FCPD"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the Washington, DC area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of Washington, DC, the parties hereto agree to the following:

1. The HIDTA Task Force Group 1 (11) and HIDTA Task Force Group 5 (12) will perform the activities and duties described below:

- a. disrupt the illicit drug traffic in the Washington, DC area by immobilizing targeted violators and trafficking organizations;
- b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and
- c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the District of Columbia.

2. To accomplish the objectives of the HIDTA Task Force Group 1 (11) and HIDTA Task Force Group 5 (12), the FCPD agrees to detail two (2) experienced officers (one (1) officer to HIDTA Task Force Group 1 (11) and one (1) officer to HIDTA Task Force Group 5 (12)) for a period of not less than two years. During this period of assignment, the FCPD officers will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.

3. The FCPD officers assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.

4. The FCPD officers assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. Section 878.

5. To accomplish the objectives of the HIDTA Task Force Group 1 (11) and HIDTA Task Force Group 5 (12), DEA will assign five (5) Special Agents to the Task Forces. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agents and



the two officers assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.

6. During the period of assignment to the HIDTA Task Force Group 1 (11) and HIDTA Task Force Group 5 (12), the FCPD will remain responsible for establishing the salary and benefits, including overtime, of the officers assigned to the Task Force, and for making all payments due them. DEA will, subject to availability of funds, reimburse the FCPD for overtime payments made by it to the two officers assigned to the HIDTA Task Force Group 1 (11) and HIDTA Task Force Group 5 (12) for overtime, up to a sum equivalent to 25 percent of the salary of a GS-12, step 1, (RUS) Federal employee (currently \$17,753.00), per officer. ***Note: Task Force Officer's overtime "shall not include any costs for benefits, such as retirement, FICA, and other expenses."***

7. In no event will the FCPD charge any indirect cost rate to DEA for the administration or implementation of this agreement.

8. The FCPD shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.

9. The FCPD shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The FCPD shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of three (3) years after termination of this agreement, whichever is later.

10. The FCPD shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H and I.

11. The FCPD agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061/6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The FCPD acknowledges that this agreement will not take effect and no Federal funds will be awarded to the FCPD by DEA until the completed certification is received.

12. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the FCPD shall clearly state: (1) the percentage of the total cost of the program or project which will be financed with Federal money and (2) the dollar amount of Federal funds for the project or program.

13. The term of this agreement shall be effective from the date in paragraph number one until September 30, 2017. This agreement may be terminated by either party on thirty days' advance written notice. Billing for all outstanding obligations must be received by DEA within 90 days of

the date of termination of this agreement. DEA will be responsible only for obligations incurred by FCPD during the term of this agreement.

For the Drug Enforcement Administration:

Karl C. Colder  
Karl C. Colder  
Special Agent in Charge  
Washington Division

Date: 9/27/16

For the Fairfax County Police Department:

Edwin C. Roessler  
Edwin C. Roessler, Jr.  
Chief  
Fairfax County Police Department

Date: 9-22-16

ACTION - 2

Authorization of Economic Development Support Funding for the Downtown Herndon  
Redevelopment Project (Dranesville District)

ISSUE:

Board of Supervisors authorization to enter into a Memorandum of Understanding with the Town of Herndon to allocate \$1,200,000 from the Economic Development Support Fund (EDSF) to the Town of Herndon for capital construction as part of the Downtown Herndon Redevelopment Project.

RECOMMENDATION:

The County Executive recommends that the Board enter into the Memorandum of Understanding to use EDSF funds for this purpose.

TIMING:

Board action is requested on June 19, 2018, in order to facilitate the development timeline. The transfer will occur once Herndon has paid at least \$1,200,000 to their development partner, Comstock Partners, for new construction work as part of the project.

The Board encumbered \$1,200,000 from the EDSF for this purpose on November 20, 2017. The Town Council of the Town of Herndon unanimously approved the Memorandum of Understanding on May 8, 2018.

BACKGROUND:

The Town of Herndon is in the process of redeveloping 4.675 acres of town-owned land in the Herndon downtown area into a mixed-use town center that will include residential and commercial structures, an arts center, a pedestrian plaza, and a parking garage (the "Project"). The Town of Herndon entered into a Comprehensive Agreement dated October 24, 2017, with Comstock Herndon Venture LC ("Comstock"), under which Comstock agreed to design and develop the Project, including approximately 281 residential apartments, approximately 17,600 square feet of retail space, an 18,000 square foot arts center, and an approximately 761-space parking garage. Construction of the Project is anticipated to begin in early 2019.

On September 26, 2017, the Board authorized the evaluation of the use of the EDSF to support the Herndon Downtown Redevelopment Project. On October 17, 2017, the Project was reviewed by the Board at Budget Committee and the Board subsequently encumbered these funds on November 21, 2017.



Board Agenda Item  
June 19, 2018

County staff have worked with the Town of Herndon to develop a Memorandum of Understanding (Attachment 1) to govern how the EDSF funds would be transferred to the Town of Herndon for the purposes of the EDSF award. The Memorandum of Understanding has the following key provisions:

- Affirms the County contribution of \$1,200,000 for the Project;
- Ensures that the Town of Herndon will have contributed at least \$1,200,000 of Town funds toward the project, prior to the County contributing; and
- Details the process for the payment.

The Memorandum of Understanding was unanimously approved by the Herndon Town Council at its May 8, 2018 Town Council Meeting.

The EDSF provides an opportunity to partner with the Town of Herndon in its downtown redevelopment efforts and will produce new tax revenues for the County on a site that currently does not produce any tax revenue. The investment will support the Economic Success Strategic Plan's goal of creating places where people want to be and also help with the capital costs involved with a performing arts center and parking infrastructure.

FISCAL IMPACT:

This item will result in the expenditure of \$1,200,000 from the Economic Development Support Fund (Attachment 2). It is estimated that the County will recapture the expenditure in the form of new tax revenue within two years after Project occupancy.

ENCLOSED DOCUMENTS:

Attachment 1 – Memorandum of Understanding with Town of Herndon  
Attachment 2 – EDSF Nominations to Date and Fund Summary

STAFF:

Robert A. Stalzer, Deputy County Executive  
Scott Sizer, P3/Joint-Ventures Policy Coordinator, Office of the County Executive  
Joe LaHait, Debt Coordinator, Department of Management and Budget  
Chase Suddith, Management Analyst II, Office of the County Executive

ASSIGNED COUNSEL:

Susan Timoner, Assistant County Attorney, Office of the County Attorney

**TOWN OF HERNDON, VIRGINIA**

**RESOLUTION**

**MAY 8, 2018**

**Resolution-** to approve a Memorandum of Understanding (MOU) between the Board of Supervisors of Fairfax County, Virginia, and the Town of Herndon, Virginia, to accept a grant from the Economic Development Support Fund in the amount of \$1.2 million for the proposed Herndon Downtown Redevelopment Project, to include Downtown Public Parking and a Downtown Herndon Arts Center.

**WHEREAS,** Fairfax County (County) has created the Economic Development Support Fund to accelerate investments in capital development project funding of strategic investment opportunities identified by the County to create value, increase economic growth, and generate taxable revenue; and

**WHEREAS,** The Town of Herndon (Town) is in the process of redeveloping 4.675 acres of town-owned land in the Herndon downtown area into a mixed-use town center (the "Project") that will include residential and commercial structures, an arts center, a pedestrian plaza, and a parking garage; and

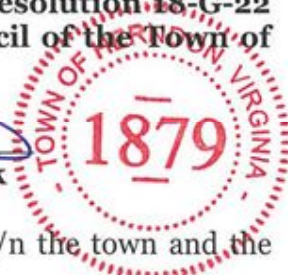
**WHEREAS,** the County believes that this Project will stimulate economic growth in the Town, provide additional public art space needed in Fairfax County, and benefit Fairfax County through increased tax revenue; and

**WHEREAS,** pursuant to Va. Code § 15.2-1202, the County desires to provide \$1.2 million from its Economic Development Support Fund to the Town to be used for the Project.

**NOW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Herndon, Virginia, that the Mayor of the Town of Herndon, Virginia, is authorized to sign and deliver this MOU on such form approved by the Town Attorney and any other instrument necessary to evidence or effectuate this MOU.

**This is certified to be a true and accurate copy of Resolution 18-G-22 adopted at a legally convened meeting of the Town Council of the Town of Herndon on May 8, 2018.**

  
Margie C. Tacci, Deputy Town Clerk



Attached for reference is the "Memorandum of Understanding" b/n the town and the Board of Supervisors of Fairfax County.

18-G-22

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “MOU”) is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by the Board of Supervisors of Fairfax County, Virginia (the “County”) and the Town of Herndon (“Herndon”). The County and Herndon may be referred to individually as a “Party” or collectively as the “Parties”.

### Background

- A. Herndon is in the process of redeveloping 4.675 acres of town-owned land in the Herndon downtown area into a mixed-use town center (the “Project”) that will include residential and commercial structures, an arts center, a pedestrian plaza, and a parking garage.
- B. To further this redevelopment and pursuant to a Request for Proposals, Herndon entered into a Comprehensive Agreement dated October 24, 2017, with Comstock Herndon Venture LC (“Comstock”), under which Comstock agreed to design and develop for the Project approximately 281 residential apartments, approximately 17,600 square feet of retail space, an 18,000 square foot arts center, and an approximately 761-space parking garage. Construction of the Project is anticipated to begin in early 2019.
- C. The County has created the Economic Development Support Fund to accelerate investments in capital development project funding of strategic investment opportunities identified by the County to create value, increase economic growth, and generate taxable revenue.
- D. The County believes that the Project will stimulate economic growth in Herndon, provide additional public art space needed in Fairfax County, and benefit Fairfax County through increased tax revenue.
- E. Pursuant to Va. Code § 15.2-1202, the County desires to provide \$1,200,000 from its Economic Development Support Fund to Herndon to be used for the Project.

### Agreement

- 1. **Purpose.** The Parties are entering into this MOU to set forth the terms under which the County will contribute \$1,200,000 from its Economic Development Support Fund to Herndon for the Project.
- 2. **Contribution.** The County will contribute \$1,200,000 to the Project upon the occurrence of the following:
  - (a) Herndon will have paid to Comstock at least \$1,200,000 for new construction work performed by Comstock under the Comprehensive Agreement (the “Herndon Payment”). The Herndon Payment can include payments for engineering, architectural planning, and contract services for infrastructure necessary to complete the Project; it

will not include payments for on-going operational, maintenance, or administrative costs. Any portions of the Fixed Payment, as defined in the Comprehensive Agreement, paid by Herndon to Comstock, will not count toward the Herndon Payment.

- (b) Herndon will notify the County in writing when it has made the Herndon Payment. The County may request copies of material evidencing the work performed by Comstock and the payments made by Herndon.
- (c) Within 90 days of receipt of the notice described in subsection (b) above and any additional material as described in subsection (b) above, the County will wire \$1,200,000 to Herndon.

**3. Limited Scope.** Nothing in this MOU may be construed as an offer or commitment by either Party to enter into a joint redevelopment or make any additional expenditures, nor be construed to create a partnership or joint venture between the Parties, nor give rise to, or serve as a basis for, any additional obligation or other liability on the part of either Party.

**4. Appropriations.** Any terms of this MOU that would require the payment of money by the County are subject to appropriations by the Fairfax County Board of Supervisors. If appropriations are not made for any fiscal year, the County will not be obligated to make any payments beyond the amount appropriated.

**5. Notice.**

- (a) All notices or other communications between the Parties must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally-recognized, next-day courier service, addressed as follows:

- (1) If to the County, to: Fairfax County  
Office of the County Executive  
12000 Government Center Parkway, Suite 552  
Fairfax, Virginia 22035-0064  
Attention: Scott Sizer

- with a copy to: Fairfax County  
Office of the County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
Attention: County Attorney

- (2) If to Herndon, to: Town of Herndon  
777 Lynn Street  
Herndon, VA 20170  
Attention: Town Manager  
Email: town.manager@herndon-va.gov

with a copy to:           Town of Herndon  
777 Lynn Street  
Herndon, VA 20170  
Attention: Town Attorney  
Email: town.attorney@herndon-va.gov

- (b) A notice given under this MOU will be effective upon receipt or refusal by the party to which it is given.
- (c) For convenience, notices may be sent via email; however, such email notice will not be considered effective until the original notice is received by the party to which it is given pursuant to one of the delivery methods described in subsection (a) above.
- (d) Either Party may change its notice address from time to time by informing the other Party in writing of such new address.

**6. Miscellaneous**

- (a) The terms of this MOU may be amended or otherwise modified only by a written instrument executed by the Parties.
- (b) This MOU and any dispute, controversy, or proceeding arising out of or relating to this MOU (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) This MOU contains the final and entire agreement between the Parties with regard to the County’s contribution to the Project. The Parties are not bound by any terms, conditions, statements, or representations, oral or written, not contained in this MOU.
- (d) This MOU is not intended to and does not confer upon any other person or business entity, other than the Parties, any rights or remedies with respect to the subject matter of this MOU.
- (e) This MOU may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

The Parties have caused this MOU to be executed by their authorized representatives.

The Board of Supervisors of Fairfax County, Virginia

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The Town of Herndon

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTACHMENT 2

Economic Development Support Fund (EDSF) Nominations to Date

5/15/2018

Project	Sponsor	Nomination Date	Initial Screening	Proposed Funding	Encumbrance Approval	Encumbrance Amount	Appropriation Approval	Appropriation Amount
AFID Grant - Local Match	Bulova / Foust	7/25/2017	10/17/2017	\$500,000	11/21/2017	\$500,000		
Annandale Pilot Projects	Gross	9/26/2017	10/17/2017	\$125,000	11/21/2017	\$125,000	12/5/2017	\$125,000
Downtown Herndon Redevelopment	Bulova / Foust	9/26/2017	10/17/2017	\$1,200,000	11/21/2017	\$1,200,000		
ESSP Implementation	Foust	9/26/2017	1/30/2018	\$200,000	2/20/2018	\$200,000	5/1/2018	\$200,000
Greater Washington Export Center	Bulova / Foust	9/26/2017	-	\$450,000				
Historic Tourism and Marketing Support	Storck	9/26/2017	-	TBD				
Sports Tourism ED Opportunity	Herrity	9/26/2017	-	TBD				
Sports Tourism Task Force Recommendation	Herrity	9/26/2017	-	TBD				
Go Virginia: Tech Talent Pipeline - Local Match	Bulova / Foust	9/26/2017	10/17/2017*	\$175,000	9/26/2017 <sup>1</sup>	\$175,000	1/23/2018	\$175,000
Go Virginia: Innovation Initiative - Local Match	Foust	10/24/2017	-	TBD				
Go Virginia: MACH37 - Local Match	Foust	10/24/2017	-	\$25,000				
Springfield Gateway Projects	McKay	11/21/2017	1/30/2018	\$100,000	2/20/2018	\$100,000	5/1/2018	\$100,000
Go Virginia: Security University	Foust	12/5/2017	1/30/2018	\$100,000				
Turning Point Suffragist Memorial <sup>2</sup>	Foust	2/6/2018	-	\$0		\$0		\$0
MVLE - Culinary Arts and Training Program	McKay / Storck	2/20/2018	-	\$100,000				
Richmond Hwy Marketing and Branding Plan	Storck / McKay	5/15/2018	-	TBD				
<b>Total Requests</b>				<b>\$2,975,000</b>		<b>\$2,300,000</b>		<b>\$600,000</b>
<b>Total Initial Funding of \$5 million less Total Requests</b>				<b>\$2,025,000</b>		<b>\$2,700,000</b>		<b>\$4,400,000</b>

<sup>1</sup> Encumbrance on 9/26/17 for \$200,000. Encumbrance changed to \$175,000 based upon 1/23/18 appropriation approval.

<sup>2</sup> Turning Point Suffragist Memorial funding of \$200,000 was included in FY2018 Third Quarter Adjustments, approved 4/24/2018.

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ACTION - 3

Adoption of a Resolution of Support for Interchange Modification Report (IMR) for Route 267 (Dulles Airport Access Road) and Route 123 (Dolley Madison Boulevard) (Providence District)

ISSUE:

Board adoption of the attached resolution supporting a modification of the Dulles Airport Access Road eastbound off ramp terminus at Dolley Madison Boulevard.

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached resolution (Attachment I) supporting a modification of the Dulles Airport Access Road eastbound off ramp terminus at Dolley Madison Boulevard (Route 123).

TIMING:

The Board should act on this item on June 19, 2018 to allow for the modification of the Dulles Airport Access Road (Route 267) eastbound off ramp at Dolley Madison Boulevard (Route 123).

BACKGROUND:

Cityline Partners LLC submitted a rezoning application for Scotts Run Station North (identified as RZ 2011-PR-009) for the property located on the northeast quadrant of the intersection of Dolley Madison Boulevard (Route 123) and Scotts Crossing Road. The Board of Supervisors approved the rezoning application on June 2, 2015. The rezoning included implementation of a new internal grid of streets. This internal grid of streets will provide the necessary roadway network to support this development and further the implementation of the grid of streets throughout Tysons. This grid allows alternative routes for traffic flow to be established, as well as pedestrian and bicycle facilities, which are key elements of the Comprehensive Plan for Tysons.

The proposed grid internal to the Scotts Run Station North development includes a new right-in/right-out street connection identified as North Dartford Drive. North Dartford Drive intersects Dolley Madison Boulevard (Route 123) to allow for both improved traffic flow and functionality accessing the development. With the implementation of North Dartford Drive, the Virginia Department of Transportation (VDOT) expressed concerns during the rezoning process regarding the location of the new intersection created by



Board Agenda Item  
June 19, 2018

North Dartford Drive at Dolley Madison Boulevard. VDOT's concern was the proximity of the new intersection to the existing eastbound off ramp of the Dulles Airport Access Road. This condition could create potential weaving conflicts associated with the current free-flow operation of the off ramp right turn lane. To address this concern, the applicant proposes to remove the existing free-flow right turn lane from the off ramp and replace it with signal controlled dual right turn lanes, with the outermost right turn lane tying directly into the dedicated right turn lane along Dolley Madison Boulevard (Route 123) to accommodate trips directly into the Scotts Run Station North development (as shown in Attachment IV).

For the applicant to construct the above improvements, approval of an Interchange Modification Report (IMR) by VDOT is required to modify the Dulles Airport Access Road (Route 267) eastbound off ramp with Dolley Madison Boulevard (Route 123). The applicant has completed the IMR for VDOT review. Fairfax County Department of Transportation (FCDOT) staff has reviewed the applicant's IMR and concurs that the proposed reconfiguration of the southbound free-flow right turn lane from the off ramp will address VDOT's safety concern and accommodate future demand for this intersection of North Dartford at Dolley Madison Boulevard (Route 123).

VDOT policy requires a resolution of support from the local governing body within which the Interchange Modification Report is proposed. FCDOT staff has reviewed the applicant's IMR and concurs that the proposed reconfiguration will address VDOT's safety concern and accommodate future demand for this intersection.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Resolution  
Attachment II: Applicant Letter to VDOT  
Attachment III: Location Map (1)  
Attachment IV: Location Map (2)  
Attachment V: Location Map (3)

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Gregg Steverson, PE; PTOE; Division Chief, Site Analysis and Transportation Planning  
Jeffrey Hermann, AICP, Section Chief, Site Analysis, FCDOT  
Brittany Nixon, Transportation Planner II, Site Analysis, FCDOT

**RESOLUTION**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Fairfax County Government Center at Fairfax, Virginia, on Tuesday, June 19, 2018, at which meeting a quorum was present and voting, the following resolution was adopted.

WHEREAS, Cityline Partners LLC has submitted a rezoning application identified as RZ 2011-PR-009 on the property located on the northeast quadrant of the intersection of Dolley Madison Boulevard and Scotts Crossing Road (the "Property"), and;

WHEREAS, the Board of Supervisors approved the rezoning application on June 2, 2015, and;

WHEREAS, development of a new grid of connected streets providing alternative pathways for traffic flow and the addition of pedestrian and bicycle facilities are key elements of the Comprehensive Plan for Tysons, and;

WHEREAS, the proposed new grid of connected streets includes a new street connection identified as North Dartford Drive from Dolley Madison Boulevard to within the Property, and;

WHEREAS, to construct the North Dartford Drive street connection to Dolley Madison Boulevard requires approval of an Interchange Modification Report by the Virginia Department of Transportation for the Dulles Airport Access Road (Route 267) interchange with Dolley Madison Boulevard, and;

WHEREAS, to process this Interchange Modification, the Virginia Department of Transportation requires a resolution of support from the locality within which the Interchange Modification is proposed, and;

WHEREAS, County staff has reviewed the Interchange Modification Report and concurs with its findings.

NOW THEREFORE, BE IT RESOLVED, that this Board, in concept, supports the proposed Interchange Modification of the Dulles Airport Access Road (Route 267) interchange with Dolley Madison Boulevard.

A Copy Teste:

\_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Supervisors



## WELLS + ASSOCIATES

### MEMORANDUM

1420 Spring Hill Road  
Suite 610  
Tysons, Virginia 22102  
703-917-6620  
703-917-0739 FAX  
www.mwells.com

**TO:** Abraham Lerner, P.E.  
Virginia Department of Transportation

**FROM:** Robin L. Antonucci  
William F. Johnson, P.E.

**RE:** RZ 2011-PR-009; Scotts Run North  
Interchange Modification Report (IMR) for Route 267 at Route 123  
Fairfax County, Virginia  
VDOT Project No.: N/A  
VDOT UPC: N/A

**SUBJECT:** Framework Document

**DATE:** May 21, 2015  
Revised September 10, 2015

### Introduction

Wells + Associates, on behalf of Cityline Partners, is preparing an Interchange Modification Report (IMR) associated with certain improvements at the interchange of Route 267 (Dulles Airport Access Road) and Route 123 (Dolley Madison Boulevard). In conjunction with the referenced rezoning (Scotts Run North), the Applicant (Cityline Partners) proffered a number of transportation network improvements/enhancements consistent with the recommendations of the Fairfax County Comprehensive Plan. Specifically, the Applicant will be providing new public street links as part of the grid of streets envisioned for the Tysons East District including North Dartford Drive and Grover Street.

Pursuant to Proffer 47.B., the Applicant seeks to provide a new partial movement intersection on the west side of Dolley Madison Boulevard (Southbound Route 123) between the Dulles Toll Road (Route 267) Eastbound off ramp and Scotts Crossing Road that will serve the new mixed-use development and accommodate the planned North Dartford Drive public street connection. Figure 1 provides a reduction of the approved conceptual development plan (CDP) associated with Scotts Run North.

During the course of the rezoning review process, VDOT expressed concerns regarding the location of the new intersection due to its proximity to the existing eastbound off ramp and potential weaving conflicts associated with the current free-flow operation of the off ramp right turn. VDOT indicated that modifications/improvements to the off



**SMITHGROUP JJR**

1000 KENT BRIDGE ROAD  
SUITE 200  
ARLINGTON, VA 22209  
703.758.4500  
www.smithgroup.com



1000 KENT BRIDGE ROAD  
SUITE 200  
ARLINGTON, VA 22209  
703.758.4500  
www.smithgroup.com

**CONCEPTUAL DEVELOPMENT**  
PLAN PRIOR TO RTE 123  
SUPER STREET

DATE: 10/27/2009  
DRAWN BY: [REDACTED]  
CHECKED BY: [REDACTED]

SCALE: AS SHOWN

CAD: [REDACTED]

PROJECT NO: 6387

1000 KENT BRIDGE ROAD  
SUITE 200  
ARLINGTON, VA 22209  
703.758.4500  
www.smithgroup.com

- LEGEND**
- REMOVED ON STREET NAME
  - REMOVED ON STREET NAME (TO BE REINSTATED)
  - REMOVED ON STREET NAME (TO BE RESTORED)
  - REMOVED ON STREET NAME (TO BE RECONSTRUCTED)
  - REMOVED ON STREET NAME (TO BE REPAIRED)

1. REMOVE EXISTING ASPHALT DRIVE AND REPAVE DRIVE WITH ASPHALT

2. REMOVE EXISTING ASPHALT DRIVE AND REPAVE DRIVE WITH ASPHALT

3. REMOVE EXISTING ASPHALT DRIVE AND REPAVE DRIVE WITH ASPHALT

4. REMOVE EXISTING ASPHALT DRIVE AND REPAVE DRIVE WITH ASPHALT

- EXISTING ASPHALT DRIVE
- EXISTING ASPHALT DRIVE (TO BE REPAIRED)
- EXISTING ASPHALT DRIVE (TO BE RECONSTRUCTED)
- EXISTING ASPHALT DRIVE (TO BE RESTORED)
- EXISTING ASPHALT DRIVE (TO BE REMOVED)

NO.	DATE	DESCRIPTION
1	10/27/09	ISSUED FOR PERMIT

**SCOTTIS RUN NORTH**  
CONCEPTUAL DEVELOPMENT  
PLAN PRIOR TO RTE 123  
SUPER STREET

DATE: 10/27/2009  
DRAWN BY: [REDACTED]  
CHECKED BY: [REDACTED]

SCALE: AS SHOWN

CAD: [REDACTED]

PROJECT NO: 6387

1000 KENT BRIDGE ROAD  
SUITE 200  
ARLINGTON, VA 22209  
703.758.4500  
www.smithgroup.com

Figure 1  
CDP Reduction



ramp intersection might be necessary to mitigate any potential weaving conflicts in order for the proposed intersection to be permitted. In response, the applicant has proffered that any new inbound access along the west side of Route 123 between the Eastbound off ramp and Scotts Crossing Road would be contingent upon VDOT review and approval of an IMR describing the necessary improvements to the Eastbound off ramp and the Applicant's commitment to providing those improvements.

### **Framework Document Purpose**

Since the roadway network enhancements proposed by Cityline Partners would include the modification of the Route 267 Eastbound off ramp terminus at Route 123, an Interchange Modification Report (IMR) is required. This framework document outlines the approach proposed to be used in developing the IMR. Following FHWA concurrence with this IMR framework document, Wells + Associates will develop and submit the IMR prepared in accordance with the format outlined in VDOT IIM-LD-200.7, FHWA Interstate System Access Informational Guide, FHWA 2009 Interstate Access Policy, and FHWA (Virginia Division) Standard Operating Procedure for New or Revised Interstate Access Points (9/30/10).

It should be noted that the subject IMR is intended to address the proffered commitments cited above and is in no way related to any other IMR that may be filed by others in the future for other roadway improvements/modifications recommended in the Comprehensive Plan for Tysons East.

### **Project Justification**

**Purpose and Need.** In 2010, the Fairfax County Board of Supervisors adopted the "Transforming Tysons" amendment to the Comprehensive Plan. With the advent of metrorail service in Tysons, the Plan envisioned high density redevelopment in proximity to the four Tysons stations along with enhanced transportation infrastructure including a grid of streets. In response to the Plan amendment, Cityline Partners filed a rezoning application for the proposed Scotts Run North development (RZ 2011-PR-009) located west of Route 123 and south of Route 267. This project, if approved, will provide up to 1.5 Million square feet of transit-oriented, mixed-use development within ¼ mile of the McLean metrorail station. As shown on Figure 1, this development will provide for two new public streets including Grover Street and North Dartford Drive.

During the course of application review, VDOT staff indicated that the proposed connection of North Dartford Drive to Route 123 (as a right-in/right-out) can occur only if certain modifications are made to the existing free-flow right turn movement at

the Route 267 Eastbound off ramp terminus in order to eliminate any potential weaving maneuvers along Route 123 between the two intersections. Figure 2 illustrates the weaving concern identified by VDOT. In order to provide for the critical North Dartford Drive connection, as proffered, the applicant is preparing the subject IMR in order to modify the Route 267 Eastbound off ramp terminus. The proposed modifications would enable the completion of the grid of streets planned for this sector of Tysons, which will increase mobility for all modes as envisioned in the Comprehensive Plan.

**Policy Points.** Although Route 267 is not an interstate facility, and in order to further demonstrate that the proposed modifications meet the threshold for FHWA, this section provides a brief summary of proposed responses to the Eight Policy Points. Detail will be provided in the IMR to support each of these statements.

*Policy Point 1: Access Needs*

*The need being addressed by the request cannot be adequately satisfied by existing interchanges to the Interstate, and/or local roads and streets in the corridor can neither provide the desired access, nor can they be reasonably improved (such as access control along surface streets, improving traffic control, modifying ramp terminals and intersections, adding turn bays or lengthening storage) to satisfactorily accommodate the design-year traffic demands (23 CFR 625.2(a)).*

This policy point appears to apply to proposed new interchange locations. It should be noted that the proposed modification represents an operational improvement and is not intended to represent a new interchange location. Therefore, this policy point does not pertain to the subject IMR.

*Policy Point 2: Transportation System Management*

*The need being addressed by the request cannot be adequately satisfied by reasonable transportation system management (such as ramp metering, mass transit, and HOV facilities), geometric design, and alternative improvements to the Interstate without the proposed change(s) in access (23 CFR 625.2(a)).*

The need for the proposed modification is being addressed by implementing access improvements within an existing interchange rather than providing a new point of access. Therefore, this policy point does not pertain to the subject IMR.

*Policy Point 3: Operational and Collision Analyses*

*An operational and safety analysis has concluded that the proposed change in access does not have a significant adverse impact on the safety and operation of the Interstate facility (which includes mainline lanes, existing, new, or modified ramps, ramp intersections with crossroad) or on the local street network based on both the current and the planned*





Figure 2  
Weaving Illustration

← Weaving Movement

North

*future traffic projections. The analysis shall, particularly in urbanized areas, include at least the first adjacent existing or proposed interchange on either side of the proposed change in access (23 CFR 625.2(a), 655.603(d) and 771.111(f)). The crossroads and the local street network, to at least the first major intersection on either side of the proposed change in access, shall be included in this analysis to the extent necessary to fully evaluate the safety and operational impacts that the proposed change in access and other transportation improvements may have on the local street network (23 CFR 625.2(a) and 655.603(d)). Requests for a proposed change in access must include a description and assessment of the impacts and ability of the proposed changes to safely and efficiently collect, distribute and accommodate traffic on the Interstate facility, ramps, intersection of ramps with crossroad, and local street network (23 CFR 625.2(a) and 655.603(d)). Each request must also include a conceptual plan of the type and location of the signs proposed to support each design alternative (23 U.S.C. 109(d) and 23 CFR 655.603(d)).*

In response to Policy Point 3, the following intersections in the vicinity of the existing ramp terminus will be evaluated as part of the IMR:

1. Dolley Madison Boulevard/Anderson Road/Route 267 Off ramp (IMR location)
2. Dolley Madison Boulevard/Old Meadow Road
3. Dolley Madison Boulevard/Scotts Crossing Road/Colshire Drive
4. Dolley Madison Boulevard/North Dartford Drive (Future)
5. Dolley Madison Boulevard/Lewinsville Road/Great Falls Street
6. Dolley Madison Boulevard/Route 267 offramp and onramp locations

Furthermore, the IMR will include a safety assessment of any proposed ramp modifications proposed as described later in this document.

*Policy Point 4: Full Access Interchanges*

*The proposed access connects to a public road only and will provide for all traffic movements. Less than "full interchanges" may be considered on a case-by-case basis for applications requiring special access for managed lanes (e.g., transit, HOVs, HOT lanes) or park and ride lots. The proposed access will be designed to meet or exceed current standards (23 CFR 625.2(a), 625.4(a)(2), and 655.603(d)).*

This policy point does not pertain to the subject IMR.

*Policy Point 5: Land Use and Transportation Plans*

*The proposal considers and is consistent with local and regional land use and transportation plans. Prior to receiving final approval, all requests for new or revised access must be included in an adopted Metropolitan Transportation Plan, in the adopted Statewide or Metropolitan Transportation Improvement Program (STIP or TIP), and the Congestion Management Process within transportation management areas, as*



*appropriate, and as specified in 23 CFR part 450, and the transportation conformity requirements of 40 CFR parts 51 and 93.*

The need for the subject IMR is based on the planning and development of the grid of streets envisioned in the Tysons Corner Urban Center Comprehensive Plan as adopted by the Fairfax County Board of Supervisors in 2010. Therefore, the proposal is consistent with those established local government planning policies.

*Policy Point 6: Review of Multiple System Modifications*

*In corridors where the potential exists for future multiple interchange additions, a comprehensive corridor or network study must accompany all requests for new or revised access with recommendations that address all of the proposed and desired access changes within the context of a longer-range system or network plan (23 U.S.C. 109(d), 23 CFR 625.2(a), 655.603(d), and 771.111).*

This policy point does not pertain to the subject IMR.

*Policy Point 7: Coordination*

*When a new or revised access point is due to a new, expanded, or substantial change in current or planned future development or land use, requests must demonstrate appropriate coordination has occurred between the development and any proposed transportation system improvements (23 CFR 625.2(a) and 655.603(d)). The request must describe the commitments agreed upon to assure adequate collection and dispersion of the traffic resulting from the development with the adjoining local street network and Interstate access point (23 CFR 625.2(a) and 655.603(d)).*

Based on the outcome of the analysis, improvements will be identified that may be necessary to mitigate the impacts on the limited access system resulting from the proposed ramp modifications. These improvements will be vetted through VDOT and appropriate FHWA personnel prior to final action on the IMR.

*Policy Point 8: Environmental Impact Review*

*The proposal can be expected to be included as an alternative in the required environmental evaluation, review and processing. The proposal should include supporting information and current status of the environmental processing (23 CFR 771.111).*

A detailed environmental review will not be included as part of the IMR. A VDOT EQ-112 checklist for Environmental Analysis for a Proposed Change in Limited Access will be filled out. Environmental impacts that have been identified will be addressed during the design phase of the proposed ramp modifications and associated improvements.

## **Interchange Modification Configuration**

As stated previously, the intent of the IMR is to recommend potential modifications to the existing Route 267 Eastbound off ramp terminus at Route 123. Specifically, and as shown on Figure 1, the applicant proposes to remove the existing free flow right turn movement and potentially replace it with controlled (i.e., signalized) dual right turn movements. As part of the Operational Analysis (OA) dated April 10, 2015 and submitted in support of the Scotts Run North rezoning application, the applicant has shown that signalized dual right turn lanes will be required to accommodate future traffic volumes forecasted therein. However, the subject IMR will confirm the adequacy of this improvement, as well as recommend specific design elements (i.e., turn bay lengths, etc.). The IMR will not suggest an interchange configuration where the operation of proposed signalized dual right turn lanes conflict with a controlled pedestrian phase. Supporting analysis will be documented as appropriate in this IMR.

## **Scoping Meeting**

A scoping meeting was held with VDOT, Fairfax County, and MWAA (Metropolitan Washington Airports Authority) staff along with representatives from the Applicant's project team on February 10, 2015. The policy points related to the proposed IMR were discussed along with specific analysis parameters to be applied to the study. The resulting scoping document was approved by VDOT on March 20, 2015. A copy of the signed scope is provided in Attachment I. The outcome of the scoping meeting is reflected below in this Framework document.

## **Proposed IMR Content**

The content of this IMR will satisfy the requirements of IIM-LD-200.7 and the proposed table of contents will be consistent with those noted in the same. Specifically, the IMR will be based on the following:

**Study Area.** In coordination with VDOT, the IMR will include an operational analysis within the study limits. Figure 3 shows the study area boundary and key intersections and roadway links in the project area under consideration for the traffic and operational analysis. The study area boundary includes intersections located south and north of the study intersection along Dolley Madison Boulevard. These intersections include the following:

1. Dolley Madison Boulevard/Anderson Road/Route 267 Off ramp (IMR location)
2. Dolley Madison Boulevard/Old Meadow Road
3. Dolley Madison Boulevard/Scotts Crossing Road/Colshire Drive



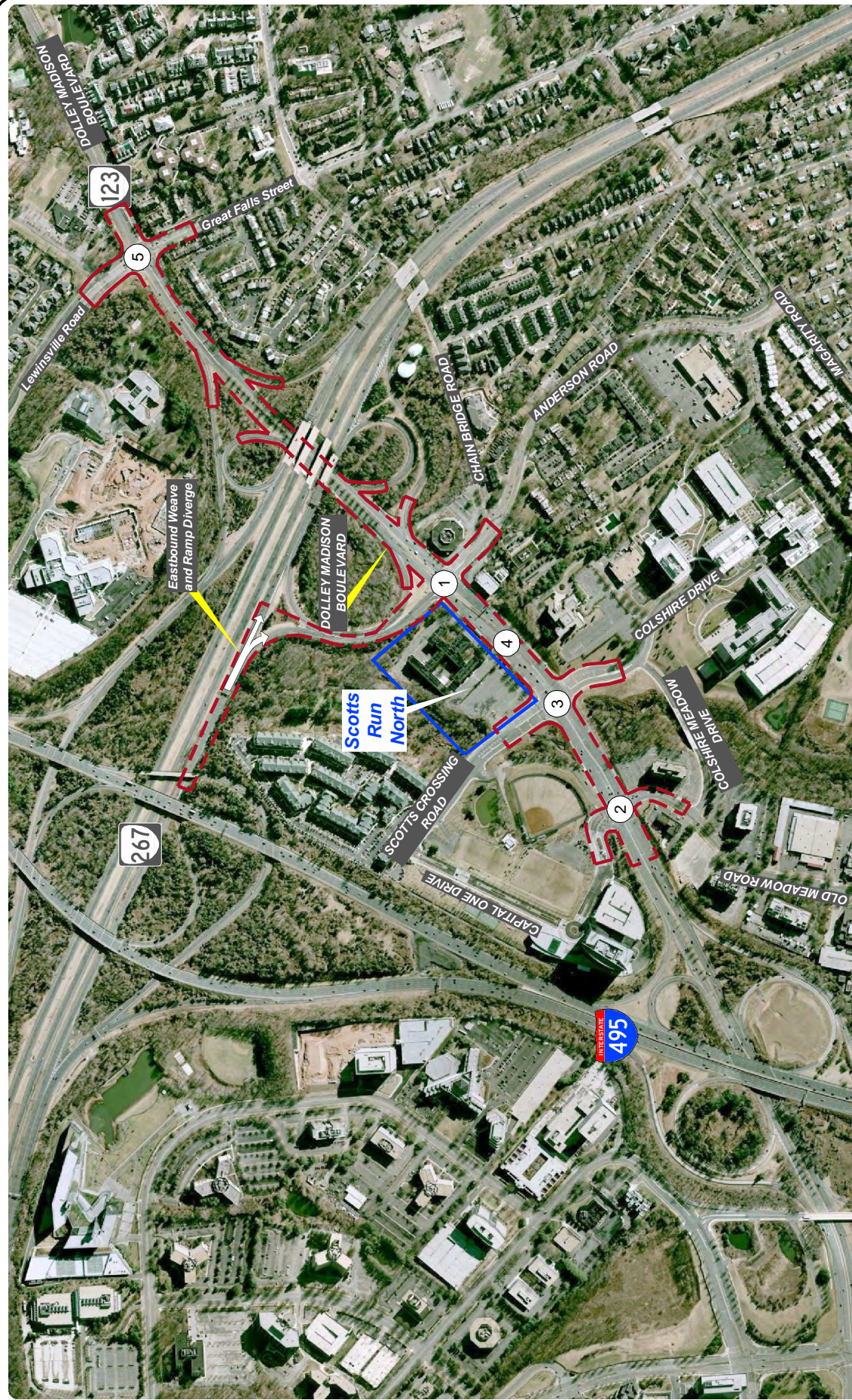


Figure 3  
Study Area and Intersection Locations

(X) Study Intersection

[ ] Study Area Boundary





4. Dolley Madison Boulevard/North Dartford Drive (Future)
5. Dolley Madison Boulevard/Lewinsville Road/Great Falls Street
6. Dolley Madison Boulevard/Route 267 offramp and onramp locations

Additionally, the study area includes the eastbound freeway segment immediately west of and including the Eastbound offramp to Dolley Madison Boulevard. The report will include an analysis of the basic freeway segment, as well as the ramp diverge and upstream weave at this location.

**Existing Conditions.** The existing conditions analysis will be based on new traffic counts to be conducted in 2015 at the study intersections and freeway segment noted above and shown on Figure 3. Vehicular traffic and pedestrian/bicycle counts will be conducted on a typical weekday subject to the following constraints:

- Counts will be conducted on a Tuesday, Wednesday, or Thursday.
- Non-holiday week when County public schools are in session.
- 6:00 AM-9:00 AM and 4:00 PM-7:00 PM.

The weekday AM and PM peak hours will be extracted from the counts and will serve as the base for the analysis.

**Analysis Years.** Based on discussions with VDOT and as noted in the approved scoping document, the IMR analysis will assume a build-out year of 2020 and a design year of 2040.

**Traffic Forecasting Methodology.** The 2020 and 2040 future traffic forecasts will be based on the “General Build Out” results included in the Tysons East Consolidated Traffic Impact Analysis (CTIA) prepared by Fairfax County (dated February 19, 2013) and accepted by VDOT. The use of these forecasts provides for consistency of future forecasts at all the study intersections and includes all current and future pipeline developments in the Tysons East District.

Since the proposed IMR analysis years of 2020 and 2040 do not coincide with the CTIA analysis years of 2030 and 2050, it was decided that the CTIA forecasts should be factored to translate the volumes to the appropriate forecast years. Pursuant to discussions with VDOT and FCDOT, the 2020 and 2040 forecasts for the Route 123/Scotts Crossing Road/Colshire Drive intersection from the Jones Branch Connector IMR (conducted by Fairfax County) will be compared to the CTIA volumes for the same intersection. Based on that comparison, adjustment factors will be developed that will then be applied to the CTIA intersection volumes at the other study intersections. The resulting traffic forecasts proposed to be evaluated in this IMR for the 2020 and 2040 analysis years will be submitted to VDOT under separate cover for

review. These forecasts may be further adjusted based on feedback from VDOT prior to completing the IMR analysis and report.

**Traffic Operational Analysis.** VISSIM software (version 6) will be used to evaluate operations (levels of service and 50<sup>th</sup> and 95<sup>th</sup> percentile queues) at the study intersections during the AM and PM peak hours. The field measured peak hour factors (PHF's) will be adjusted to  $0.85 < PHF < 0.92$  under existing condition. Future conditions 2020 and 2040 will include a PHF of 0.92 for all approaches at study intersections. Total lost time will be adjusted to 3.0 seconds for all movements. Existing conditions will include signal timings received from VDOT Northern Regional Operations (NRO) as provided in the current Synchro base files. Percent heavy vehicles used in the VISSIM analysis will be based on the 2014 VDOT traffic count data.

The analysis model will also account for the presence of pedestrians/bicycles at the study intersections. The VISSIM files will assume an appropriate number of pedestrian signal calls in order to determine the impact to overall intersection capacity.

The operational analysis will follow the parameters set forth in the VDOT Traffic Operations Analysis Tool Guidebook ("TOATG" Version 1.1) and will be conducted based on the following assumptions and scenarios:

1. The analysis will assume the completion of the Scotts Crossing Road connection to Jones Branch Drive (the Jones Branch Connector) over Interstate 495.
2. The future conditions analysis for 2020 and 2040 will be conducted assuming Route 123 remains in its current configuration (i.e., without the proposed SuperStreet improvement).
3. The 2020 and 2040 conditions analysis will include the completion of the applicable road improvements proffered by all pipeline projects.
4. The future conditions analysis for 2020 and 2040 will be conducted under the following scenarios:
  - a. Existing ramp intersection geometry and operations (i.e., "No Build").
  - b. The right turn movement from the ramp terminus to southbound Route 123 will be evaluated as a single lane with the free-flow operation replaced with signal control.
  - c. The right turn movement from the ramp terminus to southbound Route 123 will be evaluated as dual right-turn lanes with the free-flow operation replaced with signal control.

The existing conditions analysis model will be calibrated in accordance with the TOATG Version 1.1. For purposes of this analysis, the calibration thresholds summarized in Attachment II will be applied.

Synchro software will be used to optimize signal timing/phasing as may be applicable, under the future conditions analysis. Such timing information will be exported to the VISSIM model. The measures of effectiveness (MOEs) documented in the IMR will be based on VISSIM outputs and will include the following:

- Intersection delay
- Queue Length (50<sup>th</sup> and 95<sup>th</sup> percentile)
- Density (freeway network)
- Speed (arterial network)

These MOEs will be summarized and discussed in the report by movement.

**Safety Analysis.** Crash data for the last 3-5 years along the study area road segment along Route 123 will be requested from VDOT and included in the IMR. Furthermore, the IMR will include a qualitative discussion of the potential safety impacts of the proposed geometric modifications.

**Sight Distance Analysis.** As part of the IMR, a sight distance analysis will be performed at the ramp terminus in conjunction with any proposed improvements/modifications. The sight distance analysis will include 1) intersection sight distance, 2) stopping sight distance along the ramp, and 3) sight distance for future signal head locations. Sight line exhibits including horizontal, vertical, and combination horizontal/vertical will be provided in the submitted IMR. The sight distance analysis will include any impacts associated with the metrorail support piers.

## **Project Funding**

Pursuant to proffer 47.B.(i), the applicant has committed to fully fund the ramp improvements/modifications as may be identified in the subject IMR in order to provide the North Dartford Drive connection to Route 123 as qualified therein. The proffer reads as follows:

“At such time as the Applicant completes and VDOT and FHWA approve an Interchange Modification Request [Report] (IMR) associated with the DAAR Eastbound Off-ramp at Route 123, then the connection of North Dartford Drive, as shown on on Sheet C5.0 of the CDP, shall be constructed to permit right-in/right-out movements to/from Route 123. Those improvements identified in the IMR as needed to mitigate any impacts associated with the connection of North Dartford to Route 123 and deemed necessary by VDOT and/or FHWA shall be constructed by the Applicant as qualified below:

- a. If the level of improvements necessary to facilitate the connection of North Dartford Drive to Route 123 are determined to be, in sole discretion of the Applicant, too costly to construct, then the Applicant shall be limited to the level of development outlined in Proffer 49.A.(i) until such time as the Future Connector Road is constructed and open for public use between Scotts Crossing Road and DAAR Eastbound Off-ramp.”

A copy of the approved proffers, dated May 29, 2015, is provided herein as Attachment III.

### **Summary**

Wells + Associates requests VDOT and FHWA’s concurrence with the proposed approach to developing the IMR for the Route 267 Off ramp modifications as described herein. The IMR document will follow established VDOT (IIM-LD-200.7) and FHWA procedures and the Applicant and its consultants will perform all related studies and design work associated with this effort.

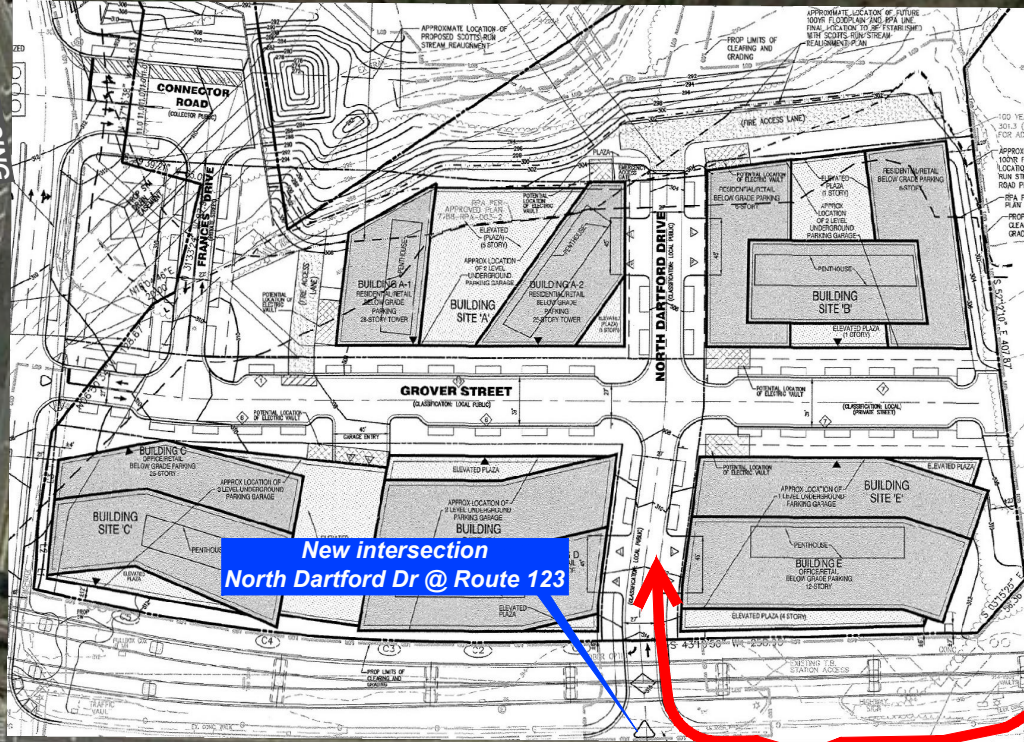
Attachments: a/s





SCOTT'S CROSSING ROAD

DULLES TOLL ROAD EASTBOUND RAMP



New intersection  
North Dartford Dr @ Route 123

Existing free-flow  
right turn lane

Potential weaving conflict  
with proposed development



DOLLEY MADISON BOULEVARD

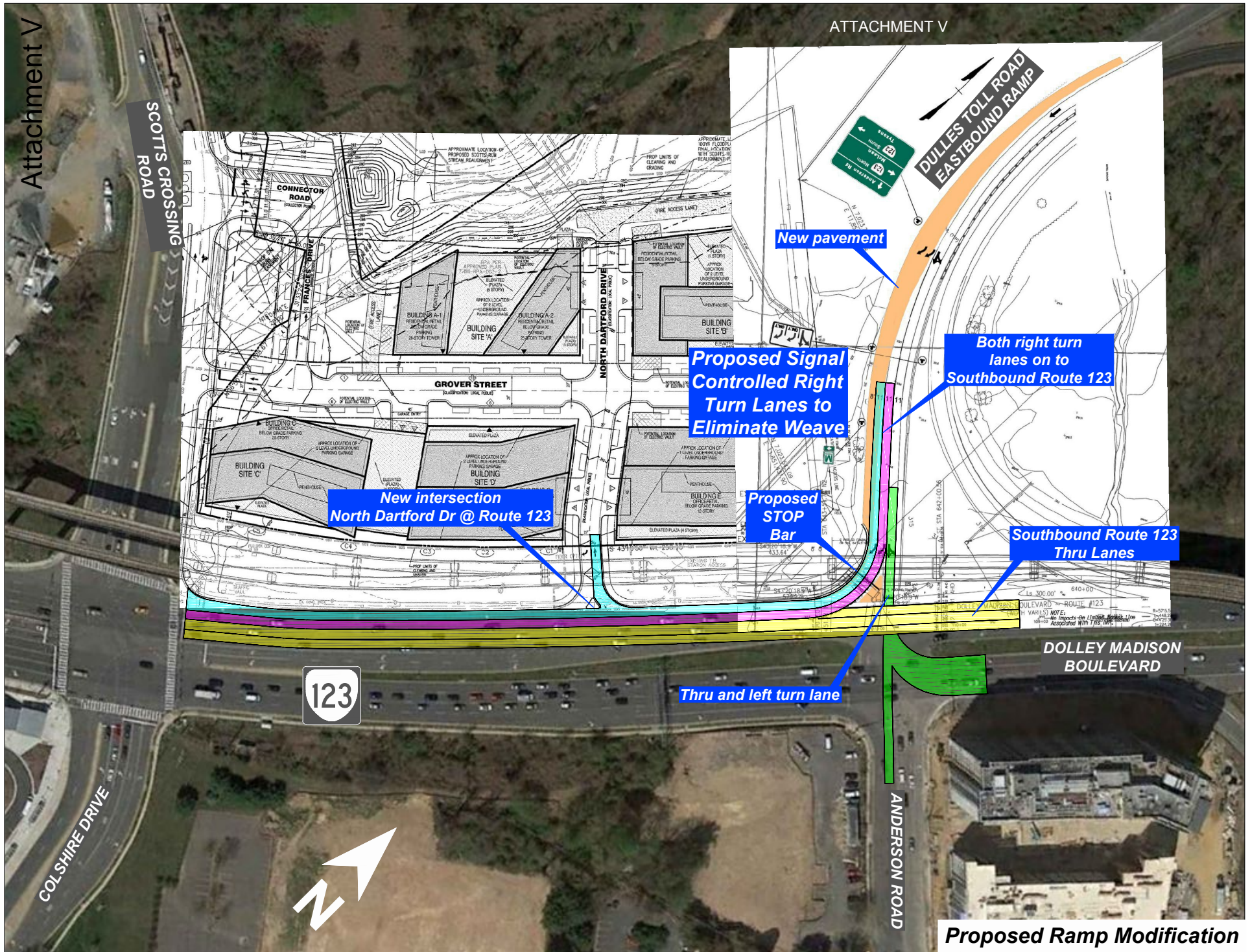
ANDERSON ROAD

COLSHIRE DRIVE



Route 123 Weaving Exhibit





SCOTT'S CROSSING ROAD

CONNECTOR ROAD

FRANCIS SPRING

NORTH DARTFORD DRIVE

GROVER STREET

DULLES TOLL ROAD EASTBOUND RAMP

New pavement

Proposed Signal Controlled Right Turn Lanes to Eliminate Weave

Both right turn lanes on to Southbound Route 123

New intersection North Dartford Dr @ Route 123

Proposed STOP Bar

Southbound Route 123 Thru Lanes

Thru and left turn lane

DOLLEY MADISON BOULEVARD

ANDERSON ROAD

COLSHIRE DRIVE



Proposed Ramp Modification

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June 19, 2018

ACTION - 4

Changes to the Fairfax County Purchasing Resolution

ISSUE:

Board of Supervisors approval of changes to the Fairfax County Purchasing Resolution.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the changes outlined below to the Fairfax County Purchasing Resolution, to become effective on July 1, 2018.

TIMING:

Routine.

BACKGROUND:

The Board of Supervisors adopted the current version of the Fairfax County Purchasing Resolution on June 20, 2017. During the 2018 General Assembly session, nine bills were approved relating to procurement and/or contracts. Three successful bills contained a change that modified a mandatory section of the Virginia Public Procurement Act (VPPA) and are proposed for inclusion in the Purchasing Resolution, listed below under the heading "Code Change."

The remaining six bills were either specific to state agencies (three), modified a section of the VPPA that is not included in the Purchasing Resolution or that didn't require any change to the existing language in the Purchasing Resolution (two), or made no change to the VPPA and thus required no change to the Purchasing Resolution.

State legislators kept their commitment to minimize changes to the VPPA in 2018. Looking forward, the County expects a resumption of bills related to cooperative contracting, construction contracting, and transparency in the 2019 General Assembly session.

This year, staff recommends five administrative amendments to the Purchasing Resolution, which can be found under the heading "Administrative Changes." These amendments are clarifications and technical corrections to the Resolution.

Code Change

1. House Bill 97, Code of Virginia §§2.2-4303, 2.2-4303.1. Increase formal

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procurement threshold for professional services from \$60,000 to \$80,000. See Attachment I at page 16.

2. House Bill 730; Code of Virginia §§2.2-4343.A.12 Amends exclusion for purchase of Virginia-grown food products for use by a public body. See Attachment I at page 25.
3. House Bill 905; Code of Virginia §§2.2-4342.F and 2.2-4343.A.12 Amends statute addressing designation of trade secrets or proprietary information in a bid, proposal, or prequalification application. See Attachment I at page 31.

Administrative Changes

1. Establish authority for the Director, Department of Procurement and Material Management to execute subaward agreements. See Attachment I at page 25.
2. Remove reference to Department of Administration for Human Services. See Attachment I at page 4.
3. Modify Informal Procurement procedures to conform with Code of Virginia §2.2-4303.G. See Attachment I at page 21.
4. Update reference to Conflict of Interest Act. See Attachment I at page 58.
5. Modify authority of Purchasing Agent to provide for logistics coordination at the County warehouse. See Attachment I at page 62.
6. Code of Virginia citations have been updated throughout the document where necessary.

Code Changes Not Adopted

1. House Bill 398, Chapter 789 of the Acts of Assembly, enacting a sunset provision of July 1, 2021. There is no change to the Purchasing Resolution Required as we will modify the document at the time the sunset occurs.
2. House Bill 574, Code of Virginia §2.2-4304 Amends a non-mandatory section of the VPPA dealing with joint and cooperative procurement that is not included in the Purchasing Resolution. The cooperative procurement language in the Purchasing Resolution already allows the County to utilize cooperative contracting as permitted by the legislation.
3. Senate Bill 652, Code of Virginia §2.2-1606 Directs the Secretary of Administration to convene a work group of interested stakeholders to examine and make recommendations regarding modifications to state procurement policies and procedures to incentivize the competitive integrated employment of individuals with significant disabilities.

The text changes proposed in the Resolution are presented in “track changes” format and legislative references are provided in highlight. These changes have been

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June 19, 2018

coordinated with the Department of Public Works and Environmental Services, the Department of Housing and Community Development, the Fairfax County Park Authority, the Department of Transportation, Fairfax County Public Schools, and the Office of the County Attorney.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I - Revised Fairfax County Purchasing Resolution

STAFF:

Joseph Mondoro, Chief Financial Officer

Cathy A. Muse, Director, Department of Purchasing and Supply Management

ASSIGNED COUNSEL:

Patricia M. McCay, Office of the County Attorney



ATTACHMENT I

# FAIRFAX COUNTY PURCHASING RESOLUTION



July 1, ~~2017~~2018

**FAIRFAX COUNTY PURCHASING RESOLUTION**

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## FAIRFAX COUNTY PURCHASING RESOLUTION

WHEREAS, a central purchasing system is authorized by §15.2-1543 of the Code of Virginia, and is thus a part of the Urban County Executive Form of Government adopted by Fairfax County in 1951; and

WHEREAS, the Board of County Supervisors is dedicated to securing high quality goods and services at reasonable cost while ensuring that all purchasing actions be conducted in a fair and impartial manner with no impropriety or appearance thereof, that all qualified vendors have access to County business and that no offeror be arbitrarily or capriciously excluded, that procurement procedures involve openness and administrative efficiency, and that the maximum feasible degree of competition is achieved; and

WHEREAS, the Code of Virginia, §2.2-4300 through §2.2-4383 (as amended), enunciate the public policies pertaining to governmental procurement from nongovernmental sources by public bodies which may or may not result in monetary consideration for either party, which sections shall be known as the Virginia Public Procurement Act; and

WHEREAS, the Code of Virginia, §15.2-1236 (as amended) requires all purchases of and contracts for supplies, materials, equipment and contractual services shall be in accordance with Chapter 43 of Title 2.2 of the Code of Virginia; and

WHEREAS, the Code of Virginia, §2.2-4343 (as amended) allows implementation of the Virginia Public Procurement Act by ordinance, resolutions, or regulations consistent with this Act by a public body empowered by law to undertake the activities described by the Act; and

WHEREAS, the Code of Virginia, §15.2-1543, empowers the Board of Supervisors to employ a County Purchasing Agent and set his duties as prescribed by the Code of Virginia, §15.2-831, §15.2-1233 through §15.2-1240, and §15.2-1543;

THEREFORE BE IT RESOLVED that this resolution prescribes the basic policies for the conduct of all purchasing in Fairfax County (except as otherwise stipulated herein) to take effect immediately upon passage, as follows:

---

*Adopted by the Fairfax County Board of Supervisors on June 29<sup>th</sup>, 2017; Effective July 1, 2017*

-1-

**FAIRFAX COUNTY PURCHASING RESOLUTION**

**Article 1**

**GENERAL PROVISIONS**

---

**Section 1. Title.**

This resolution shall be known as the Fairfax County Purchasing Resolution.

**Section 2. Organization.**

- A. The Department of Procurement and Material Management is a staff activity of the Fairfax County government, operating under the direction and supervision of the County Executive.
- B. The Director of the Department of Procurement and Material Management shall be the County Purchasing Agent who shall have general supervision of the DPMM. The Purchasing Agent shall be appointed by the Board of County Supervisors upon recommendation of the County Executive.
- C. The primary duty of the County Purchasing Agent is to carry out the principles of modern central purchasing and supply management in accordance with applicable laws and regulations and with generally accepted professional standards in such a manner as to insure the maximum efficiency of governmental operation, and to give to County taxpayers the benefit in savings that such accepted business procedures are known to produce.

**Section 3. Exclusions from Duties**

- A. The procurement of architectural, engineering and related consultant services for construction projects and the contracting for construction projects are excluded from the duties of the County Purchasing Agent for the organizations as specified below:

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1. The Department of Public Works and Environmental Services (DPWES), pursuant to §15.2-834 of the Code of Virginia, the Board of Supervisors' Resolution dated September 18, 1968, and this Resolution, is responsible for Fairfax County construction projects administered by DPWES and the architectural, engineering and consultant services related to those projects. The Director, Department of Public Works and Environmental Services or his designee, ~~shall have~~ has the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution. The Director, Department of Public Works and Environmental Services or his designee ~~shall have~~ has the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney.
2. The Fairfax County Public School Board ~~shall be~~ is responsible for construction, related architectural and engineering services, related consulting services, maintenance, repair and related services in connection with building, furnishing equipping, renovating, maintaining, and operating the buildings and property of the school division in accordance with §22.1-79 of the Code of Virginia. The school division's Superintendent or his designee ~~shall have~~ has the same authority as the County Purchasing Agent to execute and administer contracts. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.
3. The Fairfax County Park Authority ~~shall be~~ is responsible for Fairfax County Park Authority capital construction and related architectural and engineering services per §15.2-5704 of the Code of Virginia and Board of Supervisors' Resolution dated April 6, 1981, governing the relationship of the Fairfax County Park Authority and Fairfax County. The Director of the Park Authority or his designee shall have the same authority of as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County Park Authority in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution. The Director, Department of the Park Authority or his designee shall have the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney.
4. The Department of Housing and Community Development shall be responsible for capital construction and the architectural, engineering, and consultant services for all

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programs and projects administered by the Department on behalf of either the Redevelopment and Housing Authority per §36-19 of the Code of Virginia or the Fairfax County Board of Supervisors, The Director of the Department of Housing and Community Development or his designee shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Department of Housing and Community Development in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution.

5. The Department of Transportation, pursuant to § 33.2-338 of the Code of Virginia, and this Resolution, may be responsible for constructing or improving highways, including related architectural, ~~and~~ engineering, and consulting services. Highways may include curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience, which either have been or may be taken into the primary or secondary system of state highways. The Director, Department of Transportation or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution.
  6. The Fairfax County Park Authority, the Department of Housing and Community Development, and the Department of Transportation, may by a Memorandum of Understanding (MOU) delegate construction authority as detailed in sections 3 – 5 above to the Department of Public Works and Environmental Services.
- B. The procurement of goods and services for individual schools using funds generated from school activities for the Fairfax County Public Schools is excluded from the duties of the County Purchasing Agent. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.
- C. The Fairfax County Sheriff shall be the purchasing agent in all matters involving the commissary and nonappropriated funds received from inmates, in accordance with §53.1-127.1 Code of Virginia.

~~D. The Department of Administration for Human Services shall be responsible for procurement of goods and services for direct use by a recipient of County administered public assistance programs as defined by Code of Virginia §63.2-100, or the fuel~~

Commented [IP1]: Clarify FCDOT contracting authority.

Commented [IP2]: The exemption in Article 2, remains. See Va. Code Ann. §2.2-4345(A)(14).

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~~assistance program, or community services board as defined in Code of Virginia §37.2-100 or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (Code of Virginia §2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (Code of Virginia §16.1-309.2 et seq.) provided such good or service is delivered by a vendor upon specific instructions from the appropriate employee of the County.~~

### Section 4. Rules and Regulations.

- A. The County Purchasing Agent shall prepare and maintain the Fairfax County Purchasing Resolution and other rules and regulations consistent with the laws of the Commonwealth of Virginia governing the operations of the County purchasing and supply management system.
- B. The Agencies designated in Section 3 A – D shall prepare and maintain detailed rules and regulations on the conduct of these contracting actions. Such rules and regulations shall be consistent with this Resolution and the laws of the Commonwealth of Virginia. Such rules and regulations shall be approved by the Purchasing Agent for County staff agencies or the administrative head of the respective public body involved.

### Section 5. Cooperative Procurement.

The County or any entity identified in Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the Metropolitan Washington Council of Governments, the National Association of Counties, or the Virginia Sheriffs' Association for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

Except for contracts for architectural and engineering services, as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, any county, city, town, or school board may purchase from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

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### Section 6. Definitions.

1. **Acquisition Function Closely Associated with Inherently Governmental Functions** means supporting or providing advice or recommendations with regard to the following activities:
  - 1) **Planning acquisitions.**
  - 2) **Determining what supplies or services are to be acquired by the County, including developing statements of work.**
  - 3) **Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.**
  - 4) **Evaluating bids or proposals.**
  - 5) **Awarding County contracts.**
  - 6) **Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).**
  - 7) **Terminating contracts.**
  - 8) **Determining whether contract costs are reasonable, allocable, and allowable.**
2. **Best Value**, as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.
3. **Competitive Negotiation** is a formal method of selecting the top rated offeror. It includes the issuance of a written Request for Proposals, public notice, evaluation based on the criteria set forth in the Request for Proposals, and allows negotiation with the top rated offeror or offerors (See Article 2, Section 2 B).
4. **Competitive Sealed Bidding** is a formal method of selecting the lowest responsive and responsible bidder. It includes the issuance of a written Invitation to Bid, public notice, a public bid opening and evaluation based on the requirements set forth in the invitation (See Article 2, Section 2 A).
5. **Complex Project** means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.
6. **Construction** shall mean building, altering, repairing, improving or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading or similar work upon real property.

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7. **Construction Management Contract** shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
8. **Consultant Services** shall mean any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.
9. **Covered Employee** means an individual who
  - 1) Is an employee of the contractor or subcontractor, a consultant, partner, or a sole proprietor; and
  - 2) Performs an acquisition function closely associated with inherently governmental functions.
10. **Debarment** is an action taken by the County Purchasing Agent, a contracting officer, or their designee, within the scope of their procurement authority, to exclude prospective contractors from contracting with County agencies or organizations for particular types of supplies, services, insurance, or construction, for specified periods of time.
11. **Department** means the Virginia Department of General Services
12. **Design-build contract** shall mean a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.
13. **DPMM** shall mean the Department of Procurement and Material Management.
14. **Emergency** shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of essential service.
15. **Employment Services Organization** shall mean an organization that provides community based employment services to individuals and disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.
16. **Excess Property** shall mean that property which exceeds the requirement of the department to which the property is assigned.

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17. FCPS shall mean Fairfax County Public Schools.
18. Faith-Based Organization shall mean a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P. L. 104-193.
19. Firm shall mean any individual, partnership, corporation, association, or other legal entity permitted by law to conduct business in the Commonwealth of Virginia; or any other individual, firm, partnership, corporation, association or other legal entity qualified to perform professional services, non-professional or consultant services.
20. Fixed Asset shall mean a tangible item (not a component) which has an expected useful life of at least one year and a dollar value in excess of \$5,000.
21. Goods shall mean all material, equipment, supplies, printing, and information technology hardware and software.
22. Immediate Family shall mean a spouse, child, parent, brother, sister, and any other person living in the same household as the employee.
23. Independent Contractor shall mean a worker over whom the employer has the right to control or direct the result of the work done, but not the means and methods of accomplishing the result.
24. Ineligibility shall mean an action taken to suspend or debar a prospective contractor from consideration for award of contracts. The suspension shall not be for a period exceeding twelve (12) months and the debarment shall not be for a period exceeding three (3) years.
25. Informality shall mean a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
26. Job Order Contracting is a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing.
27. Non-public Government Information means any information that a covered employee gains by reason of work under a County contract and that the covered employee knows,

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or reasonably should know, has not been made public. It includes information that--

- 1) Is exempt from disclosure under the Virginia Freedom of Information Act; or
- 2) Has not been disseminated to the general public and is not authorized by the agency to be made available to the public.

28. **Nonprofessional Services** shall mean any service not specifically identified as a professional or consultant service.
29. **Official Responsibility** shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction or any resulting claim.
30. **Other Authorized Agency** is an Agency as designated by the Code of Virginia and the Board of Supervisors authorized to procure architectural, engineering and related consultant services for construction projects and the contracting for construction projects to include public announcement, receipt of bids, recommending selection and award, negotiation, contract preparation and contract administration as more fully defined in Article 1, Section 3 of this Resolution.
31. **Pecuniary Interest Arising from the Procurement** shall mean a personal interest in a contract, as defined in the State and Local Government Conflict of Interests Act.
32. **Personal Conflict of Interest** means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the County when performing under the contract.
  - Among the sources of personal conflicts of interest are--
    1. Financial interests of the covered employee, of close family members, or of other members of the household;
    2. Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
    3. Gifts, including travel.
  - Financial interests may arise from--
    - a. Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
    - b. Consulting relationships (including commercial and professional consulting and service arrangements, or serving as an expert witness in litigation);
    - c. Services provided in exchange for honorariums or travel expense reimbursements;
    - d. Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
    - e. Real estate investments;

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## FAIRFAX COUNTY PURCHASING RESOLUTION

- f. Patents, copyrights, and other intellectual property interests; or
  - g. Business ownership and investment interests.
33. Potential Bidder or Offeror shall mean a person who, at the time the County negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.
34. Procurement Transaction shall mean all functions that pertain to obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
35. Professional services shall mean any type of service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with this Resolution).
36. Public Body shall mean any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this resolution. Public body shall include any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.
37. Public Contract shall mean an agreement between a public body and a nongovernmental source that is enforceable in a court of law.
38. Public or County Employee shall mean any person employed by the County of Fairfax, including elected officials or appointed members of governing bodies.
39. Responsible Bidder or Offeror shall mean an individual, company, firm, corporation, partnership or other organization who has the capability in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.
40. Responsive Bidder or Offeror shall mean an individual, company, firm, corporation,

## FAIRFAX COUNTY PURCHASING RESOLUTION

partnership or other organization who has submitted a bid which conforms in all material respects to the Invitation to Bid or Request for Proposal.

41. Reverse Auctioning shall mean a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services, but not construction or professional services, through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidder's prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.
42. SAC shall mean Selection Advisory Committee.
43. Services shall mean any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
44. Surplus Property shall mean that property which exceeds the requirement of the entire County.
45. Suspension is a type of ineligibility based upon an immediate need when there is evidence that a prospective contractor has committed any of the grounds for debarment.

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## FAIRFAX COUNTY PURCHASING RESOLUTION

### Article 2

#### PURCHASING-PROCUREMENT POLICIES

##### Section 1. General

- A. Unless otherwise authorized by law, all Fairfax County contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, construction, or construction management, shall be awarded after competitive sealed bidding or competitive negotiation, except as otherwise provided for in this Resolution or law.
- B. Professional services shall be procured using competitive negotiation, except as otherwise provided for in this Article.
- C. Consultant services may be procured using competitive negotiation, except as otherwise provided for in the Article.
- D. Certification of sufficient funds; orders and contracts in violation of Code of Virginia, § 15.2-1238: - Except in emergency, no order for delivery on a contract or open market order for supplies, materials, equipment, professional and consultant services or contractual services for any County department or agency shall be awarded until the Director of Finance ~~shall have~~has certified that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order. ~~Whenever~~If any department or agency of the County government ~~shall purchase~~s or ~~contracts~~ for any supplies, materials, equipment or contractual services contrary to the provisions of §15.2-1238 of the Code of Virginia or the rules and regulations made thereunder, such order or contract ~~shall be~~is void and of no effect. The head of such department or agency shall be personally liable for the costs of such orders and contracts.
- E. Notwithstanding any other provision of law, the County may, as provided in the Code of Virginia, §2.2-4327, provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the Director of Finance may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction, including the accessibility of such housing to employees of the county, town, or city or employees of the local school board. No more than fifty percent of the funds of the county, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment

**Commented [MP3]:** Administrative changes for consistency with Code of Virginia.

**Commented [MP4]:** Ref. 2007 code change.

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activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return.

- F. Best value concepts may be considered when procuring goods, nonprofessional and consultant services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.
- G. The County may enter into contracts with faith-based organizations on the same basis as any other nongovernmental source subject to the requirements of the Virginia Public Procurement Act (VPPA) §2.2-4343.1.

### Section 2. Methods of Procurement.

- A. Competitive Sealed Bidding- is a method of contractor selection ~~which that~~ includes the following elements:
  - 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the purchase. Unless the County has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, a solicitation may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
  - 2. Public notice of the Invitation to Bid at least five days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of county wide circulation, or both. Public notice may also be published on a Fairfax County government web site and other appropriate web sites. In addition, bids may be solicited directly from potential vendors.
  - 3. Public opening and posting of all bids received.
  - 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential vendors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

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5. Award to the lowest responsive and responsible bidder. Multiple awards may be made when so specified in the Invitation to Bid.
- B. Competitive Negotiation- is a method of contractor selection ~~which~~ that includes the following elements:
1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.
  2. Public notice of the Request for Proposal at least five days prior to the date set for receipt of proposals by posting in a designated public area or by publication in a newspaper of county wide circulation or both. Public notice may also be published on a Fairfax County government web site and other appropriate web sites. In addition, proposals may be solicited directly from potential vendors.
  3. Competitive Negotiation – Consultant Services
    - a. Selection Advisory Committee
      1. When selecting a firm for consultant services where the compensation for such services is estimated to exceed \$100,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those consultant services firms that are to be retained by the County. The SAC will be composed of three or more principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency.
      2. When selecting a firm for consultant services, where the compensation for such consultant services is estimated to be less than \$100,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head

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## FAIRFAX COUNTY PURCHASING RESOLUTION

those consultant services firms that are to be retained by the County or an agency of the County.

3. Minutes of Selection Advisory Committee deliberations and records or votes taken shall be maintained for at least three years. Minutes shall detail pertinent reasons for committee recommendations and be available for review by the general public upon request.

b. Public Announcement

1. When consultant services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for consultant services is estimated to be less than \$100,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

c. Selection, Negotiation and Approval Process.

1. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

2. All proposed contracts for consultant services, where the compensation to be paid exceeds \$100,000, the Director of DPMM or other Authorized Agency, after review of the SAC recommendation will recommend to the County Executive, or the FCPS Division Superintendent those consultant services to be retained by the County or an agency of the County. The proposed contracts shall be submitted to the Board of Supervisors and/or the School Board as an Information Item prior to final execution. Full and adequate explanation of the selection criteria and fee determination shall be presented with the contract in such form as required by the County Executive or the Division Superintendent, FCPS.

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## FAIRFAX COUNTY PURCHASING RESOLUTION

3. All proposed contracts for consultant services, where the compensation to be paid is less than \$100,000, shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

4. For all cost-plus-a-fixed-fee consultant services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation certification stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any consultant services contract under which such a certificate is required shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

#### 4. Competitive Negotiation – Professional Services

##### a. Selection Advisory Committee.

1. When selecting a firm for professional services where the compensation for such professional services is estimated to exceed ~~\$60,000~~ \$80,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those professional services firms that are to be retained by the County. The SAC will be composed of three or more principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency.

Commented [IP5]: HB 97

2. When selecting a firm for professional services, where the compensation for such professional services is estimated to be less than ~~\$60,000~~ \$80,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those professional services firms that are to be retained by the County or an agency of the County.

Commented [IP6]: HB 97

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## FAIRFAX COUNTY PURCHASING RESOLUTION

3. Minutes of Selection Advisory Committee deliberations and records or votes taken shall be maintained for at least three years. Minutes shall detail pertinent reasons for committee recommendations and be available for review by the general public upon request.

b. Public Announcement and Qualifications for Professional Services.

1. When professional services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for such professional services is estimated to be less than ~~\$60,000~~ ~~\$80,000~~ may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

Commented [IP7]: HB 97

2. For architectural or engineering services estimated to cost less than ~~\$60,000~~ ~~\$80,000~~, an annual advertisement requesting qualifications from interested architectural or engineering firms will meet the requirements of paragraph (1) above. The County shall make a finding that the firm to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record of performance, and experience of the firm.

Commented [IP8]: HB 97

c. Selection, Negotiation, and Approval Process

1. Selection of Professional Services: Where the cost is expected to exceed ~~\$60,000~~ ~~\$80,000~~, the County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the County may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the

Commented [IP9]: HB 97

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Request for Proposal and all information developed in the selection process to this point, the County shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. DPMM or other Authorized Agency, with the aid of the Selection Advisory Committee, shall negotiate a proposed contract with the highest qualified firm for the professional services required. The firm deemed to be the most qualified will be required to disclose its fee structure during negotiation. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, the County may award contracts to more than one offeror.

2. Except for construction projects and related architectural, engineering, and consultant services, all proposed contracts for professional services, where the compensation to be paid exceeds \$100,000, the Director of DPMM or other Authorized Agency, after review of the SAC recommendation will recommend to the County Executive, or the FCPS Division Superintendent those professional services to be retained by the County or an agency of the County. The proposed contracts shall be submitted to the Board of Supervisors and/or the School Board as an Information Item prior to final execution. Full and adequate explanation of the selection criteria and fee determination shall be presented with the contract in such form as required by the County Executive or the Division Superintendent, FCPS.

3. All proposed contracts for professional services, where the compensation to be paid is less than \$100,000, shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

4. For all cost-plus-a-fixed-fee professional services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation certification stating that wage rates and other factual unit costs

## FAIRFAX COUNTY PURCHASING RESOLUTION

supporting the compensation are accurate, complete, and current at the time of contracting. Any professional services contract under which such a certificate is required shall contain a provision that the original contract price and any addition thereto shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

5. Multiphase professional services contracts satisfactory and advantageous to the County for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the County shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the County require awarding the contract.

6. A contract for architectural or professional engineering services relating to construction projects may be negotiated by the County for multiple projects in accordance with the Virginia Public Procurement Act (VPPA)§ 2.2-4303.1.

### 5. Competitive Negotiation – Non-Professional Services

#### a. Selection Advisory Committee

1. When selecting a firm for non-professional services where the compensation is estimated to exceed \$100,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those non-professional services firms that are to be retained by the County. The SAC will be composed of three or more principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency.

2. When selecting a firm for non-professional services, where the compensation is estimated to be less than \$100,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory

## FAIRFAX COUNTY PURCHASING RESOLUTION

Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those non-professional services firms that are to be retained by the County or an agency of the County.

**b. Public Announcement**

1. When non-professional services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for non-professional services is estimated to be less than \$100,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

**c. Selection, Negotiation and Approval Process.**

1. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

2. All proposed contracts for non-professional services shall be approved by the Director of DPMM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

- C. **Emergency.**- In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the appropriate contract or purchase order file. In addition, a notice shall be posted on the Department of Procurement and Material Management web site or other appropriate web sites on the day the County awards or announces its decision to award the contract in excess of \$100,000, whichever occurs first.

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1. If an emergency occurs during regular County business hours, the head of the using agency shall immediately notify the County Purchasing Agent who shall either purchase the required goods or services or authorize the agency head to do so.
2. If an emergency occurs at times other than regular County business hours, the using agency head may purchase the required goods or services directly. The agency head shall, however, when practical, secure competitive oral or written bids and order delivery to be made by the lowest responsive and responsible bidder. The agency head shall also, not later than the next regular County business day, submit to the County Purchasing Agent a requisition, a tabulation of the bids received, if any, a copy of the delivery record and a brief explanation of the circumstances of the emergency.
3. The County Purchasing Agent shall maintain a record of all emergency purchases supporting the particular basis upon which the emergency purchase was made. Such records shall be available for public inspection during regular County business hours in the office of the County Purchasing Agent.

**D. Informal Procurement.** Any Fairfax County contract when the estimated cost is less than \$100,000 in value, shall be deemed an informal procurement and ~~shall not be~~ subject to the rules governing competitive sealed bidding or competitive negotiation for goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000. However, such small purchase procedures shall provide for competition wherever practicable.

Commented [IP10]: 2.2-4303.G

1. Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$80,000. Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.

1.2. The Purchasing Agent may adopt procedures that establish informal purchase procedures. The rules and regulations adopted pursuant to Section 4 of Article 2 of this Resolution shall prescribe in detail the procedures to be observed in giving notice to prospective bidders, in tabulating and recording bids, in opening bids, in making purchases from the lowest responsive and responsible bidder, and in maintaining records of

## FAIRFAX COUNTY PURCHASING RESOLUTION

all informal procurements for public inspection.

~~However, the County Purchasing Agent shall, wherever possible, solicit at least four written competitive bids on all informal procurements estimated to exceed \$10,000 in value, and solicit at least three oral or written quotes for purchase transactions estimated between \$5,000—\$10,000.~~

- E. **Public Private Education Facilities and Infrastructure.**- The “Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA)” provides public entities an option for either approving an unsolicited proposal from a private entity or soliciting request for proposals or invitation for bids from private entities. Such projects are exempt from the Virginia Public Procurement Act. The County has developed procedures that are consistent with the principles of the PPEA and adopted by the Board of Supervisors.
- F. **Reverse Auctioning.**- The purchase of goods, consultant or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.
- G. **Small Purchase.**- Any purchase or lease of goods, professional, consultant, or nonprofessional services, or for the purchase of insurance, construction, or construction management, when the estimated cost is less than \$5,000, shall be deemed a small purchase and shall not be subject to the rules governing the formal competitive bidding process.
- H. **Sole Source.**- Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. A written record documenting the basis for this determination shall be included in the appropriate contract file or other records of the procurement. In addition, a notice shall be posted on the Department of Procurement and Material Management web site or other appropriate web sites on the day the County awards or announces its decision to award the contract in excess of \$100,000, whichever occurs first.
- I. **Auction:** Upon a determination in writing by the County Purchasing Agent that the purchase of goods, products, or commodities from a public auction sale is in the best interests of the County, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

**Commented [MP11]:** Moved from Exceptions. This is a method of procurement.

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### Section 3. Exceptions to the Requirement for Competitive Procurement.

- A. **Instructional Materials and Office Supplies:** Instructional materials and office supplies which are not stocked or purchased by the Fairfax County School Board pursuant to an existing County contract may be purchased by school principals designated by the School Board. Such purchases shall be conducted in accordance with rules and regulations adopted by the School Board pursuant to §22.1-122.1 of the Code of Virginia. With the exception of textbooks and instructional computer software that have been approved by the State Board of Education and the Fairfax County School Board, no single purchase may exceed the small purchase dollar level (as set forth in Article 2, Section 2. G.). The rules and regulations adopted by the School Board shall prescribe in detail the procedures to be observed in making purchases of instructional materials, establishing accounts for purchases, accounting for the receipt and disbursement of funds, and maintaining records of all transactions. The purchases authorized herein shall be made using funds from accounts established by the School Board solely for such purchases.
- B. **Insurance / Electric Utility Services:** As provided in the Code of Virginia, subdivision 13 of §2.2-4345, the County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles.
- C. **Insurance:** As provided in § 2.2-4303(C), upon a written determination made in advance by the County Purchasing Agent that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in §2.2-4302.2(A)(3) of the Virginia Public Procurement Act.
- D. **Legal Services:** The County (or any public body that has adopted this Resolution) may enter into contracts without competition for (1) the purchase of legal services; and (2) expert witnesses or other services associated with litigation or regulatory proceedings. Any contract for Legal Services may be entered into upon terms established by the County Attorney.
- E. **Public Assistance Programs:** The County may procure goods or services without competition for direct use by a recipient of County administered public assistance programs as defined by §63.2-100 of the Code of Virginia, or the fuel assistance program, or community services board as defined in §37.2-100, or any public body purchasing

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services under the Children's Services Act for At-Risk Youth and Families (§2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§16.1-309.2 et seq.) provided such good or service is delivered by a vendor upon specific instructions from the appropriate employee of the County. Contracts for the bulk procurement of goods and services for use of recipients shall not be exempted from the requirements of competitive procurement.

F. **Remedial Plan:** The purchase of goods and services when such purchases are made under a remedial plan established by the County Executive pursuant to Code of Virginia §15.2-965.1.

G. **Workshops:** The County Purchasing Agent may enter into contracts without competition for the purchase of goods or services which are produced or performed by persons or in schools or workshops under the supervision of the Virginia Department for the Visually Handicapped; or which are produced or performed by employment services organizations which offer transitional or supported employment services serving individuals with disabilities, provided that the goods or services can be purchased within ten percent of their fair market value, will be of acceptable quality and can be produced in sufficient quantities and within the time required.

H. **Other Special Exemptions: Procurement for single or term contracts for goods and services not expected to exceed \$100,000 as identified by the Purchasing Agent.**

### Section 4. Exemptions to the Purchasing Resolution.

B.A. **Retirement Board Investments, Actuarial Services, Disability Determination Services:** The selection of services related to the management, purchase, or sale of investments authorized by Virginia Code Ann. §51.1-803, including but not limited to actuarial services, shall be governed by the standard of care set forth in Virginia Code Ann. § 51.1-803(A) and shall not be subject to the provisions of the Purchasing Resolution or the VPPA. The selection of services related to the management, purchase, or sale of authorized investments, actuarial services, and disability determination services shall be governed by the standard of care in Code of Virginia §51.1-124.30 and shall not be subject to the provisions of the Virginia Public Procurement Act.

C.B. **Ballots and Elections Materials:** ~~Chapter 43, Virginia Public Procurement Act~~ Neither the VPPA or the Purchasing Resolution, of Title 2.2 shall not apply to contracts for equipment, software, services, the printing of ballots or statements of results, or other materials essential to the conduct of the election, except as stated in §24.2-602. The provisions of Code of Virginia §24.2-602 shall apply to such contracts.

~~Other Special Exemptions: Procurement for single or term contracts for goods and~~

**Commented [IP12]:** Moved from Exemptions to the Purchasing Resolution.

**Commented [MP13]:** The County's authorizing authority for this is actually 51.1-803 and that section does not explicitly list Disability Determinations. 2.2-4343(A)(2) applies only to the VRS.

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~~services not expected to exceed \$100,000 as identified by the Purchasing Agent.~~

**D.C. Conference Planning:** Acquisition of the use of meeting rooms and lodging rooms in hotels or motels is considered to be short term rentals of portions of real property -real estate transactions. So long as the procurement involves only the use of the facilities, the competitive requirements of the Fairfax County Purchasing Resolution do not apply. However, if the procurement includes the provision of catered meals, audio visual equipment, or other related services, and the value of these other included services exceeds the \$5,000 level for which competition is required, the entire procurement, including the use of the space, shall be procured competitively as a package based on its anticipated value.

**E-D. Virginia Grown Food Products:** ~~Neither the VPPA or the Purchasing resolution applies to the purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000, provided that the procurement is accomplished by (i) obtaining written solicitation of a minimum of three bidders or offerors if practicable and (ii) including a written statement regarding the basis for awarding the contract.~~

Commented [IP14]: HB 760

**E.** Finance Board Investments: Pursuant to Virginia Code Ann. § 15.2-1548, the selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial services, of the local finance board shall not be subject to the provisions of the Virginia Public Procurement Act.

**F.** **Subaward Agreements:** ~~Subaward Agreements entered into pursuant to the principles set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. § 200 et seq.) are not subject to the Purchasing Resolution. Subaward Agreements may, however, be executed by the Purchasing Agent.~~

Commented [IP15]: Establishes authority for the Purchasing Agent to sign non-procurement contracts related to federal grants.

### Section 4. General Purchasing Provisions.

#### A. Competitive Solicitation Process.-

1. The County Purchasing Agent shall solicit bids from all responsible prospective vendors who have registered their firm to be included on the County's vendor database and/or the Commonwealth of Virginia's "eVA" central vendor registration system for all solicitations using the competitive sealed bidding and competitive negotiation methods of procurement. Other potential vendors may be solicited at the discretion of the County Purchasing Agent.
2. The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open

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competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or informal procurement methods of procurement. In submitting a bid or proposal each bidder shall, by virtue of submitting a bid, guarantee that the bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bid of such bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor shall render the entire proceedings void and shall require re-advertising for bids.

3. All solicitations shall include the following provisions:
  - a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
  - b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph a. has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
4. Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named: it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
5. Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential

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contractors a fair opportunity to complete the process.

6. Prospective contractors may be debarred from contracting for particular types of goods, services, insurance, or construction, for specified periods of time. The debarment procedures are set forth under Article 4, Section 1.
7. The County shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.
8. Withdrawal of bids by a bidder.
  - a. A bidder for a contract other than for public construction may request withdrawal of their bid under the following circumstances:
    1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.
    2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
    3. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
    4. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.
    5. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

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6. If the County denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.
7. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of Article 2, Section 4, Paragraph D.

### B. Contract Award Process.-

1. The County Purchasing Agent shall have the authority to waive informalities in bids, reject all bids, parts of all bids, or all bids for any one or more good or service included in a solicitation when in his judgment the public interest is best served. If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of readvertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if none, to the resident Virginia tie bidder, or if none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services.
2. The County Purchasing Agent shall be responsible for determining the responsibility of a bidder. In determining responsibility, the following criteria will be considered:
  - a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
  - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
  - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
  - d. The quality of performance of previous contracts or services;
  - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;

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- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
  - g. The quality, availability and adaptability of the goods or services to the particular use required;
  - h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
  - i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
  - j. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
3. All contracts shall be approved as to form by the County Attorney or other qualified attorney and a copy of each long-term contract shall be filed with the Chief Financial Officer of the County.
4. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the responsive bid from the lowest responsible bidder exceeds available funds, the County may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiations may be undertaken only under conditions and procedures described in writing and approved by the County prior to issuance of the Invitation to Bid.
5. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Purchasing Agent. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.
6. Every contract in excess of \$100,000 shall contain the following: During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for

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the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this Resolution, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

### C. Non Discrimination.-

The County will not discriminate against a bidder or offeror because of race, color, religion, sex, national origin, age, disability, status as a service-disabled veteran or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity. In accordance with the policy of the County's Small and Minority Business Enterprise Program, every effort shall be made to actively and diligently promote the procurement of goods and services from small businesses and minority-owned and woman-owned businesses and service-disabled veteran businesses in all aspects of procurement to the maximum extent feasible. Every contract shall include the following provisions:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

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- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.
- d. The contractor will include the provisions of paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

### D. Disclosure of Information.-

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
2. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in 3. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
3. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to Article 2, Section F shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application

Commented [IP16]: HB 905

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that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

4. Nothing contained in this section shall be construed to require the County, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

### E. Bonds,-

1. The County may, at the discretion of the County Purchasing Agent, require bid, payment or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

No forfeiture under a bid bond shall exceed the lesser of:

- a. the difference between the bid for which the bond was written and the next low bid, or
  - b. the face amount of the bid bond.
2. Action on performance bond - No action against the surety on a performance bond shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees or (2) discovery of the defect or breach of warranty, if the action be for such, in all other cases.
  3. Actions on payment bonds:
    - a. Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
    - b. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond

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only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- c. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- d. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

#### 4. Alternative forms of security:

- A. In lieu of a bid, payment or performance bond a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.
- B. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

#### F. Prequalification –

- 1. Any prequalification of prospective contractor by the County shall be pursuant to a prequalification process.
  - a. At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the County shall advise in writing, each contractor who submitted an application whether that contractor has been prequalified.

## FAIRFAX COUNTY PURCHASING RESOLUTION

In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

- b. A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the prospective contractor appeals the decision in writing within ten (10) days after receipt of the notice by instituting legal action as provided in the Code of Virginia. The prospective contractor may not institute legal action until all statutory requirements have been met. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Fairfax County Purchasing Resolution, the sole relief shall be restoration of eligibility.
2. The County may deny prequalification to any contractor only if the County finds one of the following:
- a. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
  - b. The contractor does not have appropriate experience to perform the project in question;
  - c. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts;
  - d. The contractor has been in substantial noncompliance with the terms and conditions of prior contracts with the County without good cause. If the County has not contracted with a contractor in any prior contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
  - e. The contractor or any officer, director, owner, project manager, procurement

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manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental contracting, including, but not limited to, violation of Article 6 of the Virginia Public Procurement Act (§2.2-4367 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), Chapter 42 (§59.1-68.6 et seq.) of Title 59, or any substantially similar law of the United States or another state;

- f. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
- g. The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions (a) through (f) of this subsection.

### Section 5. Compliance with Conditions on Federal Grants or Contract.

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the policy of full and open competition, the County Purchasing Agent may comply with the federal requirements only upon written determination by the County Executive and/or Board of Supervisors that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provisions of this section in conflict with the conditions of the grant or contract.

### Section 6. Audit by the County.

All contracts and amendments in excess of \$10,000 shall include a provision permitting the County or its agent to have access to and the right to examine any books, documents, papers, and records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts.

### Section 7. HIPAA Compliance.

Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor may be designated a business associate pursuant to 45 CFR part 164.504(e) and 164.308 (b) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor must

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adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of the Fairfax County Business Associate agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Code of Virginia – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information. Additional information may be obtained by going to the Fairfax County Web site at: <http://www.fairfaxcounty.gov/hipaa>.

### Section 8. Immigration Reform and Control Act Compliance:

The County shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.

### Section 9. Compliance with State Law; Foreign and Domestic Businesses Authorized to Transact Business in the Commonwealth:

- A. The County shall include in every contract exceeding \$100,000 a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
- B. Pursuant to competitive sealed bidding or competitive negotiation, the County shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.
- C. Any bidder or offeror described in subsection B that fails to provide the required information may not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the County Purchasing Agent.
- D. Any business entity described in subsection A that enters into a contract with the County pursuant to this section shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required

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under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

- E. The County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section. ☐

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## FAIRFAX COUNTY PURCHASING RESOLUTION

### Article 3

#### CONSTRUCTION CONTRACTING

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##### Section 1. Authority

The procurement of architectural, engineering and related consultant services for construction projects and the contracting for construction projects are excluded from the duties of the County Purchasing Agent for the organizations as specified below:

- A. The Department of Public Works and Environmental Services (DPWES), pursuant to §15.2-834 of the Code of Virginia, the Board of Supervisors' Resolution dated September 18, 1968, and this Resolution, shall be responsible for Fairfax County construction projects administered by DPWES and the architectural, engineering and consultant services related to those projects. The Director, Department of Public Works and Environmental Services or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution. The Director, Department of Public Works and Environmental Services or his designee shall have the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney
- B. The Fairfax County Public School Board shall be responsible for construction, related architectural and engineering services, related consulting services, maintenance, repair and related services in connection with building, furnishing equipping, renovating, maintaining, and operating the buildings and property of the school division in accordance with §22.1-79 of the Code of Virginia. The school division's Superintendent or his designee shall have the same authority as the County Purchasing Agent to execute and administer contracts. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.
- C. The Fairfax County Park Authority shall be responsible for Fairfax County Park Authority capital construction and related architectural and engineering services per §15.2-5704 of the Code of Virginia and Board of Supervisors' Resolution dated April 6, 1981, governing the relationship of the Fairfax County Park Authority and Fairfax County. The Director of the Park Authority or his designee shall have the same

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authority of as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County Park Authority in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution. The Director, Department of the Park Authority or his designee shall have the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney.

- D. The Department of Housing and Community Development shall be responsible for capital construction and related architectural and engineering services for all programs and projects administered by the Department on behalf of either the Redevelopment and Housing Authority per §36-19 of the Code of Virginia or the Fairfax County Board of Supervisors, including contracts per §36-49.1:1 to carry out blight abatement. The Director of the Department of Housing and Community Development or his designee shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Department of Housing and Community Development in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution.
- E. The Department of Transportation, pursuant to §33.2-338 of the Code of Virginia, and this Resolution, may be responsible for constructing or improving highways, including related architectural and engineering services. Highways may include curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience which either have been or may be taken into the primary or secondary system of state highways. The Director, Department of Transportation or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution.
- F. The Fairfax County Park Authority, the Department of Housing and Community Development, and the Department of Transportation, may by a Memorandum of Understanding (MOU) delegate construction authority as detailed in sections 3 – 5 above to the Department of Public Works and Environmental Services.

### Section 2. Rules and Regulations

The Agencies designated in Section 1 above shall prepare and maintain detailed rules and

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regulations on the conduct of these contracting actions. Such rules and regulations shall be consistent with this Resolution and the laws of the Commonwealth of Virginia. Such rules and regulations shall be approved by the Purchasing Agent for County staff agencies or the administrative head of the respective public body involved.

### Section 3. Definitions

- A. Construction shall mean building, altering, repairing, improving or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading or similar work upon real property.
- B. Construction Management Contract shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
- C. Design-build contract shall mean a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, transportation project, or other item specified in the contract.
- D. Other Authorized Agency is an Agency as designated by the Code of Virginia and the Board of Supervisors authorized to procure architectural and engineering design services to include public announcement, receipt of bids, recommending selection and award, negotiation, contract preparation and contract administration as more fully defined in Article 1, Section 3 of this Resolution.

### Section 4. Purchasing Policies

- A. Construction may be procured by competitive negotiation as set forth in the Code of Virginia, subsection D of §2.2-4303 for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.
- B. The Purchasing Agent may establish written purchase procedures not requiring competitive sealed bids or competition negotiation for single or term contracts for non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000. However, such small purchase procedures shall provide for competition wherever practicable.
- C. No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$50,000 or more in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan,

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are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding or competitive negotiation as provided in this Resolution and law. The procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act.

- D. A contract for architectural or professional engineering services relating to construction projects may be negotiated for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year and may be renewable for four additional one-year terms at the option of the County. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed \$6 million, (c) the project fee of any single project shall not exceed \$2.5 million. Any unused amounts from the first contract term shall not be carried forward to the additional term(s). Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the County has established procedures for distributing multiple projects among the selected contractors during the contract term.
- E. No County construction contract shall waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay, in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent such delay is caused by acts or omissions of the County, its agents or employees and due to causes within their control.
1. Subsection D shall not be construed to render void any provision of a County construction contract that:
    - a. Allows the County to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractor, agents or employees;
    - b. Requires notice of any delay by the party claiming the delay;
    - c. Provides for liquidated damages for delay; or
    - d. Provides for arbitration or any other procedure designed to settle contract disputes.
  2. A contractor making a claim against the County for costs or damages due to the alleged delaying of the contractor in the performance of its work under any County construction contract shall be liable to the County and shall pay the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through

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litigation or arbitration to be false or to have no basis in law or in fact.

3. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the County shall be equal to the percentage of the contractor's total delay claim for which the County's denial is determined through litigation or arbitration to have been made in bad faith.

### Section 5. Methods of Procurement

- A. Construction Management/Design Build Services. In addition to competitive bidding and competitive negotiations, the County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis consistent with this Resolution and law.
  1. Prior to making a determination as to the use of construction management or design-build for a specific construction project, the County shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the County regarding the use of construction management or design-build for that project and (ii) assist the County with the preparation of the Request for Proposal and the evaluation of such proposals.
  2. A written determination shall be made in advance by the County that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.
  3. Procedures adopted by the County for construction management pursuant to this article shall include the following requirements:
    - a. Construction management contracts may be utilized for projects where the project cost is expected to be more than \$10 million;
    - b. Construction management may be utilized on projects where the project cost is expected to be less than \$10 million, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the local governing body. The written approval of the governing body shall be maintained in the procurement file;

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- c. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;
- d. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;
- e. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable projects;
- f. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;
- g. The procedures allow for a two-step competitive negotiation process; and
- h. Price is a critical basis for award of the contract.

- 4. Procedures adopted by the County for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department for state public bodies.
- 5. The County shall report by no later than November 1 of each year to the Director, Department of General Services of the Department on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized; (ii) the project budget; (iii) the actual project cost; (iv) the expected timeline; (v) the actual completion time; and (vi) any post-project issues.

C. Job order contracting; limitations. Where the method for procurement of job order construction is professional services through competitive negotiation is used, the following shall apply:

- 1. A job order contract may be awarded by the County for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly

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identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

2. Such contracts may be renewable for two additional one-year terms at the option of the County. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$5 million. Individual job orders shall not exceed \$500,000.
3. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.
4. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection 2 is prohibited.
5. No job order contract shall be issued solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in Article 1, Section 6. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

### Section 6. Prequalification, Bonds, Escrow Accounts

Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.

- A. Any prequalification of prospective contractors for construction by the County shall be pursuant to a prequalification process for construction projects as outlined below.
  1. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The

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form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information pursuant to Article 2, Section 4, Paragraph D.

2. In all instances in which the County requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.
3. At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the County shall advise in writing, each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.
4. A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the prospective contractor appeals the decision in writing within ten (10) days after receipt of the notice by instituting legal action as provided in the Code of Virginia. If upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Fairfax County Purchasing Resolution, the sole relief shall be restoration of eligibility.

B. The County may deny prequalification to any contractor only if the County finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
2. The contractor does not have appropriate experience to perform the construction project in question;
3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or

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construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, violation of Article 6 of the Virginia Public Procurement Act (§2.2-4367 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), Chapter 42 (§59.1-68.6 et seq.) of Title 59, or any substantially similar law of the United States or another state;
6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
7. The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions (1) through (7) of this subsection.
  - a. If the County has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria, provided, however, that nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

### C. Withdrawal of bids by a bidder.

1. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional

## FAIRFAX COUNTY PURCHASING RESOLUTION

arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

2. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. No bid shall be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent. The lowest remaining bid shall be deemed to be the low bid. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
3. The County shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the County denies the withdrawal of a bid, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the County shall return all work papers and copies thereof that have been submitted by the bidder.

### D. Progress Payments.

1. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to be included in the final payment. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

### E. Bonds.-

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## FAIRFAX COUNTY PURCHASING RESOLUTION

1. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of \$ ~~350,000~~ 250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with §2.2-4317 of the Code of Virginia. The County may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the County that waiving the requirement is in the best interests of the County. The county shall not enter into more than 10 such contracts per year.

No forfeiture under a bid bond shall exceed the lesser of:

- a. the difference between the bid for which the bond was written and the next low bid, or
- b. the face amount of the bid bond.

Nothing in this section shall preclude the County from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

2. Performance and payment bonds:
  - a. Upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor, (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body, or (iii) transportation-related projects exceeding \$350,000 that are partially or wholly funded by the Commonwealth, or (iv) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with public



## FAIRFAX COUNTY PURCHASING RESOLUTION

funds, the contractor shall furnish to the County the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.
  2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors in furtherance of the work provided for in such contract, and shall be conditioned upon the prompt payment for all ~~such~~ materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body. As used in this subdivision "Labor or materials" ~~shall include~~ includes public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
- b. For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the performance and payment bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with §2.2-4317. However, the locality may waive the requirement for prequalification of a contractor with a current Class A contractor license for contracts in excess of \$100,00 but less than \$300,000 upon a written determination in advance by the local governing body that waiving the requirement is in the best interest of the County. The County shall not enter into more than 10 such contracts per year.
  - c. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
  - d. Such bonds shall be payable to the County of Fairfax and filed with the County or a designated office or official.
  - e. Nothing in this section shall preclude the County from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for transportation-related

## FAIRFAX COUNTY PURCHASING RESOLUTION

projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

- f. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
  - g. The performance and payment bond requirements above for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by the County if the bidder provides evidence, satisfactory to the County, that a surety company has declined an application from the contractor for a performance or payment bond.
3. Action on performance bond - No action against the surety on a performance bond shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees or (2) discovery of the defect or breach of warranty, if the action be for such, in all other cases.
  4. Actions on payment bonds:
    - a. Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
    - b. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the

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Adopted by the Fairfax County Board of Supervisors on June ~~2019~~, 2017; Effective July 1, ~~2017~~2018

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## FAIRFAX COUNTY PURCHASING RESOLUTION

contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- c. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- d. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

5. Alternative forms of security:

- a. In lieu of a bid, payment or performance bond a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.
- b. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

F. Escrow Accounts.-

- 1. The County, when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations, where portions of the contract price are to be retained, shall include an option in the bid or proposal for the contractor to use an Escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the bid or proposal documents and executing the Escrow Agreement form provided by the County. In the event the contractor elects to use the Escrow account procedure, the Escrow Agreement form shall be executed and submitted to the County within fifteen days after receipt of notification of contract award by the contractor.

## FAIRFAX COUNTY PURCHASING RESOLUTION

2. The executed Escrow Agreement Form shall be submitted to the Office designated in the bid or proposal documents. If the Escrow Agreement Form is not submitted to the designated office within the fifteen day period, the contractor shall forfeit his rights to the use of the Escrow account procedure.
3. The Purchasing Agent shall promulgate escrow regulations. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent and the surety shall execute the Escrow Agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth and shall satisfy escrow agent qualifications promulgated by the Purchasing Agent.
4. This subsection E. shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
5. Any such public contract for construction with the County which includes payment of interest on retained funds, may include a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.
6. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

This subsection E. shall apply to contracts as provided in the Code of Virginia, §2.2-4334.

**FAIRFAX COUNTY PURCHASING RESOLUTION**

**Article 4**

**BIDDER/CONTRACTOR REMEDIES**

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**Section 1. Ineligibility.**

- A. Debarment as used in this section means any action taken by the County Purchasing Agent to exclude individuals or entities from contracting with County agencies or organizations for particular types of goods for a specified period of time. A prospective contractor may be suspended from participating in County procurements if there is evidence that the prospective contractor has committed an act that would be the basis of a debarment and immediate action is needed to protect the County's interests. Debarment or suspension do not relieve the contractor of responsibility for its existing obligations.
- B. The County Purchasing Agent shall have the authority to suspend or debar a prospective contractor from contracting for particular types of supplies, services, insurance on construction, for specified periods of time for the causes stated below:
1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
  3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
  4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:
    - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to

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*Adopted by the Fairfax County Board of Supervisors on June ~~2019~~, 2017; Effective July 1, ~~2017~~2018*

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## FAIRFAX COUNTY PURCHASING RESOLUTION

perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;

5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
  6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project.;
  7. The contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- C. **Ineligibility Period.** Debarment shall be for a period of ninety (90) days to three (3) years, at the discretion of the County Purchasing Agent. The period of Suspension shall not exceed one year.
- A debarment or suspension may be lifted or stayed at any time if the County Purchasing Agent determines that doing so is in the best interests of the County.
- D. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.
1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
  2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- E. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

### Section 2. Appeal of Denial of Withdrawal of Bid.

- A. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final

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Adopted by the Fairfax County Board of Supervisors on June 29, 2017; Effective July 1, 2018

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## FAIRFAX COUNTY PURCHASING RESOLUTION

and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.

- B. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4A, paragraph 8, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

### Section 3. Appeal of Determination of Nonresponsibility.

- A. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- B. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

### Section 4. Protest of Award or Decision to Award.

- A. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the

## FAIRFAX COUNTY PURCHASING RESOLUTION

same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4.D, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.

- B. If, prior to award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- C. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- D. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

### Section 5. Contractual Disputes.

- A. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who



## FAIRFAX COUNTY PURCHASING RESOLUTION

shall reduce his decision to writing and mail or otherwise forward a copy to the contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.

- B. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

### Section 6. Legal Action.

- A. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

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## FAIRFAX COUNTY PURCHASING RESOLUTION

### Article 5

#### ETHICS IN COUNTY CONTRACTING

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##### Section 1. General.

- A. The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
- B. No County employee having official responsibility for a procurement transaction (except as may be specifically allowed by subdivisions of ~~A2B1~~, ~~B2,A3~~ and ~~A4B3~~ of § 2.2-3112) shall participate in that transaction on behalf of the County when the employee knows that:
1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or,
  2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or,
  3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or,
  4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

**Commented [MP17]:** Administrative update to reflect proper legal citation.

##### Section 2. Solicitation or Acceptance of Gifts.

No County employee having official responsibility for a procurement transaction shall solicit, demand, accept or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than

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*Adopted by the Fairfax County Board of Supervisors on June 2019, 2017; Effective July 1, 2017-2018*

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## FAIRFAX COUNTY PURCHASING RESOLUTION

nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The County may recover the value of anything conveyed in violation of this section.

### Section 3. Disclosure of Subsequent Employment.

No County employee or former County employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the County employee or former County employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the County unless the County employee, or former County employee, provides written notification to the County prior to commencement of employment by that bidder, offeror or contractor.

### Section 4. Gifts.

No bidder, offeror, contractor or subcontractor shall confer upon any County employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

### Section 5. Kickbacks.

- A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything present or promised, unless consideration of substantially equal or greater value is exchanged.
- B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a County contract.
- D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.
- E. No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the County shall (i) submit a bid or proposal for that procurement or

## FAIRFAX COUNTY PURCHASING RESOLUTION

any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the County may permit such person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County.

### Section 6. Purchase of Building Materials, etc., from Architect or Engineer Prohibited.

- A. No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in §2.2-3101 of the Code of Virginia.
- B. No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in §2.2-3101 of the Code of Virginia.
- C. The provisions of this Section shall not apply in the case of emergency.

### Section 7. Certification of Compliance; Penalty for False Statements.

- A. The County may require County employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this section.
- B. Any County employee required to submit a certification as provided in subsection a. of this section who knowingly makes a false statement in such certification shall be punished as provided in §2.2-4377 of the Code of Virginia.

### Section 8. Misrepresentations.

No County employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

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*Adopted by the Fairfax County Board of Supervisors on June 29<sup>th</sup>, 2017; Effective July 1, 2017*

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## FAIRFAX COUNTY PURCHASING RESOLUTION

### Section 9. Penalty for Violation.

The penalty for violations of any of the provisions under Article 5 of this Resolution is provided in the Code of Virginia, §2.2-4377.

### Section 10. Personal Conflicts of Interest

It is County policy to require contractors to:

- 1) Identify and prevent personal conflicts of interest of their employees who perform an acquisition function closely associated with inherently governmental functions; and
- 2) Prohibit employees who have access to non-public County information from using such information for personal gain.

Failure to comply may result in suspension or debarment or termination for cause. The Purchasing Agent may waive, in exceptional circumstances, a personal conflict of interest or waive the requirement to prevent conflict of interest for a particular employee, if he determines in writing that such mitigation is in the best interest of the County.

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Adopted by the Fairfax County Board of Supervisors on June ~~2019~~, 2017; Effective July 1, ~~2017~~2018

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## FAIRFAX COUNTY PURCHASING RESOLUTION

### Article 6

#### SUPPLY MATERIAL MANAGEMENT

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The Director of the Department of Procurement and Material Management is responsible for the management of all Fairfax County and Fairfax County Public Schools (FCPS) supplies and equipment except as excluded by formal agreement between the County and other public bodies. This includes physical accountability of consumable supplies and accountable equipment, as well as, validation of the inventory and accountable equipment values reported in Fairfax County's Comprehensive Annual Financial Report. DPMM shall prescribe the procedures to be used by departments in the acquisition, receipt, storage and management, and issuance of consumable supplies and accountable equipment inventory, and disposition of excess and surplus County property.

#### Section 1. County Consolidated Warehouse

The Director of the Department of Procurement and Material Management is responsible for operation of the County ~~Consolidated~~ Warehouse which provides temporary storage and distribution of the supplies and equipment to all County departments. The Warehouse may be used as the storage point for goods on consignment from other departments. The Director of the Department of Procurement and Material Management is responsible for space management and logistics coordination at the County ~~Consolidated~~ Warehouse.

#### Section 2. Inventory Accountability

Departments and Fairfax County Public Schools are required to establish and maintain accountability of consumable inventories and accountable equipment in their custody, and to conduct periodic physical inventories in accordance with schedules published by the Director of the Department of Procurement and Material Management.

#### Section 3. Consumable Inventory Management

- A. The Director of the Department of Procurement and Material Management shall exercise oversight responsibility over all consumable inventory warehouses and stockrooms.

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*Adopted by the Fairfax County Board of Supervisors on June ~~2019~~, 2017; Effective July 1, ~~2017~~2018*

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## FAIRFAX COUNTY PURCHASING RESOLUTION

- B. The Director of the Department of Procurement and Material Management shall administer Fairfax County's perpetual inventory management system through FOCUS, and shall approve the management of perpetual inventories through any system other than FOCUS.

### Section 4. Accountable Equipment Inventory Management

- A. The Director of the Department of Procurement and Material Management shall exercise oversight responsibility over all accountable equipment.
- B. The Director of the Department of Procurement and Material Management is responsible for defining items to be capitalized as accountable equipment, and administering the Accountable Equipment Program in accordance with State and County codes, as well as industry standards and best practices.

### Section 6. Excess and Surplus Property and Inventory.

- A. The Director of the Department of Procurement and Material Management is responsible for redistribution of serviceable excess property and inventory, to include furniture, office equipment, repair parts, etc.
- B. The Director of the Department of Procurement and Material Management is responsible for the disposal of surplus property and inventory as applicable by law. Disposals will be evaluated in an effort to maximize financial returns to the County and / or minimize environmental impact.
- C. Confiscated or abandoned property in the hands of the police shall be disposed in accordance with Chapter 2, Article 2, Sections 2-2-1 through 2-2-3 of the County Code.
- D. Employees and members of their immediate family are not eligible to acquire property for personal use before such property has been declared surplus and has been made available to the general public. The County may, however, sell any dog specially trained for police work to the handler who was last in control of such dog, at a price deemed by the locality to be appropriate.

## FAIRFAX COUNTY PURCHASING RESOLUTION

### Section 7. Donations

#### A. Accepting Donations:

1. **Items \$5,000 or more:**  
The Director of the Department of Procurement and Material Management or Assistant Superintendent of Financial Services is responsible for approving the acceptance of donated items or services with a fair market value of \$5,000 or more, and ensuring accepted items are properly accounted for.
2. **Items under \$5,000:**  
Department Heads, Principals, or their equivalents may accept donated items or services with a fair market value under \$5,000.

#### B. Making Donations:

1. **Items \$5,000 or more:**  
When the fair market value of an item exceeds \$5,000, the Board of County Supervisors or FCPS School Board, as appropriate and allowed by law, may offer surplus County or School property to charitable or non-profit organizations or public bodies for sale or donation, where appropriate. The Director of the Department of Procurement and Material Management or Assistant Superintendent of Financial Services shall coordinate all requests to donate items with their respective Board.
2. **Items under \$5,000:**  
When the fair market value of a surplus item is less than \$5,000, the Director of the Department of Procurement and Material Management or FCPS Chief Financial Services may donate the item directly to charitable or nonprofit organizations as appropriate and allowed by law.

It is further resolved that this resolution shall be effective July 1, ~~2017~~2018.

A Copy Teste:

Catherine A. Chianese  
Clerk to the Board of Supervisors

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*Adopted by the Fairfax County Board of Supervisors on June ~~2019~~, 2017; Effective July 1, ~~2017~~2018*

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*Adopted by the Fairfax County Board of Supervisors on June ~~2019~~, 2017; Effective July 1, ~~2017~~2018*

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Board Agenda Item  
June 19, 2018

ACTION - 5

Approval of the Fall 2018 Bond Referendum for Public Safety

ISSUE:

Board approval of 1) a public safety bond referendum on November 6, 2018, totaling \$182 million, and 2) adoption of the enclosed resolution requesting the Circuit Court to order the referendum authorizing the issuance of such bonds. A bond referendum schedule of events is included as Attachment 1.

RECOMMENDATION:

The County Executive recommends that the Board:

1. Adopt the proposed resolution (Attachment 2) directing the County Attorney to petition the Circuit Court to schedule a public safety bond referendum on November 6, 2018; and
2. Approve a list of public safety projects (Attachment 3) that may be funded with the 2018 public safety bond funds; and
3. Authorize the preparation and distribution of an informational pamphlet about the public safety bonds that is mailed to all County households.

TIMING:

Board authorization is requested on June 19, 2018, to provide sufficient time for the County Attorney to obtain a court order and allow staff to prepare for the referendum and provide information to the public. Attachment 1 is the proposed fall 2018 bond referendum schedule of events. Staff will return to the Board with an Action Item on July 31, 2018, for authorization to print and distribute an explanatory County bond referendum statement (known as the "Plain Language Statement").

BACKGROUND:

In Virginia, a referendum can be put on the ballot for consideration by the voters only if the referendum is ordered by the court. The attached Resolution requests the Circuit Court to order a bond referendum totaling \$182 million on the ballot on November 6, 2018. The Capital Improvement Program (CIP) contains a detailed long-range bond referendum plan whereby each project was thoroughly reviewed by program area and prioritized accordingly. This plan was presented to the Board as part of the March 13, 2018, Budget Committee meeting on the CIP. This plan, including the proposed fall 2018 referendum, was subsequently approved as part of the FY 2019 – FY 2023

Adopted Capital Improvement Program (with Future Fiscal Years to 2028) on April 24, 2018.

**Fire and Rescue Department - \$73,000,000**

For the Fire and Rescue Department, an amount of \$73 million is recommended to renovate/expand or replace four aging County fire stations and a volunteer station. The County fire stations are all between 37 and 49 years old, and require the replacement of major building subsystems, such as HVAC and electrical systems, which have reached the end of their useful lives. In addition, these stations do not meet the current operational requirements of the Fire and Rescue Department. The renovation/expansion or replacement of the fire stations will enable the Fire and Rescue Department to expand equipment bays to provide adequate space for apparatus and provide space for current station minimum staffing requirements, and enhance bunkrooms and locker facilities for male and female personnel. These four County fire stations include: Mount Vernon (\$16 million), Fairview (\$16 million), Gunston (\$13 million), and Seven Corners (\$13 million). Lastly, staff recommends encumbering \$15 million for the flexibility to either renovate, expand, or replace a Volunteer fire station. This is based on the recent transition of both the Bailey's Crossroads Volunteer Fire Station and the Lorton Volunteer Fire Station to the County. There are eight remaining volunteer fire and rescue stations, all of which are approximately 40 years old and older. Staff is currently reviewing the various capital needs of these eight volunteer stations and would return to the Board with the follow-on recommendation for station specific capital improvements. In addition, the bond includes temporary fire stations to maintain operations during construction.

**Police Department - \$59,000,000**

For the Police Department, an amount of \$59 million is recommended to renovate/expand or replace one police station, an evidence storage unit, and the criminal justice academy. Bond funds for the Mason Police Station (\$23 million) would renovate with a minor expansion and upgrade building systems and infrastructure that are well beyond the end of their life cycle and do not meet current and future operational needs of the police and governmental center operations. The 24/7 facility, built in 1975, does not have adequate office, storage, workout, or interview spaces to support operations.

The police evidence storage building (\$18 million) would utilize bond funds to renovate, expand or replace the existing police evidence storage building, which currently houses the warrant desk, the victim services section and the main property and evidence section. The second and third floors are not able to adequately support high density storage, which limits storage above the first floor of the building. Many of the items

stored are critical evidence for court presentations, and their preservation is paramount. Adequate climate controlled storage is needed to properly store this property in an organized manner. Strict accountability and oversight are also necessary to meet accreditation standards.

Lastly, the Criminal Justice Academy (\$18 million) would receive bond funds for renovations and upgrades to continue to provide training for 2,300 annual recruits and incumbents from the Fairfax County Police and Sheriff, and the towns of Herndon and Vienna. The current outdated facility has limited capability to provide innovative training to recruits and incumbent officers; and the academic and scenario based training rooms do not meet the needs for today's training. In addition, many of the building systems and infrastructure are beyond the end of their life cycle.

#### **Courts / Adult Detention Center - \$50,000,000**

The County's Adult Detention Center has three wings (North, East and West), each originally constructed at different times. The North Wing is approximately 93,000 square feet and was constructed in 1989. The East Wing is approximately 106,000 square feet and was constructed in 1978 and the West Wing, the largest wing at approximately 310,000 square feet, was constructed in 1995. A mechanical, plumbing, electrical, and building systems assessment of each wing was conducted by a contracted engineering firm and the results indicate that most of the major building systems including plumbing, electrical, HVAC, fire protection systems and the elevators require replacement and/or upgrades. In addition, some exterior work is required, including weather stripping and roof repairs. In addition, the security systems were assessed in 2006 and again in 2016 with both studies concluding that the systems are outdated and no longer meet industry standards. System equipment repairs and maintenance have become nearly impossible as manufacturers no longer support the equipment and replacement parts are not available through standard vendors. Proposed improvements would integrate and upgrade mechanical and electronic security systems to increase the operational efficiencies of the Sheriff Deputies. Concurrent implementation of the major building system replacement/upgrades with the security system replacement will minimize the disruption to the critical operations of the facility. It is anticipated that General Fund support of approximately \$17 million will be required for the security system software, cameras and equipment. Bond funding of \$45 million would support the capital improvement requirements.

In addition, bond funding of \$5 million is requested to complete the next set of courtroom renovations at the Jennings Judicial Center. The original Jennings Building was completed in the early 1980s and the courtrooms have been in constant use by the public since that time. To keep them operational and enhance their efficiency, these courtrooms require improved lighting, ductwork realignment, ADA upgrades, carpeting,

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wall and ceiling replacement/repairs, refinishing of the gallery benches, renovation of the jury rooms and technology upgrades.

It is important to note that while the project lists for the public safety bonds represent the current proposals regarding what projects to fund, the ballot question is phrased more generally, to allow the Board flexibility as to precisely which projects to fund with the bond proceeds. The question on the ballot will read exactly as stated in Section 1 of the attached Resolution. Therefore, should circumstances change the scope or the need for any of the listed projects, the Board may use the bond proceeds for similar projects, so long as the projects are within the uses described in the ballot question.

Public Information Materials

To help inform the public about the referendum, the Office of Public Affairs traditionally prepares and distributes an informational pamphlet that is mailed to all County households. The Board is asked to authorize the development and distribution of a pamphlet about the public safety referendum. The pamphlet will describe the intended use for the bond funds, as well as offer information on bond financing, the cost of borrowing, the effect of borrowing on the tax rate, and other financial information.

Virginia law does not permit local governments to use the list of registered voters to provide information to voters on referendums, although it does permit parties and candidates to use the list. Therefore, the County will use a commercial mailing firm to deliver the pamphlet to all County households in October.

As in past years, the pamphlet will be translated into the most widely spoken non-English languages in the County, including Korean, Spanish, and Vietnamese. Section 203 of the Voting Rights Act of 1965, as amended, and the 2011 and 2016 designations of the Director of the Bureau of the Census, require the County to provide all election information in Spanish and Vietnamese as well as in English.

Both the English and non-English language versions of the pamphlet will be posted on the County's Web site and distributed at County facilities. However, only the English language version of the pamphlet will be mailed to County households.

The Office of Public Affairs also will work with the Police Department, the Fire and Rescue Department, and Sheriff's Office to inform the public. This includes providing information to the media, publishing information in print and electronic newsletters, providing outreach to residents, posting information online and using social media sites, including blogs, Twitter and Facebook.

FISCAL IMPACT:

The County bonds are expected to be sold according to actual cash requirements over the next several years. Annual debt service payments associated with the Public Safety

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2018 Bond Referendum have been incorporated into the County's long term debt ratio projections, and are referenced in the FY 2019 - FY 2023 Adopted Capital Improvement Program (With Future Years to FY 2028). Expenses associated with the printing, translating and mailing the bond information pamphlet will be paid out of existing appropriations in Fund 20000, Consolidated County and Schools Debt Service Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Schedule of Events

Attachment 2 – Board of Supervisors Resolution Requesting an Order for Referendum on the Issuance of Bonds in the Amount of \$182,000,000 for Public Safety

Attachment 3 – Public Safety 2018 Bond Referendum Project List

Attachment 4 – Virginia Code § 24.2-684

STAFF:

Joseph Mondoro, Chief Financial Officer

James Patteson, Director, Department of Public Works and Environmental Services

John Caussin, Acting Chief, Fairfax County Fire and Rescue Department

Edwin C. Roessler, Jr., Chief, Fairfax County Police Department

Martha Reed, Capital Coordinator, Department of Management and Budget

Joseph LaHait, Debt Manager, Department of Management and Budget

ASSIGNED COUNSEL:

Erin C. Ward, Deputy County Attorney, Office of the County Attorney

Martin Desjardins, Assistant County Attorney

**Proposed Schedule of Events  
Fall 2018 Bond Referendum – Public Safety**

<b>Date</b>	<b>Item</b>
March 13, 2018	Budget Committee review of FY 2019-FY 2023 Capital Improvement Program.
April 24, 2018	FY 2019 Budget Markup & Approval of the FY 2019-2023 Capital Improvement Program.
May 1, 2018	Budget Adoption.
June 19, 2018	Board of Supervisors Adopts Resolution for public safety bond referendum.
NLT July 1, 2018	County Attorney files Petition and Resolution with the Circuit Court.
July 2018 (est.)	Circuit Court enters order that the referendum be held on November 6, 2018.
July 31, 2018	Board approval of “plain language” statement that includes the ballot question and a neutral explanation of not more than 500 words for the referendum.
September 21, 2018	Absentee voting begins.
October 7, 2018	Publication of notice of election.
October 2018	Mailing of bond pamphlets to all County households.
November 6, 2018	Election Day.
Mid-November 2018	Electoral Board certifies election results to the State Board of Elections, the Clerk of the Board of Supervisors, and the Clerk of the Circuit Court.
November / December 2018	County Attorney moves for entry of a final order; Circuit Court enters final order.

**Resolution To Request the Fairfax County Circuit Court to Order a Referendum on the Question of Whether Fairfax County, Virginia, Should be Authorized to Contract a Debt, Borrow Money, and Issue Bonds in the Maximum Aggregate Principal Amount of \$182,000,000 to Finance the Costs of Public Safety Facilities**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on June 19, 2018, at which meeting a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, the Board of Supervisors of Fairfax County, Virginia, has determined that bonds in the maximum aggregate principal amount of \$182,000,000 should be issued to finance the costs of projects to provide public safety facilities, including the construction, reconstruction, enlargement, renovation and equipment of civil and criminal justice facilities, police training and operational facilities and stations, fire and rescue training facilities and stations, including fire and rescue stations owned by volunteer organizations, and the acquisition of necessary land (“Public Safety Facilities”); and

**WHEREAS**, the Board of Supervisors has determined that the Public Safety Facilities cannot be provided for from current revenues; and

**WHEREAS**, Virginia Code §§ 15.2-2610, 15.2-2611, and 24.2-684 provide the Fairfax County Circuit Court with the authority to issue an order for the conduct of a referendum; now therefore,

**BE IT RESOLVED** by the Board of Supervisors of Fairfax County, Virginia, that:

**Section 1.** The Circuit Court of Fairfax County, Virginia, is hereby requested to order a referendum on November 6, 2018, on the following question:



Shall Fairfax County, Virginia, contract a debt, borrow money, and issue bonds in the maximum aggregate principal amount of \$182,000,000 to provide funds, in addition to funds from public safety facilities bonds previously authorized, to finance, including reimbursement to the County for temporary financing for, the costs of public safety facilities, including the construction, reconstruction, enlargement, renovation and equipment of civil and criminal justice facilities, police training and operational facilities and stations, fire and rescue training facilities and stations, including fire and rescue stations owned by volunteer organizations, and the acquisition of necessary land?

**Section 2.** The County Attorney is hereby directed to provide the Fairfax County Circuit Court with a certified copy of this resolution and to petition the Fairfax County Circuit Court for an order to conduct such a referendum as a special election in conjunction with the general election on November 6, 2018.

**Section 3.** The members, officers, legal counsel, agents and employees of the Board of Supervisors and Fairfax County are hereby authorized and directed to do all acts and things required of them under Virginia law to ensure that the referendum will be held as a special election in conjunction with the general election on November 6, 2018.

Given under my hand on this \_\_\_\_\_ day of June 2018.

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Catherine A. Chianese  
Clerk, Board of Supervisors  
Fairfax County, Virginia

<b>Fall 2018 Bond Referendum</b>
----------------------------------

<u>Category</u>	<u>Amount</u>
<b>Fire and Rescue</b>	
Mount Vernon Fire Station	\$16,000,000
Fairview Fire Station	16,000,000
Gunston Fire Station	13,000,000
Seven Corners Fire Station	13,000,000
Volunteer Fire Station	15,000,000
<b>Total Fire and Rescue</b>	<b>\$73,000,000</b>
<b>Police</b>	
Police Evidence Storage (Annex)	\$18,000,000
Mason Police Station	23,000,000
Criminal Justice Academy	18,000,000
<b>Total Police</b>	<b>\$59,000,000</b>
<b>Courts / Adult Detention Center</b>	<b>\$50,000,000</b>
<b>Total Referendum</b>	<b><u>\$182,000,000</u></b>

Code of Virginia  
 Title 24.2. Elections  
 Chapter 6. The Election

## § 24.2-684. How referendum elections called and held, and the results ascertained and certified

Notwithstanding any other provision of any law or charter to the contrary, the provisions of this section shall govern all referenda.

No referendum shall be placed on the ballot unless specifically authorized by statute or by charter.

Whenever any question is to be submitted to the voters of any county, city, town, or other local subdivision, the referendum shall in every case be held pursuant to a court order as provided in this section. The court order calling a referendum shall state the question to appear on the ballot in plain English as that term is defined in § 24.2-687. The order shall be entered and the election held within a reasonable period of time subsequent to the receipt of the request for the referendum if the request is found to be in proper order. The court order shall set the date for the referendum in conformity with the requirements of § 24.2-682.

A copy of the court order calling a referendum shall be sent immediately to the State Board by the clerk of the court in which the order was issued.

The ballot shall be prepared by the appropriate electoral board and distributed to the appropriate precincts. On the day fixed for the referendum, the regular election officers shall open the polls and take the sense of the qualified voters of the county, city, town, or other local subdivision, as the case may be, on the question so submitted. The ballots for use at any such election shall be printed to state the question as follows:

"(Here state briefly the question submitted)

Yes

No"

The ballots shall be printed, marked, and counted and returns made and canvassed as in other elections. The results shall be certified by the secretary of the appropriate electoral board to the State Board, to the court ordering the election, and to such other authority as may be proper to accomplish the purpose of the election.

Code 1950, § 24-141; 1966, c. 115; 1970, c. 462, § 24.1-165; 1974, c. 428; 1975, c. 515; 1976, c. 616; 1978, cc. 258, 304; 1979, c. 37; 1980, c. 639; 1981, c. 367; 1982, cc. 498, 650; 1983, c. 461; 1991, c. 592; 1993, c. 641; 1994, c. 142; 1996, c. 297.

Board Agenda Item  
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ACTION - 6

Approval of SmarTrip® Conversion and Metrobus Pilots for the Free Student Bus Pass Program

ISSUE:

Board of Supervisors approval of SmarTrip® Card conversion for all middle and high schools participating in the Free Student Bus Pass program and Metrobus pilot for J.E.B. Stuart (Justice) High School and beginning Fall 2018 (SY2018 - 2019)

RECOMMENDATION:

The County Executive recommends the Board approve the SmarTrip® card conversion and J.E.B. Stuart (Justice) High School Metrobus pilots for the Free Student Bus Pass program beginning in SY2018-2019.

The County Executive also recommends that the Board authorize the Director of the Department of Transportation to enter and sign agreements with Fairfax County Public Schools (FCPS) and the Washington Metropolitan Area Transit Authority (WMATA), as needed, to implement the programs following review and approval by the Office of the County Attorney.

TIMING:

Board approval is requested on June 19, 2018, to allow time for negotiations with the Washington Metropolitan Area Transit Authority (WMATA) for trip costs, and programming and printing of custom SmarTrip® cards to be used for the pilots. Full implementation of the pilots is planned for Fall 2018.

BACKGROUND:

In September 2015, Fairfax Connector launched a pilot program to provide a Free Student Bus Pass to middle and high school students in Fairfax County. In less than three years, Fairfax Connector has provided more than 800,000 trips to students. Student ridership now accounts for 7% of the total Fairfax Connector ridership with a marked increase of 27% from March 2017 to March 2018. Students take an average of 1,600 trips each weekday and 1,000 trips every week-end day (see Attachment I). Fairfax County Public Schools (FCPS) students can, through this innovative program, access extracurricular activities, stay after school for support and tutoring, access after school jobs and internships, visit libraries, museums and other recreational activities.

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The Free Student Bus Pass is helping prepare students and familiarize them with public transportation use, so that they will be more comfortable choosing transit as a primary mode of transportation when they enter the workforce. This is critical to reducing congestion and improving mobility around the region in the future.

While this program has been successful, six middle schools and four high schools are not served by Fairfax Connector, but are served currently by Metrobus. Therefore, their ability to utilize the Free Student Bus Pass program is limited. Further, the current flash pass in use has limitations.

FCDOT proposes pilot programs for conversion from the existing non-reusable flash pass to a reusable, specially programmed SmarTrip® card for all students to use in Fall 2018 and free rides on Metrobus for J.E.B. Stuart (Justice) High School students. These pilots will improve the existing Free Student Bus Pass program and provide access to Metrobus for students at J.E.B. Stuart (Justice) High School who lack access to Fairfax Connector bus service. The nearest Fairfax Connector service to Stuart High School is four miles away (see Attachment II).

The use of SmarTrip® cards will give high school and middle school principals and administrators greater control over student bus passes. The cards will be registered by administrators which will allow them to view usage, disable cards that are lost or stolen, and monitor abuse – as needed. While there is almost no reported abuse of the flash pass, this conversion will limit risk even further. Use of the SmarTrip® card by students will allow greater accuracy when counting student passenger trips.

In 2016, at a joint meeting of the Board of Supervisors and the School Board, members asked FCDOT to consider a pilot to offer Metrobus access to J.E.B. Stuart (Justice) High School students and other schools not served by Fairfax Connector.

Per school administrators, many J.E.B. Stuart (Justice) High School students lack access to affordable, reliable transportation options. This administrator indicated that absenteeism could potentially affect their school accreditation next year. Students who miss the bus to school have no other transportation option currently available to them. Access to Metrobus would allow students the option to arrive at school, rather than be absent the entire day. The pass program would also allow students to access internship programs that they currently don't have transportation to reach.

To prepare this proposal, FCDOT staff worked closely with Fairfax County Public Schools staff, and consulted with several principals at schools currently participating in the program. Staff also briefed the Middle School and High School Principals Association's for Fairfax County Public Schools in May 2018.

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Proposal Details:

Staff recommends using the existing regional SmarTrip® card platform to implement the two proposed pilots. FCDOT will create a custom branded SmarTrip® card to replace the existing Free Student Bus Pass flash pass (see Attachment III).

The new custom branded SmarTrip® cards will be programmed to include two separate rider classes (Rider Class 1 and Rider Class 2). All participating Free Student Bus Pass schools will register the SmarTrip® cards designated for their schools.

Rider Class 1 is programmed to access Fairfax Connector and City of Fairfax CUE only. When the Rider Class 1 SmarTrip® card is tapped on farecard machine it records a “FREE ride” on Fairfax Connector and City of Fairfax CUE. No cash value is maintained on the cards. Students are not allowed to add cash value to cards. The unique card design features Fairfax Connector, City of Fairfax CUE, FCPS and SmarTrip logos on the card. All participating middle and high schools will receive SmarTrip® cards with Rider Class 1 pre-loaded. This card replaces the existing “non-electronic” flash pass. This customized SmarTrip® card cannot be used on Metrobus or Metrorail.

Rider Class 2 is programmed to access Fairfax Connector, City of Fairfax CUE and Northern Virginia Metrobus routes. J.E.B. Stuart (Justice) High School will be the only school to receive SmarTrip® cards with Rider Class 2 pre-loaded. Metrobus access is limited to Northern Virginia routes ONLY and excludes routes that terminate in DC or Maryland, or operate solely within Washington D.C. or Maryland (see Attachment IV). The SmarTrip® cards are branded differently than the Rider Class 1 Fairfax Connector/City of Fairfax CUE only SmarTrip® cards. The unique card design will feature the Fairfax Connector, City of Fairfax CUE, FCPS, SmarTrip® and Metrobus logos on the card. Students are not allowed to add cash value to card and the card cannot be used on Metrorail.

The Board of Supervisors was briefed on these proposals at the Transportation Committee meeting on May 8, 2018 (see Attachment V). Staff will track costs and usage of the Metrobus pilot and report back to the Board Transportation Committee in Spring 2019, prior to any decision being made for 2019 – 2020 school year.

FISCAL IMPACT:

Funding for both the Metrobus and SmarTrip® card pilots will be absorbed within the existing FY2019 Fairfax Connector budget (Fund 40000 – County Transit Systems). No additional General Fund dollars will be required in FY2019. Total cost estimates for SmarTrip card expansion and the one year Metrobus pilot are not expected to exceed \$300,000.

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ENCLOSED DOCUMENTS:

Attachment I - Fairfax Connector Monthly Student Ridership Chart  
Attachment II - Fairfax County Transit Map: JEB Stuart High School  
Attachment III - New SmarTrip® card designs  
Attachment IV - Metrobus routes included in Metrobus pilot for J.E.B. Stuart (Justice) High School  
Attachment V - Free Student Bus Pass Program: Update on Success, Recommendations for SmarTrip® & Metrobus Pilots (Power Point Presentation)

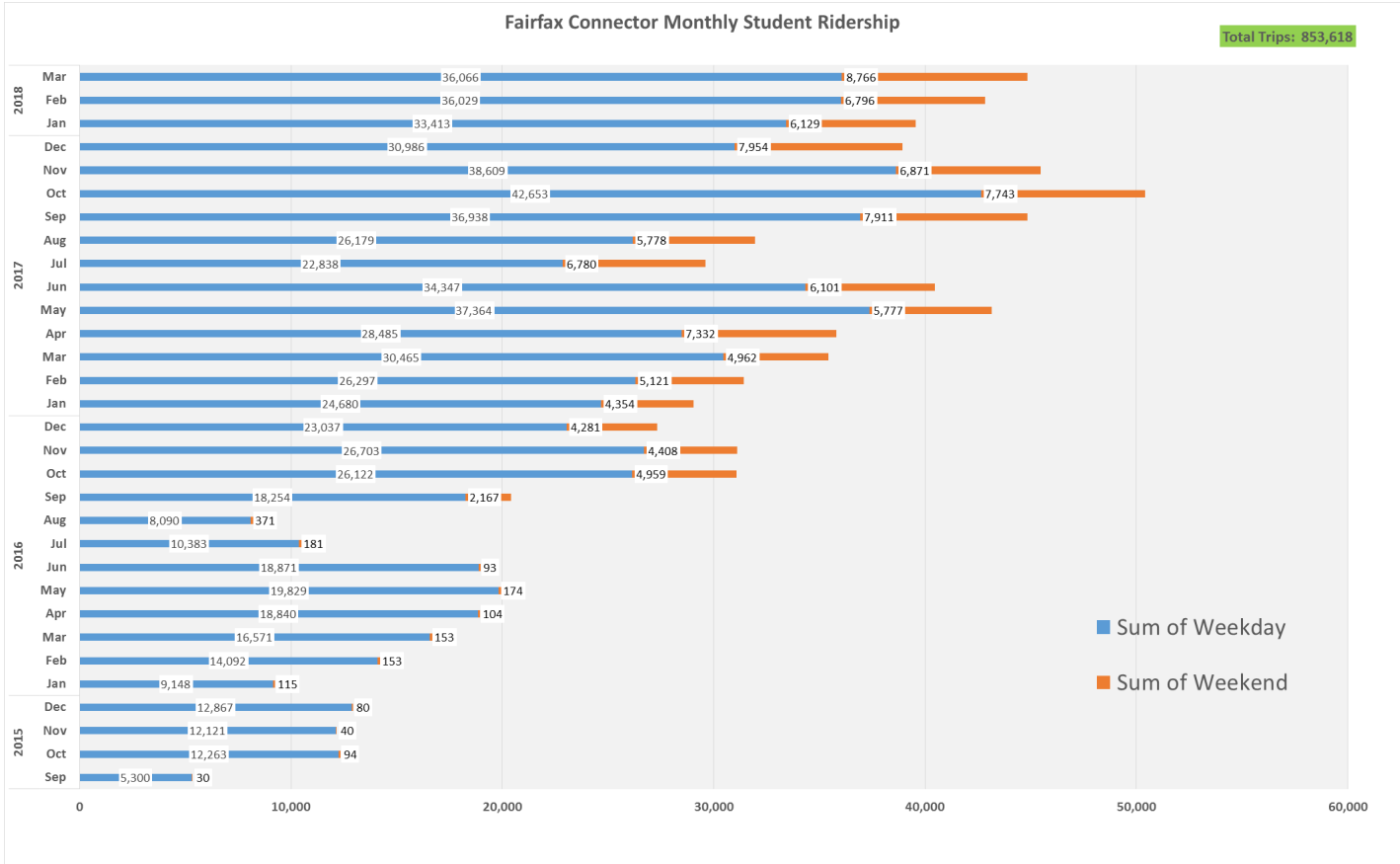
STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Todd Wigglesworth, Division Chief, FCDOT  
Dwayne Pelfrey, Division Chief, FCDOT  
Anna Nissinen, Section Chief, FCDOT  
Michael Felschow, Section Chief, FCDOT  
Kala Quintana, Communication Specialist III, FCDOT

ASSIGNED COUNSEL:

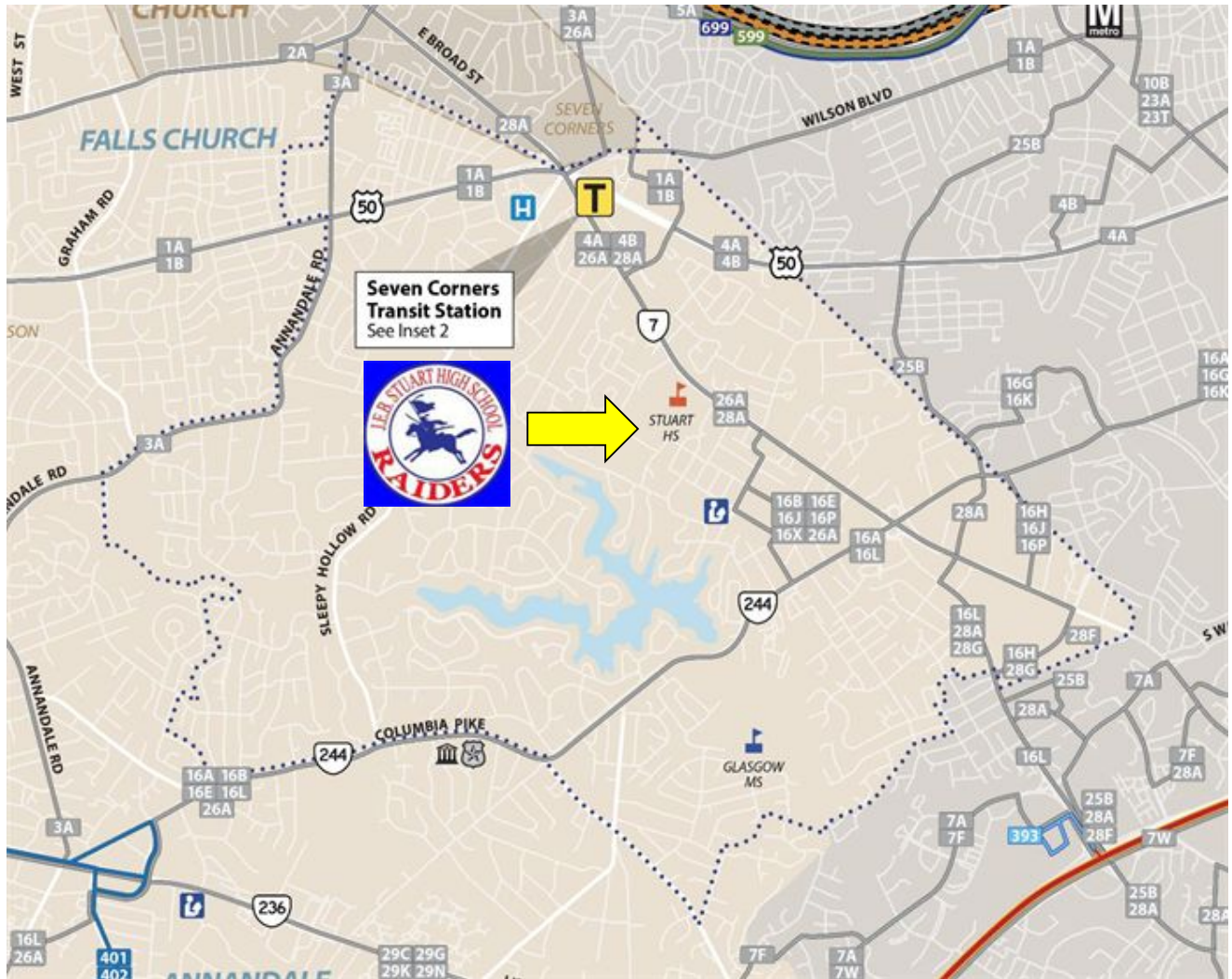
Erin Ward, Deputy County Attorney

Fairfax Connector Monthly Student Ridership Chart



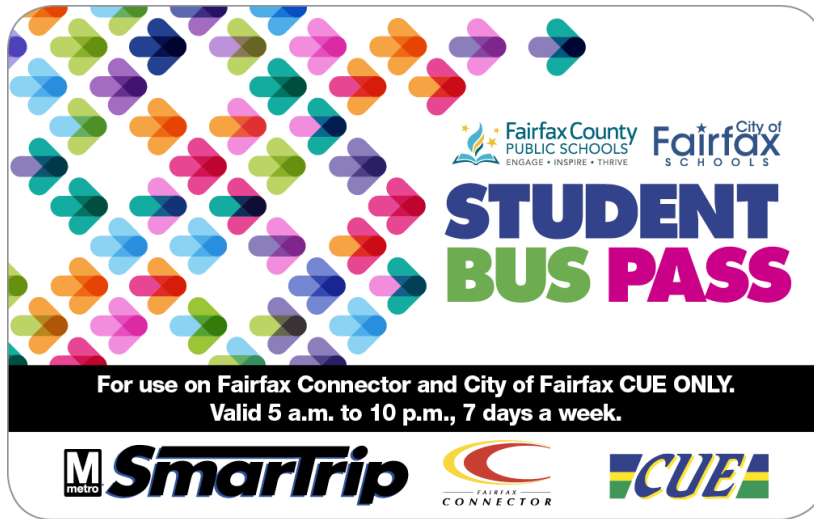


Fairfax County Transit Map: JEB Stuart High School



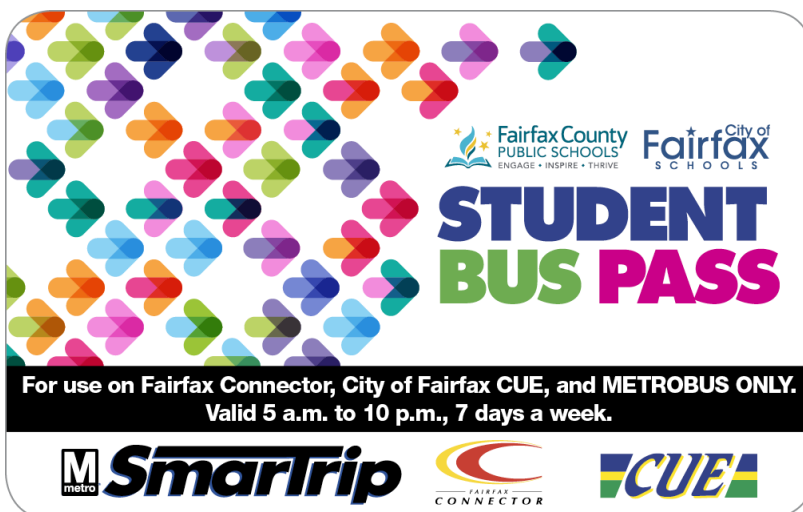
**New Free Student Bus Pass SmarTrip card design (Rider Class 1)**

- Concept -- subject to change per WMATA approval
- Accessible on Fairfax Connector and City of Fairfax CUE only



**Metrobus enabled SmarTrip Card Pass Design (Rider Class 2)**

- Concept -- subject to change per WMATA approval
- Accessible on Fairfax Connector, City of Fairfax CUE and Virginia Metrobus only



**Metrobus routes included in Metrobus pilot for J.E.B. Stuart (Justice) High School**

Northern VA Metrobus Route #'s	Service Area
1A, 1B, 1C	Wilson Blvd to Vienna Line; Fair Oaks Fairfax Blvd Line
2A, 2B	Washington Blvd. -- Dunn Loring Line; Fair Oaks -- Jermantown Rd Line
3A, 3T	Annandale Road Line; Pimmit Hills Line
4A, 4B	Pershing Dr. – Arlington Blvd. Line
7A, 7F,	Lincolnia – North Fairlington Line
7C, 7P, 7M, 7W	Park Center – Pentagon Line; Mark Center- Pentagon Line; Lincolnia – Pentagon Line
8S, 8W, 8Z	Foxchase -- Seminary Valley Line
10A, 10B, 10E, 10N	Alexandria – Pentagon Line; Hunting Point – Ballston Line
15K	Chain Bridge Road Line
16A, 16B, 16E, 16G, 16H, 16J, 16K, 16L, 16P	Columbia Pike Line; Columbia Heights West – Pentagon City Line; Annandale –Skyline City-Pentagon
17B, 17G, 17H, 17K, 17L, 17M	Kings Park – North Springfield Line;
18G, 18H, 18J, 18P	Orange Hunt Line; Burke Centre Line
21A, 21D	Landmark -- Bren Mar Park -- Pentagon Line
22A, 22B, 22C, 22F	Barcroft – South Fairlington Line
23A, 23B, 23T	McLean Crystal City Line
25B	Landmark – Ballston Line
26A	Annandale – East Falls Church Line
28A, 28F, 28G	Leesburg Pike Line; Skyline City Line
29C, 29G, 29K, 29N, 29W	Annandale Line; Alexandria – Fairfax Line; Braeburn Drive – Pentagon Express Line
REX	Richmond Highway Express
S80, S81	TAGS Springfield Circulator: Franconia Springfield Metro, Springfield Town Center, MetroPark/INNOVA Healthplex

Routes in RED  
serve schools  
directly

# Free Student Bus Pass Program

Update on Success, Recommendations for SmarTrip® & Metrobus Pilots

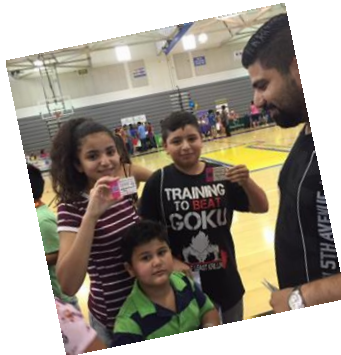
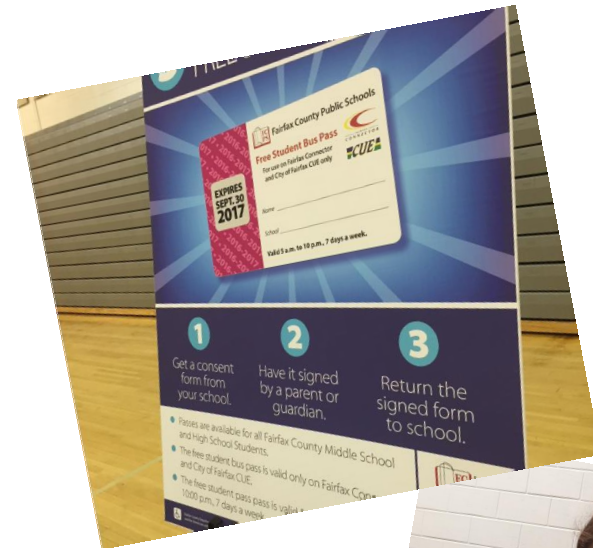
Kala Leggett Quintana and Michael Felschow  
Fairfax Department of Transportation

May 8, 2018



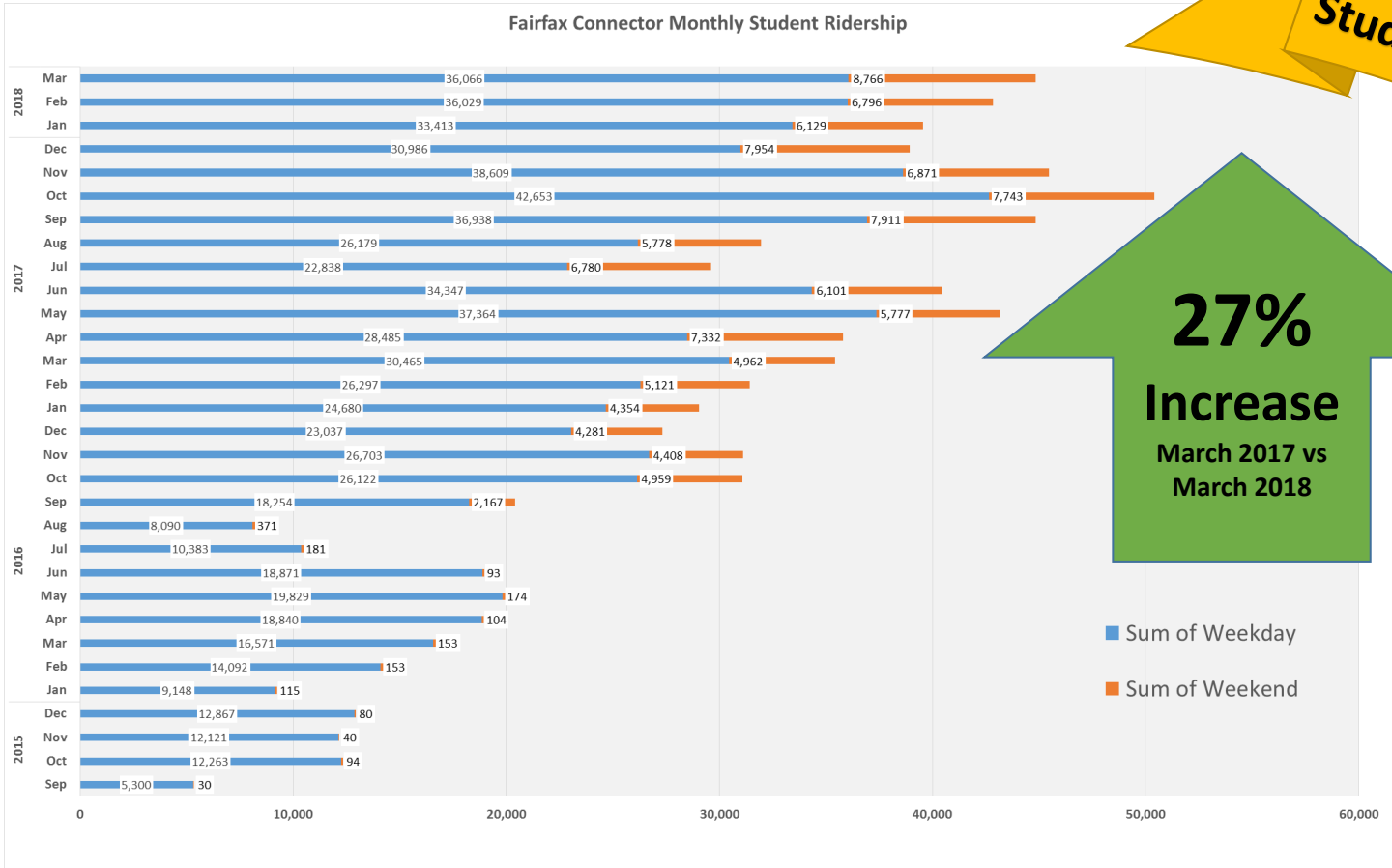
# Success

- In less than three years, Fairfax Connector has provided more than 800,000 trips to students
- Students are now 7% of total Fairfax Connector ridership



# Ridership Tells the Story

Fairfax Connector Monthly Student Ridership



**Over 800K Student Trips**

**27% Increase**  
 March 2017 vs March 2018

**Average Daily Trips**  
 Weekday: 1,600  
 Weekend: 1,000

# Benefits Now and into the Future

- Students use Fairfax Connector to access:
  - School and extracurricular activities
  - After school support and tutoring
  - After school jobs and internships
  - Libraries, museums and other recreational activities
- The Free Student Bus Pass is helping prepare the future workforce and familiarizing them with public transportation
  - More comfortable choosing transit when they enter the workforce
  - Critical to reducing congestion and improving mobility around the region



# Suggested Program Improvements SY2018-19

## 1. Convert to the SmarTrip® card platform

- Replace existing Free Student Bus Pass flash card across all participating middle and high schools



## 2. Implement Metrobus pilot for J.E.B. Stuart (Justice) High School

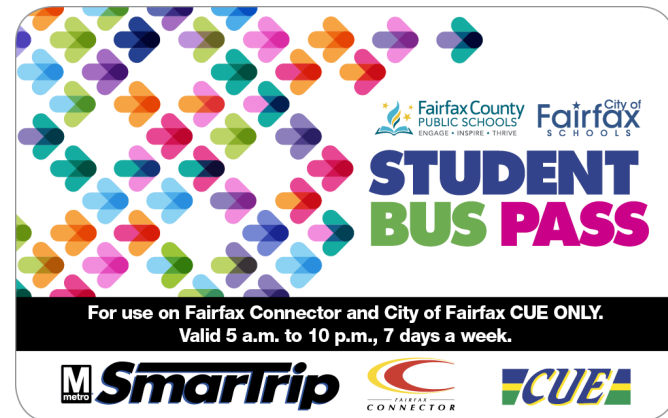
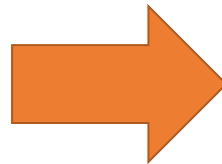
- Allow students to ride Metrobus in Northern Virginia for free with the same accessibility afforded to students eligible for Fairfax Connector Free Student Bus Pass





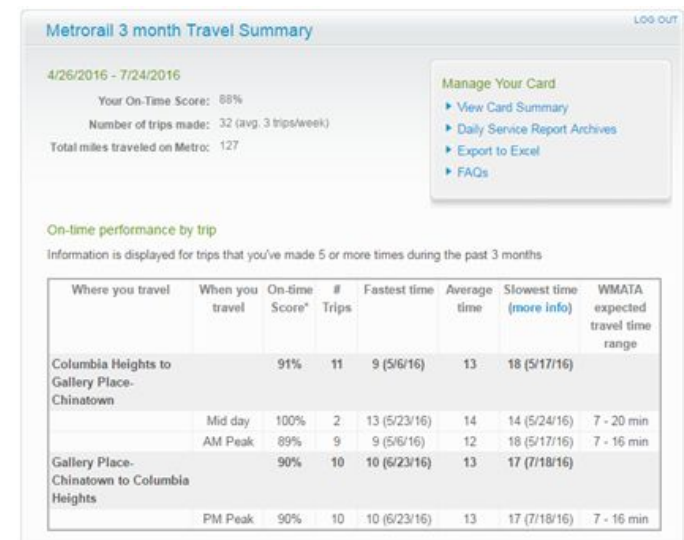
# Recommendation #1: Conversion to SmarTrip Card (SY2018-2019)

- Transition from existing flash pass to SmarTrip®
- If approved, all Fairfax County middle and high schools will have a custom branded SmarTrip® card to replace the existing flash pass for free rides on Fairfax Connector and City of Fairfax CUE



# SmarTrip at School – Key Advantages

- School representatives to register all SmarTrip cards at WMATA.com
- FCPS staff will be able to view the cards in use at any time
- FCPS administration can disable cards at any time and replace cards easily
  - If lost or stolen
  - To avoid misuse
- School administration can monitor use for abuse or inappropriate use during school hours



## Recommendation #2: Metrobus Pilot for schools not served by Fairfax Connector

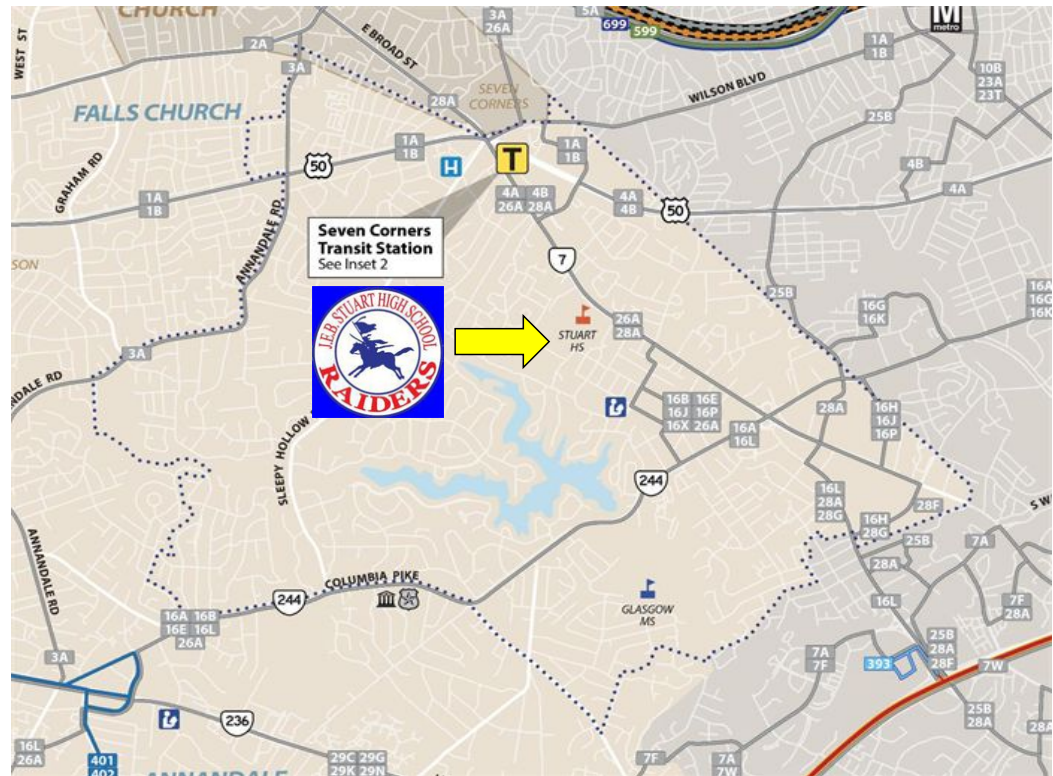
- In 2016, at a joint meeting of the Board of Supervisors and the School Board, members asked FCDOT to consider a pilot to offer Metrobus access to J.E.B. Stuart High School students and other schools not served by Fairfax Connector
- Four Fairfax County High Schools are served only by Metrobus
- Limited participation in the Fairfax Connector Free Bus Pass program, due to lack of Fairfax Connector service in their area



Annandale HS

# Proposal

- Begin with J.E.B. Stuart (Justice) High School to gauge the efficacy and use of a Metrobus accessible student pass
- Cited by members of the Board of Supervisors and the School Board as a good school to use for pilot based on student population needs
- Most isolated from Fairfax Connector access
- Only transit accessible via Metrobus



# JEB Stuart (Justice) HS Perspective



- Stuart Principal Penny Gros is supportive
- Students face a variety of challenges due to “transportation insecurity”
  - Students who miss the school bus do not have alternative transportation
  - Parents often work multiple jobs and cannot transport their children to school or activities
- Could help improve school attendance
  - Approximately 25% of our Stuart HS students are considered chronically absent, because they miss more than 10% of the school days (18 out of 180)
  - A target of this program would be to reduce absenteeism by providing another method of transportation for students who do not have a ride to school if they miss the school bus
  - In SY 18-19 Stuart HS attendance will be monitored through new Virginia Department of Education Standards of Accreditation
  - School could lose accreditation, if attendance goals are not met
- Students unable to take advantage of internship opportunities, due to lack of transportation
- Agreed to quarterly progress review; provide reports as needed; and report back on program progress and impacts in May 2019
- If pilot is approved, County must pay for all Metrobus trips taken

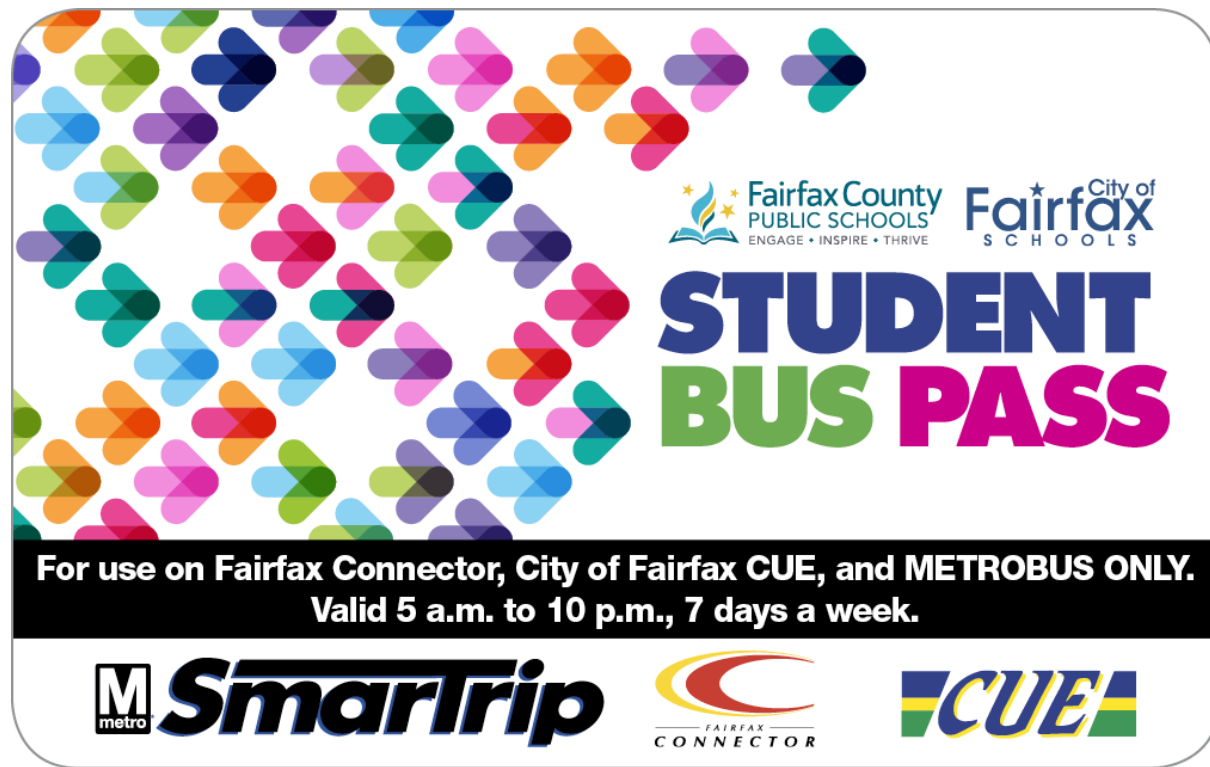


# Why SmarTrip®?

- Metrobus requires the use of cash or SmarTrip® to board their buses
- Metro will not accept our existing flash pass, because there's no way to accurately account for the trip when a student boards
- SmarTrip® cards can be uniquely programmed for specific purposes
- Can create our own unique custom design



# SmarTrip Card Student Pass Design (Metrobus Pilot Version)



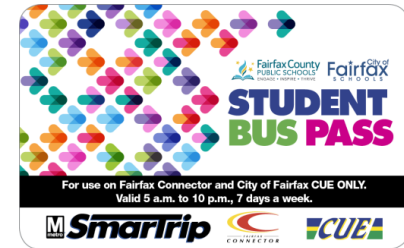
# How A Customized SmarTrip Card Works



WMATA Creates Two New Rider Classes:  
Rider Class #1 and Rider Class #2



# Rider Class #1 (RC1)



- Programmed to access Fairfax Connector and City of Fairfax CUE only
- The RC1 SmarTrip® card is tapped on farecard machine; records a “FREE ride” on Fairfax Connector and City of Fairfax CUE
- No cash value maintained on cards
- Students not allowed to add cash value to cards
- Unique card design with Fairfax Connector, City of Fairfax CUE, FCPS and SmarTrip logos on card
- Participating middle and high schools to receive SmarTrip® cards with Rider Class 1 preloaded
- Replaces existing “non-electronic” pass
- Can not be used on Metrobus or Metrorail

# Advantages

- Improved student bus pass security
- SmarTrip<sup>®</sup> cards are:
  - Reusable
  - One-time permission from the parent or guardian
  - Eliminates need to re-issue annually
  - Reduces administrative burden on schools
- Gives the FCPS administration and parents greater control
  - Monitor use and disable cards that are misused, abused, lost, or stolen
- Programmed to expire on student's graduation date
- More accurate count of student ridership
- Flags the student rider class to operator to determine eligibility

## Rider Class #2 (RC2)

- Programmed to access Fairfax Connector, City of Fairfax CUE and Northern Virginia Metrobus routes
- J.E.B. Stuart (Justice) High School to receive SmarTrip® cards with Rider Class 2 preloaded
- Metrobus access limited to Northern Virginia routes ONLY
  - Option to exclude routes that terminate in DC or Maryland, or solely within DC or MD
- Cards branded differently than the Rider Class 1 FFX Connector/City of FFX CUE only SmarTrip® cards
- Unique card design with Fairfax Connector, City of Fairfax CUE, FCPS, SmarTrip® and Metrobus logos on the card
- Students not allowed to add cash value to card
- Can not be used on Metrorail

Northern VA Metrobus Route #'s	Service Area
1A, 1B, 1C	Wilson Blvd to Vienna Line; Fair Oaks Fairfax Blvd Line
2A, 2B	Washington Blvd. -- Dunn Loring Line; Fair Oaks -- Jermantown Rd Line
3A, 3T	Annandale Road Line; Pimmit Hills Line
4A, 4B	Pershing Dr. – Arlington Blvd. Line
7A, 7F,	Lincolnia – North Fairlington Line
7C, 7P, 7M, 7W	Park Center – Pentagon Line; Mark Center- Pentagon Line; Lincolnia – Pentagon Line
8S, 8W, 8Z	Foxchase -- Seminary Valley Line
10A, 10B, 10E, 10N	Alexandria – Pentagon Line; Hunting Point – Ballston Line
15K	Chain Bridge Road Line
16A, 16B, 16E, 16G, 16H, 16J, 16K, 16L, 16P	Columbia Pike Line; Columbia Heights West – Pentagon City Line; Annandale –Skyline City-Pentagon
17B, 17G, 17H, 17K, 17L, 17M	Kings Park – North Springfield Line;
18G, 18H, 18J, 18P	Orange Hunt Line; Burke Centre Line
21A, 21D	Landmark -- Bren Mar Park -- Pentagon Line
22A, 22B, 22C, 22F	Barcroft – South Fairlington Line
23A, 23B, 23T	McLean Crystal City Line
25B	Landmark – Ballston Line
26A	Annandale – East Falls Church Line
28A, 28F, 28G	Leesburg Pike Line; Skyline City Line
29C, 29G, 29K, 29N, 29W	Annandale Line; Alexandria – Fairfax Line; Braeburn Drive – Pentagon Express Line
REX	Richmond Highway Express
S80, S81	TAGS Springfield Circulator: Franconia Springfield Metro, Springfield Town Center, MetroPark/INOVA Healthplex

Routes in **RED** serve schools directly

# Production Costs

- Annual cost for existing Free Student Bus Pass flash pass and security stickers (12,000 passes in SY17-18): **\$4,500 (not reusable)**
- The production cost per SmarTrip® card varies on the quantity purchased (based on the existing contractor for WMATA)
- 12,000 SmarTrip® cards : **\$23,160 (reusable)**

## SmarTrip Card Quantities/Cost

FROM	TO	COST PER CARD
6000	9,999	\$2.20
10,000	49,999	\$1.93
50,000	99,999	\$1.71
100,000	*	\$1.69

## Suggested SmarTrip® Purchase Quantities for Pilot

SmarTrip® Card Type	Quantity	Cost per Card	Total
Rider Class 1	12,000	\$1.93	\$23,160
Rider Class 2	6,000 (min. qty. req.)	\$2.20	\$13,200
		<b>TOTAL EST. COSTS</b>	<b>\$36,360</b>

\*Unlike the existing flash pass that must be exchanged annually, SmarTrip® cards can be assigned to a student for multiple years and reassigned

# What's Different?



- Requires FCPS Administrative Staff to register cards on-line for students into WMATA SmarTrip® registration system
- Cost of program increases at front end due to SmarTrip® card costs
- Requires tighter controls for Administration on the Metrobus enabled cards
- Cards have an unlimited cash value
  - Consider a cap to monthly value to limit abuse potential (if needed)
- Strong reporting/audit system within the school is required to ensure cards are not abused

# What's Different?



- No direct control over the WMATA operators or their training to assist students
  - WMATA operators have experience with DC and MD students
- Requires a new multi-year permission form and release from FCPS
- Requires separate permission forms for middle and high school students
  - When students transition from 8<sup>th</sup> grade to 9<sup>th</sup> grade, they need to re-register their cards with new school or obtain new pass from new school
  - Applies when a student changes schools within the county



# What's Different?



- Requires FCDOT staff to create supplemental outreach materials, guidelines and training materials for FCPS
- New procedures
  - FCPS staff will need to be trained on card registration, securing cards, card replacement, generating simple reports, and maintaining spreadsheets

# Fiscal Impacts of Stuart (Justice) HS Metrobus Pilot

- County must pay for student trips on Metrobus
- Assuming a similar monthly usage rate of ride 10 times a month, on average (120 trips a year at \$2.00 a trip – assuming no lower negotiated rate with WMATA) = **\$240 per student, annual cost**
- Estimated number of student passes assigned to 1,080 students (50% of student population\*) = **\$260K annually**
- Propose funding through cost savings in the Fairfax Connector budget.

**Total cost estimates for SmarTrip card expansion and one year Metrobus pilot not to exceed \$300K**

*\* Based on our experience with South Lakes HS and Edison HS*

# Follow Up

- If approved, staff to use the Metrobus pilot to track costs and usage and report back to the Board of Supervisors Board Transportation Committee on the findings in May 2019
- Determine feasibility to expand the program in future years to three additional High Schools with Metrobus access only
  - Annandale
  - Falls Church
  - Marshall



It's never too  
early to  
identify our  
future  
customers!



Questions?

Board Agenda Item  
June 19, 2018

ACTION – 7

Approval of Additional Funding for the Route 7 Widening Project from Jarrett Valley Drive to Reston Avenue

ISSUE:

Board approval of additional funding for the Route 7 Widening (Jarrett Valley Drive to Reston Avenue) through reallocation of funds in the Board's Transportation Priorities Plan (TPP).

RECOMMENDATION:

The County Executive recommends that the Board approve up to an additional \$40 million in funding authority for the project. Funding for this request is proposed from the following projects/sources below. As staff is requesting up to an additional \$40 million, actual amounts shown by project/source may be lower.

- \$14,650,000 in Regional Surface Transportation Funding (RSTP) FY 2023-FY2024 federal funding from Tysons Roadway Improvements.
- \$8,334,530 in Tysons Transportation Service District (TTSD) funding.
- \$13,200,000 in Northern Virginia Transportation Authority (NVTA) local funding from the Route 123 Widening Project (Route 7 to I-495).
- \$3,125,000 in Commercial and Industrial (C&I) Tax funding from the Frying Pan Road Widening Project (Route 28 to Old Centreville Road).
- \$690,470 in C&I funding from the Lorton Virginia Railway Express (VRE) Park & Ride Expansion Project.

TIMING:

The Board should act on this item on June 19, 2018, so the Virginia Department of Transportation (VDOT) can award the design-build contract for this project.

BACKGROUND:

Planning for the widening of the Route 7 corridor from four to six lanes from Tysons to Loudoun County has been ongoing effort. The first section of this effort, widening between Rolling Holly Drive and Reston Avenue, is complete. Bridge deck replacement and widening of Route 7 over the Dulles Airport Access Highway and Toll Road east of the project limits began construction in March 2016 and was completed in May 2018.

Board Agenda Item  
June 19, 2018

The Route 7 Corridor Improvements Project will improve 6.9 miles of Route 7 between Reston Avenue and Jarrett Valley Drive. The proposed work includes widening of Route 7 from four to six lanes with intersection improvements and adding a shared-use path on both sides of the roadway. These improvements will decrease congestion, increase capacity, improve safety, and expand mobility for bicyclists and pedestrians - all in conformity with Fairfax County's Comprehensive Plan.

Design-build was selected for the project delivery method. VDOT bid the project, and the low price proposal received on March 28, 2018, was \$278 million. This is \$95 million above the anticipated price proposal. The higher than anticipated price proposals received from Offerors is thought to be influenced by increase in unit prices, due to a competitive market for construction resources (multiple, ongoing, large scale projects in Northern Virginia); high risk attributable to significant number of complex utility relocations, including the \$200 million upgrade project by Washington Gas (in the same project footprint and in the same timeframe); over 230 property transactions for the right-of-way; and, an accelerated construction schedule. The Commonwealth is evaluating opportunities to reduce costs, through avoidance of utility conflicts, reduced scope, and additional flexibility in technical requirements, while still meeting project goals. The Commonwealth is committing additional funds in equal amount to Fairfax County that will permit award of the contract. As this project has been bid and is ready to go to construction, staff considers it a higher priority than projects which haven't started or are just in the preliminary engineering stage.

To fund the County's portion of the increase in project cost, staff proposes that funding in an amount up to \$22,984,530 be provided from revenues not previously allocated by the Board. This includes up to \$14,650,000 in federal RSTP the Commonwealth Transportation Board has approved for Tysons Roadway Improvements (Route 7 Widening DTR to Reston Avenue qualifies as a Tysons Roadway Improvement), and up to \$8,334,530 in TTSD funding. In addition, staff proposes that up to \$17,015,470 for this request come from a reallocation of funds previously approved by the Board in the Transportation Priorities Plan (TPP). Projects impacted or delayed due to this request include, and are shown in amounts up to:

- Route 123 Widening (Route 7 to I-495); \$13,200,000
  - Staff will investigate use of other Tysons revenues to advance implementation.
- Frying Pan Road Widening (Route 28 to Old Centreville Road); \$3,125,000
  - Project implementation would be deferred until after 2024 (consistent with draft, revised TPP).
- The Lorton VRE Park & Ride Expansion; \$690,470
  - This project is complete, and the reallocation of the balance will not negatively impact any project.

Board Agenda Item  
June 19, 2018

It is anticipated that VDOT will also provide up to \$40 million in state funding. This combined revenue and negotiated reductions in the scope of the project should allow VDOT to award the contract.

Staff met with the Tysons Transportation Service District Advisory Board on June 12, 2018, to discuss this project, and the advisory board approved staff's proposal of using service district funds to support the funding need.

FISCAL IMPACT:

Funding up to an amount of \$40 million for this request is available as follows: up to \$17,015,470 from Fund 40010, County and Regional Transportation Projects; up to \$8,334,530 from Fund 40180, Tysons Service District; and up to \$14,650,000 from RSTP federal funds. Funds will be formally reallocated as part of the FY 2018 Carryover Review process. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

None

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Department of Transportation (DOT)  
Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), DOT  
Eric Tietelman, Chief, Capital Projects and Traffic Engineering Division (CPTED), DOT  
Karyn Moreland, Chief, Capital Projects Section, CPTED, DOT  
Smitha Chellappa, Senior Transportation Planner, CPTED, DOT  
Ray Johnson, Transportation Planner, CFD, DOT



ACTION - 8

Approval of a Standard Project Agreement with the Virginia Department of Transportation for the I-495 Pedestrian Overpass from Tysons One Place to Old Meadow Road (Providence District)

ISSUE:

Board of Supervisors approval of, and authorization for the Director of the Department of Transportation to execute a Standard Project Agreement (SPA) with the Virginia Department of Transportation (VDOT), substantially in the form of Attachment 2, for the implementation of the I-495 Pedestrian Overpass from Tysons One Place to Old Meadow Road (Project).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (Board) approve a resolution (Attachment 1), authorizing the Director of the Department of Transportation to execute an SPA with VDOT substantially in the form of Attachment 2, for the implementation of the Project.

TIMING:

The Board should act on this item on June 19, 2018, so that VDOT can continue Project implementation.

BACKGROUND:

The Project will provide for the design and construction of a ten foot shared use path along Old Meadow Road beginning at the intersection of Old Meadow Road and Route 123, terminating at Tysons One Place near the intersection with Fashion Boulevard. The project includes the design and construction of a bicycle/pedestrian bridge over the Capital Beltway (I-495).

As stated in Tysons Comprehensive Plan Amendment (June 2010), and the Fairfax County's Countywide Bicycle Master Plan (October 2014), there is a need for enhanced bicycle and pedestrian connectivity in Tysons, especially across I-495. The Project area has a mix of retail, business, and residential communities with no bicycle and pedestrian access across I-495.

On May 15, 2018, the Board approved \$1,600,000 in funding for the project. Staff stated in the board item, that the total project estimate is \$6,200,000. However, the actual cost estimate is \$9,234,968. The additional \$3 million, which was previously funded primarily with federal grants, funds lighting along the entire length of trail east of I-495, and costs

Board Agenda Item  
June 19, 2018

refined through preliminary engineering. Of this total, \$7,622,382 is funded through various sources (Congestion Mitigation Air Quality (CMAQ), National Highway Safety (NHS), and local funds previously allocated to I-495 HOT Lanes Bicycle/Pedestrian Facilities). Applying funds in the amount of \$1,600,000 previously approved by the Board, this leaves an unfunded balance of \$12,586.

FISCAL IMPACT:

Funding in the amount of \$1,612,586 is available in Fund 40180 (Tysons Service District) construction reserve. As an exact amount was not known at the time, the Board approved \$1,600,000 in service district funding on May 15, 2018. The department director has the authority to authorize use of additional funds in the amount of \$12,586 under the Funding Allocation Policy approved by the Board March 29, 2011. Funds will be transferred immediately after agreement execution. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution to Execute a Standard Project Agreement with the Virginia Department of Transportation

Attachment 2: Standard Project Agreement (including Related Appendices) with the Virginia Department of Transportation for Project

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division (CPTED), FCDOT

Karyn Moreland, Section Chief, Capital Projects Section, FCDOT

Chris Wells, Senior Transportation Planner, CPTED, FCDOT

Todd Wigglesworth, Chief, Coordination and Funding Division (CFD), FCDOT

Ray Johnson, Senior Transportation Planner, CFD, FCDOT

Joe LaHait, Debt Coordinator, Department of Management and Budget

ASSIGNED COUNSEL:

Joanna Faust, Assistant County Attorney

## Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center in Fairfax, Virginia, on Tuesday, June 19, 2018, at which meeting a quorum was present and voting, the following resolution was adopted:

### AGREEMENT EXECUTION RESOLUTION

A RESOLUTION FOR THE BOARD OF SUPERVISORS OF THE COUNTY OF  
FAIRFAX, VIRGINIA  
AS AN ENDORSEMENT OF THE  
I-495 Pedestrian Overpass from Tysons One Place to Old Meadow Road  
PROJECT

**WHEREAS**, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a resolution be received from the sponsoring local jurisdiction or agency requesting the Virginia Department of Transportation (VDOT) to establish a project(s), if not already established, in the County of Fairfax.

**NOW, THEREFORE, BE IT RESOLVED**, that the County of Fairfax requests the Commonwealth Transportation Board to establish a project(s), if not already established, for the implementation of, I-495 Pedestrian Overpass from Tysons One Place to Old Meadow Road project (“Project”).

**BE IT FURTHER RESOLVED THAT**, the County of Fairfax hereby agrees to provide its share of the local contribution, in accordance with the Project Administration Agreements (“PAA”, attached) and associated financial documents (Appendix A), executed pursuant to this Resolution.

**BE IT FURTHER RESOLVED THAT**, the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County’s Department of Transportation to execute, on behalf of the County of Fairfax, the PAA with the Virginia Department of Transportation for the implementation of the Project to be administered by VDOT.

Adopted this 19<sup>th</sup> day of June 2018, Fairfax, Virginia

ATTEST \_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Supervisors

**VDOT ADMINISTERED – LOCALLY FUNDED  
PROJECT ADMINISTRATION AGREEMENT**

Attachment 2

FAIRFAX COUNTY  
PROJECT NUMBER I495-029-078 UPC 104005

THIS AGREEMENT, made and executed in triplicate on this the \_\_\_\_ day of \_\_\_\_\_, 2018, between the COMMONWEALTH OF VIRGINIA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT" and the COUNTY OF FAIRFAX, hereinafter referred to as the "COUNTY."

WITNESSETH

WHEREAS, the COUNTY has expressed its desire to have the DEPARTMENT administer the work as described in Appendix B, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds as shown in Appendix A have all been allocated by the COUNTY to finance the project; and

WHEREAS, the COUNTY has requested that the DEPARTMENT design and construct this project in accordance with the scope of work described in Appendix B, and the DEPARTMENT has agreed to perform such work; and

WHEREAS, both parties have concurred in the DEPARTMENT's administration of the project identified in this Agreement and its associated Appendices A and B in accordance with applicable federal, state, and local law and regulations; and

WHEREAS, the County's governing body has, by resolution, which is attached hereto, authorized its designee to execute this Agreement; and

WHEREAS, Section 33.2-338 of the Code of Virginia authorizes both the DEPARTMENT and the COUNTY to enter into this Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

- A. The DEPARTMENT shall:
1. Complete said work as identified in Appendix B, advancing such diligently, and all work shall be completed in accordance with the schedule established by both parties.
  2. Perform or have performed, and remit all payments for, all preliminary engineering, right-of-way acquisition, construction, contract administration, and inspection services activities for the project(s) as required.

3. Provide a summary of project expenditures to the COUNTY for charges of actual DEPARTMENT cost.
  4. Notify the COUNTY of additional project expenses resulting from unanticipated circumstances and provide detailed estimates of additional costs associated with those circumstances. The DEPARTMENT will make all efforts to contact the COUNTY prior to performing those activities.
  5. Return any unexpended funds to the COUNTY no later than 90 days after the project(s) have been completed and final expenses have been paid in full.
- B. The COUNTY shall:
1. Provide funds to the DEPARTMENT for Preliminary Engineering (PE) and Right-of-Way (ROW) upon execution of this Agreement and for Construction (CN) no less than 90 days prior to advertisement in the amounts shown in Appendix A
  2. Accept responsibility for any additional project costs resulting from unforeseeable circumstances, but only after concurrence of the COUNTY and modification of this Agreement.
- C. Funding by the COUNTY shall be subject to annual appropriation or other lawful appropriation by the Board of Supervisors.
- D. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. 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.
- E. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the 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. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the County or the Department shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the

County or the Department has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

- F. Nothing in this Agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.
- G. Should funding be insufficient and county funds be unavailable, both parties will review all available options for moving the project forward, including but not limited to, halting work until additional funds are allocated, revising the project scope to conform to available funds, or cancelling the project.
- H. Should the project be cancelled as a result of the lack of funding by the COUNTY, the COUNTY shall be responsible for any costs, claims and liabilities associated with the early termination of any construction contract(s) issued pursuant to this agreement.
- I. This Agreement may be terminated by either party upon 60 days advance written notice. Eligible expenses incurred through the date of termination shall be reimbursed to the DEPARTMENT subject to the limitations established in this Agreement.

THE COUNTY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors and assigns.

THIS AGREEMENT may be modified in writing upon mutual agreement of both parties.

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

**COUNTY OF FAIRFAX, VIRGINIA:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name of Signatory Date

\_\_\_\_\_  
Signature of Witness Date

NOTE: The official signing for the COUNTY must attach a certified copy of his or her authority to execute this Agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_  
Chief of Policy Date  
Commonwealth of Virginia  
Department of Transportation

\_\_\_\_\_  
Signature of Witness Date

- Attachments:  
Appendix A (UPC 104005)  
Appendix B (UPC 104005)

**VDOT Administered, Locally Funded Appendix A**

Date: **DRAFT**

Project Number: 1495-029-078 UPC: 104005 CFDA# 20.205 Locality: Fairfax County

Project Location ZIP+4: 22102-1819	Locality Address (incl ZIP+4): 4050 Legato Rd, Suite 400, Fairfax, VA 22033-2895
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**Project Narrative**

Scope:	Design and construct a 10' shared use path along Old Meadow Road beginning at the intersection of Old Meadow Road and Route 123, terminating at Tysons One Place near the intersection with Fashion Boulevard. The project includes the design and construction of a bicycle/pedestrian bridge over the Capital Beltway (I-495).		
From:	Route 123 & Old Meadow Road		
To:	Tysons One Place & Fashion Boulevard		
Locality Project Manager Contact info :	Chris Wells	703-877-5772	chris.wells@fairfaxcounty.gov
Department Project Coordinator Contact Info:	Abraham Lerner	703-259-3345	abraham.lerner@vdot.virginia.gov

**Project Estimates**

Phase	Estimated Project Costs
Preliminary Engineering	\$1,945,207
Right of Way & Utilities	\$503,798
Construction	\$6,785,963
Total Estimated Cost	\$9,234,968
Estimate for Current Billing	\$9,234,968

**Project Cost**

Phase	Project Allocations	Funds type (Choose from drop down box)	Local % Participation for Funds Type	Local Share Amount
Preliminary Engineering	\$1,800,000	Local Funds	0%	\$0
	\$145,207	NHS		\$0
				\$0
Total PE	\$1,945,207			\$0
Right of Way & Utilities	\$503,798	NHS	0%	\$0
				\$0
				\$0
Total RW	\$503,798			\$0
Construction	\$760,308	NHS	0%	\$0
	\$4,413,069	CMAQ	0%	\$0
	\$1,612,586	Local Funds	100%	\$1,612,586
Total CN	\$6,785,963			\$1,612,586
Total Estimated Cost	\$9,234,968			\$1,612,586

**Total Maximum Reimbursement / Payment by Locality to VDOT**

\$1,612,586

**Project Financing**

Local Funds (Accounts Receivable)	NHS	CMAQ	Local Funds (Tysons Service District)	Aggregate Allocations
\$1,800,000	\$1,409,313	\$4,413,069	\$1,612,586	\$9,234,968

**Payment Schedule**

FY 2018
\$1,612,586

**Program and project Specific Funding Requirements**

- This is a limited funds project. The locality shall be responsible for any additional funding in excess of \$7,622,382 (if applicable)
- The locality will be billed the locality share above beginning at the project scoping phase for the estimated PE and RW costs. The billing will be adjusted to include the Construction
- This Appendix A supersedes any previously listed funding schedule.
- VDOT has billed \$0.00 (dollar amount) the locality for this project as of 4/23/2018 (date)
- VDOT has received \$0.00 (dollar amount) from the locality for this project as of 4/23/2018 (date)
- Locality shall make a one time payment of \$1,612,586 no later than 60 days after agreement execution.
- All local funds included on this appendix have been formally committed by the local government's board or council resolution.
- All local contribution payments to VDOT are contingent upon receipt of invoice for the applicable pay period.
- \$1,800,000 was originally received under UPC 94363 (parent UPC) and transferred to this project.

This attachment is certified and made an official attachment to this document by the parties to this agreement

Authorized Locality Official and Date

Authorized VDOT Official and Date

Typed or printed name of person signing

Typed or printed name of person signing

Revised: June 15, 2016



**Appendix B**

**Project Number: I495-029-078 (UPC 104005)      Locality: Fairfax County**

<b>Project Scope</b>											
<b>Work Description:</b>	Pedestrian and bicycle facility connection across I-495 in the Tysons area.										
<b>From:</b>	Route 123 and Old Meadow Road										
<b>To:</b>	Tysons One Place & Fashion Boulevard										
<table border="0" style="width: 100%;"> <tr> <td style="width: 33%;">Locality Project Manager Contact Info:</td> <td style="width: 16.5%;">Chris Wells</td> <td style="width: 16.5%;">Phone: 703-877-5772</td> <td style="width: 33.5%;">Email: Chris.Wells@fairfaxcounty.gov</td> </tr> <tr> <td>Department Project Coordinator Contact Info:</td> <td>Abraham Lerner</td> <td>Phone: 703-259-3345</td> <td>Email: Abraham.Lerner@vdot.virginia.gov</td> </tr> </table>				Locality Project Manager Contact Info:	Chris Wells	Phone: 703-877-5772	Email: Chris.Wells@fairfaxcounty.gov	Department Project Coordinator Contact Info:	Abraham Lerner	Phone: 703-259-3345	Email: Abraham.Lerner@vdot.virginia.gov
Locality Project Manager Contact Info:	Chris Wells	Phone: 703-877-5772	Email: Chris.Wells@fairfaxcounty.gov								
Department Project Coordinator Contact Info:	Abraham Lerner	Phone: 703-259-3345	Email: Abraham.Lerner@vdot.virginia.gov								

<b>Detailed Scope of Services</b>
<p>Design and construct a 10' shared use path along Old Meadow Road beginning at the intersection of Old Meadow Road and Route 123, terminating at Tysons One Place near the intersection with Fashion Boulevard. The project includes the design and construction of a bicycle/pedestrian bridge over the Capital Beltway (I-495).</p>

This attachment is certified and made an official attachment to this document by the parties of this agreement

\_\_\_\_\_  
 Authorized Locality Official and date  
 \_\_\_\_\_  
 Typed or printed name of person signing

\_\_\_\_\_  
 Residency Administrator/PE Manager/District Construction Engineer  
 Recommendation and date  
 \_\_\_\_\_  
 Typed or printed name of person signing

Board Agenda Item  
June 19, 2018

ACTION – 9

Approval of Amendment to SmarTrip Operations Funding Agreement (OFA)

ISSUE:

Board approval of an amendment to the regional SmarTrip Operations Funding Agreement (OFA).

RECOMMENDATION:

The County Executive recommends that the Board approve the amendment of the SmarTrip OFA in substantially the form of Attachment I, and authorize the Director of the Department of Transportation to execute the finalized agreement on behalf of Fairfax County.

TIMING:

Board action is requested on June 19, 2018, to allow the Department of Transportation to continue participation in the Regional SmarTrip Program.

BACKGROUND:

On January 30, 2012, (Attachment 2) the Board of Supervisors approved the OFA with the regional transportation partners to provide funding for the Regional SmarTrip program. The OFA outlines the specific operational and funding parameters for each participant of the agreement. The current Amendment has been developed to add the District of Columbia DC Circulator as a participant to the Agreement effective July 1, 2018, and remove the Maryland Transit Administration from participation in the Agreement effective December 31, 2018. MTA is requesting to leave the OFA because they are upgrading their farebox software to a newer version. The new version will not be compatible with the version that the operators in our area have. Also, the number of riders who transfer between operators in our area and Baltimore are very low.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to SmarTrip Operations Funding Agreement  
Attachment 2: SmarTrip Operations Funding Agreement

Board Agenda Item  
June 19, 2018

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Todd Wigglesworth, Division Chief, Coordination and Funding Division, FCDOT  
Dwayne Pelfrey, Division Chief, Transit Services Division, FCDOT  
Randy Jouben, Risk Manager, Fairfax County Department of Risk Management  
Kris Miller, Senior Transportation Planner, FCDOT

ASSIGNED COUNSEL:

Joanna L. Faust, Assistant County Attorney

AMENDMENT TO SmarTrip® OPERATIONS FUNDING AGREEMENT  
AMONG  
ALEXANDRIA TRANSIT COMPANY  
AND  
ARLINGTON COUNTY, VIRGINIA  
AND  
CITY OF FAIRFAX, VIRGINIA  
AND  
DISTRICT OF COLUMBIA  
AND  
FAIRFAX COUNTY, VIRGINIA  
AND  
LOUDOUN COUNTY, VIRGINIA  
AND  
MONTGOMERY COUNTY, MARYLAND  
AND  
MARYLAND TRANSIT ADMINISTRATION  
AND  
POTOMAC & RAPPAHANNOCK TRANSPORTATION COMMISSION  
AND  
PRINCE GEORGE'S COUNTY, MARYLAND  
AND  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
FOR  
THE OPERATION OF THE REGIONAL SMARTRIP® SYSTEM  
AND THE REMOVAL OF  
MARYLAND TRANSIT ADMINISTRATION  
FROM  
THE OPERATION OF THE REGIONAL SMARTRIP® SYSTEM

This AMENDMENT TO THE SMARTRIP® OPERATIONS FUNDING AGREEMENT FOR THE OPERATION OF THE REGIONAL SMARTRIP® SYSTEM ("Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and among Alexandria Transit Company; Arlington County, Virginia; City of Fairfax, Virginia; the District of Columbia, acting by and through the District of Columbia Department of Transportation (interchangeably the "District", the "District of Columbia" or "DDOT"); Fairfax County, Virginia; Loudoun County, Virginia; Maryland Transit Administration; Montgomery County, Maryland; Potomac & Rappahannock Transportation Commission; Prince George's County, Maryland (collectively "the Participating Jurisdictions"); and the Washington Metropolitan Area Transit Authority ("WMATA") (collectively with the Participating Jurisdictions, the "Parties") to amend the SMARTRIP® OPERATIONS FUNDING AGREEMENT dated January 30, 2012 to provide for the funding of the Regional SmarTrip® System.

RECITALS:

**WHEREAS**, the Parties (with the exception of the District of Columbia) entered into the SmarTrip® Operations Funding Agreement, dated January 30, 2012, to provide for cost sharing of the funding for a seamless regional SmarTrip® card system (the "SmarTrip® Agreement"); and

**WHEREAS**, the District of Columbia seeks to be added as a Participating Jurisdiction in the Regional SmarTrip® System as those terms are defined in the SmarTrip® Agreement; and

**WHEREAS**, the Maryland Transit Administration seeks to terminate the participation of the Charm® card in the SmarTrip® Regional System and desires to be removed as a Participating Jurisdiction from the SmarTrip® Agreement; and

**WHEREAS**, the Parties desire to amend the SmarTrip® Agreement to memorialize their agreement with respect to the amendment of SmarTrip® Agreement.

**NOW THEREFORE**, based upon the foregoing understandings and in consideration of the covenants contained herein, the Parties hereby agree to amend the SmarTrip® Agreement as follows:

1. Recitals. The recitals set forth above are reaffirmed and incorporated herein by reference.
2. Definitions. Except as expressly provided herein, all terms and interpretations used in this Amendment shall have the same meanings as provided in the SmarTrip® Agreement, except that the following terms are amended and replaced as follows:
  - 2.1. **"Amendment"** means this Amendment to the SmarTrip® Agreement for the Regional SmarTrip® System between and among all Participating Jurisdictions as

defined below and WMATA.

2.2 **“Major Changes”** means new hardware or new software or updates to existing hardware or updates to existing software that creates new functionality or substantial changes to functionality that directly impacts fare policy, collection of data, collection of revenue, revenue reporting, or the operation of fare collection equipment owned by Parties or operated by WMATA on behalf of the Parties and any change that impacts the Parties’ costs or revenue sharing as defined in the Operations Funding Agreement. Examples include: new Driver Control Unit, new farebox, upgrades to fare collection central system, new system procurement.

2.3 **“Operational Support ”** means a change in systems, contractors, or equipment that would not significantly alter the processes or functionality to implement fare policy, collect data, collect revenue, produce reports, or operate fare collection equipment owned or used by a Party. Examples include operational support modifications required to maintain existing software and customer service for the regional SmarTrip® system; SmarTrip® card manufacturing; new smart card supplier, web logic upgrade, extension of software maintenance agreement.

2.4 **"Participating Jurisdictions"** as defined in Section 1.01(L) of the SmarTrip® Operations Funding Agreement dated January 30, 2012 is amended to mean collectively the Alexandria Transit Company; Arlington County, Virginia; City of Fairfax, Virginia; the District of Columbia; Fairfax County, Virginia; Loudoun County, Virginia; Maryland Transit Administration; Montgomery County, Maryland; Potomac & Rappahannock Transportation Commission; and Prince George's County, Maryland, except that Maryland Transit Administration shall terminate as a Participating Jurisdiction on December 31, 2018.

2.5. **"Smart card"** as defined in Section 1.01(T) of the SmarTrip® Operations Funding Agreement dated January 30, 2012 is amended to be defined as a plastic card, or any other media, containing a computer chip or other technology that can be used to pay a fare on WMATA and Participating Jurisdictions’ transit services. Smart cards may carry different brand names, such as "SmarTrip®" or "DC One" and may consist of various technology platforms provided that the card can be processed by the fare collection equipment in use by WMATA and the Participating Jurisdictions, that card is considered a "smart card" for purposes of this Agreement.

3. **Responsibilities and Procurement Process.** Article 2 (Responsibilities and Procurement Process), Section 2.01 (The Participating Jurisdictions’ Responsibilities) of the SmarTrip® Agreement dated January 30, 2012 is hereby amended and replaced as follows:

**A. WMATA Responsibilities.** In order for Participating Jurisdictions to be fully aware of Major Changes, WMATA shall provide written notice to the Participating

Jurisdictions regarding the intent to procure products or contractors for cost-effective improvements and efficiencies to the ongoing operation of the existing Regional SmarTrip® System. WMATA may provide such notice electronically. Generally, such notice will be redacted for confidential information to comply with any Non-Disclosure Agreement or limited if procurement sensitive. To the extent that confidential information or procurement sensitive information must be shared with Participating Jurisdictions in order for them to understand the effect of a Major Change on the operation of their fare equipment, the Participating Jurisdiction shall execute an appropriate non-disclosure agreement to protect confidential or procurement sensitive information from public release. Participating Jurisdictions shall identify and provide contact information for those individuals who receive notice under this paragraph. WMATA will provide notice of intent to procure for Major Changes not less than sixty (60) days prior to publishing any such intent to procure and shall thereafter coordinate with the Participating Jurisdictions in the development of the technical requirements and scopes of work, and in the acquisition of products or services which will affect the operation of the Participating Jurisdictions' fare equipment used on their local transportation systems. The Participating Jurisdictions shall submit comments within fifteen (15) days to WMATA on the notice of intent to procure, and WMATA shall give reasonable consideration to those comments. No notice of intent to procure shall be provided for any change in Operational Support.

WMATA will then, on behalf of the Participating Jurisdictions and itself, publicize, award and administer the procurement aspects of the Regional SmarTrip® System, and will exercise technical control and management oversight of any contract awarded. WMATA will retain all Financial Records, as defined in Section 1.01(G), for the Regional SmarTrip® System for three (3) years after completion and/or termination of this Agreement, as defined in Section 8.01 below, unless there is an outstanding written financial or audit question or litigation which has not been resolved. In that instance, the Financial Records will be retained by WMATA until there is a resolution of the financial or audit question(s) or the litigation. Subject to approval of the appropriate budget and the availability of funds, WMATA will fund its proportionate share of its costs of the Regional SmarTrip® System as set forth below. All Participating Jurisdictions will verify the Master Settlement Report based on the best available transaction data available to them from their reporting systems. WMATA will receive or disburse funds per the Master Settlement Report and upload and download necessary operational information, such as the Hotlisted Card List, that is required to support regional operations.

**B. Participating Jurisdiction Responsibilities.** Each Participating Jurisdiction shall pay WMATA, subject to and contingent upon the appropriation of funds, in the form of advance quarterly funding payments during the fiscal year, its proportionate share of the operating costs of the Regional SmarTrip® System, and further agrees to operate its transit system in a manner which complies with and supports the Regional SmarTrip®

System. Subject to annual budgetary appropriations, the Participating Jurisdiction shall be solely responsible for providing its share of the funds. In making these commitments, each Participating Jurisdiction acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this Amendment and the SmarTrip® Agreement. Each Participating Jurisdiction commits to review the Master Settlement Report, to receive or disburse funds per the Master Settlement Report and to upload and download necessary operational information, as required to support regional operations.

4. Notice. Except for notice by WMATA on the intent to procure for Major Changes which may be provided electronically to the individuals identified by Participating Jurisdictions, all notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or sent by a courier service or a national overnight delivery service, such as U.S. Overnight Express Mail, to any party hereunder as follows:

If to Alexandria Transit Company:

General Manager  
Alexandria Transit Company  
3000 Business Center Drive  
Alexandria, VA 22314

With a second copy to:

City Attorney  
3000 Business Center Drive  
Alexandria, VA 22314

If to Arlington County, Virginia:

Director of Transportation  
Arlington Department of Transportation  
2100 Clarendon Blvd., Suite 900  
Arlington, VA 22201

With a second copy to:

County Attorney  
Arlington County  
2100 Clarendon Blvd., Suite 403  
Arlington, VA 22201



If to City of Fairfax, Virginia:

City Manager  
City of Fairfax  
10455 Armstrong Street  
Fairfax, VA 22030  
With a second copy to:

City of Fairfax  
10455 Armstrong Street  
Fairfax, VA 22030

If to District of Columbia:

District of Columbia Department of Transportation  
55 M Street SE, 7<sup>th</sup> Floor  
Washington, DC 20003  
Attention: Director

With a copy to:

District of Columbia Department of Transportation  
55 M Street SE, 7<sup>th</sup> Floor  
Washington, DC 20003  
Attention: Associate Director, Transit Delivery Division

And:

District of Columbia Department of Transportation  
55 M Street SE, 7<sup>th</sup> Floor  
Washington, DC 20003  
Attention: General Counsel

If to Fairfax County, Virginia:

County Executive  
12055 Government Center Parkway, 10th Floor  
Fairfax, VA 22035-5511

With a second copy to:

Director, Department of Transportation  
12055 Government Center Parkway, 10th Floor

Fairfax, VA 22035-5511

If to Loudoun County, Virginia:

Transit & Commuter Services Division Manager  
Loudoun County  
101 Blue Seal Drive SE, Mailstop #69  
Leesburg, VA 20175

With a second copy to:

Loudoun County Attorney  
P.O. Box 7000  
Leesburg, VA 20177-7000

And:

Director of Transportation & Capital Infrastructure  
Loudoun County  
101 Blue Seal Drive SE  
Leesburg, VA 20175

If to Maryland Transit Administration

MTA General Counsel  
6 St. Paul Street, 12<sup>th</sup> FL  
Baltimore, MD 21202

With a second copy to:

MTA Office of Treasury  
6000 Metro Drive, Suite 180  
Baltimore, MD 21215

And:

Assistant Attorney General  
MTA  
6 St. Paul Street, 12<sup>th</sup> FL  
Baltimore, MD 21202

If to Montgomery County, Maryland:

Montgomery County Government  
101 Monroe Street, 5th Floor  
Rockville, MD 20850

With a second copy to:

Montgomery County Government  
101 Monroe Street, 5th Floor  
Rockville, MD 20850

And:

Management Services  
Montgomery County Government  
101 Monroe Street, 5th Floor  
Rockville, MD 20850

If to the Potomac and Rappahannock Transportation Commission:

Executive Director  
Potomac and Rappahannock Transportation Commission  
14700 Potomac Mills Road  
Woodbridge, VA 22192

With a second copy to:

County Attorney's Office  
One County Complex Court  
Prince William, VA 22192-9201

If to Prince George's County, Maryland:

Department of Public Works and Transportation  
9400 Peppercorn Place, Suite 300  
Largo, MD 20774

With a second copy to:

Deputy Chief Administration Officer – Public Infrastructure  
9400 Peppercorn Place, Suite 300  
Largo, MD 20774

And:

Fiscal Coordinator  
Office of Law, Room 5 121  
14741 Governor Oden Bowie Drive  
Upper Marlboro, MD 20772

If to WMATA:

General Manager and Chief Executive Officer  
Washington Metropolitan Area Transit Authority  
Jackson Graham Building  
600 Fifth Street, N.W.  
Washington, D.C. 20001

With a second copy to:

General Counsel  
Washington Metropolitan Area Transit Authority  
Jackson Graham Building, Second Floor  
600 Fifth Street, N.W.  
Washington, D.C. 20001

5. Term.

- (A) For all parties except the District, the term of this Amendment shall begin on July 1, 2018 and expire on June 30, 2023 and shall automatically be renewed for successive additional five (5) year periods unless a majority of the Participating Jurisdictions give written notice that they do not wish to renew their participation by or before February 1 of the year of expiration of the Amendment. If the Amendment is not renewed, there shall be an unwinding period of one hundred fifty (150) days to facilitate the orderly termination of the Regional SmarTrip® System for all Participating Jurisdictions.
- (B) As to Maryland Transit Administration, the term of this Agreement shall begin on July 1, 2018 and shall terminate on December 31, 2018.
- (C) As to the District, the term of this Amendment shall begin on July 1, 2018 and shall expire on September 30, 2019. The District may extend its participation annually by exercising a maximum of thirty (30) one-year option periods. DDOT shall provide WMATA with written notice of its intent to exercise an option period on or before February 1 of the year of expiration of the initial or extension year of this Agreement. The exercise of an option is subject to the availability of funds at the time of the exercise of the option.

(D) The first sentence after the indented text of Section 2.04(C) is amended to read: “The Termination Trigger Notification shall be provided, if possible, to all signatories to this Agreement at least one hundred fifty (150) days prior to the Termination Date.”

6. District of Columbia Provisions. A new Article 8A shall be added to the SmarTrip® Agreement, as follows:

8.A. District Provisions.

(1) By executing this Amendment, the District of Columbia expressly agrees to be bound by and comply with the terms of the January 30, 2012 SmarTrip® Agreement except as otherwise changed by this Amendment.

(2) WMATA agrees to create an operating reimbursable account to facilitate the inclusion of the District of Columbia as a full Participating Jurisdiction and for payment of DDOT’s share of the Operating Costs (“DDOT SmarTrip® Operating Account”) within sixty (60) days of the date of this Amendment. WMATA and DDOT agree that WMATA shall transfer from the Operating Reimbursable Account for the DC Circulator to the DDOT SmarTrip® Operating Account a reserve payment of \$156,250 which constitutes one (1) year of estimated operating costs plus a contingency of 25% to fund in advance the DDOT SmarTrip® Operating Reimbursable Account (the “Reserve Payment”). All future funding shall be in Accordance with Section 2.03 of the SmarTrip® Agreement plus any funds withdrawn from the Reserve Payment. Notwithstanding anything to the contrary in the SmarTrip® Agreement, the District’s obligation to make any payment pursuant to this Amendment or the SmarTrip® Agreement shall be limited to the balance of the DDOT SmarTrip® Operating Reimbursable Account including the Reserve Payment on the date the Districts obligation arises.

(3) Anti Deficiency. Pursuant to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the “Federal ADA”), and D.C. Official Code §§ 1-206.03(e) and 47-105; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (the “D.C. ADA” and (i) and (ii) collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46, as amended, the District cannot obligate itself to any internal or external financial commitment in any present or future year unless the necessary funds to pay that commitment have been appropriated and are lawfully available for the purpose committed. Thus, pursuant to the Anti-Deficiency Acts, nothing in this Amendment or the SmarTrip® Agreement creates an obligation in anticipation of an appropriation for such purpose, and the District’s legal liability for the payment of any amounts in subsequent fiscal years under this Amendment or the SmarTrip® Agreement does not and may not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year. Notwithstanding the foregoing, no officer, employee, director, member or other natural

person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section.

7. Order of Precedence. All other terms and conditions of the SmarTrip® Agreement, as amended that are not expressly modified by this Amendment shall remain in full force and effect. Should there be any conflict between the terms and conditions in this Amendment and the SmarTrip® Agreement, the terms and conditions of this Amendment shall control.
8. Amendments. Further amendments to this Amendment shall be completed in accordance with Article 7 (Amendments) of the SmarTrip® Agreement.

[The remainder of the page is intentionally blank.]

ALEXANDRIA TRANSIT COMPANY:

Attest:

\_\_\_\_\_  
By: Josh Baker  
Title: General Manager

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
BY: \_\_\_\_\_

Dated: \_\_\_\_\_

[Signatures continued on following page]

ARLINGTON COUNTY, VIRGINIA:

Attest:

\_\_\_\_\_  
By: Dennis Leach  
Title: Director of Transportation

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
By: Stephen A. Maclsaac  
Title: County Attorney

Dated: \_\_\_\_\_

[Signatures continued on following page]



CITY OF FAIRFAX:

Attest:

\_\_\_\_\_  
By: Robert Sission  
Title: City Manager

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
BY:

Dated: \_\_\_\_\_

[Signatures continued on following page]

DISTRICT OF COLUMBIA, A Municipal Corporation, acting by and through the District of Columbia Department of Transportation:

Attest:

\_\_\_\_\_  
Name: Jeffrey M. Marootian  
Title: Director

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

[Signatures continued on following page]

FAIRFAX COUNTY, VIRGINIA:

Attest:

\_\_\_\_\_

[ SEAL ]

By: Bryan J. Hill  
Title: County Executive

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

[Signatures continued on following page]

LOUDOUN COUNTY, VIRGINIA:

Attest:

\_\_\_\_\_  
By: Tim Hemstreet  
Title: Loudoun County Administrator

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
BY: \_\_\_\_\_

Dated: \_\_\_\_\_

[Signatures continued on following page]

MARYLAND TRANSIT ADMINISTRATION:

Attest:

\_\_\_\_\_  
By: Kevin B. Quinn, Jr.  
Title: MTA Administrator

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
BY: Byron T. Smith  
Title: General Counsel

Dated: \_\_\_\_\_

[Signatures continued on following page]

MONTGOMERY COUNTY MARYLAND:

Attest:

\_\_\_\_\_  
By: Timothy Firestine  
Title: Chief Administration Officer

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
BY: \_\_\_\_\_  
County Attorney

Dated: \_\_\_\_\_

[Signatures continued on following page]

POTOMAC & RAPPAHANNOCK TRANSPORTATION COMMISSION:

Attest:

\_\_\_\_\_  
By: Dr. Robert A. Schneider  
Title: Executive Director

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
By: Robert Dickerson  
Deputy County Attorney

Dated: \_\_\_\_\_

[Signatures continued on following page]

PRINCE GEORGE'S COUNTY, MARYLAND:

Attest:

\_\_\_\_\_  
By: Darrell B. Mobley  
Title: Director

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
BY: \_\_\_\_\_

Dated: \_\_\_\_\_

[Signatures continued on following page]



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Attest:

\_\_\_\_\_  
By: Paul J. Wiedefeld  
Title: General Manager and Chief Executive Officer

[ SEAL ]

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
By: Patricia Y. Lee  
Title: General Counsel

Dated: \_\_\_\_\_

**SmarTrip<sup>®</sup> OPERATIONS FUNDING AGREEMENT**

**Among**

**Alexandria Transit Company**

**And**

**Arlington County, Virginia**

**And**

**City of Fairfax, Virginia**

**And**

**Fairfax County, Virginia**

**And**

**Loudoun County, Virginia**

**And**

**Maryland Transit Administration**

**And**

**Montgomery County, Maryland**

**And**

**Potomac & Rappahannock Transportation Commission**

**And**

**Prince George's County, Maryland**

**And**

**Washington Metropolitan Area Transit Authority**

**For**

**The Operation of the Regional SmarTrip<sup>®</sup> System**

This SmarTrip® OPERATIONS FUNDING AGREEMENT ("Agreement"), is made and entered into this 30<sup>th</sup> day of January 2012 by and among Alexandria Transit Company; Arlington County, Virginia; City of Fairfax, Virginia; Fairfax County, Virginia; Loudoun County, Virginia; Montgomery County, Maryland; Prince George's County, Maryland; Maryland Transit Administration; Potomac & Rappahannock Transportation Commission (collectively "the Participating Jurisdictions"); and the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ("WMATA"), an interstate compact agency and instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, created with the consent of the United States Congress

PROCEEDS UPON THE FOLLOWING MUTUAL UNDERSTANDINGS AMONG THE PARTIES HERETO:

**RECITALS:**

A. The WMATA was created through Title III of the Washington Metropolitan Area Transit Regulation Compact formed by and among the State of Maryland, the Commonwealth of Virginia and the District of Columbia, authorized and approved by the United States Congress, for the purpose, among other activities, of planning, developing, financing and causing to be operated improved transit services in the Washington Metropolitan Area Transit Zone, as a part of a balanced regional system of transportation, which includes Metrorail; and

B. The parties to this Agreement are joining together to create a seamless regional smart card system to service both the WMATA Transit Zone and the Maryland Transit Administration service area in the Baltimore area ("the region") and operating off of the SmarTrip® smart card, smart cards with different brand names such as "CharmCard™" using the same technology platform as SmarTrip®, and/or different smart card or payment card platforms that are interoperable with the fare collection equipment used in the region; and

C. The parties have agreed to share the operating costs of establishing the Regional SmarTrip® System, beginning when each Participating Jurisdiction elects to utilize equipment compatible with the smart cards available throughout the region; and

D. Each party will be solely responsible for its respective share of the operating costs of the Regional SmarTrip® System under this Agreement, as identified in Exhibit A (updated annually) and incorporated in this Agreement, and for taking all necessary actions at the state or jurisdictional unit level to assist WMATA in developing the budget and securing the funding for the operation of the Regional SmarTrip® System. Each Participating Jurisdiction is only responsible for its own operating cost share, subject to annual appropriations by its respective state and/or

local governments, and in no circumstance will one Participating Jurisdiction be responsible for the operating cost shares of any other Participating Jurisdiction; and,

E. The Participating Jurisdictions, subject to the annual budgetary appropriation of their respective legislative bodies, to the full extent allowed by law, commit to provide the identified individual operating cost share, on an advance quarterly payment basis, to fund the Regional SmarTrip<sup>®</sup> System; and

F. The parties to this Agreement will be solely responsible for maintaining Participating Jurisdiction-operated smart card related equipment in a manner consistent with Participating Jurisdiction and inter-agency operations, will transfer and accept data necessary to support such operations, will report any concerns or issues that may affect regional operations as set forth in this agreement, and will transfer or accept revenues based on the revenue allocation process identified in this Agreement; and

G. The parties to this Agreement desire to enter into this Agreement to define and provide the manner in which the parties will support the Regional SmarTrip<sup>®</sup> System, and affirm that all operating costs for the Regional SmarTrip<sup>®</sup> System will be borne by the Participating Jurisdictions, in accordance with the provisions of this Agreement.

NOW THEREFORE, based upon the foregoing understandings and in consideration of the covenants contained herein, the parties do covenant and agree as follows:

#### ARTICLE 1 -- DEFINITIONS AND INTERPRETATIONS

Section 1.01: Definitions. The definitions and the recitals set forth above are reaffirmed and incorporated herein by reference. The following are definitions of certain terms used in this Agreement:

- A. "Agreement" means this funding agreement for the Regional SmarTrip<sup>®</sup> System between and among all Participating Jurisdictions as defined below and WMATA.
- B. "Autoload" is the delivery of fare value purchased online and added to the smart card when the user taps his/her card at a bus farebox, rail vending machine, or faregate. Such purchase may be a one-time purchase or on a recurring basis.
- C. "Automated Clearing House (ACH)" is a secure network of U.S. financial institutions that facilitate electronic transfers of payments within 48 hours. ACH will be the means by which funds are transferred from and to

Participating Jurisdictions to accommodate regional settlement unless otherwise agreed upon by the Participating Jurisdictions involved.

- D. **"CPOS Device"** is a Compact Point of Sale machine which allows for the purchase of fares loaded to a smart card from the machine located away from buses and rail stations.
- E. **"Data Warehouse"** is the central repository for all smart card data and is hosted by WMATA on behalf of all of the Participating Jurisdictions.
- F. **"Fare Collection Device"** is any equipment with a smartcard target capable of loading products or value onto a smartcard, deducting a fare or ride from a smartcard, or activating or validating a pass on a smartcard. Fare collection devices include, but are not limited to, faregates, bus fareboxes, ticket vending machines, hand held validator units, point of issue/point of sale machines, and parking garage targets.
- G. **"Financial Records"** are defined as any and all original documents which are used under OMB Circulars A-87 and A-133, as those circulars may be amended from time to time or such other circulars which may be issued and which are applicable to projects of this type (collectively "federal guidelines"), to support federal grant costs. This definition includes all federal guideline documents submitted by WMATA staff, consultants and contractors working on the Regional SmarTrip® System.
- H. **"Hotlisted Card"** is a card that needs to be removed from the smart card system for some reason (e.g. reported lost or stolen, involved in some type of fraudulent activity, etc.). A Hotlisted Card List will be the mechanism to consolidate and deliver the serial numbers of Hotlisted Cards to fare devices that will subsequently be removed from the system upon next use. When the card is presented, the system will mark it as not valid, seized, or other appropriate action.
- I. **"Master Settlement Report"** is an end-of-month report generated by WMATA and distributed to the Participating Jurisdictions, for validation and confirmation of the financial position of each Participating Jurisdiction. The Master Settlement Report will be disseminated by the Participating Jurisdictions and WMATA for review and, after approval by all Participating Jurisdictions, will be used as the basis for end of month settlement.
- J. **"Multifunction Point of Sale (MPOS)"** is the equipment used to initialize smart cards for use in the regional smart card system. The MPOS is also used to transfer value to a new smart card in the case of smart card replacement.

K. **"Operating Costs"** are defined as the sum of the costs enumerated in this subsection, all of which combined shall equal the expense portion of the annual Operating Budget for the Regional SmarTrip® System. Expenses may, at WMATA's discretion, include the cost to administer, operate and maintain the Regional Customer Service Center (RCSC) contract and associated regionally-shared elements, but not individual agency fare collection systems. Operating costs applicable for a fiscal year will be presented in the annual budget for the fiscal year (Exhibit A, updated annually). Operating Costs include, but are not limited to, the following:

1. Operating costs of the contract for the operation of the Regional Customer Service Center, including both the fixed monthly cost and the variable charges.
2. Operating costs of the contract for management of the Compact Point of Sale (CPOS) device network.
3. A specific overhead rate, to include WMATA costs to indirectly support Project Management of the Regional SmarTrip® System.
4. Regional SmarTrip® System WMATA dedicated project management staff costs.
5. The cost of software licenses needed for the Regional SmarTrip® System.
6. The cost of maintenance contracts on the hardware used in the Regional SmarTrip® System, only for those Participating Jurisdictions electing to use the services of the maintenance contracts.
7. The cost of software maintenance contracts used in the Regional SmarTrip® system, only for those Participating Jurisdictions electing to use the services of the maintenance contracts.
8. **Audit Fees.**
9. Costs associated with the maintenance and operation of a common SmartBenefits transaction system (the WMATA program for electronic distribution of transit benefits), but not those costs associated with SmartBenefits marketing or revenue collection.
10. System-wide costs associated with fraud or abuse that are not related to an individual Participating Jurisdiction's failure to properly support agreed upon regional operating procedures, such as the timely upload or download of data or not related to credit/debit operations.
11. An amount not to exceed the difference between the cost to purchase smart cards and the remaining balance in the SmarTrip® reserve account, to fund the reserve for the purchase of smart cards which are not specific to a given jurisdiction.
12. Communications services such as Participating Jurisdiction data lines and others as necessary to support regional operation.

13. Development and operation of a regional website
14. Such other costs as are agreed to by the Participating Jurisdictions and which contribute to the operation, security, and/or growth of the Regional SmarTrip® System.

- L. **"Participating Jurisdiction"** shall refer to any signatory to this who operates or provides funding for the operating costs of the Regional SmarTrip® System and shall include WMATA. The term does not directly include the District of Columbia. For purposes of this Agreement, the District of Columbia Circulator shall be considered to be a part of WMATA until such time as WMATA does not manage the District of Columbia Circulator. Both WMATA and the District of Columbia are parties to the "Amended and Restated Agreement Between the Washington Metropolitan Area Transit Authority and the District of Columbia Through the District Department of Transportation to contract for and Manage the DC Circulator Service" that sets out the means to reconcile various costs including those for the Regional SmarTrip® System. Nevertheless, for clarity, District of Columbia Circulator's share of the allocated costs shall be listed in the Annual Budget separately from WMATA's share of the allocated costs. The District of Columbia Circulator shall be considered to be participating in the Regional SmarTrip® system so long as WMATA is managing the service. Should WMATA cease to manage the service, then participation in the regional system will cease unless the District of Columbia signs this Agreement.
- M. **"Product"** is a stored ride ticket or time-based pass (weekly, monthly, etc.) carried on a smart card that can be used for transportation at Participating Jurisdictions according to the rules of use for each particular product.
- N. **"Projected Cash Flow and Obligation Profile" ("Cash Flow")** means a separate yearly cash flow projection for the Regional SmarTrip® System, which shows on a yearly basis the quarterly amounts of money for which each Participating Jurisdiction is responsible for that year, which sample Cash Flow is attached hereto as Exhibit B and incorporated in this Agreement as if fully set forth herein. The Cash Flow, Exhibit B, will be updated yearly by WMATA showing individual Participating Jurisdiction's projected quarterly payments and electronically sent to each Participating Jurisdiction prior to the commencement of the next fiscal year (July 1 – June 30) as described herein. An invoice shall be prepared, for each Participating Jurisdiction's quarterly payment according to the schedule defined in Section 2.03, which shall be payable in advance of that quarter by each Participating Jurisdiction according to the schedule defined in Section 2.03.
- O. **"RCSC Contract"** is the contractual agreement by which the regional customer service and order fulfillment functions are provided. The contract is between WMATA and the private entity providing the services.

- P. **"Regional SmarTrip® System"** is defined as the systems of computer hardware and software at WMATA and Participating Jurisdictions necessary to allow the use of a common smart card for fare collection and other purposes, including SmarTrip® cards, smart cards with different brand names such as CharmCard® or others using the same technology platform as SmarTrip®, and/or different smart card technology platforms that are interoperable with the fare collection equipment in the region.
- Q. **"Regional Software Maintenance Agreement (RSMA)"** is the agreement between the developer of the software used in the Regional SmarTrip® System and those Participating Jurisdictions who have elected to enter into the agreement for the provision of maintenance services on the system software as specified in the contract.
- R. **"Settlement Position"** is the calculated financial position of a Participating Jurisdiction at the end of a specified period, based on the smart card value added to and deducted from smart cards used on a Participating Jurisdiction's fare collection equipment.
- S. **"SmartBenefits"** is the WMATA program whereby an employer can provide Qualified Transportation Fringe Benefits tax-free under Internal Revenue Code section 132(f) with the delivery of fare value directly to the employee's smart card.
- T. **"Smart card"** is a paper or plastic card, or any other media, containing a computer chip that can be used to pay a fare on WMATA and Participating Jurisdictions. Smart cards may carry different brand names, such as "SmarTrip®" or "CharmCard®" and may consist of various technology platforms. Provided that the card can be processed by the fare collection equipment in use by WMATA and the Participating Jurisdictions, that card is considered a "smart card" for purposes of this Agreement.
- U. **"Stored Value"** is the cash-equivalent value stored in the smart card's purse that can be used at Participating Jurisdictions to pay for a single trip, transfer, parking or to purchase a smart card Product.
- V. **"Transaction"** is defined as the payment of a fare by smart card on either a rail mass transit or bus service for a single trip on the train or bus, and shall include both electronic cash payment from the card as well as verification of a pass or right to ride. Transfers requiring the patron to exit one vehicle and enter another in which a fare was paid, or pass or transfer verified constitute a separate transaction. For example, a trip on Metrorail with a transfer to a Metrobus constitutes two transactions. Deduction of funds from the smart card at parking areas for parking fee payment and/or other purposes that may



be contemplated shall also be considered transactions for the purposes of this agreement. The addition of funds to a smart card or the purchase of a fare product either at a vending machine, point-of-sale device or through an automatic transfer of funds does not constitute a Transaction for purposes of this Agreement:

- W. **Variable Charges** are costs that may change from month to month, due to the basis of calculation. For the current RCSC contract, effective July 2010, the monthly Variable Charges are calculated based on the number of contacts at the call center each month, and the number of cards processed at the fulfillment center each month. The Participating Jurisdictions shall review and approve any changes to this definition brought about by a change in the billing formula for the current RCSC contract or any further contract for services covered by the current RCSC contract before such changes are implemented.

Section 1.02: Interpretations. For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- A. All references in this Agreement to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement as originally executed. The words "herein," "hereof," "hereunder," "herewith" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision hereof.
- B. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.
- C. The headings and captions used in this Agreement are for convenience of reference only and shall not define, limit or describe any of the provisions hereof or the scope or intent hereof.

## **ARTICLE 2 -- RESPONSIBILITIES AND PROCUREMENT PROCESS**

Section 2.01: The Participating Jurisdictions' Responsibilities.

- A. **WMATA Responsibilities.** The Participating Jurisdictions will be involved in the development of the Scope of Work for contracts used to develop or operate the Regional SmarTrip® System. WMATA will then, on behalf of the Participating Jurisdictions and itself, publicize, award and administer the procurement aspects of the Regional SmarTrip® System, and will exercise technical control and management oversight of that procurement during its contract term. WMATA will retain all Financial Records, as defined in Section 1.01(G), for the Regional SmarTrip® System for three (3) years after

completion and/or termination of this Agreement, as defined in Section 8.01 below, unless there is an outstanding written financial or audit question or litigation which has not been resolved. In that instance, the Financial Records will be retained by WMATA until there is a resolution of the financial or audit question(s). Subject to approval of the appropriate budget and the availability of funds, WMATA will fund its proportionate share of its costs of the Regional SmarTrip® System as set forth below. All Participating Jurisdictions will verify the Master Settlement Report based on the best available transaction data available to them from their reporting systems. WMATA will receive or disburse funds per the Master Settlement Report and upload and download necessary operational information, such as the Hotlisted Card List, that is required to support regional operations.

- B. **Participating Jurisdiction Commitment and Responsibilities.** Each Participating Jurisdiction hereby commits (i) to initiate the necessary annual budget and appropriation actions, (ii) subject to annual budgetary appropriation by the legislative body, to pay WMATA in the form of advance quarterly funding payments during the fiscal year pursuant to annual fiscal year funding agreements, its proportionate share of the operating costs of the Regional SmarTrip® System, (iii) coordinate with WMATA in the development of the Scope of work for any procurement action involving the Regional SmarTrip® System and (iv) operate its transit system in a manner which complies with the Letter of Intent between the parties and supports the Regional SmarTrip® System. Subject to budgetary appropriations and with assurances to WMATA that all best efforts will be undertaken by each Participating Jurisdiction executive branch to secure those appropriations, the Participating Jurisdiction shall be solely responsible for providing its share of the funds. In making these commitments, each Participating Jurisdiction acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this Agreement. Each Participating Jurisdiction commits to review the Master Settlement Report, to receive or disburse funds per the Master Settlement Report and to upload and download necessary operational information, such as the Hotlisted Card List, that are required to support regional operations.

Section 2.02: Process.

- A. **Regional SmarTrip® System.** WMATA, using staff, consultants and contractors, shall undertake all required work associated with the operation of the Regional SmarTrip® System, as set forth in Section 1.01(N) and Section 2.01, and in accordance with WMATA procurement practices as set out in the WMATA Procurement Procedures Manual, WMATA Board resolutions and applicable Federal Transit Administration requirements.

**Section 2.03: Funding.**

- A. Operating Cost Responsibilities.** As hereinafter limited, the Participating Jurisdictions shall be responsible for their respective allocated shares of all direct and indirect costs, identified in the Operating Budget, Exhibit A, as defined in Section 1.01(K), subject to annual appropriations.

Each Participating Jurisdiction will provide to WMATA its share of the annual operating budget, in advance, by quarterly payments based upon WMATA's (a) anticipated expenditures and (b) adjustments based on actual payments for the previous quarter, and (c) termination costs for the upcoming quarter, as projected in Exhibit B and as invoiced to the Participating Jurisdictions on a quarterly basis. Each Participating Jurisdiction will confirm in writing or by electronic mail to WMATA, on or before the date of distribution of the final annual budget as outlined in Section 2.04A, each year during the Term of this Agreement that the necessary annual budgetary appropriations have been or will be made for the next fiscal year.

- B. Funds Advancement.** WMATA will not incur costs or obligations for the Operating Budget unless adequate funds are available, and each Participating Jurisdiction has obligated the necessary funds and has provided and advanced sufficient funds for WMATA's expenditures and commitments for the coming quarter.

- C. Payment Procedures.**

1. Each Participating Jurisdiction shall pay to WMATA in the form of advance quarterly funding payments due on the first day of July, October, January, and April during the fiscal year that Participating Jurisdiction's share of the Operating Costs. The quarterly billing shall, at a minimum, cover WMATA's expected expenses for the following quarter. Late payments may be assessed an interest fee measured by WMATA's lost overnight earnings amount. Such amount shall, at a minimum, cover the cost of any funding used to cover the Participating Jurisdiction's share of Operating Costs which were paid late.

If the effective date for this Agreement is during a given quarter and Operating Costs will be incurred prior to the next payment date set forth in Section 2.03.C.1, then a pro rata share of the first quarter's scheduled payment shall be made to WMATA within fifteen (15) business days after invoicing for that amount by WMATA.

2. "Costs incurred within a fiscal year" shall be defined by the date stamp that is applied by WMATA to the hard copy invoice when it is received

from the Contractor or other sources of expenses associated with Regional SmarTrip® System.

3. The quarterly invoice prepared for the Participating Jurisdictions shall cover the Regional SmarTrip® System's projected expenses for the upcoming quarter, as presented in the annual budget, as well as adjustments for costs incurred within the fiscal year, based on actual payments made by WMATA during the previous quarter. If actual payments made by WMATA during the previous quarter were less than the budgeted (invoiced) amount, the quarterly invoice will show a credit to the Participating Jurisdictions to be applied to the amount due for the current quarter. The quarterly invoice for an upcoming Quarter 1 period of a fiscal year shall be based on the proposed annual budget for that upcoming fiscal year as provided as of May 1<sup>st</sup> to the Participating Jurisdictions. Any adjustments between the May 1 proposed budget and the approved budget shall be made at the same time as other adjustments as required under §2.03.C.6.
4. Costs incurred within a fiscal year will be carried forward no more than two quarters into the next fiscal year, such that all costs incurred within a fiscal year will be invoiced to the Participating Jurisdictions no later the Q2 invoice of the following fiscal year. Any costs incurred within a fiscal year that are not invoiced to the Participating Jurisdictions by Month 4 of the next fiscal year will be paid by WMATA, except for conditions described in Section 2.03 C.5 and Section 2.04 B.
5. On an exception basis, any costs for a fiscal year that need to be carried forward more than the time period described in Section 2.03 C.4, for example contract closeout costs, will be presented to the Participating Jurisdictions, in advance of those costs being included in a quarterly invoice.
6. The invoice shall be developed as described in Section 2.03.C.6. Within twenty (20) days after the close of a quarter, WMATA shall run the Regional Ridership Reports for the immediately preceding quarter. WMATA shall then prepare the invoice for the succeeding quarter to be composed of the estimated costs for that quarter, the previous quarter's Regional Ridership Report and the difference between the estimated costs of the previous quarter and the actual expenses incurred for the previous quarter. The invoice for the second quarter of a given fiscal year shall also include any unbilled expenses from the previous fiscal year. The invoices shall be submitted to the WMATA Office of Accounting no later than the end of the first month of the quarter. The invoices shall be distributed to the Participating

Jurisdictions no later than fifteen (15) calendar days after receipt within the Office of Accounting. The Participating Jurisdictions will have at least thirty (30) days to pay the invoice to WMATA. Payment will be deemed late if not received by the later of the 31<sup>st</sup> day after invoicing or the first day of the quarter covered by the invoice.

Section 2.04: Operating Budget and Schedule.

- A. **Operating Budget and Schedule Responsibilities.** WMATA has developed a sample estimated budget (Exhibit A) and schedule (Exhibit B) as an example of the annual overall Operating Budget. Exhibits A and B will be updated at least annually. WMATA will prepare a draft budget for the upcoming fiscal year based on estimated expenses. After review by the Board of Directors of WMATA if necessary, the draft proposed annual budget shall be distributed to all Participating Jurisdictions no later than April 1. Following review and discussion, a final proposed annual budget will be distributed for approval by Participating Jurisdictions. Participating Jurisdictions will have three weeks from the distribution of the final proposed annual budget to respond with comments; otherwise, "no response" will indicate approval. Final proposed annual budget shall be approved by Participating Jurisdictions by May 31, with WMATA Board of Directors' approval if necessary by June 30. If WMATA is undergoing contract negotiations that may impact the proposed annual budget, the timing of distribution of the final proposed budget may be modified. Any revision to Exhibits A and/or B during the fiscal year shall be made only after agreement of all Participating Jurisdictions. The revised Exhibit B shall then form the basis for the quarterly payments. Participating Jurisdictions may request additional services through WMATA as the contracting agency which can be included in Exhibit B and approval shall not be unreasonably withheld under existing WMATA policies so long as there are no significant impacts on the Regional SmarTrip<sup>®</sup> System, other Participating Jurisdictions or the smart card.
- B. **Yearly Budget Review and Audit.** As a part of its budget responsibilities WMATA shall notify the Participating Jurisdictions as soon as possible of any changes to the RCSC contract, RSMA contract, or other cost elements in the OFA annual budget, which would result in an increase to the Participating Jurisdictions of more than 25% of the approved fiscal year budget. These changes will be presented to the Participating Jurisdictions at least one month in advance of the changes being included in the Participating Jurisdictions' quarterly invoices. The Participating Jurisdictions will make their best efforts to fund cost increases that occur during a Fiscal Year. At the close of the fiscal year, WMATA will initiate an audit of the expenses and provide the Participating Jurisdictions with a reconciliation of the invoiced expenses with the actual expenses. All Participating Jurisdictions shall honor any adjustments to the year's expense allocation resulting from such audit.

Participating Jurisdiction payments or credits resulting from audit adjustments shall be made with the quarter's operating budget payment of the subsequent fiscal year following the completion of the audit.

- C. Post-Agreement Termination.** During any stage of the Operating Budget, if any Participating Jurisdiction for any reason: (i) fails to appropriate the necessary funding for a fiscal year and/or fails to notify WMATA, pursuant to Section 2.03(A), that the necessary appropriation has been made for the fiscal year; (ii) fails to provide timely advance quarterly funding for WMATA's costs, (iii) if the funds deposited with WMATA are forecasted as not being sufficient to fund the Regional SmarTrip<sup>®</sup> System, including projected cost overruns; and/or (iv) decides to withdraw from the Regional SmarTrip<sup>®</sup> System and agreement is not reached by the remaining Participating Jurisdictions on funding the ensuing regional costs; WMATA will give all signatories to this Agreement written notification that it plans to terminate the Regional SmarTrip<sup>®</sup> System ("Termination Trigger Notification") at a stated date. This section is not subject to the dispute resolution steps of Article 5 below. The "Termination Date" in the Termination Trigger Notification will be determined by WMATA based upon any of the following factors:

1. WMATA's determination that one or more Participating Jurisdiction's stated appropriations or invoice payment are insufficient to fund each Participating Jurisdiction's share of the procurement, including cost overruns, OR
2. WMATA's finding that one or more Participating Jurisdiction has not timely submitted its quarterly payment, in accord with the quarterly invoice for its share of the Operating Budget, OR
3. The funds deposited with WMATA are forecasted by WMATA not to be sufficient to fund the Regional SmarTrip<sup>®</sup> System and the Participating Jurisdictions are not able to reach agreement on the additional funds and contribution schedule necessary to meet the regional costs.

The Termination Trigger Notification shall be provided, if possible, to all signatories to this Agreement at least forty-five (45) days prior to the Termination Date. (Exception: in the event termination is triggered by a failure to certify the appropriation of funds by May 31, only thirty (30) days notice will be provided). Within that period, all signatories and WMATA shall meet and confer to resolve the funding shortfall. If any Participating Jurisdiction has not remedied the inadequacy or failure identified in the notice and no resolution has been identified, WMATA will issue a Termination for

Convenience and take those steps necessary to stop work, terminate, and close out the Regional SmarTrip® System on or after the Termination Date.

The costs of a Termination for Convenience occurring due to a failure of a Participating Jurisdiction to meet any of its financial obligations or due to a Participating Jurisdiction's withdrawal prior to the close of the fiscal year that are not agreed to by the other Participating Jurisdictions, shall be paid by the Participating Jurisdiction causing the need for the Termination for Convenience, along with any other costs such as staff costs, attorneys' fees, litigation expenses, and general overhead as may be imposed by WMATA, in agreement with the other remaining Participating Jurisdictions. Punitive costs, by whatever name, shall not be imposed. If any part of the Regional SmarTrip® System is terminated pursuant to this section, WMATA shall have no further responsibility to any signatory to continue the Regional SmarTrip® System except for those signatories who elect to continue as part of the Regional SmarTrip® System under the terms of this Agreement as they may be amended or modified in the future. The provisions of Section 2.01(B) of this Agreement, relating to each Participating Jurisdiction's responsibilities, shall survive the termination of this program and this Agreement.

If there is no Participating Jurisdiction or Participating Jurisdictions causing the Termination for Convenience then all Participating Jurisdictions agree to share Termination for Convenience costs including any other costs such as staff costs, attorneys' fees, litigation expenses, and general overhead on a pro rata basis based on their respective share of the Operating Budget for that fiscal year, and to make payment of their share of those costs as soon as possible.

Section 2.05: Formulas for Allocating Operating Budget And Costs Among Participating Jurisdictions. Each year, WMATA shall develop a budget for Operating Costs, as defined in Section 1.01(K), for the upcoming fiscal year, based on actual operating cost experience, projected costs, and any anticipated changes in smart card market penetration among Participating Jurisdictions and/or any anticipated changes in membership of Participating Jurisdictions.

Operating Costs as defined in section 1.01(K) shall be allocated to WMATA and the Participating Jurisdictions based on the combination of three formulas. The majority of the Operating Costs are typically allocated using the "Transaction Based" formula, with items such as hardware/ software maintenance and communications costs allocated using the "Garage Based" formula. The third formula deals with the costs of the CPOS Device system. The specific formula to be applied each line item for the upcoming fiscal year shall be identified in the proposed annual budget. Participating Jurisdiction acceptance of the proposed annual budget shall constitute acceptance of the allocation formulas applied within the budget.

Formula 1 is "Transaction Based," which shall allocate transaction-based costs among Participating Jurisdictions based on the number of smart card transactions, as defined in Section 1.01(V). These Operating Costs will be allocated to each Participating Jurisdiction based on the number of transactions projected for that Participating Jurisdiction for the upcoming fiscal year proportional to the total number of transactions among all Participating Jurisdictions projected for the upcoming fiscal year.

Operating Costs x  $\frac{\text{Participating Jurisdiction's Number of Transactions}}{\text{Number of Transactions System-wide}}$  - Share of Costs

Formula 2 is "Garage Based," which shall allocate garage based costs among Participating Jurisdictions based on the number of Bus Garages that are connected to the Data Warehouse and operated by each Participating Jurisdiction, in proportion to the total number of Bus Garages among all Participating Jurisdictions that are projected to be connected to the Data Warehouse for the upcoming fiscal year.

Operating Costs x  $\frac{\text{Participating Jurisdiction's Number of Bus Garages}}{\text{Number of Bus Garages System-wide}}$  - Share of Costs

Formula 3 is "CPOS Device Based," which shall allocate costs for the operation and maintenance of the Compact Point-of-Sale (CPOS) network among Participating Jurisdictions based on Participating Jurisdiction ownership of the CPOS devices.

CPOS Operating Costs x  $\frac{\text{Participating Jurisdiction's \# of CPOS Devices}}{\text{Number of CPOS Devices System-wide}}$  - Share of CPOS Costs

The Operating Cost Budget developed from the above calculations shall be used to prepare the annual Cash Flow (Exhibit B), which shall be distributed to all Participating Jurisdictions as set forth in Section 2.04(A).

Section 2.06: Other Agreements. Nothing in this Agreement shall be construed to modify, diminish or supersede any existing rights, agreements or arrangements between WMATA and Participating Jurisdictions on other matters.



### ARTICLE 3 - CLEARING OF TRANSACTIONS

Section 3.01: Clearing and Settlement of Transactions. All transactions will be cleared (reconciliation of data) among the Participating Jurisdictions on a monthly basis with settlement (transfer of funds) on a monthly basis.

Section 3.02: Settlement Schedule. On the fifth business day after the close of a month each Participating Jurisdiction shall run the appropriate Jurisdiction smart card reports, as identified by WMATA and approved by the Participating Jurisdictions, to quantify the smart card value added through cash, fare media trade-in, and credit/debit loads on smart cards at the Participating Jurisdiction fare collection devices, loads on smart cards at Participating Jurisdiction owned Compact Point-of-Sale (CPOS) devices, credit/debit autoloads at Participating Jurisdiction fare collection devices, and loads at Multifunction Point of Sale (MPOS) devices for the preceding month. The Participating Jurisdiction smart card reports shall also include smart card value used, pass purchases, and pass uses at each Participating Jurisdiction.

Between five (5) and seven (7) business days after the close of a month, WMATA will produce a draft Master Settlement Report from regional smart card data available in the Data Warehouse and will provide the draft report to the Participating Jurisdictions. The affected Participating Jurisdiction and WMATA will attempt to resolve any discrepancies prior to the distribution of the final report for settlement. If there is a disagreement between a Participating Jurisdiction and WMATA regarding the monthly settlement data, the affected parties will decide whether to settle before resolution of the disagreement, while allowing the unaffected parties to settle their transactions on schedule. WMATA shall calculate the amounts due to or from each Participating Jurisdiction for monthly settlement, and shall provide the final report to the Participating Jurisdictions by business day nine (9) after the close of the month. The schedule for Clearing and Settlement can be summarized as follows:

Schedule (days after close of month)	WMATA Responsibilities	Participating Jurisdiction Responsibilities
Business Day 5		Produce financial reports from Participating Jurisdiction Central Computer for Participating Jurisdiction-specific data. Use this report to compare to data that will be provided by WMATA in the draft Master

		Settlement Report. The absence of a report from a Participating Jurisdiction will be deemed to be an acceptance of the WMATA draft Master Settlement Report.
Business Days 5 to 7	Produce draft regional Master Settlement Report showing all Participating Jurisdictions, from regional data in Data Warehouse.	
Business Day 7	Provide draft regional Master Settlement Report to Participating Jurisdictions.	
Business Day 8	Attempt to resolve any discrepancies between draft Master Settlement Report and Participating Jurisdiction smart card reports by reviewing with Participating Jurisdiction.	Identify and discuss discrepancies between Participating Jurisdiction smart card reports and draft Master Settlement Report with WMATA.
Business Day 9	Provide final Master Settlement Report to Participating Jurisdictions with ACH transfer amounts. Submit ACH for sending funds to Participating Jurisdictions in deficit	Participating Jurisdictions in surplus submit ACH for sending funds to Participating Jurisdictions in deficit
Business Day 10	Initiate ACH to deficit jurisdictions	Surplus jurisdictions initiate ACH to deficit jurisdictions.

The current Master Settlement Report is included in Exhibit C. Should changes be required to the Master Settlement report, or supporting financial reports, WMATA will present the changes to the Participating Jurisdictions as part of the recurring meetings among Participating Jurisdictions for review and concurrence.

The amounts due to or from each Participating Jurisdiction for monthly settlement shall be based on the following allocations:

1. The funds collected for credit/debit autoloans, for which payment has been processed by WMATA, shall be reported as revenue received by the

Participating Jurisdiction that receives the credit/debit payment from the website. Funds shall be transferred from the Participating Jurisdiction that receives the credit/debit payment from the website to Participating Jurisdictions according to the revenue sharing formula for the stored value or product that was purchased through the website as part of the monthly settlement process and each Participating Jurisdiction will be responsible for accounting for such funds.

2. The funds collected for cash, fare media trade-in, and credit/debit loads occurring at a Participating Jurisdiction Fare Collection Device shall be reported as revenue received by that Participating Jurisdiction, and each Participating Jurisdiction will be responsible for accounting for such funds.
3. Funds for the value of SmartBenefits autoloads shall be reported as revenue received by the Participating Jurisdiction that is paid by the sponsoring employer. Funds shall be transferred from the Participating Jurisdiction that is paid by the sponsoring employer to the Participating Jurisdictions according to the revenue sharing formula for the stored value or product that was purchased through SmartBenefits as part of the monthly settlement process and each Participating Jurisdiction will be responsible for accounting for such funds.
4. The funds collected for value loaded at Participating Jurisdiction owned or leased Compact Point of Sale (CPOS) or Multifunction Point of Sale (MPOS) device shall be held and reported as revenue received by the Participating Jurisdiction CPOS or MPOS owner or lessee and each Participating Jurisdiction will be responsible for accounting for such funds.
5. WMATA, as the contracting agency for the RCSC, shall receive the funds collected from sales of any value loaded at a WMATA-owned MPOS operated by the RCSC. These funds shall be reported as revenue received by WMATA. If MTA obtains its own MPOS device or devices, it shall account for the revenues loaded through those devices.

The sum of items 1-5 shall constitute total value loaded at each Participating Jurisdiction.

The "Settlement Position" of a Participating Jurisdiction shall be calculated by totaling the following during a calendar month:

- Stored Value added at the Participating Jurisdiction
- Stored Value deducted at the Participating Jurisdiction (excluding pass purchases with stored value)
- Product revenue allocated to a Participating Jurisdiction (accounts for stored value deductions for product purchases, and the applicable revenue-sharing agreement which will be determined at time of product definition)
- Autoload credit payments due to a Participating Jurisdiction
- Other adjustments (late-arriving transactions, fraud or loss attributable to a specific Participating Jurisdiction, prior month's adjustments, etc.)

**Stored Value Added - Stored Value Deducted +/- Product Revenue Allocated +/- Adjustments - Settlement Position**

Participating Jurisdictions with a deficiency between value loaded and value deducted for payment or pass purchase, after applying the Settlement Position formula, shall be considered in a deficit (negative) Settlement Position, and shall be due funds from Participating Jurisdictions that are in a surplus (positive) Settlement Position. In accordance with the agreed revenue sharing formula, Participating Jurisdictions with a surplus of funds loaded compared to value deducted, after applying the Settlement Position formula, shall owe funds. Participating Jurisdictions with a surplus shall transfer funds to the Participating Jurisdictions in a deficit, in an amount based on their proportional share of the total surplus. Participating Jurisdictions with a deficit shall receive funds from Participating Jurisdictions in surplus based on the reported deficiency at each Participating Jurisdiction. The result of these adjustments shall be that no Participating Jurisdiction shall have a negative position. All Participating Jurisdictions shall have either a zero balance or a surplus. In any one month, should the total regional surplus net of previous disbursements of funds be insufficient to fund the total regional deficit, then the entire positive or negative position for all Participating Jurisdictions dating from July 1, 2010 shall be considered for purposes of that given month's settlement of funds.

WMATA shall give all Participating Jurisdictions a copy of the approved report showing the final surplus and deficit calculations for the month at least one (1) business day prior to the date the ACH must be completed by Participating Jurisdictions in surplus to implement the reconciliation of funds for the given month. Reasonable commercial efforts shall be used to transfer the funds due to or from each Participating Jurisdiction by means of an Automated Clearinghouse transaction or check if agreed to by the involved Participating Jurisdictions. In no case will interest be paid to any Participating Jurisdiction resulting from the late payment of cleared funds.

Section 3.03: Authorization of Participating Jurisdiction-Initiated ACH Transactions. To facilitate the speedy transfer of funds as described in Section 3.02, each Participating Jurisdiction shall designate an account to hold its smart card revenues and shall authorize ACH deposits into that designated account, should the Participating Jurisdiction be in a deficit settlement position and Participating Jurisdiction-initiated withdrawals from that designated account, should the Participating Jurisdiction be in surplus settlement position. Participating Jurisdictions must ensure that necessary funds are available in the settlement account for the ACH transaction, should the Participating Jurisdictions be in a surplus position and be required to initiate an ACH transaction to Participating Jurisdictions in deficit positions. Should insufficient funds be available for settlement due to a Participating Jurisdiction's shortfall in its account, that

Participating Jurisdiction shall take all reasonable actions to provide the necessary funds. If any insufficient funds conditions are not corrected within a five (5) day period subsequent to the date established for the ACH transaction, WMATA shall take all necessary actions to issue a Termination Trigger Notification to all Participating Jurisdictions following the process identified in Section 2.04.

Section 3.04: Ownership of "Float". The investment earnings on funds received (commonly known as "float") by Participating Jurisdictions shall belong solely to the Participating Jurisdiction holding any uncommitted funds. Accounting of surpluses at the end of the clearing process and subsequently shall be the sole responsibility of each Participating Jurisdiction holding such funds.

Section 3.05 Use of Credit and Debit Capabilities. Any Participating Jurisdiction wishing to make use of the credit and debit capabilities of the Regional System through the ownership of a credit/debit enabled point-of-sale device or other credit/debit devices or processes must execute the Credit/Debit Authorization Agreement with WMATA. The use of a WMATA or Maryland Transit Administration owned device is not covered by the requirements of this section.

Section 3.06 Loss from Fraud or Abuse. Revenue losses associated with balance protection and any fraud or abuse not directly attributable to the failure of any one Participating Jurisdiction to properly follow established operating procedures shall be shared regionally based on value deducted at each Participating Jurisdiction. Any losses associated with a Participating Jurisdiction's management or operation of credit/debit capability shall be that Participating Jurisdiction's sole responsibility. Any loss associated with a Participating Jurisdiction's failure to properly follow established operating procedures shall also be that Participating Jurisdiction's sole responsibility.

#### ARTICLE 4 - RESERVE ACCOUNTS

Section 4.01: SmarTrip® Card Purchase Reserve. A reserve account of the Washington Metropolitan Area Transit Authority exists for the purchase of SmarTrip® cards. This reserve shall be used by WMATA on behalf of all Participating Jurisdictions to fund the purchase of SmarTrip® cards and to fund any changes to the Regional SmarTrip® system necessary to allow the use of a smart card for fare collection, which is not specifically designed for a given Participating Jurisdiction. As part of the proposed annual SmarTrip® Operating Budget, WMATA shall submit to the Participating Jurisdictions the current balance of the SmarTrip® Card Purchase Reserve along with the amount and expected uses for the reserve in the forthcoming year. Each Participating Jurisdiction shall pay into the reserve as required by the approved budget to fund future card purchases and future system changes described in this section, as part of each quarterly payment as determined in the Regional SmarTrip® Program Operating Budget. Proceeds from card sales will be returned to the reserve account. The purchase of smart cards which are specifically

designed for a given Participating Jurisdiction are the responsibility of that Participating Jurisdiction and shall not be funded from this reserve.

## ARTICLE 5 -- DISPUTES

Section 5.01: Dispute Resolution. Any disputes between Participating Jurisdictions, a Participating Jurisdiction and WMATA, or a Participating Jurisdiction and the RCSC arising out of this Agreement may be disposed of by the parties by written agreement and/or amendment of this Agreement. If the parties cannot resolve the dispute, then the party seeking a resolution shall provide written notice of the nature of the dispute and the issue(s) to the other party. The other party may respond within thirty (30) days. If the dispute is not resolved within thirty (30) days following the response, the dispute will be resolved in accordance with Section 5.02.

### Section 5.02: ADR and Court Jurisdiction.

- A. **Alternative Dispute Resolution ("ADR").** The parties agree to make their best good faith efforts to resolve any disputes which relate to or arise under this Agreement. Absent resolution, the parties agree to pursue any type of alternative dispute resolution procedure which appears to have a likelihood of successfully resolving any dispute. Either party may propose and the parties may agree to any type of dispute resolution procedure including but not limited to mediation, arbitration, mini trial, etc.
- B. **Court Jurisdiction.** In the event the parties do not jointly elect to use the procedure set forth in Section 5.02(A), any party may commence a civil action for resolution of the dispute in a court of competent jurisdiction.

## ARTICLE 6 -- NOTICES

Section 6.01: Written Notice. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or sent by a courier service or a national overnight delivery service, as the U.S. Overnight Express Mail, to any party hereunder as follows:

If to Alexandria Transit Company:

Ms. Sandy Modell  
General Manager  
Alexandria Transit Company  
3000 Business Center Drive  
Alexandria, VA 22314

**If to: Arlington County, Virginia:**

**Ms. Kelley MacKinnon  
Transit Operators Coordinator  
Department of Environmental Services  
Division of Transportation  
Transit Bureau  
2100 Clarendon Blvd., Suite 900  
Arlington, VA 22201**

**With a second copy to:**

**Mr. Steven MacIssac  
County Attorney  
2100 Clarendon Blvd., Suite 403  
Arlington, VA 22201**

**If to City of Fairfax, Virginia:**

**Mr. Robert Sisson  
City Manager  
City of Fairfax  
10455 Armstrong Street  
Fairfax, VA 22030**

**If to Fairfax County, Virginia:**

**Mr. Anthony H. Griffin  
County Executive  
12055 Government Center Parkway, 10<sup>th</sup> Floor  
Fairfax, VA 22035-5511**

**With a second copy to:**

**Mr. Thomas Biesiadny  
Acting Director  
Department of Transportation  
12055 Government Center Parkway, 10<sup>th</sup> Floor  
Fairfax, VA 22035-5511**

**If to Loudoun County, Virginia:**

**Mr. Scott W. Gross**  
Transit Operations Manager  
1 Harrison Street SE, mailstop #69  
Leesburg, VA 20175

With a second copy to:

**Ms. Tamara F. Dunlap**  
Assistant County Attorney  
1 Harrison Street SE, mailstop #06  
Leesburg, VA 20175

**AND**

**Loudoun County Director of Transportation Services**  
1 Harrison Street SE, mailstop #69  
Leesburg, VA 20175

If to Maryland Transit Administration:

**Maryland Transit Administration**  
MTA General Counsel  
6 St. Paul street  
Baltimore, MD 21202

With a second copy to:

**Maryland Transit Administration**  
Director, Office of Treasury  
6000 Metro Drive, Suite 180  
Baltimore, MD 21215

If to Montgomery County, Maryland:

**Ms. Darlene Flynn**  
Montgomery County Government  
101 Monroe Street, 5<sup>th</sup> floor  
Rockville, MD 20850

With a second copy to:



Mr. Howard Benn  
Montgomery County Government  
101 Monroe Street, 5<sup>th</sup> floor  
Rockville, MD 20850

AND

Ms. Carolyn Jones  
Management Services  
Montgomery County Government  
101 Monroe Street, 5<sup>th</sup> floor  
Rockville, MD 20850

If to the Potomac and Rappahannock Transportation Commission:

Mr. Al Harf  
Executive Director  
Potomac and Rappahannock Transportation Commission  
14700 Potomac Mills Road  
Woodbridge, VA 22192

With a second copy to:

Ms. Angela Lemon-Horan  
County Attorney's Office  
One County Complex Court  
Prince William, VA 22192-9201

If to Prince George's County, Maryland:

Mr. Haitham A. Hijazi, Director  
Department of Public Works and Transportation  
9400 Peppercorn Place, Suite 300  
Largo, MD 20774

With a second copy to:

County Attorney  
Office of Law, Room 5121  
14741 Governor Oden Bowie Drive  
Upper Marlboro, MD 20772

**If to WMATA:**

General Manager and Chief Executive Officer  
Washington Metropolitan Area Transit Authority  
Jackson Graham Building  
600 Fifth Street, N.W.  
Washington, D.C. 20001

**With a second copy to:**

General Counsel  
Washington Metropolitan Area Transit Authority  
Jackson Graham Building, Second Floor  
600 Fifth Street, N.W.  
Washington, D.C. 20001

**ARTICLE 7 -- AMENDMENT(S)**

Section 7.01: Amendment(s). This Agreement may be amended in writing by the parties. WMATA shall provide a written notification of any proposed changes to all Participating Jurisdictions. Within fifteen (15) days after delivery of the notification described above, a Participating Jurisdiction may request in writing a consultation meeting for the purpose of discussing any or all changes to the agreement. Following the receipt of such request from a Participating Jurisdiction, WMATA shall identify and inform all Participating Jurisdictions of the date, time, and location for the requested consultation meeting. Failure by any Participating Jurisdiction to request a consultation meeting will result in WMATA polling the Participating Jurisdictions for a vote on the changes. Within ten (10) business days following the consultation meeting, WMATA will poll in writing all the Participating Jurisdictions on their approval or disapproval with the recommended changes. WMATA and all Participating Jurisdictions must concur with the recommended changes for them to be approved. Failure of a Participating Jurisdiction to respond within ten (10) business days of the poll date shall be deemed concurrence on that Participating Jurisdiction's part. Such amendments will be valid upon execution by both parties.

**ARTICLE 8 -- TERM**

Section 8.01. The term of this Agreement shall begin on July 1, 2011 and shall have an initial duration to the expiration date of June 30, 2015 and shall automatically be renewed for successive additional five (5) year periods unless a majority of the Participating Jurisdictions give written notice that they do not wish to renew their participation ninety (90) calendar days prior to the expiration of the respective Agreements. If this Agreement is not renewed, the Participating Jurisdictions shall use the ninety (90) calendar day period prior to the expiration of the Agreement for the orderly termination of the Regional SmarTrip® System.

## ARTICLE 9 -- CIVIL RIGHTS AND NONDISCRIMINATION

Section 9.01. The parties to this Agreement recognize that WMATA, as the grantee of numerous present federal transit grants, is required to comply with those federal laws, regulations, executive orders or guidelines regarding civil rights and nondiscrimination strictures. Those applicable federal civil rights statutes and implementing regulations include, but are not necessarily limited to, the following:

- A. **Nondiscrimination In Federal Transit Programs.** WMATA agrees to comply, and assures compliance by each third party contractor at any tier and each subrecipient at any tier under the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex or age, and prohibits discrimination in employment or business opportunity.
- B. **Nondiscrimination -- Title VI of the Civil Rights Act.** WMATA agrees to comply and assures compliance by each third party contractor at any tier and each sub recipient at any tier under the Project, with all requirements prohibiting discrimination on the basis of race, color or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21 and any implementing requirements FTA may issue.
- C. **Equal Employment Opportunity.** WMATA agrees to comply, and assures the compliance by each third party contractor at any tier and each subrecipient at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:

### (1) General Requirements.

(a) WMATA agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. WMATA agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. WMATA also agrees to comply with any implementing requirements FTA may issue.

(b) If WMATA is required to submit and obtain Federal Government approval of its EEO program that EEO program approved by the Federal Government is incorporated by reference.

(2) Equal Employment Opportunity Requirements for Construction Activities. With respect to construction activities, WMATA agrees to comply, and assures the compliance by each third party contractor at any tier and each subrecipient at any tier, with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and any Federal statutes, executive orders, regulations and Federal policies pertaining to construction undertaken as part of the Project.

D. **Disadvantaged Business Enterprise.** WMATA agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

(1) WMATA agrees to comply with section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 as applicable.

(2) WMATA agrees that it shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. WMATA agrees to take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT.

E. **Nondiscrimination on the Basis of Sex.** To the extent applicable, WMATA agrees to comply with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1680 *et seq.*, which prohibit discrimination on the basis of sex, and any subsequent Federal requirements.

F. **Nondiscrimination on the Basis of Age.** WMATA agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*; and implementing regulations, which prohibit discrimination on the basis of age.

**G. Access Requirements for Persons with Disabilities.** WMATA agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. WMATA also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibit discrimination on the basis of handicap, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(10) Any implementing requirements FTA may issue.

- H. **Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections.** WMATA agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and the Public Health Service Act of 1912, 42 U.S.C. §§ 290dd-3 and 290ee-3, including any amendments to these acts.

#### **ARTICLE 10 -- ANTI-DRUG AND ALCOHOL POLICY**

Section 10.01. The parties to this Agreement recognize that WMATA, as the grantee to numerous transit federal grants, is required to comply with those federal laws, regulations, executive orders or guideline strictures regarding anti-drug and alcohol policy in transit work and operations, which include, but is not limited to, the following: "Drug-Free Workplace Act (DFWA) of 1988," 49 USC Sections 702 et seq.; "Requirements for a Drug-Free Workplace (Grants)," 49 C.F.R. Part 29; "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653; and "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654.

#### **ARTICLE 11 -- CERTIFICATION OF WMATA**

Section 11.01. WMATA makes the following representations as of the date of the execution of this Agreement as a basis for the undertakings on the part of the other Participating Jurisdictions:

- A. WMATA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder;
- B. WMATA by proper corporate action has duly authorized the execution and delivery of this Agreement;
- C. When executed and delivered by the Participating Jurisdiction and by WMATA, this Agreement will constitute the legal, valid and binding obligation of WMATA enforceable in accordance with its terms, except as such enforceability may be limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.
- D. No director, officer or employee of WMATA who exercises or has exercised any functions or responsibilities over any Procurement Contract shall have or obtain a personal or financial interest or benefit from any activity in connection with any such Procurement Contract or have an interest in any

contract, subcontract or agreement with respect therewith during the term of this Agreement.

## ARTICLE 12 -- CERTIFICATION OF PARTICIPATING JURISDICTION

Section 12.01. Each Participating Jurisdiction makes the following representations for its Participating Jurisdiction, and only for its Participating Jurisdiction, as of the date of the execution of this Agreement as a basis for the undertakings on the part of WMATA:

- A. Participating Jurisdiction has all necessary power and authority to enter into the transactions contemplated by this Agreement and to carry out its individual obligations hereunder;
- B. Participating Jurisdiction has duly authorized the execution and delivery of this Agreement;
- C. When executed and delivered by the Participating Jurisdiction and by WMATA, this Agreement will constitute the legal, valid and binding obligation of the individual Participating Jurisdiction enforceable in accordance with its terms, except as such enforceability may be limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally;
- D. No officer or employee of the Participating Jurisdiction who exercises or has exercised any functions or responsibilities over any procurement contract shall have or obtain a personal or financial interest or benefit from any activity in connection with any such procurement contract or have an interest in any contract, subcontract or agreement with respect therewith during the term of this Agreement.

## ARTICLE 13 - GOVERNING LAW

Section 13.01: General Rules. The applicable law to be used in disputes covered by this Operating Agreement shall be in accordance with the principles set forth in this section. For disputes between Participating Jurisdictions, all of which are within the same state, the law of that state (or the District of Columbia, as appropriate) shall be used. For region-wide contractual issues, the law of the place of the contract's execution shall be used unless otherwise specified in the contract at issue. Each state's conflict of laws rules shall be applicable since those laws are part of the state's laws.

Section 13.02: Effect of WMATA Compact. All matters involving WMATA shall be governed by the terms of the WMATA Compact.

#### **ARTICLE 14 - COUNTERPARTS**

Section 14.01. This Agreement may be executed in ten (10) identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one Agreement. The counterpart with the most recent date shall determine the date of entry of this Agreement by the parties given on page one.

#### **ARTICLE 15 – ORDER OF PRECEDENCE**

Section 15.01. Should there be any conflict in the terms of this Operations Funding Agreement and the Letter of Intent, the terms of the Operations Funding Agreement shall control.

[Remainder of Page Not Used]



Alexandria Transit Company

Attest:

Meghan Roberts By: Myah Marshall [Seal]

Witness

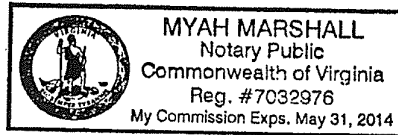
Dated: 11/02/11

Approved as to Form and Legal Sufficiency:

BY: Meghan Roberts

Dated: 11/02/11

[signatures continued on following page]



Arlington County, Virginia

Attest:

John Harrison By: Burton M. Danell [Seal]  
Witness Dated: 12-02-2011

Approved as to Form and Legal Sufficiency:

BY: [Signature]  
Dated: 11/25/11

[signatures continued on following page

City of Fairfax, Virginia

Attest:

*Melanie Bull*

By:

*Robert Sisson*

Robert Sisson, City Manager

Witness

Dated:



Approved as to Form and Legal Sufficiency:

BY:

*Brian J. Lubkeman*  
BRIAN J. LUBKEMAN, CITY ATTORNEY

Dated:

5/26/2011

[signatures continued on following page]

Fairfax County, Virginia

Attest:

JoAnn Hawach

By:

AKG

[Seal]

Witness:

Dated:

Approved as to Form and Legal Sufficiency:

BY:

Dated:

[signatures continued on following page]

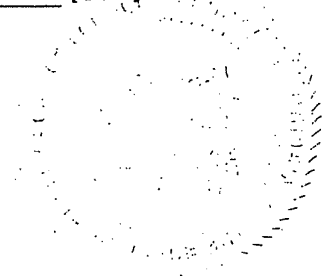
Loudoun County, Virginia

Attest:

\_\_\_\_\_ By:       *Shurt*       [Seal]

Witness       *Janita Gilbert*       Dated:       *5/9/11*      

Approved as to Form and Legal Sufficiency:



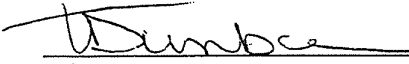
BY:       *UD*      

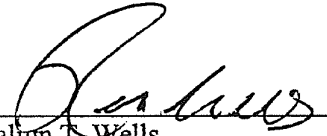
Dated:       *4/28/11*      

[signatures continued on following page]

Maryland Transit Administration

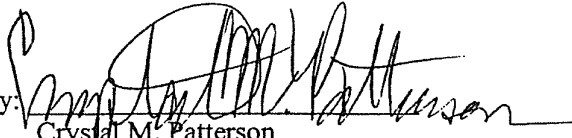
Attest:

  
\_\_\_\_\_  
Witness

By:  [Seal]  
\_\_\_\_\_  
Ralign T. Wells  
Administrator

Dated: 11/1/11

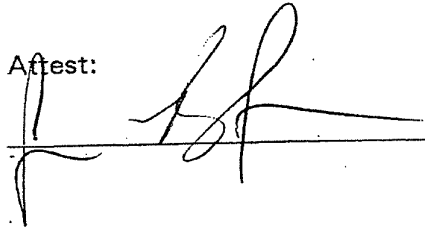

Approved as to Form and Legal Sufficiency:

By:   
\_\_\_\_\_  
Crystal M. Patterson  
Assistant Attorney General


Dated: 10/31/11

[signatures continued on following page]

Montgomery County, Maryland

Attest:  By:  [Seal]  
F&C Timothy Firestine  
Chief Administrative Officer  
Dated: 6/21/11

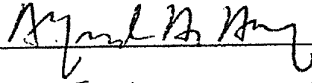
Approved as to Form and Legal Sufficiency:

BY:   
Dated: 6/8/11

[signatures continued on following page]

Potomac & Rappahannock Transportation Commission

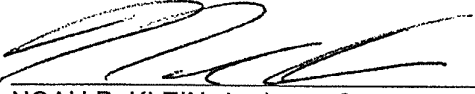
Attest:

Karen Z. Alts By:  [Seal]

Witness

Dated: JUNE 21, 2011

Approved as to Form and Legal Sufficiency:

BY:   
NOAH B. KLEIN, Assistant County Attorney

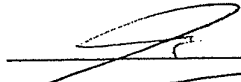
Dated: June 21, 2011

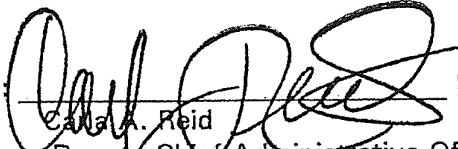
[signatures continued on following page]



Prince George's County, Maryland

Attest:


  
\_\_\_\_\_  
Witness

By:  [Seal]  
Carla A. Reid  
Deputy Chief Administrative Officer for  
Economic Development and Public  
Infrastructure

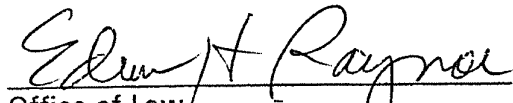
Dated:

Reviewed and Approval Recommended:

  
\_\_\_\_\_  
Haitham A. Hijazi, Director  
Department of Public Works and Transportation

  
\_\_\_\_\_  
Reviewed and Approval Recommended  
Donna Marks, Fiscal Coordinator

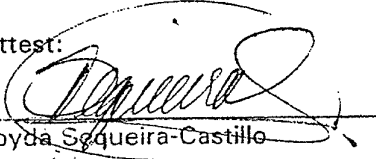
Reviewed as to Legal Form and Sufficiency:

  
\_\_\_\_\_  
Office of Law

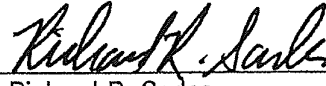
[signatures continued on following page]

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

Attest:

  
Loyda Siqueira-Castillo  
Secretary

By:



[Seal]

Richard R. Sarles  
General Manager and Chief Executive  
Officer

Dated:

Jun 30, 2012

Approved as to Form and Legal Sufficiency:

BY:

  
Office of General Counsel

# Exhibit A: Example Regional SmarTrip® System Operating Budget (FY11) – to be updated annually

Washington Area Metropolitan Transit Authority  
Office of SmartTrip

October 21, 2010

## Regional Customer Service Center Costs

Category	FY 2011 (Projected) Costs			
	Q1	Q2	Q3	Q4
0	106,000	106,000	106,000	106,000
1	571,190	571,190	571,190	571,190
2	440,316	440,316	440,316	440,316
3	50,000	50,000	50,000	50,000
4	90,000	90,000	90,000	90,000
5	1,433,506	1,433,506	1,433,506	1,433,506
6	71,925	71,925	71,925	71,925
7	151,041	151,041	151,041	151,041
8	1,461,474	1,461,474	1,461,474	1,461,474
<b>Total</b>	<b>4,831,824</b>	<b>4,831,824</b>	<b>4,831,824</b>	<b>4,831,824</b>

- Notes:**
- Existing RCSC contract ends FY11 Q1 (July 21, 2010).
  - Existing build costs to be incurred during first two quarters of contract (FY11 Q1 and Q2), but billed to partners over first three quarters (FY11 Q1, Q2, Q3).
  - RCSC Operations costs begin FY11 Q1.
  - Additional call volume projected due to introduction of First Products and Autobus, only paid if used.
  - Pricing reflects volume with DASH. Costs may be less than shown. Costs are brought in-house to WMATA.
  - Cost including WMATA project management @ 5% of RCSC project management.
  - Cost including WMATA overhead @ 10% of RCSC project management.

## Regional Point of Sale Fees

Category	FY 2011 (Projected) Costs			
	Q1	Q2	Q3	Q4
0	10,800	10,800	10,800	10,800
1	11,575	11,575	11,575	11,575
2	31,975	31,975	31,975	31,975
3	1,103	1,103	1,103	1,103
4	13,230	13,230	13,230	13,230
5	15,558	15,558	15,558	15,558
<b>Total</b>	<b>86,241</b>	<b>86,241</b>	<b>86,241</b>	<b>86,241</b>

- Notes:**
- WMATA project management @ 5% of CPOS Management fees.
  - WMATA overhead @ 10% of CPOS Management fees and project management.

FY2011 OFA Budget, REVISED 10-21-10.xls

RCSC & CPOS Fees

Page 5

Exhibit A (continued)

Washington Area Metropolitan Transit Authority  
Office of SmartWay  
October 21, 2010

Regional Software Maintenance Agreement Costs

Project	Description	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Notes 1	Software Support @ 500hrs	\$ 857,494	\$ 169,477	\$ 50,000	\$ 17,346.00	\$ 37,178.50	\$ 3,575.44	\$ 50,766.70	\$ 3,975.44	\$ 50,766.70	\$ 3,975.44
Notes 2	Core Module Licenses	\$ 251,513	\$ 0	\$ 0	\$ 23,258.33	\$ 4,874.38	\$ 3,907.30	\$ 15,362.45	\$ 1,687.30	\$ 15,362.45	\$ 1,687.30
Notes 3	Regional Support (480 hours)	\$ 80,968	\$ 20,242	\$ 50,000	\$ 150,000	\$ 10,121.00	\$ 10,121.00	\$ 1,124.56	\$ 855.07	\$ 1,124.56	\$ 855.07
Notes 4	WMATA Support (480 hours)	\$ 80,968	\$ 20,242	\$ 50,000	\$ 150,000	\$ 10,121.00	\$ 10,121.00	\$ 1,124.56	\$ 855.07	\$ 1,124.56	\$ 855.07
Notes 5	Travel Allowance	\$ 11,790	\$ 5,103	\$ 50,000	\$ 50,000	\$ 1,411.24	\$ 352.22	\$ 45.06	\$ 655.07	\$ 45.06	\$ 655.07
Notes 6	Sub-Total RSMMA Contract	\$ 1,635,222	\$ 314,437	\$ 300,000	\$ 1,137,346	\$ 119,897.54	\$ 127,247.71	\$ 13,819.71	\$ 19,442.84	\$ 13,819.71	\$ 19,442.84
Notes 7	Project Management @ 5%	\$ 81,761	\$ 15,722	\$ 15,000	\$ 56,867.30	\$ 5,994.88	\$ 6,362.39	\$ 695.99	\$ 972.64	\$ 695.99	\$ 972.64
Notes 8	Sub-Total Included in Project Management	\$ 1,716,983	\$ 330,159	\$ 315,000	\$ 1,194,213.30	\$ 125,892.42	\$ 133,610.10	\$ 14,515.70	\$ 20,415.48	\$ 14,515.70	\$ 20,415.48
Notes 9	Project Overhead @ 10%	\$ 171,698	\$ 33,016	\$ 31,500	\$ 119,421.33	\$ 12,589.24	\$ 13,361.01	\$ 1,451.57	\$ 2,041.55	\$ 1,451.57	\$ 2,041.55
Notes 10	Sub-Total Included in Project Mat. & Overhead	\$ 1,888,681	\$ 363,175	\$ 346,500	\$ 1,313,634.63	\$ 138,481.66	\$ 147,011.11	\$ 15,967.27	\$ 22,457.03	\$ 15,967.27	\$ 22,457.03
TOTAL	Total RSMMA Contract and Project Management	\$ 1,888,681	\$ 363,175	\$ 346,500	\$ 1,313,634.63	\$ 138,481.66	\$ 147,011.11	\$ 15,967.27	\$ 22,457.03	\$ 15,967.27	\$ 22,457.03

Notes:

- 1 Fixed systemwide general software support services. Distributed 50% rail and 50% bus. Bus distribution prorated based on 23 total garages.
- 2 Fixed systemwide core module upgrades. Distributed 50% rail and 50% bus. Bus distribution prorated based on 23 total garages.
- 3 Dedicated regional support. Distributed 100% regional bus. Regional bus distribution prorated based on 34 regional garages.
- 4 Dedicated WMATA support. Distributed 50% rail and 50% WMATA bus.
- 5 Systemwide travel allowance. Distributed 50% rail and 50% bus. Bus distribution prorated based on 23 total garages.
- 6 WMATA Project Management @ 5% of RSMMA cost
- 7 WMATA Overhead @ 10% of RSMMA cost & project management

Bus Garages Count is as follows:

WMATA	0
Fairfax Connector	2
Montgomery Co	3
Loudoun Co	1
Prince Georges Co	1
WVTC	1
Arlington	1
Alexandria	1
Fairfax CUE	1
DC Connector	1
TOTAL	23

FY2011 OPA Budget\_REVISED 10-21-10.xls

RSMMA Cost

Page 6

**Exhibit B: Example Quarterly Cash Flow (FY11) – to be updated annually**

Washington Area Metropolitan Transit Authority  
Office of SmarTrip®

October 21, 2010

**Regional SmarTrip Operations Funding Agreement  
FY 2011 Operating Budget  
Annual Summary**

Regional Partner Agency	PRCSO	CPOS	RSMA	Total
ART	\$ 28,633	\$ -	\$ 28,552	\$ 57,185
CUE	\$ 9,482	\$ -	\$ 28,552	\$ 38,034
DASH	\$ 50,057	\$ -	\$ 28,552	\$ 78,609
DC Circulator	\$ 36,788	\$ -	\$ 28,552	\$ 65,340
Fairfax Connector	\$ 170,394	\$ -	\$ 85,655	\$ 256,050
Loudoun County Transit	\$ 21,381	\$ -	\$ 57,104	\$ 78,465
Maryland Transit	\$ 7,049	\$ -	\$ -	\$ 7,049
Prince George's	\$ 42,524	\$ -	\$ 28,552	\$ 71,076
PRTC	\$ 47,838	\$ -	\$ 28,552	\$ 76,389
Ride-On	\$ 213,370	\$ -	\$ 85,655	\$ 299,025
WMATA Rail	\$ 3,716,548	\$ -	\$ 549,814	\$ 4,266,362
WMATA Bus	\$ 982,045	\$ -	\$ 243,607	\$ 1,225,651
WMATA Parking	\$ 314,739	\$ -	\$ -	\$ 314,739
WMATA CPOS	\$ -	\$ 145,530	\$ -	\$ 145,530
<b>Regional Total</b>	<b>\$ 5,640,828</b>	<b>\$ 145,530</b>	<b>\$ 1,193,146</b>	<b>\$ 6,979,504</b>

**Exhibit B  
(continued)**

**Washington Area Metropolitan Transit Authority  
Office of SmarTrip®**

October 21, 2010

**Regional SmarTrip Operations Funding Agreement  
FY 2011 Operating Budget  
Quarterly Summary**

Regional Partner Agency	First Quarter			Total
	RCSC	CPOS	RSMA	
ART	\$ 8,438	\$ -	\$ 7,138	\$ 15,576
CUE	\$ 2,784	\$ -	\$ 7,138	\$ 9,932
DASH	\$ 14,751	\$ -	\$ 7,138	\$ 21,889
DC Circulator	\$ 10,841	\$ -	\$ 7,138	\$ 17,979
Fairfax Connector	\$ 50,213	\$ -	\$ 21,414	\$ 71,627
Loudoun County Transit	\$ 6,295	\$ -	\$ 14,276	\$ 20,571
Maryland Transit	\$ 1,267	\$ -	\$ -	\$ 1,267
Prince George's	\$ 12,531	\$ -	\$ 7,138	\$ 19,669
PRTC	\$ 14,097	\$ -	\$ 7,138	\$ 21,235
Ride-On	\$ 62,878	\$ -	\$ 21,414	\$ 84,291
WMATA Rail	\$ 1,095,222	\$ -	\$ 137,454	\$ 1,232,676
WMATA Bus	\$ 289,397	\$ -	\$ 60,902	\$ 350,299
WMATA Parking	\$ 92,750	\$ -	\$ -	\$ 92,750
WMATA CPOS	\$ -	\$ 36,383	\$ -	\$ 36,383
<b>Quarter Total</b>	<b>\$ 1,661,474</b>	<b>\$ 36,383</b>	<b>\$ 298,287</b>	<b>\$ 1,996,143</b>

Regional Partner Agency	Second Quarter			Total
	RCSC	CPOS	RSMA	
ART	\$ 7,814	\$ -	\$ 7,138	\$ 14,952
CUE	\$ 2,588	\$ -	\$ 7,138	\$ 9,725
DASH	\$ 13,660	\$ -	\$ 7,138	\$ 20,798
DC Circulator	\$ 10,039	\$ -	\$ 7,138	\$ 17,177
Fairfax Connector	\$ 46,498	\$ -	\$ 21,414	\$ 67,912
Loudoun County Transit	\$ 5,829	\$ -	\$ 14,276	\$ 20,105
Maryland Transit	\$ 1,576	\$ -	\$ -	\$ 1,576
Prince George's	\$ 11,604	\$ -	\$ 7,138	\$ 18,742
PRTC	\$ 13,054	\$ -	\$ 7,138	\$ 20,192
Ride-On	\$ 58,225	\$ -	\$ 21,414	\$ 79,639
WMATA Rail	\$ 1,014,187	\$ -	\$ 137,454	\$ 1,151,640
WMATA Bus	\$ 267,984	\$ -	\$ 60,902	\$ 328,888
WMATA Parking	\$ 85,887	\$ -	\$ -	\$ 85,887
WMATA CPOS	\$ -	\$ 36,383	\$ -	\$ 36,383
<b>Quarter Total</b>	<b>\$ 1,539,044</b>	<b>\$ 36,383</b>	<b>\$ 298,287</b>	<b>\$ 1,873,713</b>

Exhibit B  
(continued)

Regional SmarTrip Operations Funding Agreement  
FY 2011 Operating Budget  
Quarterly Summary (continued)

Regional Partner Agency	Third Quarter			Total
	RCSO	CPOS	RSMAS	
ART	\$ 7,810	\$ -	\$ 7,138	\$ 14,948
CUE	\$ 2,587	\$ -	\$ 7,138	\$ 9,724
DASH	\$ 13,654	\$ -	\$ 7,138	\$ 20,792
DC Circulator	\$ 10,035	\$ -	\$ 7,138	\$ 17,173
Fairfax Connector	\$ 46,479	\$ -	\$ 21,414	\$ 67,893
Loudoun County Transit	\$ 5,827	\$ -	\$ 14,276	\$ 20,103
Maryland Transit	\$ 2,284	\$ -	\$ -	\$ 2,284
Prince George's	\$ 11,600	\$ -	\$ 7,138	\$ 18,738
PRTC	\$ 13,049	\$ -	\$ 7,138	\$ 20,187
Ride-On	\$ 58,202	\$ -	\$ 21,414	\$ 79,616
WMATA Rail	\$ 1,013,785	\$ -	\$ 137,454	\$ 1,151,239
WMATA Bus	\$ 267,878	\$ -	\$ 60,902	\$ 328,780
WMATA Parking	\$ 85,853	\$ -	\$ -	\$ 85,853
WMATA CPOS	\$ -	\$ 36,383	\$ -	\$ 36,383
Quarter Total	\$ 1,539,044	\$ 36,383	\$ 298,287	\$ 1,873,713

Regional Partner Agency	Fourth Quarter			Total
	RCSO	CPOS	RSMAS	
ART	\$ 4,571	\$ -	\$ 7,138	\$ 11,709
CUE	\$ 1,514	\$ -	\$ 7,138	\$ 8,652
DASH	\$ 7,992	\$ -	\$ 7,138	\$ 15,130
DC Circulator	\$ 5,873	\$ -	\$ 7,138	\$ 13,011
Fairfax Connector	\$ 27,204	\$ -	\$ 21,414	\$ 48,618
Loudoun County Transit	\$ 3,410	\$ -	\$ 14,276	\$ 17,686
Maryland Transit	\$ 1,823	\$ -	\$ -	\$ 1,823
Prince George's	\$ 6,769	\$ -	\$ 7,138	\$ 13,927
PRTC	\$ 7,637	\$ -	\$ 7,138	\$ 14,775
Ride-On	\$ 34,065	\$ -	\$ 21,414	\$ 55,479
WMATA Rail	\$ 593,353	\$ -	\$ 137,454	\$ 730,807
WMATA Bus	\$ 156,785	\$ -	\$ 60,902	\$ 217,687
WMATA Parking	\$ 50,249	\$ -	\$ -	\$ 50,249
WMATA CPOS	\$ -	\$ 36,383	\$ -	\$ 36,383
Quarter Total	\$ 901,265	\$ 36,383	\$ 298,287	\$ 1,235,934

**FINAL**

Settlement Month: December-2010  
 Date Prepared: 4/26/11

Company	Stored Value Added A	Stored Value Used - Tax B	Stored Value Used - Pass Rates C	Sub-Total A-B-C	Prior Month's Adjustment	CPD Adjustment	Stored Value Position ...E-F-G	Stored Value Surplus Position (as % of total surplus)	Stored Value - Paid by Agency in Surplus - WVATA 100.00%	Stored Value - Paid by Agency in Surplus - GTA 0.00%	Stored Value - Total Payments
Abingdon-LRY	44,134.78	150,213.84		(106,079.06)	483.25		(11,836.20)		(248,234.49)	\$0.00	(156,046.29)
Fairfax City-Cue	18,314.40	30,880.75		(12,566.35)	73.00		(15,338.35)		(113,811.93)	\$0.00	(75,497.53)
Alexandria-DASH	56,334.35	161,113.20		(104,778.85)	(1,200.00)		(103,243.85)		(118,113.83)	\$0.00	(110,043.20)
D.C. Circulator											
Fairfax-Connecticut	235,811.73	700,916.64		(465,104.91)	1407.18		(441,297.73)		(444,254.43)	\$0.00	(444,254.43)
Lyncham	40,162.30	181,254.81		(141,092.51)			(435,423.20)		(155,437.64)	\$0.00	(155,437.64)
WVATA	44,472,188.00	47,843,973.23		(3,371,785.23)		203,293.33	4,251,702.55	100.00%			
PRTC-Connecticut	71,362.30	713,274.34		(641,912.04)		17,843.50	(624,068.54)		(623,110.33)	\$0.00	(623,110.33)
Montgomery-Alle Dc	212,101.42	731,277.78		(519,176.36)			(244,243.30)		(134,383.30)	\$0.00	(134,383.30)
PG County-The Bus	4,344.48	71,442.48		(67,097.99)			(91,116.18)		(125,516.78)	\$0.00	(125,516.78)
MTA	37,334.48	57,118.73	28,137.86	(47,884.25)	(207.23)		(1,445.18)	1.000%	(11,324.78)		(12,770.14)
<b>TOTAL</b>	<b>127,917,247.83</b>	<b>133,281,227.58</b>		<b>(5,363,979.75)</b>	<b>(1,027,427.23)</b>	<b>371,536.83</b>	<b>3,737,106.86</b>		<b>(2,172,347.24)</b>	<b>\$0.00</b>	<b>(45,124,647.56)</b>
							Surplus Total Deficit				(2,172,347.24)

**TOTAL PASS PAYMENTS TO REGIONAL PARTNERS**

Company	Regional 7-Day Day Bus Pass Payment	Regional 30-Day Disabled 7-Day Bus Pass Payment	REGIONAL PARTNERS Payments (Total)
Abingdon-LRY	181,527.37	(117,978)	63,549.37
Fairfax City-Cue	11,734.85	(5,771.55)	5,963.30
Alexandria-DASH	63,207.83	30.00	63,237.83
D.C. Circulator	61,247.83	182,121	243,368.83
Fairfax-Connecticut	52,422.20	(1,117.23)	51,304.97
Lyncham	50.00	50.00	100.00
WVATA	118,303.84	154,217	272,520.84
PRTC-Connecticut	2.00	2.00	4.00
Montgomery-Alle Dc	(110,337.83)	(117,243)	(227,580.83)
PG County-The Bus	(1,177.83)	80.00	(1,097.83)
MTA	50.00	50.00	100.00
<b>TOTAL</b>	<b>50.00</b>	<b>50.00</b>	<b>50.00</b>

NOTE: Regional Partners with a stored Shared Value position and a surplus Pass position may elect to not apply their Shared Value position against their surplus Pass position in lieu of applying EFTs to each Partner with a surplus Pass position. Upon this election, WVATA will include the Partner's stored Pass position in WVATA's Total Settlement amount.

Company	Stored Value Settlement (WVATA)	Pass Settlement (GTA/GTA)	Total # Settlement (WVATA)	Stored Value Settlement (GTA)	TOTAL REM TO PARTNER
Abingdon-LRY	(11,836.20)	(17,684.34)	160,897.24	\$0.00	131,376.70
Fairfax City-Cue	(15,338.35)	(1,250.30)	(15,122.45)	\$0.00	(15,122.45)
Alexandria-DASH	(103,243.85)	(1,200.00)	(104,443.85)	\$0.00	(104,443.85)
D.C. Circulator	\$0.00	(1,178.23)	211,779.25	\$0.00	110,571.02
Fairfax-Connecticut	(441,297.73)	(1,117.23)	(442,414.96)	\$0.00	(442,414.96)
Lyncham	(435,423.20)	50.00	(435,373.20)	\$0.00	(435,373.20)
WVATA	4,251,702.55	\$0.00	(4,251,702.55)	\$0.00	\$0.00
PRTC-Connecticut	(624,068.54)	\$0.00	(624,068.54)	\$0.00	(624,068.54)
Montgomery-Alle Dc	(244,243.30)	(118,238.23)	(362,481.53)	\$0.00	(362,481.53)
PG County-The Bus	(91,116.18)	(1,097.83)	(92,214.01)	\$0.00	(92,214.01)
MTA	(1,445.18)	100.00	(1,345.18)	\$0.00	(1,245.18)
<b>TOTAL</b>	<b>(2,172,347.24)</b>	<b>(18,442.17)</b>	<b>(2,190,789.41)</b>	<b>\$0.00</b>	<b>(2,190,789.41)</b>



Board Agenda Item  
June 19, 2018

ACTION – 10

Approval of the Proposed Consolidated Plan One-Year Action Plan for FY 2019

ISSUE:

Final action by the Fairfax County Board of Supervisors on the Proposed Consolidated Plan One-Year Action Plan for FY 2019 as issued by the Consolidated Community Funding Advisory Committee (CCFAC).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors (1) adopt the Proposed Consolidated Plan One-Year Action Plan for FY 2019 as issued by the CCFAC with funding allocations outlined below; and (2) authorize signature of the Consolidated Plan Certifications and Federal funding application forms (SF-424) required by the U.S. Department of Housing and Urban Development (HUD) by June 26, 2018.

TIMING:

Board action is requested on June 19, 2018, in order to maintain the schedule for the Consolidated Plan process, which is included in the Grantee Unique Appendices section of the revised Proposed Consolidated Plan One-Year Action Plan for FY 2019, and to ensure timely submission of the Plan to HUD.

BACKGROUND:

The revised Proposed Consolidated Plan One-Year Action Plan for FY 2019 (One-Year Action Plan for FY 2019) has been issued by the CCFAC for approval by the Board of Supervisors. The One-Year Action Plan for FY 2019 contains the proposed uses of funding for programs to be implemented in the fourth year of the Five-Year Consolidated Plan for FY 2016 - 2020. An annual action plan is required by HUD for three federal programs: Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME) and Emergency Solutions Grant (ESG). The document also describes the Continuum of Care for homeless services and programs in the Fairfax community, and the Consolidated Community Funding Pool (CCFP).

The One-Year Action Plan for FY 2019 includes the first year of the two-year funding cycle for the Fiscal Year (FY) 2019 - FY 2020 CCFP. The CCFP was established by the Board to provide funding for community-based programs by nonprofit organizations

Board Agenda Item  
June 19, 2018

through a competitive solicitation process. The FY 2019 CCFP funding awards were approved by the Board on May 1, 2018, contingent on the availability of funding.

In accordance with federal requirements, the One-Year Action Plan for FY 2019 contains several certifications, including drug-free workplace, affirmatively furthering fair housing, prohibition of excessive force, and lobbying requirements. Each of the certifications will be signed by the County Executive following Board approval of the One-Year Action Plan for FY 2019.

Funding levels incorporated in the Proposed One-Year Action Plan for FY 2019 and released for public comment were based on the funding levels of FY 2018, because the County had not received notification from HUD of the actual grant levels at the time of the CCFAC's action to release the documents. HUD notified the County of the actual grant levels on May 1, 2018. The funding levels incorporated into the revised Proposed One-Year Action Plan for FY 2019 are based on the actual funding levels. Total entitlement funding for the three programs of \$8,125,387 has been recommended in this item for: CDBG (\$5,574,509), HOME (\$2,103,044), and ESG (\$447,834). It is estimated that there will be approximately \$794,300 in CDBG program income and \$848,421 in HOME program income available for FY 2019.

In accordance with the Board-adopted Citizen Participation Plan for the Consolidated Plan process, the Plan was made available and circulated for review and comment by citizens, service providers, and other interested parties during the formal public comment period, which ended with a public hearing held by the Board on March 20, 2018. Following the public comment period and public hearing, the CCFAC considered all comments received and incorporated appropriate comments into the revised Proposed One-Year Action Plan for FY 2019. Pursuant to this item, the CCFAC now forwards the revised Proposed One-Year Action Plan for FY 2019 to the Board with a recommendation for final approval on June 19, 2018.

STAFF IMPACT:

None. No positions will be added as a result of this action.

FISCAL IMPACT:

Total anticipated entitlement funding of \$8,125,387 has been recommended in this item: \$5,574,509 in Fund 500-C50800, CDBG, \$2,103,044 in Fund 500-C50810, HOME, and \$447,834 in ESG funding in Fund 500-C50000, Federal-State Grant Fund managed by the Office to Prevent and End Homelessness. The FY 2019 Adopted Budget Plan included estimated funding of \$6,948,364, to include \$4,974,689 in Fund 500-C50800, CDBG, \$1,530,449 in Fund 500-C50810, HOME and \$443,226 in ESG funding in Fund 500-C50000, Federal-State Grant Fund. Based on HUD notification of actual awards, the FY 2019 Adopted Budget Plan will be increased by \$1,177,023, to include increases

Board Agenda Item  
June 19, 2018

in federal funding of \$599,820 in Fund 500-C50800, CDBG, \$572,595 in Fund 500-C50810, HOME, and \$4,608 in ESG funding in Fund 500-C50000, Federal-State Grant Fund. The funding increases for CDBG and HOME will be requested for appropriation at the *FY 2018 Carryover Review*. Since the actual ESG award received is not significantly different from what was included in the FY 2019 Adopted Budget Plan, staff will process the award administratively as per Board policy.

In addition, as part of the *FY 2018 Carryover Review*, an estimated total of \$2,380,109, to include \$2,101,824 in CDBG (Fund 500-C50800) and \$231,200 in HOME (Fund 500-C50810) funds, will be recommended to be carried forward for ongoing CDBG and HOME activities, as well as previously programmed funding for ongoing capital projects.

The estimated FY 2018 Fund 500-C50800, CDBG, program income is \$794,300 and Fund 500-C50810, HOME, program income is \$848,421. Actual program income will be appropriated as part of the *FY 2018 Carryover Review* for allocation and use in FY 2019.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Consolidated Plan One-Year Action Plan for FY 2019. The Proposed Consolidated Plan One-Year Action Plan for FY 2019 is also available on line at <http://www.fairfaxcounty.gov/rha>.

STAFF:

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Beverly Moses, Senior Program Manager, REFGM, HCD

**CONSOLIDATED PLAN  
ONE-YEAR ACTION PLAN**

**FOR  
FY 2019  
(July 1, 2018 – June 30, 2019)**



A Publication of Fairfax County, VA

**Fairfax County, Virginia**

*[For Board Consideration on June 19, 2018]*

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## Executive Summary

### AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

#### 1. Introduction

The Executive Summary of the Fairfax County Consolidated Plan One-Year Action Plan for FY 2019 (FY 2019 One-Year Action Plan) is intended to help facilitate citizen review and comment. This One-Year Action Plan discloses Fairfax County's intended uses of Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME) and Emergency Solutions Grant (ESG) funds, (collectively, the Federal Funds). It represents the fourth year's execution of the County's FY 2016-FY 2020 Five-Year Consolidated Plan (the Consolidated Plan) for these sources of Federal Funds and is based on the goals and strategies in the Five-Year Plan.

This FY 2019 One-Year Action Plan covers the period July 1, 2018 - June 30, 2019, and describes how Fairfax County intends to use the Federal Funds to meet the needs established in the Consolidated Plan.

#### 2. Summarize the objectives and outcomes identified in the Plan

*This could be a restatement of items or a table listed elsewhere in the plan or a reference to another location. It may also contain any essential items from the housing and homeless needs assessment, the housing market analysis or the strategic plan.*

The priority housing needs identified in the Consolidated Plan and in this FY 2019 One-Year Action Plan are consistent with the priority needs identified in the Housing Blueprint. The Blueprint identifies the residents who have the greatest need as: 1) individuals and families experiencing homelessness; 2) persons with low- and extremely-low incomes; 3) persons with disabilities; and 4) seniors with low incomes.

The identified affordable housing priorities respond to three critical elements of the affordable housing crisis in Fairfax County: (1) the severity of need, (2) the limited and dwindling supply of affordable housing, in both the owner occupied and renter occupied sectors, and (3) the increase in the number of low-income households who need these units. The severity of the housing problem for people experiencing homelessness and the need for renewed vigor in providing basic shelter warrants placing a high priority on people experiencing homelessness.

Low-income households, particularly those with incomes below 30 percent of the Area Median Income (AMI), are the most disadvantaged in finding and keeping housing in the current market. The economic downturn contributed to putting hard-working families at risk of homelessness.

The elderly are the fastest growing age segment in Fairfax County and are projected to comprise 21.6 percent of the County's population by the year 2020. Elderly homeowners make up a significant portion of the low-income households experiencing housing problems, including housing cost burden.

Persons with physical or mental disabilities require special attention as this group is likely to have both service and housing needs. Housing cost burden, overcrowding and inadequate living facilities are common problems faced by renters and owners with disabilities across income levels. Over two-thirds of renters and nearly two-thirds of owners with disabilities whose incomes are greater than 80 percent of the AMI had at least one housing problem (greater than 30 percent housing cost burden, overcrowding, or lack of complete kitchen and bathroom facilities). As with other segments, the lower the household income for persons with disabilities, the greater the disadvantages in finding and keeping housing in the current market. In addition, the Americans with Disabilities Act (ADA) and the Olmstead decision provide legal protections for persons with physical or mental disabilities that must be honored.

Finding ways to ensure that housing is affordable for all residents is essential to the long term economic health of Fairfax County. An adequate supply of "workforce housing" (housing that is affordable to essential workers) is especially critical to meet the demands of projected job growth and to ensure that the County can retain workers that provide services that are crucial to all citizens.

### **3. Evaluation of past performance**

This is an evaluation of past performance that helped lead the grantee to choose its goals or projects.

Fairfax County's Consolidated Annual Performance and Evaluation Report (CAPER) for FY 2017 is available at: <http://www.fairfaxcounty.gov/housing/data/caper>. This document includes major initiatives and highlights that were proposed and executed during July 1, 2016 - June 30, 2017.

Highlights of accomplishments in FY 2017 include:

- **Housing Blueprint:** The Fairfax County Redevelopment and Housing Authority (FCRHA) implemented the FY 2017 Housing Blueprint, which set specific goals in the areas of preventing and ending homelessness, providing affordable housing to persons with special needs, providing housing for low-income working families and producing workforce housing. Through implementation of the Housing Blueprint, the FCRHA played a critical role in meeting the 2017 goals of Fairfax County's Ten-Year Plan to Prevent and End Homelessness. A total of 244 formerly homeless households received permanent housing in FY 2017. Of the total formerly homeless households provided with permanent housing, a total of 139 (57 percent) were beneficiaries of rent subsidies and/or other supportive services provided by either the FCRHA or the Fairfax County Department of Housing and Community Development (HCD).
- **Moving to Work (MTW):** In FY 2017, the FCRHA continued to implement several activities that required MTW flexibility. These activities included (1) reducing the frequency of reexaminations

for continued participation in both the Public Housing program (now, Fairfax County Rental Program-Project Based Voucher program – FCRP-PBV) and the Housing Choice Voucher (HCV) program, (2) eliminating the Earned Income Disregard Calculation, and (3) beginning streamlined inspections of HCV units. The FCRHA also established a gateway for clients to move from Bridging Affordability to sustainable (Fair Market Rent – FMR) and/or subsidized housing. Through the Total Housing Reinvention for Individual Success, Vital Services and Economic Empowerment initiative (THRIVE), 43 households were prioritized, 22 households were provided HCV subsidies, and 21 were put into public housing (PH), including the FCRP-PBV program.

- **Bridging Affordability**: Implementation of the Bridging Affordability program continued in FY 2017. The Bridging Affordability program provides rental subsidies to (1) households experiencing homelessness and persons on the County's affordable housing waiting lists, (2) individuals with physical and sensory disabilities, and (3) victims of domestic violence. The program is operated by a collaborative of non-profit organizations, led by Northern Virginia Family Service (NVFS), under contract with Fairfax County. In FY 2017, a total of 65 new households were leased up under the program. The average income of all households under the program is \$18,862 or 17.3 percent of the AMI for a family of four.
- **Affordable Housing Preservation**: As of June 30, 2017, a total of 3,000 units had been preserved under the Board of Supervisors' Affordable Housing Preservation Initiative. Purchases in FY 2017 by the FCRHA and non-profit affordable housing providers financed with CDBG and HOME funds preserved 214 of the affordable units/beds. All non-profit properties financed with CDBG or HOME funds will remain affordable for at least 30 years.
- **Multifamily Rental Housing and Tenant Subsidy Programs**: The FCRHA and HCD operate four principal affordable housing programs: the FCRP-PBV and HCV programs, the Fairfax County Rental Program (FCRP) and the Bridging Affordability Program. The average household income served in these programs in FY 2017 was \$22,594, which was approximately 23 percent of the AMI for a family of three and met the federal definition of "extremely low income." A total of 17,499 individuals were housed in the FCRP-PBV, HCV and FCRP programs in FY 2017.

#### **4. Summary of Citizen Participation Process and consultation process**

Summary from citizen participation section of plan.

A Citizen Participation Plan was adopted by the Fairfax County Board of Supervisors on December 8, 1997, and was revised and amended by the Board of Supervisors on April 30, 2007. The purpose of the Citizen Participation Plan is to serve as a guide for public input and participation in the Consolidated Plan process. The full Citizen Participation Plan may be found in the Grantee Unique Appendices section.

Per the Citizen Participation Plan, the County provided opportunities for and encouraged citizen participation from all sectors of the community in developing this FY 2019 One-Year Action Plan. Particular emphasis was placed on participation by residents whose household incomes are below the federal poverty line, residents with low and moderate household incomes who reside in areas that are blighted or in which CDBG or HOME funds are used or are proposed to be used, and residents who



are minority and non-English speaking, as well as participation by residents with mobility, visual, speech or hearing impairments.

The County provided citizens, public agencies and other interested parties with reasonable and timely access to information and records relating to this FY 2019 One-Year Action Plan and the use of the federal funding resources in prior years. Notices were provided through a variety of communication channels to include the County website, various community newspapers including minority and foreign language publications, a press release and a stakeholder newsletter.

Citizens were provided with opportunities to comment on housing, community development, public services, and the population and program priority needs identified to be addressed by community-based organizations and this FY 2019 One-Year Action Plan at public hearings and public meetings, as well as by directly contacting the appropriate County agency, prior to the submission of this FY 2019 One-Year Action Plan to the U.S. Department of Housing and Urban Development (HUD).

Citizen input was received at a public hearing held by the Consolidated Community Funding Advisory Committee (CCFAC) on November 14, 2017, for public comments on housing, community development and the needs for public services to be provided by community-based organizations. The CCFAC is composed of representatives from a variety of boards, authorities and commissions. Membership may also include representation from human services provider groups, and consumer and community organizations, as appropriate. Members are appointed by the County Executive and serve for three year terms.

Citizen input also was received at a second public hearing held by the Board of Supervisors on March 20, 2018, to allow an additional opportunity for public comment on the FY 2019 One-Year Action Plan. Citizens were encouraged again to express their views on housing and community development needs, fair housing and the proposed community development programs. A Draft Consolidated Plan One-Year Action Plan for FY 2019 was released and distributed on February 6, 2018, to meet the federal requirement of a 30-day public comment period which ended on March 20, 2018.

## **5. Summary of public comments**

This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.

At the public hearing held by the CCFAC on November 14, 2017, citizens presented testimonies and comments concerning services for residents with very low household incomes, adults and youth with autism, and residents with limited English language proficiency. Testimonies were provided by and on behalf of (1) Service Source, (2) Britepaths (formerly, Our Daily Bread), (3) The Literacy Council of

Northern Virginia, (4) Annandale Christian Community for Action, and (5) the Fairfax County Human Services Council. The concerns, needs and priorities discussed at the November 14, 2017 public hearing included:

- There are more than 3,000 students with autism in Fairfax County Public Schools.
- There is a need for more assistance for programs focusing on employment readiness of autistic youth and adults and availability of employment opportunities for them.
- There is a 5 to 7 year waiting list for affordable housing through HCD-administered programs.
- There is a connection between lack of English proficiency and poverty.
- The effect of having unmet human services needs and unmet essential basic needs are different for different people.
- There are needs for:
  - more funding for affordable housing affordable to lower income residents;
  - more integrated comprehensive supportive services from various non-profit service providers and government programs for self-sufficiency and financial counseling;
  - promotion and encouragement of collaboration between non-profits, private and government sectors;
  - workforce development and apprenticeship programs;
  - more adult language and literacy programs for residents with extremely low English language proficiency;
  - industry-specific language skills training to allow for more promotional opportunities;
  - the continuation of safety net services and assistance for low-income working families;
  - more assistance for basic needs, such as for food and utilities;
  - more affordable childcare; and
  - self-advocacy training for unmet needs.

At the public hearing held by the Board of Supervisors on March 20, 2018, both oral and written testimonies were received from and on behalf of the (1) Korean Community Service Center, and (2) Edu-Futuro. Chairman Sharon Bulova invited all interested persons to present testimony about the Draft FY 2019 One-Year Action Plan. The needs and priorities discussed at the March 20, 2018 public hearing included:

- The need for more public services for the Asian community, including rental assistance and English as a Second Language classes;
- Increasing the funding allocation to the Consolidated Community Funding Pool (CCFP);
- The importance and success of the multicultural youth and parent programs and services funded through the CCFP, including:
  - High school student college prep,
  - Adult job training,
  - Immigrant and minority student networking and support system,
  - Youth leadership training,
  - Youth mentoring, and

- Youth public speaking.

## **6. Summary of comments or views not accepted and the reasons for not accepting them**

All written and oral testimonies presented before or during the public hearings on November 14, 2017, and March 20, 2018 were accepted for inclusion in the final version of this FY 2019 One-Year Action Plan submitted to the Board of Supervisors for approval.

## **7. Summary**

### **Summary of Response to Comments Received at the Public Hearing Held on November 14, 2017.**

The priorities for the CCFP are set for each two-year funding cycle. During the course of the CCFP priority-setting process for FY 2019 - FY 2020, the CCFAC received information from Fairfax County staff on the trends and emerging needs affecting the human services system in its delivery of services. Based on the data provided by the staff and the public input received, the CCFAC revised the CCFP priorities and identified the targeted focus areas within each priority area for which competitive CCFP funding proposals were solicited for the FY 2019 – FY 2020 funding cycle.

The identified CCFP targeted focus areas represent growing needs within the human services system. Many of the comments shared at the November 14, 2017 public hearing on the FY 2019 One-Year Action Plan are addressed by the new CCFP targeted focus areas that were identified in the Request for Proposal issued for the FY 2019 – FY 2020 CCFP funding cycle. The CCFAC held its public hearing on November 14, 2017, prior to the December 4, 2017 competitive proposals due date for FY 2019 – FY 2020 CCFP funding. The CCFAC continues to emphasize the targeted focus areas and to encourage all applicant organizations to apply solely or collaboratively for funding of programs which will help meet the priority needs of the Fairfax County.

The needs and priorities identified at the public hearings are addressed by the Annual Goals and Objectives, described in AP-20 of this FY 2019 One-Year Action Plan.

## PR-05 Lead & Responsible Agencies – 91.200(b)

### 1. Agency/entity responsible for preparing/administering the Consolidated Plan

Describe the agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
CDBG Administrator	FAIRFAX COUNTY	Department of Housing and Community Development
HOME Administrator	FAIRFAX COUNTY	Department of Housing and Community Development
ESG Administrator	FAIRFAX COUNTY	Office to Prevent and End Homelessness

Table 1 – Responsible Agencies

### Narrative (optional)

Fairfax County's affordable housing and community development programs are administered by the Fairfax County Department of Housing and Community Development (HCD). In addition to its role as a department of the County government which reports to the County Executive and the Board of Supervisors, HCD also serves as the staff for the FCRHA. The FCRHA is a separate political body whose members are appointed by the Board of Supervisors and which possesses specific powers granted by state code.

Every five years, the Board of Supervisors adopts a Consolidated Plan describing the County's needs, gaps in service and priorities for affordable housing, community service, homeless assistance, community development, neighborhood preservation and revitalization, employment and economic opportunity services, as well as the resources and strategies to be used to meet these needs. Each year, the Board also approves a One Year Action Plan which sets forth how the County will utilize the Federal Funds to meet the needs and priorities identified in the Consolidated Plan. The Consolidated Plans and One-Year Action Plans are prepared by HCD staff through an intensive citizen involvement process under the leadership of the CCFAC. Annually, a Consolidated Annual Performance Evaluation Report is submitted to HUD detailing how these funds were spent and the accomplishments achieved.

**Consolidated Plan Public Contact Information**

Fairfax County Department of Housing and Community Development

3700 Pender Drive, Suite 300 Fairfax, Virginia 22030

*Thomas Fleetwood, Director*

Telephone: (703) 246-5100 or TTY: (703) 385-3578

DRAFT

## **AP-10 Consultation – 91.100, 91.200(b), 91.215(I)**

### **Provide a concise summary of the jurisdiction’s activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(I))**

The County worked closely with the FCRHA to solicit the input of area housing and service providers through a variety of means. Examples include:

- **Housing Blueprint:** The County and the FCRHA coordinated the development of the Housing Blueprint with the interagency Housing Options Group, which is comprised of a variety of County agencies and non-profit organizations, and is focused on developing housing opportunities for people experiencing homelessness. The main body overseeing the development of the Housing Blueprint is the Affordable Housing Advisory Committee, which includes representatives of the FCRHA, the Fairfax-Falls Church Community Services Board, the Disability Services Board, the County's Homelessness Governing Board, many non-profit housing providers, the business community and others.
- **Moving to Work/THRIVE Initiative:** The FCRHA has convened a THRIVE Advisory Committee, which assists in the development and implementation of activities related to the FCRHA's Moving to Work designation. Most recently, the THRIVE Advisory Committee was instrumental in creating the strategic framework for the FCRHA's response to federal budget sequestration in the Housing Choice Voucher and FCRP-PBV programs.
- **Consolidated Community Funding Pool Steering Committee:** The CCFAC overhauled the priority setting process for the FY 2019-2020 cycle to ensure that the approach is more aligned with existing human services efforts, reflects community input and supports the recommendations of the CCFP Steering Committee. Based on community feedback, supportive data, and human services outcome information provided by staff, the CCFAC identified and developed six new priority categories which were approved by the Fairfax County Board of Supervisors on June 20, 2017. These new priority categories were incorporated into the Request for Proposal (RFP) funding application packages for FY 2019-2020, which was released on October 2, 2017.

The CCFP Selection Advisory Committee (SAC) reviews and evaluates all proposals in response to the RFP for each fiscal year during the months of January through March preceding the beginning of the next two-year funding cycle. As part of the SAC process, committee members identify programs to be placed on a restoration of funds list. The identified programs receive additional funding for each year of the funding cycle if there are any unspent funds from allocations to other programs. The SAC also is charged with creating a contingency plan to mitigate against any shortfall that might occur as a result of a reduction in either federal allocations of CDBG or Community Services Block Grant (CSBG) funding.

**Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.**

The Fairfax County Office to Prevent and End Homelessness (OPEH) manages, coordinates, and monitors day-to-day implementation of the local plan to end homelessness. As part of this responsibility, OPEH assures coordinated execution of the work of the Continuum of Care (CoC) and the many interagency workgroups functioning within the CoC. Workgroups have been formed to address the specific needs of families and individuals who chronically experience homelessness, families with children, veterans and unaccompanied youth. These workgroups consist of professional and volunteer staff from relevant organizations, including government, nonprofit, businesses and faith communities. Significant initiatives implemented by these workgroups include the local 100k Homes campaign, the redesign of the intake and assessment system, and the national Mayors Challenge to End Veteran Homelessness.

**Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS**

As part of its responsibility to manage, coordinate and monitor day-to-day implementation of the local plan to end homelessness, OPEH assures coordinated execution of the work of the CoC and leads collaborative decision-making efforts in the uses of federal homeless assistance funding, including ESG. Partners in the use of ESG funds include HCD and many community-based nonprofit organizations that provide emergency shelter, homelessness prevention and rapid rehousing assistance. Through collaborative discussions, these partners assist OPEH in making decisions about the type of programs to be supported, the organizations that will utilize the funding, and the policies and procedures required to ensure compliance with applicable federal regulations for effective and efficient use of the funding. Performance standards and evaluation outcomes are developed by OPEH and community partners to support and complement homeless system performance measures as defined by HUD.

**Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdiction's consultations with housing, social service agencies and other entities**

Table begins on next page.

**Table 2 – Agencies, groups, organizations who participated**

1	<b>Agency/Group/Organization</b>	Fairfax County Redevelopment and Housing Authority
	<b>Agency/Group/Organization Type</b>	PHA
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
2	<b>Agency/Group/Organization</b>	Fairfax County Community Action Advisory Board
	<b>Agency/Group/Organization Type</b>	Services - Housing Services - Children Services - Elderly Persons Services - Persons with Disabilities Services - Persons with HIV/AIDS Services - Victims of Domestic Violence Services - Homeless Services - Health Services - Education Services - Employment Service - Fair Housing Services - Victims



	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
3	<b>Agency/Group/Organization</b>	Fairfax County Public Schools/PTA/Schools Community
	<b>Agency/Group/Organization Type</b>	Child Welfare Agency Other government - County
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
4	<b>Agency/Group/Organization</b>	Fairfax-Falls Church Community Partnership on Ending Homelessness

	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services - Homeless
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
5	<b>Agency/Group/Organization</b>	Fairfax County Health Care Advisory Board
	<b>Agency/Group/Organization Type</b>	Services - Health Health Agency
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
6	<b>Agency/Group/Organization</b>	Fairfax-Falls Church Community Services Board

	<b>Agency/Group/Organization Type</b>	Services - Housing Services - Persons with Disabilities Health Agency
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Anti-poverty Strategy Lead-based Paint Strategy
7	<b>Agency/Group/Organization</b>	Fairfax County Alliance for Human Services
	<b>Agency/Group/Organization Type</b>	Services - Housing Services - Children Services - Elderly Persons Services - Persons with Disabilities Services - Persons with HIV/AIDS Services - Victims of Domestic Violence Services - Homeless Services - Health Services - Education Services - Employment Service - Fair Housing Services - Victims

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
8	<b>Agency/Group/Organization</b>	Fairfax County Human Services Council
	<b>Agency/Group/Organization Type</b>	Services - Housing Services - Children Services - Elderly Persons Services - Persons with Disabilities Services - Persons with HIV/AIDS Services - Victims of Domestic Violence Services - Homeless Services - Health Services - Education Services - Employment Service - Fair Housing Services - Victims

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy
9	<b>Agency/Group/Organization</b>	Fairfax Area Disability Services Board
	<b>Agency/Group/Organization Type</b>	Services-Persons with Disabilities
	<b>What section of the Plan was addressed by Consultation</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy
10	<b>Agency/Group/Organization</b>	Fairfax Area Commission on Aging
	<b>Agency/Group/Organization Type</b>	Services - Elderly Persons

	<b>What section of the Plan was addressed by Consultation</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy
11	<b>Agency/Group/Organization</b>	FCRHA Resident Advisory Council
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
12	<b>Agency/Group/Organization</b>	SkillSource Group, Inc.
	<b>Agency/Group/Organization Type</b>	Services-Employment Regional organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Economic Development
13	<b>Agency/Group/Organization</b>	Northern Virginia Affordable Housing Alliance
	<b>Agency/Group/Organization Type</b>	Housing Regional organization

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
14	<b>Agency/Group/Organization</b>	Cornerstones Housing Corporation
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services - Children Services - Elderly Persons Services - Persons with Disabilities Services - Persons with HIV/AIDS Services - Victims of Domestic Violence Services - Homeless Services - Health Services - Education Services - Employment Service - Fair Housing Services - Victims
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
15	<b>Agency/Group/Organization</b>	GOOD SHEPHERD HOUSING AND FAMILY SERVICES INC.

	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services - Homeless
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
16	<b>Agency/Group/Organization</b>	Shelter House, Inc.
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services - Victims of Domestic Violence Services - Homeless
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs



17	<b>Agency/Group/Organization</b>	FAIRFAX AREA CHRISTIAN EMERGENCY & TRANSITIONAL SERVICES (FACETS)
	<b>Agency/Group/Organization Type</b>	Housing Services - Children Services - Elderly Persons Services - Persons with Disabilities Services - Persons with HIV/AIDS Services - Victims of Domestic Violence Services - Homeless Services - Health Services - Education Services - Employment Service - Fair Housing Services - Victims
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs
18	<b>Agency/Group/Organization</b>	NEW HOPE HOUSING, INC.
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing Services - Homeless

	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
19	<b>Agency/Group/Organization</b>	Madison Homes, Inc.
	<b>Agency/Group/Organization Type</b>	Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy
20	<b>Agency/Group/Organization</b>	WESLEY HOUSING DEVELOPMENT CORPORATION
	<b>Agency/Group/Organization Type</b>	Housing Services - Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy

21	<b>Agency/Group/Organization</b>	Insight Property Group LLC
	<b>Agency/Group/Organization Type</b>	Housing Business Leaders Business and Civic Leaders
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
22	<b>Agency/Group/Organization</b>	INOVA Health System
	<b>Agency/Group/Organization Type</b>	Services-Health Publicly Funded Institution/System of Care
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
23	<b>Agency/Group/Organization</b>	Federal Home Loan Mortgage Corporation
	<b>Agency/Group/Organization Type</b>	Housing Private Sector Banking / Financing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
24	<b>Agency/Group/Organization</b>	Advisory Social Services Board
	<b>Agency/Group/Organization Type</b>	Services - Housing Services - Children Services - Elderly Persons Services - Persons with Disabilities Services - Persons with HIV/AIDS Services - Victims of Domestic Violence Services - Homeless Services - Health Services - Education Services - Employment Service - Fair Housing Services - Victims

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
25	<b>Agency/Group/Organization</b>	Fairfax County School Board
	<b>Agency/Group/Organization Type</b>	Services-Education Child Welfare Agency
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
26	<b>Agency/Group/Organization</b>	Fairfax County Professional Fire Fighters and Paramedics, IAFF Local 2068
	<b>Agency/Group/Organization Type</b>	Employee Member Organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
27	<b>Agency/Group/Organization</b>	Northern Virginia Association of REALTORS
	<b>Agency/Group/Organization Type</b>	Housing Regional organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
28	<b>Agency/Group/Organization</b>	Tetra Partnerships
	<b>Agency/Group/Organization Type</b>	Commercial Real Estate
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
29	<b>Agency/Group/Organization</b>	Fairfax County Federation of Citizens Associations
	<b>Agency/Group/Organization Type</b>	Civic Leaders
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs

30	<b>Agency/Group/Organization</b>	AHOME
	<b>Agency/Group/Organization Type</b>	Housing Regional organization Business and Civic Leaders
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
31	<b>Agency/Group/Organization</b>	Habitat for Humanity of Northern Virginia
	<b>Agency/Group/Organization Type</b>	Housing
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
32	<b>Agency/Group/Organization</b>	Northern Virginia Regional Commission
	<b>Agency/Group/Organization Type</b>	Regional organization Planning organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Non-Homeless Special Needs
33	<b>Agency/Group/Organization</b>	Virginia Housing Development Authority (VHDA)
	<b>Agency/Group/Organization Type</b>	Housing Other government - State
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs
34	<b>Agency/Group/Organization</b>	City of Alexandria, Virginia
	<b>Agency/Group/Organization Type</b>	Other government - Local

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
35	<b>Agency/Group/Organization</b>	Arlington County
	<b>Agency/Group/Organization Type</b>	Other government - County Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

36	<b>Agency/Group/Organization</b>	Prince William County Department of Housing and Community Development
	<b>Agency/Group/Organization Type</b>	Housing Other government - County Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
37	<b>Agency/Group/Organization</b>	Loudoun County
	<b>Agency/Group/Organization Type</b>	Other government - County Other government - Local

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
38	<b>Agency/Group/Organization</b>	Montgomery County Government
	<b>Agency/Group/Organization Type</b>	Other government - County Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
39	<b>Agency/Group/Organization</b>	Prince George's County - DHCD
	<b>Agency/Group/Organization Type</b>	Other government - County Other government - Local



	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
40	<b>Agency/Group/Organization</b>	District of Columbia Department of Housing and Community Development
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
41	<b>Agency/Group/Organization</b>	City of Falls Church
	<b>Agency/Group/Organization Type</b>	Other government - Local

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
42	<b>Agency/Group/Organization</b>	Town of Vienna
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
43	<b>Agency/Group/Organization</b>	Town of Herndon
	<b>Agency/Group/Organization Type</b>	Other government - Local

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
44	<b>Agency/Group/Organization</b>	City of Fairfax
	<b>Agency/Group/Organization Type</b>	Other government - Local
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
45	<b>Agency/Group/Organization</b>	Town of Clifton
	<b>Agency/Group/Organization Type</b>	Other government - Local

	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy
46	<b>Agency/Group/Organization</b>	Metropolitan Washington Council of Governments
	<b>Agency/Group/Organization Type</b>	Regional organization
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

47	<b>Agency/Group/Organization</b>	Virginia Department of Housing and Community Development
	<b>Agency/Group/Organization Type</b>	Housing Other government - State
	<b>What section of the Plan was addressed by Consultation?</b>	Housing Need Assessment Public Housing Needs Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Market Analysis Economic Development Anti-poverty Strategy Lead-based Paint Strategy

**Identify any Agency Types not consulted and provide rationale for not consulting**

Not applicable.

**Other local/regional/state/federal planning efforts considered when preparing the Plan**

<b>Name of Plan</b>	<b>Lead Organization</b>	<b>How do the goals of your Strategic Plan overlap with the goals of each plan?</b>
Continuum of Care	Fairfax County Office to Prevent and End Homelessness	The metrics set forth in the County's homelessness plan are tied directly to the Housing Blueprint and are reflected in this Action Plan.
Housing Blueprint (local)	FCRHA/Department of Housing and Community Development	The Strategic Plan goals are directly driven by the goals and metrics identified in the Housing Blueprint.
Moving to Work (federal)	FCRHA/Department of Housing and Community Development	The Strategic Plan is consistent with the THRIVE Housing Continuum, which is the central concept behind the FCRHA's Moving to Work program.
FCRHA Strategic Plan/Action Plan (local)	FCRHA/Department of Housing and Community Development	The activities described in the FCRHA's annual Strategic Plan/Action Plan are largely derived from the Housing Blueprint, and serve as a yearly work plan for the agency.
10-Year Plan to Prevent & End Homelessness (local)	Fairfax County Office to Prevent and End Homelessness	The metrics set forth in the County's homelessness plan are tied directly to the Housing Blueprint and are reflected in this Action Plan.
Fairfax County Comprehensive Plan/Zoning Ordinance	Fairfax County Department of Planning and Zoning	The Comprehensive Plan and Zoning Ordinance provide, respectively, the policy and regulatory underpinnings for land use issues related to affordable housing, as described in this Action Plan. This includes elements such as the Affordable Dwelling Unit and Workforce Housing programs.

**Table 3 – Other local / regional / federal planning efforts**

**AP-12 Participation – 91.105, 91.200(c)**

**1. Summary of citizen participation process/Efforts made to broaden citizen participation  
Summarize citizen participation process and how it impacted goal-setting**

A Citizen Participation Plan was adopted by the Fairfax County Board of Supervisors on December 8, 1997 and revised and amended by the Board of Supervisors on April 30, 2007. The purpose of the Citizen Participation Plan is to serve as a guide for citizen input and participation in the Consolidated Plan process. The full Citizen Participation Plan may be found in the Grantee Unique Appendices section.

Per the Citizen Participation Plan, the County provided for and encouraged participation from all sectors of the community in developing this FY 2019 One-Year Action Plan. Particular emphasis was placed on participation by citizens whose income is below the federal poverty line, citizens with low- and moderate-income who reside in blighted areas or areas in which Federal Funds were used or proposed to be used; the participation of citizens who are minority or non-English speaking; and the participation of citizens who have mobility, visual, speech or hearing impairments.

The County provided citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to this FY 2019 One-Year Action Plan. Information was shared through a variety of communication channels, including the County website, social media, the County’s cable television channel, press releases, and a stakeholder newsletter. Outreach was also conducted through various community newspapers, which included minority publications.

Prior to submission of this FY 2019 One-Year Action Plan to HUD, citizens were notified of opportunities to comment on housing, community development and public service needs, as well as on population and program priority needs identified to be addressed by community-based organizations and the proposed FY 2019 One-Year Action Plan. Citizen comments could be made in person or in writing at public hearings, at public meetings or by directly contacting the HCD.

Citizen input on housing, community development, and needs for services to be provided by community-based organizations were received at public hearings, including one held on November 14, 2017, by the CCFAC and one held by the Board of Supervisors on March 20, 2018 . The CCFAC held the public hearing to receive citizen input on the establishment of priority needs to be addressed by community based organizations using local funding and Federal Funds. CCFAC members are appointed by the County Executive to serve for three year terms. The CCFAC is composed of representatives from a variety of boards, authorities and commissions. CCFAC membership also may include

representation from human services provider groups, and consumer and community organizations, as appropriate. The Board of Supervisors held a public hearing to allow citizens the opportunity to comment on the Draft FY 2019 One-Year Action Plan, as well as on the housing and community development needs, fair housing, and community development programs in the County. The Draft 2019 One-Year Action Plan document was released on February 6, 2018, to meet the federal requirement for a 30-day comment period.

**Citizen Participation Outreach**

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
1	Public Hearing	Minorities  Non-English Speaking - Specify other language: Spanish, Vietnamese  Persons with disabilities  Non-targeted/broad community  Residents of Public and Assisted Housing	Representatives of the CCFAC, the FCRHA and the public attended the public hearing on November 14, 2017. All of the oral and written testimonies presented at the hearing were accepted and included in the final version of this FY 2019 One-Year Action Plan. The needs identified and discussed at the public hearing are addressed by the Annual Goals and Objectives described in AP-20.	Testimony was received about the need for increased services for residents with (a) autism (b) very low household income, (c) limited English language proficiency, and/or (d) unmet human services and basic needs.	N/A	



Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
2	Public Hearing	<p>Minorities</p> <p>Non-English Speaking - Specify other language: Spanish, Vietnamese</p> <p>Persons with disabilities</p> <p>Non-targeted/broad community</p> <p>Residents of Public and Assisted Housing</p>	<p>All members of the Board of Supervisors attended the public hearing on March 20, 2018. All of the oral and written testimonies presented at the hearing were accepted and included in the final version of this FY 2019 One-Year Action Plan.</p> <p>The needs identified and discussed at the public hearing are addressed by the Annual Goals and Objectives described in AP-20.</p>	<p>Testimony was received about (a) the need for increased services, including rental assistance and English classes, for Asian residents, (b) the value and success of multicultural educational, job training, leadership development, and parenting programs funded through the CCFP, and (c) a request for an increase in the funding to be allocated to the CCFP.</p>	N/A	

Table 4 – Citizen Participation Outreach

## Expected Resources

### AP-15 Expected Resources – 91.220(c) (1, 2)

#### Introduction

The funding levels incorporated in the Draft FY 2019 One-Year Action Plan released for public comment were based on estimates of the CDBG, HOME and ESG funding to be awarded to Fairfax County for FY 2019, and estimated amounts of Program Income that will be available for use in FY 2019 as a result of projects previously funded by CDBG and HOME. The contingency instructions included below explain how adjustments were made to the estimated allocation amounts in the Draft FY 2019 One-Year Action Plan if there is a difference between the estimates used in the Draft FY 2019 One-Year Action Plan and the actual CDBG, HOME and/or ESG funding awarded to Fairfax County and Program Income available for use by Fairfax County in FY 2019.

The CDBG, HOME and ESG funding awarded to Fairfax County for FY 2018 were used as estimates for FY 2019 until formal notification of the actual allocations for FY 2019 was received from HUD. Use of estimates until notice of actual allocations is customary and allows Fairfax County to meet citizen participation requirements while planning for future HUD grants prior to the official notification from HUD. Formal notification of the actual allocations for FY 2019 was received on May 1, 2018.

#### Federal Funding Allocations for FY 2019

If there is greater than a 10 percent difference between the estimated and actual CDBG, HOME or ESG funding allocations for FY 2019, the County's Board of Supervisors reserves the right to reconsider the proposed funding allocations. If there is no more than a 10 percent difference, Fairfax County will utilize the following contingency provision governing the use of CDBG, HOME and ESG funds, and requested citizen comment on this planned process for the allocation of federal funding for FY 2019:

## **CDBG**

All CDBG-funded activities are to be proportionally increased or decreased from the estimated funding levels to match the actual CDBG allocation amount with the following exceptions:

- The Section 108 Loan Payment will remain as represented in the plan.
- General Administration, Planning, and Fair Housing are to be capped at 20 percent of the CDBG allocation based on HUD limits. Total allocation for these three activities will not exceed 20 percent of the actual CDBG allocation.
- The Targeted Public Services allocation is to be capped at 15 percent of the CDBG allocation based on HUD limits. The allocation to the Targeted Public Services will be 15 percent of the actual CDBG allocation.
- The Affordable Housing Fund in the CCFP will be funded at \$704,500.

Funding allocations for Section 108 Loan, General Administration, Planning, Fair Housing, Targeted Public Services, and the Affordable Housing Fund in the CCFP are to be made prior to any other proportional adjustments to remaining CDBG-funded activities.

## **HOME**

All HOME-funded activities are to be proportionally increased or decreased from the estimated funding levels to match the actual HOME allocation amount with the following exceptions:

- HOME Administration and Fair Housing are to be capped at 10 percent of the HOME allocation based on HUD limits. The HOME Administration and Fair Housing allocations will not exceed 10 percent of the actual HOME allocation.
- Federal regulations require that jurisdictions set-aside a minimum of 15 percent of the HOME allocation each year for Community Housing Development Organization (CHDO) investment. The CHDO set-aside will be 15 percent of the actual HOME allocation.

Funding allocations for HOME Administration, Fair Housing and CHDO are to be made prior to all other proportional adjustments to remaining HOME funded activities.

## **ESG**

All ESG-funded activities are proportionally increased or decreased from the estimated funding levels to match the actual ESG allocation amount.

### **Program Income Available for Use in FY 2019**

Excluding the guidance that was provided and approved by the Board of Supervisors on January 24, 2017, with respect to the use of Program Income from the North Hill project, all Program Income received from activities funded with CDBG and/or HOME in excess of the estimates is to be allocated as follows:

- 50% of the excess Program Income is to be allocated to the Rehabilitation of FCRHA Properties, and
- 50% of the excess Program Income is to be allocated to the NOFA/RFP.

**Table**

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 4				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	5,574,509	794,300	2,148,909	8,517,718	8,517,718	<p>The annual allocation is based on the HUD notification of the FY 2018 / County FY 2019 grant allocation. The HUD notification was received from HUD on May 1, 2018.</p> <p>The Program Income allocation is based on historical average and projections from current activities.</p>
HOME	public - federal	Multifamily rental rehab TBRA	2,103,044	848,421	231,200	3,182,665	3,182,665	<p>The annual allocation is based on the HUD notification of the FY 2018 / County FY 2019 grant allocation. The HUD notification was received from HUD on May 1, 2018.</p> <p>The Program Income allocation is based on historical average and projections from current activities.</p>

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 4				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
ESG	public - federal	Conversion and rehab for transitional housing Financial Assistance Overnight shelter Rapid re-housing (rental assistance) Rental Assistance Services Transitional housing	447,834	0	0	447,834	447,834	<p>The annual allocation is based on the HUD notification of the FY 2018 / County FY 2019 grant allocation. The HUD notification was received from HUD on May 1, 2018.</p> <p>The Program Income allocation is based on historical average and projections from current activities.</p>

Table 5 - Expected Resources – Priority Table

**Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied**

Fairfax County leverages federal CDBG, HOME and ESG funds through a variety of local resources, including private investments, donations and other County funds.

CDBG-funded targeted public services activities are supported by private cash and in-kind donations, as well as other County funds. The gaps between CDBG funding for non-profit sponsored affordable housing capital projects and the total acquisition, renovation and leasing costs are funded by equity investments, private financing and/or other local funds, as well as by donations of cash, services and materials.

Fairfax County meets and exceeds its HOME Match requirement through non-federal cash resources contributed to fund the Bridging Affordability Program, the activities of which are eligible for HOME funding.

Additionally, the County created a Housing Trust Fund (HTF) in FY 1990, which is used to encourage and support the acquisition, preservation, development and redevelopment of affordable housing by the FCRHA, non-profit sponsors and private developers. The majority of all units developed with HTF financing are HOME eligible. Housing Trust Fund awards are anticipated in FY 2019. HOME- and CHDO-funded capital projects by non-profit sponsors also are leveraged by equity investments, private financing and/or other local funds, as well as by donations of cash, services and materials.

Fairfax County invests local General Funds to provide a one-to-one match for the ESG funding. The local matching funds are appropriated on an annual basis as a part of the normal Fairfax County budget cycle, typically in April or May.

**If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan**

Fairfax County and the FCRHA have a long and successful track record of utilizing public land for the development of housing to meet a continuum of needs identified in this FY 2019 One-Year Action Plan. Projects that are expected to be completed, under construction or in planning during the time covered by this FY 2019 One-Year Action Plan include the following:

**Lincolnia Residences Renovation (Mason District):** The scope of the project includes renovation of the building complex which provides space for three separate operations: 1) Senior Housing and Assisted Living managed by HCD, 2) a Senior Center operated by the Department of Neighborhood and Community Services (NCS), and 3) an Adult Day Health Care Center managed by the Fairfax County Health Department (FCHD). The residential portion is comprised of 26 units of affordable apartments for seniors, 52 beds of licensed Assisted Living, common areas for the Housing residents, and a commercial kitchen which supports all on-site activities. The renovation includes replacement of the HVAC system and the emergency generator, extensive interior overhauls and upgrades of lighting and the fire alarm system, elevator modernization, roof and fire pump replacement, numerous accessibility modifications, and minor site enhancements. Phase I, renovation of Lincolnia Senior Center, was completed in FY 2016. Phase II, which includes trim work, cabinetry replacement, hot water heater replacement, the addition of electrical circuits, and other miscellaneous improvements, will be completed in FY 2019.

**Lewinsville Center (Dranesville District):** The planned redevelopment of the 8.6 acre McLean property includes demolition of the current facility and construction of two buildings which will: 1) create 82 units of “Independent Living” senior housing; 2) provide space for the FCHD Adult Day Care Center; 3) create two Child Day Care Centers; and 4) allow for the expansion of services through the existing Senior Center programs operated by the NCS. The residential component of the project will be developed and operated by a private developer under the Virginia Public Private Educational Facilities Infrastructure Act (PPEA). One building will contain affordable senior housing which will be constructed and operated at no cost to the County utilizing tax credits and a long term ground lease. The second building will be the community support building which will house the Senior Center, and the Adult and Child Day Care facilities. Completion of construction is anticipated for spring 2019.

**North Hill (Lee District):** The FCRHA has selected a private developer, under PPEA, for the development of the 35 acre North Hill site, which was acquired by the FCRHA in the 1980s. The selected developer received the necessary zoning approvals in FY 2018 to construct 278 mixed-income, affordable multi-family units and 175 market-rate townhouses. The approximately 12 acre remaining balance of the site will be maintained as a park. The project was awarded competitive 9% tax credits by the Virginia Housing Development Authority, which provides a critical part of the



funding for the project. Negotiations are underway for the sale of the market-rate townhouse land bay, the sale proceeds of which will be used as development funding for the affordable units. Site plan preparation is underway. Negotiation of one or more additional agreements, including a Master Development Agreement, has to be completed before development begins.

**Murraygate Renovation (Lee District):** The project scope includes extensive renovations of the 200-unit Murraygate Village apartment complex. Anticipated rehabilitation will include replacement of the central heating and cooling system with individual HVAC units in each apartment, electrical system upgrades, accessibility improvements, kitchen and bathroom modernization, other miscellaneous enhancements, and minor site work. The construction of Phase I is underway to address the necessary electrical upgrades and will be completed in FY 2018. Phase II will address the majority of the renovations and will be completed in FY 2021.

**Route 50/West Ox Road (Sully District):** This project is the development of a one-acre County owned property located in the northwest quadrant of the Route 50/West Ox Road interchange to construct up to 30 units of permanent supportive housing for victims of domestic violence and/or formerly homeless individuals, including formerly homeless veterans.

**Wedgewood Renovation (Mason District):** The scope of the project is intended to sustain the Wedgewood property for 10 or more years and preserve the Board's flexibility for future redevelopment of the property. Work completed includes condition assessment studies; a site plan for grading and drainage improvements; permits; basement water proofing and wall reinforcement; roofing and gutter replacements and repairs; one chiller replacement; repairs of cooling towers and control valves in central heating and cooling plants; and repairs of patios, walkways, stairs and retaining walls. Planned work includes site grading and drainage improvements; repaving parking lots; and improving reliability of the central plant systems. Additional basement waterproofing will be assessed after the grading and drainage improvements. The renovation effort began in FY 2017 and will continue through FY 2019.

**Mount Vernon Gardens (Mount Vernon District):** The scope of the project includes the renovation of the 34-unit Mount Vernon Gardens apartment complex. A Physical Needs Assessment study was completed in FY 2017, which resulted in the identification of health and safety items that are needed to keep the property operational for the next 7 – 10 years. The scope of the rehabilitation includes upgrade of the central water heating systems; replacement of the roof; limited upgrades of the electric system; repairs to the hand rail and guardrail; and replacement of a window in the common area.

**Oakwood (Lee District):** The scope of the project is to develop the 6.2 acres County-owned site at the intersection of Oakwood Road and Van Dorn Street. The site has the potential for the development of up to 150 units of affordable independent senior housing. Potential funding includes Low Income Housing Tax Credits (LIHTC).

**One University (Braddock District):** The scope of the project is to redevelop the site at the intersection of Route 123 and University Drive. An unsolicited proposal has been received for replacing the existing affordable housing complex (Robinson Square) and the existing FCRHA facilities. The proposed development will include up to 240 units of affordable housing and student housing. Proposals were received in response to the County's request for competing proposal to which responses were due on January 10, 2018. One of the competing proposals and the unsolicited proposal have been chosen by the Selection Advisory Committee for further evaluation and comparison. A final selection is expected before the start of fiscal year 2019.

**Little River Glen Expansion (Braddock District):** The scope of the project includes the construction of 60 units of affordable independent senior housing on land owned by the FCRHA. A funding source has not yet been determined.

## Annual Goals and Objectives

### AP-20 Annual Goals and Objectives - 91.420, 91.220(c)(3) & (e)

#### Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Homelessness	2016	2020	Homeless	Countywide	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing Community Services	CDBG: \$400,000 HOME: \$700,000 ESG: \$447,834	Rental units rehabilitated: 10 household housing units Tenant-based rental assistance / Rapid Rehousing: 1,735 households assisted
2	Special Needs	2016	2020	Affordable Housing Non-Homeless Special Needs	Countywide	Affordable Rental Housing Homeownership Access and Rehabilitation Community Services	CDBG: \$1,200,000 HOME: \$500,000	Public service activities other than Low/Moderate Income Housing Benefit: 100 persons assisted Public service activities for Low/Moderate Income Housing Benefit: 20 household housing units assisted Rental units rehabilitated: 5 housing unit Tenant-based rental assistance / Rapid Rehousing: 30 households assisted

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
3	Working Families	2016	2020	Affordable Housing	Countywide	Affordable Rental Housing Homeownership Access and Rehabilitation Community Services	CDBG: \$300,000 HOME: \$300,000	Rental units rehabilitated: 2 Household Housing Unit Tenant-based rental assistance / Rapid Rehousing: 23 Households Assisted
4	Workforce Housing	2016	2020	Affordable Housing	Countywide	Affordable Rental Housing Homeownership Access and Rehabilitation	CDBG: \$200,000 HOME: \$200,000	Rental units constructed: 200 household housing units Homeowner Housing Added: 15 household housing units
5	Human Service System	2016	2020	Non-Housing Community Development	Countywide	Community Services Administration and Planning	CDBG: \$0 HOME: \$0 ESG: \$0	Other: 1 Other
6	Poverty Reduction/Self Sufficiency	2016	2020	Non-Housing Community Development	Countywide	Community Services	CDBG: \$0 HOME: \$0 ESG: \$0	Public service activities other than Low/Moderate Income Housing Benefit: 1,100 persons assisted
7	Reinvestment	2016	2020	Non-Housing Community Development	Countywide	Administration and Planning	CDBG: \$0 HOME: \$0 ESG: \$0	Other: 1 Other
8	Community Input	2016	2020	Institutional	Countywide	Administration and Planning	CDBG: \$250,000	Other: 1 Other

Table 6 – Goals Summary

## Goal Descriptions

1	<b>Goal Name</b>	Homelessness
	<b>Goal Description</b>	<p><b><i>To End Homelessness in 10 Years by 2018</i></b></p> <p>The County will address the 10-year need for 2,650 additional units/permanent housing opportunities for individuals and families who are experiencing homelessness. Outcomes will be achieved through a variety of County programs and activities, including programs and activities funded through the CCFP.</p> <p><u>Projected Outcomes:</u></p> <ul style="list-style-type: none"> <li>• Housing opportunities created by turnover in federal resources: 90</li> <li>• New housing opportunities (non-turnover): 15</li> </ul> <p>New homeless households served in local Bridging Affordability program: 45</p>
2	<b>Goal Name</b>	Special Needs
	<b>Goal Description</b>	<p><b><i>To Provide Affordable Options to Special Needs Populations</i></b></p> <p>The County will provide affordable housing options to special needs populations including households with low- to extremely-low income, seniors and persons with physical or mental disabilities through several means, including programs and activities funded through the CCFP. (Note: Persons with special needs are also served throughout the other goals identified in the Housing Blueprint and the Consolidated Plan.)</p> <p><u>Projected Outcomes:</u></p> <ul style="list-style-type: none"> <li>• Housing opportunities created by turnover in federal resources: 78</li> <li>• New housing opportunities (non-turnover): 114</li> </ul> <p>New special needs households served in the Bridging Affordability program: 32</p> <p>FCRHA-Fairfax County Rental Program – Seniors (turnover): 99</p>

3	<b>Goal Name</b>	Working Families
	<b>Goal Description</b>	<p><b><i>To Meet the Affordable Housing Needs of Low-income Working Families</i></b></p> <p>The County will work to address the current need, estimated at about 31,000 units, for affordable housing among working families with low-income via a variety of means. The goal will be accomplished through a variety of County programs and activities, including those funded through the CCFP.</p> <p><u>Projected Outcomes:</u></p> <ul style="list-style-type: none"> <li>• New low-income households served in the Bridging Affordability program: 65</li> <li>• Housing opportunities created by turnover in federal resources: 190</li> <li>• Housing opportunities created by turnover in local housing resources: 200</li> </ul> <p>New housing opportunities (non-turnover): 100</p>
4	<b>Goal Name</b>	Workforce Housing
	<b>Goal Description</b>	<p><b><i>To Increase Workforce Housing through Creative Partnerships and Public Policy</i></b></p> <p>The County will address the need for nearly 50,000 net new housing units affordable to households earning up to 120 percent of AMI based on projected job growth through 2,032 (source: George Mason University) through bolstering existing resources and initiating other efforts.</p> <p><u>Projected Outcomes:</u></p> <p>New housing opportunities: 225</p>

5	<b>Goal Name</b>	Human Service System
	<b>Goal Description</b>	<p><b><i>Maintain and strengthen a safe, healthy and vibrant community through a human service system that is responsive to all populations and their diverse needs including children, the elderly, persons with disabilities, or those with other special needs, with emphasis on benefiting low and moderate income persons and families</i></b></p> <p>The County will promote healthy child and youth development, identify strategies to meet current and emerging service needs, and encourage and support public and private network of community services that fosters stability and maximizes self-sufficiency. The programs and activities funded through the CCFP also support the accomplishment of this goal.</p> <p><u>Specific Objectives:</u></p> <p>1.1 Promote healthy, positive child and youth development through a community support system that meets the diverse needs of all children and provides positive alternatives that help in the prevention of gang activity.</p> <p>1.2 Identify gaps and develop strategies to meet critical current and emerging service needs in the community.</p> <p>1.3 Encourage and support a coordinated public and private network of community services that fosters stability and maximizes independence for individuals and families.</p> <p>1.4 Promote a human service system that ensures residents are able to meet basic and emergency human needs, that emphasizes prevention and early intervention to minimize crises and that preserves individual and family stability.</p> <p>1.5 Encourage best practices, sensitivity to cultural differences and enhanced performances in service delivery to ensure residents receive high quality services as needed.</p>

6	<b>Goal Name</b>	Poverty Reduction/Self Sufficiency
	<b>Goal Description</b>	<p><b><i>Reduce poverty and foster self-sufficiency by using public and private resources to provide essential training and support services, and by encouraging employment opportunities and development of business</i></b></p> <p>The County will strengthen self-sufficiency for program participants via a variety of means, including programs and activities funded through the CCFP. Consistent with the FCRHA’s Moving to Work/THRIVE program, particular emphasis will be placed on promoting self-sufficiency activities for those participating in the various affordable housing programs operated by the FCRHA and Fairfax County.</p> <p><u>Specific Objectives:</u></p> <p>2.1 Strengthen current job skill training and employment programs to prepare potential workers for better job opportunities and strengthen communication and partnerships with employers to remove barriers and to improve access to and increase the number of job placements in better employment, especially for families with low income.</p> <p>2.2 Promote training and educational opportunities for workers to gain skills necessary for jobs that provide wages for individuals and families to be self-sufficient and that support family stability.</p> <p>2.3 Strengthen the provision and flexibility of supportive services for individuals to begin new jobs or continue in existing jobs by ensuring they have access to affordable child care, disabled adult and elderly care, transportation, English as a Second Language programs and/or other needed support.</p> <p>2.4 Support community efforts in the development and assistance to micro-enterprises and small businesses to reduce small business failures and to retain and create more jobs.</p> <p>2.5 Ensure that the commercial revitalization program serves as a resource to achieve a portion of these objectives.</p> <p>2.6 Implement Fairfax County’s Strategic Plan to Facilitate Economic Success, which has an overall focus on maintaining, diversifying, and enhancing the County’s strong and vital community in order to sustain and foster economic prosperity.</p>



7	<b>Goal Name</b>	Reinvestment
	<b>Goal Description</b>	<p><b><i>In commercial and residential areas that are vulnerable to instability, facilitate reinvestment, encourage business development, promote public and private investment and reinvestment, preserve affordable housing and prevent or eliminate the negative effects of disinvestment</i></b></p> <p>The County will continue to implement the Strategic Plan to Facilitate Economic Success of Fairfax County, which focuses on four fundamentals – people, places, employment and governance. In terms of places, Fairfax County will focus on infrastructure, mobility, redevelopment and fostering the retail industrial and other emerging uses.</p> <p><u>Specific Objectives:</u></p> <p>3.1 Develop strategies of prevention and early intervention in communities in danger of deterioration to reduce the need for greater community investment and improvements in the future.</p> <p>3.2 Review existing plans for Conservation Areas, Redevelopment Areas, residential Revitalization Areas, Commercial Revitalization Districts and Commercial Revitalization Areas to promote a comprehensive and coordinated approach to meeting community development needs while maintaining the affordable housing stock and the unique character of each community.</p> <p>3.3 Build on community strengths and involve the residents in decision making on needs, priorities, plans, improvements, and solutions to community concerns, in cooperation with the County's Department of Code Compliance.</p>
8	<b>Goal Name</b>	Community Input
	<b>Goal Description</b>	<p><b><i>Ensure broad community input throughout the development and implementation of the Consolidated Plan, build public/private partnerships to implement the Plan, and monitor and evaluate the goals, strategies and program outcomes</i></b></p> <p><u>Overarching Objective:</u> The County will implement the Citizen Participation Plan and monitor and evaluate the effectiveness of community outreach and education on community needs, plans and priorities, funded programs and results, and the effectiveness of the citizen participation process under the Consolidated Plan.</p>

**Table 7 – Goal Descriptions**

## AP-35 Projects – 91.220(d)

### Introduction

All CDBG, HOME, and ESG entitlement funds and any subsequent leveraging of local and private resources for FY 2019 will be invested in the following seventeen projects. Project #7- Targeted Public Services also receives an allocation of local general and CSBG funds totaling approximately \$11.7 million.

#	Project Name
1	Section 108 Loan Payments
2	Fair Housing
3	Planning
4	General Administration
5	HOME Administration
6	Affordable Housing Fund (CCFP)
7	Targeted Public Services (CCFP)
8	Home Repair for the Elderly & Community Rehabilitation Programs
9	Tenant Based Rental Assistance
10	FCRHA Properties – Rehabilitation and/or Acquisitions
11	Homeownership Program
12	Relocation Program
13	CHDO Set-Aside
14	Special Needs Housing
15	Emergency Solutions Grant
16	CDBG/HOME Affordable Housing Request For Proposals
17	North Hill

**Table 8 – Project Information**

### **Describe the reasons for allocation priorities and any obstacles to addressing underserved needs.**

On January 26, 2010, the Fairfax County Board of Supervisors adopted a “Housing Blueprint”, which establishes the County’s affordable housing policy direction for FY 2011 and beyond. The goals and priority needs set forth in the Housing Blueprint are revised and updated each year, and have evolved over time as a product of ongoing input from the community.

The housing goals established in the Housing Blueprint incorporated into the Consolidated Plan for FY 2016-2020 are as follows:

- Goal 1: To end homelessness in 10 years
- Goal 2: To provide affordable housing options to special needs population
- Goal 3: To meet the affordable housing needs of low-income working families; and
- Goal 4: To increase workforce housing through creative partnerships and public policy

This FY 2019 One-Year Action Plan reflects the overarching goals of the Housing Blueprint and is the product of the input gathered through the process of bringing together County officials and staff, representatives from the nonprofit and for-profit development sectors, and the citizens of Fairfax County, supplemented by data compiled from local sources, HUD and the U.S. Census Bureau. To accomplish these goals, Fairfax County will draw upon the community and private sector to leverage resources through partnerships. The County will complete projects already in the pipeline as well as embark on new initiatives.

As reflected in the Housing Blueprint, the philosophy driving the priority needs in the Consolidated Plan is that affordable housing is a continuum ranging from the needs of residents who are experiencing homelessness to first-time home buyers. Included in this range are the diverse housing needs of hard-working, but low paid families, senior citizens, persons with physical or mental disabilities, and the workforce across Fairfax County. This FY 2019 One-Year Action Plan is for the fourth year of the County's Consolidated Plan for FY 2016-2020 and will continue as established in FY 2016.

The main obstacle facing the County is the affordable housing gap for residents who are low-and moderate-income. The bulk of all proposed projects endeavor to combat the shortage of affordable housing in the County.

## Projects

### AP-38 Projects Summary

#### Project Summary Information

Table 9 – Project Summary

<b>1</b>	<b>Project Name</b>	Section 108 Loan Payments
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Reinvestment
	<b>Needs Addressed</b>	Affordable Rental Housing Community Services
	<b>Funding</b>	CDBG: \$1,099,481
	<b>Description</b>	The funding will be used to make annual payments on four loans under Section 108 of the Housing and Community Development Act of 1974, as amended. The loan proceeds have been used by the FCRHA for affordable housing development and preservation, for reconstruction of Washington Plaza in Reston and Olley Glen, and for road and storm drainage improvements in five Conservation Areas (Bailey's, Fairhaven, Gum Springs, James Lee, and Jefferson Manor). The loan applications were approved by the Board of Supervisors, who pledged future CDBG funds for the payment of annual interest and principal premiums due on the notes.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	All beneficiary data related to each of the projects was reported in the CAPER for the year in which the project was completed.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	Matrix Code- 19F Planned Repayments of Section 108 Loans
<b>2</b>	<b>Project Name</b>	Fair Housing
	<b>Target Area</b>	Countywide

	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing Human Service System Poverty Reduction/Self Sufficiency Reinvestment Community Input
	<b>Needs Addressed</b>	Community Services Administration and Planning
	<b>Funding</b>	CDBG: \$200,298 HOME: \$33,649
	<b>Description</b>	The funding will be used by the County's Office of Human Rights and Equity Programs to support fair housing testing performed by contractors, fair housing outreach and education activities, and investigations of fair housing complaints. In addition, funds will be used in FY 2019 for activities that affirmatively further fair housing for FCRHA clients and tenants.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	General fair housing outreach and education will be made available to all County residents, businesses and organizations. Beneficiary demographics will be tracked as activities are completed and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	Matrix Code- 21D Fair Housing Activities (subject to Admin Cap)
<b>3</b>	<b>Project Name</b>	Planning
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing Human Service System Poverty Reduction/Self Sufficiency Reinvestment Community Input

	<b>Needs Addressed</b>	Administration and Planning
	<b>Funding</b>	CDBG: \$694,548
	<b>Description</b>	The funding will continue to be used to support the planning and implementation of the County's housing and community development programs. The funding of this project is required to meet CDBG and HOME regulations and local procedures, prepare and process the County's Consolidated Plan and related citizen participation and public input processes, prepare community plans, and implement housing and community development programs, as well as identify and pursue funding sources to match and leverage entitlement funding. Planning will include FCRHA activities to affirmatively further fair housing.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Planning is a required administrative function of the CDBG entitlement that is not limited to a specific number and type of beneficiaries.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	Matrix Code- 20 Planning
4	<b>Project Name</b>	General Administration
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing Human Service System Poverty Reduction/Self Sufficiency Reinvestment Community Input
	<b>Needs Addressed</b>	Administration and Planning
	<b>Funding</b>	CDBG: \$955,055

	<b>Description</b>	Funding for the general administration of the County's CDBG and HOME-funded programs and projects, as well as projects funded under the Section 108 and Economic Development Initiative. Funding provides for administration of housing and community development programs and projects, including contract management for projects and programs funded through the Consolidated Community Funding Pool, required local, state, and federal reports and preparation of documents, provision of technical assistance, financial management, and administrative and professional support to the CCFAC and various citizen participation processes. General Administration will include FCRHA activities that will affirmatively further fair housing. Funding provides for salaries and fringe benefits plus related operating costs.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The required administrative function of the CDBG entitlement is not limited to a specific number and type of beneficiaries.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	Matrix Code- 21A General Program Administration
5	<b>Project Name</b>	HOME Administration
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families
	<b>Needs Addressed</b>	Administration and Planning
	<b>Funding</b>	HOME: \$220,855
	<b>Description</b>	The HOME funds allocated to this project will be used to support the operation of the HOME Program and the projects receiving HOME funding. The funding will be used to support salaries and fringe benefits, plus related operating and equipment costs and eligible preliminary costs related to the planning and design of housing development projects by the FCRHA.
	<b>Target Date</b>	6/30/2019

	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Planning is a required administrative function of the HOME entitlement that is not limited to a specific number and type of beneficiaries.
	<b>Location Description</b>	Not applicable.
	<b>Planned Activities</b>	See description.
6	<b>Project Name</b>	Affordable Housing Fund (CCFP)
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families
	<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing
	<b>Funding</b>	CDBG: \$704,500
	<b>Description</b>	The funding will be allocated to the CCFP to fund affordable housing programs and activities by eligible nonprofit corporations or CDBG Participating Jurisdictions (Towns of Clifton, Herndon, and Vienna, and the City of Fairfax) for the provision, development and preservation of affordable housing in accordance with CDBG eligibility criteria and the CCFP priorities adopted by the Board of Supervisors. The funding for specific programs and activities is subject to appropriations by the Board of Supervisors.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The numbers of families and individuals assisted will vary depending on specific programs and activities. It is anticipated that a minimum of four housing units will be acquired and/or rehabilitated as a direct result of the planned funding. Beneficiary demographics will be tracked as programs and activities are completed and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	Matrix Code- 14G Rehab: Acquisition
7	<b>Project Name</b>	Targeted Public Services (CCFP)
	<b>Target Area</b>	Countywide



<b>Goals Supported</b>	Homelessness Special Needs Working Families Human Service System Poverty Reduction/Self Sufficiency Reinvestment Community Input
<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing Homeownership Access and Rehabilitation Community Services
<b>Funding</b>	CDBG: \$836,176
<b>Description</b>	The amount of funding to be allocated to the CCFP for Targeted Public Services will be 15 percent of the CDBG award. The funds will be awarded through the CCFP to eligible nonprofit corporations or CDBG Participating Jurisdictions (Towns of Clifton, Herndon, and Vienna, and the City of Fairfax) for the delivery of public services in accordance with CDBG eligibility criteria and the CCFP priorities adopted by the Board of Supervisors. Funding for specific programs and activities will be subject to appropriations by the Board of Supervisors.
<b>Target Date</b>	6/30/2019
<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The number of families and individuals assisted will vary. Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
<b>Location Description</b>	To be determined.
<b>Planned Activities</b>	Funding allocated to the CCFP for Targeted Public Services will be used to support programs to be provided in FY 2019. Programs typically provide a variety of services aimed at promoting stability and self-sufficiency, preventing homelessness and/or meeting basic needs, including case management, training in life skills, employment, financial management, ESOL and limited direct financial assistance and in-kind donations. Applications for CCFP funding in FY 2019 were submitted in December 2017. Distribution of the funding awards will begin in July 2018, as funds become available.
<b>Project Name</b>	Home Repair for the Elderly & Community Rehabilitation Programs

<b>8</b>	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Human Service System Poverty Reduction/Self Sufficiency
	<b>Needs Addressed</b>	Homeownership Access and Rehabilitation
	<b>Funding</b>	CDBG: \$563,628
	<b>Description</b>	<p>As in past fiscal years, funding of the Home Repair for the Elderly Program (HREP) provides minor repairs at no cost to the homeowner for an estimated 100 homes of eligible low-income elderly or disabled persons. The HREP provides up to one week of labor and \$500 in material expenses by the HREP crew. Proposed funding provides for salaries and fringe benefits, plus related operating and equipment costs. These funds are supplemented by County funds generated from payments on loans through the Home Improvement Loan Program for the costs of outside contracting and materials.</p> <p>Funding also will be used to support the provision of technical assistance, training and referral services through the Community Rehabilitation Program for the preservation of affordable single and multi-family housing units in the Town of Herndon. The services will be provided to assist in renovations needed to comply with local codes, to install accessibility features and/or correct other deficiencies necessary to preserve the housing and/or to prevent the occupants from experiencing homelessness.</p>
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 100 elderly households are expected to be served by the Home Repair for the Elderly Program. The numbers of families and individuals assisted through the Community Rehabilitation Program will vary depending on the requests for assistances and the specific activities. All program beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	Matrix Codes- 14A Rehab: Single-Unit Residential; 14B Rehab: Multi-Unit Residential
	<b>Project Name</b>	Tenant Based Rental Assistance

9	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families
	<b>Needs Addressed</b>	Homeless Prevention and Rapid Re-Housing Affordable Rental Housing
	<b>Funding</b>	HOME: \$860,399
	<b>Description</b>	The funding will be used to provide rental assistance to prevent families/individuals from becoming homeless, to assist families/individuals experiencing homelessness with obtaining permanent housing, to support stable housing for persons with special needs, to respond to reasonable accommodation requests, and to subsidize units for clients of the Progress Center.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 50 families or individuals are expected to receive TBRA vouchers. Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined
	<b>Planned Activities</b>	Provision of TBRA vouchers
10	<b>Project Name</b>	FCRHA Properties – Rehabilitation and/or Acquisition
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Special Needs Working Families Workforce Housing
	<b>Needs Addressed</b>	Affordable Rental Housing
	<b>Funding</b>	CDBG: \$214,120 HOME: \$436,321
	<b>Description</b>	Funding will be used to rehabilitate FCRHA residential properties and group homes to maintain safety and quality of life. A portion of the funding also may be used to purchase Affordable Dwelling Units or other properties for rental.
	<b>Target Date</b>	6/30/2019

	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The number of families and individuals who will benefit from the activities will be determined by the projects. Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined
	<b>Planned Activities</b>	Matrix Code-14D Rehab: Other Public-Owned Residential Buildings
<b>11</b>	<b>Project Name</b>	Homeownership Program
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Working Families Workforce Housing
	<b>Needs Addressed</b>	Homeownership Access and Rehabilitation
	<b>Funding</b>	CDBG: \$788,851
	<b>Description</b>	The funding will be used to pay salaries and fringe benefits to support positions involved in homeownership activities related to the First-Time Homebuyer Program. Duties include application intake/data entry, waiting list maintenance, application processing, applicant eligibility certification, marketing new and resale units, conducting lotteries for purchase applicants, establishing resale prices, monitoring second trust loans, conducting required annual occupancy certifications, dissemination of program information, providing educational programs and/or counseling for applicants/homeowners, and, when available, providing financial assistance to homebuyers.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	This program is expected to benefit approximately 50 families who are currently housed but not on the certified eligible applicant waiting list and approximately 200-250 families who are on the waiting list. Approximately 6,000 additional families will be served through orientations and other marketing activities. Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.
<b>Planned Activities</b>	Matrix Code- 13 Direct Homeownership Assistance	
<b>12</b>	<b>Project Name</b>	Relocation Program
	<b>Target Area</b>	Countywide

	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing Human Service System Poverty Reduction/Self Sufficiency
	<b>Needs Addressed</b>	Affordable Rental Housing
	<b>Funding</b>	CDBG: \$598,614
	<b>Description</b>	The funding will be used to provide relocation benefits to residents of FCRHA owned property as needed to facilitate rehabilitation of housing units and the buildings in which the units are located. Funding may also be used to support the provision of federally mandated relocation and advisory services or reviews and technical assistance for CDBG- and HOME-funded non-profit development.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The numbers of families assisted will vary depending on the specific needs for each activity. Large-scale rehabilitation of FCRHA owned multi-family properties typically involves some level of relocation for low- and moderate-income residents. Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	Matrix Code- 08 Relocation
13	<b>Project Name</b>	CHDO Set-Aside
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing
	<b>Needs Addressed</b>	Affordable Rental Housing Homeownership Access and Rehabilitation
	<b>Funding</b>	HOME: \$315,457
	<b>Description</b>	CHDO set-aside funding will be used to acquire and/or rehabilitate existing affordable housing or develop additional affordable housing units for homebuyers and renters.

	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	This project is expected to serve one family at or below 50 percent AMI. Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined based on applications.
	<b>Planned Activities</b>	Typical CHDO projects in the past have included the acquisition and rehabilitation of housing units for use as affordable rental housing for persons with income at or below 50 percent AMI.
14	<b>Project Name</b>	Special Needs Housing
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families
	<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing
	<b>Funding</b>	CDBG: \$726,593 HOME: \$300,000
	<b>Description</b>	All of the funding will be used to support the development, preservation, acquisition, modification and rehabilitation of housing and facilities to serve persons with special needs, as defined by the Housing Blueprint including persons who are experiencing homelessness, have disabilities, are elderly, are large families with severely limited housing options, are severely rent burdened or are victims of domestic violence. The HOME funding is earmarked to be included in the FY 2019 CDBG/HOME Affordable Housing Request for Proposals. (See Project 16)
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.

	<b>Planned Activities</b>	Typical past projects have included the removal of architectural barriers that restrict the mobility and accessibility of elderly persons or person with disabilities, and acquisition of housing units for the purpose of providing deed restricted, long-term affordable housing options for residents with special needs. The funding will be made available for the FY 2019 Affordable Housing Request For Proposal and awarded to non-profits on a competitive basis.
<b>15</b>	<b>Project Name</b>	Emergency Solutions Grant
	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness
	<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing
	<b>Funding</b>	ESG: \$447,834
	<b>Description</b>	Pursuant to the HEARTH Act, the Emergency Solutions Grant (ESG) will continue to be used to fund activities that have a greater emphasis on preventing homelessness, and rapidly re-housing persons and families who experience homelessness. Funds will be used to support all eligible Emergency Solutions Grant Program activities.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	More than 1,500 individuals are estimated to benefit from the ESG funded programs in FY 2019. Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.
	<b>Location Description</b>	To be determined.
	<b>Planned Activities</b>	The ESG funds will be used to support homelessness prevention and rapid rehousing assistance to persons who are at-risk of homelessness and those experiencing homelessness. The funded activities will provide housing relocation and stabilization services, as well as short-to medium-term rental assistance to help program participants regain stability in current permanent housing or move into other more suitable permanent housing in order to achieve stability. Services also will include case management, housing search and placements, and financial assistance for rental application fees, security deposits, last month's rents, utility deposits and payments, and moving costs.
	<b>Project Name</b>	CDBG/HOME Affordable Housing Request For Proposals

16	<b>Target Area</b>	Countywide
	<b>Goals Supported</b>	Homelessness Special Needs Working Families Workforce Housing
	<b>Needs Addressed</b>	Homelessness Prevention and Rapid Re-Housing Affordable Rental Housing Homeownership Access and Rehabilitation
	<b>Funding</b>	CDBG: \$515,641 HOME: \$1,015,984
	<b>Description</b>	The FY 2019 CDBG/HOME Affordable Housing Request for Proposals (RFP) will be used to fund the acquisition, preservation and/or rehabilitation of existing affordable housing units, and the development of additional affordable housing units for income eligible renters. The notice of funding availability will coincide with the availability of the CHDO funding for FY 2019.
	<b>Target Date</b>	6/30/2019
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	<p>The number and type of beneficiaries will be determined based on the activities completed by the non-profit recipients of the RFP funding. In the most recent past RFPs, scoring preference typically has been given to proposed activities that included the acquisition and/or preservation of units to be used as affordable housing that can be completed in an expedited manner and that met criteria specified in the RFP, such as:</p> <ul style="list-style-type: none"> <li>• Incorporated Fairfax County's Consolidated Plan and Housing Blueprint goals;</li> <li>• Resulted in affordable housing that is accessible to persons with disabilities;</li> <li>• Served households with extremely low incomes (at or below 30 percent AMI);</li> <li>• Provided housing for families or individuals who are experiencing homelessness or who are at-risk of homelessness;</li> <li>• Provided housing for Seniors (62 and above);</li> <li>• Provided housing for youth transitioning out of foster care; or</li> <li>• Provided beneficiaries with direct access to public transportation and/or community retail centers and/or supportive services.</li> </ul> <p>Beneficiary demographics will be tracked as activities are completed and will be reported in the CAPER for FY 2019.</p>
	<b>Location Description</b>	To be determined.



	<b>Planned Activities</b>	Typical projects funded through past RFPs have included the acquisitions and rehabilitation of housing units to be used to provide affordable rental housing for persons with income at or below 50 percent AMI.
17	<b>Project Name</b>	North Hill
	<b>Target Area</b>	North Hill area in Lee District
	<b>Goals Supported</b>	Working Families Workforce Housing Reinvestment
	<b>Needs Addressed</b>	Affordable Rental Housing Community Services
	<b>Funding</b>	CDBG: \$573,128 Local: \$47,085
	<b>Description</b>	<p>The funding will support pre-development costs associated with the following projects:</p> <p>North Hill Affordable Multifamily Development: Under this Fairfax County Redevelopment and Housing Authority (FCRHA) activity, funding will support infrastructure work. The scope of work includes earth work, erosion and sediment control, utility installation, road improvements, storm water management, site improvements, removal of marine clay soils, and building of needed retaining walls.</p> <p>North Community Park: Under this FCRHA activity, approximately \$1.5 million will be made available for the initial phase of the development of the community park, which when complete, will be available for the residents of the new development as well as the existing residents of Woodley Hills Estates. The scope of work for this initial phase includes demolition, removal and disposal of existing improvements; treatment of invasive plants; site grading; and restoration and seeding of disturbed areas.</p>
	<b>Target Date</b>	6/30/2019

<b>Estimate the number and type of families that will benefit from the proposed activities</b>	<p><u>North Hill Affordable Multifamily Rental Housing Development</u>: 278 low-moderate income families</p> <p><u>North Hill Community Park</u>: Approximately 3,260 persons, including approximately 1,450 low-moderate income persons.</p> <p>Beneficiary demographics will be tracked as services are provided and will be reported in the CAPER for FY 2019.</p>
<b>Location Description</b>	<p>The North Hill Project is located on approximately 33 acres in the Mount Vernon District, which is within U.S. Census Tract (CT) 415401 Block Group (BG) 3. The community park will serve persons from CT 415401 BG 3, as well as from neighboring CT 415401 BG 2.</p>
<b>Planned Activities</b>	<p>Development of affordable multifamily rental housing and a community park.</p>

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**AP-50 Geographic Distribution – 91.220(f)**

**Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed**

Fairfax County in general is opportunity-driven in the allocation of affordable housing resources, while at the same time working actively to promote the de-concentration of poverty, particularly in the programs operated by the FCRHA. With respect to the investment of capital resources for affordable housing development, the FCRHA finances the acquisition, preservation and development of properties in locations across the County and will continue to operate its program on a countywide basis.

**Geographic Distribution**

Target Area	Percentage of Funds
Countywide	100

Table 10 - Geographic Distribution

**Rationale for the priorities for allocating investments geographically**

Not applicable

## Affordable Housing

### AP-55 Affordable Housing – 91.220(g)

#### Introduction

The goals represented below are taken from the FY 2017 Housing Blueprint. A copy of this document is attached in the Grantee Unique Appendices section of this document.

<b><i>One Year Goals for the Number of Households to be Supported</i></b>	
<i>Homeless</i>	<i>150</i>
<i>Non-Homeless</i>	<i>1,005</i>
<i>Special-Needs</i>	<i>323</i>
<i>Total</i>	<i>1,478</i>

**Table 11 - One Year Goals for Affordable Housing by Support Requirement**

<b><i>One Year Goals for the Number of Households Supported Through</i></b>	
<i>Rental Assistance</i>	<i>924</i>
<i>The Production of New Units</i>	<i>499</i>
<i>Rehab of Existing Units</i>	<i>180</i>
<i>Acquisition of Existing Units</i>	<i>55</i>
<i>Total</i>	<i>1,658</i>

**Table 12 - One Year Goals for Affordable Housing by Support Type**

## **AP-60 Public Housing – 91.220(h)**

### **Actions planned during the next year to address the needs to public housing**

The current Fairfax County Moving to Work Plan highlights planned capital fund expenditures for FCRP-PBV properties in FY 2019. The variety of need is portrayed through the different repairs needed and the estimated cost at these FCRP-PBV properties.

Barros Circle – complete replacements of failing concrete sidewalks, site lighting and kitchen appliances at an estimated cost of \$115,195

Colchester – complete replacements of kitchen appliances at an estimated cost of \$82,000

Greenwood II – complete replacements of site lighting and kitchen appliances at an estimated cost of \$291,820

Kingsley Park – complete replacements of kitchen appliances at an estimated cost of \$111,820

Robinson Square – complete replacement of HVAC systems at an estimated cost of \$211,165

Rosedale Manor – complete replacements of kitchen appliances, smoke detectors in all bedrooms, carbon monoxide detectors, balcony decking, timber retaining wall and walkways at an estimated cost of \$522,150

Tavener Lane – complete replacements of HVAC systems at an estimated cost of \$45,620

Total planned capital funding expenditures for FY 2019 on FCRP-PBV units is \$1,379,770.

### **Actions to encourage public housing residents to become more involved in management and participate in homeownership**

As a part of the THRIVE initiative, the Fairfax County Homeownership and Relocation Division (HRD) is developing an intake and counseling strategy for FCRP-PBV residents who have homeownership as a goal. For example, HRD plans to make efforts to recruit PHA residents into the program early in order to get Public Housing Authority (PHA) residents on the waiting list for the opportunity to purchase a home through the FCRHA Affordable Dwelling Unit (ADU) Program, which increases the probability that they will have the opportunity to buy an affordable home before they earn too much money to be eligible for the ADU Program. PHA residents can earn up to 100 percent AMI, while ADUs are only available to those who earn up to 70 percent AMI. Residents moving from FCRP-PBV to homeownership will get the

best long term “deal” if they are able to purchase a unit provided through the ADU program.

**If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance**

Not applicable.

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## **AP-65 Homeless and Other Special Needs Activities – 91.220(i)**

### **Introduction**

Fairfax County is committed to the goal to ensure that every American has affordable, stable place to call home as established by the Opening Doors: Federal Strategic Plan to Prevent and End Homelessness. This commitment is reflected in the Fairfax County Board of Supervisors' adoption of the local Blueprint for Success: Strategic Directions for the Plan to Prevent and End Homelessness in the Fairfax-Falls Church Community. Our strategies are to prevent homelessness due to economic crisis and disability; preserve and increase the supply of affordable housing to prevent and end homelessness; deliver appropriate support services to obtain and maintain stable housing; and create a management system for plan implementation with the collaboration of the public and private sectors that ensures adequate financial resources and accountability. Federal housing programs, such as the Continuum of Care Program and the Emergency Solutions Grant, are essential resources for local efforts; therefore Fairfax County strives to utilize these resources in the most effective and efficient way possible.

### **Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including:**

#### **Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs.**

In FY 2019, the Fairfax County Continuum of Care (COC) will continue working to enhance its coordinated referral system. The efforts to create a more coordinated system will mean that people have fair and equal access to homeless assistance programs, that they will be assessed in standardized ways across the community, that they will be prioritized and referred to the programs that best fit their needs, and that there will be a system in place to hold housing and service providers accountable to these processes. Regular monitoring and evaluation will be utilized to ensure continued system-wide improvement in effectiveness and efficiency. Assessment tools, such as the Vulnerability Index – Service Prioritization and Decision Assistance Tool (VI-SPDAT), will replace some existing forms so that individuals and families' needs will be better understood and the appropriate interventions can be applied more quickly. The Homeless Management Information System (HMIS) will continue to be an important tool in coordinating the flow of individuals and families through the homeless system.

#### **Addressing the emergency shelter and transitional housing needs of homeless persons.**

In FY 2017, a bond referendum was approved to renovate or relocate four of the County's emergency shelters as part of the Capital Improvement Program. Planned renovations will make necessary repairs and enhancements to the facilities so that they are in safe, suitable conditions and ensure that they can meet the emergency shelter needs for individuals and families in the future. In FY 2016, Fairfax County's Office to Prevent and End Homelessness executed new contracts for the management of emergency

shelters by nonprofit organizations. The new contracts establish formal standards for the improvement of program performance with respect to shortening the lengths of stay and moving a greater percentage of households to permanent housing.

Transitional housing programs will continue to be evaluated for effectiveness and efficiency as per the goals of the Ten-Year Plan. As appropriate, transitional housing programs will be converted to permanent housing or will adapt services to meet the changing needs of special populations in the community's homeless population.

**Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again.**

In FY 2019, the Fairfax COC will continue to invest in rapid rehousing, permanent supportive housing and other permanent housing opportunities for people experiencing homelessness. Investments in permanent housing for people experiencing homelessness has proven effective in increasing the number of people moving to permanent housing from homelessness and shortening the length of stay in homelessness since the adoption of the Ten-Year Plan. The COC also will continue to work toward the achievement of the benchmarks defined by the United States Interagency Council on Homelessness and partners. Development of a Coordinated Entry System also is expected to continue facilitating quick returns to stable housing for individuals and families. Improvements to the homeless delivery system are also expected to continue reducing in the number of individuals identified as chronically experiencing homelessness.

**Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.**

Homelessness prevention remains a priority for the Fairfax COC. In FY 2018, resources were committed to homelessness prevention and shelter diversion assistance in the form of direct financial and rental assistance, as well as community case management and housing location. Under contracts with the Fairfax County Office to Prevent and End Homelessness that began in 2016, non-profit organizations will continue providing homelessness prevention and rapid rehousing assistance. Finally, the workgroups that further the development of the coordinated referral system will also have opportunities to find



better ways to help individuals and families avoid becoming homeless by reviewing intake and referral procedures in existing homeless assistance programs and connections with other systems of care.

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## **AP-75 Barriers to affordable housing – 91.220(j)**

**Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment**

The Fairfax County Board of Supervisors has adopted the following affordable housing goals as part of the Housing Blueprint:

- Goal 1: To end homelessness in 10 years
- Goal 2: To provide affordable housing options to special needs population
- Goal 3: To meet the affordable housing needs of low-income working families; and
- Goal 4: To Increase workforce housing through creative partnerships and public policy

In implementing these goals, it is the intention that opportunities should be available to all who live or work in Fairfax County to purchase or rent safe, decent, affordable housing within their means. Affordable housing should be located as close as possible to employment opportunities without adversely affecting quality of life standards. Affordable housing should be a vital element in high density and mixed-use development projects, encouraged in revitalization areas, and encouraged through more flexible zoning wherever possible.

The following policies demonstrate the breadth and depth of the County's commitment to creating affordable housing opportunities for its citizens including those groups identified as having priority needs and to removing regulatory impediments. Examples include:

- Provide bonus densities in exchange for affordable housing via the Affordable Dwelling Unit and Workforce Housing programs and increase community acceptance of affordable housing;
- Residential rezoning should not be approved above the low end of the Plan range unless an appropriate commitment of land, dwelling units, and/or a cash contribution to the Housing Trust Fund is provided;
- Capitalize the Housing Trust Fund so that it can be used as a mechanism to fund the development of affordable housing;
- Encourage affordable housing as a development option for infill sites, particularly in commercial areas and near employment concentrations;
- Give priority for the use of County and other government-owned buildings and land as sites for the provision of affordable housing;

- Promote and facilitate innovative site design and construction techniques, as well as encourage the use of manufactured housing and manufactured housing components, when aimed at providing affordable housing; and
- Support the efforts of the FCRHA in producing a portion of these affordable housing units through the use of County resources and the approval of suitable housing sites.

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## **AP-85 Other Actions – 91.220(k)**

### **Introduction**

The following describes other actions to be taken as part of this Action Plan.

### **Actions planned to address obstacles to meeting underserved needs**

To increase the supply of housing available to special populations, including persons with physical and mental disabilities, who are experiencing homelessness, who are elderly with low-income, and large families, the County employs the following policies:

- Locate housing resources for special populations in all parts of the County as a way of improving accessibility to employment opportunities, County services, as well as cultural and recreational amenities;
- Facilitate the development of a range of permanent housing types for homeless persons and families, as well as others in need of these housing options;
- Enforce fair housing laws and nondiscriminatory practices in the sale and rental of housing to all citizens;
- Promote multifamily housing for residents who are elderly or have disabilities that is conveniently located to public transportation and community services;
- Encourage the creation of accessible housing for those with disabilities;
- Participation in the Virginia Housing Development Authority (VHDA) Virginia Housing Registry, which serves as an information clearinghouse for landlords with accessible housing, and persons searching for accessible housing (see [https://www.socialserve.com/tenant/Search.html?ch=VA&type=rental&region\\_id=32931&accessibility=t](https://www.socialserve.com/tenant/Search.html?ch=VA&type=rental&region_id=32931&accessibility=t)); and
- Redesign of Domestic Violence crisis shelter service to ensure accessibility and availability throughout the County.

Additionally, the County will utilize regional approaches to address the impact of government regulations on the overall supply of housing. Fairfax County advocates “fair growth” within the region, a strategy that requires regional cooperation to assure sufficient land is planned and zoned for residential development and reduces the reliance on land use planning and rezoning as a technique to control development.

Predicted job growth through 2032 will continue to strain the supply of new housing in Fairfax County. The challenge is to identify opportunities for increased housing development despite a decreasing supply of developable “green” land (i.e., vacant land suitable for development), as the County has

become more and more “built out”. In developing the remaining areas of green land, the County will seek to reduce development cycle times by limiting development in areas that require rezoning and the associated time-consuming processes for approval.

As Fairfax County becomes increasingly built-out, the County is promoting an increased supply of housing through redevelopment. Opportunities for redevelopment will mainly occur in older, commercial corridors, rather than in residential areas. Including mixed-income, transit-oriented residential development and mixed-use commercial redevelopment is a strategy that the County is using to generate a significant number of housing units.

### **Actions planned to foster and maintain affordable housing**

The County is committed to encouraging the provision of affordable housing in all parts of the County. Policies implementing this objective include:

- Expand housing opportunities in or near mixed-use Centers as a way of providing the opportunity for persons employed in the County to live near their jobs;
- Promote the development of multifamily housing in both mixed-use Centers and existing residential areas, as appropriate, in an effort to diversify the housing stock and expand lower cost housing options (the County has adopted Locational Guidelines for Multifamily Residential Development as part of the Countywide Land Use);
- Promote affordable housing opportunities throughout the County, particularly in areas where existing supply is low; and
- Encourage the creation of affordable housing for persons with special needs via the Independent Living provisions in the Zoning Ordinance.

Fairfax County strives to conserve stable neighborhoods and encourage rehabilitation and other initiatives that will help to revitalize and promote the stability of older neighborhoods. Policies implementing this objective include:

- Provide assistance to seniors with low and moderate incomes and homeowners with disabilities to stay in their homes, via the Home Repair for the Elderly and Community Rehabilitation Programs;
- Encourage redevelopment through tax abatement;
- Improve and maintain existing housing and neighborhood quality by upgrading substandard housing and improving physical community facilities (e.g., streets, sidewalks, lighting) in existing neighborhoods;
- Maintain housing quality in existing neighborhoods and preserve neighborhood stability through the abatement of “spot” blight;
- Facilitate improvement and maintenance of existing neighborhoods by initiating community

development programs in communities where needed with as little displacement as possible and incorporating affordable housing units as part of all major housing rehabilitation efforts;

- Retain existing below market rental housing through acquisition, rehabilitation assistance and other subsidies; and
- Facilitate the retention of existing mobile home parks which are identified in the Area Plans as appropriate for mobile home park use (the County has adopted Guidelines for Mobile Home Retention as part of the Countywide Land Use).

### **Actions planned to reduce lead-based paint hazards**

Fairfax County provides telephone consultation, literature, and referrals to private lead testing companies to citizens who seek information regarding lead-based paint or other potential environmental lead hazards in the community. The Fairfax County website displays a lead poisoning prevention page (<https://www.fairfaxcounty.gov/health/environment/lead>). The webpage defines some of the major sources of lead in people's homes: dust from deteriorating lead-based paint primarily due to opening and closing windows in older homes (built pre-1978), residual lead dust in residential soils, and lead pipes. In addition, the Fairfax County Health Department educates household members about reducing lead exposure. To reduce risk of lead poisoning, the County recommends that residents remove peeling paint and chips from the home, not allow for children to be present when scraping or cleaning up paint chips, minimize dust through frequent damp mopping of floors and using wet cloths to wipe down windows, and discourage children from playing in bare soil surrounding the home. In addition, the Fairfax County lead poisoning prevention website provides links to numerous websites with information on lead exposure.

### **Actions planned to reduce the number of poverty-level families**

While based on data from the American Community Survey (ACS), Fairfax County has one of the highest median household incomes in the nation (estimated \$115,717 in 2016), there were an estimated 66,681 persons living below the poverty level in 2016. An estimated 5.9 percent of the population are living below poverty in Fairfax County.

The Community Action Advisory Board (CAAB) serves as an advisory body to the Fairfax County Board of Supervisors. The CAAB advises the Board on the needs, concerns and aspirations of low-income persons and recommends policies that promote meaningful change. The following are goals established by CAAB:

- Identify, review and develop policies as they relate to low-income residents;
- Support increases in programs and services providing the greatest supports to low-income

- families and individuals, and actions that minimize reductions to such programs;
- Maximize opportunities to provide input based on identified priority areas; and
- Oversee the disposition of CSBG funds.

Specific programs administered by Fairfax County that help reduce the number of poverty-level families include Housing Choice Voucher, Transitional Housing, Permanent Supportive Housing, and Unification programs. The FCRHA's PROGRESS (Partnership for Resident Opportunities, Growth, Resources and Economic Self-Sufficiency) Center undertakes family self-sufficiency initiatives and links FCRP-PBV program residents with resources to prevent eviction, assist with family crises, meet lease obligations, access mental health services and participate in economic self-sufficiency programs.

HCD also administers the Bridging Affordability Program, a locally-funded rental subsidy program operated through a consortium of nonprofit organizations. The collaborative provides rental subsidies as well as an array of supportive services to program participants. Bridging Affordability is intended to be a gateway to the Fairfax County Housing Continuum as part of the FCRHA's Moving to Work program. The Housing Continuum and the FCRHA THRIVE initiative are approaches that provide work incentives, service supports, and permanent housing to residents of FCRHA properties. The THRIVE initiative is focused on self-sufficiency and establishes goals to help residents move to their highest level of success.

#### **Actions planned to develop institutional structure.**

The County plans the following actions:

*Strategy #1: Make a segment of Bridging Affordability rental assistance resources available to individuals with disabilities who have been admitted to residential programs for more than 90 days and no longer need this level of care but would be otherwise discharged to homelessness.*

As the gateway to the County's housing continuum, the Bridging Affordability program provides access to locally funded rental assistance for two to three years with a bridge to other County housing programs or market housing, depending on individual need. Currently, in order to be eligible for Bridging Affordability rental assistance, a household must be on a County or CSB housing waitlist. Rather than base eligibility on housing waitlist status, the County is considering a new approach to make eligibility for individuals with disabilities contingent upon achievement of service plan goals and no longer being in need of the level of care provided by the residential program. This approach would focus on individuals with disabilities who have stabilized their medical, mental health, and substance abuse conditions and/or developed basic adaptive skills, but do not have enough income to afford to move to more integrated housing as their recovery and growth continues. Priority would be given to individuals who would become homeless as a result of their discharge from a residential program but do not qualify for homeless services due to their length of stay in the residential program. This process

would free up resources for those waiting to receive more intensive residential services.

Strategy #2: *Stimulate alternative affordable housing opportunities through development of a roommate referral program.*

There is a need for affordable housing alternatives for people with disabilities who have very low incomes, live in precarious housing situations but are not homeless, and are unable to get on housing waitlists. The County or a contracted entity could coordinate matches between individuals who need housing and persons with safe, decent rooms to rent. Individuals could receive guidance on what to look for in a housemate, what questions to ask, how to check references, and how to develop a rental agreement.

Finding a roommate is one of the major challenges to the progress of individuals with developmental disabilities seeking to access integrated, independent housing. In September 2017, the Northern Virginia Housing & Supportive Services Regional Implementation Team (NVHSSRT) launched “Roommate i-Match, <http://www.novahss.org/about-the-roommate-i-match-service>, a web-based tool to help increase affordable housing alternatives by making it easier to find roommates. The web-based tool begins with a brief on-line survey for the individual who is seeking a roommate. The survey answers are reviewed by program administrators at Service Source and the Arc of Northern VA starts and matches the applicant with potential roommates based on location and gender preferences, tobacco use, pet status, accessibility and transportation needs, rent and affordability requirements, move readiness and other characteristics. The applicant and/or their point of contact (POC) are informed by email of the potential matches. The program administrators email the profile to the potential roommates only when agreed by the applicant. Everyone involved receives tips on how to interview roommates and create roommate agreements. Further communication and any agreements reached are carried out by the applicant with support from their POC and the potential roommates. As the participation on Roommate i-Match grows, the NVHSSRT plans to host social activities and additional educational programs.

Strategy #3: *People with mental illness and/or substance use, and individuals with disabilities who have come into contact with the criminal justice system for low level offenses and who experience housing as a barrier to overall stability and self-sufficiency will be provided with case management, supportive services and referrals for subsidized housing opportunities through the countywide Diversion First Initiative (DFI).*

The DFI includes the Diversion First Housing Project (DFHP) through which the CSB will provide clinical and supportive services while working collaboratively with New Hope Housing, Inc., a non-profit affordable housing provider. Case management and supportive services will be provided to help clients eliminate their involvement with the criminal justice system and improve their opportunities to obtain stable affordable housing. The case management and supportive services will be continued after the



clients receive stable housing.

**Actions planned to enhance coordination between public and private housing and social service agencies.**

Human and social services agencies work together in Fairfax County and coordinate services to help combat poverty and help low-income residents to become self-sufficient.

In addition, the CCFP is a countywide grant process for funding private community-based human services programs that meet community identified needs. Begun in 1997, the CCFP leverages Fairfax County General Fund dollars with CDBG and CSBG to support programs that provide affordable housing and public services to low-income households and residents with special needs. The CCFP provides funding for program and services that meet priorities developed based on community input and reflecting the most critical needs for a continuum of stability, connectedness, well-being, and self-sufficiency services and opportunities for individuals and families, including housing, literacy, educational development, financial stability, health and support networks. Programs funded through the CCFP with CSBG funds are specifically targeted toward households with incomes at or below the poverty level.

The FCRHA, HCD, DFS, and CAAB share responsibilities in combating poverty. HCD and DFS have entered into a cooperative agreement to make client referrals, share information about mutual clients (for rent determinations and otherwise), coordinate the provision of specific social and self-sufficiency services and programs to eligible families, and provide joint administration of programs.

## Program Specific Requirements

### AP-90 Program Specific Requirements – 91.220(l)(1,2,4)

#### Introduction

The use of CDBG, HOME and ESG entitlement funds in Fairfax County are guided by the following Vision and Mission:

#### Vision

- A community that cares about its children, the elderly, persons with physical or mental disabilities and those less able to meet their basic needs;
- A community that values creative endeavors, arts and diversity which creates a strong, diverse and vibrant community that cares about the strengths and needs of its residents, where all can live to the best of their abilities in thriving, supportive neighborhoods;
- A community that adequately supports its human services system to ensure optimal service delivery;
- A community that actively participates in the planning, needs assessment, priority setting and decision-making processes to allocate community resources to meet the needs of its citizens; and
- A community that addresses these needs by building dynamic, flexible partnerships among the public, private, and non-profit sectors, and community volunteers.

#### Mission Statement

The mission of the County is to maximize the effective and efficient use of resources in the Consolidated Plan through a citizen-driven, staff-supported process to develop and preserve affordable housing, promote healthy, thriving and safe neighborhoods, and provide quality, accessible human services that meet essential existing and emerging needs throughout Fairfax County.

A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70 percent of CDBG funds is used to benefit persons of low and moderate income. For CDBG, Fairfax County uses a three-year average to ensure compliance with the low moderate-income benefit. The three years to which this FY 2019 One-Year Action Plan is applicable are: 2017, 2018 and 2019.

The County program specific requirements for CDBG, HOME and ESG are listed below.

**Community Development Block Grant Program (CDBG)  
Reference 24 CFR 91.220(I)(1)**

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed	794,300
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan.	0
3. The amount of surplus funds from urban renewal settlements	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan	0
5. The amount of income from float-funded activities	0
<b>Total Program Income:</b>	<b>794,300</b>

**Other CDBG Requirements**

1. The amount of urgent need activities	0
2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70 percent of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan.	95.00%

**HOME Investment Partnership Program (HOME)  
Reference 24 CFR 91.220(I)(2)**

1. A description of other forms of investment being used beyond those identified in Section 92.205 is as follows:

The County has no plan or required HUD approval to utilize other forms of investment not specifically eligible under Section 92.205.

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in 92.254, is as follows:

The County has no plan to utilize HOME funding in FY 2019 for homebuyer activities under 92.254.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR 92.254(a)(4) are as follows:

The County has no plan to utilize HOME funding in FY 2019 for homebuyer activities under 92.254.

4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR 92.206(b), are as follows:

Fairfax County does not currently utilize HOME funds to refinance existing debt.

**Emergency Solutions Grant (ESG)  
Reference 91.220(l)(4)**

1. Include written standards for providing ESG assistance (may include as attachment)

The OPEH has established a set of policies and procedures for the provision of financial and rental assistance that is funded by the ESG, as well as local tax dollars. These written standards were developed in collaboration with public and private partners from the Continuum of Care and designed to be in compliance with the authorizing laws, regulations and Federal Register Notices for the ESG program. (See attached).

2. If the CoC has established centralized or coordinated assessment system that meets HUD requirements, describe that centralized or coordinated assessment system.

The Fairfax County Continuum of Care (CoC) has developed a Coordinated Entry System of ensuring that families and individuals who are homeless can access the appropriate homeless assistance programs in a manner that is fair and efficient. Most people seeking assistance contact a centralized, telephone-operated information and referral hotline operated by NCS Coordinated Services Planning office before being referred to emergency shelters or homelessness prevention and rapid rehousing assistance providers. Homeless outreach services, staffed by local nonprofit case managers as well as nurses from the Homeless Healthcare Program and social workers from the CSB, work to engage unsheltered individuals. All homeless families and individuals are assessed in a way that is consistent across programs with many standardized questions and tools, such as a housing barrier assessment and the VI-SPDAT. The answers from the assessments provide valuable information to homeless assistance providers and the system in making decisions as to where families and individuals should be referred for assistance and who will be prioritized for the most resource-intensive programs.

More work continues to be done to improve the effectiveness and efficiency of the local housing crisis response system. Current initiatives are placing a particular emphasis on making improvements to quickly

addressing the needs of homeless veterans and people who are chronically homeless.

3. Identify the process for making sub-awards and describe how the ESG allocation is made available to private nonprofit organizations (including community and faith-based organizations).

The OPEH, in consultation with JCD, has allocated ESG program funding to Northern Virginia Family Services (NVFS), a private nonprofit organization that is contracted by the county to provide financial and rental assistance to families and individuals, along with case management and housing location services. Through this contract, NVFS provides homelessness prevention and rapid rehousing services to families and individuals throughout the community in collaboration with a group of community-based nonprofit organizations that includes Cornerstones, FACETS, Good Shepherd Housing and Family Services, New Hope Housing and Shelter House.

4. If the jurisdiction is unable to meet the homeless participation requirement in 24 CFR 576.405(a), the jurisdiction must specify its plan for reaching out to and consulting with homeless or formerly homeless individuals in considering policies and funding decisions regarding facilities and services funded under ESG.

Currently, the Fairfax County CoC has a formerly homeless individual participating as a member in the Governing Board for the Fairfax-Falls Church Community Partnership to Prevent and End Homelessness, which is the executive-level leadership group that provides high-level policy direction and overall accountability necessary for the successful implementation of the plan to end homelessness. The same representative on the board is also the chairperson of the CoC's Consumer Advisory Council, which reviews important policy and procedure documents with staff from OPEH and provides valuable feedback based on the perspective of individuals who were formerly homeless.

5. Describe performance standards for evaluating ESG.

The ESG program funding is only used to support homelessness prevention and rapid rehousing assistance in the Fairfax County CoC. A web-based Homeless Management Information System database application is used to record, measure and evaluate data related to ESG-funded programs. There are three primary performance standards used to evaluate ESG supported programs: (1) the number of families and individuals served over the course of a fiscal year; (2) the length of time that services are provided; and (3) the destination of families and individuals exiting the program. The goal is to increase the number of people assisted each year, reduce the length of time that services are provided, and increase the number of people exiting programs to permanent housing destinations in order to increase the effectiveness and efficiency of homeless assistance programs.

ACTION - 11

Approval of a One Year Extension to the Washington Metropolitan Area Transit Authority's (WMATA) Capital Funding Agreement, Use of Bond Premium Proceeds from the FY 2018 WMATA Bond Sale for FY 2019; and Opt Out of Long Term Debt to be Issued by WMATA in FY 2019

ISSUE:

Board approval of a one year extension of the Washington Metropolitan Area Transit Authority (WMATA) Capital Improvement Program (CIP), authorization of the County Executive to execute an amendment to the Capital Funding Agreement, authorization to use bond premium proceeds from WMATA's FY 2018 bond sale for FY 2019 capital expenses, and opt out of long term debt issued by WMATA in FY 2019. The current six year Capital Funding Agreement (CFA) addresses system rehabilitation, the purchase of new rail cars and buses, and is designed to keep the system in a "state of good repair." The current agreement expires at the end of FY 2018, and WMATA is requesting a one year extension of the current agreement.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors:

- (1) approve, in substantially the form of Attachment I, the amendment to the current CFA (Attachment II), which extends the agreement through FY 2019;
- (2) authorize the County Executive to sign the Amendment to the CFA;
- (3) authorize the use of bond premium funding from the FY 2018 WMATA bond issue for FY 2019 expenses; and
- (4) opt out of any long-term debt issued by WMATA in FY 2019.

TIMING:

Board action is requested on June 19, 2018, because the current CFA expires on June 30, 2018.

BACKGROUND:

The WMATA CFA began in FY 2011, and was in effect through June 30, 2016. It has been extended several times, and currently expires on June 30, 2018. WMATA has requested that the regional partners again extend the current CFA for one year (FY 2019) to allow WMATA to work through the implementation of the new Metro Funding Bill (HB 1539) that provides \$500 million annually to WMATA for capital expenses, and propose a new budget, CIP and multi-year CFA for FY 2020 through FY 2025. HB 1539 also included governance and budgetary reforms that included items such as reducing

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the role of alternates on the WMATA Board of Directors and capping the annual operating budget increase to three percent above the previous year. The proposed CFA Amendment, among other things: (1) extends the term of the CFA to June 30, 2019; (2) sets the maximum of Long-Term Debt to be issued at \$58,300,000; (3) incorporates the FY2019 Annual Work Plan; and (4) sets the County's FY2019 contribution at not more than \$35.4 million. Since the Amendment leaves the current CFA largely unchanged, key provisions of the current CFA are discussed below:

The CFA includes WMATA's CIP, which consists of capital projects to be funded over a six year period, including useful life projections for each project. The first six year period of the CIP in the current CFA was from FY 2011 to FY 2016. The CIP is updated for each successive six year period through the Annual Work Plan (AWP) and annual budget approval at WMATA. Signatories of the WMATA CFA agree to use all reasonable efforts to secure funding for the CIP. The current WMATA CIP (FY2019-FY2024) includes an increase in projects and maintenance that will be funding partially by the new Metro Funding Bill (HB 1539).

Under the CFA, WMATA bills its capital program on an expenditure basis, instead of an obligation basis. This allows the jurisdictions to fund projects as they progress versus fully funding a project before it begins. It also means that projects started near the end of the CFA term may require funding after the end of the agreement to complete them. The CFA commits all jurisdictions to completing all projects that are started within the current CFA term. Payment obligations on any debt financing incurred during the agreement period also continue after the agreement expires. The current WMATA CFA includes the following major points:

- Supersedes the Metro Matters funding agreement and includes any capital expenditures carried over from the Metro Matters Agreement.
- Signatories of the WMATA CFA agree to use all reasonable efforts to secure funding for the CIP. This extension of the CFA reflects the new dedicated funding that has been approved by Virginia, Maryland and the District of Columbia.
- The Board of Supervisors approved the original CFA on June 22, 2010.
- If there is a shortfall in revenue for the capital program, WMATA will develop a recovery plan, to be approved by the WMATA Board of Directors, which could include: use of interim funding; project redesign; project rescheduling; project deferrals; and, subject to agreement of the jurisdictions, increased contributions.
- If federal or other revenue is greater than anticipated, WMATA will use the excess revenue to fund any unfunded portions of the CIP or apply the funds to

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any outstanding indebtedness, thereby reducing the allocated contribution of the jurisdictions. This provision also applies to funds received under the Metro Matters Funding Agreement.

- WMATA will perform quarterly analysis and update the Annual Work Plan. The CIP will be reconciled annually and updated for the next six years.
- The jurisdictions have the ability to audit WMATA.
- Each jurisdiction's obligation is contingent on participation by all jurisdictions.

Lastly, the CFA gives each jurisdiction the option of paying cash, issuing its own debt, or having WMATA issue debt on the jurisdiction's behalf to fund its share of the WMATA CIP. In the past, the County has both issued its own debt to fund the County's share of WMATA's CIP and allowed WMATA to issue debt on the County's behalf. These decisions are made at the time a long-term debt issuance is needed. The County is able to fund its entire capital contribution with local funds and bond premium proceeds from the FY 2018 WMATA bond issuance that the County participated in. Therefore, staff recommends that the County opt out of any WMATA issued debt in FY 2019.

The County's total estimated FY 2019 capital costs for its share of the entire WMATA capital budget is approximately \$35.4 million, assuming the County opts out of WMATA issued long term debt and the new HB 1539 funding is sent to WMATA from the Commonwealth. The County's approved fall 2016 bond referendum provided \$120 million to help fund the WMATA CFA requirements for several years. These local bonds, combined with our share of bond premium proceeds from WMATA's bond issuance in FY 2018, gives the Board of Supervisors the ability to pay the County's ongoing capital payments and opt-out of WMATA-issued long term debt in FY 2019.

FISCAL IMPACT:

This one year extension of the WMATA CFA allows the County to fund its share of WMATA's capital budget in FY 2019 which is approximately \$35.4 million of a total FY 2019 WMATA Capital Budget of \$1.279 billion, including the County opting out of any WMATA issued long-term debt for FY 2019. The County intends to use the proceeds of the \$120 million transportation bond referendum approved in 2016, state funding, and bond premium proceeds from the WMATA bond issuance in FY 2018 to meet the County's share of WMATA capital obligations. Debt service costs associated with the County's transportation bond referendum have been incorporated into the County's long term debt ratio projections, and are referenced in the FY 2019-FY 2023 Adopted Capital Improvement Program (With Future Fiscal Years to 2028) and in Fund 30000, Metro Operations and Construction.



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ENCLOSED DOCUMENTS:

Attachment I – Amendment to the WMATA Capital Funding Agreement  
Attachment II – Current WMATA Capital Funding Agreement

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Joe LaHait, County Debt Coordinator, Department of Management and Budget  
Todd Wigglesworth, Chief, Coordination and Funding Section, FCDOT

ASSIGNED COUNSEL:

Patricia McCay, Assistant County Attorney

**THIRD AMENDMENT TO THE  
CAPITAL FUNDING AGREEMENT**

**Among**

**The State of Maryland;**

**The District of Columbia;**

**Arlington County, Virginia;**

**Fairfax County, Virginia;**

**The City of Alexandria, Virginia;**

**The City of Fairfax, Virginia;**

**The City of Falls Church, Virginia;**

**And**

**The Washington Metropolitan Area Transit Authority**

**Effective Date: \_\_\_\_\_**

**THIRD AMENDMENT TO THE  
CAPITAL FUNDING AGREEMENT**

THIS THIRD AMENDMENT TO THE CAPITAL FUNDING AGREEMENT (Third Amendment) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and among **the Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; **the State of Maryland, acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia (Contributing Jurisdictions and, collectively with WMATA, the Parties):**

**RECITALS**

1. The Parties to this Third Amendment desire to extend the term of that Capital Funding Agreement entered into by the Parties as of July 1, 2010 and previously extended to include WMATA Fiscal Year 2018 (CFA).
2. The Parties to this Third Amendment desire to continue the funding and work of WMATA on the same terms and conditions currently in place under the CFA as amended by the Second Amendment to the CFA for an additional year (the Extension Term).
3. The Parties will continue to negotiate in good faith toward a longer-term capital funding agreement during the Extension Term.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, and with the intent to be bound, the Parties hereby agree as follows:

**SEC. 1 DEFINITIONS**

Unless defined otherwise in this Third Amendment all terms used in this Third Amendment shall have the same meaning as is found in the CFA.

**SEC. 2 EXTENSION OF TERM AND AMENDMENT OF LONG TERM DEBT OBLIGATIONS**

Pursuant to Section 11 of the CFA, the Parties agree to extend the term of the CFA for one additional year, from July 1, 2018 through June 30, 2019 (FY2019) on the same terms and conditions agreed to under the CFA as amended by the First and Second Amendments to the CFA. The maximum amount of long-term debt authorized for issuance in FY2019 in support of the FY2019 Capital Improvement Program shall not exceed \$384 million plus the costs of issuance in an amount not to exceed \$4,000,000. Each of the Parties acknowledge and agree that this debt issuance will be approved by the Jurisdictions pursuant to the opt-out provisions of the CFA. In the event that WMATA desires to issue additional debt during FY2019, WMATA shall follow the processes established for such issuance in the CFA.

**SEC. 3 CAPITAL IMPROVEMENT PROGRAM**

A. As is contemplated by the CFA as amended by the First and Second Amendments to the CFA, it is anticipated that the WMATA Board of Directors will adopt a new Fiscal Year 2019 Capital Budget on or before June 30, 2018. It is the intent of the Parties that the CFA be automatically amended to incorporate the FY2019 Annual Work Plan as adopted by the

Board exclusive of funds to be used to repay the debt service on previously issued bonds as shown in Attachment A.

- B. Attachment A contains the FY2019 Capital Budget Financial Plan.
- C. The cash portion of the District of Columbia's Allocated Contribution to the FY2019 Annual Work Plan shall not exceed \$75,235,000 and this amount shall be added to the amounts contained in Section 4(b)(1)(C)(i) of the CFA and the First and Second Amendments to the CFA to constitute the new limitation on required Allocated Contributions for the District of Columbia in the total maximum amount not to exceed \$640,749,000 to be paid from the District of Columbia Capital Funds.
- D. It is the intent of the Parties that to the extent that WMATA undertakes multi-year projects in the FY2019 Annual Work Plan, adopted by this Third Amendment, such projects shall be continued in accordance with the provisions of Section 2(e) of the CFA.

#### **SEC. 4 CONTINUING EFFECT**

This Third Amendment amends certain terms and conditions of the CFA. All other terms and conditions of the CFA as amended by the First and Second Amendments to the CFA that are not modified by this Third Amendment shall remain in full force and effect. Should there be any conflict between the terms and conditions in this Third Amendment and the CFA as amended by the First and Second Amendments to the CFA; the terms and conditions of this Third Amendment, and in the case of the District of Columbia the Third Amendment to the Local Capital Funding Agreement, shall control.

**SEC. 5 COUNTERPARTS**

This Amendment may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement. The counterpart with the most recent date shall determine the date of entry of this Agreement by the Parties.

IN WITNESS WHEREOF, WMATA and the Contributing Jurisdictions have executed this Amendment by their representatives' signatures on the following pages.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

Attest:

By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Paul J. Wiedefeld [Seal]  
General Manager/Chief Executive Officer

Dated: \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Office of General Counsel

[signatures continued on following page]

STATE OF MARYLAND

acting by and through the Washington Suburban Transit District and the Department of  
Transportation

MARYLAND DEPARTMENT OF  
TRANSPORTATION

Attest:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [Seal]  
Secretary

and

WASHINGTON SUBURBAN  
TRANSIT DISTRICT

Attest:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [Seal]  
Chairman

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

[signatures continued on following page]



DISTRICT OF COLUMBIA

Attest:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [[Seal]]  
Mayor

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Attorney General

Dated: \_\_\_\_\_

[signatures continued on following page]

ARLINGTON COUNTY, VIRGINIA

Attest:

\_\_\_\_\_  
County Clerk

By: \_\_\_\_\_ [Seal]  
County Manager  
Arlington County, Virginia

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Arlington County Attorney

Dated: \_\_\_\_\_

[signatures continued on following page]

FAIRFAX COUNTY, VIRGINIA

Attest:

\_\_\_\_\_  
Clerk to the Board of Supervisors

By: \_\_\_\_\_ [Seal]  
County Executive  
Fairfax County, Virginia

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
County Attorney

Dated: \_\_\_\_\_

[signatures continued on following page]

CITY OF ALEXANDRIA, VIRGINIA

Attest:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_ [Seal]  
City Manager  
City of Alexandria, Virginia

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_

[signatures continued on following page]

CITY OF FAIRFAX, VIRGINIA

Attest:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_ [Seal]  
City Manager  
City of Fairfax, Virginia

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_

[signatures continued on following page]

CITY OF FALLS CHURCH, VIRGINIA

Attest:

\_\_\_\_\_

City Clerk

By: \_\_\_\_\_ [Seal]

City Manager  
City of Falls Church, Virginia

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_

City Attorney

Dated: \_\_\_\_\_

**ATTACHMENT A:  
FY2019 Capital Improvement Plan (CIP) Financial Plan**

\$ in Millions	Total	District of Columbia	State of Maryland	City of Alexandria	Arlington County	City of Fairfax	Fairfax County	City of Falls Church	DRPT CMAQ Match	Commonwealth of Virginia
Direct Jurisdictional Contributions	253.0	75.2	108.8	11.0	21.2	0.7	35.4	0.6		
Debt Strategy	262.7	151.7	111.0							
Commonwealth of Virginia	121.3									121.3
<b>Subtotal - State &amp; Local Contributions</b>	<b>637.0</b>	<b>226.9</b>	<b>219.8</b>	<b>11.0</b>	<b>21.2</b>	<b>0.7</b>	<b>35.4</b>	<b>0.6</b>		<b>121.3</b>
PRIIA Match	148.5	49.5	49.5							49.5
Other State and Local (CMAQ Match)	1.5								1.5	
Federal	459.3									
MWAA	27.5									
Other (Jurisdictional Reimbursable Projects)	5.3	2.9	1.4	0.2	0.3	0.01	0.5	0.01		
<b>Subtotal - Other CIP Funding</b>	<b>642.1</b>	<b>52.4</b>	<b>50.9</b>	<b>0.2</b>	<b>0.3</b>	<b>0.01</b>	<b>0.5</b>	<b>0.01</b>	<b>1.5</b>	<b>49.5</b>
<b>Total</b>	<b>1,279.1</b>	<b>279.4</b>	<b>270.7</b>	<b>11.2</b>	<b>21.5</b>	<b>0.7</b>	<b>35.9</b>	<b>0.6</b>	<b>1.5</b>	<b>170.8</b>

**Pre-Existing Debt Service**

	District of Columbia	Montgomery County	Prince George's County	City of Alexandria	Arlington County	City of Fairfax	Fairfax County	City of Falls Church
<b>Total</b>	<b>\$20,080,228</b>	<b>\$4,699,175</b>	<b>\$5,211,823</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$52,209</b>
Metro Matters Debt Service	\$10,117,021	\$4,699,175	\$5,211,823	\$0	\$0	\$0	\$0	\$52,209
Series 2017B Debt Service	\$13,676,661	\$7,213,337	\$7,285,285	\$1,773,356	\$0	\$111,358	\$5,608,396	\$126,607
<b>Subtotal</b>	<b>\$23,793,682</b>	<b>\$11,912,512</b>	<b>\$12,497,108</b>	<b>\$1,773,356</b>	<b>\$0</b>	<b>\$111,358</b>	<b>\$5,608,396</b>	<b>\$178,816</b>

**CAPITAL FUNDING AGREEMENT**

**Among**

**The State of Maryland;**

**The District of Columbia;**

**Arlington County, Virginia;**

**Fairfax County, Virginia;**

**The City of Alexandria, Virginia;**

**The City of Fairfax, Virginia;**

**The City of Falls Church, Virginia;**

**And**

**The Washington Metropolitan Area Transit Authority**



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**ATTACHMENT 3 District of Columbia Local Capital Funding Agreement**

## CAPITAL FUNDING AGREEMENT

THIS CAPITAL FUNDING AGREEMENT (Agreement) is made and entered into this 15<sup>th</sup> day of July, 2010, by and among **the Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; **the State of Maryland, acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia (Contributing Jurisdictions):**

### RECITALS

1. The WMATA transit system has played a critical role in the growth and prosperity of the National Capital Region and environs, and WMATA's continued economic vitality is essential to the regional transportation system and the environmental quality, economic, educational and cultural life of the Washington region.
2. The WMATA system was built and is operated through the substantial investment of public funds by the Federal Government and by State and local governments in the region.
3. The lack of sufficient secure and reliable funding to rehabilitate and maintain the WMATA transit system and to replace rail cars, buses, and other key transit assets is creating a transportation crisis, threatening the continued health and vitality of the system and jeopardizing the public investment.
4. Previously, the Parties entered into an agreement covering specific capital projects for FY2005 through FY10 (Metro Matters Funding Agreement) along with associated financing arrangements to cover those capital projects. That agreement expires on July 1, 2010 and the

---

Parties wish to create a follow-on agreement for both funding FY2011-2016 on an expenditure basis and to provide an ongoing master agreement for future support of WMATA's capital needs.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the Parties hereby agree as follows:

## **SEC. 1 DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings, unless the context otherwise requires:

- (1) "Agreement" means this Capital Funding Agreement.
- (2) "Allocated Contribution" means the financial share of the cost of the Capital Improvement Program to be contributed by a Contributing Jurisdiction, in accordance with the terms of this Agreement but shall not include funds to be provided to match the Dedicated Funding (PRIIA) funds.
- (3) "Annual Work Plan" means the annual plan developed by WMATA on both obligation and expenditure bases and submitted to the Contributing Jurisdictions which identifies the Capital Improvement Program projects and activities to be undertaken in the Capital Budget for a specific fiscal year and the estimated annual cash requirement of those projects and activities and the sources of funds expected to be used on an expenditure basis to meet that cash requirement.
- (4) "Authorized Representative" means the individual designated by the chief executive officer (or comparable official) of a Contributing Jurisdiction or WMATA to take actions on behalf of that Party regarding issues that arise in carrying out this Agreement.
- (5) "Capital Budget" is synonymous with the term Annual Work Plan.

(6) “Capital Improvement Program” (“CIP”) means the list of project elements including the useful life computations for each project contained therein for the period of July 1, 2010 through June 30, 2016 approved by the WMATA Board of Directors for the period of July 1, 2011 – June 30, 2016 as may subsequently be updated for this or each successive six-year period (for planning purposes only) and specific fund sources for use in supporting the specific scope, schedule, and budget (expressed in both obligation and expenditure terms) of projects that advance the Authority’s strategic objectives. See Attachment 1 for the FY2011-2016 CIP. The CIP is not considered a payment schedule. The CIP shall be updated annually as described in this Agreement.

(7) “Contributing Jurisdictions” means the State of Maryland acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia.

(8) “Days” means calendar days, unless otherwise specifically provided.

(9) “Debt” means any bond, security, debt issuance, certificate of participation, Grant Anticipation Debt, or other evidence of indebtedness issued by a public body, and includes commercial paper, lines of credit, and letters of credit to finance the program of projects to be completed under the terms of this Agreement. Debt shall be classified as either Short-Term Debt or Long-Term Debt.

(10) “Dedicated Funding” (PRIIA) means those federal funds provided to WMATA under the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432). The PRIIA matching funds will be made available to WMATA pursuant to the applicable laws of the District of Columbia, Maryland, and the Commonwealth of Virginia.

(11) “Discretionary Grant” means any award of discretionary Federal financial assistance for a new or existing fixed guideway system from the capital investment grant program authorized under Section 5309 of Title 49 of the U.S. Code, or from any other discretionary grant program from any federal agency under which funds are provided on other than a formula basis.

(12) “Federal grant” means an award of financial assistance, including formula grants, discretionary grants, and cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government through the Federal Transit Administration or any other federal agency to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

(13) “FTA” means the Federal Transit Administration.

(14) “Formula grant” means any award of Federal financial assistance from the urban formula program authorized under Section 5307 of Title 49 of the U.S. Code or the fixed guideway modernization program authorized under Section 5309 of Title 49 of the U.S. Code, or similar successor programs.

(15) “Funding Sources” shall be the various categories of funds to be used to pay for the projects covered in the CIP. These funds may be either from federal or non-federal sources. Where the Agreement requires a more detailed description of the funding source, then the following categories shall be used: Dedicated Funding, Dedicated Funding matching funds,

Formula Grants, Formula Grants matching funds, Other Federal Grants, Other Federal Grants matching funds, System Performance Funds, and Other funds.

(16) “Grant Anticipation Debt” means any debt issuance the principal and interest on which are to be paid with the proceeds of Federal grant funds.

(17) “Interim Funding Sources” means one or more letters of credit or lines of credit and related reimbursement agreements, standby bond purchase agreements, commercial paper, or similar agreements or obligations, or any combination of the foregoing, issued to or for WMATA or entered into with WMATA by a bank, insurance company, or other financial institution, or one or more resolutions, indentures, or other security agreements providing for bonds or other evidence of indebtedness of WMATA.

(18) “Long-Term Debt” means Debt with a maturity greater than 1 year.

(19) “Metro Matters Funding Agreement” means the capital funding agreement dated October 25, 2004 by and among the Washington Metropolitan Area Transit Authority; the State of Maryland acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia and covering projects in WMATA’s Fiscal Years 2005-2010.

(20) “Minimum Annual Allocated Contribution” means that annual amount of funds payable by a Contributing Jurisdiction sufficient to provide any required matching funds for (a) all federal formula and other federal grant funds awarded to WMATA and expected to be expended in the current Annual Work Plan excluding the local match to be provided by the District of Columbia, Virginia and Maryland for the Dedicated Funding (PRIIA) funds, and (b)



the System Performance Funds necessary to meet any maintenance of effort requirement for WMATA to receive Dedicated Funding.

(21) “Non-Federal funds” means funds provided by State and local sources and debt sources.

(22) “Party” or “Parties” means WMATA and the Contributing Jurisdictions.

(23) “Preventive Maintenance” means upgrades to, repairs to, and maintenance of, capital assets that provides additional value to the capital asset. The FTA definition of “preventive maintenance” is separate from and not connected to Preventive Maintenance as defined herein.

(24) “Reprogramming” means a change to an Annual Work Plan or Capital Budget that occurs outside of the Annual Work Plan process.

(25) “Short-Term Debt” means Debt with a maturity of 1 year or less.

(26) “System Performance Funds” means jurisdictional funds over and above those funds required to match any Federal grant and to be used for Capital Improvement Plan projects contained in the applicable Annual Work Plan.

(27) “WMATA” or “Authority” means the Washington Metropolitan Area Transit Authority.

## **SEC. 2 CAPITAL IMPROVEMENT PROGRAM**

(a) **Agreement of the Parties.** -- WMATA and the Contributing Jurisdictions hereby agree to and adopt the Capital Improvement Program attached as Attachment 1. The Parties further agree to comply with the terms and conditions of this Agreement and to fully and faithfully carry out their respective obligations under this Agreement. Any commitment or agreement of any Contributing Jurisdiction required by this Agreement shall be subject to the

annual appropriation of funds and other limitations on expenditures or obligations under the law of the Contributing Jurisdiction or under other applicable law as described in Section 4(b)(3)(B). This Agreement shall not constitute an indebtedness of the Contributing Jurisdictions until funds are duly appropriated and quarterly payments become due pursuant to Section 5(c)(3) of this Agreement, nor shall it constitute an obligation for which the Contributing Jurisdictions are obligated to levy or pledge any form of taxation or for which the Contributing Jurisdiction has levied or pledged any form of taxation. Nothing in this Agreement affects requirements placed on the District of Columbia, State of Maryland and Commonwealth of Virginia by the Passenger Rail Investment and Improvement Act of 2008.

**(b) Elements of Capital Improvement Program.**

(1) Program Elements. – The Capital Improvement Program proposed to be funded by this Agreement consists of those projects identified for funding along with the sources of that funding in the annually approved CIP as they are updated in accordance with this Agreement. The CIP may include any capital project or purchase eligible for capital funding and may include, for example, projects in any of the following categories:

- (A) Vehicles and Vehicle Parts, such as replacement or purchase of new rail cars, buses, paratransit vehicles and/or service vehicles, rehabilitation of rail cars and buses and replacement parts to maintain the rail fleet.
- (B) Rail System Infrastructure Rehabilitation, such as multiple systems and equipment within the rail stations and tunnels that enable safe, reliable Metrorail service.
- (C) Maintenance Facilities, such as rehabilitation, maintenance, replacement and/or new bus garages and rail yards to support repairs to vehicle fleet.
- (D) Systems and Technology, such as technology systems, software and equipment supporting transit operations and business functions.

- (E) Track and Structures, such as steel running rail that guides Metrorail trains, the cross ties and fasteners that hold the rail in place, the ballast bed that supports the cross ties and the third rail that provides power to the train. Structures include the retaining walls that protect the track bed and underground tunnels, the concrete pads that keep the track bed properly elevated and the bridges that span roads and bodies of water.
- (F) Passenger Facilities, such as facilities at Metrorail stations, including bus loops, bus stops, parking garages, surface lots, Kiss-and-Ride spaces, access roads and bus loops, bike racks and lockers.
- (G) Maintenance Equipment such as equipment to rehabilitate track and maintain the vehicle fleet (rail and bus).
- (H) Other Facilities, such as facilities that house administrative offices, training rooms, revenue processing activities, material storage, police work and a print shop.
- (I) Program Management and Support including Credit Facility and Other Financial Fees and Expenses and Program Contingencies.
- (J) Safety and Security Projects.
- (K) Preventive Maintenance as defined in this Agreement.

(2) **Description.** -- The specific projects and activities and the sources of funding to support those specific projects and activities will be set forth in the Annual Work Plan.

(c) **Cost.** -- The estimated program cost of the initial Capital Improvement Program is approximately \$5,000,000,000 in year of expenditure dollars and covering a six-year period. The initial CIP covering FY 2011-2016 is provided as Attachment 1.

(d) **Schedule.** -- The initial Capital Improvement Program will be implemented over the period beginning WMATA fiscal year 2011 and ending fiscal year 2016. There will be an

Annual Work Plan for each fiscal year, as more specifically described in Section 4 of this Agreement.

(e) **Agreement to Fund Capital Improvement Program.** -- WMATA and the Contributing Jurisdictions hereby concur in and agree to fund the Capital Improvement Program in accordance with 4(b)(1)(B) of this Agreement.

(f) **Authorized Representative.** -- Within 30 days after the Effective Date of this Agreement, WMATA and each of the Contributing Jurisdictions shall designate an Authorized Representative to act on that Party's behalf in implementing this Agreement.

### **SEC. 3 CAPITAL IMPROVEMENT PROGRAM FINANCIAL PLAN**

(a) **Funding Sources.**

The projects and activities in the Capital Improvement Program shall be funded in the most cost effective manner from one or more of the following sources: (A) Funding Sources; (B) the issuance of Debt by WMATA, with WMATA's debt service to be paid with funds received from the Contributing Jurisdictions unless a Contributing Jurisdiction has opted out of the Long-Term Debt issue in accordance with this Agreement; and (C) such other funding sources, cash management strategies or financing methods as the WMATA Board determines to be appropriate to accomplish the goals of the Capital Improvement Program. The specific amounts estimated from each Funding Source will be set forth in each Annual Work Plan.

(b) **Formula for Contributing Jurisdiction Funding.** -- The Allocated Contributions of the Contributing Jurisdictions for the Capital Improvement Program will be based on the Board-adopted FY 2010 Operations Allocation Formulas applied to each project as shown in the FY2011-2016 CIP applied to each element of the Capital Improvement Program as follows:

- (1) The Rail allocation formula will apply to Rail projects and debt issued for Rail projects.
- (2) The Bus allocation formula will apply to Bus projects and debt issued for Bus projects.
- (3) The Paratransit formula will apply to Paratransit projects and debt issued for Paratransit projects.
- (4) An average of the Rail and Bus allocation formulas will apply to General financing expenditures and for project expenditures that cannot be allocated to Rail, Bus, or Paratransit.
- (5) Dedicated Funding funded projects – Will be divided equally among the District of Columbia, State of Maryland, and Commonwealth of Virginia subject to the provisions of the various state laws establishing dedicated funding sources to match federal funds made available under the Passenger Rail Investment and Improvement Act of 2008.

The allocation formulas will be recalculated every three (3) years to reflect the then-current approved Operating Budget allocation and applied prospectively to the three subsequent Annual Work Plans.

(c) **Debt Service.** – Debt service on obligations agreed to by the Contributing Jurisdictions and issued under the Metro Matters Funding Agreement shall become obligations issued under this Agreement. The Contributing Jurisdictions shall continue to make any debt service payments as were required under the terms of the Metro Matters Funding Agreement. New debt service for obligations issued under the terms of this Agreement will be funded by the Contributing Jurisdictions as more fully set forth in Section 4(b)(2) of this Agreement.

(d) **FY 2010 Capital Projects.** -- WMATA and the Contributing Jurisdictions agree that all projects whose funding was obligated under the Metro Matters Funding Agreement but for which expenditures will occur during the scope of this Agreement will become projects under this Agreement and governed by the terms of this Agreement including the funding obligations

of the Contributing Jurisdictions thereto. It is the intent of the Parties to terminate the Metro Matters Funding Agreement and incorporate all its capital commitments into this Agreement.

#### **SEC. 4 IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM**

**(a) Programmatic Aspects.**

**(1) Long Term Programming** -- To assist in the prioritization of projects, each Contributing Jurisdiction will, at the execution of this Agreement, provide a schedule of funds expected to be made available to WMATA for the 2011-2016 period and successor periods (for planning purposes only) covered by this Agreement. The schedule for WMATA fiscal years 2012 - 2016 is subject to adjustment as the submitting Contributing Jurisdiction obtains more updated information. It is not binding on any Party and shall not be considered as a payment schedule. The Annual Work Plan will contain the actual funding requirements and sources of funds for the current year. The WMATA Board of Directors will approve a six-year capital program each year, with such program covering potential funding sources, a description of the project prioritization process, an explanation of how the CIP would further the strategic goals of WMATA, and an identification of the performance metrics by which the outcome of the CIP will be measured. The prioritization process shall rank and select projects based on the projects' support of WMATA's strategic goals and funding availability.

The annual documentation of the capital program will describe qualitatively and quantitatively the broad outlines of the proposed capital spending and sources for that spending for the forthcoming fiscal year and the outcomes expected to be achieved by the proposed program. The discussion of the proposed spending shall include at least the following: (i) the sources of funds for the proposed spending, (ii) expenditures by mode (e.g. bus, rail, paratransit), (iii) expenditures by project phase (e.g. planning, design, land acquisition, construction), (iv) the

indicators of the outcomes to be achieved by the proposed projects, and (v) projected spending compared to prior year actual spending rate.

(2) **Annual Work Plan.** -- WMATA shall, as a part of its annual budget process each year during this Agreement, develop and submit to the Contributing Jurisdictions a draft Annual Work Plan for the Capital Improvement Program which shall include the preliminary results of the Budget Reconciliation process contained in section 5 of this Agreement. The Annual Work Plan shall be based upon and be consistent with the updated Capital Improvement Program prepared pursuant to the reconciliation process under Section 5 of this Agreement. The Annual Work Plan along with the Capital Program will be approved by the WMATA Board of Directors prior to the start of the fiscal year covering the specific Annual Work Plan.

(3) **Contents of Plan.** -- The Annual Work Plan shall include --

(A) an identification of the projects and activities in the Capital Improvement Program for which funds will be obligated or expended during the next WMATA fiscal year;

(B) a budget for the Annual Work Plan that includes a cost estimate and source of funds for each project and activity in the Plan, by CIP category;

(C) a statement of each Contributing Jurisdiction's required Allocated Contribution for the Annual Work Plan, based on a schedule of projected quarterly cash needs including an identification of what portion of that contribution is a direct capital contribution, and what portion (if any) is to be used by WMATA to pay debt service on WMATA Long-Term Debt and WMATA Short-Term Debt (each to be stated separately in the Plan);

(D) a summary of the CIP projects and activities undertaken in the then-current WMATA fiscal year, together with the costs incurred to date and the estimated remaining costs for those projects and activities; and

(E) the preliminary results of the Budget Reconciliation process contained in section 5 of this Agreement and a revised proposed CIP.

(4) **Schedule for Approval of CIP and Annual Work Plan.** To ensure a coordinated program, the Parties agree that each annual program will be developed and approved under the following schedule:

(A) The updated 6-year CIP will be made available to the Contributing Jurisdictions no later than the 10th business day in October.

(B) A presentation will be offered to the Northern Virginia Transportation Commission at a scheduled meeting no later than the November meeting.

(C) A presentation will be offered to the Mayor and Council of the District of Columbia no later than the Wednesday immediately prior to Thanksgiving.

(D) Subject to consultation with the Maryland Department of Transportation, a public presentation will be offered in both Prince George's County and Montgomery County no later than the Wednesday immediately prior to Thanksgiving.

(E) WMATA will also present the capital program and the Annual Work Plan information to affected legislative bodies as requested.

(F) The draft Annual Work Plan shall be submitted to the Contributing Jurisdictions by December 15.



(G) Comments are due from the Contributing Jurisdictions no later than February 15th. WMATA may not be able to consider comments received after February 15<sup>th</sup> in the development of the proposed Annual Work Plan.

(H) The proposed Annual Work Plan shall be provided to the Contributing Jurisdictions immediately following the March WMATA Board meeting and shall be used by the staff of the Contributing Jurisdictions to consult with WMATA Board representatives. The amount included as the Minimum Allocated Contribution on this final Annual Work Plan will remain substantially the same for the upcoming fiscal year, subject to downward adjustment as provided in Section 4(b)(3)(B), or as otherwise requested by the WMATA Board and approved by the Contributing Jurisdictions. The final CIP and Annual Work Plan will be adopted by the WMATA Board no later than the June meeting.

**(5) WMATA Implementation Responsibilities.**

(A) General. -- WMATA will administer the Capital Improvement Program and carry out all necessary procurement actions and management oversight. All procurement actions will be undertaken in accordance with WMATA procurement policies and applicable law.

(B) Federal Grants. -- To the extent that Federal financial assistance is provided for any project or activity in the Capital Improvement Program, WMATA will develop the required Federal grant applications and/or other necessary documentation to meet FTA or other Federal program requirements, and will carry out the federally assisted project or activity in compliance with all applicable Federal requirements.

**(6) Funding Methodology For Projects in the Annual Work Plan.** New projects for the Annual Work Plan will be listed with their funding identified by both year and

Funding Source. A project may be funded by more than one type of funding. If a project is a multi-year project, then in the second and succeeding years, that project will have the first call on that funding source unless another funding source is identified. In every case, funds needed for debt service including Short Term Debt and Interim Financing and funds needed for annual “state of good repair” items shall have first claim on all funds that may legally be spent on such projects. Projects which are underway but which have remaining amounts budgeted for them in the CIP shall have the unexpended funds “rolled over” to the succeeding fiscal year. The unexpended funds shall be in addition to the succeeding year’s CIP funding requirements.

**(b) Financial Aspects.**

**(1) Cash Sources.**

(A) Federal Funds. -- WMATA commits to take all necessary and appropriate actions to secure Federal funding in the CIP (including Federal formula and discretionary grant funds under the Federal transit/highway program, the Passenger Rail Investment and Improvement Act of 2008, and such other Federal financial assistance as may be made available during the term of this Agreement) to assist in the funding of the Capital Improvement Program. WMATA will manage the Capital Improvement Program within the funding amounts agreed to by the Contributing Jurisdictions, except as otherwise provided in paragraph (C) of this subsection.

**(B) Jurisdictional Commitments.**

(i) To the extent applicable, each Contributing Jurisdiction agrees to make its Allocated Contribution to fund the Capital Budget component of the CIP and the CIP as a whole as adjusted annually in accordance with this Agreement; provided, however, that in no case will the Allocated Contribution be less than the Contributing Jurisdiction’s estimated

annual share of any required matching funds for (1) all federal formula and other federal grant funds awarded to WMATA and expected to be expended in the current Annual Work Plan, and (2) the System Performance Funds necessary to meet any maintenance of effort requirement for WMATA to receive Dedicated Funding (“Minimum Annual Allocated Contributions”). Such contributions shall be made in accordance with the requirements and procedures in subsection (3) of this Section. The source of funds for such capital contributions is in the discretion of each Contributing Jurisdiction; provided that such funds must qualify as local match under applicable FTA or other agency grant program requirements. WMATA agrees to provide each Contributing Jurisdiction with their estimated Allocated Contribution by the 10<sup>th</sup> business day in October each year.

(ii) If the expected amount of federal grant funds requiring a non-federal match increases by more than 20% over the previous year’s grant funds received by WMATA, then the Parties will confer within 30 days to determine if a change to the funding requirement contained in Section 4(b)(1)(B)(i) of this Agreement is appropriate.

(iii) Additionally, each Contributing Jurisdiction agrees to make its best efforts to provide necessary System Performance Funds to pursue the projects in the Annual Work Plan to be funded with System Performance Funds above those required to obtain Dedicated Funding. Each Contributing Jurisdiction shall inform WMATA of the amount of any such System Performance Funds to WMATA in sufficient time for WMATA staff to prepare the draft and final capital program and Annual Work Plan. The System Performance Funds will be programmed into the CIP and Annual Work Plan using the WMATA funding formulas described in Section 3(b) of this Agreement. Only those amounts which are balanced among the

Contributing Jurisdictions based on the aforementioned funding formulas will be programmed into the CIP and Annual Work Plan.

(C) Additional Limitations.

(i) As authorized in Section 4(b)(7) of this Agreement, WMATA and the District of Columbia have entered into a separate Local Capital Funding Agreement of even date herewith (“DCLCFA”) to address certain issues concerning the implementation of this Agreement that must be handled separately according to District of Columbia law. The implementation of District of Columbia obligations, representations, and warranties under this Agreement shall be controlled by the provisions of the DCLCFA set forth on Attachment 3 to the extent of any inconsistency between this Agreement and the provisions of the DCLCFA identified on Attachment 3. Section 4(b)(2)(D) of the DCLCFA provides that, if the District of Columbia exercises its prepayment rights for all long-term debt under 4(b)(2)(D) of this Agreement, then notwithstanding anything to the contrary herein, the Allocated Contribution of the District of Columbia, as shown on Table 1 of Attachment 1 of this Agreement, may not be increased above the aggregate amount of \$397,314,000 to be paid from District of Columbia capital funds, without written approval of the District of Columbia. Payments for Long Term Debt service on Metro Matters Funding Agreement debt and Long Term Debt service anticipated in this Agreement, are not included in the Allocated Contribution aggregate cap for the District of Columbia.. For informational purposes, only, the District of Columbia represents that payments for amounts such as Long Term Debt service under the Metro Matters Funding Agreement and funds associated with debt service for projects under this Agreement are funded through annual appropriations in its Operating Budget. For example, the District of Columbia has included in its proposed operating budget for FY 2011 the sum of

\$258,318,034 for payment to WMATA, which includes an amount sufficient to pay Long Term Debt service for FY 2011.

(ii) The District of Columbia agrees to review its Allocated Contributions annually to determine if any adjustments may be made. If the District of Columbia agrees to increase the District of Columbia Allocated Contributions cap by an amendment to the DCLCFA, then such increase will be incorporated into this Agreement pursuant to the Annual Work Plan process.

(iii) In the event that (i) WMATA proposes an increase that would cause the District of Columbia's Allocated Contribution to exceed an aggregate amount of \$397,314,000; and (ii) the District of Columbia denies or withholds approval of the increase in excess of that stated amount, all other Contributing Jurisdictions shall be relieved of any obligation to fund the increase proposed by WMATA in their Allocated Contributions.

(iv) In the event that the District of Columbia denies or withholds approval of such increase, all Parties shall cooperate to develop alternative solutions to any resulting revenue or program shortfalls.

**(2) Debt Sources.**

(A) General. -- In accordance with the Annual Work Plan, all or any portion of the Capital Improvement Program may be funded through short- or long-term debt financing as described in this subsection and in accordance with Section 21 and Articles IX and X of the WMATA Compact.

(B) WMATA Responsibility. -- WMATA may issue debt to assist in the financing of the Capital Improvement Program. The WMATA Board may authorize the issuance of such debt, in one or more issuances during the term of this Agreement, at such times

as it determines appropriate, in its discretion, taking into account factors such as the cash flow needs of the CIP, market conditions for financing, and WMATA's debt capacity. Any debt issued by WMATA under this subsection may be secured by a lien and pledge of WMATA's gross revenues, or (subject to any required FTA approval) of WMATA's capital assets. Any such debt secured by WMATA's gross revenues may be on parity with or subordinate to the 2003 Gross Revenue Transit Refunding Bonds, the Gross Revenue Transit Bonds Series 2009A, and the Gross Revenue Transit Bonds Series 2009B. For any such debt that is secured by WMATA's capital assets, WMATA will endeavor, consistent with the cash flow needs of the CIP and with market demands, to match the length of the debt financing to the useful life of the pledged assets, unless WMATA determines that market or other financial considerations make a different debt length more prudent. In addition to debt secured by gross revenues or capital assets as described in this paragraph, WMATA may issue debt in accordance with subsection (f) of this Section.

(C) Contributing Jurisdiction Responsibility. -- The Contributing Jurisdictions which have not elected to prepay pursuant to paragraph (D) of this subsection each commit, subject to annual appropriations, to make the annual contributions necessary in order that WMATA can make payments of debt service on debt issued by WMATA under paragraph (B) of this subsection. The amount of such contributions will be included in the respective Allocated Contribution amounts of the Contributing Jurisdictions set forth in the CIP. Such contributions shall be made in accordance with the requirements and procedures in subsection (3) of this Section. The obligation to make contributions to pay such debt service shall survive the term of this Agreement and shall remain in effect throughout the term of the WMATA debt issuance involved.

(D) Prepayment Alternative for Contributing Jurisdictions.

(1) Election. -- A Contributing Jurisdiction may elect to prepay its portion of the debt financing (other than commercial paper, letter of credit, or line of credit) needed to fund the Capital Improvement Program, as described in the CIP, in lieu of making annual contributions to pay WMATA debt service pursuant to paragraph (3) of this subsection. The elections and commitments of the Contributing Jurisdictions to make such prepayments, as of the Effective Date of this Agreement, are reflected in the CIP. If any update to the CIP during the term of this Agreement contemplates long-term debt issuances by WMATA, then the Contributing Jurisdictions shall have an opportunity to change their elections regarding prepayment, by notice to WMATA. Such notice shall be provided in writing no later than one hundred twenty (120) days after the date WMATA notifies the Contributing Jurisdictions of the need to make an election regarding such additional debt issuance.

(2) Responsibility for Repayment. -- If a Contributing Jurisdiction issues debt to make its prepayment under this paragraph, it shall pay the proceeds of such debt issuance directly to WMATA in accordance with its Allocated Contribution as set forth in the CIP and in accordance with the procedures set forth in Attachment 2. Such Contributing Jurisdiction shall be solely responsible for the repayment of the principal and interest of any debt it issues under this paragraph.

(3) **Contributing Jurisdiction Commitment.**

(A) General. -- The maximum amount of the Contributing Jurisdictions' Allocated Contribution of the costs of the CIP is subject to the provisions of Section 4(b)(1)(C) of this Agreement. Nothing in this Agreement shall be construed to obligate a Contributing Jurisdiction to have, as of the date that it enters into this Agreement, funding or an

appropriation in the full amount of its Allocated Contribution of the costs of the CIP. The Contributing Jurisdictions shall be solely responsible for their Allocated Contributions of the cost of the CIP. Each Contributing Jurisdiction commits, subject to its constitutional or legally equivalent provisions and throughout the term of this Agreement, to use all reasonable efforts including, but not limited to, a request by the responsible official to include the Minimum Annual Allocated Contribution as described in the draft Annual Work Plan in the Contributing Jurisdiction's annual proposed budget or other financial submission to its fiscal authority and to pursue all legally available means to secure the necessary and appropriate budget, legislative, and appropriations actions in order to obtain funding in the full amount of its Allocated Contribution of the costs of the Capital Improvement Program. Each Contributing Jurisdiction shall be solely responsible for providing its Allocated Contribution to the cost of the CIP, and in no circumstance shall one Contributing Jurisdiction be responsible for the Allocated Contribution or other obligations of any other Contributing Jurisdiction under this Agreement.

(B) Annual Commitment. -- Each Contributing Jurisdiction shall annually provide WMATA with written notice, concurrent with comments on WMATA's proposed budget, that funds have been, are intended to be, or will not be appropriated to cover its Allocated Contribution for WMATA's upcoming fiscal year, and committing to make payment of such Allocated Contribution to WMATA. No CIP or Annual Work Plan shall be approved without the certification of each Contributing Jurisdiction that the funding levels are reasonable and accurate reflections of funds to be made available. If a Contributing Jurisdiction's appropriations process is not completed by June 1, such Contributing Jurisdiction shall provide to WMATA: (i) a written explanation for the failure to make such submissions by June 1 and confirmation that amounts equal to its Allocated Contribution have been or will be included in



the next fiscal year budget to be considered by the Contributing Jurisdiction's fiscal authority; and (ii) written assurances that all reasonable efforts will be undertaken to secure the ultimate appropriation of funds in a prompt and timely fashion, or if funds will not be appropriated, then the Contributing Jurisdiction shall notify WMATA and all other Contributing Jurisdictions through their representatives listed in section 12 of this Agreement or as may be updated by each Contributing Jurisdiction in the future within five business days of the fiscal body's action. If there is a failure to appropriate the full annual Allocated Contribution, the Annual Work Plan shall be revised to conform to the available funds and submitted to the WMATA Board of Directors and the other Contributing Jurisdictions for approval.

(C) Quarterly Payments. -- Each Contributing Jurisdiction's Allocated Contribution shall be based on the approved Annual Work Plan and any subsequent adjustments derived from the Annual Budget Reconciliation Process for the quarter covered by the invoice, and paid to WMATA on a quarterly basis in advance, no later than the first day of each quarter, throughout the term of this Agreement. Any debt service included in the invoice for either Short-Term Debt or Long-term Debt shall be separately identified on the invoice. WMATA shall submit bills to the Contributing Jurisdictions for such quarterly payments forty-five (45) days prior to the date such payments are due. Thus, for example, for the July-September quarter WMATA will bill the amount in the Annual Work Plan as approved or adjusted for July-September and send each Contributing Jurisdiction an invoice for its Allocated Contribution no later than the immediately preceding May 15<sup>th</sup>. Contributing Jurisdiction payments must be received by WMATA no later than July 1. The sum of each Contributing Jurisdiction's quarterly invoices during a given fiscal year shall not exceed that Contributing Jurisdiction's Allocated Contribution in the approved Annual Work Plan.

**(4) Transitional System for FY2011 Billings** -- To transition to the billing system covered by this Agreement, WMATA shall:

(A) Bill the Contributing Jurisdictions  $\frac{1}{4}$  of the Allocated Contribution amounts for each of the first two quarters in FY2011 instead of the expected cash flow needs.

(B) Issue the final Annual Work Plan for FY2011 on or before July 1, 2010.

(C) Apply the Annual Budget Reconciliation Process to FY2011.

(D) Start the Quarterly Reporting required under the Agreement for the 1st quarter which closes on September 30, 2010, with the content of the report being progressively refined to meet the requirements of section 4(b)(5) and coming into full compliance with the report covering the 3<sup>rd</sup> quarter of FY2011.

**(5) Quarterly Reports.** At the conclusion of every quarter, WMATA shall prepare a report on the result of the preceding quarter for submittal to the Contributing Jurisdictions no later than forty five (45) days following the close of the quarter. Such report shall contain a review of capital project scope, cost, and schedule changes; the status of contracts necessary for the implementation of capital projects; the status of year-to-date expenditures relative to budget and the Annual Work Plan; the status of all cash and debt sources relative to budget and the Annual Work Plan; updated project cash flow projections and program cash requirements; and a comparison of the billed amount to amounts actually paid out for the preceding quarter. Such report shall be provided in a quarterly financial report to the WMATA Board.

**(6) Timeliness of Payment.**

(A) Treatment of Payments. -- Interest shall accrue on all payments made by a Contributing Jurisdiction until the funds are expended. WMATA shall place such funds so contributed into an interest earning account, with interest to be compounded monthly at WMATA's then current earnings rate for its short-term investments. Interest earned on funds contributed by a Contributing Jurisdiction shall be applied as a credit against future payments for Allocated Contributions due from that jurisdiction under this Agreement, unless otherwise directed in writing by that jurisdiction.

(B) Non-Payment or Late Payments. -- If a Contributing Jurisdiction fails to make a quarterly payment in full to WMATA when such payment is due after certification by the Contributing Jurisdiction as required under section 4(b)(3)(B), WMATA shall notify the other Contributing Jurisdictions and may issue debt or otherwise advance funds as deemed necessary by the WMATA General Manager to replace the amount of payment not timely received. In the event that WMATA issues debt, WMATA shall charge such Contributing Jurisdiction an amount equal to the sum of (i) the financing and interest costs and expenses (or lost interest earnings) incurred by or on behalf of WMATA in connection with such debt issuance or advance of funds; (ii) any administrative costs incurred by WMATA in connection with obtaining such replacement funding; and (iii) any penalties or losses incurred by WMATA assessed by a third party as a result of such late or non-payment. The total amount of the charges assessed under this paragraph, together with the unpaid quarterly payment, shall be due and payable to WMATA no later than thirty (30) days after the date of assessment by WMATA plus interest compounded monthly at the WMATA short-term investment earnings rate until the date of full payment.

(7) **Local Capital Funding Agreements.** -- WMATA, with the approval of the WMATA Board, may enter into Local Capital Funding Agreements with some or all of the Contributing Jurisdictions, consistent with this Agreement and the Attachments hereto, to establish arrangements to implement the Contributing Jurisdiction's commitment to pay its Allocated Contribution of the cost of the Capital Improvement Program, in the event that the budgetary process of a Contributing Jurisdiction makes such an agreement necessary or appropriate.

(8) **Interim Funding Sources and Security Interests.**

(A) **Interim Funding Authority.** -- The WMATA Board of Directors is authorized to use Interim Funding Sources, including borrowing, on behalf of WMATA in such amounts and at such times as, in the Board's sole judgment, are necessary and appropriate for the purpose of implementing the projects and activities in the Capital Improvement Program and any Annual Work Plan funded through direct capital contributions.

(B) **Security Interests.** -- WMATA may create security interests in its rights and interests in amounts paid or received as direct capital contributions from the Contributing Jurisdictions under this Agreement, as such amounts shall become available and are paid to or for the account of WMATA under the terms of this Agreement. Such amounts may be pledged as security for the costs of Interim Funding Sources. Each Contributing Jurisdiction shall comply with any reasonable and legal request of WMATA to execute, acknowledge, and deliver appropriate instruments and assurances as may be necessary or desirable to confirm and effectuate any such security interest created by WMATA in connection with Interim Funding Sources. Nothing in this subsection shall be construed as requiring any Contributing Jurisdiction to make any payment under this Agreement to anyone other than WMATA. For purposes of this

subsection, the “cost of Interim Funding Sources” includes payments of principal and interest thereunder and all fees, expenses, and other amounts incurred or payable under any Interim Funding Sources.

(C) Limitation. -- The borrowing authority authorized by this subsection may not be used by any Contributing Jurisdiction to satisfy its funding obligations under this Agreement.

(9) WMATA Risk Mitigation. -- Section 22 of the WMATA Compact prohibits WMATA from making any commitment or incurring any obligations with respect to the construction or acquisition of any transit facilities “until funds are available therefor.” The Parties acknowledge that the commitments of the Contributing Jurisdictions under this Agreement are intended to satisfy the requirements of Section 22 under an expenditure-based budget. In order to address the risk of non-appropriation or late payment of funds by a Contributing Jurisdiction or insufficient funding by the Federal Government, and to assure compliance with Section 22 of the WMATA Compact, WMATA intends to continue to maintain a risk mitigation credit facility using one or more of the following: a line of credit, letter of credit, commercial paper program, or other credit facility determined by WMATA in its discretion to be appropriate and feasible. Such risk mitigation credit facility shall be in addition to any other credit facility which may be put in place as a working capital or other cash flow aid.

(10) Annual Changes to the CIP -- In addition to making the funding commitments described in this Section and subject to the provisions of the District of Columbia Local Capital Funding Agreement (attached as Attachment 3), the Parties agree to adjust the program of projects included in the scope of this Agreement, each year within the term of this agreement on a rolling basis, in order to provide the funding required to meet WMATA’s

ongoing and updated CIP needs and other capital needs, and for planning WMATA's ongoing and updated CIP needs and other capital needs on a rolling basis for years beyond the term of this agreement.

## **SEC. 5 ANNUAL BUDGET RECONCILIATION PROCESS**

(a) **Reconciliation.** -- As part of its annual budget process in each year during the term of this Agreement, WMATA shall prepare a reconciliation of --

(1) the actual expenditures for projects and activities under the current Capital Improvement Program to date, and for that fiscal year, as compared to the planned expenditures for such projects and activities for the same fiscal year;

(2) the actual Allocated Contribution of each of the Contributing Jurisdictions to date, as compared to the scheduled Allocated Contribution of each Contributing Jurisdiction for the current CIP;

(3) the projected Allocated Contributions of each Contributing Jurisdiction for the current CIP;

(4) the actual amount of Federal grant funds received for the Capital Improvement Program, as compared to the budgeted or projected amount of Federal grant funds for the same fiscal year; and

(5) the current forecast of expenditures; and

(6) the estimated cost to complete the remaining projects and activities in the current Capital Improvement Program and expected sources of those funds.

(b) **Application of Reconciled Payment Amounts.** On or before October 15<sup>th</sup>, WMATA shall have performed the reconciliation described in the above section, including whether there is a surplus of funds paid in by the Contributing Jurisdictions. The results of this

reconciliation shall be used in the Annual Work Plan currently under development as well as to review the Annual Work Plan for the fiscal year then currently in effect at the time that the reconciliation is completed. If the results of the reconciliation indicate a need to adjust the then-current year's Annual Work Plan billing amounts, those adjustments shall become effective with the billing for the 3<sup>rd</sup> quarter, which begins on January 1. The surplus amount may be made available to the Contributing Jurisdictions only if there is no expectation that those funds will be needed within the next six succeeding quarters measured from WMATA's fiscal year 3<sup>rd</sup> quarter (beginning on January 1) and that the refund of the surplus will not result in WMATA receiving less funds (including the surplus funds) than is required to be needed to meet the expected costs of the program over the next six calendar quarters. If surplus funds are provided to the Contributing Jurisdictions, the funds will be made available prior to the 3<sup>rd</sup> or 4<sup>th</sup> quarter of the fiscal year in which the reconciliation was completed.

(c) **Revenue Shortfalls.** -- If the reconciliation process conducted under subsection (a) of this Section reveals that there are shortfalls in revenues for the Capital Improvement Program due to late or insufficient contributions by a Contributing Jurisdiction or to the receipt of less than the assumed level of Federal funds, or other funds that support the CIP, WMATA shall develop a recovery plan for addressing such shortfalls. Such recovery plan, as approved by the WMATA Board of Directors through its annual budget process, shall include one or more of the following alternatives: (1) utilization of Interim Funding Sources; (2) value engineering, project re-design, or other cost reduction measures for future projects or activities; (3) re-scheduling of projects or activities in the Capital Improvement Program; (4) subject to agreement of the Contributing Jurisdictions, increasing the levels of Allocated Contributions from the

Contributing Jurisdictions; and/or (5) the implementation of Project Deferrals under subsection (e) of this Section.

(d) **Revenue Increases.** If the reconciliation process conducted under subsection (a) of this Section reveals that Federal or other funds have been received which substantially exceed the assumed level of funding, such excess funds shall be applied to (1) to the unfunded priorities in the Capital Needs Inventory or to other needs identified by the WMATA Board; or (2) to any outstanding indebtedness, thereby reducing the Allocated Contributions of the Contributing Jurisdictions, as determined by the WMATA Board of Directors through its annual budget process.

(e) **Project Deferrals.** If WMATA is unable to satisfactorily address revenue shortfalls under subsection (c) of this Section, the WMATA Board may, through the next WMATA budget process, modify the Capital Improvement Program to defer certain projects or activities in order to assure that the Capital Improvement Program can be funded during the term of this Agreement within the amount of available financial resources.

(f) **Updated Capital Improvement Program.** The WMATA staff shall, as soon as practical after each annual reconciliation process conducted under this Section, develop an updated Capital Improvement Program. This updated document, if approved by the WMATA Board, will replace and supercede all previous versions of the Capital Improvement Program and.

(g) **Reprogramming of Funds and Projects During the Term of This Agreement.** The Parties recognize that the scope, pricing or desirability of some projects will change during the term of this Agreement. To address these possibilities, WMATA agrees to provide the



Contributing Jurisdictions with advance notice of any request to reprogram funds in an amount greater than \$1,000,000 per project.

**(h) Final Distribution.** In the event that this Agreement is terminated pursuant to section 8 of this Agreement, any amounts remaining at the expiration of this Agreement shall be first used to fund any remaining unfunded projects or activities in the Capital Improvement Program as indicated in the attached Capital Improvement Program, and then, if any funds remain, will be credited or refunded to the Contributing Jurisdictions, as directed by the Contributing Jurisdictions.

**(i) Financial Records.**

(1) Maintenance of Records. -- During the term of this Agreement, WMATA agrees to maintain separate and complete accounting records which are consistent with generally accepted governmental accounting procedures and which accurately reflect all income and expenditures of funds which may be provided under this Agreement. WMATA will retain all such CIP records for the same period that records are required to be kept for the FTA or other federal grants, unless there is an outstanding written Contributing Jurisdiction or FTA financial or audit question, which is not resolved by the Contributing Jurisdiction or FTA auditor. The records of WMATA must be in sufficient detail to determine the character and timing of fund items; and of contract obligation and expenditure transactions authorized by this Agreement.

(2) Audits.

(A) Timing for Performance. -- A Contributing Jurisdiction or its agent may perform an audit of WMATA's expenditures of funds and the sources of those funds provided by this Agreement for a period of up to three (3) fiscal years preceding a request for audit from the Contributing Jurisdiction provided that the request is received no later than one

hundred eighty (180) days after the release of the WMATA audit for the preceding year and transmittal of the audit to the Contributing Jurisdictions with a notice of their audit rights under this Agreement. Any such audit shall be commenced within sixty (60) days after the date of the request, and shall be completed (to the maximum extent practicable) within 180 days after the date it is commenced. The Contributing Jurisdiction will assume all financial responsibility for any costs associated with the performance of such audits. If more than one Contributing Jurisdiction initiates an audit on a timely basis under this paragraph, the audits shall be consolidated into a single audit for the applicable fiscal years and the Contributing Jurisdictions participating in the audit shall share in the cost of the audit. WMATA agrees to cooperate fully with a Contributing Jurisdiction or its authorized agent or designee in the conduct of any audit carried out in accordance with this paragraph. In addition to the foregoing, in the event that any Contributing Jurisdiction's bond, the proceeds of which were used to meet the funding obligation of the Agreement or any transaction pertaining to such Contributing Jurisdiction's bond, is the subject of any tax, securities or similar federal or state law investigation, inquiry or suit, WMATA shall promptly allow the Contributing Jurisdiction access, at the Contributing Jurisdiction's expense, to any record it may have relating to WMATA's use of the proceeds of such Contributing Jurisdiction's bond so that the Contributing Jurisdiction may participate and respond to any aspect of such investigation, inquiry or suit. In the event WMATA is notified that any Contributing Jurisdiction's bond, the proceeds of which were used to meet funding obligations of this Agreement or any transaction pertaining to any such Contributing Jurisdiction's bond, is the subject of any tax, securities or similar federal or state law investigation, inquiry or suit, WMATA shall promptly notify the Contributing Jurisdiction and

allow the Contributing Jurisdiction to participate in all aspects of the conduct or any response WMATA may make in such regard.

(B) Audit Results. -- If it is determined as a result of such an audit under this paragraph that the Contributing Jurisdiction has made payments in excess of or less than the amount(s) provided for pursuant to the terms and conditions of this Agreement and the CIP, WMATA will make appropriate adjustments in the amount due to WMATA from such Contributing Jurisdiction in the next fiscal year. The audit rights provided under this paragraph shall survive the termination date of this Agreement.

## **SEC. 6 DISPUTES**

(a) Informal Resolution -- The Parties agree to use all reasonable efforts to resolve any disputes, which arise under or otherwise relate to this Agreement. If the Parties, at staff level, cannot resolve such a dispute through initial discussions within thirty (30) days after the date it first arises, then the Party seeking a resolution shall, through its Authorized Representative, provide written notice of the nature of the dispute and the issues involved to the Authorized Representatives of each other Party involved. Such other Parties shall respond within thirty (30) days, stating their position on the issue presented and their proposal for resolution. The Authorized Representatives shall then meet within the next thirty (30) days in an attempt to resolve the dispute. If the dispute is not resolved within thirty (30) days following the date of the last meeting, any Party to the dispute may refer the matter to the WMATA Board for resolution.

(b) Alternative Resolution. -- If a dispute arising under this Agreement is not resolved pursuant to subsection (a) of this Section, the Parties thereto may agree to pursue a mutually acceptable alternative dispute resolution procedure. If such a procedure is not utilized

or does not result in a final and binding resolution of the dispute, any Party thereto may pursue a civil action for appropriate relief in a court of competent jurisdiction.

## **SEC. 7 REPRESENTATIONS AND WARRANTIES**

(a) **By WMATA.** -- WMATA makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement.

(1) WMATA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder;

(2) WMATA by proper WMATA Board action has duly authorized the execution and delivery of this Agreement;

(3) When executed and delivered by the Contributing Jurisdictions and by WMATA, this Agreement will constitute the legal, valid and binding obligation of WMATA enforceable in accordance with its terms, except as such enforceability is limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.

(4) No director, officer, or employee of WMATA who exercises or has exercised any functions or responsibilities over any procurement contract in connection with the Capital Improvement Program shall have or obtain a personal or financial interest or benefit from any activity in connection with the procurement contract or have an interest in any contract, subcontract, or agreement with respect thereto during the term of this Agreement.

(b) **By Contributing Jurisdictions.** -- Each Contributing Jurisdiction makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement.

(1) The Contributing Jurisdiction has all necessary power and authority to enter into the transactions contemplated by this Agreement and to carry out its individual obligations hereunder;

(2) Each Contributing Jurisdiction has individually duly authorized the execution and delivery of this Agreement;

(3) When executed and delivered by each Contributing Jurisdiction, this Agreement will constitute the legal, valid and binding obligation of the individual entity enforceable in accordance with its terms, except as such enforceability is limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally;

(4) No officer, or employee of any Contributing Jurisdiction who exercises or has exercised any functions or responsibilities over a procurement contract in connection with the Capital Improvement Program shall have or obtain a personal or financial interest or benefit from any activity in connection with the procurement contract or have an interest in any contract, subcontract, or agreement with respect therewith during the term of this Agreement.

## **SEC. 8 EFFECTIVE DATE AND TERM OF AGREEMENT**

(a) Effective Date. The Parties acknowledge and agree that this Agreement is in consideration of and contingent upon the execution of the Local Funding Agreement for Capital Funding by and between WMATA and the District of Columbia to be executed concurrently with the execution of this Agreement. Accordingly, this Agreement shall take effect on the date of execution by the last signatory to either this Agreement or the District of Columbia Local Funding Agreement for Capital Funding.

(b) Term. The term of this Agreement shall begin on the Effective Date and shall terminate on June 30, 2016. Where there are projects which have been started during the term of the Agreement or where bonds or other financial instruments have been issued pursuant to the Metro Matters Funding Agreement (for those Contributing Jurisdictions who did not opt out of the Long Term Debt issuance) or pursuant to this Agreement, the Contributing Jurisdictions, subject to annual appropriations, agree to continue to make their Allocated Contributions for those projects or debt service until the conclusion of the projects or the final maturity of the bonds or other financial instruments.

(c) Future Negotiations. No later than June 30, 2015, WMATA and the Contributing Jurisdictions agree to commence discussions for a successor capital funding agreement. WMATA will ask each Contributing Jurisdiction for an affirmative response to whether it wishes to participate in a successor agreement. Each Contributing Jurisdiction shall give an affirmative notice in accordance with Section 12 of this Agreement no later than October 1, 2015, either that: (1) it intends to continue under the Agreement, subject to amendment only of the projects included in the CIP and the cost of a new 6 year CIP and the renegotiation of the Local Funding Agreement with the District of Columbia (2) it requests negotiation of additional terms of the agreement in addition to those specified in the preceding clause or (3) it wishes to terminate the agreement as of June 30, 2016. It is the Parties' desire to limit negotiations only to the items listed in clause (1) if at all possible. A failure to timely respond will be deemed an election to terminate the Agreement. If a Contributing Jurisdiction gives or is deemed to give the required notice that it is terminating its participation in this Agreement, then the Agreement shall terminate as of June 30, 2016, except as covered by subsection (b), above.

**SEC. 9 RECITALS**

The Recitals set forth in this Agreement are material parts of this Agreement and are binding on the Parties to the same extent as the other terms and conditions hereof.

**SEC. 10 NO THIRD PARTY BENEFICIARIES**

The Parties to this Agreement do not intend any non-signatory to this Agreement or any other third Party to be a third Party beneficiary to this Agreement, nor do the Parties intend for any such third Party to have any rights or benefits under this Agreement or to have standing to bring an action or claim in any court or other forum to enforce any provision of this Agreement.

**SEC. 11 AMENDMENTS**

This Agreement may be amended or modified only by written agreement duly executed by all the Parties.

**SEC. 12 NOTICES**

All notices under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or sent by the U.S. Postal Service or by a courier service or national overnight delivery service, to any Party as follows:

To the State of Maryland:  
Department of Transportation:

Director, Washington Area Transit Programs  
Maryland Department of Transportation  
4351 Garden City Drive, Suite 305  
Hyattsville, MD 20785

with a copy to:

Chairman, Washington Suburban Transit District  
4351 Garden City Drive, Suite 305  
Hyattsville, MD 20785

To the District of Columbia:

Director  
District Department of Transportation  
2000 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20009

With copies to:

Chief Financial Officer for the District of Columbia  
John A. Wilson Building, Room 203  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Attorney General for the District of Columbia  
John A. Wilson Building, Room 409  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

To Arlington County, Virginia:

Director  
Department of Management and Finance  
2100 Clarendon Boulevard, Suite 501  
Arlington, VA 22201

with a copy to:

Director  
Department of Environmental Services  
2100 Clarendon Boulevard, Suite 900  
Arlington, VA 22201

To Fairfax County, Virginia:

Director  
Fairfax County Department of Transportation  
12055 Government Center Parkway, 10<sup>th</sup> Floor  
Fairfax, VA 22035-5511

To the City of Alexandria, Virginia:

City Manager  
City of Alexandria  
301 King Street  
Alexandria, VA 22314



To the City of Fairfax, Virginia:

Mayor  
City of Fairfax  
10455 Armstrong Street  
Fairfax, VA 22030

with a copy to:

Transportation Director  
City of Fairfax  
10455 Armstrong Street  
Fairfax, VA 22030

To the City of Falls Church, Virginia:

City Manager  
City of Falls Church  
300 Park Avenue  
Falls Church, VA 22046

To the Washington Metropolitan Area Transit Authority:

General Manager  
600 Fifth Street, N.W.,  
Washington, D.C. 20001

with a copy to:

The General Counsel  
Washington Metropolitan Area Transit Authority  
600 Fifth Street, N.W., Second Floor  
Washington, D.C. 20001

### **SEC. 13 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on the successors and assigns of the Contributing Jurisdictions and WMATA.

### **SEC. 14 NO DEBT GUARANTEES**

No Contributing Jurisdiction guarantees the debt of WMATA or any other Contributing Jurisdiction, nor any obligation of WMATA or any other Contributing Jurisdiction.

**SEC. 15 REQUIREMENT FOR ANNUAL APPROPRIATIONS**

Notwithstanding any other provisions of this Agreement, all obligations of the Contributing Jurisdictions are subject to discretionary annual appropriation of funds by the governing bodies thereof or other appropriate legislative bodies thereof and shall be consistent with the anti-deficiency laws applicable to each Contributing Jurisdiction.

**SEC. 16 COUNTERPARTS**

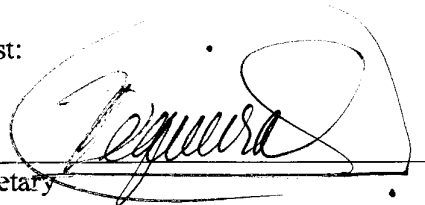
This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement. The counterpart with the most recent date shall determine the date of entry of this Agreement by the Parties listed on page one.

IN WITNESS WHEREOF, WMATA and the Contributing Jurisdictions have executed this Agreement on this 1<sup>st</sup> day of July, 2010.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

Attest:

Secretary



By:

Richard Sarles  
Interim General Manager



[Seal]

Dated:

7/1/10

Approved as to Form and Legal Sufficiency:

By:

Office of General Counsel



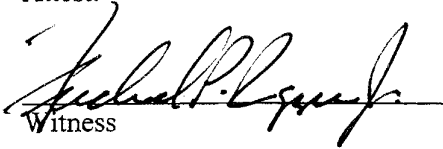
[signatures continued on following page]

STATE OF MARYLAND

acting by and through the Washington Suburban Transit District and the Department of  
Transportation

MARYLAND DEPARTMENT OF  
TRANSPORTATION

Attest:

  
Witness

By:  [Seal]  
Secretary

and

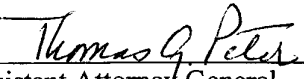
WASHINGTON SUBURBAN  
TRANSIT DISTRICT

Attest:

  
Witness

By:  [Seal]  
Chairman

Approved as to Form and Legal Sufficiency:

By:   
Assistant Attorney General


Date: June 16, 2010

[signatures continued on following page]

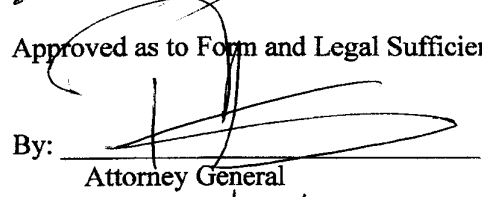
DISTRICT OF COLUMBIA

Attest:

  
\_\_\_\_\_  
Witness

 [Seal]  
\_\_\_\_\_  
By: Mayor

Approved as to Form and Legal Sufficiency:

  
\_\_\_\_\_  
By: Attorney General

Dated: 6/30/10

[signatures continued on following page]

COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

Attest:

Hope L. Holcomb

Clerk to the County Board

By: Jay Fissette [Seal]

Chair  
County Board  
Arlington County, Virginia

Approved as to Form and Legal Sufficiency:

By: [Signature]  
Arlington County Attorney

Dated: 7/2/10

[signatures continued on following page]

FAIRFAX COUNTY, VIRGINIA

Attest:

Nancy Vekus  
Clerk to the Board of Supervisors

By: At Gitti [Seal]  
County Executive  
Fairfax County, Virginia

Approved as to Form and Legal Sufficiency:

By: David P. Bolger  
County Attorney

Dated: 6/30/10

[signatures continued on following page]

CITY OF ALEXANDRIA, VIRGINIA

Attest:

Jackie M. Henderson  
City Clerk

By: [Signature] [Seal]  
City Manager

Approved as to Form and Legal Sufficiency:

By: [Signature]  
Deputy City Attorney

APPROVED AS TO FORM:  
[Signature]  
DEPUTY CITY ATTORNEY

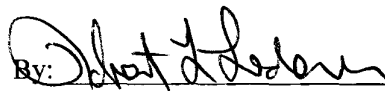
Dated: 7/22/10

[signatures continued on following page]


CITY OF FAIRFAX, VIRGINIA

Attest:

  
\_\_\_\_\_  
City Clerk

By:  [Seal]  
\_\_\_\_\_  
Mayor

Approved as to Form and Legal Sufficiency:

By:   
\_\_\_\_\_  
City Attorney

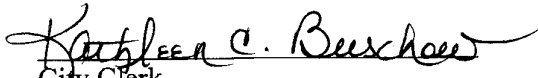
Dated: 7/14/2010

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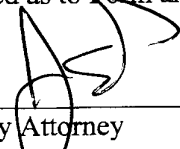
CITY OF FALLS CHURCH, VIRGINIA

Attest:

  
Kathleen C. Beuchow  
City Clerk

By:  [Seal]  
City Manager

Approved as to Form and Legal Sufficiency:

By:   
City Attorney

Dated: 6/29/10

Board Agenda Item  
June 19, 2018

CONSIDERATION – 1

Appeal of K2NC, LLC, from a Decision of the Exception Review Committee Pursuant to the Chesapeake Bay Preservation Ordinance for 4104 Woodlark Drive; Fairfax Hills, Section 1, Lot 42; Tax Map No. 059-4-10-0042 (Braddock District)

ISSUE:

Board of Supervisors (Board) consideration of an appeal of the Exception Review Committee's (ERC) decision denying a request for an encroachment exception under §118-6-7 (Loss of Buildable Area) of the County's Chesapeake Bay Preservation Ordinance (CBPO), and disapproving the associated Water Quality Impact Assessment (WQIA).

TIMING:

Board consideration is requested on June 19, 2018.

BACKGROUND:

K2NC, LLC (Appellant), is asking the Board to reverse the ERC's decision and approve the exception under the CBPO, allowing the Appellant to build a new residence that would encroach into the seaward 50 feet of the Resource Protection Area (RPA). The Appellant is the record owner of a residential property located at 4104 Woodlark Drive in the Braddock District (Property).

In May 2016, staff administratively approved an exception under § 118-5-4 for loss of buildable area, allowing for construction of a home in the RPA but outside the RPA seaward 50 feet. Subsequently, a grading plan was approved and the Appellant began land disturbance activities on the Property. Neither the 2016 application requesting the exception nor the grading plan reflected a restrictive covenant that established a 75-foot front yard setback on the Property. When the Appellant started to clear the Property based on the approved grading plan, S. Richard Rio, Jr., a neighboring land owner filed a lawsuit to enjoin the land-disturbing activity and enforce the 75-foot front yard setback. On July 5, 2017, the Fairfax County Circuit Court issued a Preliminary Injunction Order (Attachment 5), prohibiting the construction of a building within 75 feet of the front lot line.

On February 7, 2018, the Appellant submitted exception request #2582-WRPA-006-1 and Water Quality Impact Assessment #2582-WQ-003-1 under CBPO § 118-6-7 for "Loss of Buildable Area." Approval of the exception would allow the house to be located beyond the 75-foot front yard setback, but would result in an encroachment into the

Board Agenda Item  
June 19, 2018

seaward 50-feet of the RPA. Only the ERC (or Board) can grant an exception to allow construction within the seaward 50-feet.

On December 6, 2017, the ERC held a public hearing and deferred its decision to February 7, 2018. On that date the ERC denied the exception request based on the finding that the application does not meet § 118-6-6(a) of the CBPO, which requires that the requested exception to the criteria is the minimum necessary to afford relief. See Attachment 1, Staff Report; Attachment 2, ERC Resolution. Staff had recommended approval of the exception request, but believed that the injunction enforcing the covenant was permanent. However, during the public hearing, statements made by Mr. Rio regarding his lawsuit against the Appellant led the ERC and staff to question the finality of the injunction. The preliminary injunction remains in force, but the appellant is continuing to contest the lawsuit that seeks to make it permanent.

The ERC's motion to deny the exception request noted that a "final determination as to the front yard setback is necessary for the ERC to determine whether the relief requested is the minimum necessary to build the proposed house" (Attachment 2). At the hearing, committee members waived the requirement that the Appellant wait 12 months before reapplying for the exception if the legal dispute over the front yard setback was resolved.

In the absence of the covenant requiring a 75-foot front yard setback, the exception request would exceed the minimum necessary to afford relief because the front yard setback in the zoning district applicable to the property is only 35 feet. See Attachment 3, an exhibit showing the location of the critical boundaries on the lot.

On March 8, 2018, the Appellant filed an appeal of the ERC decision pursuant to CBPO § 118-8-1(b) (Attachment 4). The Appellant's justification for the appeal is that the ERC "made a determination of law outside of their jurisdiction" by concluding that a recorded covenant within Fairfax County land records "may" be invalid without having sufficient legal or technical basis for making such a decision. Additional information from the Appellant in support of its case, received after the ERC hearing was closed and not considered by the ERC, is included as Attachment 6. The Appellant's appeal requests that the Board overturn the decision of the ERC and approve Exception #2582-WRPA-006-1 and Water Quality Impact Assessment #2582-WQ-003-1; and, assign appropriate and typical conditions consistent with prior RPA exception approvals and/or those recommended by Staff.

It is Staff's opinion that resolution of the legal dispute regarding the applicable front yard setback is required before the ERC can determine whether the exception requested is the minimum necessary to afford relief. As things stand, the Appellant is seeking relief based on the existence of a covenant whose legality it opposes/contests in the litigation, which remains unresolved. Therefore, the Appellant's exception request has not met

Board Agenda Item  
June 19, 2018

the criteria set forth in the CBPO necessary for approval of the encroachment exception.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 - Original Staff Report dated November 16, 2016

Attachment 2 - ERC Resolution dated February 26 2018

Attachment 3 – Exhibit showing the location of the critical boundaries on the lot

Attachment 4 – K2NC, LLC, Statement of Appeal

Attachment 5 – Letter from Mr. Rio and Preliminary Injunction Order

Attachment 6 – Letter from Greg Budnik, GJB Engineering, Inc. dated February 2, 2018

STAFF:

Rob Stalzer, Deputy County Executive

William D. Hicks, P.E., Director, Land Development Services

ASSIGNED COUNSEL:

Marc Gori, Assistant County Attorney



# FAIRFAX COUNTY

APPLICATION FILED: October 10, 2017

EXCEPTION REVIEW COMMITTEE: December 6<sup>th</sup>, 2017

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 V I R G I N I A

November 16, 2017

## LAND DEVELOPMENT SERVICES

### SITE DEVELOPMENT AND INSPECTIONS DIVISION

#### STAFF REPORT

#### RESOURCE PROTECTION AREA (RPA) ENCROACHMENT EXCEPTION #2582-WRPA-006-1 & WATER QUALITY IMPACT ASSESSMENT #2582-WQ-003-1

#### BRADDOCK DISTRICT

<b>APPLICANT:</b>	K2NC, LLC
<b>PROJECT LOCATION:</b>	4104 Woodlark Drive
<b>TAX MAP REFERENCE:</b>	059-4-10-0042
<b>APPLICATION ACCEPTED:</b>	October 19, 2017
<b>WATERSHED:</b>	Unnamed tributary to Accotink Creek
<b>CHESAPEAKE BAYPRESERVATION ORDINANCE (CBPO) PROVISION:</b>	Section 118-6-7, Loss of buildable area within an RPA
<b>PROPOSAL:</b>	New residential development to construct a dwelling unit within 50-foot seaward
<b>LOT SIZE:</b>	45,000 Square feet (1.03 acres)

<b>AREA OF REQUESTED RPA ENCROACHMENT:</b>	7,568 square feet
<b>PUBLIC HEARING:</b>	<p>RPA Encroachment Requests under CBPO Section 118-6-7 require approval by the Exception Review Committee (ERC).</p> <p>The application proposes to construct a new dwelling unit and to encroach into the seaward 50 feet of the RPA buffer. The encroachment into the seaward 50 feet is primarily because of a covenant, which requires a 75 feet setback from the front property line. Reference condition #8, Deed Book S-14 (DB 357), Page 553.</p>
<b>DESCRIPTION:</b>	<p>The applicant is requesting an RPA exception to construct a new house and its amenities. The amenities include a concrete patio (10 feet x 20 feet, with pervious paving) and wooded deck (maximum of 15 feet long and elevated above the patio). See Attachment F (Exhibit 6). The improvements create 2,462 square feet of encroachment within 50-foot seaward.</p>
<b>BACKGROUND:</b>	<p>The lot on 4104 Woodlark Drive was legally created and recorded on 03/24/1941 in deed book S-14 (DB 357) and page 53. The lot is vacant. The stream is located at the rear of the property. The RPA extends from the rear of the property and covers approximately 80% of the lot. A proposed house grading plan was approved in May 2016 (# 2582-INF-004-1). The grading plan showed the improvements outside the 50-foot seaward. However, the grading plan did not consider the restrictive covenant, which requires a 75-foot setback from the front property line.</p> <p>When the lot was created in 1941, a covenant was recorded which restricts building within 75 feet of the front property line. Reference condition #8, Deed Book S-14 (DB 357), Page 553.</p>

<p><b>DOCUMENTS AND CORRESPONDANCE:</b></p>	<p>Attachments A through E are provided by Staff. Attachments F is provided by the Applicant.</p> <ul style="list-style-type: none"> <li>• <u>Attachment A:</u> Proposed Exception Conditions.</li> <li>• <u>Attachment B:</u> October 19, 2017, letter acknowledging receipt of the RPA exception application, indicating the application package is complete and notifying the applicant of the public hearing.</li> <li>• <u>Attachment C:</u> List of properties to be notified per CBPO 118-6-3(c).</li> <li>• <u>Attachment D1:</u> Aerial Photography.</li> <li>• <u>Attachment D2:</u> Statistics of House and Deck Footprint Size in Relation to Adjacent Lots.</li> <li>• <u>Attachment E:</u> UFMD (Urban Forestry Management Division) memorandum, dated November 9, 2017.</li> <li>• <u>Attachment F:</u> Application request, revised November 6, 2017 <ul style="list-style-type: none"> <li>○ Applicant's statement for Section 118-6-6 of the Chesapeake Bay Ordinance (Cover Letter, Section III)</li> <li>○ WQIA Statement of Justification (Cover Letter, Section VII);</li> <li>○ Completed and Signed Application Form for an RPA Encroachment Exception (Exhibit 1);</li> <li>○ Site Photographs dated September 12, 2017 and existing site condition (Exhibits 3 &amp; 4);</li> <li>○ Preliminary Injunction Order (Exhibit 5);</li> <li>○ RPA Reforestation Exhibit (Proposed Planting Plan) (Exhibit 6);</li> <li>○ Plats for RPA Exception Request (Exhibit 6);</li> <li>○ Soils map data (Exhibit 7);</li> <li>○ Floodplain Exhibit (Addendum).</li> </ul> </li> </ul>
<p><b>ANALYSIS:</b></p>	<p><u>RPA</u> This application cannot be approved administratively by staff because the limits of disturbance for the new house extend into the seaward 50 feet of the RPA.</p> <p>A site-specific RPA delineation was provided by the applicant in accordance with CBPO 118-1-7(b) with the grading plan # 2582-INF-004. From the staff site visit on October 26, 2017, there is no sign of wetlands on the property, and the RPA delineation appears to be 100 feet from stream top of bank. The field-delineated RPA confirms that RPA covers nearly 80% of the property</p>

	<p>In accordance to the LTI 09-05, a 10-foot wide work zone around the perimeter of the proposed structure is required. The applicant proposes 15 feet wide of work zone around the building, see Attachment F, Exhibit 6.</p> <p>The applicant has evaluated 50 existing house footprints in the same proximate vicinity and found that the average house footprint is approximately 2,350 square feet. The applicant proposes a house footprint of 1,900 square feet. Additionally, the staff has tabulated, using County GIS, existing house and deck footprints within 500 feet of the subject property and found that the average house and deck footprints are 2,242 and 329 square feet, respectively (See Attachment D2). As part of the disturbance and impervious areas are encroaching into the seaward 50 feet of RPA buffer, the application cannot be approved by staff under CBPO Section 118-5-4(a), the application must be made under CBPO Section 118-6-7 and approved by the ERC.</p> <p>The ERC may approve an exception for loss of buildable area in an RPA under CBPO 118-6-7 where the total disturbance is limited to 10,000 square feet with no more than 5,000 square feet of impervious area within the RPA. The applicant proposes 7,568 square feet of disturbed area and 2,711 square feet of impervious area (access is included).</p> <p>CBPO Section 118-6-7(d) requires that where practical a vegetated buffer equal to the area of encroachment into the buffer, is established elsewhere on the lot. The RPA covers 80% of the lot, and due to the density of the existing vegetation, an equal area of mitigation cannot be achieved. The proposed disturbance in the RPA is 7,568 square feet which the applicant proposes to mitigate with 4,395 square feet. The planting plan was reviewed by the County Urban Forestry Management Division (UFMD). The UFMD staff has provided a memorandum indicated adequate planting on the subject site, see attachment E. UFMD agree that the proposed vegetation plan, Attachment F (Exhibit 6) is the maximum amount of reforestation practical in order to ensure long term survivability of the proposed plantings and existing vegetation. The planting mitigation for an area of 4,395 square feet is 11 overstory trees, 21 understory trees, and 110 shrubs.</p> <p><u>Floodplain</u> As the drainage area to the property is greater than 70 acres, a</p>
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	<p>minor floodplain exists on the property. The applicant used the water surface elevations from the County Watershed Plan, HEC-RAS model to delineate the extent of the floodplain on the property, see Attachment F (Addendum). The proposed grading is to ensure that the minimum of 18" above the flood elevation, and the required minimum yard (15 feet away from the flood limits) are provided. The freeboard requirement precludes the house having a basement.</p> <p><u>Best Management Practices (BMP)</u>          As the disturbance is less than one acre and the proposed total impervious area is approximately 0.06 acres, including impervious area outside the RPA, and representing approximately 6.0% of the lot area, the project is exempt from Chapter 124 of the County code and is not required to provide BMPs. Reference Chapter 124-1-7(3).</p>
<p><b>REQUIRED FINDINGS:</b></p>	<p>Exception requests for disturbance within seaward 50 feet of RPA buffer may be granted only upon the findings listed in the <u>CBPO 118-6-6</u>. It is the opinion of the county staff that the required findings, as discussed below, have been satisfied in the application.</p> <p><i>(a) The requested exception to the criteria is the minimum necessary to afford relief;</i></p> <p>The subject property is zoned R-2. The CBPO allows a total of 5,000 square feet of impervious surfaces in the RPA. The applicant proposed 2,711 square feet of impervious area within RPA on this lot.</p> <p><i>(b) Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;</i></p> <p>Given the fact that the 80% of the lot is within RPA, the restrictive covenant which requires a 75-foot setback from the front property line, and the house footprint is an average size compared with existing houses on this street (Attachment D2), it is the staff opinion that granting the exception as proposed to allow the development, would not confer upon the applicant any special privileges.</p>

	<p>(c) <i>The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;</i>                  The RPA buffer should remain intact or be established to minimize the adverse effects of human activities on other components of the RPA, state water, and aquatic life. The project proposes additional trees and vegetation of shrubs and groundcover to increase the density of the remaining RPA buffer along the rear and sides of the house. It is the opinion of staff that the exception request is not a substantial detriment to the water quality. Staff's recommendations are given in Attachment A.</p> <p>(d) <i>The exception request is not based upon conditions or circumstances that are self-created or self-imposed;</i>                  Given the fact that this lot was legally created in 1941, it is the opinion of staff that the request is not entirely based upon circumstances that are self-created or self-imposed.</p> <p>(e) <i>Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality;</i>                  The applicant proposes to mitigate by planting trees and vegetating shrubs and groundcover to increase the density of the trees and vegetation in the remaining RPA buffer on the property (Attachment F; Exhibit 6). The Exhibit also shows that existing trees have been preserved and protected from the impacts of planting new trees. The available mitigation area of 4,395 square feet for the subject site is 11 overstory trees, 21 understory trees, and 110 shrubs. UFMD agree with the proposed vegetation plan (see Attachment E). If the intent of the ERC to approve the exception, staff recommends that approval be subject to proposed development conditions, including, but not limited to, minimal disturbance of the RPA. The proposed development conditions are contained in Attachment A of this staff report.</p> <p>(f) Other findings, as appropriate and required herein, are provided.</p>
<p><b>STAFF RECOMMENDATIONS:</b></p>	<p>Staff recommends approval of RPA encroachment Exception 2582-WRPA-006-1 and Water Quality Impact Assessment 2582-WQ-003-1 subject to the proposed development conditions dated November</p>

	<p>16, 2017.</p> <p>It is not staff's intent to recommend that the Committee, in adopting any conditions, relieve the applicant from compliance with the provisions of any other applicable ordinances, regulations, or adopted standards.</p> <p>The content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Exception Review Committee. For further information, please contact Site Development and Inspections Division (SDID), Land Development Services, 12055 Government Center Parkway, Suite 535, Fairfax, Virginia 22035-5505, 703-324-1720.</p>
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**ATTACHMENT A****PROPOSED EXCEPTION CONDITIONS****#2582-WRPA-006-1 and #2582-WQ-003-1****November 16, 2017**

If it is the intent of the Exception Review Committee to approve 2582-WRPA-006-1 and 2582-WQ-003-1 to allow encroachment in the Resource Protection Area (RPA) located at 4104 Woodlark Drive (Tax Map 059-4-10-0042) pursuant to Section 118-6-7 of the Fairfax County Chesapeake Bay Preservation Ordinance (CBPO), staff recommends that the Exception Review Committee condition the approval by requiring conformance with the following development conditions.

1. This RPA Exception is granted for and runs with the land indicated in this application and is not transferable to other land.
2. This RPA Exception is granted only for the purposes, structures and/or uses indicated on the Plat approved with the application, as qualified by these development conditions.
3. Any plan submitted pursuant to this RPA Exception shall be in substantial conformance with the Plat titled "4104 Woodlark Drive, Water Quality Impact Assessment & Exception" prepared by Wetland Studies and Solutions, Inc (WSSI), signed and sealed. Received September 28, 2017 (Revised November 6, 2017), which shows the proposed improvements.
4. In order that the project is in harmony with the purpose and intent of the CBPO, does not create a substantial detriment to water quality, and meets the performance criteria for RPAs, vegetated buffer area(s) shall be established as generally shown on the proposed planting plan, Dated November, 2017 with a combined area of at least 4,395 square feet. The size, species, density and locations shall be consistent with the planting requirements of CBPO Section 118-3-3(f), and PFM 12-0516.4 or a vegetation plan that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff, as determined by the Land Development Services (LDS) or the Urban Forest Management Division (UFMD). The Director may approve the use of a seed mixture as a supplement to or in lieu of individual plants for shrubs and groundcovers. Plants shall be native to the degree practical and adaptable to site conditions. The vegetation shall be randomly placed to achieve a relatively even spacing throughout the buffer. Notwithstanding any statements on the Plat and in the Water Quality Impact Assessment (WQIA), the size, species, density, and locations of the trees, shrubs, and groundcover will be subject to approval of the Director of the LDS or UFMD.
5. In order that the disturbed area within the RPA is the minimum necessary to

afford relief, indigenous vegetation shall be preserved to the maximum extent possible. Any further encroachment into, and/or disturbance of, the RPA not shown on the approved rough grading plan will be considered a violation of the CBPO and is subject to the penalties of the CBPO Article 9.

6. In order that the proposed construction activity does not degrade water quality, adequate erosion and sediment control measures, including, but not limited to, a super-silt fence, in lieu of the double row of regular silt fence proposed, shall employed during construction within the RPA, and shall remain in place, and be properly maintained, for the duration of the land disturbing activity within the RPA until such time that the disturbed area is completely stabilized.

7. This RPA Exception shall automatically expire, without notice, July 1<sup>st</sup>, 2020, unless the subject grading plan has been approved and the vegetated buffers have been established.

This approval, contingent on the above noted conditions, does not relieve the applicant from compliance with the provisions of any applicable Federal, State, or County ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the approval of any required plans and permits through established procedures, and this RPA Exception shall not be valid until this is accomplished.

**ATTACHMENT B**

**LETTER ACKNOWLEDGING RECEIPT  
OF THE RPA EXCEPTION  
APPLICATION**



## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

OCT 19 2017

John T. Kelley  
Wetland Studies and Solutions, Inc.  
5300 Wellington Branch Drive  
Gainsville, VA 20155

Subject: 4104 Woodlark Drive; Fairfax Hills Section 1, Lot 42  
Tax Map #059-4-10-0042, Braddock District

Reference: Resource Protection Area Encroachment Exception #2582-WRPA-006-1, and  
WQIA #2582-WQ-003-1

Dear Mr. Kelley:

Your exception request has met the submission requirements of Section 118-6-5 of the CBPO. This application will be forwarded to the Exception Review Committee for a public hearing to be held on **Wednesday, December 6th, 2017, at 2:00 p.m. in, Room 122, Herrity Building, 12055 Government Center Parkway, Fairfax, Virginia.** Under CBPO Section 118-6-3(c), it is your responsibility to send written notices as follows.

Notices shall be sent to:

- To all owners of property abutting, immediately across the street, and within 500 feet of the subject property including properties which lie in an adjoining county or city. A draft list of properties is enclosed; please check the list of properties before mailing as notices shall be sent to the last known address of the owner(s) as shown in the current Real Estate Tax Assessment files.
- To one (1) homeowners association or civic association within the immediate area as approved by the Department of Public Works and Environmental Services. Notices to homeowner associations or civic associations shall be sent to the registered office address kept on file with the State Corporation Commission.
- On the same date the abutting property owners are notified, the applicant shall send a copy of the notification letter to the Board Member in whose district the subject property is located.

Department of Land Development Services  
12055 Government Center Parkway, Suite 659  
Fairfax, Virginia 22035-5503  
Phone 703-324-1780 • TTY 711 • FAX 703-653-6678  
[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)



John T. Kelley  
Page 2 of 2

The notice shall (sample enclosed):

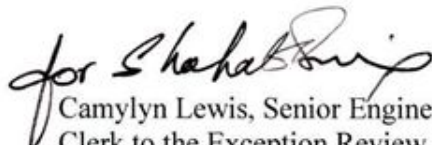
- Be sent by certified mail, return receipt requested, and postmarked not less than 15 days prior to the hearing as evidenced by the postmark date on the white receipts for the certified mailings.
- Include the tax map reference number; the street address of the parcel; the date, time and place of the hearing.
- Include the nature of the matter before the Exception Review Committee.

When the notices have been mailed, please submit the dated white receipts to this office in the same order as provided on the mailing list (copy enclosed).

Please be advised that it is extremely important for you to send the necessary notices as required. **Failure to send the notices to all required parties and in a timely manner will result in deferral of the public hearing.**

If further assistance is desired, please contact Prutha Rueangvivatanakij, Senior Engineer III or Jessica Richardson, Administrative Assistant III, Site Development and Inspection Division (SDID) at 703-324-1720 or e-mail: [prutha.rueangvivatanakij@fairfaxcounty.gov](mailto:prutha.rueangvivatanakij@fairfaxcounty.gov) or [LDSSDIDAdmin@fairfaxcounty.gov](mailto:LDSSDIDAdmin@fairfaxcounty.gov)

Sincerely,

  
Camylyn Lewis, Senior Engineer III  
Clerk to the Exception Review Committee

Enclosure

cc: Catherine Chianese, Clerk to the Board of Supervisors  
Chris Koerner, Chairman and Dranesville Representative, CBPO Exception Review Committee  
Prutha Rueangvivatanakij, Senior Engineer III, Central Branch, SDID, LDS Waiver File



**ATTACHMENT C**

**LIST OF PROPERTIES TO BE NOTIFIED**

**Rueangvivatanakij, Prutha**

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**From:** Greg Budnik <greg.budnik@gjbinc.com>  
**Sent:** Tuesday, November 14, 2017 11:00 PM  
**To:** Rueangvivatanakij, Prutha  
**Cc:** sheila.konecke@homevestors.com; JT Kelley Jr.; Kharel, Durga D.  
**Subject:** Notices for 12/6 ERC Public Hearing  
**Attachments:** 2582-WRPA-0006-1 LegalNotice.pdf; 2582-WRPA-006-1 Mailing list.pdf

Prutha,

Please find attached below:

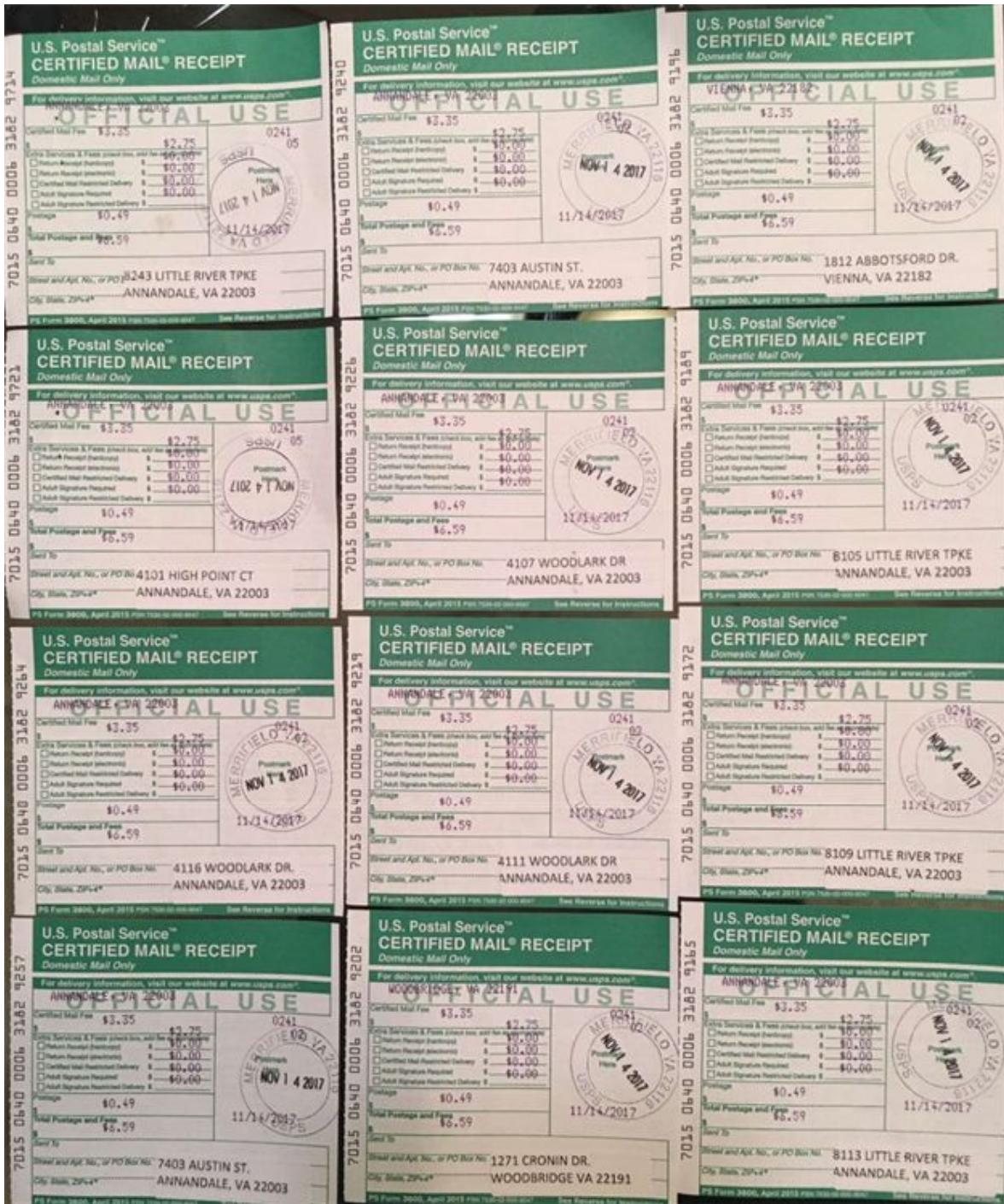
- the list of property owners who were notified in our certified mailing today;
- copy of the notice letter which was mailed;
- postmarked receipts for 32 letters, including notices to the Braddock District Supervisor and the Fairfax Hills Civic Association.

Regarding notice to the civic association, there was no published address for the Fairfax Hills Civic Association in the State Corporation Commission or Fairfax County records, so we used the address which the stated President of that organization provided the applicant.

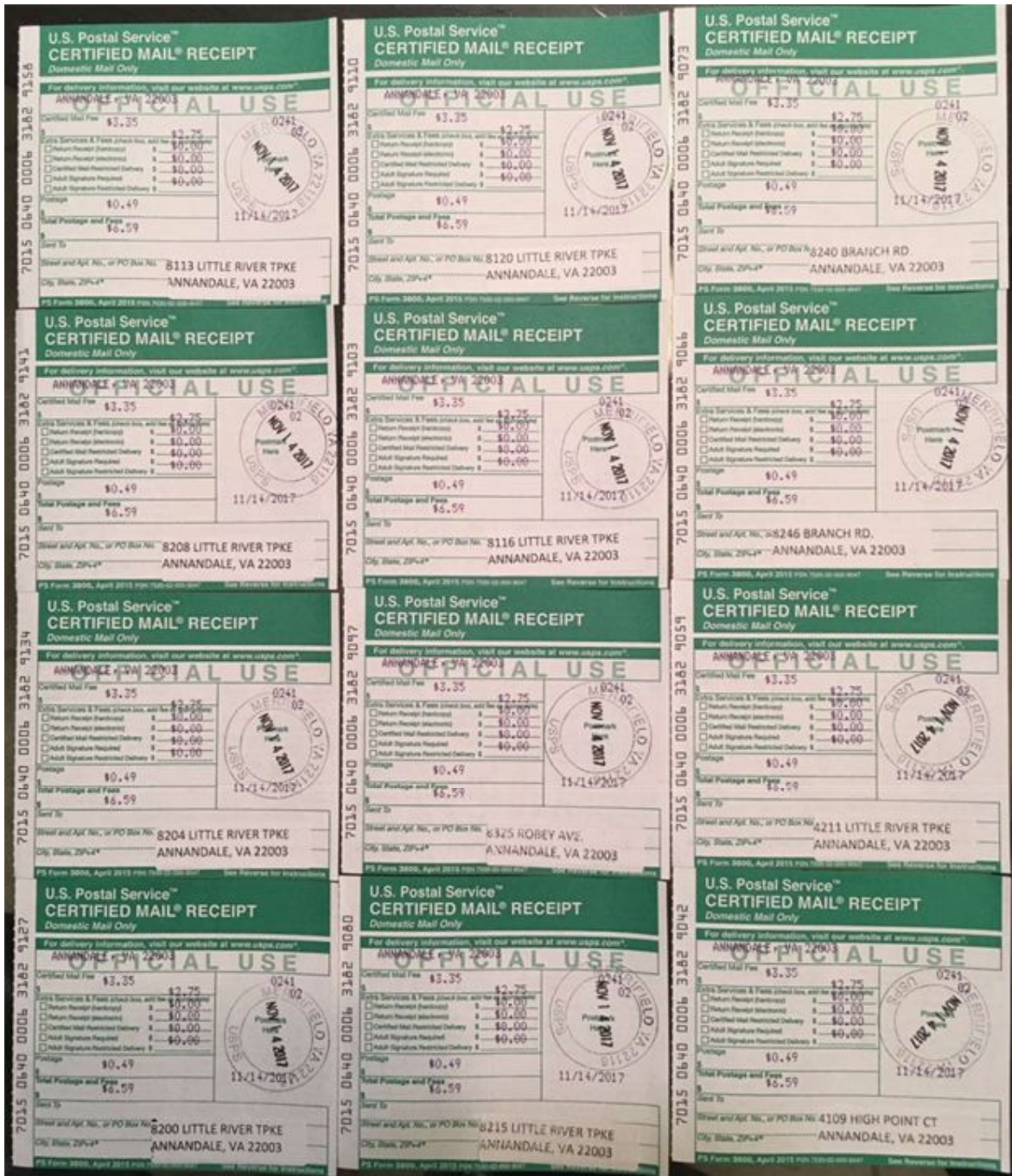
We would appreciate your confirmation that our notice submission meets Code requirements for the Dec 6, 2017 public hearing.

Greg Budnik, P.E.  
**GJB Engineering Inc.**  
703-401-8855

ID	PIN	SITE LOCATION	OWNER ADDRESS	OWNER	CITY STATE
1	0593 01 0032B	8220 LITTLE RIVER TPKE	8220 LITTLE RIVER TPKE	CHURCH NAZARENE CALVARY OF THE	ANNANDALE, VA, 22003
2	0593 11 0001	8243 LITTLE RIVER TPKE	8243 LITTLE RIVER TPKE	BAWDEN GERALD W	ANNANDALE, VA, 22003
3	0593 11 0002	4101 HIGH POINT CT	4101 HIGH POINT CT	SABIR FAROUK MOHAMED	ANNANDALE, VA, 22003
4	0593 11 0013	8256 BRANCH RD	8256 BRANCH RD	DAVILA SUAREZ ALFONSO L	ANNANDALE, VA, 22003
5	0593 11 0014	8252 BRANCH RD	8252 BRANCH RD	STETSON NANCY H	ANNANDALE, VA, 22003
6	0593 11 0015	8250 BRANCH RD	8250 BRANCH RD	SMITH G RICHARD	ANNANDALE, VA, 22003
7	0593 11 0016	4105 HIGH POINT CT	4105 HIGH POINT CT	NGO KENNY	ANNANDALE, VA, 22003
8	0593 11 0017	4109 HIGH POINT CT	4109 HIGH POINT CT	PROBST MARY E AND BYHAM BETH A	ANNANDALE, VA, 22003
9	0594 01 0007A	8211 LITTLE RIVER TPKE	8211 LITTLE RIVER TPKE	PUNIT SANGITA P	ANNANDALE, VA, 22003
10	0594 01 0007C	8246 BRANCH RD	8246 BRANCH RD	CHAN IEONG TR	ANNANDALE, VA, 22003
11	0594 01 0007D	8240 BRANCH RD	8240 BRANCH RD	WHITLEY ROY J AND WHITLEY MARY G R	ANNANDALE, VA, 22003
12	0594 01 0008	8215 LITTLE RIVER TPKE	8215 LITTLE RIVER TPKE	TRAN BRUCE	ANNANDALE, VA, 22003
13	0594 02 0004	8112 LITTLE RIVER TPKE	8325 ROBEY AVE	KHAN NABEEL	ANNANDALE, VA, 22003
14	0594 02 0005	8116 LITTLE RIVER TPKE	8116 LITTLE RIVER TPKE	STEIDEL DAVID W	ANNANDALE, VA, 22003
15	0594 02 0006	8120 LITTLE RIVER TPKE	8120 LITTLE RIVER TPKE	MC COY EDWARD D	ANNANDALE, VA, 22003
16	0594 02010001	8200 LITTLE RIVER TPKE	8200 LITTLE RIVER TPKE	CLARE RODGER	ANNANDALE, VA, 22003
17	0594 02010002	8204 LITTLE RIVER TPKE	8204 LITTLE RIVER TPKE	WADHWA SARIOT SEEMA KAUR	ANNANDALE, VA, 22003
18	0594 02010003	8208 LITTLE RIVER TPKE	8208 LITTLE RIVER TPKE	ARMSTRONG H JERE	ANNANDALE, VA, 22003
19	0594 10 0001	8201 LITTLE RIVER TPKE	8113 LITTLE RIVER TPKE	PERRY MC NAIR W	ANNANDALE, VA, 22003
20	0594 10 0002	8113 LITTLE RIVER TPKE	8113 LITTLE RIVER TPKE	PERRY MC NAIR W	ANNANDALE, VA, 22003
21	0594 10 0003	8109 LITTLE RIVER TPKE	8109 LITTLE RIVER TPKE	ESTABILLO ROSELLO	ANNANDALE, VA, 22003
22	0594 10 0004	8105 LITTLE RIVER TPKE	8105 LITTLE RIVER TPKE	MCGEHEE THOMAS L TR	ANNANDALE, VA, 22003
23	0594 10 0023	4104 PINERIDGE DR	1812 ABBOTSFORD DR	MOORE SAMUEL V AND AUDREY C	VIENNA, VA, 22182
24	0594 10 0039	4115 WOODLARK DR	1271 CRONIN DR	BOLINGER MARY ELAINE	WOODBIDGE, VA, 22191
25	0594 10 0040	4111 WOODLARK DR	4111 WOODLARK DR	GOLOMB ANDREW M	ANNANDALE, VA, 22003
26	0594 10 0041	4107 WOODLARK DR	4107 WOODLARK DR	RODRIGUEZ HECTOR A	ANNANDALE, VA, 22003
27	0594 10 0042	4104 WOODLARK DR	15881 CRABBS BRANCH WAY	K2NC LLC	ROCKVILLE, MD, 20855
28	0594 10 0043	4108 WOODLARK DR	7403 AUSTIN ST	VALVERDE HUGO AND MARIA	ANNANDALE, VA, 22003
29	0594 10 0044	4112 WOODLARK DR	7403 AUSTIN ST	VALVERDE HUGO AND MARIA	ANNANDALE, VA, 22003
30	0594 10 0145A	4116 WOODLARK DR	4116 WOODLARK DR	LAROCCA JOHN J	ANNANDALE, VA, 22003
31	<u>To Be Determined by Applicant</u>				







7015 0640 0006 3182 9745	<b>U.S. Postal Service™ CERTIFIED MAIL® RECEIPT</b> Domestic Mail Only For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ™ ANNANDALE, VA 22003 OFFICIAL USE	<b>U.S. Postal Service™ CERTIFIED MAIL® RECEIPT</b> Domestic Mail Only For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ™ ANNANDALE, VA 22003 OFFICIAL USE
	Certified Mail Fee \$3.25 Extra Services & Fees (check box, add fee) <input type="checkbox"/> Return Receipt (hardcopy) \$2.75 <input type="checkbox"/> Return Receipt (electronic) \$0.00 <input type="checkbox"/> Certified Mail Restricted Delivery \$0.00 <input type="checkbox"/> Adult Signature Required \$0.00 Postage \$0.49 Total Postage and Fees \$6.59 11/14/2017	Certified Mail Fee \$3.25 Extra Services & Fees (check box, add fee) <input type="checkbox"/> Return Receipt (hardcopy) \$2.75 <input type="checkbox"/> Return Receipt (electronic) \$0.00 <input type="checkbox"/> Certified Mail Restricted Delivery \$0.00 <input type="checkbox"/> Adult Signature Required \$0.00 Postage \$0.49 Total Postage and Fees \$6.59 11/14/2017
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7015 0640 0006 3182 9035	<b>U.S. Postal Service™ CERTIFIED MAIL® RECEIPT</b> Domestic Mail Only For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ™ ANNANDALE, VA 22003 OFFICIAL USE	<b>U.S. Postal Service™ CERTIFIED MAIL® RECEIPT</b> Domestic Mail Only For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ™ ANNANDALE, VA 22003 OFFICIAL USE
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	Sent To Street and Apt. No. 74105 HIGH POINT CT City, State, ZIP+4® ANNANDALE, VA 22003 PS Form 3800, April 2013 (Rev. 10-16-2016) See Reverse for Instructions	Sent To Street and Apt. No. 4317 WOODLARK DR City, State, ZIP+4® ANNANDALE, VA 22003 PS Form 3800, April 2013 (Rev. 10-16-2016) See Reverse for Instructions
7015 0640 0006 3182 9026	<b>U.S. Postal Service™ CERTIFIED MAIL® RECEIPT</b> Domestic Mail Only For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ™ ANNANDALE, VA 22003 OFFICIAL USE	<b>U.S. Postal Service™ CERTIFIED MAIL® RECEIPT</b> Domestic Mail Only For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ™ BURKE, VA 22015 OFFICIAL USE
	Certified Mail Fee \$3.25 Extra Services & Fees (check box, add fee) <input type="checkbox"/> Return Receipt (hardcopy) \$2.75 <input type="checkbox"/> Return Receipt (electronic) \$0.00 <input type="checkbox"/> Certified Mail Restricted Delivery \$0.00 <input type="checkbox"/> Adult Signature Required \$0.00 Postage \$0.49 Total Postage and Fees \$6.59 11/14/2017	Certified Mail Fee \$3.25 Extra Services & Fees (check box, add fee) <input type="checkbox"/> Return Receipt (hardcopy) \$2.75 <input type="checkbox"/> Return Receipt (electronic) \$0.00 <input type="checkbox"/> Certified Mail Restricted Delivery \$0.00 <input type="checkbox"/> Adult Signature Required \$0.00 Postage \$0.49 Total Postage and Fees \$6.59 11/14/2017
	Sent To Street and Apt. No. 8250 BRANCH RD City, State, ZIP+4® ANNANDALE, VA 22003 PS Form 3800, April 2013 (Rev. 10-16-2016) See Reverse for Instructions	Sent To Street and Apt. No. 9002 BURKE LAKE RD City, State, ZIP+4® BURKE, VA 22015 PS Form 3800, April 2013 (Rev. 10-16-2016) See Reverse for Instructions

**LEGAL NOTICE**

**EXCEPTION REVIEW COMMITTEE PUBLIC HEARING**

Date: \_\_\_\_\_

**RE: Encroachment Exception Request #2582-WRPA-006-1 and Water Quality Impact Assessment #2582-WQ-003-1**

Dear Property Owner(s):

The Fairfax County Exception Review Committee will hold a public hearing in **Room 106** of the **Herrity Building, 12055 Government Center Parkway, Fairfax, Virginia**, on **WEDNESDAY, December 6th at 2:00 P.M.**, regarding an

**Encroachment Exception Request #2582-WRPA-006-1 and Water Quality Impact Assessment #2582-WQ-003-1, K2NC LLC**, an application for an exception to construct a house within 50-foot seaward of the Resource Protection Area (RPA) under Chesapeake Bay Preservation Ordinance (CBPO) Section 118-6-7 at 4104 Woodlark Drive, Annandale, Virginia 22003; Fairfax Hills, Section 1, Lot 42; Tax Map #059-4-10-0042; Braddock District.

You are listed in the current real estate assessment records of Fairfax County, Virginia, as the owner of a parcel in the vicinity of the property which has filed the above-referenced application. In accordance with the provisions of the CBPO Section 118-6-3(c) of the *Code of the County of Fairfax*, you are hereby notified of the scheduled public hearing on this application. You are invited to present oral comments at the hearing, or provide written comments, on the application.

Copies of the application and the staff report will be available for review in Fairfax County's Site Development and Inspections Division (SDID) offices located in Suite 535 of the Herrity Building at 12055 Government Center Parkway, Fairfax, Virginia, 22035.

Persons desiring to speak at the public hearing may contact SDID staff at 703-324-1720. Written comments should be sent to the county at the address in the paragraph above and should reference the application numbers shown in the subject line. Written comments must be received before the hearing is called to order to be considered a part of the public record on the application.

Please note that occasionally the advertised public hearing dates need to be rescheduled to a later date. Prior to coming to the public hearing, please check with SDID staff to determine whether the public hearing is still scheduled to proceed on the date advertised above. Office hours are 8:00 A.M. to 4:30 P.M.

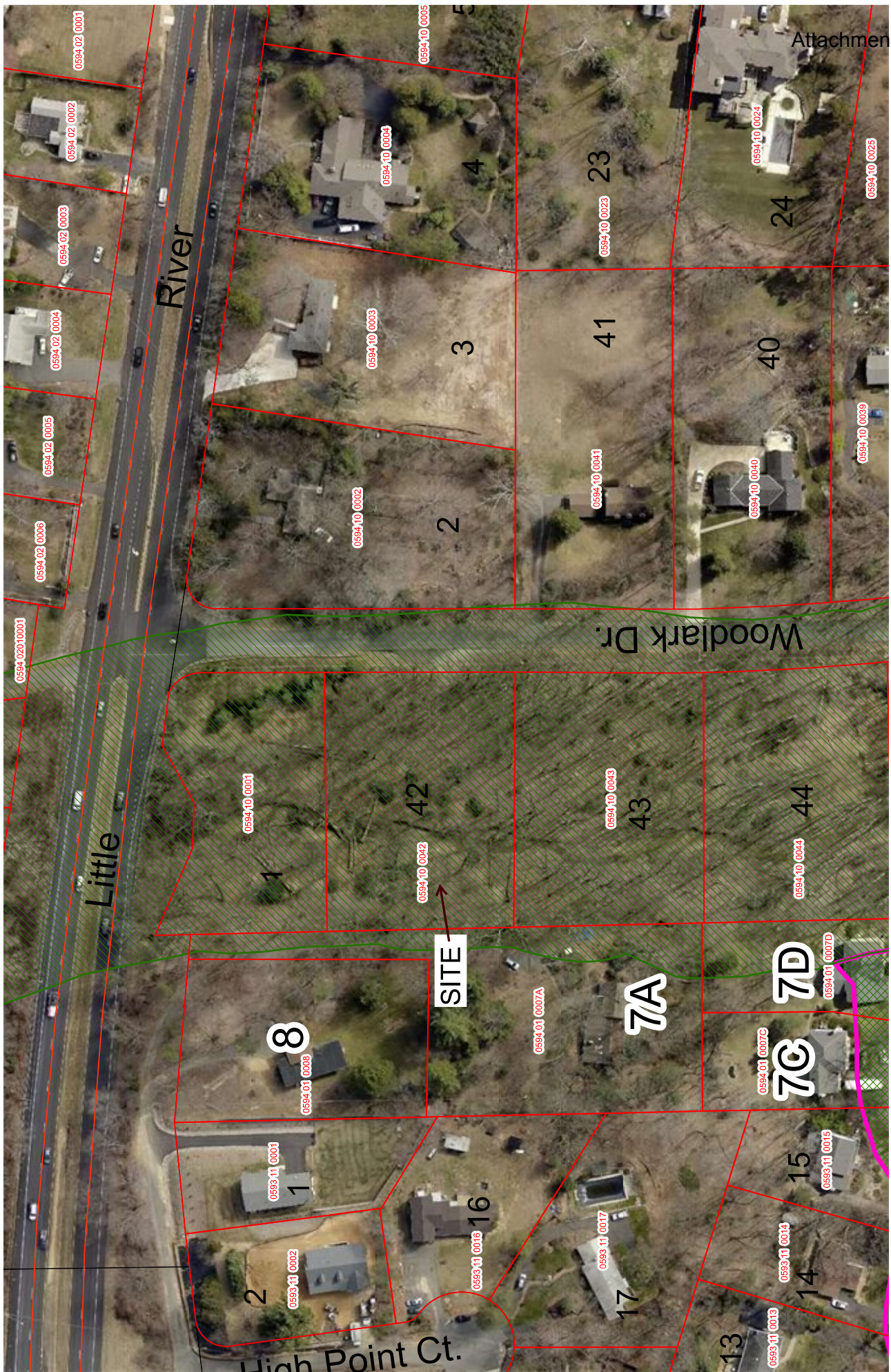


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1720 or TTY 711 (Virginia Relay Center).

**ATTACHMENT D1**

**AERIAL PHOTOGRAPHY**





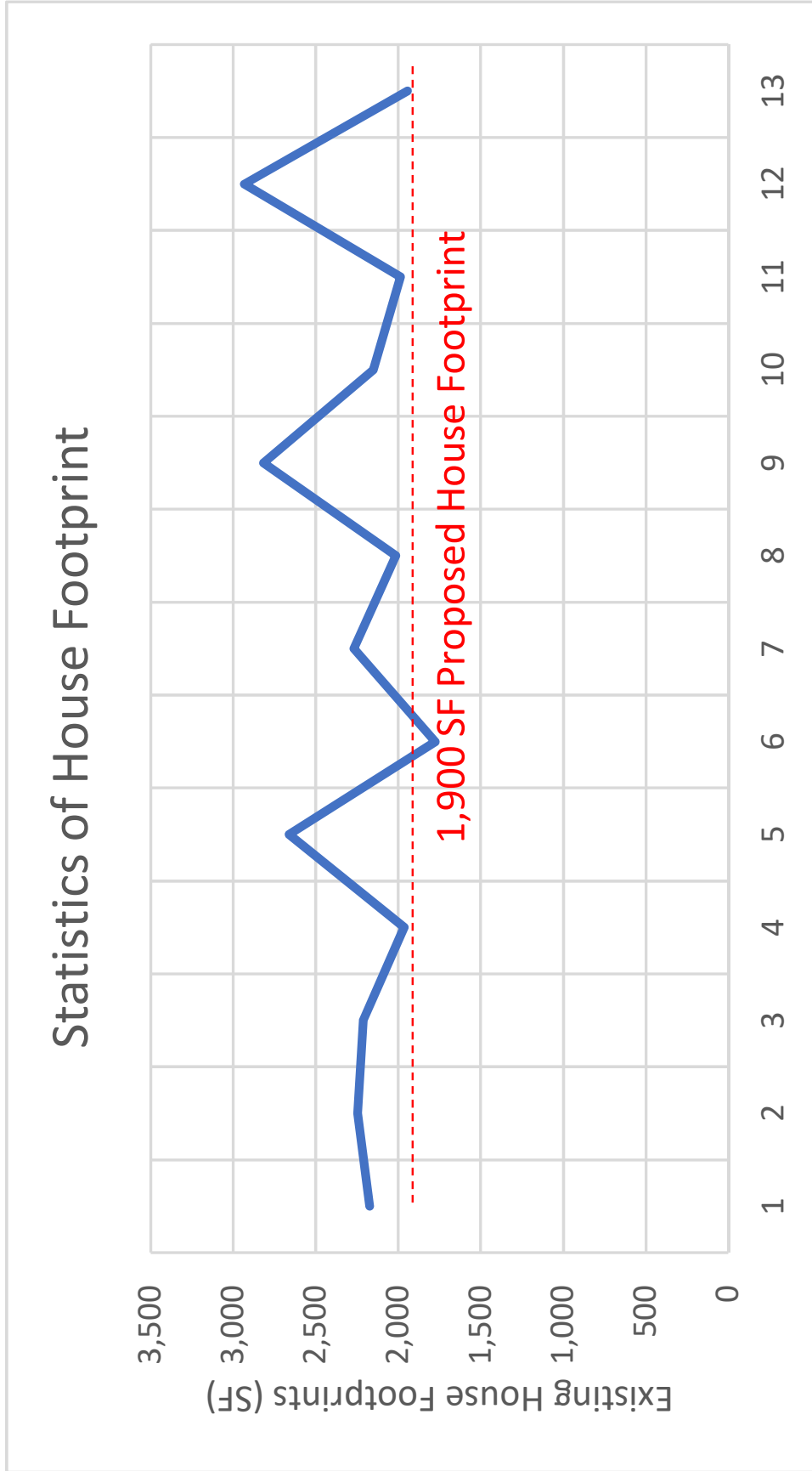
**ATTACHMENT D2**

**STATISTICS OF HOUSE AND DECK  
FOOTPRINT SIZE IN RELATION TO  
ADJACENT LOTS**

# Building Footprint Evaluation

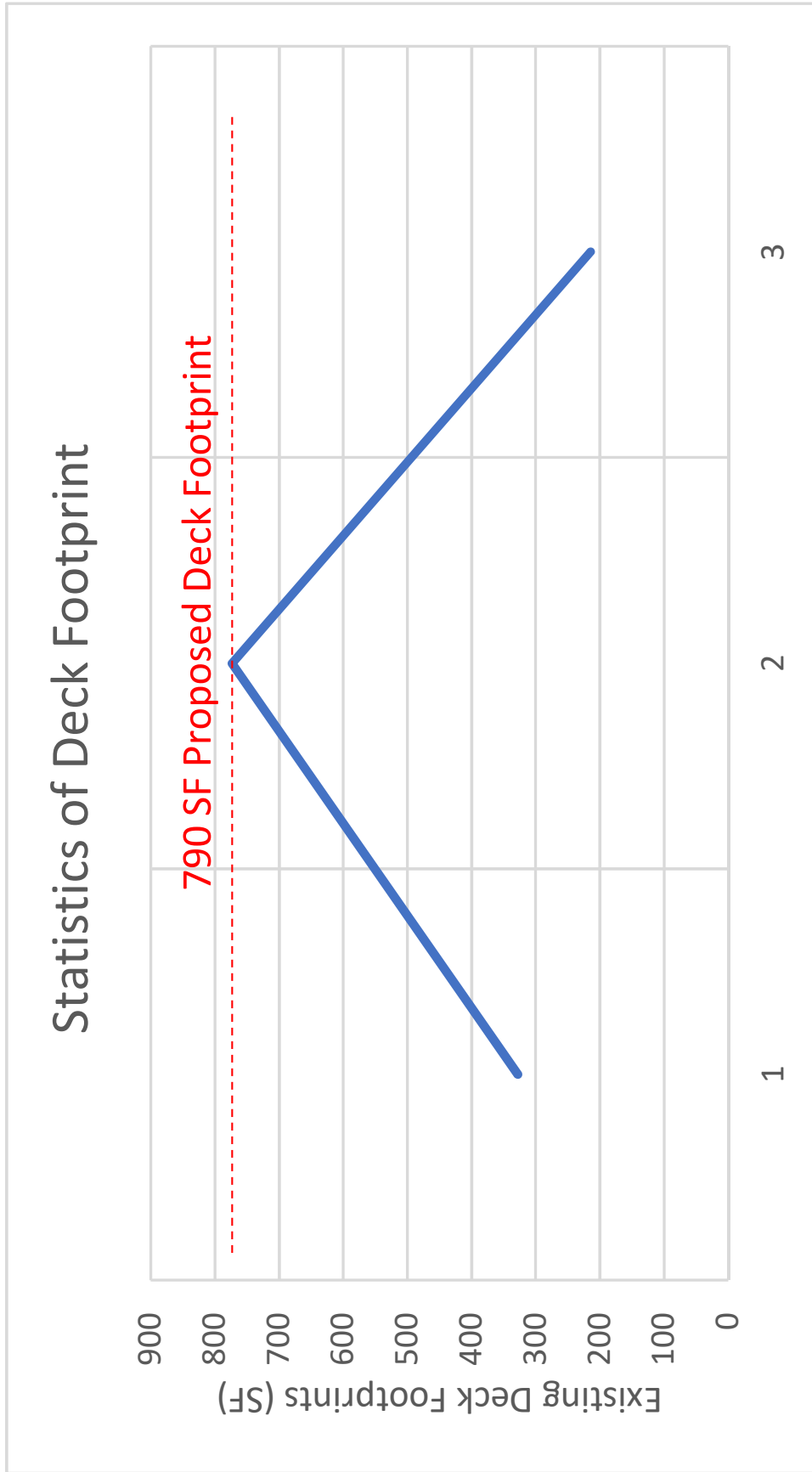
ID	Tax Map	Address	House Footprints Square feet
1	0593 11 0001	8243 Little River Turn Pike	2172
2	0593 11 0002	4101 High Point Court	2246
3	0593 11 0015	8250 Branch Road	2214
4	0593 11 0017	4109 High Point Court	1963
5	0593 11 0016	4105 High Point Court	2661
6	0594 01 0008	8215 Little River Turn Pike	1776
7	0594 01 0007A	8211 Little River Turn Pike	2269
8	0594 01 0007C	8246 Branch Road	2014
9	0594 01 0007D	8240 Branch Road	2818
10	0594 10 0002	8113 Little River Turn Pike	2152
11	0594 10 0003	8109 Little River Turn Pike	1987
12	0594 10 0040	4111 Woodlark Drive	2933
13	0594 10 0041	4107 Woodlark Drive	1945
<b>Average</b>			<b>2242</b>





# Deck Footprint Evaluation

ID	Tax Map	Address	Deck Footprints Square feet
1	0593 11 0016	4105 High Point Court	328
2	0594 01 0007A	8211 Little River Turn Pike	773
3	0594 01 0007C	8246 Branch Road	215
<b>Average</b>			<b>439</b>





**ATTACHMENT E**

**URBAN FORESTRY MANAGEMENT  
DIVISION (UFMD) MEMORANDUM,  
DATED NOVEMBER 9, 2017**





# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** November 9, 2017

**TO:** Prutha Rueangvivatanakij, Stormwater Engineer  
Department of Public Works and Environmental Services

**FROM:** Ian Fuze, Urban Forester II  
Forest Conservation Branch, UFMD

**SUBJECT:** Forest Conservation Branch review comments

**RE:** Project name: Fairfax Hills Section 1, Lot 42  
Plan Number: 2582-WRPA/WQ-006-1  
Date submitted to Site and Addressing Center: 9/30/17  
Date submitted to Urban Forest Management Division: 11/6/2017

The following comments are based on the above mentioned Water Quality Impact Assessment and associated request to remove vegetation within the RPA.

As the Applicant states, “Indigenous vegetation within the RPA buffer on the subject site will be retained to the maximum extent practicable in order to retard runoff, prevent erosion, and filter nonpoint source pollution for the adjacent stream.” UFMD agrees with this assessment as it appears that the minimum area required for construction has been proposed and tree preservation has been maximized resulting in the proposed project likely meeting PFM requirements of the Tree Conservation Ordinance.

The Applicant has requested a reduction in the plantings due to the following justification, “Opportunities for reforestation are severely limited due to existing forest cover, reforestation is proposed where practicable to mitigate the effects of buffer encroachment. The remainder of the project (not disturbed by proposed construction) is densely vegetated with smaller trees and shrubs and is not suitable for reforestation.” UFMD agrees with this assessment. A landscape schedule has been provided (exhibit 6) which locates existing trees. Proposed plantings have been shown avoiding the Critical Root Zones of identified trees to the greatest extent possible. UFMD believes that reforestation to the minimum extend required would result in adverse root impacts to existing trees resulting in their eventual decline.

Reforestation with native trees and shrubs is proposed as shown in Exhibit 6. The total plantings proposed includes: 11 overstory trees, 21 understory trees, and 110 shrubs. An additional 1,935 sf within the 50’ seaward buffer will be stabilized utilizing shade-tolerant alternative groundcovers in lieu of turf grass lawn. UFMD agrees that this is the maximum

**Department of Public Works and Environmental Services**  
**Urban Forest Management Division**

12055 Government Center Parkway, Suite 518  
Fairfax, Virginia 22035-5503  
Phone 703-324-1770, TTY: 711, Fax: 703-653-9550  
[www.fairfaxcounty.gov/dpwes](http://www.fairfaxcounty.gov/dpwes)



amount of reforestation practical in order to unsure long term survivability of proposed plantings and existing vegetation.

If further assistance is desired, please contact me at 703-324-1770.

if/

UFMID #: 239720

cc: RA File

**ATTACHMENT F**

**APPLICATION REQUEST**



September 28, 2017  
Revised: November 6, 2017

VIA Hand Delivery

Mr. Bruce McGranahan, P.E.  
Director  
Department of Public Works and Environmental Services  
12055 Government Center Parkway  
Suite 444  
Fairfax, VA 22035-5504

Re: Section 118-6-7 Exception Request and Water Quality Impact Assessment  
Fairfax Hills, Section 1, Lot 42  
Tax Map: 59-4 ((10) Parcel 42  
Fairfax County, Virginia  
WSSI #11325.01

Dear Mr. McGranahan:

Wetland Studies and Solutions, Inc. (WSSI) has been engaged by the Owners of the property, K2NC, LLC, to prepare this Resource Protection Area Encroachment Request (RPAE) and Water Quality Impact Assessment (WQIA) for approval of construction activities associated with the development of a single lot as required under Section 118-6-7 of the Fairfax County Chesapeake Bay Preservation Ordinance (Ordinance).

**I. RPAE Submission Requirements:**

Pursuant to the Submission Requirements for Exception Requests (Section 118-6-5) please find enclosed:

- (a) Four (4) copies of the application form;
- (b) Four (4) copies of a Water Quality Impact Assessment;
- (c) Fourteen (14) copies of a plat which meets the submission requirements of Zoning Ordinance Section 9-011, Paragraph 2;
- (d) Photographs of the property showing existing structures, terrain, and vegetation;
- (e) Four (4) copies of a map identifying classification of soil types, at a scale of one inch equals five hundred feet (1"=500'), covering an area at least 500 feet beyond the perimeter of the proposed development;
- (f) A statement of justification which addresses how the proposed development complies with the factors set forth in Sections 118-6-6(a) through (f) – provided within the body of this RPAE.

RPAE Request – Fairfax Hills, Section 1, Lot 42  
September 28, 2017  
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(g) The following Exhibits are enclosed in support of this RPAE and WQIA:

- Exhibit 1 - Application Form for RPA Encroachment Exceptions
- Exhibit 2 - Vicinity Map
- Exhibit 3 - Existing Site Photographs
- Exhibit 4 - Existing Conditions
- Exhibit 5 - Preliminary Injunction Order
- Exhibit 6 - Proposed Conditions
- Exhibit 7 - Soils Map
- Exhibit 8 - Adjacent Property Owners
- Addendum 1 - County Comment Response Information

## **II. Background**

The subject of this RPAE is located at 4104 Woodlark Drive in Fairfax, Virginia. It is an unimproved single lot in the Fairfax Hills subdivision with over 80% of the lot encumbered by the RPA, see Exhibit 2 for the site vicinity. The Applicant purchased the subject property in 2015 and engineered the site for a single family residence on the lot in accordance with the 35-foot front yard setback per the Zoning Ordinance. Approvals were issued during the spring of 2016 (2852-INF-004-1; 2582-WRPA-005-2) under the RPA Exemption for loss of buildable area. This was possible because the desired lot plan did not encroach into the 50' seaward RPA buffer.

With approvals in-hand, the Applicant sought to commence construction, but was issued a Preliminary Injunction Order (Case No. CL2017-5321). This injunction barred erection of the approved house based on a 1941 Deed of Dedication (pre-dating the Zoning Ordinance) that established a 75-foot front yard setback. It is important to note that this 75-foot setback extends into the RPA for the entire width of the site (and nearly reaches the 50' seaward buffer at the northern property line), thus leaving no area outside the RPA where house construction is permitted and creating a genuine hardship for the Applicant. The original/desired house had been set forward of this 75-foot setback to minimize RPA encroachment and leave more buffer between the residence and an unnamed perennial tributary to Accotink Creek. Please refer to Exhibit 3 for Existing Site Photographs, Exhibit 4 for Existing Conditions (including an outline of the area cleared under the prior approvals) and Exhibit 5 for a copy of the Preliminary Injunction Order.

Since the injunction was issued, stopping construction, the Applicant is proceeding with a revised lot plan which simply shifts the approved house away from the front property line to conform to the 75-foot setback required in the neighborhood covenant. A pre-application meeting was conducted on August 30, 2017 to discuss RPAE/WQIA issues regarding the site and wherein County staff was supportive of the proposed submission of this RPAE for Loss of Buildable Area. The proposed lot design is shown in Exhibit 6, and includes survey-located wetlands, as described in Wetland Studies and Solutions' (WSSI), September 26, 2017 Wetlands Delineation report, and the Field-Verified RPA and 50' Seaward RPA Buffer based on this information.

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As shown in the site photos and existing conditions map, the lot is completely forested with the exception of trees cleared under the prior approval. Since the only substantial cleared areas will be necessary to construct the residence, the potential for RPA reforestation is severely limited. A proposed planting plan located in Exhibit 6 depicts plantings in accordance with RPA regulations to the extent possible given the site limitations – (both within and outside the RPA, including some areas previously cleared by the Applicant).

The proposed project includes additional tree clearing and construction of a new single family home that will be well suited for the area. The proposed layout of the structure and lot is presented in Exhibit 6 (as well as in the required RPAE Plat that is part of this submission). The proposed structure will result in new impervious area and disturbance to both the RPA and the 50' seaward RPA buffer, but all disturbance (including grading) has been limited to the minimum necessary to construct the residence. Further, the residence is appropriately sized to neighborhood standard and sited appropriately on the lot, subject to both zoning restrictions and the 75-foot setback. Specific details regarding home size and dimension are provided in this request.

As stated previously, this RPA Exception for Loss of Buildable Area is being submitted based on the extent of the RPA on-site and a neighborhood setback requirement that bars the Applicant from limiting development to the outer 50' of the RPA buffer. Demonstration of how the proposed project complies with each of the relevant sections of the Ordinance is presented in the remainder of this submission.

### **III. Resource Protection Area Encroachment Statement of Justification**

The following is the Statement of Justification which addresses how the development complies with the factors set forth in Sections 118-6-6 (a) through (f) of the Ordinance:

*(a) The requested exception to the criteria is the minimum necessary to afford relief;*

The project site area is over 80% encumbered by RPA. In addition, there has been a court-enforced injunction of a 75' front setback for any proposed house in the neighborhood – which precludes construction of a house anywhere outside the RPA. As shown on the proposed conditions plan, the 75' setback extends into the RPA in all areas of the site – nearly to the 50' seaward buffer at the northern property line.

The proposed lot plan represents the minimum disturbance necessary to construct a single family residence and associated infrastructure that is appropriate for the neighborhood. Grading has been minimized and proposed impervious areas have been reduced to provide the Applicant with a reasonably sized home and usable amenities. Please refer to Section (f) below for a justification of the proposed house sizing.

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- (b) *Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;*

Granting of this exception will not confer any special privileges upon the property Owner – the Ordinance allows for exceptions in circumstances of loss of reasonable buildable area due to RPA. Other owners are entitled to seek relief in the event they are so encumbered by the Field-Verified RPA, in the same manner as the Applicant.

- (c) *The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;*

Situations as presented in this exception request are the reason that the exception in Section 118-6-7 (Exceptions for Loss of Buildable Area) exists. Properties established prior to the advent of the Ordinance have always been entitled to be developed in a reasonable manner in the event that the RPA precludes development without relief. This project proposes tree clearing and erection of a single family residence, representing no substantial detriment to water quality. Thus, this exception request is in harmony with the purpose and intent of the Ordinance.

- (d) *The exception request is not based upon conditions or circumstances that are self-created or self-imposed;*

As stated previously, RPA encumbers over 80% of the subject lot. Further, there is a court-enforced neighborhood setback of 75 feet from the front property line where no structure is permitted to be built. Since the setback extends into the RPA in all areas, there is no permitted location outside the RPA that a house may be constructed on Lot 42.

Neither of the conditions impacting house construction are self-imposed; and in fact the Applicant attempted to construct as far as possible outside the RPA (2852-INF-004-1; 2582-WRPA-005-2) before being forced to honor the front setback by litigation.

- (e) *Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and*

As demonstrated in Section (f) below, the proposed house is sized similarly (if not slightly smaller) than typical houses in the neighborhood. All grading has been minimized and proposed impervious areas have been reduced to the maximum extent practicable. Further, although opportunities for reforestation are severely limited, due to existing forest cover, reforestation is proposed where practicable.

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(f) *Other findings, as appropriate and required herein, are met.*

In order to demonstrate that the proposed house is sized appropriately for the neighborhood, the Applicant has evaluated the approximately 50 existing houses with respect to house footprint size and house depth (from front face to rear of house) as shown by Fairfax County GIS data.

This analysis indicated:

1. Average House Footprint is approximately 2,350 square feet.
2. Average house depth (front face to rear of house) is approximately 48'.
3. The proposed house footprint is 1,900 square feet with a maximum house depth of 37'

Thus it is readily apparent that the proposed house is, in fact, sized modestly with respect to other homes constructed in the Fairfax Hills subdivision.

The remainder of this submission documents the degree to which this proposed project meets and exceeds all requirements of the Ordinance.

#### **IV. Compliance with Criteria for Exception for Loss of Buildable Area in a Resource Protection Area (Section 118-6-7)**

Each of the *Criteria for Loss of Buildable Area* contained in the Ordinance are stated below, along with the required justification that the project meets or exceeds the criteria.

(a) *The proposed development does not exceed 10,000 square feet of land disturbance, exclusive of land disturbance necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);*

**Comply:** The proposed disturbance of 7,568 sf (including 2,462 sf within the 50' seaward buffer) is less than 10,000 square feet.

(b) *The proposed development does not create more than 5,000 square feet of impervious surface within the RPA, exclusive of impervious surface necessary to provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);*

**Comply:** The proposed impervious area created of 2,711 sf (including 716 sf within the 50' seaward buffer) is less than 5,000 square feet.



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- (c) *The lot or parcel must meet the minimum lot size specified for the zoning district in which located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance, and any other applicable ordinances and laws;*

**Comply:** The Applicant's lot size of 45,000 square feet exceeds minimum lot size requirements for the Zoning (R-2).

- (d) *Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel;*

**Comply:** Although opportunities for reforestation are severely limited due to existing forest cover, reforestation is proposed where practicable to mitigate the effects of buffer encroachment. Proposed reforestation of 4,395 sf is detailed this application. An additional 1,935 sf within the 50' seaward buffer will be stabilized utilizing shade-tolerant alternative groundcovers in lieu of turf grass lawn. Please refer to Exhibit 6 for the proposed reforestation plan.

- (e) *The requirements of Section 118-3-2 shall be satisfied or waived pursuant to Section 118-3-2(f)7; and*

**Comply:** See Part V below for an item-by-item analysis of Section 118-3-2 criteria.

- (f) *The requirements of Section 118-3-3 shall be satisfied except as specifically provided for in this section to permit an encroachment into the RPA buffer area. (32-03-118.)*

**Comply:** See Part VI below for an item-by-item analysis of Section 118-3-3 criteria.

## **V. Compliance with General Performance Criteria (Section 118-3-2)**

Each of the *General Performance Criteria* contained in the Ordinance are stated below, along with the required justification that the project meets or exceeds the criteria.

- (a) *No more land shall be disturbed than is necessary to provide for the proposed use, development, or redevelopment.*

**Comply:** The proposed lot plan represents the minimum disturbance necessary to construct a single family residence and associated infrastructure that is appropriate for the neighborhood. Grading has been minimized and proposed impervious areas have been reduced to provide the Applicant with a reasonably sized home and usable amenities.

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- (b) *Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use, development, or redevelopment proposed.*

**Comply:** Indigenous vegetation within the RPA buffer on the subject site will be retained to the maximum extent practicable in order to retard runoff, prevent erosion, and filter nonpoint source pollution for the adjacent stream. Proposed development and the resulting RPA encroachment have been minimized, and 4,395 sf of reforestation (with an additional 1,935 sf of alternative groundcovers) is proposed to mitigate the impact of the proposed construction.

- (c) *Where the best management practices utilized require regular or periodic maintenance in order to continue their functions, such maintenance shall be ensured through a maintenance agreement with the owner or through some other mechanism or agreement that achieves and equivalent objective.*

**Comply:** No best management practices are proposed for the site that will require significant or regular maintenance. No maintenance agreement is required.

- (d) *Impervious cover shall be minimized consistent with the use, development, or redevelopment proposed.*

**Comply:** As outlined above, the proposed 1,900 square foot house footprint (including 37' maximum depth (from front to back) has been demonstrated to be minimized with respect to other existing houses in the neighborhood. In addition to the house footprint, a small patio beneath the back deck is proposed. This is consistent with typical sizing and is necessary to provide a modicum of utility for the back yard. Thus impervious cover is minimized consistent with the use proposed.

- (e) *Any land disturbing activity that exceeds an area of 2,500 square feet shall comply with the requirements of Chapter 104 of the Fairfax County Code. The construction of single family dwellings, septic tanks, and drainfields shall not be exempt from this requirement.*

**Comply:** The proposed land disturbing activity will meet the requirements of Chapter 104 of the Fairfax County Code.

- (f) *For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices (BMPs).*

**Comply:** The BMP requirement does not apply to this project because a site plan or subdivision approval is not required and the total impervious area percentage is less than 18%.

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- (g) *The Director shall require certification on all plans of development that all wetlands permits required by law will be obtained prior to commencement of land disturbing activities in any area subject to the plan of development review. No land disturbing activity on the land subject to the plan of development shall commence until all such permits have been obtained by the application and evidence of such permits has been provided to the Director.*

**Not Applicable:** Disturbance to the unnamed tributary to Accotink Creek is not proposed, thus no wetlands permit will be required.

- (h) *All on-site sewage disposal systems requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be subject to the restrictions imposed by the State Water Control Board or the Virginia Department of health.*

**Not applicable:** There are no on-site sewage disposal systems related to the disturbance that is the subject of this RPAA.

- (i) *Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Chesapeake Bay Preservation Act and this chapter.*

**Not applicable:** The project is not associated with agricultural activities.

## **VI. Compliance with Additional Performance Criteria (Section 118-3-3)**

Each of the *Additional Performance Criteria* contained in the Ordinance are stated below, along with the required justification that the project meets or exceeds the criteria.

- (a) *A Water Quality Impact Assessment shall be required for any proposed land disturbance within an RPA that is not exempt.*

**Comply:** The required WQIA (as described in Section 118-4-1 of the Ordinance) is provided at the end of this submission.

RPAE Request – Fairfax Hills, Section 1, Lot 42  
 September 28, 2017  
 Revised: November 6, 2017  
 WSSI #11325.01  
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(b) *Allowable Development: Development is allowed within RPAs if it is water-dependent.*

**Not Applicable:** This project is not water dependent.

(c) *Redevelopment, outside of IDAs, is allowed within RPAs only if there is no increase in the amount of impervious area within the RPA and no further encroachment within the RPA and shall conform to the criteria set forth in this Chapter.*

**Not Applicable:** This project is not redevelopment.

(d) *Buffer area requirements.*

**Comply:** The existing RPA buffer on the subject site will be retained to the maximum extent practicable in order to retard runoff, prevent erosion, and filter nonpoint source pollution for the adjacent stream. Proposed development and the resulting RPA encroachment have been minimized, and 4,395 sf of reforestation (with an additional 1,935 sf of alternative groundcovers) is proposed to mitigate the impact of the proposed construction. As discussed previously, the remainder of the project (not disturbed by proposed construction) is densely vegetated with smaller trees and shrubs and is not suitable for reforestation).

(e) *Agricultural land requirements.*

**Not Applicable:** This project does not involve agricultural lands.

(f) *Buffer area establishment.*

**Comply:** As compensation for the proposed RPA encroachment, 4,395 sf of buffer reforestation with native trees and shrubs is proposed in accordance with the planting densities required by this section of the Ordinance, as shown in Exhibit 6. The total plantings proposed includes: 11 overstory trees, 21 understory trees, and 110 shrubs. An additional 1,935 sf within the 50' seaward buffer will be stabilized utilizing shade-tolerant alternative groundcovers in lieu of turf grass lawn. Please refer to Exhibit 6 for the proposed reforestation plan.

## **VII. Water Quality Impact Assessment (Section 118-4-1)**

Pursuant to Section 118-4-3, the following Water Quality Impact Assessment Components, which demonstrate the proposed project's overall compliance with the Ordinance, are discussed below:

(a) *Display the boundaries of RPA;*

RPAE Request – Fairfax Hills, Section 1, Lot 42  
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The boundary of the RPA is presented in Exhibits 4 and 6, as well as in the RPAE Plat that is included with this submission. It was established by WSSI based on a survey of wetland flagging by HugeSurveys for use in this application.

- (b) *Display and describe the location and nature of the proposed encroachment into and/or impacts to the RPA, including any clearing, grading, impervious surfaces, structures, utilities, and sewage disposal systems;*

Proposed RPA encroachment of 7,568 sf (including 2,462 sf within the inner 50' buffer) occurs due to construction of the proposed single family detached structure and associated infrastructure including a back deck and patio, lot grading, utility connections, and the house driveway. The house structure, patio, and driveway represent new impervious surfaces totaling 2,711 sf (including 716 sf within the inner 50' buffer).

- (c) *Provide justification for the proposed encroachment into and/or impacts to the RPA;*

This project proposes the construction of a reasonably-sized single family detached residence on a parcel zoned for such activity. This RPAE/WQIA is necessary because RPA extends over 80% of the lot area. The lot is further encumbered by a 75-foot front yard setback due to a 1941 Deed of Dedication that has been court-enforced on the Applicant. As a result of these restrictions, there is no buildable area outside the RPA on the Applicant's lot, creating a genuine hardship through no fault of the Applicant, and requiring submission of this RPA exception request for Loss of Buildable Area and accompanying Water Quality Impact Assessment.

The proposed lot plan represents the minimum disturbance necessary to construct a single family residence and associated infrastructure that is appropriate for the neighborhood. Grading has been minimized and proposed impervious areas have been reduced to provide the Applicant with a reasonably sized home and usable amenities.

As outlined previously, the Applicant has evaluated the approximately 50 existing houses in the Fairfax Hills neighborhood with respect to square footage and house depth (from front face to rear of house) as shown by Fairfax County GIS data.

This analysis indicated that the proposed 1,900 square foot house footprint is less than the 2,350 square foot neighborhood average; and that the proposed 37' maximum house depth is less than the 48' neighborhood average. Thus it is readily apparent that the proposed house is minimized with respect to providing an appropriate house that fits within the existing character of the Fairfax Hills subdivision.

Finally, although opportunities for reforestation are severely limited due to existing forest cover, reforestation is proposed where practicable to mitigate the effects of

RPAE Request – Fairfax Hills, Section 1, Lot 42  
 September 28, 2017  
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buffer encroachment. Proposed reforestation of 4,395 sf ( and an additional 1,935 sf of proposed alternative groundcovers in lieu of turf grass lawn) is detailed in Exhibit 6.

Based on these factors, it is our opinion that the proposed RPA encroachments described herein are fully justified.

- (d) *Describe the extent and nature of any proposed disturbance or disruption of wetlands;*

Wetlands, including Waters of the U.S., were delineated by Wetland Studies and Solutions, Inc. as described in a report titled, “Waters of the U.S. (Including Wetlands) Delineation and Resource Protection Area Evaluation, Fairfax Hills, Section 1, Lot 42”, dated September 27, 2017. This report concluded that although no wetlands are present within the site boundary, there is a perennial stream (an unnamed tributary to Accotink Creek) running through the rear-center of the site. The proposed lot improvements will not impact this stream, thus there will be no disturbance or disruption to jurisdictional wetlands or Waters of the U.S. as a result of the proposed activity.

- (e) *Display and discuss the type and location of proposed best management practices to mitigate the proposed RPA encroachment and/or adverse impacts;*

BMPs are not required or proposed for this project. Strict adherence to erosion and sediment controls, coupled with the proposed post-construction reforestation, will ensure that adverse RPA impacts are minimized.

- (f) *Demonstrate the extent to which the proposed activity will comply with all applicable performance criteria of this Chapter; and*

The proposed activity meets the applicable performance criteria, as detailed in the preceding RPAE section of this submission.

In conclusion, we request that this RPAE be granted to allow the Applicant to move forward with construction of their single family home. As outlined herein, the Applicant was obtained approvals for construction including a RPA exemption for loss of buildable area based on a 35-foot front property setback. Litigation based on the 1941 Deed of Dedication required them to re-design the site to honor the 75-foot front setback requirement; which pushed development into the 50-foot seaward buffer and required a RPA exception (versus an exemption). The Applicant has acted in good faith throughout the process at great expense and made every attempt to limit impacts to the Resource Protection Area. At this time, they simply request authorization to construct a modest home on their lot that complies with site restrictions to the maximum extent practicable.

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Thank you for your consideration and please feel free to contact me at [jkelly@wetlands.com](mailto:jkelly@wetlands.com) or (703) 679-5652 if you have any questions.

Sincerely,

WETLAND STUDIES AND SOLUTIONS, INC.

A handwritten signature in blue ink, appearing to read "J. Kelley".

John T. Kelley, Jr., PE, CFM, LEED®AP  
Senior Associate - Engineering

Enclosures

cc: Greg Budnik, P.E., GJB Engineering, Inc.  
Sheila Konecke, K2NC LLC

*L:\11000s\11325.01\Admin\04-ENGR\19-RPAE\2017\_09-20 RPAE Request\_Revised.docx*

Exception # \_\_\_\_\_

**APPLICATION FORM**

**For Resource Protection Area (RPA) Encroachment Exceptions Pursuant to Article 6 of the  
Chesapeake Bay Preservation Ordinance; Public Hearing Required**

**Part 1 – Property Information**Property Owner's Name: K2NC, LLCProperty Address: 4104 Woodlark Drive, Annandale, VA 22003Description (Lot# Subdivision): Fairfax Hills, Section 1, Lot 42Project Name: Fairfax Hills, Section 1, Lot 42Tax Map Number: 59-4 ((10) Parcel 42Magisterial District: Braddock Permit #: \_\_\_\_\_**Part 2 -Exception Type**

Check One	CBPO Section	Exception Types: (Refer to CBPO for detailed list of qualifications and limitations)
X	118-6-7	<b>Loss of buildable area</b> within an RPA on a lot or parcel recorded prior to November 18, 2003. The proposed construction encroaches into the seaward 50 feet of the RPA buffer.
	118-6-8(a)	<b>Accessory structure</b> within the RPA, where the principal structure was established (i.e. RUP issued) as of July 1, 1993 and the proposed construction encroaches into the 1993 RPA.
	118-6-8(b)	<b>Accessory structure</b> in the RPA, where the principal structure on the lot or parcel was established (i.e. RUP issued) between July 1, 1993 and November 18, 2003 and the construction encroaches into the 2003 RPA.
	118-6-9	<b>General RPA Encroachment</b> request for encroachments into either the 1993 or 2003 RPA that do not qualify for waivers under CBPO Article 5 and do not qualify under any of the above Sections.

**Part 3 –General Description of Exception Request**

Acres or Square Feet	Description of Exception Request
Property Area (acres or square feet)	45,000
Disturbed Area in RPA (acres or square feet)	7,568
Impervious Area within RPA (acres or square feet)	2,711
Brief Description of Project and RPA Encroachment	Proposed encroachment to construct a new single family home.

Check here if a Special Exception (SE) and/or Rezoning (RZ) application has been/will be submitted. The public hearing will be conducted by the Board of Supervisors in conjunction with the SE or RZ hearing.



Exception # \_\_\_\_\_

**Part 4 – Submission Checklist**

Check	CBPO Section	Exception Types: (Refer to CBPO for detailed list of qualifications and limitations)
X	118-6-5(a)	Four (4) copies of this <i>application form</i> , completed and signed by the applicant.
X	118-6-5(b)	Four (4) copies of a <i>Water Quality Impact Assessment (WQIA)</i> . The WQIA may be submitted with the application as a combined document.
X	118-6-5(c)	Fourteen (14) copies of a <i>plat</i> which meets the submission requirements of Zoning Ordinance Section 9-011, paragraph 2. In addition, four (4) letter size copies of the plat that is suitable for reproduction and distribution.
X	118-6-5(d)	<i>Photographs</i> of the property showing existing structures, terrain and vegetation
X	118-6-5(e)	Four (4) copies of a <i>map identifying classification of soil types</i> , at a scale of one inch equals five hundred feet (1" = 500'), covering an area at least 500 feet beyond the perimeter of the proposed development.
X	118-6-5(f)	A <i>statement of justification</i> which addresses how the proposed development complies with the factors set forth in Sections 118-6-6(a) through (f). (See Part 5 below).
X	118-6-3(c)	A List of property owners, with addresses, to be notified (minimum of 5). Include all properties abutting, immediately across the street from, and within 500 feet of the subject property (including all properties which lie in adjacent municipalities). In addition, the name and address of a Homeowners or Civic Association that is within the immediate area that will be notified.
N/A	118-6-3(d)	If the exception is associated with a RZ or SE, the notification shall be conducted concurrently with the RZ or SE notification, and the public hearing will be conducted by the Board of Supervisors. Provide a list of owners, with addresses, to be notified in accordance with Zoning Ordinance Article 18 instead of CBPO Section 118-6-3(c).
X	104-1-3(d)	Application Fees (must be paid at the time of submission of the application)
X	101-2-9 and 112-17-109	Exception request fee: \$204 per lot (not to exceed \$876) for individual lots; \$876 for subdivisions or site plans.
X	101-2-9 and 112-17-109	WQIA fee (if submitted as a combined document): \$432 for single lot, \$1,652.40 for subdivision or site plan, per submission.
X	101-2-9 and 112-17-109	A public hearing is required for all exceptions under Article 6. There is an additional fee of \$438 per exception request.

Exception # \_\_\_\_\_

**Part 5 Statement of Justification checklist**

Check	CBPO Section	Exception Types: (Refer to CBPO for detailed list of qualifications and limitations)
Y	118-6-6(a)	The requested exception to the criteria is the minimum necessary to afford relief.
Y	118-6-6(b)	Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated.
Y	118-6-6(c)	The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality.
Y	118-6-6(d)	The exception request is not based upon conditions or circumstances that are self-created or self-imposed.
Y	118-6-6(e)	Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.
Y	118-6-6(f)	Other findings, as appropriate and required for the specific exception being applied for, are met. The additional criteria are listed in CBPO Sections 118-6-7(a) through (f), CBPO Section 118-6-8(a)(1) and (2), CBPO Section 118-6-8(b)(1) and (2), or CBPO Section 118-6-9.

**Part 6**

All information in this application and all documents submitted in support of this request are correct to the best of my knowledge and belief.

Applicant Name: K2NC, LLC (please print)

Authorized Agent(s): JOHN T. KELLEY, JR., P.E., WETLAND STUDIES AND SOLUTIONS, INC.

Business Location Address: 15881 CRABBS BRANCH WAY

City: ROCKVILLE State: MD ZIP: 20855

Telephone: (703) 447-7488 Facsimile: (703) 738-7300

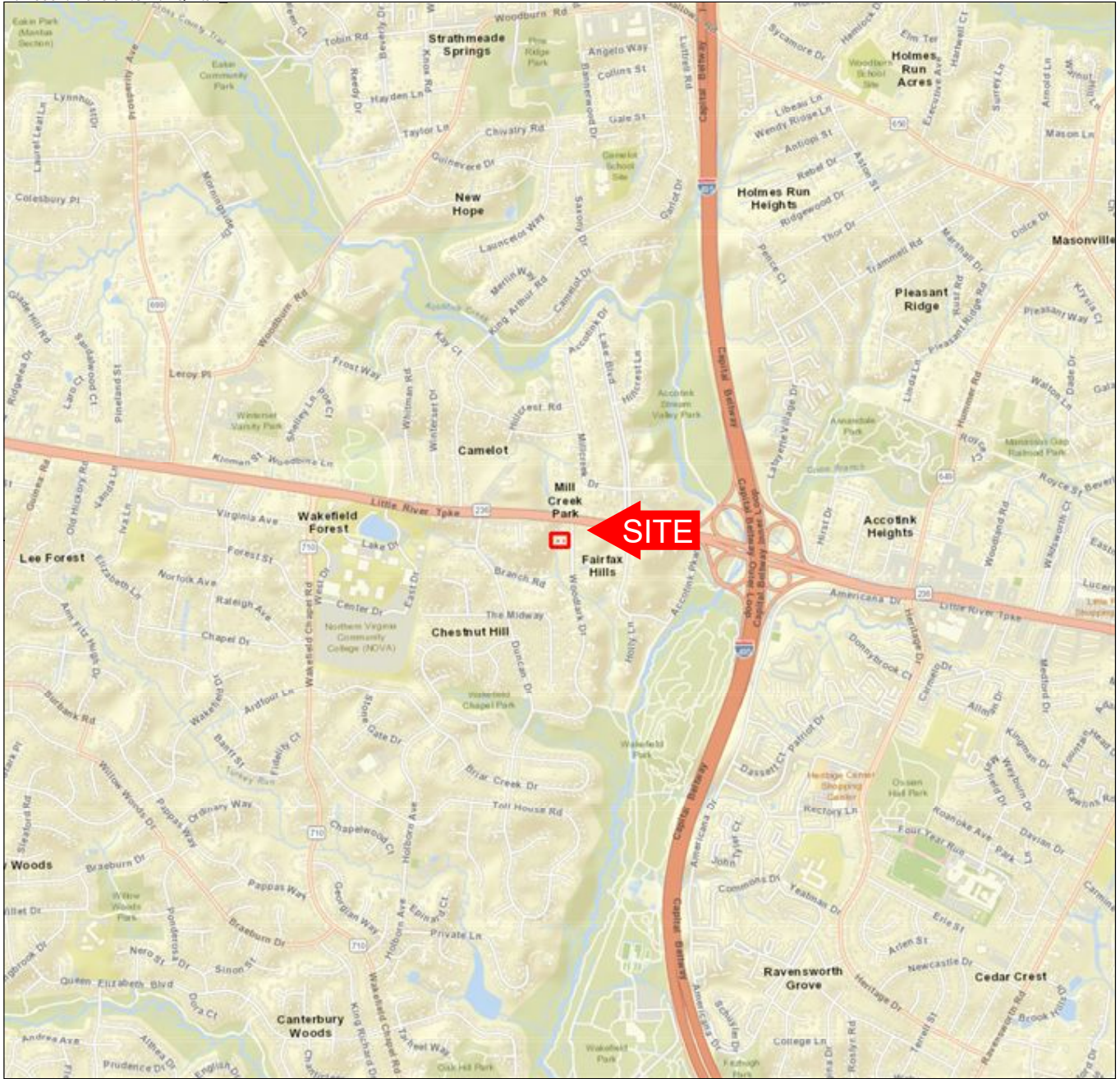
Email Address: Sheila.Konecke@homevestors.com

Business Phone Number: (703) 447-7488 Cell Phone Number: (703) 447-7488

Signature:  (Owner/Agent) Date: 11/6/17

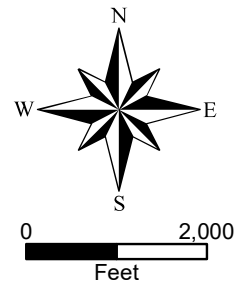
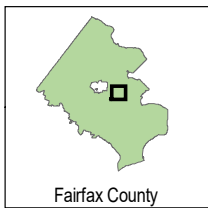
SUBMIT TO: Customer and Technical Support Center  
Site and Addressing Center  
12055 Government Center Parkway, Suite 230  
Fairfax, Virginia 22035

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Base Map Data Source: ESRI

**Vicinity Map**  
**Fairfax Hills, Sec 1, Lot 42**  
**Original Scale: 1" = 2000'**





**EXHIBIT 3  
SITE PHOTOGRAPHS  
FAIRFAX HILLS, SECTION 1, LOT 42  
WSSI #11325.01**



1. **Looking north (upstream) at the unnamed perennial tributary to Accotink Creek in the eastern portion of the site.**



2. **Looking south (downstream) at the unnamed perennial tributary to Accotink Creek in the eastern portion of the site.**



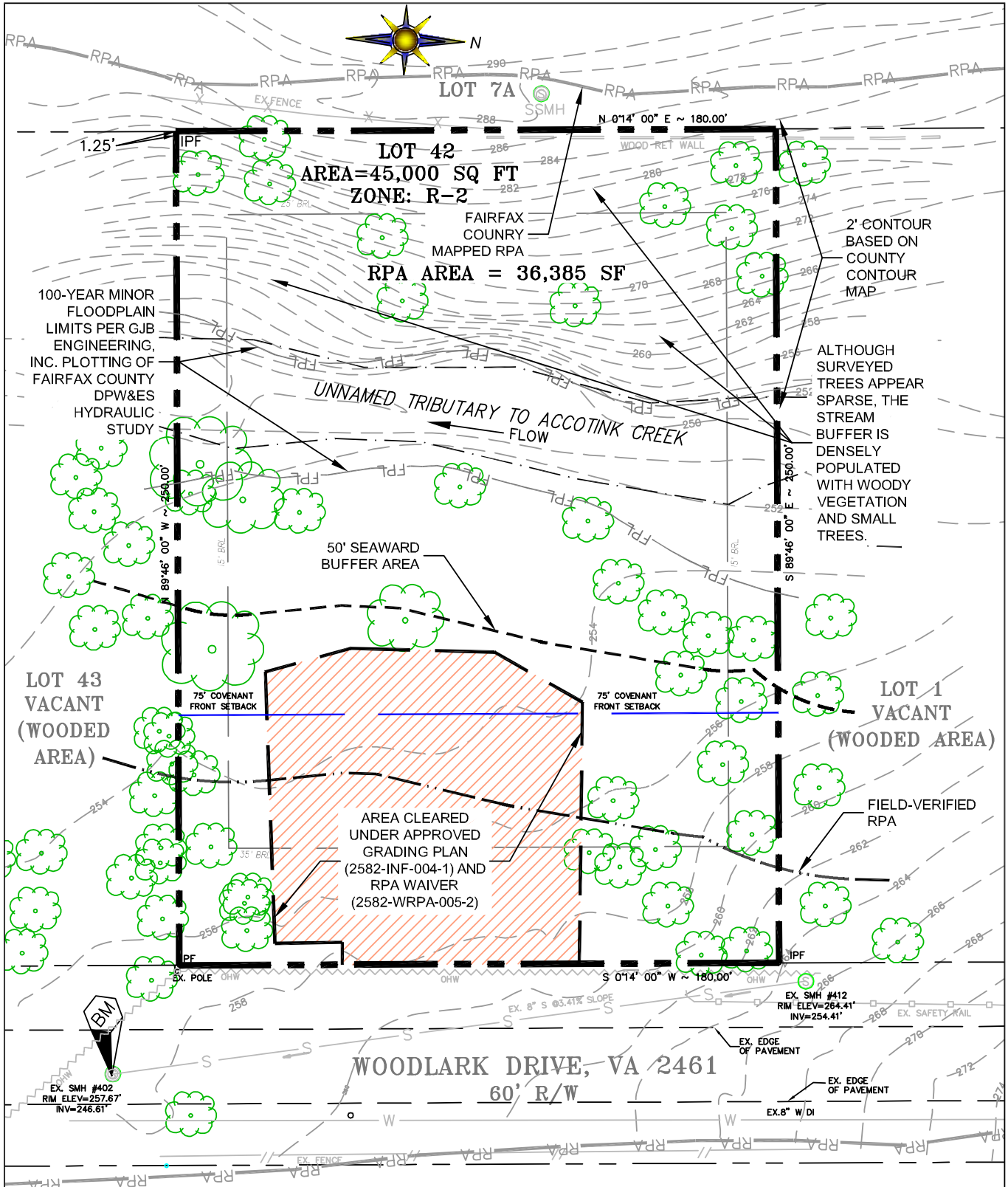
**EXHIBIT 3  
SITE PHOTOGRAPHS  
FAIRFAX HILLS, SECTION 1, LOT 42  
WSSI #11325.01**



3. Looking northeast at Data Point 1, which characterizes the floodplain and forested portions of the site. Jurisdictional WOTUS are not present at this data point.



4. Looking northwest at the cleared portion of the site where a single family house is proposed.



<p><b>Applicant:</b>                  K2NC LLC                  15881 Crabbs Branch Way, Suite B                  Rockville, MD 20855</p>	<p><b>FAIRFAX HILLS, SECTION 1, LOT 42</b></p> <p><b>RPA EXCEPTION REQUEST FOR LOSS OF BUILDABLE AREA</b></p> <p>Fairfax County, Virginia</p>	<p><b>Sheet Title:</b>                  EXHIBIT 4:                  EXISTING CONDITIONS</p>	
<p><b>Agent:</b>                  Wetland Studies and Solutions, Inc.                  5300 Wellington Branch Drive, Suite 100                  Gainesville, Virginia 20155                  Phone 703.679.5600 Fax 703.679.5601</p>		<p><b>Scale:</b> 1"=40' , C.I. = 2'</p>	<p><b>Date:</b> SEPT 2017    <b>Sheet:</b> 1 of 1</p>

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VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

<p><b>S. RICHARD RIO, JR.,</b></p> <p><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>K2NC, LLC</b></p> <p><b>Defendant.</b></p>	<p><b>Case No. CL2017-5321</b></p>
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PRELIMINARY INJUNCTION ORDER

THIS MATTER HAVING COME UPON Plaintiff's Motion for Emergency Temporary and Preliminary Injunctive Relief and, after a hearing on the preliminary injunction and argument of the parties, it is hereby

ADJUDGED, ORDERED AND DECREED that Defendant K2NC, LLC, and any parties acting on its behalf ~~shall not perform any construction activities on the Property~~ *are enjoined from erecting any building within 75 feet of the front property* located at ~~4104 Woodlark Drive, Annandale, Virginia 22003, including but not limited to~~ *line, which is the line bounding Woodlark Dr, with final* removing any trees, clearing any land, or constructing any improvements until further *resolution of merits of this case. No bond shall be* order of this Court; and *required of plaintiff.*

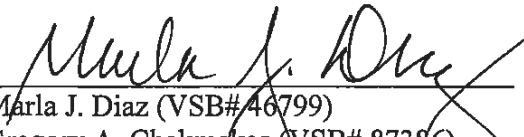
*as specified in section 8 of the 1941 Deed of Dedication*


ENTERED THIS 5<sup>th</sup> DAY OF July, 2017

*[Handwritten Signature]*  
 Judge, Circuit Court for Fairfax County

**David Bernhard**

**I ASK FOR THIS:**

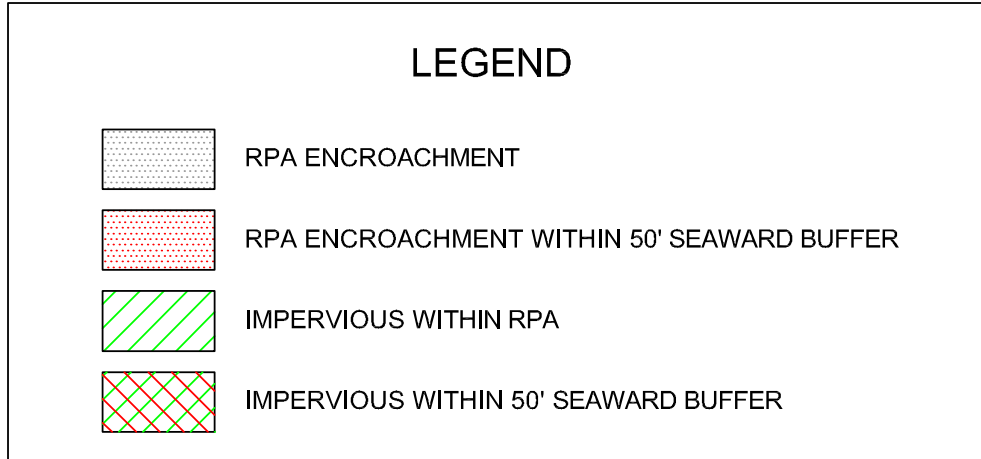
  
Marla J. Diaz (VSB# 46799)  
Gregory A. Chakmakas (VSB# 87386)  
WHITEFORD, TAYLOR & PRESTON, LLP  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042  
(703) 280-9131  
(703) 280-9139 (facsimile)  
[mdiaz@wtplaw.com](mailto:mdiaz@wtplaw.com)  
[gchamakas@wtplaw.com](mailto:gchamakas@wtplaw.com)  
*Counsel for Plaintiff*

SEEN AND Objected to as the Defendant has shown that  
  
the 75' setback has been waived  
that the Plaintiff has failed to  
prove any of the elements necessary  
to demonstrate a right to a  
temporary injunction.

David G. McKennett, Esq. (VSB # 71257)  
Purnell, McKennett & Menke, PC  
9214 Center Street, Suite 101  
Manassas, VA 20110  
(703) 368-9196  
(703) 361-0092 (facsimile)  
[dmckennett@manassasalawyers.com](mailto:dmckennett@manassasalawyers.com)  
*Counsel for Defendant*

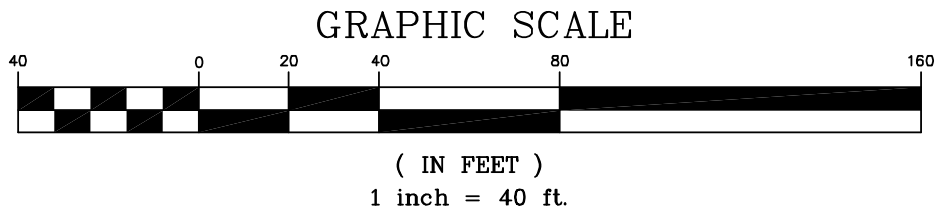
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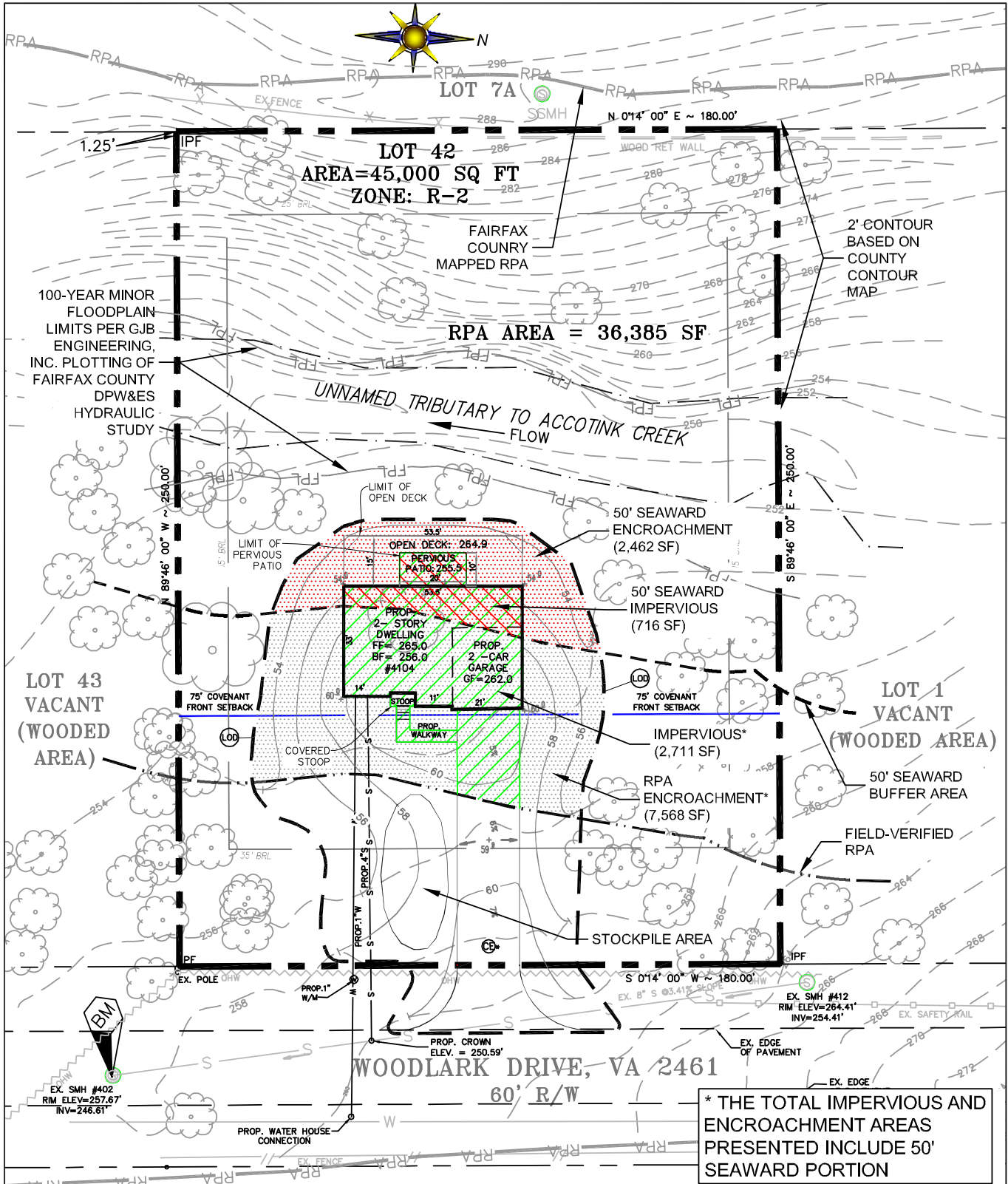


**GENERAL NOTES**

1. Site boundary, Existing & Proposed Conditions, and Existing Topography was provided by GJB Engineering, Inc., in digital (AutoCAD) format to be used as the base for this exhibit.
2. The boundaries of jurisdictional wetlands and other Waters of the U.S. on the site were delineated by WSSI as described in a report titled "Waters of the U.S. (Including Wetlands) Delineation and Resource Protection Area Evaluation, Fairfax Hills, Section 1, Lot 42", dated September 27, 2017. The wetland boundaries were surveyed by HugeSurveys and provided to WSSI by GJB Engineering on September 20, 2017.
3. The Fairfax County Mapped Resource Protection Area (RPA) was obtained from Fairfax County Digital Data.
4. Since the unnamed tributary to Accotink Creek is mapped as perennial on the Fairfax County RPA Map, a stream assessment was not conducted.
5. There is no 100-year major floodplain on-site. The depicted minor floodplain limits were plotted by GJB Engineering, Inc. as described in the County of Fairfax DPW&ES hydraulic study of the unnamed perennial tributary to Accotink Creek.
6. The limits of the Resource Protection Area (RPA) depicted on this Attachment are based on the surveyed location of the unnamed perennial tributary to Accotink Creek. The RPA extends 100 feet landward of the RPA core components or to the limits of the major floodplain, whichever is greater. Because a 100-year major floodplain is not present, the RPA is confined to the limits of the 100-foot buffer.

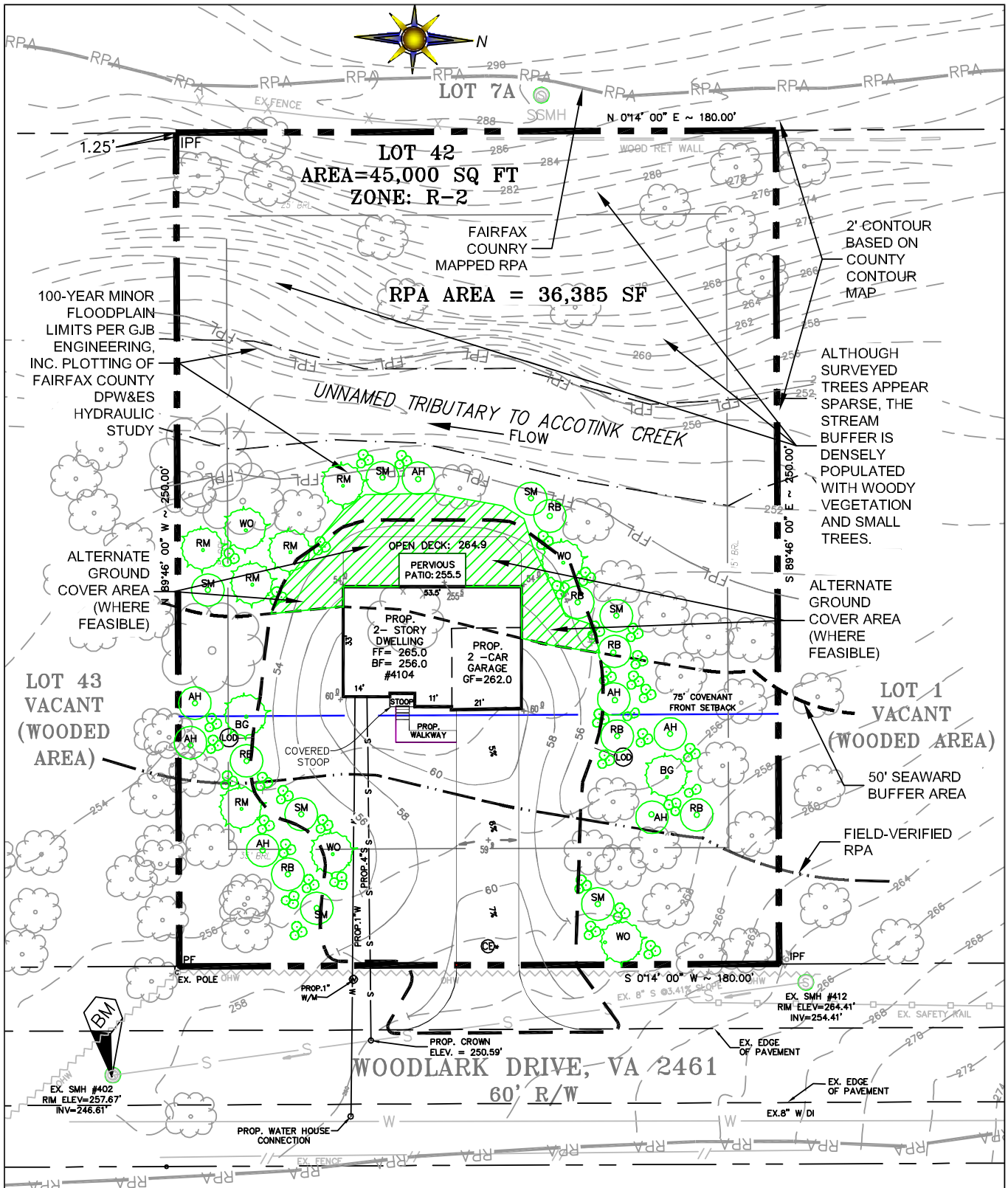


<p><b>Applicant:</b> K2NC LLC 15881 Crabbs Branch Way, Suite B Rockville, MD 20855</p>	<p><b>FAIRFAX HILLS, SECTION 1, LOT 42</b></p> <p><b>RPA EXCEPTION REQUEST FOR LOSS OF BUILDABLE AREA</b></p> <p>Fairfax County, Virginia</p>	<p><b>Sheet Title:</b> EXHIBIT 6: GENERAL NOTES</p> <p>Scale: N/A</p> <p>Date: SEPT 2017    Sheet: 1 of 4</p>
<p><b>Agent:</b> Wetland Studies and Solutions, Inc. 5300 Wellington Branch Drive, Suite 100 Gainesville, Virginia 20155 Phone 703.679.5600 Fax 703.679.5601</p>		



\* THE TOTAL IMPERVIOUS AND ENCROACHMENT AREAS PRESENTED INCLUDE 50' SEAWARD PORTION

<p><b>Applicant:</b>                  K2NC LLC                  15881 Crabbs Branch Way, Suite B                  Rockville, MD 20855</p>	<p><b>FAIRFAX HILLS, SECTION 1, LOT 42</b></p> <p><b>RPA EXCEPTION REQUEST FOR LOSS OF BUILDABLE AREA</b></p> <p>Fairfax County, Virginia</p>	<p><b>Sheet Title:</b>                  EXHIBIT 6:                  PROPOSED CONDITIONS</p>	
<p><b>Agent:</b>                  Wetland Studies and Solutions, Inc.                  5300 Wellington Branch Drive, Suite 300                  Gainesville, Virginia 20155                  Phone 703.679.5600 Fax 703.679.5601</p>		<p><b>Scale:</b> 1"=40' , C.I. = 2'</p>	<p><b>Date:</b> NOV 2017    <b>Sheet:</b> 2 of 4</p>



<p><b>Applicant:</b> K2NC LLC 15881 Crabbs Branch Way, Suite B Rockville, MD 20855</p>	<p>FAIRFAX HILLS, SECTION 1, LOT 42</p>	<p><b>Sheet Title:</b> EXHIBIT 6: PROPOSED PLANTING PLAN</p>	
<p><b>Agent:</b> Wetland Studies and Solutions, Inc. 5300 Wellington Branch Drive, Suite 300 Gainesville, Virginia 20155 Phone 703.679.5600 Fax 703.679.5601</p>	<p>RPA EXCEPTION REQUEST FOR LOSS OF BUILDABLE AREA</p> <p>Fairfax County, Virginia</p>	<p>Scale: 1"=40', C.I. = 2'</p>	<p>Date: NOV 2017 Sheet: 3 of 4</p>

L:\11000s\11325.01\CADD\04-ENGR\RPAE PLANTING\_Revised.dwg

**PLANTING NOTE**

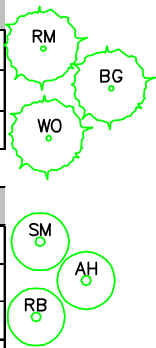
1. Planting schedule was prepared by Inova Engineering Consultants, Inc. and provided to WSSI in digital (AutoCAD) format for use in this application. WSSI adapted the Inova planting plan to reflect revised site plan.

**PROPOSED GREEN VEGETATION WITHIN BUFFER AREA (118-3-3(f) )**

PROPOSED WOODY PLANTING AREA= 4395 SQ FT

OR 0.101 AC

KEY	BOTANICAL NAME	COMMON NAME	QTY	STOCK SIZE (HT/CALIPER)	STOCK TYPE	10-YR TREE CANOPY (SF)	TREE CANOPY SUB-TOTAL (SF)
<b>OVERSTORY TREE @ 100 COUNTS PER ACRE 118-3-3(f)= 11 (MINIMUM REQUIRED)</b>							
RM	ACER RUBRUM	RED MAPLE	4	1" CALIPER	BB	150	600
BG	NYSSA SYKVATICA	BLACKGUM	4	1" CALIPER	BB	125	500
WO	QUERCUS PHELLOS	WILLOW OAK	3	1" CALIPER	BB	150	450
<b>SUB-TOTAL= 11</b>							
<b>UNDERSTORY TREE @ 200 COUNTS PER ACRE 118-3-3(f)= 21 (MINIMUM REQUIRED)</b>							
SM	MAGNOLIA VIRGINIA	SWEETBAY MAGNOLIA	7	1" CALIPER	BB	75	525
AH	ILEX OPACA	AMERICAN HOLLY	7	1" CALIPER	BB	75	525
RB	BETULA NIGRA	RIVER BIRCH	7	1" CALIPER	BB	125	875
<b>SUB-TOTAL= 21</b>							4475
<b>SHRUBS @ 1089 COUNTS PER ACRE 118-3-3(f)= 110 (MINIMUM REQUIRED)</b>							
		<i>Ilex Decidua/Decidious</i>	37	1 GAL			
		<i>Ilex Galbra/Inkberry</i>	37	1 GAL			
		<i>Aronia Melannocarpa/Black Chokeberry</i>	36	1 GAL			
<b>SUB-TOTAL 110</b>							



PROPOSED ALTERNATE GROUNDCOVER AREA=1,935 SF



Species	Common Name	Type	Spacing
Carex applachia	Appalachian Sedge	plug	18"
Carex pensylvanica	Pennsylvania Sedge	plug	18"
Chasmanthium latifolium	Indian Woodoats	plug	18"
Deschampsia flexuosa	Wavy Hairgrass	plug	18"
Dryopteris marginalis	Marginal Woodfern	plug	18"
Dennstaedtia punctilobula	Eastern Hayscented Fern	plug	18"
Polystichum acrostichoides	Christmas Fern	plug	18"

**Applicant:**  
 K2NC LLC  
 15881 Crabbs Branch Way, Suite B  
 Rockville, MD 20855

**Agent:**  
 Wetland Studies and Solutions, Inc.  
 5300 Wellington Branch Drive, Suite 100  
 Gainesville, Virginia 20155  
 Phone 703.679.5600 Fax 703.679.5601

**FAIRFAX HILLS, SECTION 1, LOT 42**

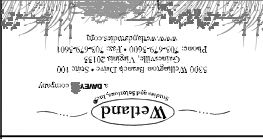
**RPA EXCEPTION REQUEST FOR  
 LOSS OF BUILDABLE AREA**

**Fairfax County, Virginia**

**Sheet Title:**  
 EXHIBIT 6:  
 PLANTING SCHEDULE

**Scale:** N/A

**Date:** SEPT 2017    **Sheet:** 4 of 4

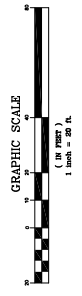


Copyright © 2017 Wetland Studies and Solutions, Inc.  
 Fairfax Hills, Section 1, Lot 42  
 Prepared For: K2NC, LLC  
 Plat for RPAE Request

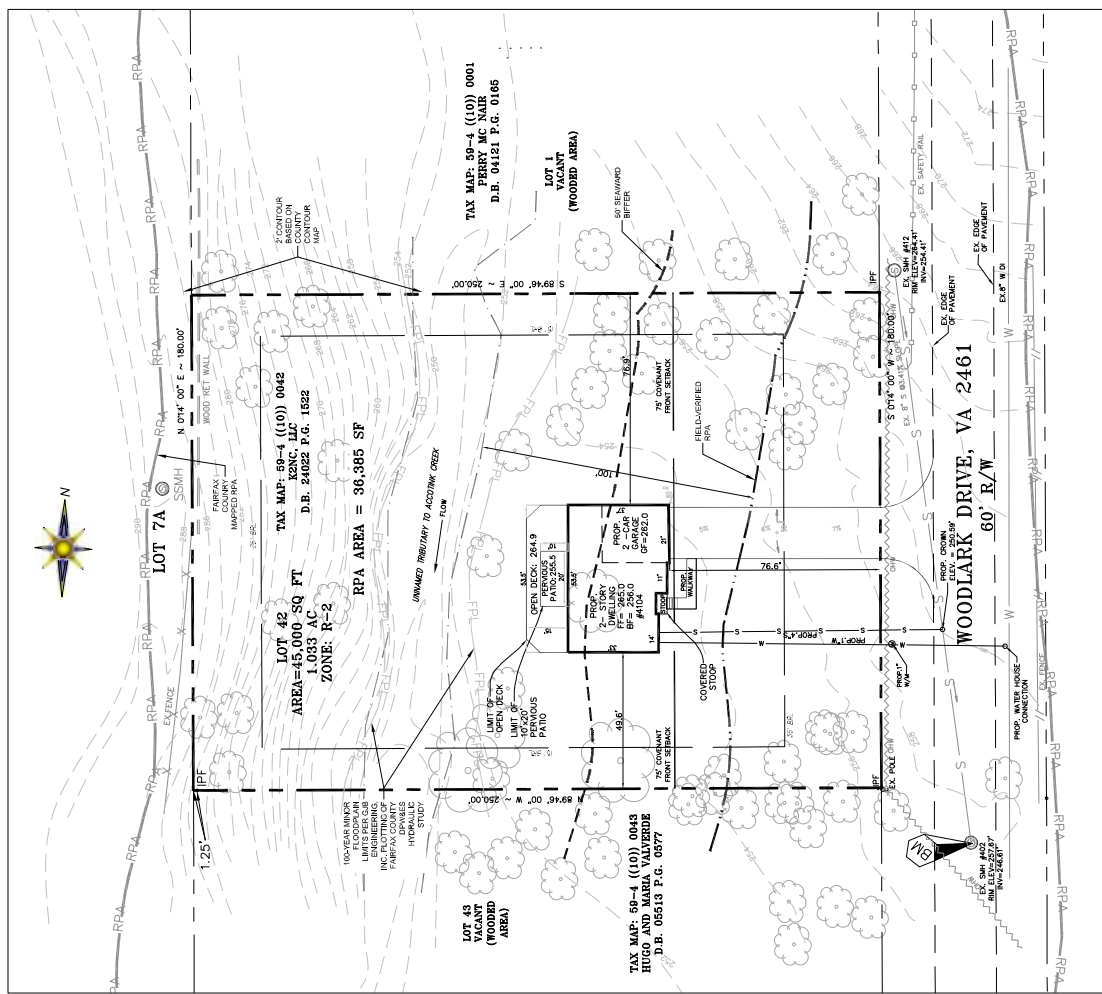


DATE	DESCRIPTION	BY	DATE
November 2017	SCALE: 1" = 20'		

REVISIONS	No.	Date	Description

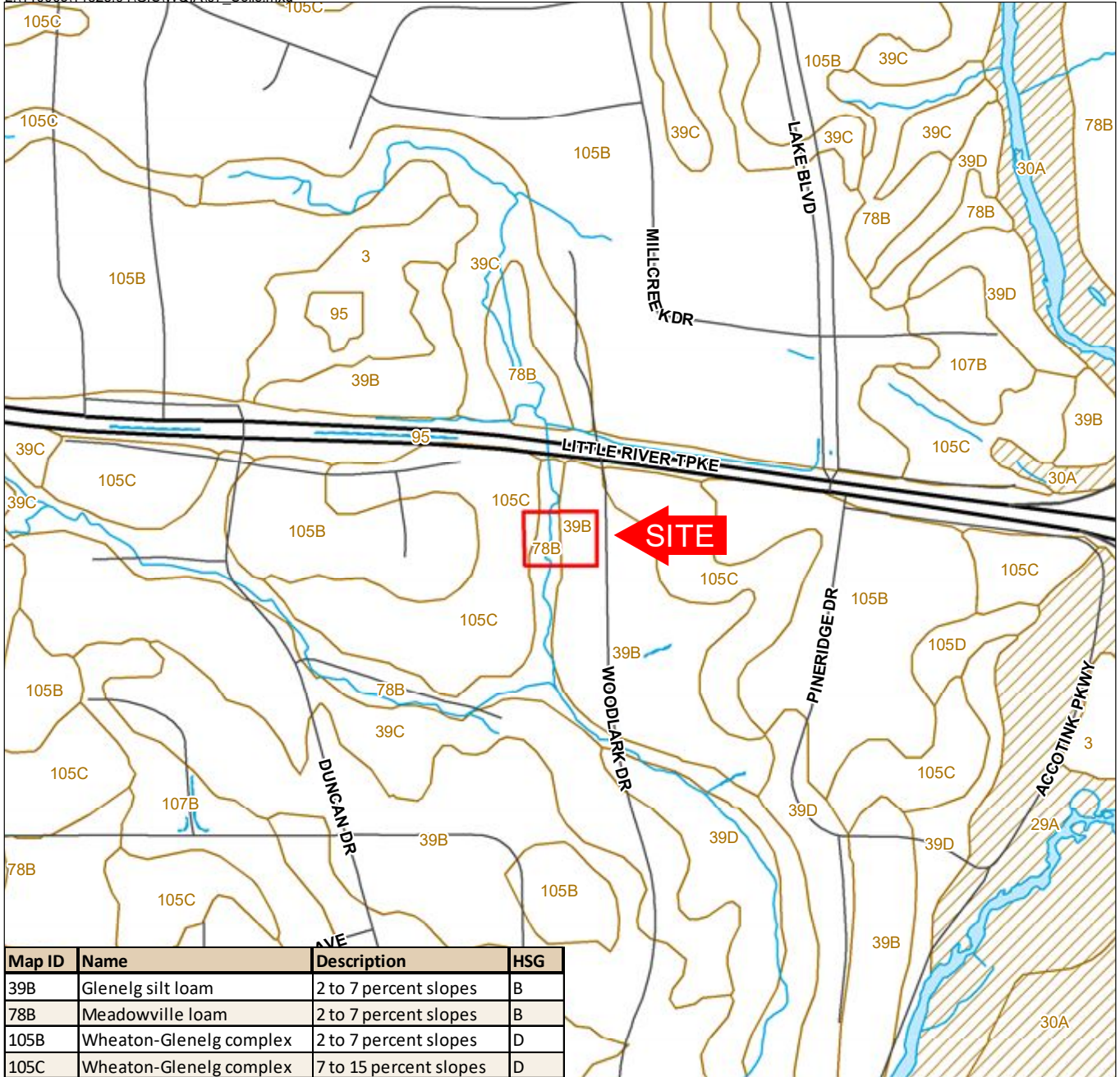


- Notes:
- Survey and existing conditions information provided by GJB Engineering, Inc. was used as a base for this attachment.
  - Wetlands survey was performed by Hugs Surveys and provided to WSSI by GJB Engineering on September 20, 2017.
  - Proposed conditions contained in this Plat for the RPAE Request was developed by GJB Engineering, Inc.
  - Field-verified RPA was plotted by Wetland Studies and Solutions, Inc.
  - Address: 4104 Woodlark Drive, Annandale, VA 22003  
 Owner: K2NC, LLC, Deed Book 24022, Page 1522.  
 Zone: R2  
 Use: Single Family Residential  
 Lot Area: Parcel 42 = 45,000 sf






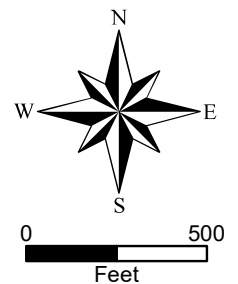


L:\11000s\11325.01\GIS\WQIA\07\_Soils.mxd

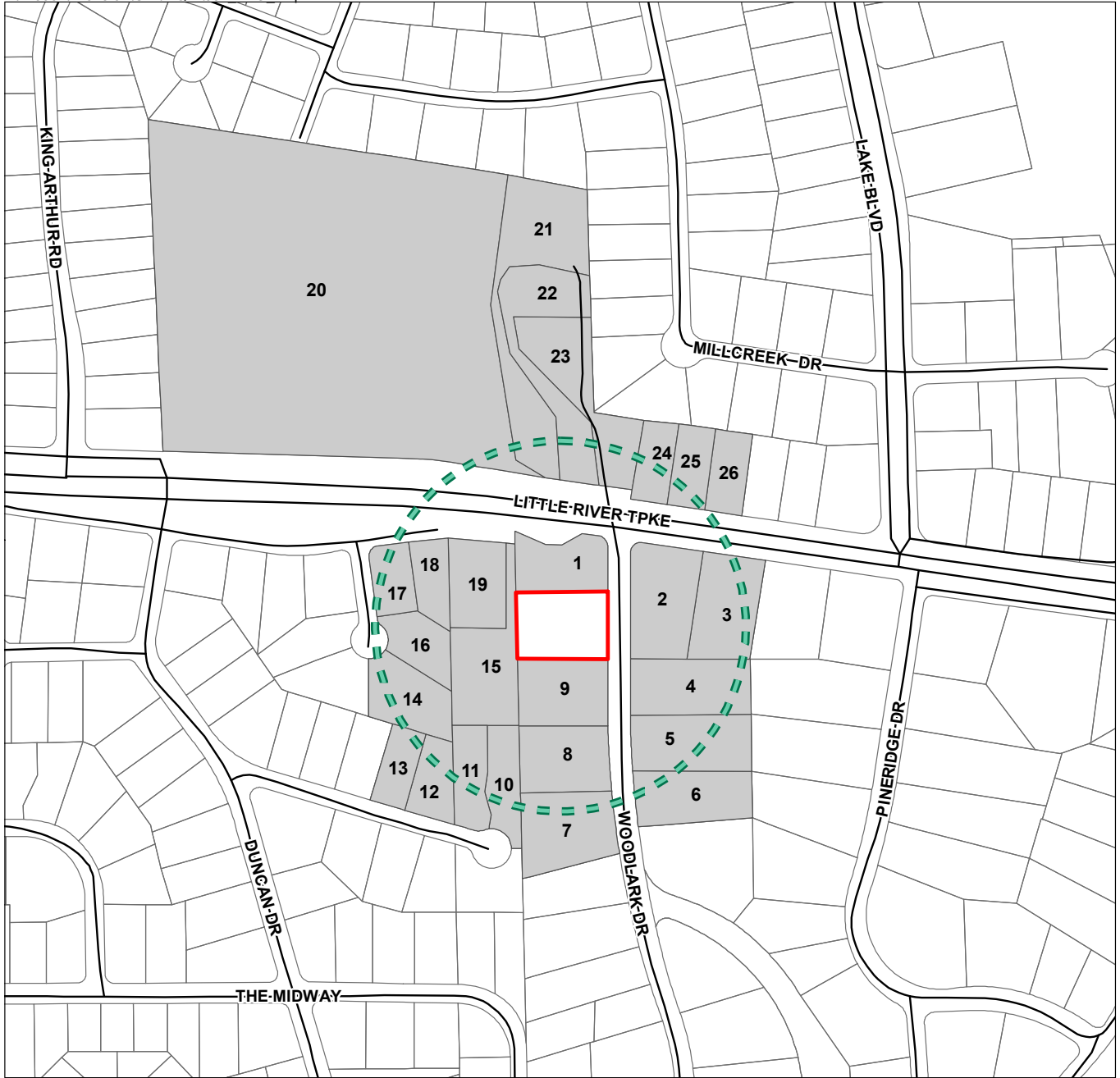


**Soils Map**  
**Fairfax County Digital Data**  
**Fairfax Hills, Sec 1, Lot 42**  
**Original Scale: 1" = 500'**




-  Hydric Soils
-  Soils with Hydric Inclusions
-  Non-hydric Soils

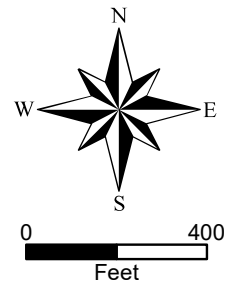


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**Adjacent Parcel Ownership Map**  
**Fairfax Hills, Sec 1, Lot 42**  
**Original Scale: 1" = 400'**

-  Project Area
-  500-Foot Radius from Center of Project Area
-  Parcels Within 500-Foot Radius of Project Area Center



L:\11000s\11325.01\GIS\WQIA\08b\_APO\_Table.mxd

Map ID	Parcel ID	Location	Owner	Owner Address
1	0594 10 0001	8201 LITTLE RIVER TPKE	PERRY, MC NAIR W.	8113 LITTLE RIVER TPKE ANNANDALE VA 22003 2327
2	0594 10 0002	8113 LITTLE RIVER TPKE	PERRY, MC NAIR W.	8113 LITTLE RIVER TPKE ANNANDALE VA 22003 2327
3	0594 10 0003	8109 LITTLE RIVER TPKE	ESTABILLO, ROSELLO	8109 LITTLE RIVER TPKE ANNANDALE VA 22003 2327
4	0594 10 0041	4107 WOODLARK DR	RODRIGUEZ, HECTOR A.	4107 WOODLARK DR ANNANDALE VA 22003 2343
5	0594 10 0040	4111 WOODLARK DR	GOLOMB, ANDREW M.	4111 WOODLARK DR ANNANDALE VA 22003
6	0594 10 0039	4115 WOODLARK DR	BOLINGER, MARY ELAINE	1271 CRONIN DR WOODBIDGE VA 22191
7	0594 10 0145A	4116 WOODLARK DR	LAROCCA, JOHN J. AND CATHIE	4116 WOODLARK DR ANNANDALE VA 22003
8	0594 10 0044	4112 WOODLARK DR	VALVERDE, HUGO AND MARIA	7403 AUSTIN ST ANNANDALE VA 22003
9	0594 10 0043	4108 WOODLARK DR VA	VALVERDE, HUGO AND MARIA	7403 AUSTIN ST ANNANDALE VA 22003
10	0594 01 0007D	8240 BRANCH RD	WHITLEY, ROY J. AND MARY G.R.	8240 BRANCH RD ANNANDALE VA 22003
11	0594 01 0007C	8246 BRANCH RD	CHAN, IEONG T.R.	8246 BRANCH RD ANNANDALE VA 22003
12	0593 11 0015	8250 BRANCH RD	SMITH, G. RICHARD	8250 BRANCH RD ANNANDALE VA 22003
13	0593 11 0014	8252 BRANCH RD	STETSON, NANCY H.	8252 BRANCH RD ANNANDALE VA 22003
14	0593 11 0017	4109 HIGH POINT CT	PROBST, MARY E. AND BYHAM, BETH A.	4109 HIGH POINT CT ANNANDALE VA 22003
15	0594 01 0007A	8211 LITTLE RIVER TPKE	PUNIT, SANGITA P.	8211 LITTLE RIVER TPKE ANNANDALE VA 22003 2328
16	0593 11 0016	4105 HIGH POINT CT	NGO, KENNY	4105 HIGH POINT CT ANNANDALE VA 22003
17	0593 11 0002	4101 HIGH POINT CT	SABIR, FAROUK MOHAMED	4101 HIGH POINT CT ANNANDALE VA 22003
18	0593 11 0001	8243 LITTLE RIVER TPKE	BAWDEN, GERALD W.	8243 LITTLE RIVER TPKE ANNANDALE VA 22003
19	0594 01 0008	8215 LITTLE RIVER TPKE	TRAN, BRUCE	8215 LITTLE RIVER TPKE ANNANDALE VA 22003 2328
20	0593 01 0032B	8220 LITTLE RIVER TPKE	CALVARY OF THE CHURCH NAZARENE	8220 LITTLE RIVER TPKE ANNANDALE VA 22003 2305
21	0594 02010003	8208 LITTLE RIVER TPKE	ARMSTRONG, H. JERE	8208 LITTLE RIVER TPKE ANNANDALE VA 22003 2305
22	0594 02010002	8204 LITTLE RIVER TPKE	WADHWA, SARJOT SEEMA KAUR	8204 LITTLE RIVER TPKE ANNANDALE VA 22003 2305
23	0594 02010001	8200 LITTLE RIVER TPKE	CLARE, RODGER	8200 LITTLE RIVER TPKE ANNANDALE VA 22003 2305
24	0594 02 0006	8120 LITTLE RIVER TPKE	MCCOY, EDWARD D.	8120 LITTLE RIVER TPKE ANNANDALE VA 22003 2326
25	0594 02 0005	8116 LITTLE RIVER TPKE	STEIDEL, DAVID W.	8116 LITTLE RIVER TPKE ANNANDALE VA 22003 2326
26	0594 02 0004	8112 LITTLE RIVER TPKE	KHAN, NABEEL	8325 ROBNEY AVE ANNANDALE VA 22003

**Adjacent Parcel Ownership Table  
Fairfax Hills, Sec 1, Lot 42**





November 6, 2017

VIA Email: [Prutha.Rueangvivanakij@fairfaxcounty.gov](mailto:Prutha.Rueangvivanakij@fairfaxcounty.gov)

Mr. Prutha Rueangvivanakij  
 Fairfax County  
 12055 Government Center Parkway  
 Suite 530  
 Fairfax, VA 22035

Re: Fairfax Hills, Section 1, Lot 42  
 Addendum #1 – County Comment Response Information  
 Fairfax County Plan #2852-WRPA-006-1.1 and 2852-WQ-003-1.1  
 WSSI Project #11325.01

Dear Mr. Rueangvivanakij:

Your comments regarding the above referenced plans were received via emails on 10/31/2017, 11/3/2017. As a result, the RPAE/WQIA request has been revised. A point-by-point response to these comments is provided below.

Received via email – From: Prutha Rueangvivanakij – To: J.T. Kelley – 10/31/2017

1. **Comment:** *“We feel that the rear amenity is not minimal necessary. It appears to be larger than the approved INF.”*  
  
**Response:** Per discussions during our 11/3/17 meeting, the rear amenity has been reduced. The deck has been reduced to 15’ maximum from the rear of the house, and the patio was reduced to 10’ maximum from the rear of the house. The resulting reduction in LOD is shown in revised WQIA/RPAE exhibits and tabulations.
2. **Comment:** *“Grading seems to be excessive.”*  
  
**Response:** The grading shown is already 4:1 or steeper at the sides of the house. This cannot be steepened due to potential safety issues relating to home/yard maintenance.
3. **Comment:** *“The floodplain limit was revised without any written descriptions.”*  
  
**Response:** Please find attached GJB Engineering’s "Floodplain Exhibit" as a supplementary document for the above application. The purpose of the Exhibit is to detail how the County floodplain study limits and water surface elevations have been verified by GJB Engineering and applied to the application field run topography.

The floodplain shown in the current application is (and has been) from County-performed HEC-RAS study by Fairfax County DPW&ES SWM Planning Division. The floodplain limits shown on the originally approved house grading plan on the lot were actually plotted in error from that same original County source data. So any appearance of "revision" between the RPAE and the original grading plan should be understood as a "correction" by the current submitting engineers.

Mr. Prutha Rueangvivatanakij  
November 6, 2017  
WSSI #11325.01  
Page 2 of 2

Any future House Grading Plan (INF submissions) will utilize and honor the attached floodplain limits and elevations.

4. **Comment:** *“The total disturbance is 9 thousand square feet but the mitigation is based on 4 thousand square feet.”*

**Response:** The mitigation provided was determined by replanting all reasonable non-forested areas following construction (as noted in paragraph 1 on page 3 of 12 of the RPAE/WQIA letter). Areas not proposed for disturbance are already densely vegetated with trees and other woody vegetation. Notation has been added to the WQIA exhibits to clarify.

Received via email – From: Prutha Rueangvivatanakij – To: J.T. Kelley 11/3/2017

1. **Comment:** *“Please change the Director to Bruce McGranahan.”*

**Response:** Bruce McGranahan has been added as a CC on this addendum and changed on the WQIA/RPAE letter.

2. **Comment:** *“I cannot get to 37 feet of house depth. I used 2,200 square feet divided by 53.5 feet and I got 41 feet.”*

**Response:** The stated house size of 2,200 square feet is not correct. The actual house size is approximately 1,900 square feet. Further, the house depth varies over its width – it is 33’ at its shallowest point and 37’ at its deepest.

3. **Comment:** *“Please add 50-foot seaward (buffer) on the house plat.”*

**Response:** The 50-foot seaward buffer has been added to the plat, as requested.

It is our opinion that this response letter addresses all issues raised to date. Please feel free to contact me by phone (703-679-5652) or email ([jkelly@wetlandstudies.com](mailto:jkelly@wetlandstudies.com)) if you have any questions.

Sincerely,

WETLAND STUDIES AND SOLUTIONS, INC.



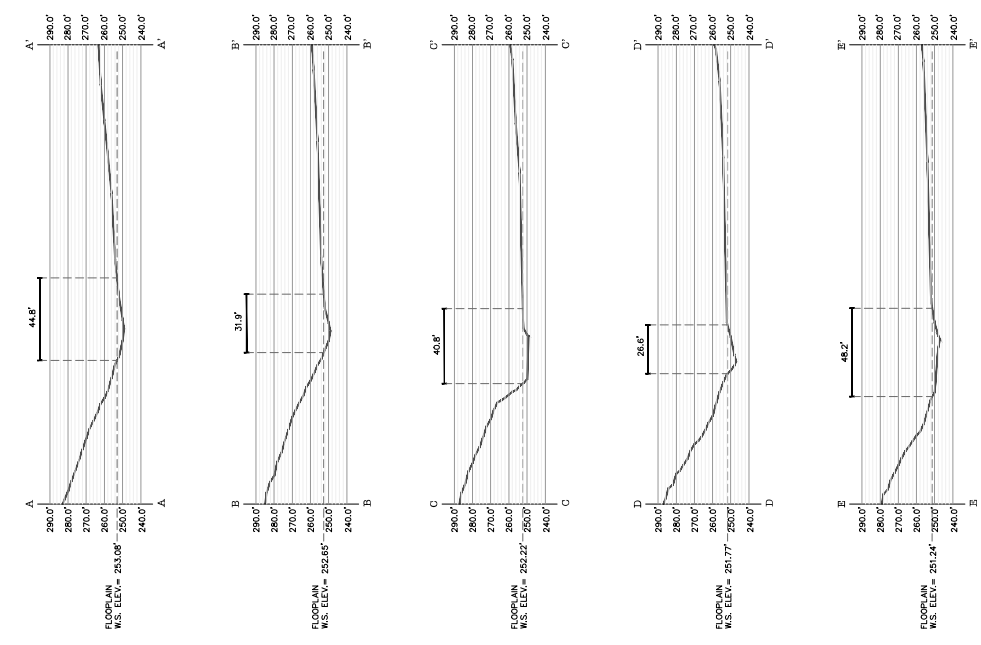
J.T. Kelley, P.E., LEED®AP, C.F.M.  
Senior Associate – Engineering

Cc: Bruce McGranahan, Director, LDS  
Greg Budnik (via email)  
Sheila Konecke (via email)

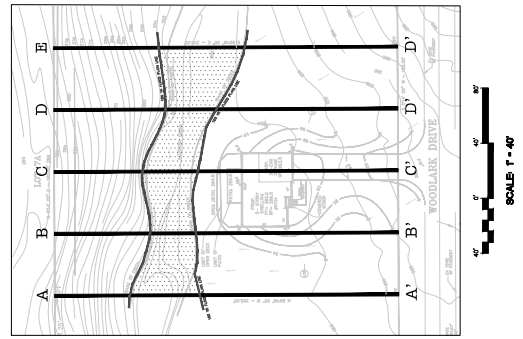
L:\11000s\11325.01\Admin\04-ENGR\19-RPAE\2017\_11-03 Fairfax Hills Comment Response.docx



FLOODPLAIN CROSS-SECTIONS



FLOODPLAIN EXHIBIT



GIS ATTACHMENT B



FLOODPLAIN NARRATIVE

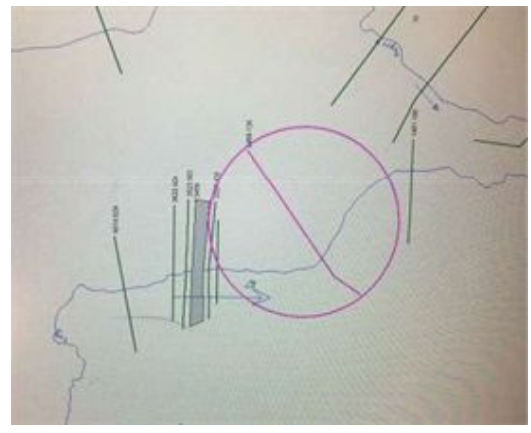
FLOODPLAIN LIMITS AND ELEVATION FOR THE DEVELOPMENT APPLICATIONS OF THIS PROPERTY HAVE BEEN OBTAINED FROM FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS STUDIES PERFORMED FOR THE ACCOING COUNTY SIM PLANNING DIVISION. THE FLOODPLAIN EXHIBIT AND FLOODPLAIN CROSS-SECTIONS WERE PLOTTED USING THE 2015 FIELD RUN TOPOGRAPHIC SURVEY DATA AND THE 2015 FIELD RUN TOPOGRAPHIC SURVEY DATA PERFORMED BY THE APPLICANT'S ENGINEER.

CONCLUSION: THE LIMITS AND ELEVATIONS PLOTTED ON THE CURRENT TPO ARE CONSISTENT WITH AND IN ACCORDANCE WITH THE FLOODPLAIN EXHIBIT AND FLOODPLAIN CROSS-SECTIONS PLOTTED ON THE 2015 FIELD RUN TOPOGRAPHIC SURVEY DATA. THE PROPOSED HOUSE ELEVATION AND HORIZONTAL LOCATION IN THE PPA EXCEPTION APPLICATION COMPLY WITH THE COUNTY FLOODPLAIN ORDINANCE.

HYDRAULIC RESULTS

Station	Flow (cfs)	Water Depth (ft)	Velocity (ft/s)	Hydraulic Radius (ft)	Friction Loss (ft/1000 ft)	Head Loss (ft)
1+00	100	1.5	1.3	1.5	0.02	0.2
2+00	100	1.5	1.3	1.5	0.02	0.2
3+00	100	1.5	1.3	1.5	0.02	0.2
4+00	100	1.5	1.3	1.5	0.02	0.2
5+00	100	1.5	1.3	1.5	0.02	0.2
6+00	100	1.5	1.3	1.5	0.02	0.2
7+00	100	1.5	1.3	1.5	0.02	0.2
8+00	100	1.5	1.3	1.5	0.02	0.2
9+00	100	1.5	1.3	1.5	0.02	0.2
10+00	100	1.5	1.3	1.5	0.02	0.2
11+00	100	1.5	1.3	1.5	0.02	0.2
12+00	100	1.5	1.3	1.5	0.02	0.2
13+00	100	1.5	1.3	1.5	0.02	0.2
14+00	100	1.5	1.3	1.5	0.02	0.2
15+00	100	1.5	1.3	1.5	0.02	0.2
16+00	100	1.5	1.3	1.5	0.02	0.2
17+00	100	1.5	1.3	1.5	0.02	0.2
18+00	100	1.5	1.3	1.5	0.02	0.2
19+00	100	1.5	1.3	1.5	0.02	0.2
20+00	100	1.5	1.3	1.5	0.02	0.2
21+00	100	1.5	1.3	1.5	0.02	0.2
22+00	100	1.5	1.3	1.5	0.02	0.2
23+00	100	1.5	1.3	1.5	0.02	0.2
24+00	100	1.5	1.3	1.5	0.02	0.2
25+00	100	1.5	1.3	1.5	0.02	0.2
26+00	100	1.5	1.3	1.5	0.02	0.2
27+00	100	1.5	1.3	1.5	0.02	0.2
28+00	100	1.5	1.3	1.5	0.02	0.2
29+00	100	1.5	1.3	1.5	0.02	0.2
30+00	100	1.5	1.3	1.5	0.02	0.2
31+00	100	1.5	1.3	1.5	0.02	0.2
32+00	100	1.5	1.3	1.5	0.02	0.2
33+00	100	1.5	1.3	1.5	0.02	0.2
34+00	100	1.5	1.3	1.5	0.02	0.2
35+00	100	1.5	1.3	1.5	0.02	0.2
36+00	100	1.5	1.3	1.5	0.02	0.2
37+00	100	1.5	1.3	1.5	0.02	0.2
38+00	100	1.5	1.3	1.5	0.02	0.2
39+00	100	1.5	1.3	1.5	0.02	0.2
40+00	100	1.5	1.3	1.5	0.02	0.2
41+00	100	1.5	1.3	1.5	0.02	0.2
42+00	100	1.5	1.3	1.5	0.02	0.2
43+00	100	1.5	1.3	1.5	0.02	0.2
44+00	100	1.5	1.3	1.5	0.02	0.2
45+00	100	1.5	1.3	1.5	0.02	0.2
46+00	100	1.5	1.3	1.5	0.02	0.2
47+00	100	1.5	1.3	1.5	0.02	0.2
48+00	100	1.5	1.3	1.5	0.02	0.2
49+00	100	1.5	1.3	1.5	0.02	0.2
50+00	100	1.5	1.3	1.5	0.02	0.2
51+00	100	1.5	1.3	1.5	0.02	0.2
52+00	100	1.5	1.3	1.5	0.02	0.2
53+00	100	1.5	1.3	1.5	0.02	0.2
54+00	100	1.5	1.3	1.5	0.02	0.2
55+00	100	1.5	1.3	1.5	0.02	0.2
56+00	100	1.5	1.3	1.5	0.02	0.2
57+00	100	1.5	1.3	1.5	0.02	0.2
58+00	100	1.5	1.3	1.5	0.02	0.2
59+00	100	1.5	1.3	1.5	0.02	0.2
60+00	100	1.5	1.3	1.5	0.02	0.2
61+00	100	1.5	1.3	1.5	0.02	0.2
62+00	100	1.5	1.3	1.5	0.02	0.2
63+00	100	1.5	1.3	1.5	0.02	0.2
64+00	100	1.5	1.3	1.5	0.02	0.2
65+00	100	1.5	1.3	1.5	0.02	0.2
66+00	100	1.5	1.3	1.5	0.02	0.2
67+00	100	1.5	1.3	1.5	0.02	0.2
68+00	100	1.5	1.3	1.5	0.02	0.2
69+00	100	1.5	1.3	1.5	0.02	0.2
70+00	100	1.5	1.3	1.5	0.02	0.2
71+00	100	1.5	1.3	1.5	0.02	0.2
72+00	100	1.5	1.3	1.5	0.02	0.2
73+00	100	1.5	1.3	1.5	0.02	0.2
74+00	100	1.5	1.3	1.5	0.02	0.2
75+00	100	1.5	1.3	1.5	0.02	0.2
76+00	100	1.5	1.3	1.5	0.02	0.2
77+00	100	1.5	1.3	1.5	0.02	0.2
78+00	100	1.5	1.3	1.5	0.02	0.2
79+00	100	1.5	1.3	1.5	0.02	0.2
80+00	100	1.5	1.3	1.5	0.02	0.2
81+00	100	1.5	1.3	1.5	0.02	0.2
82+00	100	1.5	1.3	1.5	0.02	0.2
83+00	100	1.5	1.3	1.5	0.02	0.2
84+00	100	1.5	1.3	1.5	0.02	0.2
85+00	100	1.5	1.3	1.5	0.02	0.2
86+00	100	1.5	1.3	1.5	0.02	0.2
87+00	100	1.5	1.3	1.5	0.02	0.2
88+00	100	1.5	1.3	1.5	0.02	0.2
89+00	100	1.5	1.3	1.5	0.02	0.2
90+00	100	1.5	1.3	1.5	0.02	0.2
91+00	100	1.5	1.3	1.5	0.02	0.2
92+00	100	1.5	1.3	1.5	0.02	0.2
93+00	100	1.5	1.3	1.5	0.02	0.2
94+00	100	1.5	1.3	1.5	0.02	0.2
95+00	100	1.5	1.3	1.5	0.02	0.2
96+00	100	1.5	1.3	1.5	0.02	0.2
97+00	100	1.5	1.3	1.5	0.02	0.2
98+00	100	1.5	1.3	1.5	0.02	0.2
99+00	100	1.5	1.3	1.5	0.02	0.2
100+00	100	1.5	1.3	1.5	0.02	0.2

GIS ATTACHMENT A





## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

**FEB 26 2018**

Sheila Konecke  
K2NC, LLC  
15881 Crabbs Branch Way  
Rockville, MD 20855

Subject: 4104 Woodlark Drive, Tax Map #059-4-10-0042, Braddock District

Reference: Resource Protection Area Encroachment Exception #2582-WRPA-006-1 and  
Water Quality Impact Assessment #2582-WQ-003-1

Dear Ms. Konecke:

Enclosed you will find a copy of a Resolution adopted by the Exception Review Committee (ERC) at their regular meeting held on February 7, 2018, denying Resource Protection Area (RPA) Encroachment Exception #2582-WRPA-006-1, under Section 118-6-7 of the Chesapeake Bay Preservation Ordinance (CBPO), to permit encroachment into the RPA at the subject property. The motion to deny included that "final determination as to the front yard setback is necessary for the Committee to determine whether relief requested is the minimum necessary to build the proposed house."

In accordance to the CBPO 118-6-1, no new application concerning any or all of the subject property for the same general use as applied shall be heard by the ERC or Board for a period of less than 12 months from February 7, 2018. In discussion during the meeting, committee members expressed willingness to waive that requirement and encourage the applicant to reapply after a final order is issued in the pending litigation regarding the covenant creating a front building restriction line. Once the court proceedings are finalized, please notify this office in writing to request a rehearing.

Please be advised that the decision of the Exception Review Committee may be appealed to the Board of Supervisors in accordance with Article 8 of the CBPO within 30 days from the date of the Resolution.

If further assistance is desired, please contact Prutha Rueangvivatanakij, Stormwater Engineer, Site Development and Inspection Division (SDID), at 703-324-1720.

Department of Land Development Services  
12055 Government Center Parkway, Suite 659  
Fairfax, Virginia 22035-5503  
Phone 703-324-1780 • TTY 711 • FAX 703-653-6678  
[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)



Sheila Konecke  
2582-WRPA-006-1 & 2582-WQ-003-1  
Page 2 of 2

Sincerely,



Camylyn Lewis  
Clerk to the Exception Review Committee  
Site Development & Inspection Division (SDID)  
Land Development Services (LDS)

Enclosure

cc: Supervisor Cook, Braddock District Supervisor  
Catherine Chianese, Clerk to the Board of Supervisors  
Chris Koerner, Chairman, Exception Review Committee  
Leslie B. Johnson, Zoning Administrator, Department of Planning and Zoning  
Durga Kharel, Chief, Central Branch, SDID, LDS  
Prutha Rueangvivanakij, Senior Engineer III (Stormwater), SDID, LDS  
Greg Budnik, P.E., GJB Engineering, Inc.  
Waiver File





# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## EXCEPTION RESOLUTION OF THE EXCEPTION REVIEW COMMITTEE

K2NC, LLC, Resource Protection Area (RPA) Encroachment Request #2582-WRPA-006-1, under Section 118-6-7 of the Chesapeake Bay Preservation Ordinance (CBPO), at 4104 Woodlark Drive, Annandale, to permit encroachment into the RPA for the construction of a house within seaward 50 feet on the lot legally created prior to November 18, 2003, Braddock District, Tax Map #059-4-10-0042. At a regular meeting of the Exception Review Committee (ERC) on February 7, 2018, Ms. Kanter moved that the ERC adopt the following resolution:

WHEREAS, the ERC has made the findings that:

- a) The requested exception is not the minimum necessary to afford relief; and
- b) Final determination as to the front yard setback is necessary for the Committee to determine whether relief requested is the minimum necessary to build the proposed house.

NOW, therefore, be it resolved that the ERC **Deny** Exception Request #2582-WRPA-006-1 upon finding that the application does not meet Section 118-6-6.a of the CBPO.

The motion carried by a vote of 5-0, with Dr. Schnare abstaining due to the hearing preceeding his appointment.

A Copy Teste:

Camylyn Lewis  
Clerk to the Exception Review Committee






Department of Land Development Services  
12055 Government Center Parkway, Suite 659  
Fairfax, Virginia 22035-5503  
Phone 703-324-1780 • TTY 711 • FAX 703-653-6678  
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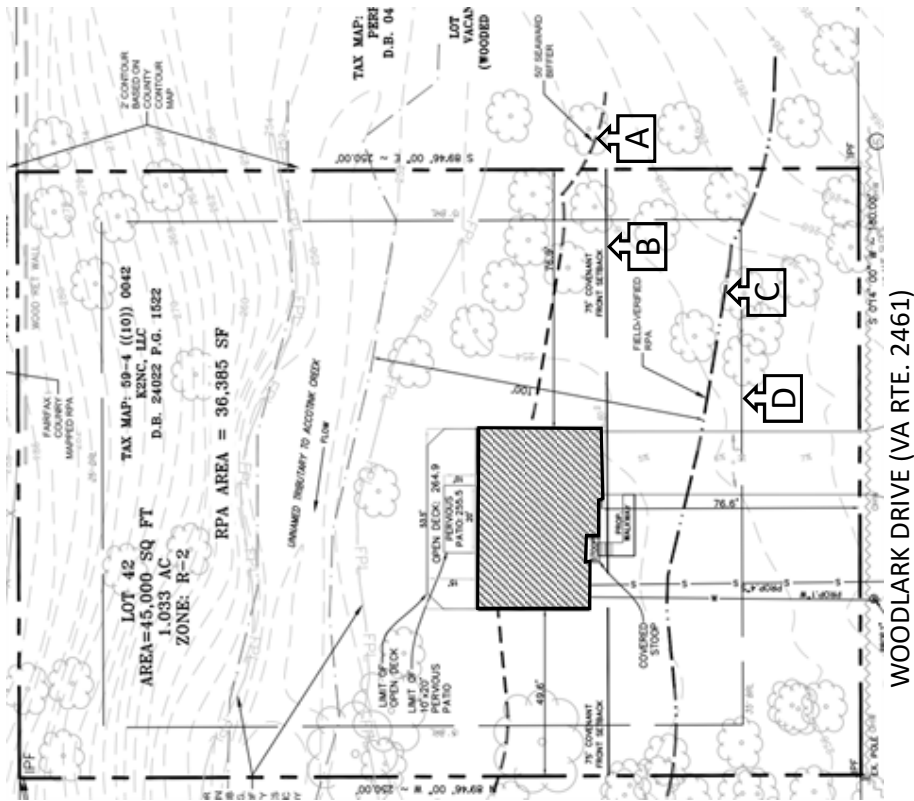




# Attachment 3 4104 Woodlark Drive Exhibit

## Legend

-  Proposed Dwelling
-  Seaward 50 feet Buffer
-  75 feet Front-Yard Setback
-  RPA (Resource Protection Area) Buffer
-  35 feet Front-Yard Setback



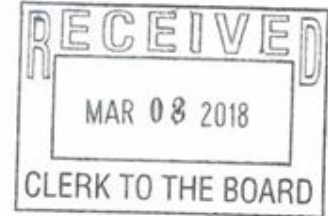
J:\LDS\Divisions\_-\_Branches\SDID\Board Items\4104 Woodlark Drive CBPO Appeal



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March 8, 2018

The Board of Supervisors of the County of Fairfax  
12000 Government Center Parkway  
Fairfax County, Virginia 22035

Re: Appeal to the Board of Supervisors of the denial by the Chesapeake Bay Preservation Ordinance Exception Review Committee (ERC) of applications 2582-WRPA-006-1 and 2582-WQ-003-1

Property: 4104 Woodlark Drive  
Fairfax Hills, Section 1, Lot 42  
Tax Map 0594 ((10)) 0042; Braddock District

Dear Board Members:

This appeal is being filed on behalf of K2NC, LLC as a result of the denial on February 7, 2018 by the ERC of the above applications to construct a single family dwelling on the above referenced lot in the Fairfax Hills subdivision.

As provided for in Chapter 118, Article 8, "an applicant or any other party aggrieved by any decision of the Exception Review Committee in the administration of this Chapter may, within 30 days of such decision, appeal the decision to the Board of Supervisors". The appellant is aggrieved because they, being the applicant, are being denied by the ERC the right to construct the proposed dwelling on the lot which they own in what has been determined to be the only location permissible for such construction to take place given the limitations of and conditions applicable to the subject property.

It is the position of the appellant that the basis of the denial (copy of ERC denial resolution attached) was related to criteria outside that outlined in Chapter 118 of the County Code which the ERC is required to use to review exception against. Specifically, that the ERC made a determination of law outside of their jurisdiction, by making a determination that a recorded covenant within Fairfax County land records may be invalid without having sufficient legal or technical basis for making such determination.



4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Appeal to the Board of Supervisors of the denial by the ERC of 2582-WRPA-006-1 and 2582-WQ-003-1  
March 8, 2018  
Page 2 of 4

As stated in the attached Resolution, the ERC denied the above applications on the basis that “the requested exception is not the minimum necessary to afford relief” and that “final determination as to the front yard setback is necessary for the Committee to determine whether relief requested is the minimum necessary to build the proposed house” under 118-6-6.A of Chapter 118 of the County Code. The Resolution language reference to a “front yard setback” refers to a subdivision covenant recorded over 70 years ago with the Fairfax Hills subdivision which requires all dwellings to be constructed a minimum of 75’ from the front property line of each lot in the subject subdivision which was a primary basis for the exception application that was filed by the applicant.

Salient elements of the application, LDS review, supplemental applicant submissions, public hearing, and ERC meetings include:

- No dispute with or argument against the validity of the private recorded covenant which stipulates the 75’ setback in the application package or the LDS staff report;
- Agreement by LDS staff in their staff report that the applications had met the criteria in Chapter 118 for approval of the requested exception;
- Testimony by a key homeowner in the subdivision (Mr. Richard Rio) that the 75’ setback clearly applies to the construction of a dwelling on the property and is not invalid or void;
- Submission to the ERC within the application package of the temporary injunction issued by the Circuit Court upholding the 75’ covenant’s validity (copy within LDS staff report);
- Letter of Justification for house siting (as a response to an ERC member question raised during the public hearing) submitted by our firm to the ERC prior to their February decision (copy attached);
- Confirmation that the proposed house site is outside the regulatory floodplain (refer to LDS staff report for this supplementary information submitted in response to LDS staff review after the applications’ initial filing);
- Confirmation by the U.S. Army Corps of Engineers that the proposed house is outside regulatory wetlands (submitted to LDS staff as supplementary information after the applications’ initial filing);

The above list of items all consistently describe an application, which during the presentation and review of, neither the applicant, LDS staff, or even the testifying members of the public and homeowners in the community questioned the validity of the 75’ covenant setback from the front property line. The application was based on and accepted the fact that the covenant was recorded in the land records and on the strength of the Circuit Court’s decision upholding the covenant in a temporary injunction issued as a result of a homeowner’s lawsuit to stop construction of the home under a previously issued County Building Permit.

---

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4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Appeal to the Board of Supervisors of the denial by the ERC of 2582-WRPA-006-1 and 2582-WQ-003-1  
March 8, 2018  
Page 3 of 4

The position the ERC has taken (as the sole underpinning of its denial) to question the validity of the covenant is without a demonstrated basis in fact and is, in the opinion of the appellant, outside the jurisdiction of the Committee to make what is, effectively, a finding of law which is contrary to the finding of the Circuit Court, yet made by the ERC without the benefit of reviewing the evidence provided to such Court.

It should be noted that the ERC, subsequent to its meeting with the County Attorney in January and in approving Resolution denying the applications on February 7<sup>th</sup>, chose not to offer the applicant an opportunity to provide additional information on the matter of the covenant or request that the ERC defer their decision beyond the 70 days required under Code to allow for additional time to review the concerns the ERC apparently harbored at that time of the decision to deny. It is noted that the applicant and the undersigned attended the February 7<sup>th</sup> "decision only" meeting of the ERC specifically in case the ERC wished to speak with the applicant about any final concerns, but was not questioned, nor granted an opportunity to request such a deferral.

Further, it should be noted that the ERC retains the authority to modify the proposed conditions which LDS staff recommended with an approval of the applications by requiring additional measures to address their concerns about the covenant (such measured to be required as part of the approval), yet chose not to exercise this authority.

In summary, we believe that the applicant has provided all required by the Code and by the County, as represented by LDS staff, to provide an application which meets the purpose and intent of Chapter 118 of the County Code and is in harmony with its goals and objectives of increasing water quality of the Chesapeake Bay watershed. We have modified the application at the request of staff, conducted additional studies as requested by the staff and ERC, and performed above the average applicant that is similarly situated. The support of the LDS staff underscores the merit of this application and that it should have been approved.

Therefore, it is the appellant's position that they as applicant had met the outlined criteria for approval of an exception under Section 118-6-6 of the Chesapeake Bay Preservation Ordinance and should have been granted approval by the ERC had the ERC maintained its findings within the jurisdiction of that which the ERC is authorized to review by State law and the Code of Fairfax County using the application contents and supplemental information presented with the application and the information contained within the staff report and provided by LDS staff.

---

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4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Appeal to the Board of Supervisors of the denial by the ERC of 2582-WRPA-006-1 and 2582-WQ-003-1  
March 8, 2018  
Page 4 of 4

Being that it is the appellant's belief that the ERC's actions were outside the authority they are granted (by making a determination as to the validity of a recorded covenant in the land records) and that the denial is not consistent with previously approved requests of those applicants who were similarly situated, the appellant asks that the Board of Supervisors overturn the decision of the ERC and approve County Applications 2582-WRPA-006-1 and 2582-WQ-003-1 and assign appropriate and typical conditions consistent with prior RPA exception approvals and/or those recommended by staff within the LDS staff report for this application.

Your consideration in this matter is greatly appreciated.

Sincerely,



Greg Budnik, P.E.  
Engineer for the Applicant

attachments: ERC Resolution of February 7<sup>th</sup>, 2018 (issued February 26<sup>th</sup>, 2018)  
Supplemental information letter from GJB Engineering dated 2-2-18  
Circuit Court temporary injunction

---

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## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

**FEB 26 2018**

Sheila Konecke  
K2NC, LLC  
15881 Crabbs Branch Way  
Rockville, MD 20855

Subject: 4104 Woodlark Drive, Tax Map #059-4-10-0042, Braddock District

Reference: Resource Protection Area Encroachment Exception #2582-WRPA-006-1 and  
Water Quality Impact Assessment #2582-WQ-003-1

Dear Ms. Konecke:

Enclosed you will find a copy of a Resolution adopted by the Exception Review Committee (ERC) at their regular meeting held on February 7, 2018, denying Resource Protection Area (RPA) Encroachment Exception #2582-WRPA-006-1, under Section 118-6-7 of the Chesapeake Bay Preservation Ordinance (CBPO), to permit encroachment into the RPA at the subject property. The motion to deny included that "final determination as to the front yard setback is necessary for the Committee to determine whether relief requested is the minimum necessary to build the proposed house."

In accordance to the CBPO 118-6-1, no new application concerning any or all of the subject property for the same general use as applied shall be heard by the ERC or Board for a period of less than 12 months from February 7, 2018. In discussion during the meeting, committee members expressed willingness to waive that requirement and encourage the applicant to reapply after a final order is issued in the pending litigation regarding the covenant creating a front building restriction line. Once the court proceedings are finalized, please notify this office in writing to request a rehearing.

Please be advised that the decision of the Exception Review Committee may be appealed to the Board of Supervisors in accordance with Article 8 of the CBPO within 30 days from the date of the Resolution.

If further assistance is desired, please contact Prutha Rueangvivatanakij, Stormwater Engineer, Site Development and Inspection Division (SDID), at 703-324-1720.

Department of Land Development Services  
12055 Government Center Parkway, Suite 659  
Fairfax, Virginia 22035-5503  
Phone 703-324-1780 • TTY 711 • FAX 703-653-6678  
[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)



Sheila Konecke  
2582-WRPA-006-1 & 2582-WQ-003-1  
Page 2 of 2

Sincerely,



Camylyn Lewis  
Clerk to the Exception Review Committee  
Site Development & Inspection Division (SDID)  
Land Development Services (LDS)

Enclosure

cc: Supervisor Cook, Braddock District Supervisor  
Catherine Chianese, Clerk to the Board of Supervisors  
Chris Koerner, Chairman, Exception Review Committee  
Leslie B. Johnson, Zoning Administrator, Department of Planning and Zoning  
Durga Kharel, Chief, Central Branch, SDID, LDS  
Prutha Rueangvivanakij, Senior Engineer III (Stormwater), SDID, LDS  
Greg Budnik, P.E., GJB Engineering, Inc.  
Waiver File



# County of Fairfax, Virginia

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## EXCEPTION RESOLUTION OF THE EXCEPTION REVIEW COMMITTEE

K2NC, LLC, Resource Protection Area (RPA) Encroachment Request #2582-WRPA-006-1, under Section 118-6-7 of the Chesapeake Bay Preservation Ordinance (CBPO), at 4104 Woodlark Drive, Annandale, to permit encroachment into the RPA for the construction of a house within seaward 50 feet on the lot legally created prior to November 18, 2003, Braddock District, Tax Map #059-4-10-0042. At a regular meeting of the Exception Review Committee (ERC) on February 7, 2018, Ms. Kanter moved that the ERC adopt the following resolution:

WHEREAS, the ERC has made the findings that:

- a) The requested exception is not the minimum necessary to afford relief; and
- b) Final determination as to the front yard setback is necessary for the Committee to determine whether relief requested is the minimum necessary to build the proposed house.

NOW, therefore, be it resolved that the ERC **Deny** Exception Request #2582-WRPA-006-1 upon finding that the application does not meet Section 118-6-6.a of the CBPO.

The motion carried by a vote of 5-0, with Dr. Schnare abstaining due to the hearing preceeding his appointment.

A Copy Teste:

Camylyn Lewis  
Clerk to the Exception Review Committee

Department of Land Development Services  
12055 Government Center Parkway, Suite 659  
Fairfax, Virginia 22035-5503  
Phone 703-324-1780 • TTY 711 • FAX 703-653-6678  
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February 2, 2018

Chesapeake Bay Preservation Ordinance Exception Review Committee  
Attn: Chris Koerner, Chairman  
c/o Department of Land Development Services  
Attn: Camylyn Lewis, Clerk to the ERC  
12055 Government Center Parkway, 5<sup>th</sup> Floor  
Fairfax, VA 22035

Reference: 4104 Woodlark Drive  
Fairfax Hills, Section 1, Lot 42  
Tax Map 0594 ((10)) 0042  
Project # 2582-WRPA-006-1 and 2582-WQ-003-1  
Braddock District

Dear Chairman Koerner:

You may recall that during the public hearing of the above application, Committee Member Howard Green observed that it would be helpful to have further background on whether other options for architectural design and house siting had been performed by the applicant to verify that the submitted house footprint and location within the lot was the least disruptive to the RPA it is proposed within. Allow this letter to serve as an affirmation of the previously submitted data within the application relative to this topic, documentation of the relative verbal presentation made by our firm at the December 6<sup>th</sup> public hearing and a summary of further study performed by our firm since December 6<sup>th</sup> in response to further discussion which Mr. Green and I had after the adjournment of the January ERC meeting.

It should be noted at the outset of this summary that our firm, as well as the engineering firm of Wetlands Studies & Solutions, looked at a number of house footprint designs and sitings as part of the preparation process for the above application this past summer prior to determining the particular design and siting which is presented before your committee for approval, was verified as being the architectural product and house siting which met the definition of least disruptive to the RPA, while still meeting the community's recorded covenant of a 75' setback from the front property line and met the definition of a "reasonable" size total square footage and ground footprint area relative to other houses in the community.



4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Response to ERC on discussion related to RPAE request public hearing 12/6/17  
February 1, 2018  
Page 2 of 4

Below is an excerpt from Page 2 of the application background, for reference:

*"The project site area is over 80% encumbered by RPA. In addition, there has been a court-enforced injunction of a 75' front setback for any proposed house in the neighborhood – which precludes construction of a house anywhere outside the RPA. As shown on the proposed conditions plan, the 75' setback extends into the RPA in all areas of the site – nearly to the 50' seaward buffer at the northern property line. The proposed lot plan represents the minimum disturbance necessary to construct a single family residence and associated infrastructure that is appropriate for the neighborhood. Grading has been minimized and proposed impervious areas have been reduced to provide the Applicant with a reasonably sized home and usable amenities.*

During application preparation, our firm assessed various options for reducing the impact to the seaward 50' portion of the RPA:

- Obtaining a change in, gaining an exception to, or litigating the legitimacy of the recorded 75' setback covenant.
- Verifying the average footprint size and total floor area of the homes in the subdivision
- Assessing the current house architectural design to determine if a shallower house was reasonable and would allow for less impact to the core components of the RPA and the pollutant load anticipated from the development of the house on the lot.
- Shifting the house siting left or right of the current siting, while maintaining conformance to the 75' setback if changes or deletion of the covenant were not possible.

This assessment yielded the following:

- The injunction was sought by and granted to an individual (Mr. Richard Rio) who has stated he strongly believes the covenant to be valid. We understand he will vigorously defend the legitimacy of the covenant in any further litigation and that he, alone, does not have the authority to grant exceptions to the setback requirement. His testimony at the public hearing underscores that understanding and that the 75' setback must be met without expectation of exception. This is not a hardship created by the applicant, but created by the community covenant and their choice to enforce such through litigation
- Attorneys for the applicant have determined that unanimity of all owners of the subdivision would be required to modify the covenant – even just once for this lot. Therefore, modifying the 75' covenant is not a reasonable expectation of the applicant, nor is such within the control of the applicant.
- The house architectural design was found by our firm to be less than average already at 37' deep, so reduction of the depth of the house was deemed unreasonable.

---

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4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Response to ERC on discussion related to RPAE request public hearing 12/6/17  
February 1, 2018  
Page 3 of 4

- The house architectural design was found by our firm to be average to below average in width (dependent on the factors considered) and though the house could be wider than the design submitted without negatively impacting the existing trees to be preserved just outside the currently proposed clearing and grading limits, it the applicant's opinion that they did not feel that was appropriate as they understood the need to minimize total impervious area. The applicant therefore has been sensitive to the need to develop a house product which is neither excessively wide or deep, and thus feels the house architectural design is reasonable for this particular lot as it minimizes impervious area and avoids, to the maximum extent possible, damage to or loss of existing mature trees and forest.

Upon these findings, the application dwelling was confirmed as meeting the standards of Chapter 118 for this application. The house was sited and graded allowing for a reasonable lawn within the front of the house for resident enjoyment, while minimizing the creation of lawn between the proposed house and the RPA core component stream and along the sides of the house. Slopes created along the sides are at a maximum for reasonable mowing by conventional equipment. Due to Floodplain Ordinance requirements, the dwelling's lowest part of the lowest floor of the home must be 18" above the floodplain elevation. The application design meets this requirement, with a factor of safety to boot, without any exception, but requires the grading along the rear and sides of the home to be slightly higher than would be otherwise necessary if no floodplain existed.

During application review by LDS this fall, their staff pushed for a reduction in the patio and deck which was proposed on the house, which the applicant acquiesced to and which is represented in the November 6, 2017 revised application which was presented to the ERC at the December public hearing. Staff also asked for additional backup and information related to the floodplain, which was also supplied to staff.

Subsequent to the December public hearing, at the request of Committee Member Green, over the next four weeks, our firm revisited the design and siting of the house, attempting three additional potential sitings and house configurations. We also discussed possible architectural design changes with the applicant. All additional options assessed were deemed to either be no improvement to the RPA, unreasonable in nature, or more impact on the RPA than the application house architectural and house siting presented to you in December.

**Thus, our firm certifies to the ERC that the design presented before your committee meets the standards of the Chesapeake Bay Preservation Ordinance as the minimum house size and location necessary to afford relief. LDS staff has concurred with our finding.**

---

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4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Response to ERC on discussion related to RPAE request public hearing 12/6/17  
February 1, 2018  
Page 4 of 4

Please also note that the US Army Corps of Engineers has made their Jurisdictional Determination subsequent to the submission of our application. A copy of their determination has been provided to the Clerk to the ERC for your file.

We stand available to answer any further questions you may have relative to the referenced submission.

Sincerely,



Greg Budnik, P.E.  
Engineer for the Applicant

---

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www.gjbengineering.com  
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VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

<p>S. RICHARD RIO, JR.,</p> <p>Plaintiff,</p> <p>v.</p> <p>K2NC, LLC</p> <p>Defendant.</p>	<p>Case No. CL2017-5321</p>
--	-----------------------------

PRELIMINARY INJUNCTION ORDER

THIS MATTER HAVING COME UPON Plaintiff's Motion for Emergency Temporary and Preliminary Injunctive Relief and, after a hearing on the preliminary injunction and argument of the parties, it is hereby

ADJUDGED, ORDERED AND DECREED that Defendant K2NC, LLC, and any parties acting on its behalf shall ~~not perform any construction activities on the Property~~ *be enjoined from erecting any building within 75 feet of the front property* located at 4104 Woodlark Drive, Annandale, Virginia 22003, including but not limited to ~~removing any trees, clearing any land, or constructing any improvements until further~~ *line, which is the line bounding Woodlark Dr. with final* resolution of merits of this case. No bond shall be ~~required of~~ *required of* Plaintiff.

*as specified in section 8 of the 1941 deed of Dedication*

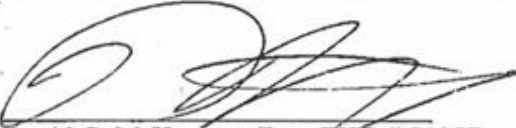
ENTERED THIS 5<sup>th</sup> DAY OF July, 2017

*David Bernhard*  
 Judge, Circuit Court for Fairfax County

**David Bernhard**

**I ASK FOR THIS:**

  
Marla J. Diaz (VSB# 46799)  
Gregory A. Chakmakas (VSB# 87386)  
WHITEFORD, TAYLOR & PRESTON, LLP  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042  
(703) 280-9131  
(703) 280-9139 (facsimile)  
[mdiaz@wtplaw.com](mailto:mdiaz@wtplaw.com)  
[gchamakas@wtplaw.com](mailto:gchamakas@wtplaw.com)  
*Counsel for Plaintiff*

SEEN AND Objected to as the Defendant has shown that  
  
the 75' setback has been waived  
that the Plaintiff has failed to  
prove any of the elements necessary  
to demonstrate a right to a  
temporary injunction.

David G. McKennett, Esq. (VSB # 71257)  
Purnell, McKennett & Menke, PC  
9214 Center Street, Suite 101  
Manassas, VA 20110  
(703) 368-9196  
(703) 361-0092 (facsimile)  
[dmckennett@manassasalawyers.com](mailto:dmckennett@manassasalawyers.com)  
*Counsel for Defendant*

2208247

Prutha Rueangvivatanakij  
Fairfax County Government  
Site Development and Inspections Division  
12055 Government Center Parkway  
Suite 535  
Fairfax, Va. 22035

Re: Encroachment Exception Request #2582-WRPA-006-1  
Water Quality Impact Assessment #2582-WQ-003-1  
K2NC LLC

Dear Mr. Rueanfivatrakij :

I wish to request that I be added as a speaker at the Public Hearing on the above referenced matter scheduled to be held on December 6, 2017 at your office at 2:00 PM.

I also wish to submit the attached documents for the public record:

- Request in the Circuit Court for Fairfax County for Preliminary and Permanent Injunctive Relief, Case # CL2017-5321 (6 pages)
- Restrictive Covenants governing Fairfax Hills, Va. subdivision (4 pages)
- Preliminary Injunctive Order (2 pages)

As you can see, I have brought a lawsuit against the developer to prohibit construction less than 75' from Woodlark Drive, pursuant to Covenant 8 of the Restrictive Covenants. Injunctive relief has been granted in that lawsuit. Please confirm that you have received all these documents, submitted them as written comments, and added them to the official record in this matter. Also please add me to the speakers list.

Thank you.



S. Richard Rio, Jr.

*November 20, 2017*

Attachments (12 pages)

VIRGINIA

## IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

<p><b>S. RICHARD RIO, JR.,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>K2NC, LLC</b></p> <p><b>Serve: Sheila Konecke, Registered Agent</b>  <b>803 Hallyard Court</b>  <b>Leesburg, VA 20175</b></p> <p style="text-align: center;"><b>Defendant.</b></p>	<p>Case No. _____</p>
---	-----------------------

**COMPLAINT FOR PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF, AND SPECIFIC PERFORMANCE**

COMES NOW the Plaintiff, S. Richard Rio, Jr. ("Mr. Rio"), by and through his undersigned counsel, and hereby files this Complaint for Preliminary and Permanent Injunctive Relief, and Specific Performance and states as follows:

**PARTIES AND JURISDICTION**

1. Mr. Rio is an owner of real property and improvements located in the Fairfax County, Virginia, namely 4317 Woodlark Drive, Annandale, Virginia 22003 ("Rio Lot"). A true copy of the Deed for the Rio Lot is attached as Exhibit A.

2. The Rio Lot is located within the Fairfax Hills subdivision ("Fairfax Hills"). A certain Deed of Dedication dated March 27, 1941, and recorded in Deed Book S-14 at Page 551 of the Land Records of Fairfax County ("1941 Deed of Dedication") created Fairfax Hills. The 1941 Deed of Dedication contained numerous restrictive covenants applicable to the lots within Fairfax Hills. A true copy of the 1941 Deed of Dedication is attached as Exhibit B.



3. By virtue of his ownership of the Rio Lot, Mr. Rio has standing to enforce the restrictive covenants contained in the 1941 Deed of Dedication against any owner of any lot or lots in Fairfax Hills, as provided in covenant number twelve of the 1941 Deed of Dedication.

4. Pursuant to covenant number eight of the 1941 Deed of Dedication, “[n]o building shall be erected within seventy-five (75) feet of the front property line of any lot or lots in said Subdivision.”

5. Defendant K2NC, LLC (“K2NC”) is an owner of real property and improvements located in the Fairfax County, Virginia, namely 4104 Woodlark Drive, Annandale, Virginia 22003 (the “Property”). A true copy of the Deed for the Property is attached as Exhibit C.

6. The Property is a lot located in Fairfax Hills and is subject to the restrictive covenants contained in the 1941 Deed of Dedication. As the owner of the Property, K2NC is subject to the restrictions contained in the 1941 Deed of Dedication.

7. This Court has jurisdiction over all the parties as they all have an interest in, using, or possessing real property in Fairfax County, Virginia and/or transact business in Fairfax County, Virginia. Further this Court has jurisdiction pursuant to Virginia Code §§ 8.01-620.

8. Venue is proper in the Court pursuant to Va. Code Ann. § 8.01-262.

#### **THE PROPERTY**

9. The allegations contained in paragraphs 1 through 8 are incorporated herein by reference as though fully set forth herein.

10. Fairfax County records indicate that K2NC applied for a building permit for the construction of a single family dwelling on the Property. Upon information and belief, the planned construction of the dwelling on the Property will be in violation of the covenant number

eight of the 1941 Deed of Dedication, in that it will involve the erection of a building within seventy-five (75) feet of the front property line of the lot.

11. Further, the Property is located in a Resource Protection Area as defined and provided for under the Chesapeake Bay Preservation Act and as designated by the Fairfax County Board of Supervisors. The Fairfax County Chesapeake Bay Preservation Ordinance (Fairfax County Ordinances, Section 118-1-1) requires the preservation of indigenous vegetation in Resource Protection Areas to the maximum extent practicable.

12. Mr. Rio, through counsel, has contacted K2NC to notify it that the Property is within Fairfax Hills and is subject to the Fairfax Hills covenants by letter dated March 24, 2017. The March 24<sup>th</sup> letter further advised K2NC of the 75 foot front setback covenants and the prohibition on removing trees from a Resource Protection Area. A true copy of the March 24, 2017 letter sent to K2NC is attached as Exhibit D. Despite Mr. Rio's requests that K2NC honor the covenants binding on its lot and its status as a Resource Protection Area, K2NC has proceeded with its application for a building permit and its construction plans.

#### **COUNT I – PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION**

13. Mr. Rio incorporates by reference the allegations contained in Paragraphs 1 through 12, above.

14. K2NC has failed and/or refused to honor the covenants contained in the 1941 Deed of Dedication, including particularly the seventy-five foot front property set back.

15. Upon information and belief, K2NC intends to remove trees from the Property, despite its status as a Resource Protection Area.

16. K2NC, if not immediately enjoined, will continue to be in violation of the 1941 Deed of Dedication and the requirements for a Resource Protection Area. Such actions will



prevent Mr. Rio from obtaining the benefits of the restrictive covenants that apply to all lots in Fairfax Hills. Further, K2NC's non-compliance with its obligations under the 1941 Deed of Dedication will cause continuing damage to Mr. Rio, Fairfax Hills, and its residents. Finally, the removal of the trees from this Resource Protection Area will irreparably alter the appearance of Fairfax Hills, thereby diminish the value of the properties in Fairfax Hills.

17. Mr. Rio does not have an adequate remedy at law because the damages he will suffer, if K2NC is not enjoined from constructing a swelling within 75 feet of the front property line in violation of the restrictive covenants and removing trees in violation of the requirements for Resource Protection Areas cannot be compensated by an award of money damages.

18. In order to avoid this irreparable harm, it is necessary that the Court direct K2NC to immediately cease construction unless and until construction can be completed in compliance with the 1941 Deed of Dedication and the requirements for a Resource Protection Area.

WHEREFORE, the premises considered, S. Richard Rio, Jr. prays for the following relief:

- (1) Enter a temporary or preliminary injunction directing the Defendant K2NC, LLC to cease construction on the Property in violation of the requirements of the 1941 Deed of Dedication and the Chesapeake Bay Preservation Ordinance;
  - (2) Enter a permanent injunctive order prohibiting the Defendant K2NC, LLC from any construction on the Property in violation of the requirements of the 1941 Deed of Dedication and the Chesapeake Bay Preservation Ordinance, and in particular prohibiting any building within seventy-five (75) feet of the front property line of the Property and prohibiting the removal of any trees from the lot;
- and

- (3) Award Plaintiff a judgment against the Defendant for its damages, including but not limited to the attorney's fees and costs incurred in bringing this action, damages being authorized by covenant number twelve of the 1941 Deed of Dedication; and
- (4) Such other, further and general relief as the Court may deem sufficient and proper in the circumstances.

**COUNT II – SPECIFIC PERFORMANCE**

19. Mr. Rio repeats and realleges the allegations contained in paragraphs 1 through 18 as if set forth in their entirety herein.

17. K2NC violated and continues to violate the covenants and restrictions contained within the 1941 Deed of Dedication by applying for a building permit to construct a single family residence on the Property that will be erected within seventy-five (75) feet of the front property line of the lot in Fairfax Hills.

18. Mr. Rio is entitled to specific performance by K2NC to insure compliance with the restrictive covenants for Fairfax Hills. Mr. Rio is further entitled to specific performance by K2NC to prevent violation of the Chesapeake Bay Preservation Ordinance.

19. Mr. Rio does not have an adequate remedy at law because the damages he will suffer (if K2NC is not enjoined to cease construction) cannot be compensated by an award of money damages.

WHEREFORE, the premises considered, S. Richard Rio, Jr. prays for the following relief:

- (1) Enter a temporary or preliminary injunction directing the Defendant K2NC, LLC to cease construction on the Property in violation of the requirements of the 1941 Deed of Dedication and the Chesapeake Bay Preservation Ordinance;
- (2) Enter a permanent injunctive order prohibiting the Defendant K2NC, LLC from any construction on the Property in violation of the requirements of the 1941 Deed of Dedication and the Chesapeake Bay Preservation Ordinance, and in particular prohibiting any building within seventy-five (75) feet of the front property line of the Property and prohibiting the removal of any trees from the lot;
- (3) Award Plaintiff a judgment against the Defendant for its damages, including but not limited to the attorney's fees and costs incurred in bringing this action, damages being authorized by covenant number twelve of the 1941 Deed of Dedication; and
- (4) Such other, further and general relief as the Court may deem sufficient and proper in the circumstances.

Respectfully submitted,

**S. RICHARD RIO, JR.**

By Counsel,



Marla J. Diaz (Va. Bar No. 46799)  
Gregory A. Chakmakas (Va. Bar No. 87386)  
WHITEFORD, TAYLOR & PRESTON, LLP  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042  
(703) 280-9131  
(703) 280-9139 (facsimile)  
[mdiaz@wtplaw.com](mailto:mdiaz@wtplaw.com)  
[gchamakas@wtplaw.com](mailto:gchamakas@wtplaw.com)

2204774

done no act to encumber the said lands, and that they will execute such further assurances of the said lands as may be required.

WITNESS the following signatures and seals:

Robert J. Allen  
Dorothy G. Allen (SEAL)

District of Columbia, SS.

I, Bernice Jay Colline, a Notary Public in and for the District aforesaid, whose commission as such expires on the 1st day of February, 1943, do hereby certify that this day personally appeared before me in my said District ROBERT J. ALLEN and DOROTHY G. ALLEN, his wife, whose names are signed to the foregoing and hereto annexed deed, dated the 3rd day of April, 1941, and acknowledged the same.

Given under my hand this 5th day of April, 1941.

Bernice Jay Colline (N. P. Seal)  
Notary Public D. C.

My Com. expires Feb. 1 1943.

In the Clerk's office of the Circuit Court of Fairfax County, Virginia, April 9, 1941, at 10:30 o'clock, A. M.

This deed was received, and with the certificate annexed, admitted to record. (Stamped \$7.15, V. S. R. S. E. & C)

Teste: JOHN M. WHALEN, CLERK.

H. [Signature] Notary Clerk.

THIS DEED OF DESIGNATION, made and entered into this 27th day of March, 1941, by: JOSEPH L. BRISTOW, widower, party of the first part; WILSON E. FARR, Trustee, party of the second part; and ETHEL DAVIS REIS, RUSH D. LITTLETON, PERRY F. COMPTON and ROSE E. MARLEY, parties of the third part.

WITNESSETH THAT WHEREAS, the said Joseph L. Bristow is the sole owner and proprietor of the parcel of land hereinafter set forth, situated on the Little River Turnpike in Lee Magisterial District, Fairfax County, State of Virginia, and being a part of the identical land conveyed to him by deed from John A. Smith, et ux, dated March 12, 1926 and recorded in Liber R, No. 9, page 412 of the land records of said County, the present description of the parcel of said land hereby subdivided and dedicated with bearings computed by reference to the true meridian being hereinafter set forth; and

WHEREAS, the party of the first part hereto, as such sole owner and proprietor of said land desires to subdivide, plat and dedicate the portion thereof hereinafter bounded and described as a subdivision to be known and designated as SECTION ONE FAIRFAX HILLS, into certain lots, streets and park as shown on the plat hereto attached and expressly made a part hereof;

NOW, THEREFORE, the said party of the first part, as such sole owner and proprietor of the said land, pursuant to the provisions of Sections 5217 and 5218 of the Code of Virginia (Michie's 1935), and to the provisions of an act of the General Assembly of the State of Virginia, approved March 14, 1926 (Acts of 1926, page 625), said act providing how subdivisions of lands shall be made in Fairfax County, doth now hereby subdivide and dedicate the hereinafter described parcel of land as shown on the plat thereof hereto annexed, made by R. W. Berry and Sons, dated March 1, 1941, approved by Joseph Berry, County Surveyor, March 10, 1941, and doth now designate the said subdivision as SECTION ONE, FAIRFAX HILLS;

The lots numbered Five (5) and Six (6) each marked on the plat hereto annexed "Excluded" and the parcel of land shown on said plat as "ACCOTINK

Handwritten notes and stamps on the right margin, including a date stamp "APR 11 1941" and other illegible markings.



"PARKWAY" lying east of Parkway Road and thereon marked "Excluded" are expressly excepted from this subdivision and dedication.

And the party of the first part, as sole owner and proprietor of the said land embraced in this deed of dedication, subdivision and plat thereof, hereto attached, doth now certify that this subdivision of said land is made as shown on the said plat thereof hereunto attached and expressly made a part hereof, with the free consent and in accordance with the desire of the undersigned party of the first part, the said owner and proprietor thereof, and doth further certify that such statements shall have the same force and effect as if the same were endorsed by him upon the said plat hereto attached and expressly made a part hereof.

The said land now subdivided and dedicated being described in a survey thereof made by the said R. W. Berry and Sons as follows, to-wit:

Beginning for the same at an iron pipe heretofore planted at the north westerly corner of the said tract of land, being where the westerly boundary of the said tract of land intersects the southerly side of Little River Turnpike, as widened; thence with the outline of the said tract of land, the following courses and distances, S. 0° 14' 00" E. 2461.30 feet to an iron pipe; thence S. 82° 49' 30" E. 454.74 feet to a stone; thence S. 76° 44' 10" E. 557.80 feet to a point in Accotink Creek; thence N. 36° 03' 00" E. 341.70 feet to a point again in Accotink Creek; thence N. 7° 32' 00" E. 331.50 feet to a point again in Accotink Creek; thence N. 32° 14' 00" E. 808.60 feet to an iron pipe; thence leaving the outline of the said tract of land, N. 27° 29' 30" E. 332.58 feet to an iron pipe; thence with the arc of a curve to the left, having a radius of 1857.13 feet, an arc distance of 531.93 feet, the subtending chord bearing N. 16° 19' 40" E. 530.12 feet, to an iron pipe at the point of tangency; thence N. 8° 07' 20" E. 200.00 feet to an iron pipe; thence with the arc of a curve to the right, having a radius of 50.00 feet, an arc distance of 78.54 feet, the subtending chord bearing N. 53° 07' 20" E. 70.72 feet to an iron pipe at the point of tangency on the southerly side of Little River Turnpike, as widened; thence with the southerly side of Little River Turnpike, as widened, the following courses and distances, N. 81° 52' 40" W. 878.90 feet to an iron pipe, thence N. 81° 04' 50" W. 1241.60 feet to the place of beginning, the above described tract of land containing 85.43 acres of land, more or less.

LESS AND EXCEPT therefrom the 49,886 square feet of land shown on said plat in Lot Numbered Five (5), and the 49,480 square feet of said land shown on said plat in Lot Numbered Six (6), the land embraced in said Lot Numbered Five (5) and Lot Numbered Six (6) on said plat being hereby expressly excluded from this deed of dedication. (Reference to the said deed recorded as aforesaid and to said plat hereunto annexed is now made for more particular description of the land hereby subdivided and of the streets and park therein hereby dedicated).

Pine Ridge Drive shown on said plat is the identical street contemplated to be known as Catoma Drive and mentioned in a deed heretofore executed by the party of the first part, dated May 27, 1940 and recorded in Liber D, No. 14, page 135, of the said land records, conveying to Annandale Farm Homes, Incorporated, the two said Lots Numbered Five (5) and Six (6) now excluded

from this deed of dedication. The said Pine Ridge Drive having been opened and dedicated.

to public use by Annandale Farm Homes, Incorporated, for the full sixty-foot width and the full depth of two hundred twenty-five feet on the easterly line of said Lot Numbered Five (5) and on the westerly line of said Lot Numbered Six (6), as shown on the plat hereunto annexed.

This Subdivision is made expressly subject to the following conditions and restrictions, which shall be construed as covenants real running with the land hereby subdivided and dedicated, to-wit:

1. No apartment houses, flats, rows of houses, duplex houses or places of amusement shall be erected or constructed on any of the lots in said Subdivision or any part thereof, and all buildings or structures shall be designed and used for the private residence of not more than one family

2. No dwelling house, (including attached garage) shall be erected on any one of said lots or any part thereof, costing less than \$4500.00 to construct, and no detached garage shall be erected on any one of said lots or any part thereof, costing less than \$500.00 to construct.

3. No lot in the said Subdivision or any part thereof shall ever be used or allowed to be used for manufacturing, mechanical business, hotel, tourist home, boarding house, theatre, night club, road houses or entertainment purposes or for any purpose which would be a nuisance to the owner or owners of any lot or lots in the said Subdivision.

4. No sign, billboard or other similar device shall be erected, placed or maintained upon the said property except "for sale" or "for rent" signs.

5. No lot or lots in said Subdivision or any part of any lot or lots shall ever be used or occupied by or directly or indirectly sold, demised, transferred, conveyed unto or in trust for, leased, or rented to any one not of the Caucasian race, except that this shall not exclude partial occupancy by domestic servants of another race employed by and in actual service at the time of such partial occupancy of any owner or owners of any lot or lots in said Subdivision.

6. No re-subdivision of any lot or lots shall be made without the prior consent in writing first had and obtained from the party of the first part or his assigns.

7. All commercial automobiles or trailers owned or used by the owners or occupants of any lot or lots in said Subdivision shall be housed and may not be parked on or in front of any lot or lots in said Subdivision.

8. No building shall be erected within seventy-five (75) feet of the front property line of any lot or lots in said Subdivision.

9. No cow, hogs, goats or sheep shall be kept upon any of said lots or any part thereof.

10. No commercial dog kennel for the raising, breeding, training or sale of dogs shall be kept, operated or maintained from or on any of said lots or any part thereof.

11. The front and side yards of each lot, when improved by the erection of a dwelling thereon shall be kept free from trash, weeds and uncut grass which has attained a height of six (6) inches.

12. If any owner of any lot or lots in said Subdivision shall violate or attempt to violate any provision or provisions of the aforesaid covenants, it shall be lawful for any other person or persons owning any lot or lots in

said subdivision to institute any proceedings at law or in equity against the person or persons so violating or attempting to violate any such covenant, either to prevent him or them from so doing, or to recover damages for such violation.

13. Should any one of the aforesaid covenants, or any provision or provisions thereof, be held invalid by any Court having jurisdiction, such judgment of such Court shall in no wise affect or impair any of the other provisions either of that or any other covenant, all of which shall remain in full force and effect; and

WHEREAS, the party of the first part hereto did by his certain deed of trust dated July 6, 1938 and recorded in Liber B, No. 13, page 177 of said land records, convey a larger parcel of land containing 94.61 acres of which the land herein subdivided and dedicated is a portion, to the party of the second part hereto, in trust to Ethel Davis Reid, Wilson M. Farr, Executor and Trustee for Ella M. Davis under the last will and testament of John F. Davis, Perry F. Compton, and the payment of sundry bonds, all of which are fully set forth and described in said deed of trust, the said bond thereby secured, payable to the order of said Wilson M. Farr, Executor and Trustee for Ella M. Davis under the last will and testament of John F. Davis having been duly assigned for value received, to the said Ruth D. Littleton, and bond thereby secured, payable to the order of Mary E. Davis, having been duly assigned for value received to the said Rose E. Makely; and

WHEREAS, the parties of the third part hereto are now the holders of all of the bonds secured by the said deed of trust and are willing to unite in this dedication of the aforesaid portion of said 94.61 acres of land:

NOW, THEREFORE, THIS DEED FURTHER WITNESSETH, that the party of the second part hereto and the parties of the third part hereto, do now hereby consent to the subdivision of the aforesaid land and to the dedication of the streets and park therein as shown on the plat hereunto annexed and expressly made a part hereof, such consent to such dedication to in no wise impair the lien of the aforesaid deed of trust on the lots shown in said subdivision, the lien of said deed of trust as to the park and the streets shown in said subdivision and dedication being hereby expressly released, subject, however, to the provision that if any one of said streets or any part thereof or said park or any part thereof as shown on said plat be vacated then the lien of said deed of trust shall attach thereto.

Witness the following signatures and seals:

Joseph L. Bristow	(SEAL)
Wilson M. Farr	(SEAL)
Trustee as aforesaid.	
Ethel Davis Reid	(SEAL)
Perry F. Compton	(SEAL)
Rose E. Makely	(SEAL)
Ruth D. Littleton	(SEAL)

STATE OF VIRGINIA, COUNTY OF FAIRFAX, to-wit:

I, Ruth A. Mitchell, a Notary Public in and for the State and County aforesaid, and whose commission as such will expire on the 2nd day of February, 1942, do hereby certify that this day personally appeared before me in my said State and County JOSEPH L. BRISTOW, widower, and WILSON M. FARR, Trustee, whose names are signed to the foregoing deed of dedication dated the 27th day of March, 1941, and each then and there acknowledged the same before me.

GIVEN under my hand this 5th day of April, 1941.

Ruth A. Mitchell Notary Public as  
Aforesaid.

In the Clerk's Office of the Circuit Court of Fairfax County, Virginia,  
April 9, 1941, at 12 o'clock, M.  
This deed of dedication with plat attached was received, and with the certifi-  
cate annexed, admitted to record.

Test: JOHN M. WHALEN, CLERK.

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

<p>S. RICHARD RIO, JR.,</p> <p>Plaintiff,</p> <p>v.</p> <p>K2NC, LLC</p> <p>Defendant.</p>	<p>Case No. CL2017-5321</p>
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PRELIMINARY INJUNCTION ORDER

THIS MATTER HAVING COME UPON Plaintiff's Motion for Emergency Temporary and Preliminary Injunctive Relief and, after a hearing on the preliminary injunction and argument of the parties, it is hereby

ADJUDGED, ORDERED AND DECREED that Defendant K2NC, LLC, and any parties acting on its behalf ~~shall not perform any construction activities on the Property located at 4104 Woodlark Drive, Annandale, Virginia 22003, including but not limited to removing any trees, clearing any land, or constructing any improvements until further~~ *are enjoined from erecting any building within 75 feet of the front property line, which is the line bounding Woodlark Dr, until final resolution of merits of this case.* No bond shall be required of plaintiff.

*as specified in section 8 The 1941 deed of Dedication*

ENTERED THIS 5<sup>th</sup> DAY OF July, 2017


*[Signature]*  
 Judge, Circuit Court for Fairfax County

**David Bernhard**



**I ASK FOR THIS:**

  
Marla J. Diaz (VSB# 46799)  
Gregory A. Chakmakas (VSB# 87386)  
WHITEFORD, TAYLOR & PRESTON, LLP  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042  
(703) 280-9131  
(703) 280-9139 (facsimile)  
[mdiaz@wtpaw.com](mailto:mdiaz@wtpaw.com)  
[gchamakas@wtpaw.com](mailto:gchamakas@wtpaw.com)  
*Counsel for Plaintiff*

SEEN AND Objected to as the Defendant has shown that  
  
the 75' setback has been waived  
that the Plaintiff has failed to  
prove any of the elements necessary  
to demonstrate a right to a  
temporary injunction.

David G. McKennett, Esq. (VSB # 71257)  
Purnell, McKennett & Menke, PC  
9214 Center Street, Suite 101  
Manassas, VA 20110  
(703) 368-9196  
(703) 361-0092 (facsimile)  
[dmckennett@manassasl原因yvers.com](mailto:dmckennett@manassasl原因yvers.com)  
*Counsel for Defendant*

2208247



**GJB Engineering, Inc.**

*providing quality engineering with personal service*

P.O.Box 1214, Newington, VA 22122  
www.gjbengineering.com 703-541-2000

February 2, 2018

Chesapeake Bay Preservation Ordinance Exception Review Committee  
Attn: Chris Koerner, Chairman  
c/o Department of Land Development Services  
Attn: Camylyn Lewis, Clerk to the ERC  
12055 Government Center Parkway, 5<sup>th</sup> Floor  
Fairfax, VA 22035

Reference: 4104 Woodlark Drive  
Fairfax Hills, Section 1, Lot 42  
Tax Map 0594 ((10)) 0042  
Project # 2582-WRPA-006-1 and 2582-WQ-003-1  
Braddock District

Dear Chairman Koerner:

You may recall that during the public hearing of the above application, Committee Member Howard Green observed that it would be helpful to have further background on whether other options for architectural design and house siting had been performed by the applicant to verify that the submitted house footprint and location within the lot was the least disruptive to the RPA it is proposed within. Allow this letter to serve as an affirmation of the previously submitted data within the application relative to this topic, documentation of the relative verbal presentation made by our firm at the December 6<sup>th</sup> public hearing and a summary of further study performed by our firm since December 6<sup>th</sup> in response to further discussion which Mr. Green and I had after the adjournment of the January ERC meeting.

It should be noted at the outset of this summary that our firm, as well as the engineering firm of Wetlands Studies & Solutions, looked at a number of house footprint designs and sitings as part of the preparation process for the above application this past summer prior to determining the particular design and siting which is presented before your committee for approval, was verified as being the architectural product and house siting which met the definition of least disruptive to the RPA, while still meeting the community's recorded covenant of a 75' setback from the front property line and met the definition of a "reasonable" size total square footage and ground footprint area relative to other houses in the community.

4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Response to ERC on discussion related to RPAE request public hearing 12/6/17  
February 1, 2018  
Page 2 of 4

Below is an excerpt from Page 2 of the application background, for reference:

*“The project site area is over 80% encumbered by RPA. In addition, there has been a court-enforced injunction of a 75’ front setback for any proposed house in the neighborhood – which precludes construction of a house anywhere outside the RPA. As shown on the proposed conditions plan, the 75’ setback extends into the RPA in all areas of the site – nearly to the 50’ seaward buffer at the northern property line. The proposed lot plan represents the minimum disturbance necessary to construct a single family residence and associated infrastructure that is appropriate for the neighborhood. Grading has been minimized and proposed impervious areas have been reduced to provide the Applicant with a reasonably sized home and usable amenities.*

During application preparation, our firm assessed various options for reducing the impact to the seaward 50’ portion of the RPA:

- Obtaining a change in, gaining an exception to, or litigating the legitimacy of the recorded 75’ setback covenant.
- Verifying the average footprint size and total floor area of the homes in the subdivision
- Assessing the current house architectural design to determine if a shallower house was reasonable and would allow for less impact to the core components of the RPA and the pollutant load anticipated from the development of the house on the lot.
- Shifting the house siting left or right of the current siting, while maintaining conformance to the 75’ setback if changes or deletion of the covenant were not possible.

This assessment yielded the following:

- The injunction was sought by and granted to an individual (Mr. Richard Rio) who has stated he strongly believes the covenant to be valid. We understand he will vigorously defend the legitimacy of the covenant in any further litigation and that he, alone, does not have the authority to grant exceptions to the setback requirement. His testimony at the public hearing underscores that understanding and that the 75’ setback must be met without expectation of exception. This is not a hardship created by the applicant, but created by the community covenant and their choice to enforce such through litigation
- Attorneys for the applicant have determined that unanimity of all owners of the subdivision would be required to modify the covenant – even just once for this lot. Therefore, modifying the 75’ covenant is not a reasonable expectation of the applicant, nor is such within the control of the applicant.
- The house architectural design was found by our firm to be less than average already at 37’ deep, so reduction of the depth of the house was deemed unreasonable.

---

**GJB Engineering, Inc.**  
P.O. Box 1214, Newington, VA 22122  
www.gjbengineering.com  
703-541-2000

4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Response to ERC on discussion related to RPAE request public hearing 12/6/17  
February 1, 2018  
Page 3 of 4

- The house architectural design was found by our firm to be average to below average in width (dependent on the factors considered) and though the house could be wider than the design submitted without negatively impacting the existing trees to be preserved just outside the currently proposed clearing and grading limits, it the applicant's opinion that they did not feel that was appropriate as they understood the need to minimize total impervious area. The applicant therefore has been sensitive to the need to develop a house product which is neither excessively wide or deep, and thus feels the house architectural design is reasonable for this particular lot as it minimizes impervious area and avoids, to the maximum extent possible, damage to or loss of existing mature trees and forest.

Upon these findings, the application dwelling was confirmed as meeting the standards of Chapter 118 for this application. The house was sited and graded allowing for a reasonable lawn within the front of the house for resident enjoyment, while minimizing the creation of lawn between the proposed house and the RPA core component stream and along the sides of the house. Slopes created along the sides are at a maximum for reasonable mowing by conventional equipment. Due to Floodplain Ordinance requirements, the dwelling's lowest part of the lowest floor of the home must be 18" above the floodplain elevation. The application design meets this requirement, with a factor of safety to boot, without any exception, but requires the grading along the rear and sides of the home to be slightly higher than would be otherwise necessary if no floodplain existed.

During application review by LDS this fall, their staff pushed for a reduction in the patio and deck which was proposed on the house, which the applicant acquiesced to and which is represented in the November 6, 2017 revised application which was presented to the ERC at the December public hearing. Staff also asked for additional backup and information related to the floodplain, which was also supplied to staff.

Subsequent to the December public hearing, at the request of Committee Member Green, over the next four weeks, our firm revisited the design and siting of the house, attempting three additional potential sitings and house configurations. We also discussed possible architectural design changes with the applicant. All additional options assessed were deemed to either be no improvement to the RPA, unreasonable in nature, or more impact on the RPA than the application house architectural and house siting presented to you in December.

**Thus, our firm certifies to the ERC that the design presented before your committee meets the standards of the Chesapeake Bay Preservation Ordinance as the minimum house size and location necessary to afford relief. LDS staff has concurred with our finding.**

---

**GJB Engineering, Inc.**  
P.O. Box 1214, Newington, VA 22122  
www.gjbengineering.com  
703-541-2000

4104 Woodlark Drive / Fairfax Hills, Section 1, Lot 42  
Response to ERC on discussion related to RPAE request public hearing 12/6/17  
February 1, 2018  
Page 4 of 4

Please also note that the US Army Corps of Engineers has made their Jurisdictional Determination subsequent to the submission of our application. A copy of their determination has been provided to the Clerk to the ERC for your file.

We stand available to answer any further questions you may have relative to the referenced submission.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Budnik', with a long horizontal flourish extending to the right.

Greg Budnik, P.E.  
Engineer for the Applicant

---

**GJB Engineering, Inc.**  
P.O. Box 1214, Newington, VA 22122  
[www.gjbengineering.com](http://www.gjbengineering.com)  
703-541-2000

Board Agenda Item  
June 19, 2018

10:50 a.m.

Matters Presented by Board Members

Board Agenda Item  
June 19, 2018

11:40 a.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
- (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
- (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
  - 1. Request for Authorization to File Interpleader Styled *Board of Supervisors for Fairfax County, Virginia v. Eva Ysaura Cotto and Alex A. Cotto a/k/a Alex Cotto Rivera* in Fairfax County Circuit Court
  - 2. *Barry McCabe v. Fairfax County Animal Shelter*, Case No. 1:18cv572 (U.S. Dist. Ct., E.D. Va.)
  - 3. *Steven Collado v. Fairfax County Government*, JCN VA00001079971 (Va. Workers' Compensation Comm'n)
  - 4. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Lillian F. Graf and Steven F. Graf*, Case No. CL-2017-0015518 (Fx. Co. Cir. Ct.) (Braddock District)
  - 5. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Maria E. Schaart and Elder C. Sandi Zambrana*, Case No. GV18-002877 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
  - 6. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Farhad Gulban*, Case No. GV18-007690 (Fx. Co. Gen. Dist. Ct.) (Lee District)
  - 7. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Brian K. Mason, Kenneth Norman Mason, and Bernice S. Mason*, Case No. GV18-007695 (Fx. Co. Gen. Dist. Ct.) (Lee District)
  - 8. In re: *January 10, 2018, Decision of the Board of Zoning Appeals of Fairfax County, Virginia; Blake D. Ratcliff and Sara B. Ratcliff v. Board of Supervisors of Fairfax County, Virginia*, Case No. CL-2018-0001836 (Fx. Co. Cir. Ct.) (Mason District)

9. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Muhammad Irfan Qureshi and Tayyaba Samina*, Case No. CL-2018-0007694 (Fx. Co. Cir. Ct.) (Mason District)
10. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ahmad Ellini and Parvin Ellini, Trustees of the Ellini Family Trust Dated August 21, 2015*, Case No. CL-2018-0004149 (Fx. Co. Cir. Ct.) (Providence District)
11. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County v. Jorge Alberto Broide*, Case No. CL-2010-0017885 (Fx. Co. Cir. Ct.) (Providence District)
12. *Leslie B. Johnson, Fairfax County Zoning Administrator v. David Edward Cusin Kettner and Rafaela Da Conceicao Otoni*, Case No. GV18-010761 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
13. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. K. Dian Green*, Case No. GV17-023490 (Fx. Co. Gen. Dist. Ct.) (Sully District)



Board Agenda Item  
June 19, 2018

3:00 p.m.

Joint Public Hearing on the Proposed Virginia Department of Transportation Six-Year Secondary System Construction Program for Fiscal Years 2019 Through 2024 and FY 2019 Budget

ISSUE:

Public hearing and Board approval of the proposed Virginia Department of Transportation (VDOT) Six-Year Secondary System Construction Program (SSYP) for Fiscal Years (FY) 2019 through 2024.

RECOMMENDATION:

The County Executive recommends that the Board approve the attached Secondary System Construction Program for FY 2019 through 2024 (Attachment 1), the FY 2019 Budget, and the resolution (Attachment 2) required by VDOT.

TIMING:

The Board is requested to act on this item on June 19, 2018, following the public hearing.

BACKGROUND:

The proposed SSYP has been prepared by VDOT, in coordination with County staff, pursuant to Section 33.2-331 of the *Code of Virginia*. This is an update of the previous Program which was the subject of a public hearing before the Board on June 20, 2017. Project schedule information is also included in the proposed program.

Due to changes in funding formulas implemented in Virginia over the past several years, roadway funding is largely allocated through the Commonwealth's Smart Scale and State of Good Repair programs. Consequently, no additional secondary road funds are expected in the future. The Commonwealth's Biennial Budget specifies that these changes will not affect the expenditure of the secondary funds that were allocated by July 1, 2018, provided that they are committed and expected to be expended as of January 1, 2019. Those secondary funds that remain unspent as of January 1, 2019, will be deallocated and transferred to the State of Good Repair Program unless such funds are allocated to a fully funded and active project. Therefore, the County can continue to utilize those secondary funds already allocated to projects.

Although the program has limited funds, there are two changes to the program for FY 2024.

- Funding available in FY 2024 for the Unpaved Road District Grant Program equals the available funding in FY 2023, \$9,379.00.
- Rolling Road – Route 638 (UPC 5559) was added to the list of projects included in the SSYP, but will be constructed using other funding sources.
- Telegraph Road (UPC 11012) is complete and will be removed at the next report.

Table A shows the annual VDOT Secondary System Construction Program for Fairfax County from FY 2008 through FY 2024.

**Table A**

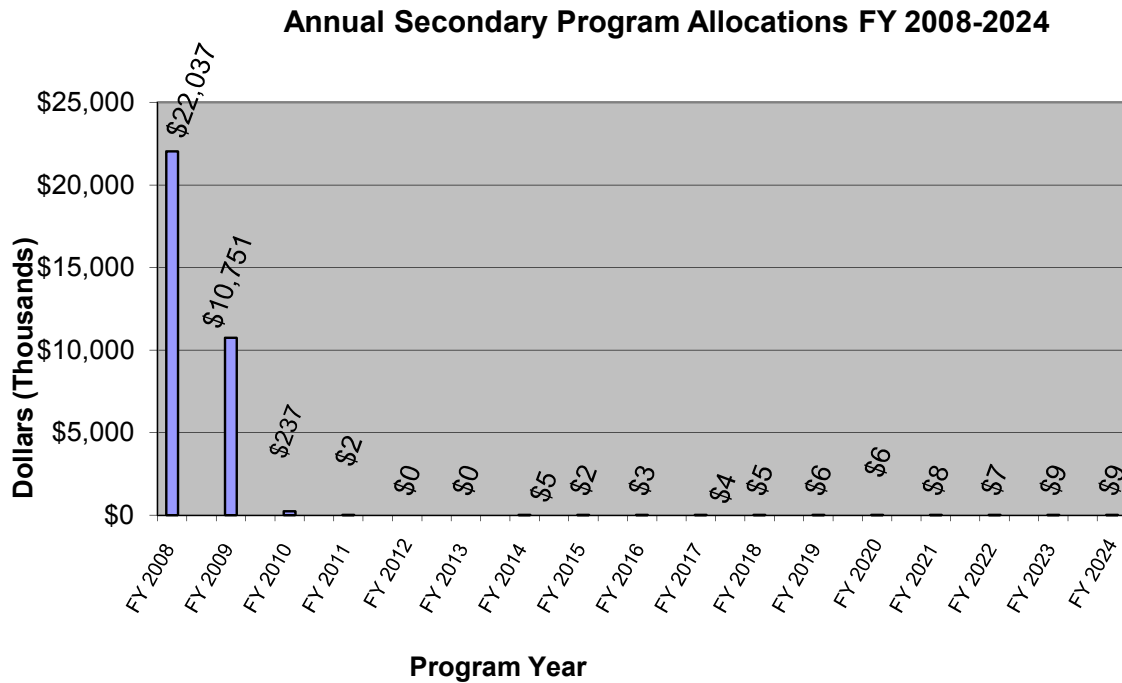


Table B shows the changes in the Six-Year Secondary Construction Program amounts from the FY 2003 – FY 2008 Program through the current Program.

**Table B: Secondary Program Comparison**

2003-2008	\$138,335,526
2004-2009	\$153,442,084
2005-2010	\$113,686,186
2006-2011	\$131,445,086
2007-2012	\$78,270,291
2008-2013	\$119,121,972
2009-2014	\$10,994,320
2010-2015	\$1,443,761
2011-2016	\$11,798
2012-2017	\$19,591
2013-2018	\$11,382
2014-2019	\$25,680
2015-2020	\$51,480
2016-2021	\$33,275
2017-2022	\$36,860
2018-2023	\$41,750
2019-2024 (projected)	\$45,836

FISCAL IMPACT:

There is no impact to the Fairfax County budget at this time. At such time as individual projects are constructed, the County may send VDOT any related funds that have been collected for a particular project by the County through proffers, construction escrows and/or other local funds.

ENCLOSED DOCUMENTS:

- Attachment 1: Secondary System Construction Program for FY 2019 through FY 2024
- Attachment 2: Resolution Approving Budget and Program.
- Attachment 3: Secondary Priority Road Widening Status Update

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT  
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT  
Brent Riddle, Coordination and Funding Division, FCDOT

Attachment 1

Secondary System  
 Fairfax County  
 Construction Program  
 Estimated Allocations

Fund	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	Total
CTB Formula - Unpaved State	\$6,425	\$5,852	\$0	\$0	\$0	\$0	\$12,277
Secondary Unpaved Roads	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TeleFee	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Residue Parcels	\$0	\$0	\$0	\$0	\$0	\$0	\$0
STP Converted from IM	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Federal STP - Bond Match	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Formula STP	\$0	\$0	\$0	\$0	\$0	\$0	\$0
MG Formula	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BR Formula	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other State Match	\$0	\$0	\$0	\$0	\$0	\$0	\$0
State Funds	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Federal STP	\$0	\$0	\$0	\$0	\$0	\$0	\$0
District Grant - Unpaved	\$0	\$0	\$8,216	\$6,921	\$9,379	\$9,379	\$33,895
<b>Total</b>	<b>\$6,425</b>	<b>\$5,852</b>	<b>\$8,216</b>	<b>\$6,921</b>	<b>\$9,379</b>	<b>\$9,379</b>	<b>\$46,172</b>

Board Approval Date:

-----

Residency Administrator

Date

-----

County Administrator

Date

District: Northern Virginia

County: Fairfax County

Board Approval Date:

2019-20 through 2023-24

Route	Road Name	Estimated Cost	Traffic Count
PPMS ID	Project #		Scope of Work
Accomplishment	Description		FHWA #
Type of Funds	FROM		Comments
Type of Project	TO		
Priority #	Length	Ad Date	
4007		<i>PE</i> \$0	0
100162	1204007	<i>RW</i> \$0	Safety
NOT APPLICABLE	COUNTYWIDE TRAFFIC SERVICES	<i>CN</i> \$861,779	16021
S	VARIOUS LOCATIONS IN COUNTY	<b>Total</b> \$861,779	Traffic Services include secondary speed zones, speed studies, and other new secondary signs.
0000.03	VARIOUS LOCATIONS IN COUNTY	3/1/2011	
4008		<i>PE</i> \$0	0
100373	1204008	<i>RW</i> \$0	Right of Way
NOT APPLICABLE	COUNTYWIDE RIGHT OF WAY ENGR.	<i>CN</i> \$0	16016
S	VARIOUS LOCATIONS IN COUNTY	<b>Total</b> \$0	USE WHEN IMPARTICAL TO OPEN A PROJECT: ATTORNEY FEES and ACQUISITION COST.
0000.04	VARIOUS LOCATIONS IN COUNTY	3/1/2011	
0638	ROLLING ROAD	<i>PE</i> \$5,887,063	18000
5559	0638029156	<i>RW</i> \$17,122,171	Reconstruction w/ Added Capacity
RAAP CONTRACT	ROLLING ROAD - RTE 638 - WIDEN TO 4 LANES	<i>CN</i> \$33,816,446	44003
STP	0.369 MILE NORTH ROUTE 286 (FAIRFAX COUNTY PARKWAY)	<b>Total</b> \$56,825,680	MPO Project. FY16 RS local match shown includes \$5M NVTA funds, \$5M local funds.
SECONDARY - ONE HEARING DESIGN	ROUTE 644 (OLD KEENE MILL ROAD)	7/29/2022	
0002.03	1.4		
0612	Colchester Road	<i>PE</i> \$60,000	
76256	0612029P87	<i>RW</i> \$50,000	Reconstruction w/o Added Capacity
RAAP CONTRACT	COLCHESTER ROAD - RTE 612 -RECON & PAVE GRAVEL ROAD	<i>CN</i> \$335,000	47004
STP	CHAPEL ROAD (ROUTE 641)	<b>Total</b> \$445,000	Unpaved Road Allocation
SECONDARY - ONE HEARING DESIGN	0.24 MILE NORTHWEST OF ROUTE 641	1/15/2028	
0003.01	0.2		
0611	TELEGRAPH ROAD	<i>PE</i> \$1,207,594	25900
11012	0611029303	<i>RW</i> \$1,098,441	Bridge, New Construction
NON VDOT	TELEGRAPH RD -RTE 611 - WIDEN TO 4-LANES	<i>CN</i> \$23,561,965	4H008
STP	ROUTE 613 (BEULAH STREET)	<b>Total</b> \$25,868,000	\$4.035 VNDIA Grant
SECONDARY - ONE HEARING DESIGN	LEAF ROAD	3/16/2011	
9999.00	1.0		

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, June 19, 2018, at which meeting a quorum was present and voting, the following resolution was adopted.

**PROGRAM ENDORSEMENT RESOLUTION**

WHEREAS, Sections 33.2-331 of the 1950 Code of Virginia, as amended, provides the opportunity for each county to work with the Virginia Department of Transportation in developing a Secondary Six-Year Road Plan,

WHEREAS, Anna Fortune, Program Manager, Virginia Department of Transportation, appeared before the board and recommended approval of the Six-Year Plan for Secondary Roads (FY2019 through FY2024) and the FY 2019 Budget for Fairfax County,

NOW, THEREFORE, BE IT RESOLVED that since said Plan appears to be in the best interests of the Secondary Road System in Fairfax County and of the citizens residing on the Secondary System, said Secondary Six-Year Plan (FY2019 through FY2024) and FY 2019 Budget are hereby approved as presented at the public hearing;

Adopted this 19<sup>th</sup> day of June, 2018, Fairfax, Virginia

ATTEST

\_\_\_\_\_

Catherine A. Chianese  
Clerk to the Board of Supervisors

## FY 2019 - 2024 Secondary Six Year Program Summary

**COST ESTIMATES IN THOUSANDS**

#	<u>SSYP Project</u>	FY 2018 COST <u>Jun-15</u>	FY 2019 COST <u>Jun-16</u>	CHANGE/ COST <u>INCREASE</u>	PERCENT COST INCREASE SINCE <u>Jun-15</u>	Bid/Advertisement Date	
						FY18	FY19
1	COLCHESTER ROAD RECONSTRUCTION AND PAVE GRAVEL ROAD	\$ 445	\$ 445	\$ -	0.0%	January-28	January-28
2	ROLLING ROAD	\$ 56,826	\$ 56,826	\$ -	0.0%	July-22	July-22
3	TELEGRAPH ROAD - WIDENING BEULAH TO LEAF ROAD	\$25,868	\$ 25,868	\$ -	0.0%	March-11	March-11
<b>TOTALS</b>		\$83,139	\$83,139	\$0	0.0%		

Board Agenda Item  
June 19, 2018

3:30 p.m.

Public Hearing on RZ 2018-SP-001 (Jag Development Company, LLC) to Rezone from C-3 and HC to PDH-20 and HC to Permit Multi-Family Residential Development with an Overall Density of 22.96 Dwelling Units Per Acre Including Affordable and Workforce Dwelling Bonus Units and Approval of the Conceptual Development Plan, Located on Approximately 3.93 Acres of Land (Springfield District)

This property is located in the SouthWest intersection of Legato Road and Legato Road. Tax Map 46-3 ((1)) 45, 46, 47, 48, 49 and 50

PLANNING COMMISSION RECOMMENDATION:

On May 17, 2018, the Planning Commission voted 12-0 to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2018-SP-001 and the associated CDP, subject to the proffers dated April 26, 2018;
- Approval of a modification of Part 4 of Section 11-203 of the Zoning Ordinance for the required multi-family dwelling loading space to that shown on the CDP/FDP;
- Approval of a waiver of Section 10-0306 of the Public Facilities Manual to request a waiver to the requirement of an on-site dumpster pad;
- Approval of a modification of Paragraph 10 of Section 11-102 of the Zoning Ordinance to permit driveway parking in front of garage parking (i.e, tandem parking) for multifamily 2-over-2 stacked units as shown on the FDP;
- Approval of a waiver of Part 3B of Section 17-201 of the Zoning Ordinance to request a waiver of the interparcel access requirements; and
- Approval of a modification of Paragraph 3 of Section 13-303 of the Zoning Ordinance to modify the transitional screening requirements along the northwestern property line (denoted as B-C on the FDP).

Concurrently, the Planning Commission voted 12-0 to approve FDP 2018-SP-001, subject to the Board of Supervisors' approval of RZ 2018-SP-001 and the associated CDP and, subject to development conditions revised May 17, 2018, as below:



Board Agenda Item  
June 19, 2018

7. A four-foot tall masonry screenwall, with brick or stone veneer, ~~may~~ must be utilized along Legato Road to provide screening to the vehicular access drive, as depicted on Sheet 13 of the CDP/FDP. This screenwall must be constructed of masonry material to reinforce the architectural character of the proposed dwelling units. Multi-layered landscaping and groundcovers

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Kelly Atkinson, Planner, DPZ

Board Agenda Item  
June 19, 2018

3:30 p.m.

Public Hearing on PCA 2010-PR-022-02/CDPA 2010-PR-022 (The Boro II-C Developer, L.P.) to Amend the Proffers and Conceptual Development Plan for RZ 2010-PR-022, Previously Approved for Hotel/Residential Options, to Permit an Option for Office with Accessory Retail Uses in Building C-1 at a Density of 12.46 Floor Area Ratio and Associated Modifications to Proffers and an Overall Density of 5.33 Floor Area Ratio, Located on Approximately 28,089 Square Feet of Land Zoned PTC, SC and HC (Providence District) (Concurrent with SE 2017-PR-029)

and

Public Hearing on SE 2017-PR-029 (The Boro II-C Developer, L.P.) to Permit an Increase in Floor Area Ratio for Office use within the Overall Development from 2.50 up to a Maximum of 2.93 and a Density of 12.03 on the Subject Site, Located on Approximately 28,089 Square of Land Zoned PTC, SC and HC (Providence District) (Concurrent with PCA 2010-PR-022-02 and CDPA 2010-PR-022)

This property is located on the SouthEast quadrant of the intersection of Greensboro Drive and Silver Hill Drive. Tax Map 29-3 ((15)) 7C4 (pt.), 7C5, 7C6, 7K2 (pt.) and 29-3 ((36)) 4A (pt.)

PLANNING COMMISSION RECOMMENDATION:

On May 24, 2018, the Planning Commission voted 10-0 (Commissioners Hart and Murphy were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 2010-PR-022-02 and CDPA 2010-PR-022, subject to the execution of proffers consistent with those dated March 23, 2018;
- Approval of SE 2017-PR-029, subject to the development conditions dated May 9, 2018;
- Approval of a waiver of Section 2-505 of the Zoning Ordinance to permit structures and vegetation on a corner lot as shown on the CDPA/FDPA;
- Approval of a modification of Section 2-506 of the Zoning Ordinance to allow for a parapet wall, cornice, or similar projection to exceed the height limit established by more than three (3) feet as may be indicated on the FDPA to screen mechanical equipment;

Board Agenda Item  
June 19, 2018

- Approval of a modification of Section 17-201 of the Zoning Ordinance to permit the streetscape and on-road bike lane system shown on the CDPA/FDPA in place of any trails and bike trails shown for the subject property on the Comprehensive Plan;
- Approval of a modification of Section 12-0508 of the Public Facilities Manual (PFM) to allow for tree preservation target deviations as justified by PFM 12-0508.3A (1) and 3A (3); and
- Approval of a modification of Section 12-0510 of the PFM to permit trees located in rights-of-way and easements to count toward the 10-year tree canopy requirement subject to the proffered replacement provisions.

Concurrently, the Planning Commission voted 10-0 (Commissioners Hart and Murphy were absent from the meeting) to approve FDPA 2010-PR-022-02-01, subject to development conditions dated May 9, 2018, and subject to the Board of Supervisors' approval of PCA 2010-PR-022-02 and CDPA 2010-PR-022.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt and Staff Report available online at:  
<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Bob Katai, Planner, DPZ

To be Deferred

Board Agenda Item  
June 19, 2018

3:30 p.m.

Public Hearing on PCA/CDPA 2017-DR-014 (Stanley Martin Companies, LLC) to Amend the Proffers and Conceptual Development Plan for RZ 2017-DR-014, Previously Approved for Multi-Family Residential Development to Incorporate Two-Over-Two Multi-Family Stacked Homes and Associated Modifications to Proffers and Site Design at a Maximum Floor Area Ratio of 0.99, Located on Approximately 11.6 Acres of Land Zoned PRM (Dranesville District)

This property is located on the South side of Dulles Technology Drive between River Birch Road and Sunrise Valley Drive. Tax Map 16-3 ((1)) 4M

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing was held on June 14, 2018, the decision was deferred to June 21, 2018. The Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:

Planning Commission Verbatim Excerpt (available after PC meeting) and Staff Report available online at:

<https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors>

STAFF:

Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)  
Sharon Williams, Planner, DPZ

Board Agenda Item  
June 19, 2018

4:00 p.m.

Public Hearing to Consider Adopting an Ordinance Expanding the Oakton Residential Permit Parking District, District 19 (Providence District)

ISSUE:

Public Hearing to consider a proposed amendment to Appendix G, of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to expand the Oakton Residential Permit Parking District (RPPD), District 19.

RECOMMENDATION:

The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix G, of the Fairfax County Code, to expand the Oakton RPPD, District 19.

TIMING:

On May 15, 2018, the Board authorized a Public Hearing to consider the proposed amendment to Appendix G, of the Fairfax County Code, to take place on June 19, 2018, at 4:00 p.m.

BACKGROUND:

Section 82-5A-4(a) of *The Code of the County of Fairfax, Virginia*, authorizes the Board to establish RPPD restrictions encompassing an area within 2,000 feet walking distance from the pedestrian entrances and/or 1,000 feet from the property boundaries of an existing or proposed high school, existing or proposed rail station, or existing Virginia college or university campus if: (1) the Board receives a petition requesting the establishment or expansion of such a District, (2) such petition contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block face of the proposed District, and (3) the Board determines that 75 percent of the land abutting each block within the proposed District is developed residential. In addition, an application fee of \$10 per address is required for the establishment or expansion of an RPPD.

Board Agenda Item  
June 19, 2018

Staff has verified that the petitioning blocks are within 1,000 feet from the property boundary of Oakton High School, and all other requirements to expand the RPPD have been met.

FISCAL IMPACT:

The cost of sign installation is estimated to be \$200. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:

Attachment I: Proposed Amendment to the Fairfax County Code  
Attachment II: Map Depicting Proposed Limits of RPPD Expansion

STAFF:

Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT  
Neil Freschman, Chief, Traffic Engineering Section, FCDOT  
Henri Stein McCartney, Sr. Transportation Planner, FCDOT  
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNCIL:

F. Hayden Coddington, Assistant County Attorney

Proposed Amendment

Amend *The Code of the County of Fairfax, Virginia*, by adding the following streets in Appendix G-19, Section (b), (2), Oakton Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

*Hatmark Court (Route 6803):*

From Hatmark Street to the cul-de-sac inclusive

*Hatmark Street (Route 6802):*

From Courthouse Road to the cul-de-sac inclusive

Fairfax County  
Department of Transportation  
Residential Permit Parking District  
Oakton (19)  
Providence District





Board Agenda Item  
June 19, 2018

4:00 p.m.

Public Hearing to Lease County-Owned Property at 1500 Shenandoah Road to A Child's Place, Inc. (Mount Vernon District)

ISSUE:

Public hearing to lease County-owned property to A Child's Place, Inc. for the continuation of child care services at Hollin Hall located at 1500 Shenandoah Road.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to lease County-owned property at 1500 Shenandoah Road to A Child's Place, Inc.

TIMING:

On May 15, 2018, the Board authorized the advertisement of a public hearing on June 19, 2018 to lease County-owned property at 1500 Shenandoah Road to A Child's Place, Inc.

BACKGROUND:

The Board of Supervisors is the owner of Hollin Hall, located at 1500 Shenandoah Road, on a County-owned parcel identified as Tax Map Number 1022 01 0002A. One-third of the building, comprising approximately 9,500 square feet, is occupied by a private child care center doing business as A Child's Place, Inc. ("A Child's Place"), a for-profit organization that has occupied the premises since 1989. The remaining two-thirds of the facility is utilized by the County's Hollin Hall Senior Center.

A Child's Place oversees a preschool curriculum for 90 children aged two to five years old and accommodates 65 to 75 of the overflow students from the School Age Child Care programs located at Stratford Landing, Fort Hunt Elementary and Waynewood Elementary Schools. During the summer, the facility administers a preschool curriculum for approximately 90 students and a summer activity camp for 80 children. These programs generated jobs for 30 full- and part-time employees who live locally in the area and whose ranks include students from West Potomac and Mount Vernon High Schools and patrons of the adjacent Senior Center.

The lease for A Child's Place is about to expire and the day care operator is seeking a new lease to continue to provide child care services at this site. The term of the new lease will be five (5) years, with one (1) option to extend the lease for an additional five (5) years if both parties agree. The annual rent shall be increased by an additional 10 percent to \$220,000 per year for the first year, with a 2.5 percent annual increase thereafter, to bring the rent in line with other market rents for similar facilities in the area.

Board Agenda Item  
June 19, 2018

Staff recommends that the Board authorize staff to execute all necessary documents to lease County-owned property at Hollin Hall to A Child's Place.

FISCAL IMPACT:

The proposed lease will generate approximately \$220,000 in revenue the first year with a 2.5 percent increase in each subsequent year. All revenue will be deposited in the general fund.

ENCLOSED DOCUMENTS:

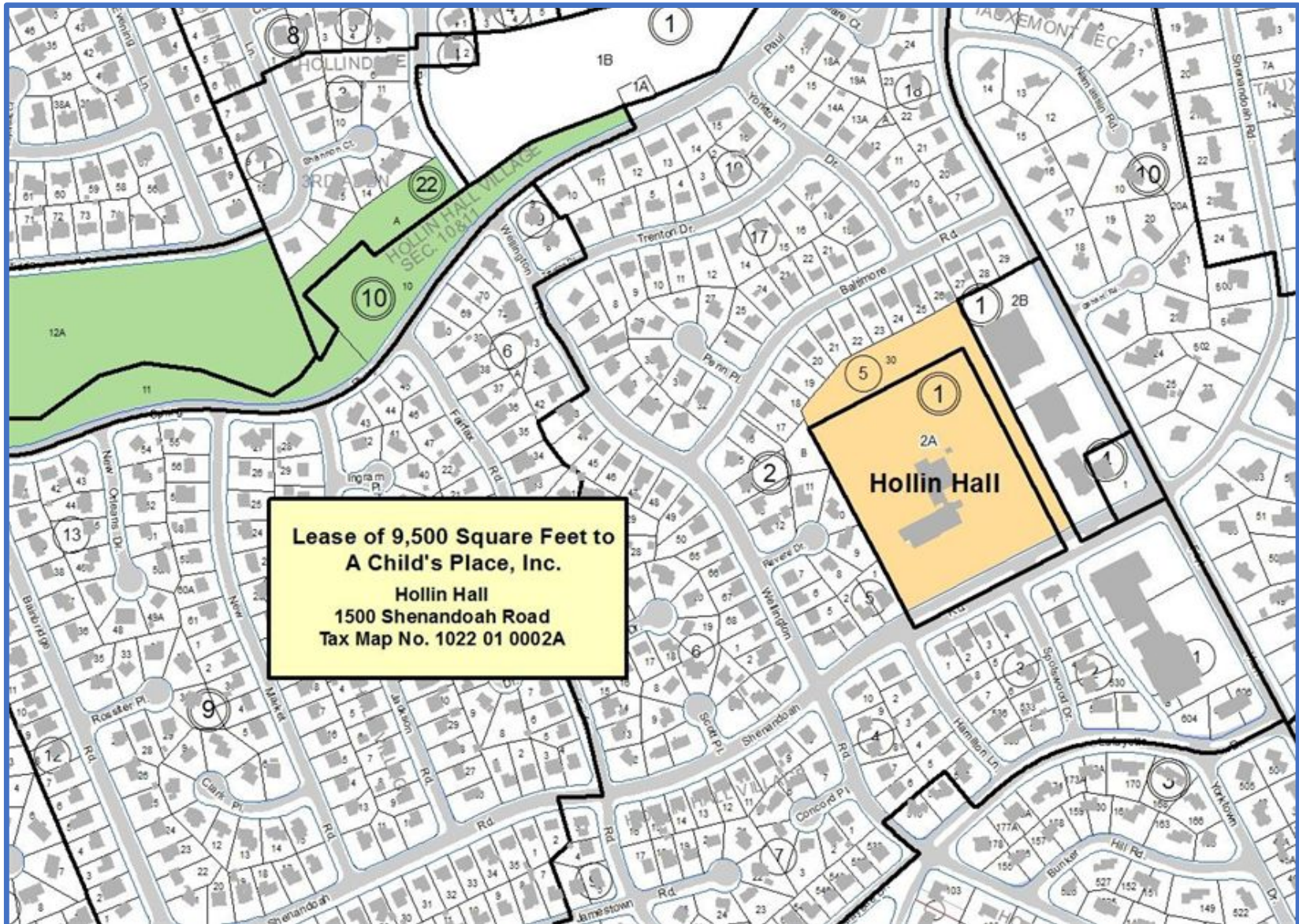
Attachment 1 – Location Map 1022 01 0002A  
Attachment 2 – Draft Lease Agreement

STAFF:

Joe Mondoro, Chief Financial Officer, Department of Management and Budget  
José A. Comayagua, Jr., Director, Facilities Management Department

ASSIGNED COUNSEL:

Alan M. Weiss, Assistant County Attorney



ATTACHMENT 1

# COUNTY OF FAIRFAX

## REVENUE LEASE



A CHILD'S PLACE  
HOLLIN HALL FACILITY  
1500 Shenandoah Road  
Alexandria, Virginia 22308

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**COUNTY OF FAIRFAX**  
**REVENUE AGREEMENT**

THIS LEASE AGREEMENT ("Lease"), made as of the 1<sup>st</sup> day July, 2018, by and between **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic, hereinafter referred to as the "Board" (whose address is Board of Supervisors of Fairfax County, Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035), and **A CHILD'S PLACE, INC.**, hereinafter referred to as the "Tenant" (whose address is 5252 Lyngate Court, Suite 201, Burke, Virginia 22015), witness:

WHEREAS, the Board and Tenant entered into a lease, dated as of July 1, 2008, pursuant to which Tenant leased from the Board the Premises as described in Section 1 (the "Initial Lease");

WHEREAS, the Initial Lease, as previously extended pursuant to the terms of the Initial Lease, will expire on June 30, 2018;

WHEREAS, both the Board and Tenant desire to enter into this Lease to permit Tenant to continue to occupy the Premises on the terms and conditions and for good and valuable consideration described in this Lease.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto mutually agree as follows:

**SECTION 1 PREMISES GRANT**

A. The Board does hereby Lease unto Tenant and Tenant does hereby Lease from the Board a portion of the building ("Building") at 1500 Shenandoah Road Alexandria, Virginia 22308, known as the Hollin Hall Facility, located in Fairfax County, Virginia. The leased premises hereinafter referred to as the "Premises" consist of approximately 9,375 rentable square feet of space in the Building, for use hereinafter described, the Premises separately outlined and shown on **Exhibit A**, attached hereto and hereby made a part hereof.

B. It is agreed that, because Tenant has been occupying the Premises pursuant to the Initial Lease, Tenant acknowledges that it has had full opportunity to examine the Building, and the Premises, and is fully informed, independently of the Board, as to the character, construction and structure of the Building. It is agreed that by occupying the Premises, Tenant formally accepts the same "as is" and acknowledges that the Board has complied with all requirements imposed upon it under the terms of this Lease. This Lease does not grant any right to light or air over or about the Premises or Building.

C. Tenant agrees to confine its use of the Premises to the areas specifically described in this Lease and any common areas necessary for ingress and egress, or otherwise necessary for the use thereof, which is specifically limited to hallways, stairways, doorways, and restrooms. Tenant agrees not to use, occupy, or obstruct any room or any area of the Building not specifically leased to the Tenant by this Lease.

## SECTION 2 TERM

This Lease shall be for a term of five years (“First Term”) commencing on July 1, 2018 (“Commencement Date”), the date of expiration of the Initial Lease, and ending at midnight on June 30, 2028; provided, however that Tenant and the Board agree that this Lease shall be automatically renewed for an additional term of five years, unless notice to the contrary is given by either party 60 days prior to the end of the First Term, and in this event, the Lease shall terminate at the end of the First Term. If the Lease is automatically renewed then all covenants, conditions and terms will remain the same, including that the basic rental terms shall be subject to escalation as noted in Section 4 in this Lease.

## SECTION 3 RENT

A. Tenant shall pay to the Board, in legal tender of the United States of America without setoff or deduction whatsoever as basic rent (“Basic Rent”) for said Premises the sum of Two Hundred and Twenty Thousand Dollars payable in advance on the first day of each month in the amount of Eighteen Thousand Three Hundred Thirty-Three and 33/100 Dollars, as adjusted in accordance with Section 4. All Basic Rent payments shall be made by check to Fairfax County, paid to the Board or its duly authorized agent, at the office of Facilities Management Department, 12000 Government Center Parkway, Suite 424, Fairfax, VA 22035.

B. In addition to the Basic Rent, Tenant shall pay all other costs as may be required under the terms of this Lease (“Additional Rent”). Such Additional Rent will include the costs the Board may incur if the Board is requested to provide services in addition to those routinely provided by the Board at the Building. Such fee for services will be based on an hourly rate as determined by the Board. Tenant shall pay any Additional Rent within 30 days after receiving a bill therefor.

C. If Tenant shall fail timely to pay any Basic Rent as aforesaid, although there shall have been no legal or formal demand made, or if Tenant shall fail timely to pay any Additional Rent within ten days after notice that such Additional Rent is delinquent, or shall break or violate any of the conditions or promises contained in this Lease, then, and in either of said events, this Lease shall, at the sole option of the Board, terminate upon written notice of termination by the Board and such failure or violation shall operate as a Notice to Quit, other Notice to Quit being hereby expressly waived, and the Board may proceed to recover possession of said Premises under and by virtue of the provisions of the law of the Commonwealth of Virginia. In the event of such re-entry, by the Board, Tenant shall nevertheless remain in all event liable and answerable for the full rental (including Additional Rent) to the date of retaking or re-entry, and the Tenant shall also be, and remain, answerable in damages for the deficiency in rental payments which the Board may thereby sustain in respect of the balance of the term.

D. Any Basic Rent or Additional Rent not paid timely by Tenant shall be subject, at the Board’s election, to a late charge of ten percent of any installment of such Basic Rent or Additional Rent.



#### SECTION 4 RENTAL ADJUSTMENT

On the date one (1) year following the Commencement Date, and thereafter at the end of each succeeding period of one (1) year throughout the term of this Lease, annual rent (and the monthly installments thereof) shall be increased according to the schedule attached as **Exhibit B**.

#### SECTION 5 SECURITY DEPOSIT

A. Tenant has deposited with the Board, pursuant to the Initial Lease, the sum of \$11,450.00 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease. It is agreed that in the event Tenant defaults in respect of any of the terms, provisions or conditions of this Lease, including, but not limited to, the payment of Basic Rent and Additional Rent, the Board may use, apply or retain the whole or any part of the security deposited to the extent the Board determines appropriate for the payment of any Basic Rent or Additional Rent or any other sums as to which Tenant is in default or for any such which the Board may expend by reason of Tenant's default under this Lease, including any damages or deficiency in the re-letting of the Premises, whether such damage or deficiency occurred before or after summary proceedings or other re-entry by the Board without waiving any other remedies the Board may have.

B. If Tenant shall fully comply with all of the terms, provisions, covenants and conditions of this Lease, the security deposit shall be returned to Tenant within 60 days after the termination of this Lease, after delivery of the entire possession of the Premises to the Board. The security deposit may not be used by the Tenant to apply toward Any Rent or Additional Rent at any time.

C. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither the Board nor its successors or assigns shall be bound by any such assignment or encumbrance.

#### SECTION 6 USE

Tenant represents covenants and warrants that the Premises will be used lawfully and agrees to abide by all the laws and regulations of all lawful authorities for the following purposes and for no other purposes: childcare center, nursery school, summer camp and Before and After School Programs. Tenant shall at all times be required to be in compliance with all governmental laws, rules and regulations applicable to Tenant's use of the Premises for child care purposes.

## SECTION 7 DEFAULT

Tenant shall be considered in default of this Lease upon happening of any of the following:

- A. A default in timely payment of any installment of Basic Rent from the date due;
- B. A default of ten days in payment of any Additional Rent following notice to Tenant that such Additional Rent is delinquent.
- C. It is hereby agreed that all personal property of the Premises shall be liable for rent distraint, except as to the unpaid balance of any conditional sales contract, and the Tenant hereby waives its homestead exception and the benefit of other laws exempting personal property from levy and sale for arrears rent.
- D. A breach of any term, covenant or condition of this Lease other than payment of Additional Rent continuing for more than ten days after written notice is received by the Tenant.
- E. Death, dissolution or commencement of any proceeding to dissolve Tenant, termination of existence, insolvency, business failure, appointment of the receiver or trustee of Tenant's property, assignment for the benefit of creditors of all or any part of the property of Tenant, or commencement of any proceedings under any bankruptcy or insolvency law by or against Tenant.
- F. The abandonment of the Premises by the Tenant or the discontinuance of the use permitted hereunder.
- G. In the event of default by Tenant, the Board may, at its option, terminate this Lease, and re-enter the Premises and again have, possess, and enjoy the same as and of its former estate, but no such re-entry shall be deemed an acceptance of the surrender of this Lease. In the event of re-entry for default, the Board may, at its option, relet the Premises or any part thereof, as agent for Tenant, for any sum which it may deem reasonable, but the Board shall not be under any obligation to relet the Premises for any purpose other than that specified in this Lease. In event of termination for default, Tenant shall remain liable for all its obligations under the Lease, and for such losses and damages as the Board may sustain as a result of Tenant's breach thereof, which together with reasonable attorneys' fees, shall be considered payable as rent hereunder.
- H. If the Tenant or its representatives shall neglect or fail to perform or observe any covenant herein contained on the Tenant's part to be kept or performed, or shall become a bankrupt or insolvent, or suffer any levy against his property on the said Premises or shall make an assignment for the benefit of creditors, then and in any such case, the Board, its successors or assigns, may declare the term of this Lease at end immediately, without notice or demand, enter into and upon the Premises, or any part thereof, repossess the same, expel the Tenant and those claiming under him (them) and remove his (their) effects forcibly, if necessary, without being deemed guilty of any manner of trespass, but without prejudice to the lawful remedies which the Board, its successors or assigns, may have for arrears of rent and the breach or covenants of this Lease.

## SECTION 8 PARKING

Tenant agrees that parking is shared with other occupants of the Facility, and that Tenant's share of such parking is undefined. Tenant agrees to cooperate fully with Board in keeping Tenant's agents, servants, guests or invitees from using any parking spaces at this facility except as expressly permitted by the Board. Any vehicles parked at the site shall be at the Tenant's own risk.

## SECTION 9 MODIFICATIONS AND REPAIRS

A. Tenant agrees to accept the Premises "as is" and to pay for any changes and repairs as may be necessary to make the Premises acceptable for the approved use. This shall not be construed to include major modification required to bring the building in compliance with Fairfax County or Commonwealth of Virginia Code requirements, which shall be the responsibility of the Board at its election.

B. The Board must approve in advance all improvements including but not limited to structural, interior and exterior modifications or additions. Approval(s) shall be given in writing. Tenant will submit plans and specifications for approval, which approval may be granted or withheld in the Board's discretion.

C. Tenant shall not be due any refund or payment of any kind from the Board for any modifications or improvements to the Premises made by or for the Tenant and all such improvements shall be and remain the sole property of the Board at the termination of the Lease.

D. Tenant shall not place any lettering, signs or objects on doors, windows or outside walls of Premises without the permission of the Board. No signs shall be visible through or on windows.

E. Tenant shall not, without the prior written approval of the Board, paint or paper or decorate or drive nails in or otherwise deface or injure the walls or ceiling or woodwork or floors of said Premises, install any electrically or mechanically operated equipment (including air conditioners) in said Premises. At the termination of the Lease, or any extension or renewal thereof, all such improvements shall be and remain the property of the Board. Tenant expressly covenants and agrees that the Board may, at its sole and absolute discretion, require such improvements to be removed and the Premises restored to their original condition, with such removal and restoration to be at Tenant's expense.

F. Tenant shall be responsible for repairs or maintenance necessitated by the negligence of Tenant, its agents, servants, guests or invitees; and all damage to the Premises caused by the Tenant, its agents, servants, guests or invitees, shall be repaired promptly by, or at the expense of the Tenant, at the option of the Board.

G. Any renovation or improvements made or obtained by Tenant are made at Tenant's sole risk and expense, and the Board shall not be held responsible for any claims for injury or loss of property due to renovation or improvements made by or for Tenant.

H. In use of said structural alterations, changes or improvements, Tenant may be required upon the termination of the Lease or any extension or renewal thereof to restore the Premises to their original condition. All movable partitions, trade fixtures, floor covering, or equipment installed in the Premises at Tenant's expense shall remain the property of the Tenant, and may be removed by Tenant. Tenant shall, however, repair any damage caused by such removal. In addition, Tenant will restore or repair any damage to the Premises which affects accessibility by the handicapped as defined in the American Disabilities Act (ADA).

I. As determined by the Board, any increased facility operating costs resulting from the modifications will be added to rental due hereunder and Tenant shall pay such costs as Additional Rent.

#### SECTION 10 SERVICES PROVIDED BY BOARD

In consideration of the rental herein reserved and of the foregoing covenants and agreements, the Board covenants and agrees:

A. To provide electric and heating services to the Premises, water and sewer services to the Building of which the Premises are a part; however, Board shall not be liable for failure to furnish any of the foregoing when such failure is caused by conditions beyond the control of the Board or by accidents, repairs or strikes nor shall such failure constitute an eviction; nor shall Board be liable under any circumstances for loss of or injury to property, however occurring, through or in connection with or incidental to the furnishing of any of the foregoing. These services shall be provided as follows:

(1) Electricity for normal business usage. Tenant's use of electric energy in the Premises shall not at any time exceed their pro-rata share of capacity of any of the electrical conductors and equipment in or otherwise serving the Premises, or based on the square footage of the Premises' area. To insure that such capacity is not exceeded and to avert possible adverse effect upon the Building's electric service, Tenant shall not, without Board's prior written consent in each instance (which shall may be granted or withheld in the Board's discretion), connect any additional fixtures, appliances or equipment (other than lamps, typewriters and similar small office machines) to the Building's electric distribution system or make any alteration or addition to the electric system of the Premises existing on the commencement date of this Lease.

(2) Heat to Premises, daily from 7:00 a.m. to 6:00 p.m., with nighttime setback, Monday through Friday, Fairfax County legal holidays excepted, during those portions of each year that heating may be necessary, so as to provide a temperature condition required for the comfortable occupancy of the Premises under normal business condition.

(3) Cold water for drinking, lavatory and toilet purposes, drawn through existing fixtures or fixtures installed by Tenant with Board's written consent, and hot water for lavatory purposes from the regular Building supply at reasonable temperatures.

(4) Custodial services shall be provided in a manner as determined by the Board for similar Buildings owned by Fairfax County.

B. To provide maintenance to the Premises during the term of this Lease or any extension thereof, in such manner as determined by the Board for heat, plumbing, electrical,

sewer and water systems, snow and ice removal, sanding or salting of the driveway, walks and parking areas, grass cutting, and repair to the doors, windows and roof, provided that such damage, defect or repair is not caused by negligence of the Tenant (including its employees, business invitees, customers, and clients).

C. As determined by the Board, any increased facility operating costs resulting from Tenant's operations exceeding normal business use will be added to the rental due hereunder and Tenant shall pay such costs as Additional Rent.

D. The Board shall, in no event, be liable for consequential damages, for any losses arising from or related to the Lease or the tenancy

## SECTION 11 LIABILITY AND INSURANCE

A. LIABILITY FOR DAMAGE TO PERSONAL PROPERTY AND PERSON: All personal property of the Tenant (including its employees, business invitees, customers, clients, etc.), agents, family members, guests or trespassers, in and on said Premises, shall be and remain at the sole risk of the Tenant, and Board shall not be liable to them for any damage to, or loss of such personal property arising from any act of any other persons nor from the leaking of the roof, or from the bursting, leaking or overflowing of water, sewer or steam pipes, or from heating or plumbing fixtures, or from electrical wires or fixtures, or from air-conditioning failure. The Board shall not be liable for any personal injury to Tenant (including its employees, business invitees, customers, and clients), arising from the use, occupancy and condition of the Premises.

B. LIABILITY INSURANCE: During the term of this Lease, Tenant will maintain a policy of commercial general liability insurance insuring the Board and Tenant against liability arising out of the ownership, use, occupancy or maintenance of the Premises. The insurance will be for not less than \$1,000,000 for bodily or personal injury to or death per occurrence. The insurance shall also insure the Board and Tenant against liability for property damage of at least \$1,000,000 per occurrence. The limits of the insurance will not limit the liability of Tenant. If the Tenant fails to maintain the required insurance the Board may, but does not have to, maintain the insurance at Tenant's expense. The policy shall expressly provide that it is not subject to invalidation of the Board's interest by reason of any act or omission on the part of Tenant.

C. TENANT'S INSURANCE POLICIES: Insurance carried by Tenant will be with companies acceptable to the Board. The Tenant will deliver to the Board certificate evidencing the existence and amounts of the insurance. No policy shall be cancelable for subject to reduction of coverage or other modification except after 60 days prior written notice to the Board. Tenant shall, at least 60 days prior to the expiration of the policies, furnish Board with renewals of "binders" for the policies, or Board may order the required insurance and charge the cost of Tenant.

D. Tenant will not do anything or permit anything to be done or any hazardous condition to exist ("Increased Risk") which shall invalidate or cause the cancellation of the insurance policies carried by Tenant. If Tenant does or permits any Increased Risk which causes an increase in the cost of insurance policies then Tenant shall reimburse Board for additional premiums attributable to any act, omission or operation of Tenant causing the increase in the

premiums. Payment of additional premiums will not excuse Tenant from terminating or removing the Increased Risk unless Board agrees in writing. Absent agreement, Tenant shall promptly terminate or remove the Increased Risk.

E. The Board, its officers, employees and volunteers, shall be named as an "additional insured" on the General Liability policy and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the Board may possess."

F. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and ". . . but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.

G. INDEMNIFICATION: The Tenant hereby agrees to indemnify and hold harmless the Board of Supervisors, Fairfax County, Virginia, its officers, employees, volunteers and agents, from any and all claims for bodily injuries and personal injuries, death or property damage, including cost or investigation, all expenses of litigation, including reasonable attorney fees and the cost of appeals arising out of any claims or suits because of the Tenant, including his agents, servants, employees, volunteers, business invitees, customers, guests or trespassers arising from the use, occupancy and condition of the Premises.

## SECTION 12 RESPONSIBILITIES OF TENANT

Tenant covenants and agrees:

A. Not to injure or deface or suffer to be injured or defaced the Premises or any part hereof and to promptly replace or repair any damages to said Premises, other than damage to structural portions not caused by negligence of the Tenant(including its employees, business invitees, Tenants, customers, clients).

B. To keep said Premises in good order and condition at all times and to give the Board prompt notice of any defects in, or damage to, the structure, equipment, or fixtures of said Premises.

C. Not to strip, overload, damage or deface the Premises or hallways, stairways, or other approaches thereto, of said Building, or the fixtures therein or used therewith, nor to suffer or permit any waste to, in or upon the Premises or any part of said Building.

D. Not to keep gasoline or other flammable material or any other explosive in or near the Premises or in or near the Building of which they are a part which will increase the rate of fire insurance on the Building beyond the ordinary risk established for the types of operations above provided to be conducted therein or in violation of Fairfax County regulations and any such increase in the insurance rate due to the above, or Tenant's special operations carried on within the Premises, shall be borne by Tenant. Tenant shall not by any act or thing placed upon the Premises or in or about the Building of which they are a part which makes void or voidable any insurance on the said Premises or Building; and Tenant expressly agrees to conform to all rules and regulations from time to time established by the Commonwealth of Virginia Insurance Rating Bureau, or any other authority having jurisdiction.

E. To take appropriate measures to conserve and efficiently use energy and other resources (i.e., heat, water, and utilities).

F. Not to use or allow to be used the Premises or any part thereof for any illegal, unlawful, or improper purpose, or for any activity which will be noisy, boisterous or in any other manner constitute a nuisance, to adjacent properties or the adjacent neighborhood or which may be likely to endanger or affect any insurance on the said Premises.

G. All covenants of Tenant relating to the use of, or misuse of, the Premises and of the property of which they are a part or anything therein shall be construed to include use or misuse thereof by Tenant's agents, employees, and invitees.

H. To supervise and conduct its activities in such a manner as to insure no disruption to the pleasurable and quiet enjoyment and possession of the other occupants of the Building.

I. To comply with all rules and regulations, conditions of this Lease; and any violation of said rules, regulations and conditions shall be a violation of this Lease.

J. Not to obstruct or use the sidewalks, passages, and staircases and other parts of the Building which are not occupied by the Tenant for any other purpose than ingress and egress.

### SECTION 13 DAMAGE BY FIRE OR CASUALTY

A. If the Premises or a material portion thereof shall be destroyed or damaged from whatever cause, so as to render them unfit for the purpose for which leased, and if it is not reasonably possible to repair such destruction or damage within 90 days, as determined by the Board, either party shall be entitled to terminate the Lease by written notice within fifteen (15) days after such destruction.

B. If the Premises can reasonably be repaired within 90 days from the date of damage, as determined by the Board, and the Board elects to repair such damage, then the Board will proceed to repair such Premises to the extent that monies are available from the Board's fire and casualty insurance, provided that if the extent of damage is such as to cause the cost of repairs to be more than the monies available under such insurance, or if the Board determines that it is uneconomical, impractical or unfeasible to make such repairs considering the extent of damage and the cost of repairs, the Board may, at its option, terminate the Lease on ten days written notice.

C. In the event of any damage or destruction to which the above provisions are applicable, rent shall be proportionally abated for the period from the date of such damage or destruction until the repair of the Premises or the termination of this Lease, as the case may be, to the extent which Tenant is deprived of normal occupancy and use of the Premises.

SECTION 14 SUBJECT TO ALL LAWS

This Lease shall be governed by the laws (including without limitation those relating to nondiscrimination) of the United States; the Commonwealth of Virginia, Fairfax County, and appropriate Board Regulations; and Tenant agrees to abide by these provisions.

SECTION 15 ACCESS

Tenant shall allow the Board, its employees or agents to have access to the Premises at all reasonable times for the purpose of inspection, or in the event of fire or other property damage, or at any other time for the purpose of performing any work required to be performed by the Board, or which the Board considers necessary or desirable, or for any other purpose for the reasonable protection of said Premises or of the Building of which the Premises are a part.

SECTION 16 WAIVER

A. No waiver by the Board of any breach of any covenant, condition, or agreement herein contained shall operate as a waiver of the covenant, condition, or agreement itself or of any subsequent breach thereof.

B. To the extent permitted by law, the Board shall not be liable for and the Tenant releases the Board and Board's agents, employees, contractors, volunteers and servants from, and waives all claims for damage to person or property sustained by the Tenant or any occupant of the Building or Premises resulting from the Building or Premises or any part of either or any equipment or appurtenance becoming out of repair, or resulting from any accident in or about the Building, or resulting directly or indirectly from any act or neglect of any Tenant or occupant of the Building or of any other person, including the Board, its agents or employees.

SECTION 17 NOTICE OF DEFECTS

Tenant shall give the Board prompt written notice of accidents or defects on or about or of damages to the Premises or the Building of which the Premises are a part.

SECTION 18 QUIET POSSESSION

The Board covenants and agrees that, if Tenant shall perform all the covenants, conditions, and agreements herein contained to be performed on Tenant's part, Tenant shall at all times during the term of this Lease and any renewal or extension thereof have the peaceable and quiet enjoyment and possession of the Premises.



## SECTION 19 COMPLIANCE WITH LAWS

It is understood, agreed and covenanted by and between the parties hereto that Tenant at its expense, will promptly comply with, observe, and perform all of the requirements of all of the statutes, ordinances, policies, rules, orders, procedures, and regulations now in effect or hereinafter promulgated whether required by the Federal Government, Commonwealth of Virginia, Fairfax County Government, Fairfax County School Board, Fairfax County Fire and Rescue Services Office, or other governmental agencies located within Fairfax County. If any act or failure to act on Tenant's part results in a violation of any of the above referred to statutes, ordinances, rules, orders, and regulations, upon due notice, Tenant will act promptly to comply therewith. Any violation of any of the above referred to statutes, ordinances, rules order and regulations will be deemed a default under Section 7 of this Lease.

## SECTION 20 SURRENDER OF POSSESSION

Tenant covenants, at the expiration or other termination of this Lease, to remove all goods and effects from the Premises not the property of the Board, and to yield up to the Board the Premises and all keys and locks and other fixtures connected therewith (except trade fixtures and other fixtures belonging to Tenant), in good repair, order and condition in all respects, reasonable wear and use thereof and damage by fire or other casualty and damage from any risk with respect to which Tenant is not herein expressly made liable, excepted.

## SECTION 21 BENEFIT AND BURDEN

The provisions of this Lease shall be binding upon, and shall inure to the benefit of the parties hereto and each of their respective representatives.

## SECTION 22 ASSIGNMENT

The Tenant shall not transfer nor assign this Lease, nor let or sublet the whole or any part of the said Premises or permit any other person, firm or corporation to occupy or use any part of said Premises without the written consent of the Board first had and obtained.

## SECTION 23 MAILING NOTICES

Any notice which the Board may desire or be required to give the Tenant shall be deemed sufficiently given or rendered, if in writing, delivered to the Tenant by certified or registered mail, return receipt requested, addressed to the Tenant at A Child's Place, Inc. c/o Ms. Julie Lee, President, 5252 Lyngate Court, Suite 201, Burke, Virginia 22015; and Jason Smolen, Trustee, Fifth Floor, 8045 Leesburg Pike, Vienna, Virginia 22182, or at the Premises. Any notice which the Tenant may desire or be required to give the Board shall be deemed sufficiently given or rendered, if in writing, delivered to the Board by certified or registered mail, return receipt requested, addressed to Facilities Management Department at Fairfax County Government

Center, 12000 Government Center, Suite 424, Fairfax, Virginia 22035, Attention: Leasing Department, or other such places as Tenant or Board may from time to time designate in writing. Any notice given hereunder shall be deemed delivered when the return receipt is signed or refusal to accept the notice is noted thereon.

#### SECTION 24 LIENS

If any mechanic's lien or liens shall be filed against the Premises for work done or materials furnished to Tenant or its sublessees, Tenant, within thirty (30) days after notice thereof, at its expense will cause such lien or liens to be discharged by filing or causing to be filed the bond or bonds for that purpose required by law or provide other suitable security.

#### SECTION 25 RULES AND REGULATIONS

Tenant and its agents and employees shall abide by and observe such reasonable rules and/or regulations as may be promulgated from time to time by the Board for the operation and maintenance of the Building, provided that the same are in conformity with common practice and usage and are not inconsistent with the provisions of this Lease and a copy thereof is sent to Tenant. Nothing contained in this Lease shall be construed to impose upon the Board any duty or obligation to enforce such rules and/or regulations, or the terms, conditions or covenants contained in any other Lease as against any other Tenant, and the Board shall not be liable to Tenant as against any other Tenant, and the Board shall not be liable to Tenant for violation of the same by any other Tenant, its employees, agent, business invitees, Tenants, customers, clients, family members or guests.

#### SECTION 26 AUTHORITY TO CONTRACT

The Board covenants that it has a right to make this Lease for the term aforesaid, and that if Tenant shall pay the rental and perform all of the covenants, terms and conditions of Lease hereby created, freely, peaceably and quietly occupy and enjoy the full possession of the Premises without molestation or hindrance by Board or any party claiming through or under Board.

#### SECTION 27 NO PARTNERSHIP

Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Board and Tenant, or to create any other relationship between the parties hereto other than that of Board and Tenant.

SECTION 28 APPLICABLE LAW

The Board and Tenant agree to be bound by the Laws of the Commonwealth of Virginia in any proceeding, whether in law or in equity, with respect to any dispute arising under this Lease.

SECTION 29 COMMON AREAS

The Board reserves the right to alter the common areas, as deemed necessary, in the sole discretion of the Board, so long as such alteration does not interfere with the Tenant's reasonable use of the space for the purposes contemplated in contracting for the space. This includes but is not limited to the parking area, grounds, common hallways, walkways, etc. and such right shall not be infringed by Tenant.

SECTION 30 TIME OF ESSENCE

Time is of the essence with respect to the performance of each of the covenants and agreements under this Lease.

SECTION 31 AGREEMENT AND COVENANT

Every term, condition, agreement or provision contained in this Lease that imposes any obligation on Tenant or the Board shall be deemed to be also a covenant by Tenant or the Board.

SECTION 32 SEVERABILITY

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws in effect during the term of this Lease, it is the intention of the parties that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

SECTION 33 HOLDING OVER

If Tenant shall not immediately surrender the Leased Premises on the date of expiration of the term hereof, and subject only to the Board's approval, Tenant shall, by virtue of the provisions hereof become a Tenant on a month to month basis. Tenant, as a monthly Tenant, shall be subject to all of the conditions and covenants of this Lease as though the same had

originally been a monthly tenancy. Tenant shall give to Landlord at least 30 days written notice of an intention to quit the Leased Premises, and Tenant shall be entitled to 30 days written notice from the Landlord to quit the Leased Premises.

#### SECTION 34 APPROPRIATIONS

Any and all of the Board's financial obligations under this Lease are subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations.

#### SECTION 35 ENTIRE AGREEMENT

This Lease, together with any EXHIBITS attached hereto and referenced herein, contains the entire and only agreement between the parties. No oral statements or representations or prior written matter not contained or referred to in this Lease shall have any force or effect. This Lease shall not be modified in any way except by a writing executed by both parties hereto. No waiver of any provisions of this Lease shall be deemed to have been made, unless it be in writing and signed by both parties hereto.

SIGNATURE PAGE

IN WITNESS WHEREOF the parties hereto have affixed their signatures all as of the date first above written.

**WITNESS:**

**LANDLORD:**

**BOARD OF SUPERVISORS OF FAIRFAX  
COUNTY, VIRGINIA**

\_\_\_\_\_

\_\_\_\_\_

By:  
Its:

**WITNESS:**

**TENANT:**

**A CHILD'S PLACE, INC.**

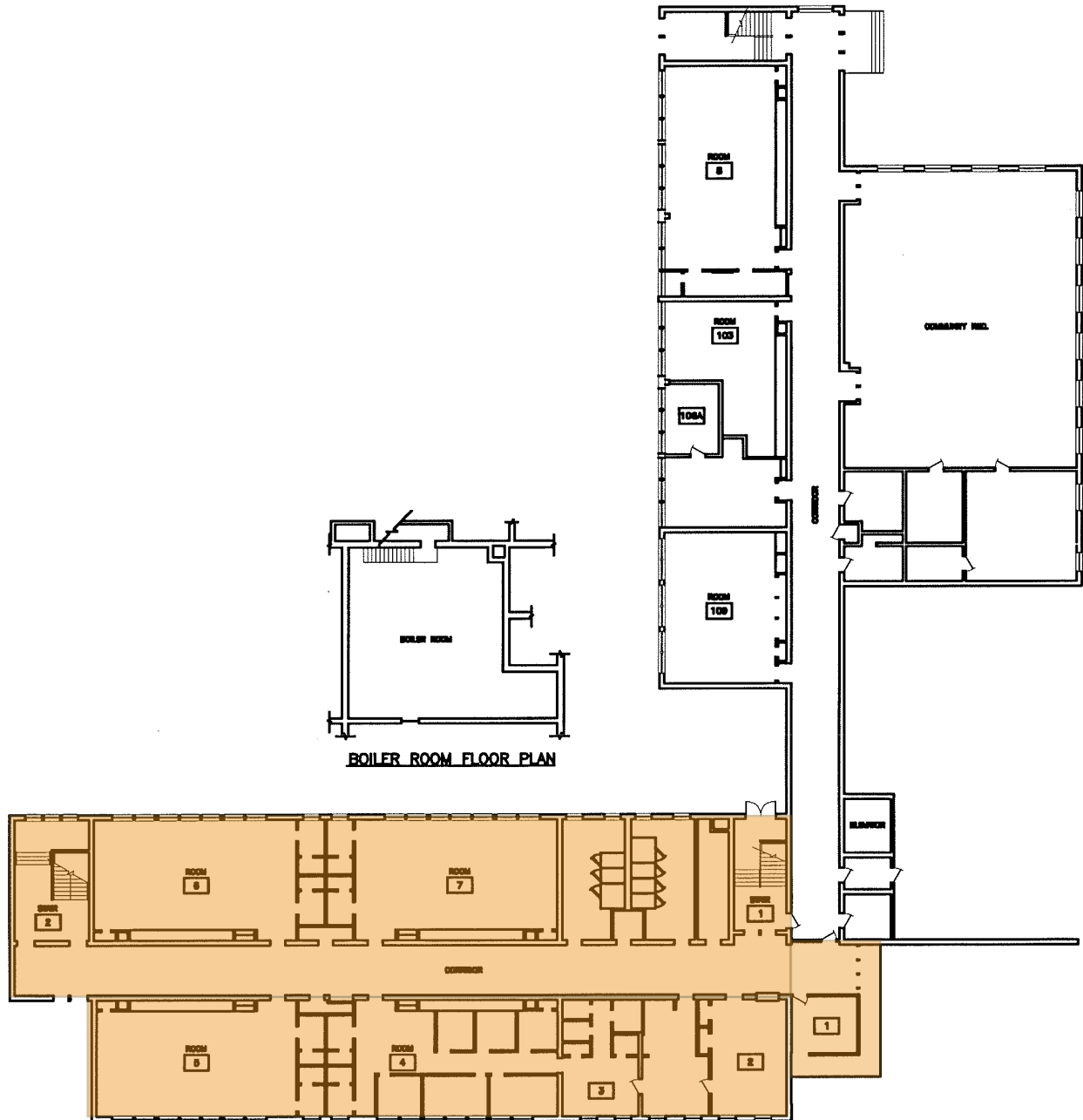
\_\_\_\_\_

\_\_\_\_\_

By:  
Its:

# EXHIBIT A

FAIRFAX COUNTY  
ASSET #HSA13  
HOLLIN HALL CENTER  
FIRST FLOOR

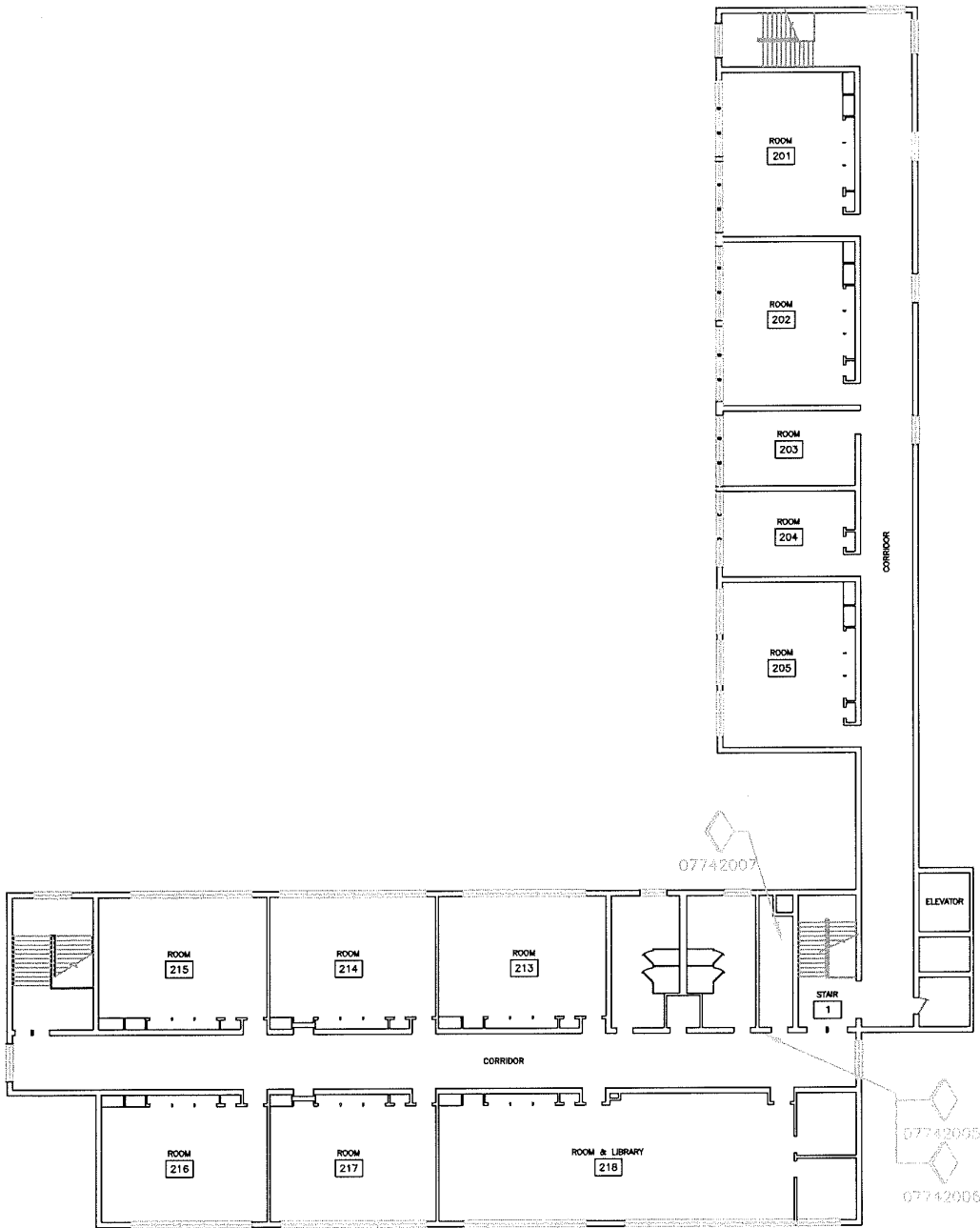


= Leased Area for A Child's Place



FAIRFAX COUNTY  
ASSET #HSA13  
HOLLIN HALL CENTER  
SECOND FLOOR

Scale: 1/32"=1'-0"



## EXHIBIT B

### A Child's Place - Hollin Hall located at 1500 Shenandoah Road Alexandria, Virginia 22308 Rental Schedule for Annual 2.5% Escalation

	Lease Year		Monthly Payment	Annual Cost
Year 1	7/1/2018	6/30/2019	\$18,333.33	\$220,000.00
Year 2	7/1/2019	6/30/2020	\$18,791.67	\$225,500.00
Year 3	7/1/2020	6/30/2021	\$19,261.46	\$231,137.50
Year 4	7/1/2021	6/30/2022	\$19,742.99	\$236,915.94
Year 5	7/1/2022	6/30/2023	\$20,236.57	\$242,838.84
Year 6*	7/1/2023	6/30/2024	\$20,742.48	\$248,909.81
Year 7	7/1/2024	6/30/2025	\$21,261.05	\$255,132.55
Year 8	7/1/2025	6/30/2026	\$21,792.57	\$261,510.87
Year 9	7/1/2026	6/30/2027	\$22,337.39	\$268,048.64
Year 10	7/1/2027	6/30/2028	\$22,895.82	\$274,749.85

\* If both Board and Tenant agree to the exercise of the five-year option to extend the lease term.



Board Agenda Item  
June 19, 2018

4:00 p.m.

Public Hearing on Proposed Amendments to the Code of the County of Fairfax, Virginia - Chapter 30 (Minimum Private School and Child Care Facility Standards), Article 1 (In General) and Article 3 (Home Child Care Facilities)

ISSUE:

Public hearing to consider amendments to The Code of the County of Fairfax, Virginia Chapter 30, Articles 1 and 3. The amendments will update the list of barrier crime offenses, replace current background check requirements with a new fingerprint based national background check, require out of state central registry searches for any provider and/or adult resident who has lived in another state within the previous five years, and deletes language referencing training hour thresholds that are no longer valid.

RECOMMENDATION:

The County Executive recommends adoption of the proposed amendments to Chapter 30, Articles 1 and 3 of the Fairfax County Code.

TIMING:

On May 15, 2018, the Board of Supervisors authorized a public hearing to take place on June 19, 2018 to consider amendments to the Fairfax County Code, Chapter 30, Articles 1 and 3. This ordinance would become effective July 1, 2018.

BACKGROUND:

Chapter 30, Article 1 of the Fairfax County Code provides definitions for words and phrases pertaining to minimum private school and child care facility standards. Section 30-1-1 of this Chapter outlines the barrier offenses which bar an applicant from obtaining a home child care facility permit. Chapter 30, Article 3, of the Fairfax County Code regulates Home Child Care Facilities in which a person cares for four or fewer children. Section 30-3-2 of this Chapter sets forth the requirements for the applicant of a proposed home child care facility and each adult resident in the facility.

The General Assembly amended its definition of offenses that mandate a denial or revocation of a state child care license in 2017. The proposed amendment to Section 30-1-1 brings the Fairfax County Code's definition of barrier offenses in line with those offenses that mandate a denial or revocation of a state child care license.

Section 30-3-2 currently requires a search of the Virginia Central Criminal Records Exchange every three years for each applicant and adult resident in a facility. In addition, this section requires a search of child protective services agencies every three years for each applicant, adult resident, and minors age 14 and older to determine if the

Board Agenda Item  
June 19, 2018

individual has been the subject of a founded complaint of abuse or neglect. The Office for Children is proposing to replace the state search with a fingerprint-based national background check every five years for each applicant and adult resident in the facility, with a requirement that existing providers and adult residents complete the fingerprint-based national background check by September 30, 2018. The Office for Children is also proposing to change the child protective services search to every five years for each applicant, adult resident and minors age 14 and older. The amendment reflects new federal and state requirements for background checks for child care facilities and brings the County's ordinance in line with those state and federal requirements.

Currently, the cost to complete a state background check is \$15.00. The current cost of the fingerprint-based national background check is \$33.72, which will be an increased cost to the provider of \$18.72.

The proposed amendment to Section 30-3-2 also authorizes the Office for Children to obtain a copy of the results of a search of the central registry maintained pursuant to Va. Code § 63.2-1515, and any child abuse and neglect registry or equivalent registry maintained by any other state in which the applicant and/or any adult resident has resided in the preceding five years for any founded complaint of child abuse or neglect. This proposed amendment will align the Fairfax County Code with new state licensing requirements for child care facilities.

The proposed amendments also delete language from Section 30-3-4 that reference annual training hour requirements, which set forth time deadlines that have expired and serve no further purpose.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Amendments to The Code of the County of Fairfax, Virginia Chapter 30, Articles 1 and 3.

STAFF:

Tisha Deeghan, Deputy County Executive  
Nannette M. Bowler, Director, Department of Family Services  
Anne-Marie D. Twohie, Director, Office for Children, Department of Family Services

ASSIGNED COUNSEL:

Daniel Robinson, Assistant County Attorney



1 370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-  
2 374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-  
3 406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1,  
4 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-  
5 478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; any  
6 violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94; any felony  
7 violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5,  
8 § 18.2-250, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-  
9 258.1, or 18.2-258.2; (ii) any substantially similar offense under the laws of another  
10 jurisdiction; (iii) any offense set forth in Va. Code § 9.1-902 that results in the person's  
11 requirement to register with the Sex Offender and Crimes Against Minors Registry  
12 pursuant to Va. Code § 9.1-901, including any finding that a person is not guilty by reason  
13 of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the  
14 Virginia Code of an offense set forth in Va. Code § 9.1-902 that results in the person's  
15 requirement to register with the Sex Offender and Crimes Against Minors Registry  
16 pursuant to Va. Code § 9.1-901, or any substantially similar offense under the laws of  
17 another jurisdiction, or any offense for which registration in a sex offender and crimes  
18 against minors registry is required under the laws of the jurisdiction where the offender  
19 was convicted; (iv) any other felony not included in clause (i), (ii), or (iii), unless five  
20 years have elapsed from the date of the conviction; or (v) any offense listed as a "Barrier  
21 crime" in Va. Code § 19.2-392.02, including all subsequent amendments or modifications  
22 thereto. (a) any of the following offenses set out in the *Virginia Code* : a felony violation  
23 of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in  
24 Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as  
25 set out in § 18.2-41; abduction as set out in § 18.2-47(A) or (B); abduction for immoral  
26 purposes as set out in § 18.2-48; assaults and bodily woundings as set out in Article 4 (§  
27 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as  
28 set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threats of death or bodily  
29 injury as set out in § 18.2-60; felony stalking as set out in § 18.2-60.3; a felony violation  
30 of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7 (§  
31 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.)  
32 of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter  
33 5 of Title 18.2; any felony violation relating to possession or distribution of drugs as set  
34 out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive by shooting as set  
35 out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289;  
36 aggressive use of a machine gun as set out in § 18.2-290; use of a sawed off shotgun in a  
37 crime of violence as set out in § 18.2-300(A); pandering as set out in § 18.2-355; crimes  
38 against nature involving children as set out in § 18.2-361; incest as set out in § 18.2-366;  
39 taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1; abuse and  
40 neglect of children as set out in § 18.2-371.1; failure to secure medical attention for an  
41 injured child as set out in § 18.2-314; obscenity offenses as set out in § 18.2-374.1;  
42 possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of  
43 pornography as set out in § 18.2-374.3; abuse and neglect of incapacitated adults as set  
44 out in § 18.2-369; employing or permitting a minor to assist in an act constituting an  
45 offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-  
46 379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out

1 ~~in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or (b) an equivalent offense~~  
 2 ~~in another state; or (c) any other felony unless five years have elapsed since the~~  
 3 ~~conviction.~~ Convictions shall include prior adult convictions and juvenile convictions and  
 4 adjudications of delinquency based on a crime that would be a felony if committed by an  
 5 adult within or outside the Commonwealth.

6 (2) If the provider or a person who resides in the home is the subject of a founded complaint  
 7 of child abuse or neglect within or outside the Commonwealth; and

8 (3) If the provider makes a false statement regarding a material fact on an application for a  
 9 home child care permit under this Chapter; this bar shall remain in effect for a period of  
 10 one year from the time the permit is denied or revoked on this basis.

11 *Director of Health* means the Director of the Fairfax County Health Department or the  
 12 authorized agent of the Director of the Fairfax County Health Department.

13 *Director of the Office for Children* means the Director of the Fairfax County Office for  
 14 Children or the authorized agent of the Director of the Fairfax County Office for Children.

15 *Home child care facility* means any facility located in a dwelling or mobile home, as defined  
 16 in Article 20 of Chapter 112 of the Fairfax County Code (the Zoning Ordinance), where a person,  
 17 for compensation, regularly provides care, protection, supervision and guidance to one or more  
 18 children who do not reside in the facility and who are not attended by a parent, guardian or legal  
 19 custodian while they are in that facility, during a part of the day for at least four days of a calendar  
 20 week. If, on a regular basis, a person receives compensation for the care, protection, supervision  
 21 and guidance of one or more children in a structure other than a dwelling or mobile home, as  
 22 defined in the Zoning Ordinance, that facility shall be deemed to be a child care center and included  
 23 within those facilities defined in this Section. A home child care facility does not include: (i) any  
 24 family day home licensed by the Commonwealth pursuant to *Virginia Code* § 63.2-1701 or any  
 25 facility exempted from licensure by *Virginia Code* § 63.2-1715; (ii) any dwelling or mobile home  
 26 where a person provides care solely for children who reside there; or (iii) any dwelling or mobile  
 27 home where a person provides care solely for relatives of the resident owner or tenant. However,  
 28 if on a regular basis, a person receives compensation for the care, protection, supervision and  
 29 guidance of one or more children who do not reside in that dwelling or mobile home and who are  
 30 not attended by a parent, guardian or legal custodian while they are in that dwelling or mobile  
 31 home during a part of the day for at least four days of a calendar week, and a home child care  
 32 facility is established thereby, then any children who are related to the person who provides such  
 33 care and are present in that dwelling or mobile home and any other children who reside in that  
 34 dwelling or mobile home shall be counted and considered in determining whether the facility  
 35 complies with the provisions of this Chapter.

36 *Occasional child care* means care provided on an hourly basis, for one or more children  
 37 between the ages of six weeks and 12 years of age, for a period not to exceed four hours within  
 38 any one day, which is contracted for by a parent, guardian, or legal custodian for the same child  
 39 not more than ten days within a calendar month.

40 *Permit* means authorization from the County to operate a private school, nursery school, child  
 41 care center or home child care facility for the care, guidance, education, training or protection of  
 42 children in compliance with this Chapter.

1 *Private school, nursery school, or child care center* means any place, home, facility, or  
 2 institution, however designated, or any part thereof, that (1) is eligible for an exemption from state  
 3 licensure pursuant to *Virginia Code* §§ 63.2-1716 and 63.2-1717; (2) is operated for the purposes  
 4 of providing care, guidance, education or training; and (3) receives on a regular basis, for any  
 5 period of more than one hour but less than twenty-four hours in any twenty-four-hour period, one  
 6 or more children under the age eligible for enrollment in the Fairfax County Public Schools who  
 7 are not attended by a parent, guardian or person with legal custody. A home child care facility, as  
 8 defined in this Section, shall not be included within this definition.

9 *Provider* means the adult responsible for obtaining the permit and for the day-to-day operation  
 10 of the home child care facility. The provider is responsible for providing care, protection,  
 11 supervision, and guidance to children in a home child care facility.

12 *Substitute Care Provider* means any person who provides care, protection, supervision, and  
 13 guidance to children when the provider is away from the home child care facility.

### 14 **Article 3. – Home Child Care Facilities.**

#### 15 **Section 30-3-2. - Annual permit application, issuance or denial.**

17 (a) A person proposing to operate a home child care facility, and each adult who resides in the  
 18 proposed facility, shall submit to fingerprinting and shall provide personal descriptive  
 19 information to be forwarded along with each individual's fingerprints through the Central  
 20 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of  
 21 obtaining criminal history record information regarding each such person. The applicant shall  
 22 also submit an application on a form prepared by the Director of the Office for Children, which  
 23 shall include:

24 (i) The name and address of the home child care facility;

25 (ii) The name of the applicant;

26 (iii) A statement of whether the applicant currently holds or previously held a home child care  
 27 facility permit in the County;

28 (iv) The names of all persons who reside in the home;

29 (v) A sworn statement from the applicant and each adult who resides in the proposed facility  
 30 stating whether he or she has ~~committed any barrier offense, ever been convicted of or is~~  
 31 ~~the subject of any pending charges for any offense within or outside the Commonwealth~~  
 32 and consent forms signed by the applicant and each adult who resides in the proposed  
 33 facility allowing the Director of the Office for Children to obtain the results of the  
 34 criminal history record search conducted in accordance with Section 30-3-  
 35 2(b)(iii).~~request a search of the Central Criminal Records Exchange for files on each such~~  
 36 ~~person, and payment of an investigation fee in an amount equal to the fee established by~~  
 37 ~~the Virginia State Police for conducting a records search multiplied by the number of~~  
 38 The applicant must pay any fee required in connection with such criminal history  
 39 investigation for each persons making disclosures and providing consent forms;  
 40 ~~When the Central Criminal Records Exchange records indicate that any such person has a~~  
 41 ~~criminal record in another state, or when the Director otherwise deems appropriate, the~~

1 ~~Director may also require that the applicant or such adult who resides in the proposed~~  
 2 ~~facility consent to and pay for a national criminal background check;~~

- 3 (vi) ~~A sworn S~~statements from the applicant and each adult who resides in the proposed  
 4 facility ~~stating the names of all states in which he or she has lived in the 5 years prior to~~  
 5 ~~the date of the application and stating whether he or she has been the subject of a founded~~  
 6 ~~complaint of child abuse or neglect within or outside the Commonwealth of Virginia and~~  
 7 ~~consent forms signed by the applicant and each adult who resides in the proposed facility~~  
 8 ~~giving consent to the Director of the Office for Children to obtain a copy of the results of~~  
 9 ~~a search of the central registry maintained pursuant to Va. Code § 63.2-1515, and any~~  
 10 ~~child abuse and neglect registry or equivalent registry maintained by any other state in~~  
 11 ~~which the applicant or any adult who resides in the proposed facility has resided in the~~  
 12 ~~previous five years for any founded complaint of child abuse or neglect;~~ ~~and the applicant~~  
 13 ~~shall also provide sworn~~ statements from a parent, guardian or legal custodian on behalf  
 14 of all minors age 14 and older who reside in the proposed facility, ~~stating whether the~~  
 15 ~~minor has been the subject of a founded complaint of child abuse or neglect and consent~~  
 16 ~~forms signed the parent, guardian or legal custodian of all minors age 14 and older who~~  
 17 ~~reside in the proposed facility, giving~~ ~~consenting to the release of information~~ to the  
 18 Director of the Office for Children ~~to obtain a copy of the results of a search of the central~~  
 19 ~~registry maintained pursuant to Va. Code § 63.2-1515 for any from child protective~~  
 20 ~~services investigating agencies reflecting whether any such individual has been the~~  
 21 ~~subject of a founded complaint of child abuse or neglect;~~ ~~the term "child protective~~  
 22 ~~services" shall have the meaning defined by Virginia law;~~
- 23 (vii) Copies of the applicant's current certifications in first aid and cardiopulmonary  
 24 resuscitation (CPR);
- 25 (viii) — Proof of the applicant's compliance with the training requirements established in  
 26 Section 30-3-4(b), which shall consist of records provided by the trainer or, if none are  
 27 provided by the trainer, records maintained by the applicant;
- 28 (ix) A description of the structure in which the home child care facility is proposed to be  
 29 operated, including a description of all places and areas to which the children shall have  
 30 access;
- 31 (x) The proposed hours of operation;
- 32 (xi) A statement of whether the applicant is 18 or more years old;
- 33 (xii) A certificate from a physician, physician's designee, or Health Department official stating  
 34 that acceptable screening methods (tuberculin skin test and/or tuberculosis risk and  
 35 symptom screen and/or chest X-ray), singly or in combination as determined appropriate  
 36 by the signatory, indicate that the applicant and all adult household residents are currently  
 37 free from communicable tuberculosis. The screen must be performed every two years or  
 38 more frequently as recommended by a physician or the local health department;
- 39 (xiii) — A written policy describing what the applicant will do with children in care who  
 40 are sick and a written emergency preparedness plan;
- 41 (xiv) — Such other information, including, but not limited to, information concerning  
 42 applicant's child care training and special skills, as the Director of the Office for Children  
 43 may deem appropriate;



1 (xv) The application fee of \$14, which is in addition to any business or occupation license tax  
 2 imposed by the County, and any other taxes or fees that may be required to engage in the  
 3 business.

4 If the information the provider submits in accordance with subsections (iv), (v), (vi), and (xii)  
 5 changes during the term of the permit, the provider must report the change to the Director of the  
 6 Office for Children within 21 days and must promptly submit updated information and documents.

7 (b) Upon submission of an application to the Office for Children:

8 (i) The Director of the Office for Children shall inspect the proposed facility to determine  
 9 whether it is in compliance with this Article and all applicable Virginia law that may  
 10 affect the health and safety of the children who may attend or be present at the facility.

11 (ii) The Fire Code Official shall conduct a fire safety inspection of the proposed facility and  
 12 advise the Director of the Office for Children of any noncompliance with this Article or  
 13 any applicable Virginia law that may affect the health and safety of the children who may  
 14 attend or be present at the facility.

15 (iii) If the applicant does not hold a permit under this Article at the time of the application,  
 16 the Director of the Office for Children shall require that the fingerprints and personal  
 17 descriptive information for the applicant and each adult who resides in the proposed  
 18 facility be forwarded to the Central Criminal Records Exchange and request a search of  
 19 the Central Criminal Records Exchange and a national criminal history search by the  
 20 Federal Bureau of Investigation to determine whether the applicant or any persons who  
 21 reside in the home have committed any crimes that constitute barrier offenses. ~~When the~~  
 22 ~~Central Criminal Records Exchange records indicate that any such person has a criminal~~  
 23 ~~record in another state, or when the Director otherwise deems appropriate, the Director~~  
 24 ~~may also require that the applicant or such adult who resides in the proposed facility~~  
 25 ~~consent to and pay for a national criminal background check.~~ Otherwise, the Director may  
 26 request a criminal records search if ~~three~~five or more years have passed since the last  
 27 records search on an individual, or upon receipt of new information submitted in  
 28 accordance with this section, or as the Director deems appropriate in extenuating  
 29 circumstances.

30 (iv) ~~If the applicant does not hold a permit under this Article at the time of the application,~~  
 31 ~~the~~The Director of the Office for Children shall request a copy of the results of a search  
 32 of the central registry maintained pursuant to Va. Code § 63.2-1515 for the applicant and  
 33 all individuals age 14 and older that reside in the proposed facility, and a copy of the  
 34 results of a search of any child abuse and neglect registry or equivalent registry  
 35 maintained by any other state in which the applicant or any adult who resides in the  
 36 proposed facility has resided in the preceding five years for the applicant and all adults  
 37 who reside in the proposed facility, for any founded complaint of child abuse or neglect.  
 38 ~~information from child protective services investigating agencies as deemed necessary to~~  
 39 ~~determine whether the applicant or any person age 14 and older who resides in the~~  
 40 ~~proposed facility has been the subject of a founded complaint of abuse or neglect.~~  
 41 Otherwise, the Director may request a copy of the central registry maintained pursuant to  
 42 Va. Code § 63.2-1515 if five or more years have passed since the last records search on  
 43 an individual, or upon receipt of new information submitted in accordance with this  
 44 section, or as the Director deems appropriate in extenuating circumstances.



1 (c) The Director of the Office for Children shall issue a permit to an applicant if the Director  
 2 determines from the information contained in the permit application, the facility inspections,  
 3 and the records searches that (i) the applicant is an adult; (ii) neither the applicant nor any  
 4 person who resides in the facility has committed any barrier offense; and (iii) both the  
 5 applicant and the proposed facility are in compliance with this Article and all applicable  
 6 Virginia laws that may affect the health and safety of the children who may attend or be  
 7 present at the proposed facility. The permit shall be displayed in the home child care facility  
 8 by the provider.

9 (d) The Director of the Office for Children shall deny a permit to any applicant if the Director  
 10 determines from the information contained in the permit application, the facility inspections,  
 11 and the records searches that (i) the applicant is not an adult; (ii) the applicant or any person  
 12 who resides in the facility has committed any barrier offense; or (iii) either the applicant or  
 13 the proposed facility is not in compliance with this Article and all applicable Virginia laws  
 14 that may affect the health and safety of the children who may attend or be present at the  
 15 proposed facility. If the denial is based on the results of the searches of the records of the  
 16 Central Criminal Records Exchange, the national criminal background check, or the  
 17 Department of Social Services, the Director shall provide the applicant a copy of the  
 18 information upon which the denial was based.

19  
 20 **Section 30-3-4. - Provider Qualifications.**

21 (a) The provider must be an adult.

22 (b) The provider must be trained in areas such as physical, intellectual, social, and emotional child  
 23 development; behavior management and discipline techniques; health and safety in the home  
 24 child care environment; art and music activities for children; nutrition; child abuse detection  
 25 and prevention; recognition and prevention of the spread of communicable diseases;  
 26 emergency preparedness; and business practices of family child care. ~~From January 1, 2014,~~  
 27 ~~through December 31, 2014, any person granted an initial or renewal permit must attend 14~~  
 28 ~~hours of training by an approved trainer during the term of the permit. Any applicant granted~~  
 29 ~~an initial or renewal permit at any time on or after January 1, 2015, All providers~~ must attend  
 30 16 hours of training by an approved trainer during the term of the permit. The Director of the  
 31 Office for Children shall maintain a list of entities that are approved as trainers. Upon request  
 32 from the provider, accompanied by information about the entity and/or the course, the Director  
 33 of the Office for Children may approve additional trainers or a specific course.

34 (c) The provider must be currently certified in first aid and cardiopulmonary resuscitation (CPR).

35 (d) In addition to the training required in subsection (b) above, and except as set forth in Section  
 36 30-3-6(o) and (p), a provider who administers prescription medications or non-prescription  
 37 medications to children in care must satisfactorily complete a training program for this  
 38 purpose developed or approved by the Board of Nursing and taught by a registered nurse,  
 39 licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist. Providers  
 40 required to complete the training program shall be retrained at three-year intervals.

41  
 42 **2. All providers that are permitted under Article 3 of Chapter 30 of the Fairfax County**  
 43 **Code on the effective date of this ordinance, and all adults who reside in the provider's**

1 facility, must submit to fingerprinting and provide the personal descriptive information  
2 required in Fairfax County Code Section 30-3-2(a) and the sworn statements and consent  
3 forms required in Fairfax County Code Section 30-3-2(a)(v), as well as any applicable fee  
4 required thereunder, to the Office for Children by September 30, 2018. The failure to  
5 comply with this requirement will result in a suspension of the provider’s permit. Upon  
6 receipt of the sworn statements and forms, the Director will request the criminal history  
7 search set forth in Section 30-3-2(b)(iii).

8 3. That the provisions of this ordinance are severable, and if any provision of this  
9 ordinance or any application thereof is held invalid, that invalidity shall not affect the other  
10 provisions or applications of this ordinance that can be given effect without the invalid  
11 provision or application.

12  
13 4. That this Ordinance will become effective on July 1, 2018.

14  
15  
16 GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018

17  
18 \_\_\_\_\_

19 Clerk to the Board of Supervisors  
20

To Be Deferred

Board Agenda Item  
June 19, 2018

4:00 p.m.

Public Hearing on a Proposed Zoning Ordinance Amendment Re: Short-Term Lodging Uses (Residential Owner/Renter Operated Dwelling Only) and a Proposed Amendment to Chapter 4 of the Fairfax County Code

ISSUE:

The proposed Zoning Ordinance Amendment is on the 2017 Priority 1 Zoning Ordinance Amendment Work Program (ZOAWP), as part of the review of state code changes. In 2017, the General Assembly enacted Virginia Code § 15.2-983, affirming a locality's right to regulate the short-term rental of property through its general land use and zoning authority. As a result of this law, on March 14, 2017, the Board of Supervisors (Board) directed staff to form a workgroup to analyze the short-term rental of property in Fairfax County and recommend possible changes to the County Code and Zoning Ordinance.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission held their public hearing on May 3, 2018, and deferred the decision until May 17, 2018; then May 24, 2018; then June 14, 2018, then to June 21, 2018. Staff will provide the Planning Commission recommendation to the Board at or before the public hearing.

RECOMMENDATION:

The County Executive recommendation will be provided at or before the public hearing.

TIMING:

Board of Supervisor's authorization to advertise – March 20, 2018; Planning Commission public hearing – May 3, 2018, decision deferred to May 17, 2018; May 24, 2018, and June 14, 2018; Board of Supervisor's public hearing – June 19, 2018, at 4:00 p.m.

BACKGROUND:

The rise in popularity of online hosting platforms such as AirBnB, Vacation Rental by Owner (VRBO), HomeAway, TripAdvisor, and FlipKey has encouraged many

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homeowners and renters to offer their homes for transient lodging. Individual rooms within a dwelling or entire dwellings are offered for a fee for periods of less than thirty days, and the search, booking, and fee collection components are typically handled by the hosting platform. This emergent economic model has presented regulatory challenges related to land use and other matters in many jurisdictions in Virginia and nationwide.

In 2017, the General Assembly enacted Virginia Code § 15.2-983, affirming a locality's right to regulate the short-term rental of property through its general land use and zoning authority. As a result of this law, on March 14, 2017, the Board of Supervisors (Board) directed staff to form a workgroup to analyze the short-term rental of property in Fairfax County and recommend possible changes to the County Code and Zoning Ordinance. Staff from the Department of Planning and Zoning (DPZ), the Department of Code Compliance (DCC), the Department of Tax Administration (DTA), the County Attorney's Office (OCA), the County Executive's Office (CEO) and the Office of Public Affairs (OPA) comprised the County's workgroup.

Beginning in June of 2017, staff conducted extensive public outreach and solicited input on a potential amendment to the Zoning Ordinance using a variety of outreach tools including an on-line survey, four County-wide community meetings held in the Community Centers in Reston, McLean, Mount Vernon and at the Government Center, and an open house. Staff also developed a dedicated website for the amendment. The proposed regulations reflect consideration of all the input and feedback received from these various sources.

Staff determined that there are different arrangements of transient housing offered by County businesses and residents. While staff may propose further ordinance changes, particularly with regard to transient occupancy in commercially managed multiple family rental developments, **the Zoning Ordinance amendments presented in this Staff Report reflect only Short-Term Lodging (STL) conducted by an owner or renter in his or her permanent residence.**

These proposed amendments to the Zoning Ordinance and the County Code create regulations to address STL operations in terms of both zoning and taxation. Staff presented the general framework for the amendment to the Board's Development Process Committee (DPC) on July 18, October 3, and December 12, 2017, and to the Planning Commission's Land Use Process Review Committee (LUPRC) on June 22 and September 28, 2017. Additionally, the Planning Commission held a public workshop on November 1, 2017 to discuss that framework.

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A more detailed discussion of the proposed amendment to the Zoning Ordinance is set forth in the Staff Report enclosed as Attachment 1.

The workgroup also determined that certain amendments will be required to Chapter 4 of the Fairfax County Code relating to taxation. Section 4-13-1 will be amended to clarify that any place that offers Short-Term Lodging, as defined in the proposed amendment to the Zoning Ordinance, is included within the definition of Hotel and the amendment reduces the definition's requirement that lodging be offered to four or more persons to simply require that the lodging be offered to one or more persons. The proposed amendment will also modify the definition of transient to ensure compliance with the Virginia Code. In addition, staff proposes that the Fairfax County Code be amended to require Hotels to report and remit their Transient Occupancy Tax on a monthly basis. The Fairfax County Code currently only requires that this tax be remitted on a quarterly basis. Finally, staff proposes certain formatting changes to the tax ordinance, all of which is set forth in Attachment D of the Staff Report dated March 20, 2018.

REGULATORY IMPACT:

The proposed regulations are intended to allow limited STL operations in Fairfax County, balancing the interests of residents in protecting the character of their neighborhoods with the interest of residents who want to operate STLs in their residences. In crafting the restrictions on STL use, staff took into consideration the particular concerns citizens and stakeholders voiced during the outreach process. Staff proposes to create an STL permit valid for a period of two years with a permit fee of \$200. Staff also proposes a grace period between 90 and 120 days from the date of adoption for STL Operators to obtain approval of an STL permit.

FISCAL IMPACT:

Based on an average of 64 nights of occupancy at \$72/night rental rate, and full compliance from the 1,549 currently active listings, staff estimates collecting \$428,268 in annual Transient Occupancy Tax (TOT) revenue. The total TOT in Fairfax County is calculated at the rate of 6 percent (2 percent for general transient occupancy tax + 2 percent for tourism + 2 percent for regional transportation) on the gross room rental charged for overnight stays related to transient occupancy. As required by state legislation, of the revenue generated by the 2 percent for tourism, one quarter is designated to the Fairfax County Convention and Visitors' Center, and the rest is used

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by the County to promote tourism. As a result, of the total projected \$428,268, \$142,756 will be allocated for regional transportation, \$35,689 to Fairfax County Convention and Visitors' Center, and \$249,823 to the County's General Fund. Additionally, based on the proposed \$200 STL permit fee, estimated revenue of approximately \$150,000 could be generated annually.

The estimated fiscal impacts has not been reflected in the FY 2019 Advertised Budget Plan estimates and will be included as part of a future budget review process, pending Board approval, along with associated implementation costs.

ENCLOSED DOCUMENT:

Attachment 1 – Staff Report dated March 20, 2018

STAFF:

Robert A. Stalzer, Deputy County Executive  
Fred Selden, Director, Department of Planning and Zoning (DPZ)  
Leslie B. Johnson, Zoning Administrator, DPZ  
Donna Pesto, Deputy Zoning Administrator, DPZ  
Lily Yegazu, Senior Assistant to the Zoning Administrator, DPZ  
Jay Doshi, Director, Department of Tax Administration (DTA)  
Juan Rengel, Director, Personal Property and Business License Assessments Division,  
DTA

ASSIGNED COUNSEL:

Sarah Hensley, Assistant County Attorney  
Dan Robinson, Assistant County Attorney



**FAIRFAX  
COUNTY**

# **STAFF REPORT**

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V I R G I N I A

## **PROPOSED ZONING ORDINANCE AMENDMENT**

**Articles 10, 18 and 20 of the Zoning Ordinance and  
Chapter 4 of the Code of Fairfax County Regarding  
Short-Term Lodging**  
(Residential Owner/Renter Operated Dwellings Only)

### **PUBLIC HEARING DATES**

**Planning Commission**

May 3, 2018 at 7:30 p.m.

**Board of Supervisors**

June 19, 2018 at 4:00 p.m.

**PREPARED BY  
ZONING ADMINISTRATION DIVISION  
DEPARTMENT OF PLANNING AND ZONING  
703-324-1314**

March 20, 2018

LY



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

## STAFF COMMENT

In 2017, the General Assembly enacted Virginia Code § 15.2-983 (Attachment B), affirming a locality's right to regulate the short-term rental of property through its general land use and zoning authority. As a result of this law, on March 14, 2017, the Board of Supervisors (Board) directed staff to form a workgroup to analyze the short-term rental of property in Fairfax County and recommend possible changes to the County Code and Zoning Ordinance. Staff from the Department of Planning and Zoning (DPZ), the Department of Code Compliance (DCC), the Department of Tax Administration (DTA), the County Attorney's Office (OCA), the County Executive's Office (CEO) and the Office of Public Affairs (OPA) comprised the County's workgroup.

Staff determined that there are different arrangements of transient housing offered by County businesses and residents. While staff may propose further ordinance changes, particularly with regard to transient occupancy in commercially managed multiple family rental developments **the Zoning Ordinance amendments presented in this Staff Report reflect only Short-Term Lodging (STL) conducted by an owner or renter in his or her permanent residence.**

These proposed amendments to the Zoning Ordinance and the County Code create regulations to address STL operations in terms of both zoning and taxation. Staff presented the general framework for the amendment to the Board's Development Process Committee (DPC) on July 18, October 3, and December 12, 2017, and to the Planning Commission's Land Use Process Review Committee (LUPRC) on June 22 and September 28, 2017. The Planning Commission held a public workshop November 1, 2017 to discuss that framework. Additionally, extensive public outreach has occurred, as discussed in more detail below.

### **Background**

The rise in popularity of online hosting platforms such as AirBnB, Vacation Rental by Owner (VRBO), HomeAway, TripAdvisor, and FlipKey has encouraged many homeowners and renters to offer their homes for transient lodging. Individual rooms within a dwelling or entire dwellings are offered for a fee for periods of less than 30 days, and the search, booking, and fee collection components are typically handled by the hosting platform. This emerging economic model has presented regulatory challenges related to land use and other matters in many jurisdictions in Virginia and nationwide.

### **Existing STLs**

Staff research indicates that there are more than 1,500 active STLs—that is, STLs that have been rented in the past year—currently operating in Fairfax County. Assuming there are 1,500 active STLs operating in the County, only 54, or less than 1%, have been the subject of complaints for the STL use. While these numbers do not discredit the concerns raised, they do reflect that there may be a significant number of STLs currently operating without any negative impacts on their communities. At the time of preparation of this Staff Report, the Department of Code Compliance has 13 open cases under investigation and has issued 6 Notices of Violations (NOVs). Of those 6 NOVS, 4 have resulted in compliance, while 2 were appealed and heard by the Board of Zoning



Appeals (BZA) on November 29, 2017, and January 10, 2018. The BZA upheld the Zoning Administrator's determination that these two homeowners were operating illegal STLs.

### **Stakeholder outreach**

Beginning in June of 2017, staff conducted extensive public outreach and solicited input on a potential amendment to the Zoning Ordinance using a variety of outreach tools. First, staff distributed an on-line survey from June through August of 2017 (which was promoted on the DPZ and general County websites, as well as in various newspapers and televised news reports). The survey generated 7,671 responses in total. Responses ranged from suggesting the County entirely prohibit STLs to suggesting the County allow unlimited STL use. The survey included a comment section where respondents could provide a summary of their concerns. The main concerns expressed included: impacts on the character of the neighborhood; introduction of commercial uses to residential areas; parking and increased traffic on local streets; safety and security in the neighborhood (particularly for children); noise and trash associated with rentals and events/parties; and the enforceability of any STL ordinance. The comments in favor of STLs noted that STLs generated additional income for homeowners, making homeownership more affordable; offered a cheaper and alternative rental option to hotels; provided opportunities for hosts to engage with travelers from other states and countries; and enhanced the County tax base. Proponents also shared their belief that lodgers are better stewards of a property than long-term renters and that County regulations should not infringe on what a homeowner does within a dwelling.

From the comments on the survey, staff identified a number of common areas of concern: character of the neighborhood, parking, trash, taxes, inspections/complaints, safety/security, noise/events, affordability of housing, and homeowner/condo association regulations. These topics became the basis for community meetings held throughout the County to discuss potential changes to the Zoning Ordinance. Four Countywide community meetings were held in the Community Centers in Reston, McLean, and Mount Vernon and at the Government Center. DPZ also held an open house.

In addition to the survey and community meetings, staff also participated in multiple individual meetings with residents, neighborhood and civic group representatives, homeowner and condominium association representatives, tourism-related professionals, realtors, the hotel industry, Airbnb representatives, and others. Staff has briefed the standing Zoning Ordinance Modernization (zMOD) Citizens Advisory Group, the Land Use Aides, and the Land Use Attorneys Group. Staff also developed a dedicated [website](#) for the amendment. The proposed regulations reflect consideration of all the input and feedback received from these various sources.

### **Analysis of other jurisdictions' regulations**

As a result of Virginia Code § 15.2-983, many jurisdictions throughout Virginia have been working toward amending their regulations regarding STLs. County staff participated in a multi-jurisdictional workgroup comprised of Fairfax County, Arlington County, City of Alexandria, Loudoun County, Tidewater area jurisdictions, the Virginia Association of Counties, and the Virginia Municipal League. Staff has also researched and reviewed the regulations of local jurisdictions in Virginia, as well as jurisdictions outside of Virginia. Brief descriptions of some of the regulations adopted by various jurisdictions are provided below with a more detailed summary table provided as Attachment C. While not exhaustive, it demonstrates the variety of regulatory mechanisms used throughout Virginia and the rest of the United States.

- Arlington County, VA:
  - Defines use as “Accessory Homestay”, a type of home occupation use
  - Requires primary residency (defined as living in unit a minimum of 185 days per year)
  - Can be operated by owner and renter
  - Maximum occupancy is limited to the larger of 6 guests or 2 guests/bedroom
  - All occupancy must comply with the applicable Building Code
  - Commercial uses such as parties, weddings, meetings, etc. are prohibited
  - Annual permit with a \$63 filing fee
  - Revocation of permit for 3 or more violations
  
- Montgomery County, MD:
  - Defines use as “Short-Term Residential Rentals”
  - Requires primary residency
  - Can be operated by owner or renter
  - Maximum occupancy is limited to 2 adults/bedroom and a maximum of 6 adults/unit
  - No limit on the number of rentals per year when operator is on-site
  - Limited to 90 days if the operator is not on-site
  - Must keep and make available a record of all overnight visitors
  - One off-street parking space per contract required or ad needs to prohibit vehicle parking
  
- City & County of San Francisco, CA:
  - Defines use as “Short Term Rentals”
  - Requires permanent residency (defined as living in unit at least 275 days/year)
  - Can be operated by owner or renter
  - Maximum occupancy is limited to 2 guests/unit
  - Requires registration with the Office of Short-Term Rental’s Registry
  - No limit on rentals when operator is on-site
  - Maximum of 90 days if operator is not on-site
  - Submittal of quarterly reports of rental activity required
  - Liability insurance >\$500,000 is required by owner or hosting platform
  - Registration is valid for two years with application fee of \$250

### **Current Zoning Ordinance Provisions**

Short-term lodging is not a currently defined use in the Zoning Ordinance; however, the use is understood to apply to the transient occupancy of a dwelling or a portion of a dwelling. Transient occupancy is also not currently defined in the Zoning Ordinance, but it is the Zoning Administrator’s longstanding determination that transient occupancy means occupancy for less than 30 days. This is now consistent with the definition of “short-term rental” in Virginia Code § 15.2-983. The Zoning Ordinance definition of “dwelling” prohibits transient occupancy:

*DWELLING: A building or portion thereof, but not a MOBILE HOME, designed or used for residential occupancy. The term ‘dwelling’ shall not be construed to mean a motel, rooming house, hospital, or other accommodation used for more or less transient occupancy” (Emphasis added).*

Zoning Ordinance Sect. 10-302, Par. 7 also limits transient occupancy. It allows “the letting for hire

of not more than two rooms for rooming or boarding use for not more than two persons, neither of whom is a transient.” Transient occupancy of a dwelling is currently only permitted as a Bed and Breakfast, which is a Category 5 Special Exception use permitted on residential properties located within the R-A through R-2, PDH, and PRC Zoning Districts. The only other form of transient occupancy permitted under the provisions of the Zoning Ordinance is hotel/motel uses, which are commercial uses that are not permitted in a dwelling.

## **Proposed Zoning Ordinance Amendments**

The proposed regulations are intended to allow limited STL operations, balancing the interests of residents in protecting the character of their neighborhoods with the interest of residents who want to operate STLs in their residences. In crafting the restrictions on STL use, staff took into consideration the particular concerns citizens and stakeholders voiced during the outreach process. A summary of how the proposed amendments specifically address these concerns follows.

### **Neighborhood character**

Staff received multiple comments during the public outreach efforts from residents who had concerns related to the impacts of STLs on the existing neighborhood character and residential feel of their community. Residents indicated that a neighborhood made up of owners or long-term tenants has a very different character than a neighborhood frequented by short-term or transient occupants who may not have a vested interest in maintaining the quality of life of their neighbors. Residents consistently expressed that they did not want investors acquiring multiple properties to operate full-time, hotel-type commercial uses within residential neighborhoods. Staff believe the ordinance addresses preserving neighborhood character in a number of ways:

- **Accessory use:** The proposed amendment adds Short-Term Lodging as a permitted accessory use in any zoning district that permits residential uses, and in any type of dwelling or in a mobile home, except that STLs may not be conducted in workforce or affordable housing units, detached accessory structures, accessory dwelling units, or temporary family health care structures. These excluded structures are specifically intended for other purposes, such as an on-site unit for an aged parent or a unit equipped for providing medical care to a family member. In the case of a detached accessory structure, staff believes the use of such structures for lodging purposes could easily convert these structures into permanent second dwelling units, which is not generally permitted. Staff believes the operation of STLs within the main structure of the principal building on the property will help limit the impacts of the use on surrounding properties.
- **Permanent residents as STL Operators:** STL uses are proposed to be operated by a permanent resident of a dwelling or mobile home to dispel the concern that non-resident operators could negatively impact neighborhood character by having little or no interaction with the community and by not being consistently present to address issues of community concern. Two forms of verification—like a driver’s license, vehicle registration, passport, or utility bill—are required to demonstrate permanent residency. This information will be reviewed and noted by staff at the time of application, but sensitive information will not be retained in the public records for security reasons.
- **Operator Presence/Authorized Agent:** Having the operator on-site may decrease the likelihood of issues arising with the STL use. Research and community input indicate, however, that many

STLs operate without the operator present, e.g., an owner may offer their home while away on vacation for a week. To address the absence concern, the proposed amendments require that the STL operator identify an Authorized Agent who will consent and agree to the proposed regulations and who will be available and responsible to address issues or emergencies in the absence of the STL Operator. *(The amendment has been advertised to also allow consideration of requiring the STL Operator to be on-site; and to require additional restrictions on the physical proximity and response time of the Authorized Agent to the STL. The requirement for the Authorized Agent is not contingent on operator presence.)*

- **Limitation on number of nights a STL use is permitted:** To keep the use truly accessory, staff proposes a maximum of 90 calendar days for STL use per year, or approximately 25% of a year. *(The amendment has been advertised to allow consideration of a maximum number of rental nights of up to 180 without an operator present or unlimited nights with an operator present.)*
- **Occupancy limitations:** The proposed amendment recommends not more than six adults per dwelling per night. This allows for families or groups of friends or colleagues to rent an STL and is consistent with other jurisdictions that have adopted provisions for an occupancy limit. Staff considered establishing a maximum number of persons per bedroom, but such a restriction would be virtually impossible to enforce, as it requires specific observation of the number of people in a bedroom. The Virginia Uniform Statewide Building Code further limits occupancy: as the proposed amendments reflect, it may impose stricter limits depending on the space being offered. *(The amendment is advertised to allow for any limit on occupancy, up to the maximums the Virginia Uniform Statewide Building Code imposes.)*
- **Limited contracts:** Staff propose restricting STL use to one contract; all persons lodging in the dwelling at one time must be associated with the same rental contract. This does not preclude a group of related/associated individuals from working out individual payment plans or having different durations of stay, but it will preclude the STL Operator from making the home available to multiple, unrelated/associated individuals, which would make the STL use more like a traditional hotel/motel. Additionally, parking, traffic on local streets, and the potential for negative interaction among lodgers are all issues that could be exacerbated by allowing multiple, unrelated groups or individuals to lodge at the same time. *(The amendment is advertised to allow flexibility to consider 1 to 5 contracts per night, with staff recommending one.)*

### **Safety**

Safety measures to protect lodgers are important, as they would not be particularly familiar with the layout or safety features of a dwelling/mobile home in the event of an emergency. The proposed amendments require that dwellings used for STLs meet all applicable requirements related to building code or manufactured home safety regulations. The age of the structure generally determines what provisions are applicable.

- **Sleeping rooms:** Converting basements or other non-traditional spaces to sleeping rooms requires compliance with the most current building code, which would require a second means of egress from the room, such as an emergency egress window in an existing basement.
- **Safety Equipment:** The amendment proposes that a working fire extinguisher, interconnected smoke detectors, and interconnected carbon monoxide detectors (if there is a fireplace and/or gas service is provided to the home) must be present in every dwelling offering STL use. If these features are not present in the home due to the age of the structure, they must be added before

beginning an STL operation.

- **Exit plan:** Like hotels, STLs must have an exit plan posted on the door to each bedroom or sleeping space to outline a pathway out of the home in the event of an emergency.

### **Commercial event use**

It is the Zoning Administrator's longstanding position that hosting events (e.g., parties, weddings, catered dinners) at a dwelling is prohibited except when the activity is directly hosted by the principal residents of the dwelling. For example, an owner could host a backyard wedding for their son or daughter, but could not make the property available as a wedding venue. The provisions prohibit all events and activities for persons other than authorized lodgers staying in the dwelling regardless of whether there is direct or indirect compensation for the event or activity.

### **Parking**

Citizens claimed STL users often park vehicles in reserved spaces, block access to driveways and mailboxes, or use all the available public parking. In evaluating whether the ordinance should therefore require STL operators to provide parking, staff considered that home child care, home offices, and a variety of other home occupations are currently permitted under the Zoning Ordinance without a requirement for an additional off-street parking space. Staff also recognized that many visitors may opt to use public transport, taxis or ride-sharing services and would not need a parking space. In addition, staff could not draft the ordinance to place a blanket limitation on otherwise publicly available parking. Furthermore, most existing developments already have in place or have the ability to manage parking located on private streets and parking garages within the developments. Lastly, none of the other Virginia jurisdictions that specifically provide for short-term lodging uses in their regulations require that STL operators provide parking. Accordingly, staff does not currently believe a designated parking space is warranted.

To ensure that parking is managed appropriately, however, the amendment proposes to require all advertisements for STLs to indicate if and where on-site parking is available for the dwelling offering STL. If there is no on-site parking available, the advertisements must so state. This information will help lodgers manage their expectations and plan for their transportation needs. *(The amendment is advertised to allow flexibility to consider requiring 1 to 2 off-street parking spaces per contract, with staff recommending none.)*

### **Impact on Property Owners Associations**

Staff understands the concerns of communities who, collectively, do not want STL operations in their development. However, Virginia Code § 15.2-110 prohibits the County from requiring consent from an HOA/COA prior to the issuance of any permit, certificate or license. HOA/COA covenants, bylaws and other regulations remain intact, even when a Zoning Ordinance has been amended, so if there is a current provision in an association's documents that would restrict the use of any homes for STL purposes, the proposed amendments will not negate those restrictions. The proposed amendments expressly state that they do not abrogate, nullify or invalidate any provisions applicable to the structure or use of the property. The STL operator is therefore on notice that his or her STL operation must comply with any restrictive covenants on his or her property.

### **Enforcement**

Because this is a use that operates within a home, enforcement will pose difficulties particularly regarding the 90-night limit and 6-lodger limitations. Staff believes the proposed regulations have been crafted in a way to minimize (but not eliminate) enforcement challenges. The following tools and requirements will assist compliance staff with complaint investigations:

- **Permit:** STL operations will require a permit issued by the Zoning Administrator and valid for a period of two years. Home occupation uses generally require only an initial permit; however, staff believes requiring permit renewal will ensure STLs are operating in conformance with the use limitations. To help the Code Compliance Inspectors determine which STLs may be illegally operating, STL Operators will be required to include their permit number in their online listings. The Zoning Administrator may revoke a permit for failure to comply with the STL regulations. *(Advertised to allow a one- or two-year period of permit validity.)*
- **Guest Log:** STL Operators must maintain a record of lodgers and lodgers' contact information, and make available upon request to appropriate County staff. This will help staff ensure compliance with the limitations on number of nights of use and occupancy, as well as allow staff to contact lodgers if that becomes necessary during a complaint investigation.
- **Owner Consent:** The proposed amendment requires consent of the property owner if the STL Operator is a long-term tenant. Because property owners are ultimately responsible for any violations occurring on property they own and for any fines or penalties associated with those violations, staff considers this a critical requirement.
- **Outside Consultant:** To enhance enforcement efforts, staff proposes to use the services of an outside consultant. Other Virginia jurisdictions have contracted with Host Compliance LLC, which can track the exact address and rental activity of STLs across multiple online platforms, as well as provide screenshots of listings and contact information for operators. The County can enter into a purchase order based on the existing contract with the other Virginia jurisdictions for the next year or two.
- **Inspection:** Oftentimes, the biggest hurdle for DCC is the inability to gain access to a property to investigate a complaint of noncompliance. The proposed provisions are intended to eliminate that hurdle by requiring STL Operators to consent to inspection by County personnel during reasonable hours.

### **Changes and Additions to Ordinance Definitions**

As noted, the Zoning Ordinance currently does not define transient occupancy or STL. The proposed regulations will introduce these as new definitions and will modify the "Dwelling" and "Dwelling, Mobile Home" definitions in Chapter 20 to accommodate the STL use. In addition, the proposed amendments introduce and define the STL-use specific terms "Authorized Agent," "Permanent Resident," and "Short-Term Lodging Operator," which apply only to STL use provisions.

### **Proposed Fees**

Virginia Code § 15.2-2286(A)(6) provides that a Zoning Ordinance may include reasonable provisions for the collection of fees to cover the costs of making inspections, issuing permits, advertising notices, and other expenses incident to its administration. To keep fees in line with other permits/certifications staff proposes a \$200/2-year permit application fee for STLs.

As part of this amendment, staff also proposes to reduce the special exception application fee for Bed and Breakfast use by 50%, from \$16,375 to \$8,180, but will advertise a fee ranging from \$4,085 to the current fee of \$16,375. Staff believes the high application fee may account for the fact that there are no approved Bed and Breakfasts currently operating in the County. The only Bed and Breakfast approved in the last two decades ceased operating. Unlike the STLs, Bed and Breakfasts may be operated by non-permanent residents and may be operated year-round. Staff believes that the Bed and Breakfast provisions may offer an additional business opportunity for some of the County's lodging entrepreneurs. No other changes are proposed to the Bed and Breakfast provisions regarding their location and other use limitations.

### **Fiscal Impacts and Tax Provisions of the County Code**

The operation of STL in the County constitutes a transient occupancy use that is subject to a Transient Occupancy Tax or TOT. It is estimated that there are approximately 1,500 active listings in the County based on research and specific data provided by a third-party data collection company who provided information related to Airbnb listings. Airbnb representatives have confirmed this approximate number. The estimates obtained from the third-party data collection company also indicate that the average days of rental in the County are 64 days and the average income per night for the STL Operator is \$72. Using these average assumptions of 64 rentals per year per STL Operator and a \$72 per night, staff estimates collecting \$428,268 in annual Transient Occupancy Tax (TOT) revenue. The total TOT in Fairfax County is calculated at the rate of 6 percent (2 percent for general transient occupancy tax + 2 percent for tourism + 2 percent for regional transportation) on the gross room rental charged for overnight stays related to transient occupancy. As required by state legislation, of the revenue generated by the 2 percent for tourism, one quarter is designated to the Fairfax County Convention and Visitors' Center, and the rest is used by the County to promote tourism. As a result, of the total projected \$428,268, \$142,756 will be allocated for regional transportation, \$35,689 to Fairfax County Convention and Visitors' Center, and \$249,823 to the County's General Fund. Additionally, based on the proposed \$200 STL permit fee, estimated revenue of approximately \$150,000 could be generated annually.

Given these average rental night and rate figures, the revenue from the Business, Professional, and Occupations License tax (BPOL) is not likely to result in meaningful revenue, since gross receipts under \$100,000 per year are subject to a license/tax of \$50 or less and in instances of revenue of less than \$10,000 the BPOL is zero. The average annual income for an STL host is estimated at less than \$5,000 per year, and BPOL is not applicable at this level. As such, staff does not believe that a significant amount of income will be derived from the BPOL.

This amendment includes a companion amendment to Chapter 4 of the County Code. Those changes are set forth and described in Attachment D.

### **Implementation of Proposed Changes**

Staff is developing an implementation plan to assist with the smooth initiation of the STL permit process. While not part of the Zoning Ordinance text, a new permit application form and STL permit will be developed in conjunction with this amendment. If the proposed amendment is adopted, staff is considering sending notification letters to the owners of addresses identified by the third-party

data collection company as currently advertising the availability of an STL in the County. Such notice would provide the new regulations and advise of the permit requirement and process. Staff also believes that the volume of potential STL applications that could be received warrants a delayed implementation to allow operators to obtain approval. This is similar to the grace period that was granted when the home child care amendment was adopted, in which existing operators were given a period of time to come into compliance by obtaining the require approval. Delayed implementation is also warranted because of the change in TOT remittance from a quarterly option to a monthly requirement. This change will impact current hotel operators as well as the new STLs and a delayed implementation will allow those hotels that currently remit the tax on a quarterly basis time to prepare for a monthly remittance process. Staff is recommending an effective date of October 1, 2018, which is the first day after the July quarter.

The proposed regulations are intended to achieve a balance between allowing STLs while maintaining the overall character of residential neighborhoods. As such, staff recommends approval of the proposed amendments with an effective date of 12:01 a.m. on the day following adoption, provided, however that STL Operators will have a grace period of between 90 and 120 days from the date of adoption to obtain approval of an STL permit.

## **Conclusion**

The changes staff propose are intended to facilitate a limited STL use for the County's entrepreneurs, while preserving the character of the County's communities and safety of its residents. Because STL regulation is relatively new, not only in Fairfax County but nationwide, staff believe it appropriate to revisit these regulations in eighteen months and make any necessary regulatory changes. This, of course, does not limit the Board's ability to revisit this amendment sooner, should it see fit to do so.

### Attachments:

- A. Proposed Zoning Ordinance Amendments
- B. Virginia Code § 15.2-983
- C. Summary Table of Other Jurisdictions' Regulations
- D. Amendment to Chapter 4 of the County Code



## ATTACHMENT A

## PROPOSED AMENDMENT

*This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of March 20, 2018. There may be other proposed amendments that could affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment. If any such other amendment is adopted before this amendment, any necessary renumbering or editorial revisions will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.*

1 **Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, by**  
 2 **revising the current definition of DWELLING and DWELLING, MOBILE HOME and to add**  
 3 **new definitions for SHORT-TERM LODGING and TRANSIENT OCCUPANCY to read as**  
 4 **follows:**

5  
 6 DWELLING: A building or portion thereof, but not a MOBILE HOME, designed or used for  
 7 residential occupancy. The term ‘dwelling’ ~~shall not be construed to~~ does not mean a motel, rooming  
 8 house, hospital, or other accommodation used for more or less ~~transient occupancy~~ TRANSIENT  
 9 OCCUPANCY, except a dwelling may be used for SHORT-TERM LODGING.

10  
 11 DWELLING, MOBILE HOME: A single family residential unit with all of the following  
 12 characteristics: (a) designed for long-term occupancy, and containing sleeping accommodations, a  
 13 flush toilet, a tub or shower bath and kitchen facilities with plumbing and electrical connections  
 14 provided for attachment to outside systems; (b) designed to be transported after fabrication on its own  
 15 wheels or on a flat bed or other trailer or detachable wheels; (c) arriving at the site where it is to be  
 16 occupied as a dwelling complete, conventionally designed to include major appliance, and ready for  
 17 occupancy except for minor and incidental unpacking and assembly operations, location on foundation  
 18 supports, connection to utilities, and the like; (d) designed for removal to and installation or erection  
 19 on other sites.

20  
 21 A mobile home may include one (1) or more units, separately towable, which when joined  
 22 together shall have the characteristics as described above. For the purposes of this Ordinance, a mobile  
 23 home shall not be deemed a SINGLE FAMILY DETACHED DWELLING. A MOBILE HOME does  
 24 not include TRANSIENT OCCUPANCY, except a mobile home may be used for SHORT-TERM  
 25 LODGING.

26  
 27 SHORT-TERM LODGING: The provision of a room or space that is suitable or intended for transient  
 28 occupancy, in exchange for a charge for the lodging. Such use does not include ACCESSORY  
 29 DWELLING UNIT, BED AND BREAKFAST, HOTEL/MOTEL, or TEMPORARY FAMILY  
 30 HEALTH CARE STRUCTURE.

1 TRANSIENT OCCUPANCY: Use of a DWELLING or MOBILE HOME, or part thereof, for sleeping  
 2 or lodging purposes for fewer than 30 consecutive nights.

3  
 4 **Amend Article 10, Accessory Uses, Accessory Service Uses and Home Occupations, as follows:**

- 5  
 6 - **Amend Sect. 10-102, Permitted Accessory Uses by revising the lead-in paragraph and adding**  
 7 **a new Par. 35, as follows:**

8  
 9 Accessory uses and structures ~~shall~~ may include, but are not limited to, the following uses and  
 10 structures; ~~provided that~~ any such use or structure ~~shall~~ must be in accordance with the definition  
 11 of Accessory Use contained in Article 20.

12  
 13 35. Short-Term Lodging, limited by the provisions of Sect. 105 below.

- 14  
 15 - **Add a new Sect. 10-105, Short-Term Lodging, to read as follows:**

16  
 17 **10-105 Short-Term Lodging**

18  
 19 Short-Term Lodging, as defined in Article 20, is permitted in a dwelling or mobile  
 20 home only upon the Zoning Administrator's issuance of a permit and is subject to the  
 21 following limitations:

22  
 23 1. For the purposes of this section, the following definitions apply:

24  
 25 A. Authorized Agent: an adult designated by a Short-Term Lodging Operator who  
 26 consents to be available to address issues or emergencies that may arise during  
 27 any Short-Term Lodging stay.

28  
 29 B. Permanent Resident: a person who occupies or intends to occupy a dwelling or  
 30 mobile home for at least 185 days out of the calendar year for the purposes of  
 31 establishing the dwelling or mobile home as that person's primary residence. A  
 32 person may have only one permanent residence.

33  
 34 C. Short-Term Lodging Operator: an owner or tenant of a property who offers that  
 35 property for Short-Term Lodging.

36  
 37 2. A dwelling or mobile home used for Short-Term Lodging must:

38  
 39 A. Be open, upon request, for inspection by County personnel during reasonable  
 40 hours; and

41  
 42 B. Comply with the requirements of the applicable version of the Virginia Uniform  
 43 Statewide Building or Virginia Manufactured Home Safety Regulations, as  
 44 determined by the Building Official; and

- 1           C. Have a working multi-purpose fire extinguisher and interconnected smoke  
 2           detectors and carbon monoxide detectors (when required for a fireplace or gas  
 3           service); and  
 4  
 5           D. Have a plan posted inside the door to each sleeping room showing the exit  
 6           pathway from the sleeping room to the nearest exit from the dwelling or mobile  
 7           home.

8  
 9           3. A Short-Term Lodging Operator must:

- 10  
 11           A. Be a permanent resident of the property hosting the Short-Term Lodging Use.  
 12           Permanent residency must be demonstrated at the time of application for a  
 13           permit to operate Short-Term Lodging; and  
 14  
 15           B. Obtain written consent from the owner of the property for the Short-Term  
 16           Lodging Use; and  
 17  
 18           C. Assume responsibility for determining whether any regulations, prohibitions,  
 19           and covenants applicable to the dwelling or mobile home prohibit Short-Term  
 20           Lodging; and  
 21  
 22           D. Designate at least one person who consents to serve as an Authorized Agent for  
 23           the Short-Term Lodging Operator. Contact information (name, address,  
 24           telephone, and email address) for the Authorized Agent(s) must be provided on  
 25           the application for a Short-Term Lodging permit, posted in a prominent location  
 26           within the area made available for Short-Term Lodging, and provided in any  
 27           written material given to lodgers during their overnight stay. [Additionally  
 28           advertised to allow the Board to require the Short-Term Lodging Operator to  
 29           be present during any rental for transient occupancy; or to establish  
 30           additional requirements related to the Authorized Agent's physical proximity  
 31           and response time to any issues or emergencies that may arise at the STL  
 32           when the Operator is not present.]

33  
 34           4. The Short-Term Lodging Use is subject to the following use limitations:

- 35  
 36           A. A dwelling or mobile home may be used for Short-Term Lodging for no more  
 37           than 90 nights per calendar year. [Advertised to permit the Board to consider  
 38           a maximum of 180 nights per year that a dwelling/mobile home could be used  
 39           as an STL. Additionally, the advertisement allows the Board to consider any  
 40           number of nights in which the STL Operator must to be present during an  
 41           STL rental from 0 to 180 per year.]  
 42  
 43           B. The maximum number of lodgers per night may not exceed 6 adults, except  
 44           where the Virginia Uniform Statewide Building Code allows fewer occupants.  
 45           [Advertised to permit the Board to consider any occupancy limit up to an

1 *unlimited number of people, except as limited by the Virginia Uniform*  
 2 *Statewide Building Code.]*

- 3
- 4 C. All lodgers occupying a Short-Term Lodging must be associated with the same  
 5 rental contract. The maximum number of rental contracts per night is one.  
 6 [Advertised to permit the Board to consider a range on the number of  
 7 contracts per night from 1 to 5.]
- 8
- 9 D. Events and activities—including luncheons, banquets, parties, weddings,  
 10 meetings, fund raising, commercial or advertising activities, and any other  
 11 gathering of persons other than the authorized lodgers, whether for direct or  
 12 indirect compensation—are prohibited in association with any Short-Term  
 13 Lodging.
- 14
- 15 E. All advertisements for Short-Term Lodging, posted on any platform online or  
 16 in any other format, must (i) include the Short-Term Lodging permit number  
 17 and (ii) identify where lodgers can legally park or state that parking is not  
 18 available. [Advertised to allow the Board to consider requiring 1 to 2 parking  
 19 space per contract, with staff recommending none.]
- 20
- 21 F. A Short-Term Lodging Operator must maintain a guest log including the name,  
 22 address and telephone number of all overnight lodgers. The guest log must be  
 23 made available upon request to any County employee or agent tasked with  
 24 enforcing the Zoning Ordinance or other applicable part of the County Code.
- 25
- 26 G. Short-Term Lodging is prohibited in a detached accessory structure, accessory  
 27 dwelling unit, temporary family health care structure, affordable dwelling unit  
 28 or workforce dwelling unit.
- 29
- 30 H. The Zoning Administrator’s issuance of a permit does not abrogate, nullify, or  
 31 invalidate any other provision of federal, state, or local law; any restrictive  
 32 covenant; or any property owners association by-law.

33

34 5. Permit Required

- 35
- 36 A. An application for a Short-Term Lodging permit must be submitted to the  
 37 Zoning Administrator on a form furnished by the County along with a filing fee  
 38 of \$200.
- 39
- 40 B. The permit will be valid for two years from the date of issuance. [Advertised to  
 41 allow the Board to consider any permit fee from \$50 to \$250 and a range of  
 42 permit validity from 1 to 2 years.]
- 43
- 44 C. A permit for Short-Term Lodging may be revoked by the Zoning Administrator  
 45 because of the failure of the Short-Term Lodging Operator to comply with all  
 46 applicable regulations set forth in this Section or elsewhere in the Zoning

1                   Ordinance. The Zoning Administrator will give notice of any such revocation  
2                   by letter to the Short-Term Lodging Operator and the property owner, where  
3                   applicable, setting forth the grounds upon which the permit was revoked, the  
4                   date and time when the revocation is effective, and the appeals procedure. These  
5                   provisions do not preclude the Zoning Administrator’s use of any other remedy  
6                   prescribed by law with respect to violations of this Ordinance.  
7

8   **Amend Article 18, Administration, Amendments, Violations and Penalties, by amending Part 1,**  
9   **Administration, Sect. 106, Application and Zoning Compliance Letter Fees, to modify the**  
10 **Category 5 Special Exception fees in Par. 1, and to amend Par. 5, as follows:**  
11

- 12       1. Application for a variance, appeal, special permit or special exception:  
13

14           Category 5 special exception	\$16375
15	
16           • <u>Bed and Breakfast</u>	<u>\$8180. [Advertised to permit the Board to</u>
17	<u>consider any application fee from \$4085 to</u>
18	<u>\$16375.]</u>
19	
20           • <u>All other uses</u>	<u>\$16375</u>
21	

- 22       5. Fees for food trucks, small cell facilities, home occupations, short-term lodging, sign permits  
23       and site plans shall be as specified in Articles 2, 10, 12 and 17, ~~respectively~~ as applicable.

**§ 15.2-983. Creation of registry for short-term rental of property.**

A. As used in this section:

"Operator" means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity.

"Short-term rental" means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.

B. 1. Notwithstanding any other provision of law, general or special, any locality may, by ordinance, establish a short-term rental registry and require operators within the locality to register annually. The registration shall be ministerial in nature and shall require the operator to provide the complete name of the operator and the address of each property in the locality offered for short-term rental by the operator. A locality may charge a reasonable fee for such registration related to the actual costs of establishing and maintaining the registry.

2. No ordinance shall require a person to register pursuant to this section if such person is (i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.

C. 1. If a locality adopts a registry ordinance pursuant to this section, such ordinance may include a penalty not to exceed \$500 per violation for an operator required to register who offers for short-term rental a property that is not registered with the locality. Such ordinance may provide that unless and until an operator pays the penalty and registers such property, the operator may not continue to offer such property for short-term rental. Upon repeated violations of a registry ordinance as it relates to a specific property, an operator may be prohibited from registering and offering that property for short-term rental.

2. Such ordinance may further provide that an operator required to register may be prohibited from offering a specific property for short-term rental in the locality upon multiple violations on more than three occasions of applicable state and local laws, ordinances, and regulations, as they relate to the short-term rental.

D. Except as provided in this section, nothing herein shall be construed to prohibit, limit, or otherwise supersede existing local authority to regulate the short-term rental of property through general land use and zoning authority. Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Condominium Act (§ 55-79.39 et seq.), the declaration of a common interest community as defined in § 55-528, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55-508 et seq.).

SUMMARY TABLE OF OTHER JURISDICTIONS' REGULATIONS

Jurisdiction	Arlington County, VA	Town of Blacksburg, VA
Definitions	<p><b>Accessory Homestay:</b> A home occupation in which an owner(s) or tenant(s) of a dwelling unit who uses such dwelling unit as his/her primary residence, rents to a lodger, either such dwelling unit, or any portion thereof.</p> <p><b>Responsible party:</b> The owner or tenant, or an individual or business entity designated by the owner or tenant, of a dwelling unit in which an accessory homestay is permitted, who is available 24 hours a day, 7 days a week to respond to and resolve issues and complaints that arise during all times in which the dwelling unit is being used for an accessory homestay, so that a reasonably prompt, in-person response can be made at the accessory homestay when necessary.</p>	<p><b>Homestay:</b> accessory or secondary use of a residential dwelling unit or a portion thereof by a host to provide room or space that is intended for a short term transient rental purposes in exchange for a charge for the occupancy. The primary use of the homestay unit shall remain residential. For each booking transaction, all applicable taxes must be collected and remitted to the town as required by Chapter 22 by either the host or the associated hosting platform. Such accessory or secondary use shall not create a landlord/tenant relationship.</p>
Primary residency	Required and established with minimum of 185 days/year	Required
Tenancy of operator	Both owners and renters can participate provided primary residency is established	Only owner that lives at the homestay can participate provided primary residency is established
Authorized Agent	Required	N/A (during each stay, a principal guest is required to be designated as the contact person to respond to issues at the unit)
Guest Log		N/A
Allowable dwelling type	All dwelling types	All dwelling types
Life safety measures	Smoke detectors, fire extinguishers and carbon monoxide detectors (where applicable) required	Smoke and carbon monoxide detectors in all sleeping areas, in every room in the path of the means of egress from sleeping area and in each story including basements and second means of egress in each sleeping area required

Not an exhaustive list of regulations

Jurisdiction	Arlington County, VA	Town of Blacksburg, VA
Permit type	Annually renewable Accessory Homestay Permit (revocable for 3 or more violations, non-compliance or failure to allow inspections) and a business license	Annually renewable Homestay Permit (only one permit per host allowed) and revocable for 3 or more substantiated complaints, non-compliance and failure to allow inspections
Application fee	\$63 (permit fee)	N/A
TOT remittance	Required	Required
Limit on # of days per year	N/A	Type A: 90 days/year with host present Type B: 30 days out of 90 days total without host present
Events & commercial activities	Prohibited	N/A
Limit on # of contracts per day	One/night	N/A
Limit on # of bedrooms available for rent per day	Determined by limits on occupants	Type A: 2 bedrooms maximum Type B: No limit
Limit on occupancy	Larger of either 6 guests or 2 guests/bedroom (not to exceed that allowed by Building Code)	No more than 6 guests total per night per unit
Adjacent property notification	N/A	Required
Parking	N/A	N/A
Include license/permit number on advertisement	N/A	N/A



Jurisdiction	City of Charlottesville, VA	Montgomery County, MD
Definitions	<p><b>Bed and Breakfast (Homestay):</b> a temporary lodging facility operated within a single family residence which is owner occupied and managed; having no more than two (2) guest rooms; and wherein food service shall be limited to breakfast and light fare for guests only.</p> <p><b>Responsible Party:</b> Individual or business entity located within 30 miles who will be available 24 hours a day, 7 days a week, to respond to resolve issues and complaints (in person, if necessary) that arise during the period of time in which the dwelling is being used as a homestay.</p>	<p><b>Short-Term Residential Rental:</b> the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days. Short-Term Residential Rental is not a Bed and Breakfast (record of all overnight visitors must be maintained and readily available for inspection)</p>
Primary residency	Required and established with minimum of 180 days/year	Required
Tenancy of operator	Owner or resident manager provided primary residency is established	Both owners and owner-authorized residents can participate provided primary residency is established
Authorized Agent	Responsible party located not more than 30 miles from rental unit required	Required when primary resident is not present and must reside within 15 miles of the unit (contact information of authorized agent must be posted inside the unit along with rules and regulations)
Guest Log	N/A	Record of all overnight visitors required to be maintained and be readily available for inspection
Allowable dwelling type	All dwelling types	Prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Apartment
Life safety measures	Working smoke and carbon monoxide detectors and fire extinguishers required	Working smoke and carbon monoxide detectors and fire extinguishers required

<b>Jurisdiction</b>	<b>City of Charlottesville, VA</b>	<b>Montgomery County, MD</b>
<b>Permit type</b>	Annually renewable Home Occupation Provisional Use Permit / Homestay (revocable for 3 or more substantiated complaints within a calendar year)	Annually renewable license
<b>Application fee</b>	\$100 permit fee	\$44 (license fee)
<b>TOT remittance</b>	Required	Required
<b>Limit on # of days per year</b>	14 days in any 30-day period	No limit with host present 120 days/year without host present
<b>Events &amp; commercial activities</b>	N/A	N/A
<b>Limit on # of contracts per day</b>	N/A	N/A
<b>Limit on # of bedrooms available for rent per day</b>	N/A	N/A
<b>Limit on occupancy</b>	No more than 6 adults per night per tax map parcel	2 adults (over 18 years old) per bedroom, and a maximum of 6 adults per night per unit
<b>Adjacent property notification</b>	N/A	Required
<b>Parking</b>	N/A	One off-street parking space per contract unless the online listing indicates that vehicle parking is prohibited
<b>Include license/permit number on advertisement</b>	N/A	Required

Jurisdiction	City of Santa Monica CA	City & County of San Francisco CA
Definitions	<p><b>Short-Term Rental:</b> Any rental of any living accommodation that is 30 consecutive days or less, including hotels, motels, bed and breakfasts, home- sharing and vacation rentals.</p> <p><b>Home-Sharing:</b> The rental of a person’s private residence while the primary occupant is present during the rental and whereby the person is hosting the visitor. PERMITTED CITYWIDE.</p> <p><b>Vacation Rental:</b> The exclusive rental of a private residence for transient use. In such cases the resident is either not present or there is no full time resident that lives in the unit. PROHIBITED CITYWIDE.</p>	<p><b>Short-Term Residential Rental:</b> A Tourist or Transient Use where all of the following conditions are met:</p> <p>(a) the Residential Unit is offered for Tourist or Transient Use by the Permanent Resident of the Residential Unit;</p> <p>(b) the Permanent Resident is a natural person;</p> <p>(c) the Permanent Resident has registered the Residential Unit and maintains good standing on the Department’s Short-Term Residential Rental Registry; and</p> <p>(d) the Residential Unit: is not subject to the Inclusionary Affordable Housing Program.</p>
Primary residency	Required (a host may not have more than one residence within the city of Santa Monica)	Required and established with minimum of 275 days/year (new residents must have occupied the unit for at least 60 consecutive days prior to application.)
Tenancy of operator	Both owners and renters can participate provided primary residency is established	Both owners and renters can participate provided primary residency is established
Authorized Agent	N/A (operator required to be on-site at all times)	N/A
Guest Log	N/A	N/A
Allowable dwelling type	All dwelling types except Rent Control Bootleg Units	All dwelling types where residential use is permitted except in RV, Camper Vans, temporary structures, commercial or industrial buildings
Life safety measures	Emergency exist route information required to be provided	Unit must not have any outstanding Planning, Building, Housing, Fire, Health, Police, or other applicable City code violations

Jurisdiction	City of Santa Monica CA	City & County of San Francisco CA
Permit type	Home-Sharing Permit and business license	Registration and Certifications as a Host by the Office of STR every two years (submittal of a quarterly report affirming compliance required)
Application fee	N/A (only business license fee applies)	\$250 every two years
TOT remittance	Required	Required.
Limit on # of days per year	No limit when host present. Not permitted without host present.	No limit with host present 90 days/year without host present
Events & commercial activities	Prohibited	Prohibited
Limit on # of contracts per day	N/A	Maximum of five/night
Limit on # of bedrooms available for rent per day	N/A	N/A
Limit on occupancy	N/A	Not more than 5 guests per unit
Adjacent property notification	N/A	N/A
Parking	N/A	N/A
Include license/permit number on advertisement	Required	Required

1 AN ORDINANCE AMENDING  
2 ARTICLES 7.2 AND 13 OF CHAPTER 4 OF THE FAIRFAX COUNTY CODE,  
3 RELATING TO BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE TAX  
4 AND TRANSIENT OCCUPANCY TAX  
5

6 Draft of February 16, 2018  
7

8 AN ORDINANCE to amend the Fairfax County Code by amending and  
9 readopting Sections 4-7.2-25, 4-13-1, 4-13-2 and 4-13-5, relating to  
10 Business, Professional and Occupational License Tax and Transient  
11 Occupancy Tax.  
12

13 Be it ordained by the Board of Supervisors of Fairfax County:

14 1. That Sections 4-7.2-25, 4-13-1, 4-13-2 and 4-13-5 are amended and readopted as  
15 follows:

16 Article 7.2 – Business, Professional and Occupational License Tax.

17 Section 4-7.2-25. – Hotels and motels; license tax rate.

18 Every person operating a hotel-~~or motel~~ as defined in Section ~~4-13-1 4-17-1~~ of the Fairfax  
19 County Code or similar business which rents rooms or space to transients shall pay an annual  
20 business license tax of Twenty-six Cents for each One Hundred Dollars of gross receipts.

21 Article 13. – Transient Occupancy Tax.  
22

23 Section 4-13-1. -Definitions.

24 The following words and phrases when used in this Article shall, for the purposes of this  
25 Article, have the meanings respectively ascribed to them in this Section, except in those instances  
26 where the context clearly indicates a different meaning:

27 *County* means the County of Fairfax, Virginia.

28 *Director* means Director of the Department of Tax Administration or any of duly authorized  
29 deputies or agents of the Director.

30 *Hotel* means any public or private hotel, inn, apartment hotel, hostelry, tourist home or house,  
31 motel, rooming house, any place that offers Short-Term Lodging as defined in Article 20, Part 3  
32 of the Fairfax County Zoning Ordinance, or other lodging place within the County offering lodging  
33 for ~~onefour~~ or more persons at any one time, and the owner and operator thereof, who, for  
34 compensation, furnishes lodging to any transients as hereinafter defined.

1 *Person* means individuals, firms, partnerships, associations, corporations, persons acting in  
2 representative capacity and combinations of individuals of whatever form and character.

3 *Room rental* means the total charge made by any such hotel for lodging and/or space furnished  
4 any such transient. If the charge made by such hotel to such transient includes any charge for  
5 services or accommodations in addition to that of lodging and/or the use of space, then such portion  
6 of the total charge as represents only room and/or space rental shall be distinctly set out and billed  
7 to such transient by such hotel as a separate item.

8 *Transient* means any person who, for any period of ~~less~~~~not more~~ than thirty consecutive days  
9 either at his own expense or at the expense of another, obtains lodging or the use of any space in  
10 any hotel as hereinabove defined, for which lodging or use of space a charge is made.

11 **Section 4-13-2. – Levy; amount of tax.**

12 ~~(a)A-~~ Pursuant to Virginia Code § 58.1-3819, in addition to all other taxes, there is hereby  
13 imposed and levied on each and every transient a tax equivalent to two percent of the total amount  
14 paid for room rental by or for any such transient to any hotel; provided however, that the tax  
15 imposed by this subsection shall not be imposed on any transient occupancy in any hotel that is  
16 located within any town that has imposed a tax on transient occupancy.

17  
18 ~~(b)B-~~ Pursuant to Virginia Code § 58.1-3824, and in addition to the tax imposed by subsection  
19 A of this Section, in addition to all other taxes, there is hereby imposed and levied on each and  
20 every transient a tax equivalent to two percent of the total amount paid for room rental by or for  
21 any such transient to any hotel regardless of whether the hotel is located within any town that has  
22 imposed a tax on transient occupancy. The tax imposed pursuant to this subsection shall be  
23 collected and appropriated for those purposes set forth in ~~Virginia Code § 58.1-3825~~ Virginia  
24 Code § 58.1-3824.

25  
26 **Section 4-13-5. - Report and remittance of tax.**

27 (a) The person collecting any such tax shall make out a report on such forms and setting forth  
28 such information as the Director may prescribe and require, showing the amount of room rental  
29 charges collected, and the tax required to be collected, and shall sign and deliver the same to the  
30 Director with a remittance of such tax.

31  
32 (b) Such reports and remittances shall be made monthly on or before the last day of the month  
33 ~~following each quarter~~ and covering the amount of tax collected during the preceding  
34 ~~month. quarter. Such quarterly reports and remittances shall be made on or before the last day of~~  
35 ~~April, July, October and January in each year.~~ If the remittance is by check or money order, it  
36 shall be payable to the County and all remittances received hereunder by the Director shall be  
37 promptly delivered to the Director of the Department of Finance. ~~Any person operating a hotel~~  
38 ~~may make reports and remittances on a monthly basis in lieu of the quarterly basis hereinbefore~~  
39 ~~provided.~~

40  
41 **2. That the provisions of this ordinance are severable, and if any provision of this**  
42 **ordinance or any application thereof is held invalid, that invalidity shall not affect the other**

1 **provisions or applications of this ordinance that can be given effect without the invalid**  
2 **provision or application.**

3  
4 **3. That this Ordinance will become effective on October 1, 2018.**

5  
6  
7 GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018

8  
9 \_\_\_\_\_

10 Clerk to the Board of Supervisors  
11

Board Agenda Item  
June 19, 2018

4:30 p.m.

Public Hearing on Amendments to the Code of the County of Fairfax, Chapter 82, Motor Vehicles and Traffic

ISSUE:

Public Hearing on amendments to the Code of the County of Fairfax, Chapter 82, Motor Vehicles and Traffic.

RECOMMENDATION:

The County Executive recommends approval of the proposed amendments to Chapter 82.

TIMING:

On May 15, 2018, the Board authorized advertisement of a public hearing to consider this matter on June 19, 2018, at 4:30 p.m.

BACKGROUND:

A housekeeping measure to update Chapter 82, portions of Section 82-1-6 (Adoption of State Law) have been amended to reflect changes made to the *Code of Virginia* by the 2018 General Assembly. A summary of the changes as a result of the 2018 General Assembly amendments affecting Chapter 82 is provided in Attachment 2.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 - Proposed Amendments to Chapter 82, Motor Vehicles and Traffic  
Attachment 2 - Summary of 2018 General Assembly Amendments Affecting Chapter 82, Motor Vehicles and Traffic.

STAFF:

David M. Rohrer, Deputy County Executive  
Colonel Edwin C. Roessler Jr., Chief of Police

Assigned Counsel:

Kimberly P. Baucom, Senior Assistant County Attorney



Proposed Amendments to  
Chapter 82, Motor Vehicles and Traffic

**Article 1. – In General.**

**Section 82-1-6. Adoption of State Law**

Pursuant to the authority of Section 46.2-1313 of the Virginia Code, all provisions and requirements of the following sections of the Code of Virginia, as in effect on July 1, ~~2017~~ 2018, except those provisions and requirements the violation of which constitutes a felony, are hereby incorporated into the Fairfax County Code by reference, effective July 1, ~~2017~~ 2018.

18.2-266	18.2-269	46.2-203.1
18.2-266.1	18.2-270	46.2-218
18.2-267	18.2-270.01	46.2-300
18.2-268.1	18.2-270.1	46.2-301
18.2-268.2	18.2-271	46.2-301.1
18.2-268.3	18.2-271.1	46.2-302
18.2-268.4	18.2-272	46.2-329
18.2-268.5	<u>46.2-100</u>	46.2-334.001
18.2-268.6	46.2-102	46.2-341.20:5
18.2-268.7	46.2-104	46.2-341.26:2
18.2-268.8	46.2-108	46.2-341.26:3
18.2-268.9	46.2-109	46.2-341.26:4
18.2-268.10	46.2-110	46.2-341.26:7
18.2-268.11	46.2-111	46.2-341.26:9
18.2-268.12	46.2-112	46.2-341.27

46.2-341.28	46.2-715	46.2-821
46.2-346	46.2-716	46.2-822
46.2-349	46.2-724	46.2-823
46.2-357	46.2-730	46.2-824
46.2-371	46.2-800	46.2-825
46.2-373	46.2-801	46.2-826
46.2-376	46.2-802	46.2-827
46.2-379	46.2-803	46.2-828
46.2-380	46.2-804	46.2-828.2
46.2-391.01	46.2-805	46.2-829
46.2-391.2	46.2-806	46.2-830
46.2-391.3	46.2-807	46.2-831
46.2-391.4	46.2-808	46.2-832
46.2-392	46.2-808.1	46.2-833
46.2-393	46.2-810	46.2-833.1
46.2-398	46.2-811	46.2-834
46.2-602.3	46.2-812	46.2-835
<u>46.2-613</u>	46.2-814	46.2-836
46.2-616	46.2-816	46.2-837
46.2-617	46.2-817	46.2-838
46.2-618	46.2-818.1	46.2-839
46.2-704	46.2-819.4	46.2-841
<u>46.2-711</u>	46.2-820	46.2-842

46.2-842.1	46.2-866	46.2-888
46.2-844	46.2-868	46.2-889
46.2-845	46.2-868.1	46.2-890
46.2-846	46.2-869	46.2-891
46.2-848	<u>46.2-870</u>	46.2-892
46.2-849	46.2-871	46.2-893
46.2-850	46.2-872	46.2-894
46.2-851	46.2-873	46.2-895
46.2-852	46.2-874	46.2-896
46.2-853	46.2-876	46.2-897
46.2-854	46.2-877	46.2-898
46.2-855	46.2-878	46.2-899
46.2-856	46.2-878.1	46.2-900
46.2-857	46.2-878.2	46.2-902
46.2-858	46.2-878.3	46.2-903
46.2-859	46.2-879	46.2-905
46.2-860	46.2-880	46.2-906
46.2-861	46.2-882	46.2-908.1
46.2-862	46.2-883	46.2-909
46.2-863	46.2-884	46.2-910
46.2-864	46.2-885	46.2-911.1
46.2-865	46.2-886	46.2-912
46.2-865.1	46.2-887	46.2-914

46.2-915	46.2-1002	46.2-1032
46.2-915.2	46.2-1003	46.2-1033
46.2-918	46.2-1004	46.2-1034
46.2-919	46.2-1010	46.2-1035
46.2-919.1	46.2-1011	46.2-1036
46.2-920	<u>46.2-1012</u>	46.2-1037
46.2-921	46.2-1013	46.2-1038
<u>46.2-921.1</u>	46.2-1014	46.2-1039
46.2-922	46.2-1015	46.2-1040
46.2-923	46.2-1016	46.2-1041
46.2-924	46.2-1017	46.2-1043
46.2-926	46.2-1018	46.2-1043.1
46.2-927	46.2-1019	46.2-1044
46.2-928	<u>46.2-1020</u>	46.2-1047
46.2-929	46.2-1021	<u>46.2-1049</u>
46.2-930	<u>46.2-1022</u>	46.2-1050
46.2-932	<u>46.2-1023</u>	46.2-1052
46.2-936	46.2-1024	46.2-1053
46.2-937	46.2-1025	46.2-1054
46.2-940	<u>46.2-1026</u>	46.2-1055
46.2-942	46.2-1027	46.2-1056
46.2-1001.1	46.2-1030	46.2-1057
46.2-1001	46.2-1031	46.2-1058

46.2-1059	46.2-1088	46.2-1154
46.2-1060	46.2-1088.1	46.2-1155
46.2-1061	46.2-1088.2	46.2-1156
46.2-1063	46.2-1088.5	46.2-1157
46.2-1064	46.2-1088.6	46.2-1158
46.2-1065	46.2-1090	<u>46.2-1158.01</u>
46.2-1066	46.2-1091	46.2-1158.02
46.2-1067	46.2-1092	46.2-1158.1
46.2-1068	46.2-1093	46.2-1172
46.2-1070	46.2-1102	46.2-1173
46.2-1071	46.2-1105	46.2-1218
46.2-1072	46.2-1110	46.2-1219.2
46.2-1076	46.2-1111	46.2-1234
46.2-1077	46.2-1112	46.2-1240
46.2-1077.01	46.2-1115	46.2-1242
46.2-1078	46.2-1116	46.2-1250
<u>46.2-1078.1</u>	46.2-1118	46.2-1309
46.2-1079	46.2-1120	<u>46.2-1508.2</u>
46.2-1080	46.2-1121	46.2-1552
46.2-1081	46.2-1130	46.2-1561
46.2-1082	46.2-1137	46.2-2910
46.2-1083	46.2-1150	
46.2-1084	46.2-1151	

References to "highways of the state" contained in such provisions and requirements hereby adopted shall be deemed to refer to the streets, highways and other public ways within the County. Such provisions and requirements are hereby adopted, mutatis mutandis, and made a part of this chapter as fully as though set forth at length herein; and it shall be unlawful for any person, within the county, to violate or fail, neglect or refuse to comply with any provision of Title 46.2 or Title 18.2-266, 18.2-266.1, 18.2-267, 18.2-268.1 through 18.2-268.12, 18.2-269, 18.2-270, 18.2-270.01, 18.2-270.1, 18.2-271, 18.2-271.1 and 18.2-272 of the *Code of Virginia* which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Title 46.2 or Title 18.2-266, 18.2-266.1, 18.2-267, 18.2-268.1 through 18.2-268.12, 18.2-269, 18.2-270, 18.2-270.01, 18.2-271, 18.2-270.1, 18.2-271.1 and 18.2-272 of the *Code of Virginia*.

## ATTACHMENT 2

### SUMMARY OF 2018 GENERAL ASSEMBLY AMENDMENTS AND REPEAL AFFECTING CHAPTER 82

The information presented below summarizes changes to Title 18.2 and Title 46.2 of the *Code of Virginia*, portions of which are adopted by reference into Chapter 82 of the *Code of the County of Fairfax*.

Be it enacted by the General Assembly of Virginia:

*An Act to amend and reenact [46.2-100](#) and [46.2-1158.01](#), relating to military surplus motor vehicles; registration and operation on highways.* Defines “military surplus motor vehicle” as a multipurpose or tactical vehicle that was manufactured by or under the direction of the United States Armed Forces for off-road use and subsequently authorized for sale to civilians. Exempts licensed military surplus motor vehicles from inspection requirements.

*An Act to amend and reenact § [46.2-613](#) of the Code of Virginia, relating to parked vehicles; registration, licensing, and titling requirements.* Expands from vehicles operated on a highway to vehicles operated or parked on a highway the class of vehicles subject to registration, licensing, and titling requirements. The bill contains technical amendments.

*An Act to amend and reenact § [46.2-870](#) of the Code of Virginia, relating to maximum speed limits on certain highways.* Increases from 55 miles per hour to 60 miles per hour the maximum speed limit on U.S. Route 301, the entirety of U.S. Route 17, and State Routes 3 and 207.

*An Act to amend and reenact §§ [46.2-921.1](#) and [46.2-1026](#) of the Code of Virginia, relating to public utility vehicles; yielding right-of-way or reducing speed.* Public utility service vehicles; yielding right-of-way or reducing speed. Authorizes vehicles used by any public utility company for the purpose of repairing, installing, or maintaining electric or natural gas utility equipment or service to use certain high-intensity amber warning lights. The bill provides that if such a vehicle is stationary and displaying such lights, drivers shall, if possible, make a lane change to the lane not adjacent to the vehicle or reduce speed and proceed with caution.

*An Act to amend and reenact § [46.2-1012](#) of the Code of Virginia, relating to auxiliary lights on motorcycles and autocycles.* Provides that motorcycles and autocycles may be equipped with red or amber standard bulb running lights or light-emitting diode (LED) pods or strips as auxiliary lighting. The bill requires such lights to (i) be directed at the ground, (ii) be designed for vehicular use, (iii)

not emit a beam of light greater than 25 candlepower per bulb, (iv) not be attached to wheels, and (v) not be blinking, flashing, oscillating, or rotating.

*An Act to amend and reenact § [46.2-1020](#) of the Code of Virginia, relating to lighting devices on motor vehicles; covering.* Provides that if certain lighting devices are unlit, have a clear lens, and have a clear reflector if the lighting device has a reflector, then a vehicle equipped with such lighting device may be operated on the highways without covering the lighting device.

*An Act to amend and reenact § [46.2-1022](#) of the Code of Virginia, relating to steady-burning blue or red lights on law-enforcement vehicles.* Permits law-enforcement vehicles to be equipped with steady-burning blue or red lights in addition to being equipped with flashing, blinking, or alternating blue, blue and red, blue and white, or red, white, and blue combination warning lights of types approved by the Superintendent of State Police.

*An Act to amend and reenact § [46.2-1023](#) of the Code of Virginia, relating to flashing red or red and white warning lights.* Allows vehicles of the National Guard Chemical, Biological, Radiological, Nuclear and High Yield Explosive (CBRNE) Enhanced Response Force Package (CERFP) to utilize flashing, blinking, or alternating red or red and white combination warning lights when responding to an emergency.

*An Act to amend and reenact § [46.2-1049](#) of the Code of Virginia, relating to exhaust system in good working order; excluded vehicles.* Excludes vehicles licensed as antique motor vehicles from the requirement that such vehicle be equipped with an exhaust system in good working order and in constant operation to prevent excessive or unusual levels of noise. Current law excludes antique motor vehicles manufactured prior to 1950 from such requirements.

*An Act to amend and reenact § [46.2-1078.1](#) of the Code of Virginia, relating to use of handheld personal communication devices; highway work zone.* Imposes a mandatory fine of \$250 for using a handheld personal communications device for reading emails or texting while operating a motor vehicle in a highway work zone, defined in the bill.

*An Act to amend and reenact § [46.2-1508.2](#) of the Code of Virginia, relating to display or parking of used motor vehicles for sale; penalty.* Clarifies that the prohibition on the display or parking, or permitting the display or parking, of five or more used motor vehicles within any 12-month period on real property to sell or advertise the sale of used motor vehicles applies per property and provides that a property owner or lessee in violation of such prohibition is guilty of a Class 4 misdemeanor. The bill also requires the Motor Vehicle Dealer Board to create a form to place on a vehicle that is in violation of the law. The bill contains technical am



Board Agenda Item  
June 19, 2018

4:30 p.m.

Public Hearing for the De-Creation of Small and Local Sanitary Districts for  
Discontinuing Vacuum Leaf Collection Service (Mason and Dranesville Districts)

ISSUE:

Board of Supervisors' approval of the De-creation of Small Sanitary Districts for vacuum leaf collection service.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the proposed de-creation of these Sanitary Districts within the Mason and Dranesville Districts:

Sanitary District	Action	Service	Recommendation
Small District within Mason District (Nine homes on Colfax Ave)	De-create	Vacuum leaf collection	Approve
Small District within Mason District (3703 Munson Road)	De-create	Vacuum leaf collection	Approve
Small District within Dranesville District (4023 North Upland Street)	De-create	Vacuum leaf collection	Approve

TIMING:

Board of Supervisors' authorized the advertisement on May 15, 2018, for a Public Hearing to be held on June 19, 2018, at 4:30 p.m.

BACKGROUND:

The administrative responsibility for the Creation/Enlargement/De-Creation/Re-creation of Small and Local Sanitary Districts in the County of Fairfax for refuse/recycling and/or leaf collection is with the Department of Public Works and Environmental Services, Solid Waste Management Program (SWMP). The establishment of sanitary districts is accomplished through the action of the Board of Supervisors at public hearings.

In early 2017, the SWMP conducted a review of mapping data used to precisely define the collection areas where County waste collection service is provided. During this review, it was discovered that nine homes on Colfax Avenue, one house on Munson Avenue, and one on North Upland Street were inadvertently included in sanitary district mapping. This de-creation will rectify the mapping errors.

Details of each de-creation are described below:

**Colfax Avenue, Mason District**

Nine new homes were built on Colfax Avenue as infill development, with construction completed in 2008. This development was built in an existing Sanitary District that included refuse, recycling and curbside vacuum leaf collection. This Colfax Avenue development was designed as a pipestem with nine single-family homes. Fairfax County solid waste regulations do not require trash trucks to service pipestems because there is not enough room for the truck to turn around to exit (without the ability to turnaround, the trash truck must back out of the pipestem – a difficult and dangerous practice).

When trash trucks do not service pipestems, residents must bring the carts to the end of the pipestem where it meets the roadway. Some customers do not like this situation and, in the case of Colfax Avenue, residents agreed to obtain trash collection service from a privately-owned collection company that would collect with a truck on the pipestem rather than use county service. In this case, the Sanitary District for trash and recycling collection was de-created for these nine homes, but curbside vacuum leaf collection was not included in the de-creation. Since that time, the homes have been charged for leaf service but have not received the service. The de-creation of the vacuum leaf collection sanitary district for Colfax Avenue will rectify this situation.

Upon Board approval and in accordance with county policy, the owners of the nine homes will be provided refunds for three years of service through the Department of Tax Administration.

**3703 Munson Road, Mason District**

The inclusion of the Munson Road property was due to a clerical error. The de-creation of the vacuum leaf collection district for this property will rectify this error.

Upon Board approval, and in accordance with county policy, the owner of the home will be provided a refund for three years of service through the Department of Tax Administration.

**4023 North Upland Street, Dranesville District**

This property straddles the line between Fairfax and Arlington Counties. With respect to Fairfax County, the property is located in a Sanitary District that includes curbside

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vacuum leaf collection. The resident has been receiving refuse and recycling collection service from Arlington County (not Fairfax County).

In this case, the Sanitary District for refuse and recycling collection was de-created for 4023 North Upland Street, but curbside vacuum leaf collection was not included in the de-creation. The de-creation of the vacuum leaf collection sanitary district for 4023 North Upland Street will rectify this situation.

Upon Board approval, and in accordance with county policy, the owner of the home will be provided a refund for three years of service through the Department of Tax Administration.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Summary Sheet

Attachment 2: Data Sheet with Proposed Resolution with Maps

STAFF:

Robert A. Stalzer, Deputy County Executive

James W. Patteson, P.E., Director, Department of Public Works and Environmental Services (DPWES)

John W. Kellas, Deputy Director, DPWES

## SUMMARY SHEET

Proposed alterations to the following small and local sanitary districts for leaf collection service:

1. De-Create Small District within Mason District for the purpose of removing curbside vacuum leaf collection service to nine homes on Colfax Avenue.
2. De-Create Small District within Mason District for the purpose of removing curbside vacuum leaf collection service from 3703 Munson Road.
3. De-Create Small District within Dranesville District for the purpose of removing curbside vacuum leaf collection service from 4023 North Upland Street.

DATA SHEET

De-Create Small Districts within the Mason & Dranesville Districts

Purpose: To remove Vacuum Leaf Collection Service from:

- Nine homes on Colfax Avenue - 5718, 5720, 5722, 5724, 5726, 5740, 5742, 5744, & 5746
- 3703 Munson Road
- 4023 North Upland Street
  
- To correct inaccuracies in sanitary district mapping that were discovered during a review of mapping.

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ADOPTION OF  
A RESOLUTION TO DE-CREATE SMALL DISTRICTS  
FOR CURBSIDE VACUUM LEAF COLLECTION  
WITHIN MASON AND DRANESVILLE DISTRICTS

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on May 15, 2018, at which a quorum was present and voting, the following resolution to be effective on July 1, 2018, was adopted:

WHEREAS, Virginia Code Section 15.2-858, as amended, provides for, among other things, the de-creation by the Board of Supervisors of Fairfax County, Virginia, of a small sanitary district by resolution; and

WHEREAS, the Board of Supervisors has been presented with facts and information upon consideration of which said Board, finding the properties embraced in the sanitary districts will be benefited by de-creating the sanitary districts to eliminate vacuum leaf collection service.

NOW, THEREFORE, BE IT RESOLVED, that there is hereby de-created by the Board of Supervisors of Fairfax County, Virginia, pursuant to Virginia Code Section 15.2-858, as amended:

Small District within Mason District and Small District within the Dranesville District, Fairfax County, Virginia, which said de-creation of the sanitary districts shall be described as follows and as shown on the attached maps:

Mason District - 5718, 5720, 5722, 5724, 5726, 5740, 5742, 5744, & 5746 Colfax Avenue and 3703 Munson Road

Dranesville District - 4023 North Upland Street

AND BE IT FURTHER RESOLVED that the Board of Supervisors of Fairfax County, Virginia, declares its intention to implement the purpose for which said Small Districts within the Mason and Dranesville Districts is hereby de-created to wit:

To discontinue vacuum leaf collection service for the residents who reside therein.

Given under my hand this \_\_\_\_ day of June, 2018

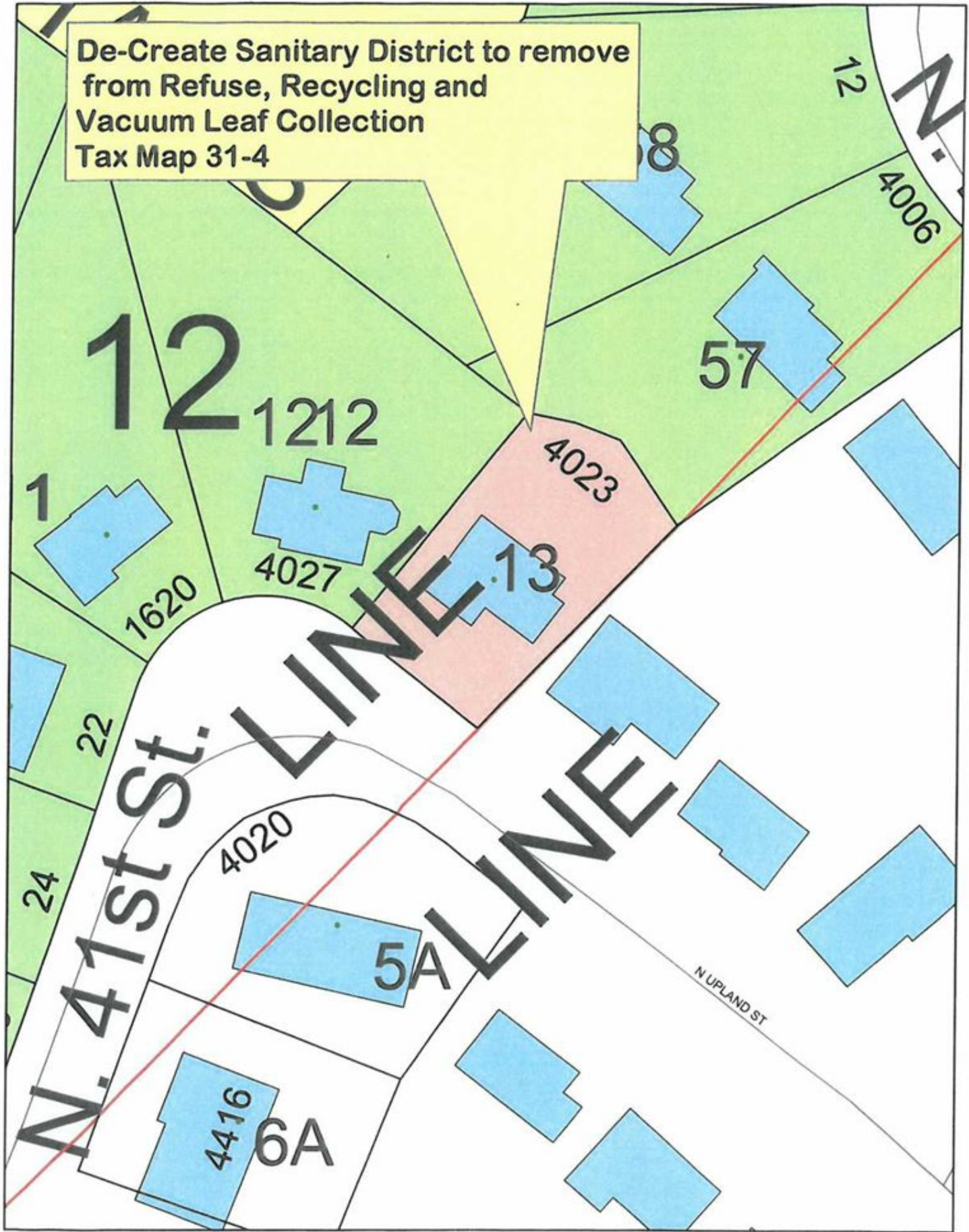
\_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board







De-Create Sanitary District to remove  
from Refuse, Recycling and  
Vacuum Leaf Collection  
Tax Map 31-4

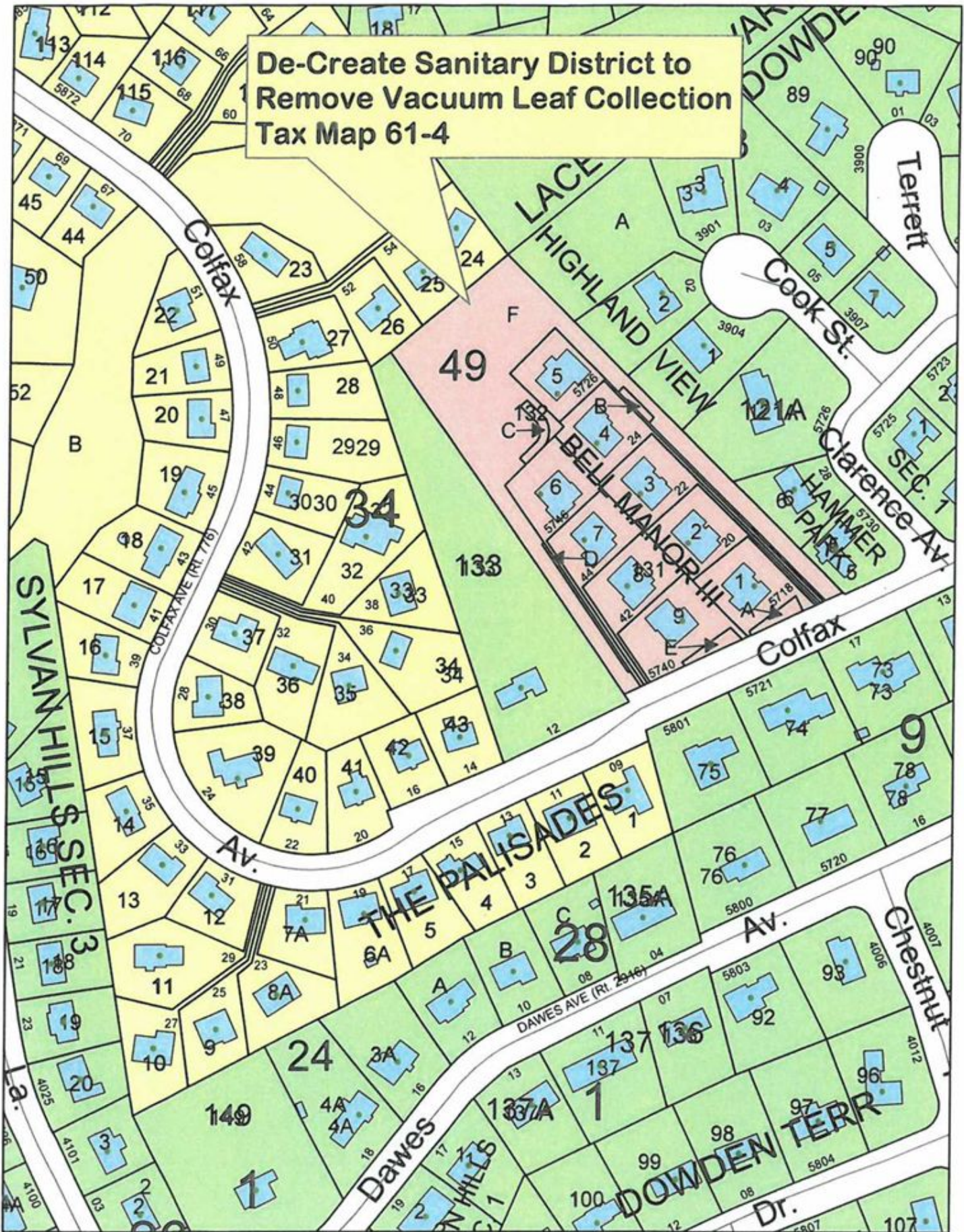


31-4

4023 N. UPLAND ST



**De-Create Sanitary District to  
Remove Vacuum Leaf Collection  
Tax Map 61-4**



61-4

COLFAX AVE AREA



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4:30 p.m.

Public Comment from Fairfax County Citizens and Businesses on Issues of Concern