

**REPORT ON THE
CITY OF FALLS CHURCH – COUNTY OF FAIRFAX
VOLUNTARY SETTLEMENT AGREEMENT**



**Commission on Local Government
Commonwealth of Virginia**

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REPORT ON THE CITY OF FALLS CHURCH– COUNTY OF FAIRFAX VOLUNTARY SETTLEMENT AGREEMENT

PROCEEDINGS OF THE COMMISSION

On May 1, 2013 the City of Falls Church and the County of Fairfax submitted to the Commission on Local Government for review a proposed voluntary settlement agreement negotiated by the two jurisdictions under the authority of Section 15.2-3400 of the Code of Virginia.¹ Consistent with the regulations promulgated by the Commission, the submission was accompanied by data and materials supporting the proposed agreement. Further, and in accordance with the Commission’s regulation 1VAC 50-20-230(C), the City and County gave notice of the proposed agreement to 24 other Virginia local governments with which they are contiguous or with which they share functions, revenues, or tax sources.² The proposed agreement provides for: (1) the annexation to the City of Falls Church of approximately 38.41 acres of territory located in Fairfax County; (2) requiring a portion of the proposed annexation area continue to be utilized for school-related purposes for a period of 50 years; and (3) for other terms relative to the settlement of litigation between the two parties.^{3 4}

In conjunction with its review of the proposed settlement agreement, on July 8, 2013, the Commission toured relevant sections of the City of Falls Church and Fairfax County and met in the City to receive oral testimony from the two jurisdictions in support of the agreement. That evening, the Commission held a public hearing, advertised in accordance with Section 15.2-2907(B) of the Code of Virginia, for the purpose of receiving citizen comment. The public hearing was attended by approximately 19 persons and three individuals testified. In order to permit receipt of additional public comment, the Commission agreed to keep its record open for written submissions through July 22, 2013. The Commission did not receive any additional submissions or comments from the public.

¹ Notice by the City of Falls Church and the County of Fairfax of a Voluntary Settlement Agreement, April 29, 2013.

² John E. Foster, City Attorney, City of Falls Church; and Cynthia L. Tianti, Deputy County Attorney, Fairfax County; letter to Commission staff dated June 7, 2013. In addition to the requisite Virginia localities, the parties notified the District of Columbia, Prince Georges County, Maryland, and Montgomery County, Maryland.

³ Voluntary Boundary Adjustment Agreement By and Between Falls Church, Virginia and Fairfax County, Virginia, April 30, 2013, hereinafter cited as the “settlement agreement” or “proposed agreement.” Though the Notice and other materials originally submitted to the Commission indicated that 42.4 acres were proposed to be annexed, the parties submitted Proposed Findings of Fact, dated August 9, 2013 that reflected an updated acreage of 38.41 acres based on survey data.

⁴ John E. Foster, Falls Church City Attorney, email to Commission staff, dated September 3, 2013. The Commission was notified on September 3, 2013 of an additional amendment to the proposed settlement agreement. This amendment would create a new Section 1.8, which would apply to existing easements in portions of the boundary adjustment area. The language would require Fairfax County to cooperate in the relocation of any easement it may have on the school properties. The Commission does not foresee any negative implications from the proposed language and wishes to acknowledge that it is aware of these terms, although they were not part of the agreement that was provided with the Notice.

SCOPE OF REVIEW

The Commission on Local Government is directed by law to review proposed annexations and other local boundary change and transition issues, as well as negotiated agreements settling such matters, prior to their presentation to the courts for ultimate disposition. Upon receipt of notice of such a proposed action or agreement, the Commission is directed to “hold hearings, make investigations, analyze local needs” and to submit a report containing findings of fact and recommendations regarding the issue to the affected local governments.⁵ With respect to a proposed agreement negotiated under the authority of Section 15.2-3400 of the Code of Virginia, the Commission is required to determine in its review “whether the proposed settlement is in the best interest of the Commonwealth.”

As we have noted in previous reports, it is evident that the General Assembly encourages local governments to attempt to negotiate settlements of their interlocal concerns. One of the statutory responsibilities of this Commission is to assist local governments in such efforts. In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as that negotiated by the City of Falls Church and Fairfax County, should be approached with respect and presumption of their compatibility with applicable statutory standards. The Commission notes, however, that the General Assembly has decreed that interlocal agreements negotiated under the authority of Section 15.2-3400 of the Code of Virginia shall be reviewed by this body prior to their final adoption by the local governing bodies. We are obliged to conclude, therefore, that while interlocal agreements are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be permitted to render our review a *pro forma* endorsement of any proposed settlement. Our responsibility to the Commonwealth and to the affected localities requires more.

GENERAL CHARACTERISTICS OF THE CITY, THE COUNTY, AND THE AFFECTED AREAS

City of Falls Church

The City of Falls Church, which developed around the historic 1734 Falls Church (Episcopal), was incorporated as a town in 1875, and finally became a city in 1948.⁶ The City’s population increased from 10,377 to 12,332 persons, or by 18.84%, between 2000 and 2010. Falls Church is Virginia’s smallest unit

⁵ Section 15.2-2907(A), Code of Virginia.

⁶ City of Falls Church, Virginia, Comprehensive Plan, adopted October 25, 2005, p. 1.

of city or county government by land area, encompassing only 2.0 square miles. Based on its area and population, the City's population density is 6,166 persons per square mile.⁷

The population of the City is significantly wealthier than the State as a whole. The Census estimated that, in 2011, the City's median household income was \$120,332, which is 190.1% of the statistic for the Commonwealth as a whole (\$63,302).⁸ With regard to age, as of 2010, the median age of City residents was 39.0 years, compared with 37.5 for Virginia as a whole, and the percentage of the population that was age 65 or older was 10.5%, compared to 12.2% for Virginia.⁹

In terms of the City's physical development, recent land use data indicate that 69.44% of the land area is devoted to residential uses, 14.13% to commercial enterprise, 3.97% to industrial activity, 11.82% to public or semi-public uses, leaving about 0.65% (seven acres) of the City as vacant land.¹⁰

County of Fairfax

Fairfax County was established in 1742 from territory that was previously part of Prince William County.¹¹ As Virginia's most populous county, between 2000 and 2010, its population increased from 969,749 to 1,081,726, or by 11.55%. On the basis of the 2010 population and an area of 390.97 square miles, the locality has a population density of 2,766.77 persons per square mile.

With respect to the characteristics of its population, Fairfax County is slightly younger and more prosperous than the State as a whole. The 2010 median age of County residents was 37.3 years, slightly less than the statewide median age (37.5). Moreover, the percentage of its populace age 65 and over was 9.8, which was lower than the rate for the State overall (12.2%).¹² Regarding wealth, the 2011 estimated median household income was \$108,439, or 171.30% of the comparable figure for the entire State (\$63,302).¹³

Area Proposed for Annexation

The lands proposed for incorporation into the City of Falls Church consist of several areas totaling 38.41 acres along the northwest side of the City, and do not contain any residences. The largest area, referred to in the agreement as the "School-Related Parcels," is approximately 34.62 acres, and is currently occupied by the City's high school and middle school. These publicly-owned properties are immediately surrounded to the west, north and east by Virginia Route 7, Interstate 66, and the West Falls Church Metro Station, respectively.

South of the School-Related Parcels is Haycock Road, which consists of .77 acres of dedicated right-of-way.

⁷ U.S. Department of Commerce, Bureau of the Census, Census 2000, Summary File 1; Census 2010, Summary File 1.

⁸ U.S. Department of Commerce, Bureau of the Census, 2007-2011 American Community Survey.

⁹ U.S. Department of Commerce, Bureau of the Census, Census 2000, Summary File 1; Census 2010, Summary File 1.

¹⁰ *Comprehensive Plan*, p. 34

¹¹ Salmon, Emily J. and Edward D.C. Campbell Jr., *The Hornbook of Virginia History*, 4th ed. (Richmond: Library of Virginia, 1994), p. 164.

¹² U.S. Department of Commerce, Bureau of the Census, Census 2000, Summary File 1; Census 2010, Summary File 1.

¹³ U.S. Department of Commerce, Bureau of the Census, 2005-2009 American Community Survey.

Directly to the south of this right-of-way are the only lands proposed to be annexed that are privately owned. This property consists of .62 acres and is occupied by a parking lot that serves a commercial use that is immediately adjacent within the existing city limits. The property is part of a larger parcel that is partially within the City, and partially within Fairfax County, and upon annexation would be located completely within the city limits.

The western area consists of approximately 2.40 acres, is owned by the City of Falls Church, and is occupied by the City's maintenance facilities.¹⁴

HISTORICAL BACKGROUND

Prior to the establishment of the Fairfax County Water Authority (FCWA) in 1957, public water to the County was provided through 26 separate water systems. To meet the demand for utility service, the City of Falls Church was permitted to extend its water utility into adjacent areas of the County, an arrangement that continues to this day, with the City providing water service to about 130,000 people in the County in addition to the 12,332 residents of the City. The FCWA currently provides water to about 1,700,000 residents.¹⁵

In 1959, the City and FCWA entered into a 30-year agreement that established exclusive service areas; however, this agreement was never renewed after it expired in 1989. Between 2007 and 2012, several lawsuits were filed by various parties regarding this utility arrangement. In the 2012 case, which is the only remaining pending case, the City filed suit against Fairfax County challenging an ordinance the County passed attempting to set water rates charged by the City to County residents, and to control future expansion of the City's water utility in the County.

As a component of this court settlement, Falls Church has agreed to sell its entire water system to the FCWA. Also as part of that settlement, it was agreed that Fairfax County and Falls Church would enter into the voluntary settlement agreement that is the subject of this report. Due to a provision in the City's charter, the City's voters will have to approve the sale of its water system. In order for the voluntary settlement agreement to take effect, the sale of the water system must occur, and vice-versa.^{16 17}

STANDARD FOR REVIEW

As a previous section of this report has noted, the Commission on Local Government is charged with reviewing proposed interlocal settlements negotiated under the authority of Section 15.2-3400 of the

¹⁴ Voluntary Jurisdictional Voluntary Jurisdictional Boundary Adjustment Agreement Between The City of Falls Church and Fairfax County, Virginia, plat dated June 28, 2013; and Proposed Findings of Fact.

¹⁵ Testimony of Cynthia Tianti, Deputy County Attorney, Fairfax County, July 8, 2013; and Proposed Findings of Fact.

¹⁶ Charter of the City of Falls Church, Section 13.11.

¹⁷ Additional Information, Maps, and Documents in Support of the Voluntary Settlement Agreement Between the City of Falls Church and Fairfax County, May 22, 2013, p. 3.

Code of Virginia to determine whether such settlements are “in the best interest of the Commonwealth.” In our judgment, the State’s interest in this and other proposed interlocal agreements is fundamentally the preservation and promotion of the general viability of the affected localities. In this instance, the Commission is required to review an interlocal agreement which provides for: the annexation to the City of Falls Church of approximately 38.41 acres of territory located in Fairfax County; (2) requiring a portion of the proposed annexation area continue to be utilized for school-related purposes for a period of 50 years; and (3) for other terms relative to the settlement of litigation between the two parties. A proper analysis of the proposed City of Falls Church-Fairfax County settlement agreement, as mandated by statute, requires consideration of the ramifications of these provisions with respect to the current and future viability of the two jurisdictions.

We note that the sale of the City-owned water system to the FCWA is a transaction between those two parties and not the City and County, and such sale is not part of the proposed voluntary settlement agreement, although there are provisions in the agreement requiring the City and County to cooperate in matters related to the execution of the sale of the water utility. The County is not a party to the water agreement and as such, the actual terms of the sale are not within the scope of this Commission’s review, although there are benefits resulting from that transaction that are mentioned in this report.

Interests of the City of Falls Church

Land for Development

As indicated previously, the City of Falls Church currently has within its boundaries approximately seven acres of undeveloped land, or less than one-percent of its area. Recognizing this limitation on additional growth, the City’s Comprehensive Plan extensively encourages redevelopment and higher-density development.¹⁸

The terms of the agreement contain a use restriction on 70 percent of the School-Related Parcels, whereby approximately 24.23 acres must be continued to be used for school purposes for 50 years. Therefore, of the total 38.41 acres annexed, the City would have immediate control of the future land use for about 12.79 acres. This provision will ensure that the City maintains school facilities on the site for at least fifty years. While there is no indication that these properties would be redeveloped in the immediate future, as there is little land available in the area to replace the existing schools and city maintenance facility, through this restriction the City has provided assurance that the school sites will continue operating on that site, while retaining flexibility as to the future use of the remaining annexation area.

Fiscal Impact

The recurring fiscal impact to the City of Falls Church that would result from the proposed annexation will be minimal. Because 70 percent of the School-Related Parcels must remain used for school purposes for 50 years, the City will not be able to collect real estate taxes on those parcels during that

¹⁸ Comprehensive Plan, pp. 15, 52-54, and 81.

time frame.¹⁹ Parcels 109A and 109B, which are privately owned, would generate approximately \$9,394 and \$48 in additional real estate tax revenue respectively.²⁰ Given that the projection for total general fund revenue in the City's FY 2013 budget was \$69,317,704, these new revenues would represent a 0.0136% increase.²¹

According to Fairfax County's Department of Tax Administration, there are not any vendors, concessionaires, or other entities on the properties proposed for annexation that will pay personal property or business taxes to the City after the boundary adjustment.²²

The City anticipates a small increase to its expenditures as a result of the boundary adjustment. Fairfax County has performed fire inspection services for the properties to be annexed and these services would become a City responsibility. The City expects these services will cost between \$4,000 and \$7,000 per year.²³ In addition, the City will be responsible for the maintenance of the portion of Haycock Road that will be brought within its boundaries. It is estimated that the cost of this maintenance will be \$9,079 annually.²⁴ The increase in costs would represent approximately 0.0232% of the City's FY 2013 general fund budget.²⁵

The City should also expect to experience a cost savings from the end of litigation between the City and the County.

Finally, the City's water utility will be sold to the FCWA, which would occur in conjunction with this voluntary settlement agreement. This would relieve the City of its responsibility to provide public water and result in compensation for those assets.

Summary of the City's Interests

We find that the proposed settlement agreement will have minimal impact to Falls Church, and that it will end pending legal issues between the City and County. In addition, the City should benefit from having full control over existing public facilities that are currently located outside of its jurisdiction.

Interests of the Areas Proposed for Annexation

Community of Interest

One of the factors appropriate for consideration in the analysis of proposed voluntary settlement agreements is the strength of the community of interest that joins the area proposed for annexation to

¹⁹ Settlement Agreement, Section 1.1 (c) (i).

²⁰ John E. Foster, City Attorney, City of Falls Church and Cynthia L. Tianti, Deputy County Attorney, Fairfax County, letter to Commission staff dated June 26, 2013, p. 1; and Virginia Local Tax Rates, 2012, Weldon Cooper Center for Public Service, p 14-15. In Tax Year 2013, Fairfax County collected \$7,952.02 in real estate taxes from Parcel 109A and \$40.25 from Parcel 109B. In order to compute the estimated collection for the City, the tax rates for both the County (\$1.075 per \$100 of assessed value) and City (\$1.27 per \$100 of assessed value) are required.

²¹ FY2013 Adopted Budget, City of Falls Church, p 60.

²² Foster and Tianti, letter dated June 26, 2013, p. 1.

²³ Ibid.

²⁴ Ibid., The expenses would be partially offset by a maintenance payment from VDOT.

²⁵ The estimate was computed using a \$7,000 estimate for fire inspection services.

the adjacent municipality. In this instance, the evidence suggests that there exists a significant degree of interdependence between the areas subject to annexation and the adjacent municipality.

The overwhelming majority of the land is occupied by uses that fulfill governmental functions for the City of Falls Church, including both of its secondary schools and its maintenance facilities. This suggests that these lands already serve as focal point for the citizens of Falls Church to a greater degree than for residents of Fairfax County.

Provision of Urban Services

As noted previously, the approximately 38.41 acres of territory that will be annexed do not contain any residents, and all but .62 acres of that land is publicly-owned. Because these lands are fully developed, urban services are already provided. Further, due to the City's ownership of most of this land, many of the public services provided to these properties are already arranged by the City of Falls Church and would be unaffected by the boundary adjustment.

Public Water and Sewer Service. Public water and sewer for the proposed boundary adjustment area is currently provided by the City of Falls Church. The City has agreed to sell its water system to the FCWA upon the execution of this boundary line agreement and approval of the sale by the City's voters via referendum, as required by the City's charter. Upon completion of this sale, the annexation area, along with all of the City and much of adjacent land in Fairfax County will begin to receive public water through the FCWA. Sewer service would continue to be provided by the City, and will not be affected by the sale of the water utility or the boundary line adjustment.²⁶

Planning, Zoning, and Subdivision of Land. Because these properties are currently located within Fairfax County, zoning and other land use approvals for construction projects or changes in use are granted by the County. Upon annexation, these responsibilities will transfer to the City, providing the City with full control of the development of these properties, eliminating the need to seek such approvals from the County.²⁷ The privately-owned tract of land will also benefit, as it will be subject only to the City's land use requirements because the parcel will no longer be split between the two jurisdictions.

The voluntary settlement agreement restricts the use of the School-Related Parcels so that at least 70 percent of these properties must remain used for school purposes for 50 years. The remaining 30 percent of the school properties will not have such a restriction, which will permit the City to enjoy some of the development potential that this property enjoys due to its proximity to the Metro station, Route 7, and Interstate 66, although there are no immediate plans for redevelopment.²⁸

²⁶ Proposed Findings of Fact, pp. 7-8.

²⁷ *ibid.*, p 8.

²⁸ *ibid.*, p. 6.

Public Safety. Primary police protection responsibility will transfer from Fairfax County to the City of Falls Church; however, the City and County have indicated that most police response to the School-Related Parcels is already provided by the Falls Church Police Department.

Fairfax County currently provides fire and rescue services to the annexation area. Upon these properties becoming part of the City, this responsibility will transfer to the City of Falls Church. The City is served by the Falls Church Volunteer Fire Department, and by the Arlington County Fire Department through a contract with that locality. The City's Fire Inspector will begin providing fire inspection services to the school properties, which had been previously provided by the County.²⁹

Public Works. As part of the annexation, maintenance responsibility for a short section of Haycock Road will transfer from the Virginia Department of Transportation to the City.³⁰

Solid waste collection will not be affected because the nonresidential uses occupying the properties have their refuse collected by private contractors rather than through a public entity.³¹

Summary of Service Considerations

The previous sections presented an overview of the changes to public service delivery that would occur to the proposed annexation area as a result of the voluntary settlement agreement. Significant public facilities that are operated by the City that are currently outside of its boundaries would become governed by a single jurisdiction. We also find that the annexation of these properties would have a minimal impact to the City of Falls Church's public service delivery.

Interests of the County of Fairfax

Fiscal Impact

The fiscal effects of the proposed boundary adjustment to Fairfax County should be minimal. The majority of parcels that are proposed for annexation are tax-exempt properties that are owned by the City of Falls Church. The County would lose the real estate tax revenues associated with Parcels 109A and 109B, which totaled \$7,992.27 in FY 2013.³² Given that the projection for total general fund revenue in the County's FY 2013 adopted budget was \$3,473,825,765, the loss of revenues would represent a 0.000230% decrease.³³

According to Fairfax County's Department of Tax Administration, the County would not lose any personal property or business taxes to the City after the boundary adjustment.³⁴

Net County expenditures would be unchanged as a result of the proposed boundary adjustment. The County is currently performing fire inspection services within the areas proposed for annexation;

²⁹ *Ibid.*, p. 8-9.

³⁰ *Ibid.*, p. 9-10.

³¹ *Ibid.*, p. 8.

³² Foster and Tianti, letter dated June 26, 2013, p. 2.

³³ FY 2013 Adopted Budget Plan, Fairfax County, Volume 1, p. 7.

³⁴ Foster and Tianti, letter dated June 26, 2013, p 1.

however the City is paying the County for those services.³⁵ Additionally, the small segment of Haycock Road that will be transferred to the City will not affect Fairfax County, as the Virginia Department of Transportation is responsible for street maintenance in the County.

Finally, the County should expect to experience a cost savings from the end of litigation between the City and the County.

Other Considerations.

Fairfax County has adopted a small area plan for the vicinity of the West Falls Church Metro Station in order to guide more dense transit-oriented development around that facility.³⁶ This plan anticipates that the schools will remain on the site and considers the remainder of the site that is occupied by athletic fields to be appropriate for higher-density residential development, at up to 25 units per acre.³⁷ These land use suggestions are consistent with the proposed 50-year restriction on the use of the school properties, which is in the County's interest, as it will no longer control the development of those areas through its zoning and subdivision ordinances.

The residents of Fairfax County who receive public water from Falls Church will be impacted by the sale of the water system, as public water will be provided by the FCWA. Utility customers in the County and City will benefit from this purchase, by savings realized through greater scales of economy and access to additional regional sources for public water.³⁸

Summary of the County's Interests

In sum, we find that the proposed voluntary settlement agreement will have minimal fiscal or service delivery impact to Fairfax County, and will terminate legal proceedings between the City and County. In addition, the FCWA and its customers will benefit from its purchase of the Falls Church water utility.

Interests of the Commonwealth

The Commission notes that the proposed City of Falls Church – County of Fairfax agreement is the product of negotiations conducted under a State-established process that encourages the negotiated settlement of interlocal issues. By the establishment of this negotiation process, the State has expressed its desire for local governments to affect a resolution of their interlocal concerns within parameters established by law. This agreement, which constitutes a locally effected reconciliation of the needs and interests of the City and County, is consistent with the interest of the Commonwealth in the promotion of negotiated settlements.

The principal interest of the State in the resolution of this and all interlocal issues subject to the Commission's review is the preservation and promotion of the viability of the affected local

³⁵ *Ibid.*, p. 2.

³⁶ *Fairfax County Comprehensive Plan, 2011 Edition, Area II, McLean Planning District*, p. 76-90.

³⁷ *Ibid.*, p. 82-83.

³⁸ *Proposed Findings of Fact*, p. 7-8.

governments. As previous sections of this report have indicated, the provisions in the proposed settlement agreement will allow the City of Falls Church to expand its boundaries to include significant existing public facilities that are already owned and operated by the City. In addition, the proposed agreement, in conjunction with the pending sale of the City's water utility settles issues that have been the subject of pending litigation between the City, the County, and the Fairfax County Water Authority. In sum, the Commission finds that the proposed agreement, negotiated by the governing bodies of the City and County, is consistent with the interest of the Commonwealth in the promotion and preservation of the viability of Virginia's local governments.

FINDINGS AND RECOMMENDATIONS

In the preceding sections of this report, the Commission has reviewed a proposed voluntary settlement agreement negotiated by the City of Falls Church and Fairfax County addressing the interests of the two jurisdictions. Based upon that review, we find that the agreement promotes the viability of both local governments and is consistent with the best interests of the Commonwealth. Accordingly, we recommend the court's approval of the agreement.

CONCLUDING COMMENT

The Commission on Local Government acknowledges the considerable effort devoted by officials of the City of Falls Church and Fairfax County to negotiate the agreement before us. The agreement reflects a notable commitment by the leadership of both jurisdictions to address in a collaborative fashion the concerns of their localities and the needs of their residents. We commend the officials of the two jurisdictions for their public leadership and for the interlocal agreement which they have negotiated.

**Voluntary Boundary Adjustment Agreement
By and Between
the City of Falls Church, Virginia,
and
Fairfax County, Virginia**

Dated as of April 30, 2013

VOLUNTARY BOUNDARY ADJUSTMENT AGREEMENT

This Voluntary Boundary Adjustment Agreement (“Agreement”) is made and entered into this 30th day of April, 2013, by and between the CITY OF FALLS CHURCH, VIRGINIA, a political subdivision and an independent city of the Commonwealth of Virginia with powers vested in its City Council (“Falls Church” or “City”), and FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia with powers vested in its Board of Supervisors (“Fairfax County” or “County”).

WHEREAS, Falls Church is a political subdivision and an independent city of the Commonwealth of Virginia, and is engaged, inter alia, in the business of acquiring, treating, storing, supplying, distributing and selling water to the public (the “Water System”);

WHEREAS, Falls Church owns, operates and maintains the Water System to serve its customers within the city limits of Falls Church and in portions of surrounding areas located within Fairfax County;

WHEREAS, the Fairfax County Water Authority (“Fairfax Water”) is a political subdivision created by the Board of Supervisors of Fairfax County pursuant to the Virginia Water and Waste Authorities Act and is engaged, inter alia, in the business of collecting, treating, storing, supplying, distributing and selling water to the public through an integrated system sometimes located adjacent to the Water System;

WHEREAS, subject to the terms and conditions set forth in a separate Agreement of Sale by and between Falls Church and Fairfax Water dated ____ (“Agreement of Sale”), Falls Church intends to sell, and Fairfax Water intends to purchase, substantially all of the assets and rights of Falls Church in connection with the Water System;

WHEREAS, the City and Fairfax County, in recognition of the benefits that the acquisition of the Water System by Fairfax Water would confer upon the residents of both the City and the County, desire to facilitate and effectuate this acquisition, through mutual agreement, by making certain changes to the boundary lines between Falls Church and the County;

WHEREAS, Fairfax County, acting under the authority of its Board of Supervisors, has approved this Agreement and authorized the undersigned official representatives to execute the Agreement on behalf of Fairfax County; and,

WHEREAS, Falls Church, acting under the authority of its City Council, has approved this Agreement and authorized the undersigned official representatives to execute the Agreement on behalf of Falls Church;

NOW THEREFORE, in consideration of \$10.00 and the mutual covenants, representations, warranties and agreements set forth herein, and intending to be legally bound, Falls Church and Fairfax County (each a “Party” and collectively referred to as the “Parties”) agree as follows:

Section 1. Covenants of the Parties.

Subject to the terms and conditions of this Agreement, the Parties mutually covenant and agree that:

1.1 Boundary Adjustments.

- (a) The Parties shall take all necessary, legally permissible action to cause the entirety of each of the following parcels identified in Fairfax County Tax Map 40-3 (Revised to 07-20-2012, attached hereto as Appendix 1), and herein collectively referenced as the “School-Related Parcels,” to be legally removed from within the boundaries and under the jurisdiction of Fairfax County and included within the boundaries and under the jurisdiction of Falls Church:
 - (i) Parcel 91 (Tax Map Number 0403-01-0091), totaling approximately 12.8728 acres and owned by the City;
 - (ii) Parcel 93 (Tax Map Number 0403-01-0093), totaling approximately 1.6450 acres and owned by the City; and
 - (iii) Parcel 94 (Tax Map Number 0403-01-0094), totaling approximately 24.7670 acres and owned by the School Board of the City of Falls Church, less and except the small island of land to the south of the larger part of parcel 94 completely surrounded by the right-of-way of the Washington Metropolitan Area Transit Authority and as shown on Appendix 1 as “the island.”

- (b) The Parties shall take all necessary, legally permissible action to cause the entirety of each of the following parcels and land identified in Fairfax County Tax Map 40-3 (Revised to 07-20-2012, attached hereto as Appendix 1), and herein collectively referenced as the “Additional Parcels,” to be legally removed from within the boundaries and under the jurisdiction of Fairfax County and included within the boundaries and under the jurisdiction of Falls Church:
 - (i) Parcel 14 (Tax Map Number 0403-12-0014), totaling approximately 0.2159 acres and owned by the City;
 - (ii) Parcel 15 (Tax Map Number 0403-12-0015), totaling approximately 0.1696 acres and owned by the City;
 - (iii) Parcel 23A (Tax Map Number 0403-12-0023A), totaling approximately 0.1515 acres and owned by the City;
 - (iv) Parcel 24 (Tax Map Number 0403-12-0024), totaling approximately 0.1148 acres and owned by the City;

- (v) Parcel 25 (Tax Map Number 0403-12-0025), totaling approximately 0.2827 acres and owned by the City;
 - (vi) Parcel 26 (Tax Map Number 0403-12-0026), totaling approximately 0.2861 acres and owned by the City;
 - (vii) Parcel 26A (Tax Map Number 0403-12-0026A), totaling approximately 0.2483 acres and owned by the City;
 - (viii) Parcel 109A (Tax Map Number 0403-01-0109A), totaling approximately 0.6448 acres and owned by Henry J. Fox, Wales H. Jack, and John R. Steelman, Trustees for Federal Realty Investment Trust an unrecorded Business Trust organized on May 25, 1962;
 - (ix) Parcel 109B (Tax Map No. 0403-01-0109B, totaling approximately 142 square feet and owned by Federal Realty Investment Trust, an Unincorporated Business Trust;
 - (x) An unnumbered portion of City of Falls Church Parcel Number 51-219-104 that is currently located within Fairfax County (identified at DB 5574 PG 1581 as parcel 3B among the land records of Arlington County, Virginia, hereinafter “the unnumbered parcel”);
 - (xi) Parcel 115A (Tax Map Number 0403-01-0115A), totaling approximately 1.0005 acres and owned by the City; and
 - (xii) The entire width of the Haycock Road right-of-way that runs parallel to Parcel 94.
- (c) *Limitation on Post-Adjustment Use of School-Related Parcels.* The Parties agree that the following limitations shall apply to the use of the School-Related Parcels following the completion of the boundary adjustments set forth in Section 1.1(a) hereof:
- (i) At least 70% of the acreage of the School-Related Parcels, the composition of which acreage will be determined from time to time solely by Falls Church, shall be used for school purposes for a period of fifty (50) years after the later of the dates on which the County and the City have each adopted final versions of the draft ordinances set forth in Appendices 2 and 3 (“Draft Ordinances”), respectively, and the United States Department of Justice has given preclearance approval to the Draft Ordinances pursuant to § 5 of the Voting Rights Act of 1965, as amended, and 42 C.F.R. § 51.13(e) (2012), if such preclearance approval is required. During such 50-year period, Falls Church will not use and will not allow any person or entity to use the School-Related parcels in a manner that is inconsistent with this provision. Falls Church will

take such reasonable and lawful actions as may be necessary to effectuate this provision, and in the event that Falls Church fails to do so, Fairfax County may similarly take reasonable and lawful actions to effectuate this provision.

- (ii) Up to 30% of the acreage of the School-Related Parcels, the composition of which acreage will be determined from time to time solely by Falls Church, may be used for any lawful purposes for a period of fifty (50) years after the later of the dates on which the County and the City have each adopted final versions of the Draft Ordinances and the United States Department of Justice has given preclearance approval pursuant to § 5 of the Voting Rights Act of 1965, as amended, and 42 C.F.R. § 51.13(e) (2012), if such preclearance approval is required.
 - (iii) Following the 50-year period after the later of the dates on which the County and the City have each adopted final versions of the Draft Ordinances and the United States Department of Justice has given preclearance approval to the Draft Ordinances pursuant to § 5 of the Voting Rights Act of 1965, as amended, and 42 C.F.R. § 51.13(e) (2012), if such preclearance approval is required, the School-Related Parcels may be used in whole or in part for any lawful purpose.
- (d) *General Procedure to Effectuate Boundary Adjustments.*
- (i) The Parties covenant that they will take all necessary and reasonable action to implement the terms of this Agreement in accordance with the requirements for voluntary settlements among local governments set forth in Va. Code Ann. § 15.2-3400 (2012).
 - (ii) This Agreement shall constitute a “voluntary agreement” and/or a “voluntary settlement” for purposes of Va. Code Ann. § 15.2-3400 (2012).
 - (iii) Any judicial proceeding(s) required to effectuate the terms and conditions of this Agreement shall be instituted by the Parties in conformance with Paragraphs 5 and 6 of Va. Code Ann. § 15.2-3400 (2012).
 - (iv) Falls Church and Fairfax County shall each pass ordinances substantially in the form of the Draft Ordinances attached hereto as Appendix 2 and Appendix 3, respectively. The Draft Ordinances are deemed by the Parties to satisfy the ordinance requirements under Va. Code Ann. § 15.2-3400 (2012).
 - (v) In any application, filing, submission or request to any court, commission, agency or other body required to fulfill the terms and

conditions of this Agreement, the Parties shall exercise their reasonable best efforts to have the boundary adjustments set forth in this Section 1.1 take effect as of the later of any of the dates on which the final version of the County and the City's Draft Ordinances set forth in Appendix 2 and 3 respectively, are adopted and the United States Department of Justice has given preclearance approval to the Draft Ordinances pursuant to § 5 of the Voting Rights Act of 1965, as amended, and 42 C.F.R. § 51.13(e) (2012), if such preclearance approval is required.

- (e) *Submission to the Justice Department for Preclearance Approval.*
 - (i) The Parties agree to submit the boundary adjustments set forth in this Agreement to the United States Department of Justice for preclearance approval pursuant to § 5 of the Voting Rights Act of 1965, as amended, and 42 C.F.R. § 51.13(e) (2012), if such preclearance approval is required.
 - (ii) If preclearance approval is required and the Department of Justice has not given preclearance approval to all of the boundary adjustments set forth in this Agreement within 120 days after the Parties have submitted said boundary adjustments for preclearance approval pursuant to § 5 of the Voting Rights Act of 1965, as amended, and 42 C.F.R. § 51.13(e) (2012), and such preclearance approval is required, then this Agreement shall be deemed to have terminated, unless the parties otherwise agree in writing.
- (f) *Fairfax County will not Support or Encourage Others to Sue City.* Neither Fairfax County, the Board of Supervisors of Fairfax County, nor any board members, officials, officers, employees, or agents of Fairfax County acting in their official capacity shall sue or support or encourage others to sue the City, its City Council, council members, officials, officers, employees, or agents of Falls Church relative to this agreement, including the recovery of any of the proceeds of the sale of the City's water system to Fairfax Water.
- (g) *Falls Church will not Support or Encourage Others to Sue County.* Neither the City, the Falls Church City Council, nor any council members, officials, officers, employees, or agents of the City acting in their official capacity shall sue or support or encourage others to sue the County, its Board of Supervisors, board members, officials, officers, employees, or agents of Fairfax County relative to this Agreement or the sale of the City's water system to Fairfax Water.

1.2 Requirements for Boundary Adjustments to Take Effect.

- (a) The provisions of this Agreement effecting boundary adjustments between the Parties shall not take effect until the following have occurred:
 - (i) This Agreement has been presented to and reviewed by the Commission on Local Government (“the Commission”) in accordance with the provisions of Va. Code § 15.2-3400(3).
 - (ii) The Commission has conducted a hearing pursuant to Va. Code § 15.2-2907(A) and reported, in writing, its findings and recommendations as to whether this Agreement is in the best interests of the Commonwealth of Virginia. The Commission report shall not be binding upon any court but shall be advisory in nature only.
 - (iii) Upon receipt of the Commission report, the Parties have passed by a recorded affirmative vote of a majority of the members of each governing body, either this Agreement or a modified agreement acceptable to the Parties, as provided by Va. Code § 15.2-3400(4).
 - (iv) The Parties, by and through their respective governing bodies, have petitioned a circuit court having jurisdiction for an order affirming this Agreement or a modified Agreement, the terms of which have been agreed to by both Parties.
 - (v) A special court (“the Special Court”) has been appointed by the Supreme Court of Virginia to hear the case brought by the Parties for an order affirming this Agreement or a modified Agreement, the terms of which have been agreed to by both Parties.
 - (vi) The Special Court has entered an order deciding to affirm this Agreement or a modified Agreement, the terms of which have been agreed to by both Parties, thereby validating this Agreement or a modified Agreement and giving it full force and effect.
 - (vii) The United States Department of Justice has given preclearance approval to the Draft Ordinances pursuant to § 5 of the Voting Rights Act of 1965, as amended, and 42 C.F.R. § 51.13(e) (2012), if such preclearance approval is required.
- (b) The Parties agree that if this Agreement, or a modified Agreement, the terms of which have been agreed to by both Parties, is not affirmed, validated, and given full force and effect by the Special Court, this Agreement shall terminate without further action by either of the Parties.

1.3 Effective Date of Boundary Adjustments.

- (a) The boundary line adjustments set forth in this Agreement shall become effective at 12:01 a.m. on one of the following dates, whichever is later: (1) the first day of the month succeeding validation of this Agreement or a modified Agreement, the terms of which have been agreed to by both Parties, by the Special Court, or (2) the first day of the month succeeding the month in which the United States Department of Justice has given preclearance approval to the Draft Ordinances pursuant to § 5 of the Voting Rights Act of 1965, as amended, and 42 C.F.R. § 51.13(e) (2012), if such preclearance approval is required.
- (b) At the time the boundary adjustments set forth in this Agreement become effective as set forth in Paragraph 1.3(a) above, the boundaries of the City and the County shall be as shown on the plat attached hereto as Appendix 4.
- (c) *Cooperation to Facilitate Boundary Adjustments and Performance of the Agreement.* The Parties shall cooperate in good faith and cause their respective officers, board and/or council members, employees, agents and representatives to cooperate to facilitate the boundary adjustments contemplated by this Agreement, and to facilitate the performance of the other obligations of the Parties under this Agreement.

Each Party shall furnish to the other any necessary information or reasonable assistance as the other Party may request in connection with the consent, approval or authorization of, or registration with or filing or submission to any third party (including any court, commission, or governmental or regulatory agency or entity).

1.4 Cooperation with VDOT.

Falls Church and Fairfax County will work cooperatively with the Virginia Department of Transportation to address transportation and access issues in the general area of the boundary adjustments set forth in this Agreement.

1.5 Enforcement of Contested Ordinance.

- (a) Fairfax County agrees that neither it nor its board members, officers, agents, and employees will take any action on behalf of the County to civilly or criminally enforce § 65-6-13 of the Fairfax County Code, which is the subject of *City of Falls Church, et al. v. Board of Supervisors of Fairfax County, et al.*, No. 1:12cv487 (the “Ordinance”), against Falls Church and/or any of its council members, officers, officials, agents, and employees for any alleged violation of said ordinance occurring at any time prior to, upon, or after the execution of this Agreement, provided that Falls Church and Fairfax Water consummate the sale of the Water System to Fairfax Water pursuant to the terms of the Agreement of Sale (as may

be modified, amended or superseded in accordance with the terms thereunder).

- (b) In the event Falls Church and Fairfax Water do not consummate the sale of the Water System to Fairfax Water pursuant to the terms of the Agreement of Sale (as may be modified, amended or superseded in accordance with the terms thereunder), Fairfax County agrees that neither it nor its board members, officers, agents, and employees will take any action on behalf of the County to civilly or criminally enforce the Ordinance against Falls Church and/or any of its council members, officers, officials, agents, and employees for any alleged violation of said ordinance occurring at any time prior to the termination of the Agreement of Sale.

1.6 Expenses.

- (a) The Parties agree to share equally the filing fees and other mandatory costs incurred by them in connection with any public hearings required to be held pursuant to Va. Code §§ 15.2-2907(A) and -3400(3) and the filing of the petition requesting validation of this Agreement by the Special Court.
- (b) The Parties shall each bear their own respective administrative, accounting, legal and other expenses incurred in connection with the terms of this Agreement.

1.7 Litigation Cooperation.

Notwithstanding anything to the contrary contained in this Agreement, if any action or proceeding by any third party is instituted (or threatened to be instituted) challenging any transaction or action contemplated by this Agreement, the Parties shall mutually use their reasonable best efforts to (i) contest, resist or resolve any such proceeding or action and (ii) have vacated, lifted, reversed or overturned any injunction adverse to the Parties resulting from such proceeding or action.

Section 2. Representations and Warranties.

2.1 Representations and Warranties of Falls Church.

Falls Church represents and warrants to Fairfax County as follows:

- (a) *Organization in Good Standing.* Falls Church is a political subdivision and an independent city duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia.
- (b) *Authorization and Enforceability.* Falls Church has the full power and lawful authority, through its City Council, to execute this Agreement and to perform its obligations contemplated hereby and has duly and validly

authorized the execution of this Agreement (including such other necessary agreements, instruments and documents in connection herewith) and all necessary proceedings.

This Agreement constitutes the legal, valid and binding obligation of Falls Church, enforceable against Falls Church in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditor's rights generally.

- (c) *Noncontravention.* Falls Church's performance of its obligations contemplated hereby shall not (i) require any further approvals or consents from any third party other than those approvals or consents mandated by law, ordinance or regulation in effect as of the date of this Agreement; (ii) violate any law, ordinance or regulation; or, (iii) conflict with or result in a breach of, or constitute a default under, any contract, lease, permit or other agreement or commitment to which Falls Church is a party; except where the approvals, consents, violations or conflicts would have no effect on the ability of the Parties to fully consummate all terms of this Agreement.

2.2 Representations and Warranties of Fairfax County.

Fairfax County represents and warrants to Falls Church as follows:

- (a) *Organization in Good Standing.* Fairfax County is a political subdivision of the Commonwealth of Virginia duly organized and validly existing and in good standing under the laws of the Commonwealth of Virginia.
- (b) *Authorization and Enforceability.* Fairfax County has the full power and lawful authority, through its Board of Supervisors, to execute this Agreement and to perform its obligations contemplated hereby and has duly and validly authorized the execution of this Agreement (including such other necessary agreements, instruments and documents in connection herewith) and all necessary proceedings.

This Agreement constitutes the legal, valid and binding obligation of Fairfax County, enforceable against Fairfax County in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization or affecting creditor's rights generally.

- (c) *Noncontravention.* Fairfax County's performance of its obligations contemplated hereby shall not (i) require any further approvals or consents from any third party other than those approvals or consents mandated by law, ordinance or regulation in effect as of the date of this Agreement; (ii) violate any law, ordinance or regulation; or, (iii) conflict with or result in a breach of, or constitute a default under, any contract, lease, permit or

other agreement or commitment to which Fairfax County is a party; except where the approvals, consents, violations or conflicts would have no effect on the ability of the Parties to fully consummate all terms of this Agreement.

Section 3. **Conditions Precedent to the Parties' Obligations.**

3.1 Conditions Precedent to Falls Church's Obligations.

The obligation of Falls Church to fully and finally effectuate the boundary adjustments set forth herein is subject to the satisfaction, on or prior to the Closing Date set forth in the Agreement of Sale (as such Closing Date may be modified pursuant to the terms of the Agreement of Sale), of each of the following conditions (any one or more of which may be waived in writing, in whole or in part, by Falls Church, in its sole discretion):

- (a) *Representations and Warranties.* Fairfax County's representations and warranties contained in this Agreement or in any appendix, schedule, list, certificate or document delivered pursuant to the provisions of this Agreement shall be true in all material respects at the Closing Date of the Agreement of Sale, as such Closing Date may be modified pursuant to the terms of the Agreement of Sale, except for changes in the ordinary course of business that are in conformity with the covenants, warranties, representations and agreements contained in this Agreement.
- (b) *Performance of Agreement.* Fairfax County shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Fairfax County.
- (c) *Consents.* Fairfax County shall have obtained all lawfully required written, final and unappealable approvals, authorizations, orders and consents to effectuate the boundary adjustments agreed to herein, subject only to the sale of Falls Church's Water System to Fairfax Water pursuant to the terms of the Agreement of Sale.
- (d) *Referendum.* A majority of all votes cast by the qualified voters of Falls Church at a general election referendum shall have approved the sale of the Water System from Falls Church to Fairfax Water.

3.2 Conditions Precedent to Fairfax County's Obligations.

The obligation of Fairfax County to fully and finally effectuate the boundary adjustments set forth herein is subject to the satisfaction, on or prior to the Closing Date set forth in the Agreement of Sale (as such Closing Date may be modified pursuant to the terms of the Agreement of Sale), of each of the following conditions (any one or more of which may be waived in writing, in whole or in part, by Fairfax County, in its sole discretion):

- (a) *Representations and Warranties.* Fall Church's representations and warranties contained in this Agreement or in any appendix, schedule, list, certificate or document delivered pursuant to the provisions of this Agreement shall be true in all material respects at the Closing Date of the Agreement of Sale, as such Closing Date may be modified pursuant to the terms of the Agreement of Sale, except for changes in the ordinary course of business that are in conformity with the covenants, warranties, representations and agreements contained in this Agreement.
- (b) *Performance of Agreement.* Falls Church shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Falls Church.
- (c) *Consents.* Falls Church shall have obtained all lawfully required written, final and unappealable approvals, authorizations, orders and consents to effectuate the boundary adjustments agreed to herein, subject only to the consummation of the sale of the Falls Church Water System to Fairfax Water pursuant to the terms of the Agreement of Sale.
- (d) *Referendum.* A majority of all votes cast by the qualified voters of Falls Church at a general election referendum shall have approved the sale of the Water System from Falls Church to Fairfax Water.

Section 4. Effective Date and Time of this Agreement.

The terms and obligations of the Parties under this Agreement shall not take effect until this Agreement, or a modified Agreement, the terms of which have been agreed to by both Parties, has been validated and affirmed by the Special Court as provided by Paragraph 1.2(a)(vi) above.

Section 5. Termination.

5.1 Termination.

This Agreement may be terminated prior to the Closing Date (as such Closing Date may be modified pursuant to the terms of the Agreement of Sale) only as follows and in each case only by written notice:

- (a) by the mutual written consent of both Parties;
- (b) by either Party, if the Agreement of Sale has been terminated in accordance with the terms and conditions therein;
- (c) by either Party, upon a material breach by the other Party of any covenant, warranty, representation, agreement or provision of this Agreement that has not been (i) cured within thirty (30) days after the non-breaching Party

gives written notice of said breach to the breaching Party; or (ii) waived by the non-breaching Party; or

- (d) by either Party, if any of the precedent conditions in this Agreement have become impossible to fulfill (other than through the failure of any Party to comply with its obligations under this Agreement); and the Parties have not mutually waived such condition within 30 days of being notified of the impossibility (which notification shall be promptly provided in writing by the Party discovering the impossibility to the other Party).

5.2 Effect of Termination.

- (a) Each Party's right of termination under Section 5.1 of this Agreement is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies.
- (b) If this Agreement is terminated pursuant to Section 5.1(a), (b) or (d) of this Agreement, all further obligations of the Parties under this Agreement will terminate, except that the provisions in Sections 1.5 (Enforcement of Contested Ordinance) and 1.6 (Expenses) of this Agreement shall survive.

Section 6. Remedies.

6.1 Specific Performance.

- (a) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement are not performed in accordance with its specific terms or are otherwise breached.
- (b) In the event there is a disagreement between the Parties regarding compliance with the terms and conditions of this Agreement, before the filing of any suit or the resumption of the currently pending litigation in the United States District Court for the Eastern District of Virginia, Alexandria Division (“District Court”), No.1:12cv487, any such disagreement shall be submitted for at least 60 days to the Honorable Theresa Carroll Buchanan, Magistrate Judge, or another federal court mediator of the District Court if Judge Buchanan is not available, for assistance in reaching a resolution of the disagreement that is satisfactory to both Parties. The Parties shall endeavor in good faith to fully and fairly participate in any such mediation.
- (c) Each Party agrees that, in the event of any breach or threatened breach by the other Party of any covenant or obligation contained in this Agreement, the non-breaching Party shall be entitled (in addition to any other remedy that may be available to it whether in law or equity) to seek and obtain (i) a decree or order of specific performance to enforce the observance and

performance of such covenant or obligation, and (ii) an injunction restraining such breach or threatened breach.

- (d) In circumstances where the Agreement of Sale has been terminated in accordance with the terms and conditions therein, each Party acknowledges that the other Party shall not be entitled to enforce specifically the duties and obligations set forth in this Agreement.

Section 7. Survival.

7.1 Representations and Warranties.

All representations and warranties made by the Parties in this Agreement or in any appendix, schedule, document, statement or certificate furnished in connection with this Agreement shall, except if the Agreement of Sale has been terminated, survive the Closing Date set forth in the Agreement of Sale, as such Closing Date may be modified in accordance with the terms and conditions therein, for a period of one (1) year.

7.2 Covenants.

This Section 7 shall not limit any covenant or agreement made by the Parties in this Agreement or in any schedule, document, statement or certificate furnished in connection with the transaction contemplated by this Agreement, that by its terms contemplates performance after the Closing Date set forth in the Agreement of Sale, as such Closing Date may be modified in accordance with the terms and conditions therein, except if the Agreement of Sale has been terminated. Each such covenant or agreement shall survive such Closing Date, and shall continue in full force and effect until each such covenant or agreement is fully performed.

Section 8. Miscellaneous.

8.1 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties concerning the voluntary boundary adjustments described in Section 1.1 and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the Parties with respect to any of the parcels described in Section 1.1.

8.2 Amendment.

This Agreement may be amended or modified only by a writing executed by both of the Parties.

8.3 Extension or Waiver of Performance.

Each Party may extend the time for or waive the performance of any of the obligations of the other, waive any inaccuracies in the warranties or representations made by the other,

or waive compliance by the other with any of the covenants, conditions or agreements contained in this Agreement, provided that any such extension or waiver shall be in writing and signed by the waiving Party in the case of a waiver, or each of the Parties in the case of an extension.

8.4 Assignment or Delegation.

No Party shall assign, delegate or otherwise transfer any of its duties, rights or obligations under this Agreement without the prior written consent of the other Party.

8.5 Successors and Assigns; Binding Effect.

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

8.6 Governing Law.

This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia.

8.7 Notices.

All notices provided for in this Agreement shall be in writing, addressed to Falls Church or Fairfax County, as the case may be, at the addresses set forth in this Paragraph and may be (a) delivered in person; (b) sent by United States registered or certified mail, return receipt requested; or (c) sent by Federal Express or any other nationally recognized overnight courier or delivery service from which a receipt may be obtained.

To Falls Church: Wyatt Shields, City Manager
City of Falls Church, Virginia
300 Park Avenue, Suite 303 East
Falls Church, VA 22046
Tel: 703-248-5004
Fax: 703-248-5146
WShields@fallschurchva.gov

With a copy to: John E. Foster, City Attorney
City of Falls Church, Virginia
300 Park Avenue, Suite 302 East
Falls Church, VA 22046
Tel: 703-248-5010
Fax: 703-248-5146
JFoster@fallchurchva.gov

To Fairfax County: Edward L. Long Jr., County Executive
12000 Government Center Parkway, Suite 552
Fairfax, VA 22035

With a copy to: David P. Bobzien
County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035

Fairfax County and Falls Church shall each deliver a copy of each notice delivered under this Agreement to:

Fairfax Water: Charles Murray, General Manager
8570 Executive Park Avenue
Fairfax, VA 22031

With a copy to: Stuart A. Raphael, Esquire
Hunton & Williams LLP
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102

Each Party shall have the right to designate for itself a new recipient and/or address for the receipt of notices by written notice to the other Party.

8.8 Captions.

The headings and captions used with the subsections, sections and articles of this Agreement are for convenience or reference only and shall not be deemed to modify or limit the provisions of this Agreement.

8.9 Construction.

In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Any reference to any federal, state, local or foreign statute shall be deemed to refer to all statutes, rules and regulations referenced therein or promulgated thereunder, unless the context requires otherwise.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context may require. The word "including" means included, without limitation.

8.10 Cumulative Remedies.

The remedies afforded in this Agreement are cumulative to each other and to all other remedies provided by law.

8.11 No Waiver.

Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement shall impair any such right, power or remedy; nor shall it be construed as a waiver of or acquiescence in any such breach or default, or any similar breach or default occurring later; nor shall any waiver of a single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

8.12 Time of the Essence.

Time is of the essence in the execution and performance of this Agreement.

8.13 Jurisdiction and Venue.

Each Party irrevocably submits to the exclusive jurisdiction of (a) the Fairfax County Circuit Court (19th Judicial District), the Arlington County Circuit Court (17th Judicial District) and the appropriate appellate courts therefrom, and (b) the United States District Court for the Eastern District of Virginia and the appropriate appellate courts therefrom, for the purposes of any suit, action or other proceeding arising out or related to this Agreement.

When the above-mentioned courts may properly exercise jurisdiction over an action, suit or proceeding relating to this Agreement, the Parties agree not to commence or maintain any such action, suit or proceeding in a court or forum other than the above-mentioned courts.

8.14 Third Party Beneficiaries.

Nothing herein expressed or implied is intended or should be construed to confer upon or give to any person (other than the Parties) any rights or remedies under or by reason of this Agreement.

8.15 Counterparts.

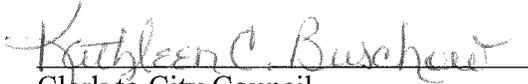
This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

[Signatures Appear on Next Page]

WHEREFORE, in consideration of the foregoing and intending to be legally bound by the terms herein, the Parties have caused this Agreement to be executed as set forth below.

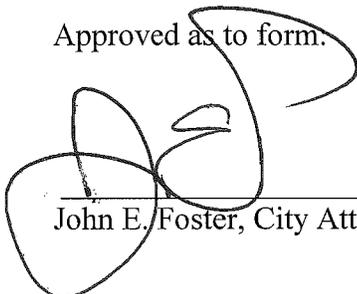
Attest:

CITY OF FALLS CHURCH, VIRGINIA


Clerk to City Council


City Manager
J. Acting

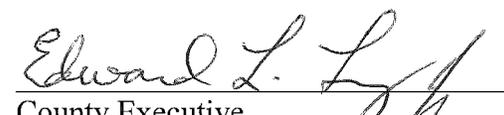
Approved as to form.


John E. Foster, City Attorney

Attest:

FAIRFAX COUNTY, VIRGINIA


Clerk to the Board


County Executive

Approved as to form:


David P. Bobzien, County Attorney

Appendix 1 to Voluntary Boundary Adjustment Agreement:
Fairfax County Tax Map 40-3



A Fairfax County, Virginia Seal of Office



GENERAL NOTES

1. This map is a reproduction of the original map on file in the Office of the County Engineer, Fairfax County, Virginia. It is not to be used for any other purpose without the written consent of the County Engineer.

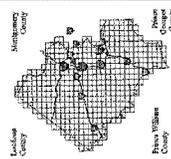
2. The County Engineer is not responsible for the accuracy of the information shown on this map, but he is responsible for the accuracy of the information shown on the original map.

3. The County Engineer is not responsible for the accuracy of the information shown on this map, but he is responsible for the accuracy of the information shown on the original map.

4. The County Engineer is not responsible for the accuracy of the information shown on this map, but he is responsible for the accuracy of the information shown on the original map.

ADMINISTRATIVE INDEX

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Map of Virginia
Fairfax County
Other Counties

PROPERTY MAP ZONING 40-3

Revised to : 02 - 19 - 2013

Prepared by:
Department of Information Technology
12000 Sunrise Valley Drive, Suite 117
Fairfax, VA 22031-1117
Phone: (703) 246-1117
Email: delap@fairfaxva.gov

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July 2013 19.02.2013

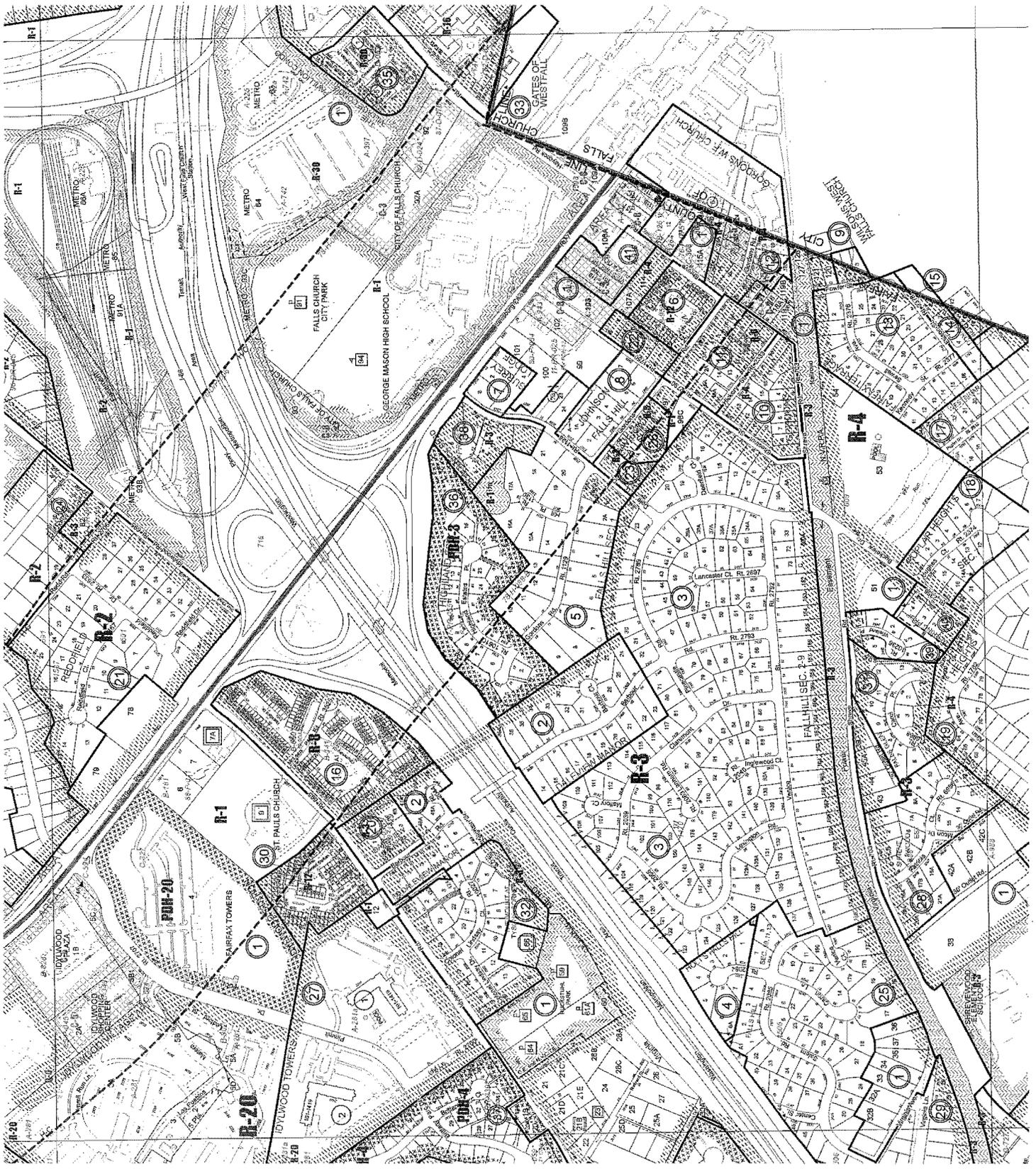


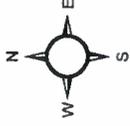
Exhibit 1
Gordon Rd/ Shreve Rd
Proposed Boundary Changes

City of Falls Church
Legend
 Existing Boundary
 Proposed Boundary
 Lot Lines
91 Lot Number
5/22/2013





Exhibit 2
Schools
Proposed Boundary Changes
City of Falls Church
Legend
Existing Boundary Proposed Boundary Lot Lines
91 Lot Number
5/21/2013

