

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

Dated as of DECEMBER 11, 2013

VOLUNTARY BOUNDARY ADJUSTMENT AGREEMENT

This Voluntary Boundary Adjustment Agreement (“Agreement”) is made and entered into this ____ day of _____, 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 July 11, 2013, as amended (“the Water Agreement”), 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 05-21-2013, 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 40-3-01-0091), totaling approximately 8.36815 acres and owned by the City;
 - (ii) Parcel 93 (Tax Map Number 40-3-01-0093), totaling approximately 1.59753 acres and owned by the City; and
 - (iii) Parcel 94 (Tax Map Number 40-3-01-0094), totaling approximately 24.65471 acres and owned by the School Board of the City of Falls Church (“the School Board”), 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 05-21-2013, 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 40-3-12-0014) and Parcel 15 (Tax Map Number 40-3-12-0015), which comprise approximately 0.38762 acre and are owned by the City;
 - (ii) Parcel 23A (Tax Map Number 40-3-12-0023A), totaling approximately 0.14839 acre and is owned by the City;
 - (iii) Parcel 24 (Tax Map Number 40-3-12-0024), totaling approximately 0.09554 acre and is owned by the City;

- (iv) Parcel 25 (Tax Map Number 40-3-12-0025), totaling approximately 0.28168 acre and is owned by the City;
 - (v) Parcel 26 (Tax Map Number 40-3-12-0026), totaling approximately 0.30463 acre and is owned by the City;
 - (vi) Parcel 26A (Tax Map Number 40-3-12-0026A), totaling approximately 0.17932 acre and is owned by the City;
 - (vii) Parcel 109A (Tax Map Number 40-3-01-0109A), totaling approximately 0.61619 acre and is 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;
 - (viii) Parcel 109B (Tax Map No. 40-3-01-0109B), totaling approximately 0.00124 acre and is owned by Federal Realty Investment Trust, an Unincorporated Business Trust;
 - (ix) 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”), which comprises approximately 0.00066 acre;
 - (x) Parcel 115A (Tax Map Number 40-3-01-0115A), totaling approximately 1.00048 acres and is owned by the City; and
 - (xi) The entire width of the Haycock Road right-of-way that runs parallel to Parcel 94 of the School-Related Parcels, which comprises approximately 0.77418 acre.
- (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 upon the closing on the Water Agreement.
- (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 plats attached hereto as Appendix 4 and as illustrated in Appendices 5 and 6.
- (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 Water Agreement (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 Water Agreement (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.

1.8 Easements.

If, in the reasonable opinion of the City, the School Board, and/or any future owner of the School-Related Parcels and/or the Additional Parcels, any easement or facility in an easement encumbering any of said parcels in favor of Fairfax County or the Board as a grantee, unreasonably interferes with the use and/or development of said parcels, then, upon written request, Fairfax County and/or the Board agrees to the reasonable relocation of the easement and/or facility. Under such circumstances, Fairfax County and/or the Board must receive from the owner of the encumbered parcel a written request to allow such owner to relocate any such easement and/or facility at least 60 days before the owner desires to complete the relocation. The written request to allow the owner to relocate any such easement and/or facility must contain the reason for the request and a specification of a proposed new location for the easement and/or facility, to which Fairfax County and/or the Board shall agree, if the new location for the easement and/or facility is a reasonable replacement. The owner requesting any such relocation shall be responsible for preparing, filing and recording all paperwork necessary to effectuate the relocation and shall further be responsible for paying any and all costs associated with the filing and/or recordation of the papers and any other work necessary to complete the relocation. Fairfax County and/or the Board agree to approve and promptly have signed any document(s) that may be necessary to effectuate any such reasonable relocation.

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 Water Agreement (as such Closing Date may be modified pursuant to the terms of the Water Agreement), 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 Water Agreement, as such Closing Date may be modified pursuant to the terms of the Water Agreement, 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 Water Agreement.

- (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 Water Agreement (as such Closing Date may be modified pursuant to the terms of the Water Agreement), 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 Water Agreement, as such Closing Date may be modified pursuant to the terms of the Water Agreement, 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 Water Agreement.
- (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 Water Agreement) 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 Water Agreement 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) The Parties agree that, in the event there is a disagreement between them regarding compliance with the terms and conditions of this Agreement,

prior to filing any suit the disagreement shall be submitted by either or both of the Parties to a neutral mediator for at least 60 days for assistance in reaching a resolution of the disagreement satisfactory to both Parties.

- (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 Water Agreement 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 Water Agreement has been terminated, survive the Closing Date set forth in the Water Agreement, 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 Water Agreement, as such Closing Date may be modified in accordance with the terms and conditions therein, except if the Water Agreement 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: J. Patrick Taves, Interim 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
PTaves@fallschurchva.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

Approved as to form:


J. Patrick Taves, Interim City Attorney

Attest:

FAIRFAX COUNTY, VIRGINIA


Clerk to the Board


County Executive

Approved as to form:


David P. Bobzien, County Attorney

Appendix 1: Parcel Map

Appendix 2: Draft of County Ordinance

Appendix 3: Draft of Falls Church Ordinance

Appendix 4: Plats Showing New Boundaries

Appendix 5: Aerial Photograph of School-Related and Adjacent Parcels

Appendix 6: Aerial Photograph of Gordon Road / Shreve Road Parcels

AN ORDINANCE TO ADJUST THE BOUNDARY LINE OF FAIRFAX COUNTY WITH THE CITY OF FALLS CHURCH TO ANNEX AND INCORPORATE THIRTEEN PARCELS AND OTHER LAND INTO THE CITY OF FALLS CHURCH AND TO ADOPT A VOLUNTARY SETTLEMENT AGREEMENT WITH THE CITY OF FALLS CHURCH.

THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA HEREBY RESOLVES that, upon the effective date of this Ordinance, the existing boundary line between the County and the City of Falls Church (“the City”) will be adjusted by incorporating into the City 13 parcels and other land (“the Parcels”) that are currently in the unincorporated portions of Fairfax County, Virginia (“the County”). The Parcels are shown on Fairfax County Tax Map 40-3 (Revised to 05-21-2013) attached hereto as Exhibit 1, and metes and bounds descriptions of the Parcels are attached hereto as Exhibit 2. The Parcels are further identified as follows:

The “School-Related Parcels” are as follows:

- (1) Parcel 91 (Tax Map Number 040-3-01-0091), totaling approximately 8.36815 acres and owned by the City.
- (2) Parcel 93 (Tax Map Number 040-3-01-0093), totaling approximately 1.59753 acres and owned by the City.
- (3) Parcel 94 (Tax Map Number 40-3-01-0094)—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 Exhibit 3 as “the island”—totaling approximately 24.65471 acres and owned by the School Board of the City of Falls Church.

The “Additional Parcels” are as follows:

- (1) Parcel 14 (Tax Map Number 040-3-12-0014) and Parcel 15 (Tax Map Number 40-3-12-0015), which comprise approximately 0.38762 acre and are owned by the City.
- (2) Parcel 23A (Tax Map Number 040-3-12-0023A), totaling approximately 0.14839 acre and owned by the City.
- (3) Parcel 24 (Tax Map Number 040-3-12-0024), totaling approximately 0.09554 acre and owned by the City.
- (4) Parcel 25 (Tax Map Number 040-3-12-0025), totaling approximately 0.28168 acre and owned by the City.
- (5) Parcel 26 (Tax Map Number 040-3-12-0026), totaling approximately 0.30463 acre and owned by the City.
- (6) Parcel 26A (Tax Map Number 040-3-12-0026A), totaling approximately 0.17932 acre and owned by the City.
- (7) Parcel 109A (Tax Map Number 040-3-01-0109A), totaling approximately 0.61619 acre 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.

- (8) Parcel 109B (Tax Map Number 040-3-01-0109B, totaling approximately 0.00124 acre and owned by Federal Realty Investment Trust, an Unincorporated Business Trust.
- (9) 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), which comprises approximately 0.00066 acre.
- (10) Parcel 115A (Tax Map Number 040-3-01-0115A), totaling approximately 1.00048 acres and owned by the City.
- (11) The entire width of the Haycock Road right-of-way that runs parallel to Parcel 94 of the School-Related Parcels, which comprises approximately 0.77418 acre.

This Ordinance also adopts a Voluntary Boundary Adjustment Agreement By and Between the City of Falls Church, Virginia, and Fairfax County, Virginia (“the Agreement”), attached hereto as Exhibit 4. Under the Agreement, this Ordinance and the incorporation of the Parcels into the City’s boundaries will be effective only upon the occurrence of the last of all of the following events: (1) the sale of the City’s water system to the Fairfax County Water Authority (“Fairfax Water”); (2) the County and the City both adopting ordinances to incorporate the Parcels into the City; and (3) a special court affirming and validating the Agreement giving it full force and effect. The Agreement provides, among other things, that at least 70% of the total acreage of the School-Related Parcels will be used for school purposes for a period of 50 years after the County and the City have each adopted ordinances confirming the incorporation of the Parcels into the City.

To effectuate this Ordinance and the Agreement, pursuant to Va. Code § 15.2-3400(5), the City and the County must petition for appointment of a special court pursuant to Va. Code §§ 15.2-3000 *et seq.* and -3400 *et seq.*; the Supreme Court of Virginia must appoint a special court; and the special court must enter a final order affirming and validating the Agreement.

Upon the incorporation of the Parcels into the City, the City will extend its then-existing governmental services to the Parcels on the same basis and at the same level as such services are then, or may thereafter be, provided to areas within the City’s current corporate limits where like conditions exist.

City of Falls Church

1
2

Meeting Date:	Title: ORDINANCE TO ADJUST THE BOUNDARY LINE OF THE CITY OF FALLS CHURCH WITH FAIRFAX COUNTY TO ANNEX AND INCORPORATE THIRTEEN PARCELS AND OTHER LAND INTO THE CITY AND TO ADOPT A VOLUNTARY SETTLEMENT AGREEMENT WITH FAIRFAX COUNTY. ()	Agenda No.:
Proposed Motion: MOVE to approve () on first reading, schedule second reading and public hearing for _____, and advertise the same according to law.		
Originating Dept. Head: John E. Foster, City Attorney		Disposition by Council:
City Manager: Wyatt Shields 703.248.5004	City Attorney: John Foster 703.248.5010	CFO: Richard LaCondre 703.248.5092

3

4 REQUEST:

5 RECOMMENDATION:

6 BACKGROUND:

7 FISCAL IMPACT:

8 TIMING:

9

10

()

11

ORDINANCE TO ADJUST THE BOUNDARY LINE OF THE CITY OF
12 FALLS CHURCH WITH FAIRFAX COUNTY TO ANNEX AND
13 INCORPORATE THIRTEEN PARCELS AND OTHER LAND INTO THE
14 CITY AND TO ADOPT A VOLUNTARY SETTLEMENT AGREEMENT
15 WITH FAIRFAX COUNTY.

16

THE CITY OF FALLS CHURCH, VIRGINIA, HEREBY ORDAINS that, upon
17 the effective date of this Ordinance, the existing boundary line of the City will be
18 adjusted by incorporating into the City 13 parcels and other land (“the Parcels”) that are
19 currently in the unincorporated portions of Fairfax County, Virginia (“the County”).

20 The Parcels are shown on Fairfax County Tax Map 40-3 (Revised to 05-21-2013)
21 attached hereto as Exhibit 1, and metes and bounds descriptions of the Parcels are
22 attached hereto as Exhibit 2. The Parcels are further identified as follows:

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25 approximately 8.36815 acres and owned by the City.
- 26 (2) Parcel 93 (Tax Map Number 040-3-01-0093), totaling
27 approximately 1.59753 acres and owned by the City.
- 28 (3) Parcel 94 (Tax Map Number 040-3-01-0094)—less and except
29 the small island of land to the south of the larger part of parcel 94
30 completely surrounded by the right-of-way of the Washington
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33 owned by the School Board of the City of Falls Church.

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37 0.38762 acre and are owned by the City.
- 38 (2) Parcel 23A (Tax Map Number 040-3-12-0023A), totaling
39 approximately 0.14839 acre and owned by the City.
- 40 (3) Parcel 24 (Tax Map Number 040-3-12-0024), totaling
41 approximately 0.09554 acre and owned by the City.
- 42 (4) Parcel 25 (Tax Map Number 040-3-12-0025), totaling
43 approximately 0.28168 acre and owned by the City.
- 44 (5) Parcel 26 (Tax Map Number 040-3-12-0026), totaling
45 approximately 0.30463 acre and owned by the City.
- 46 (6) Parcel 26A (Tax Map Number 040-3-12-0026A), totaling
47 approximately 0.17932 acre and owned by the City.
- 48 (7) Parcel 109A (Tax Map Number 040-3-01-0109A), totaling
49 approximately 0.61619 acre and owned by Henry J. Fox, Wales
50 H. Jack, and John R. Steelman, Trustees for Federal Realty
51 Investment Trust an unrecorded Business Trust organized on
52 May 25, 1962.
- 53 (8) Parcel 109B (Tax Map No. 040-3-01-0109B), totaling
54 approximately 0.00124 acre and owned by Federal Realty
55 Investment Trust, an Unincorporated Business Trust.

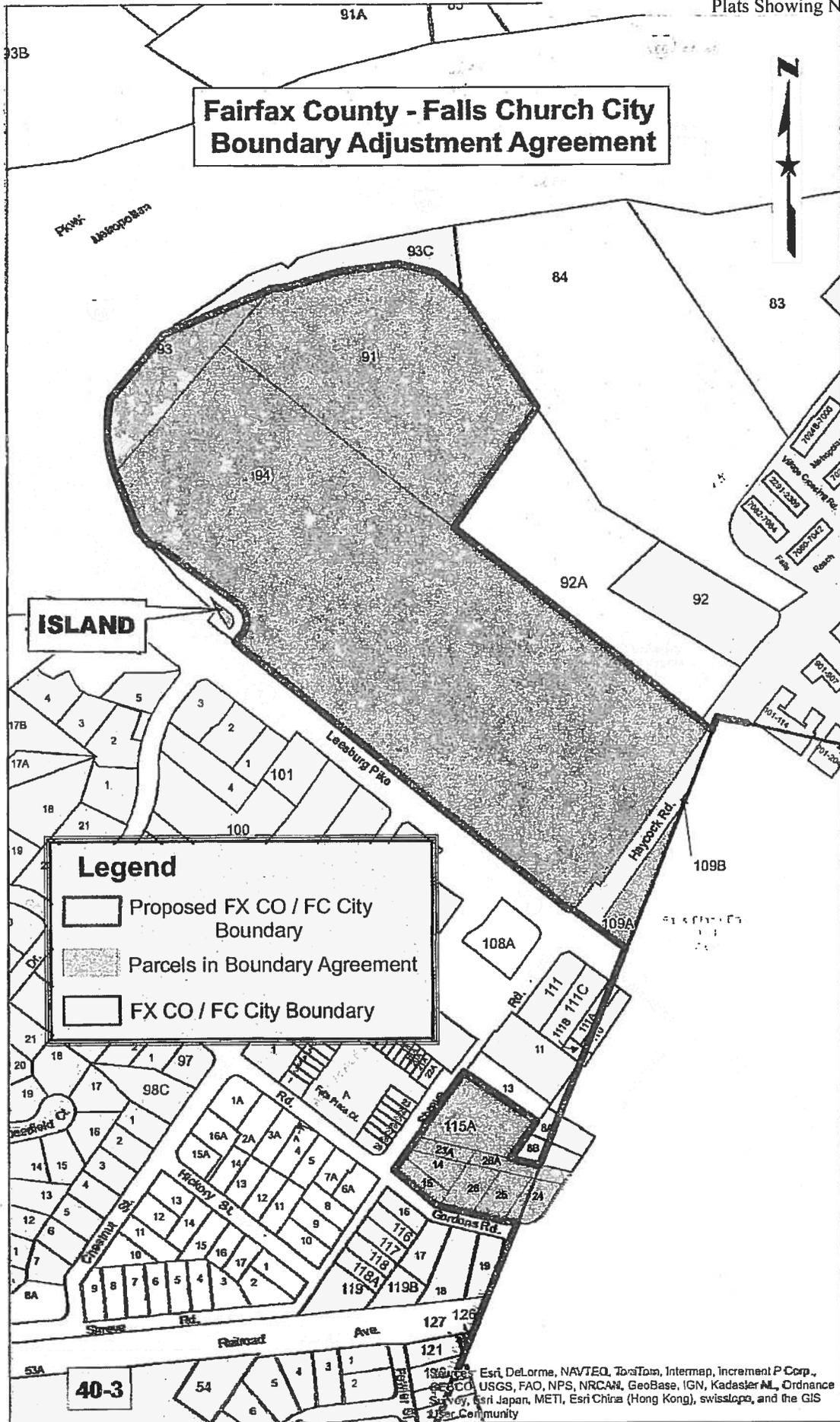
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58 (identified at DB 5574 PG 1581 as parcel 3B among the land
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60 approximately 0.00066 acre.
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- 63 (11) The entire width of the Haycock Road right-of-way that runs
64 parallel to Parcel 94 of the School-Related Parcels, which
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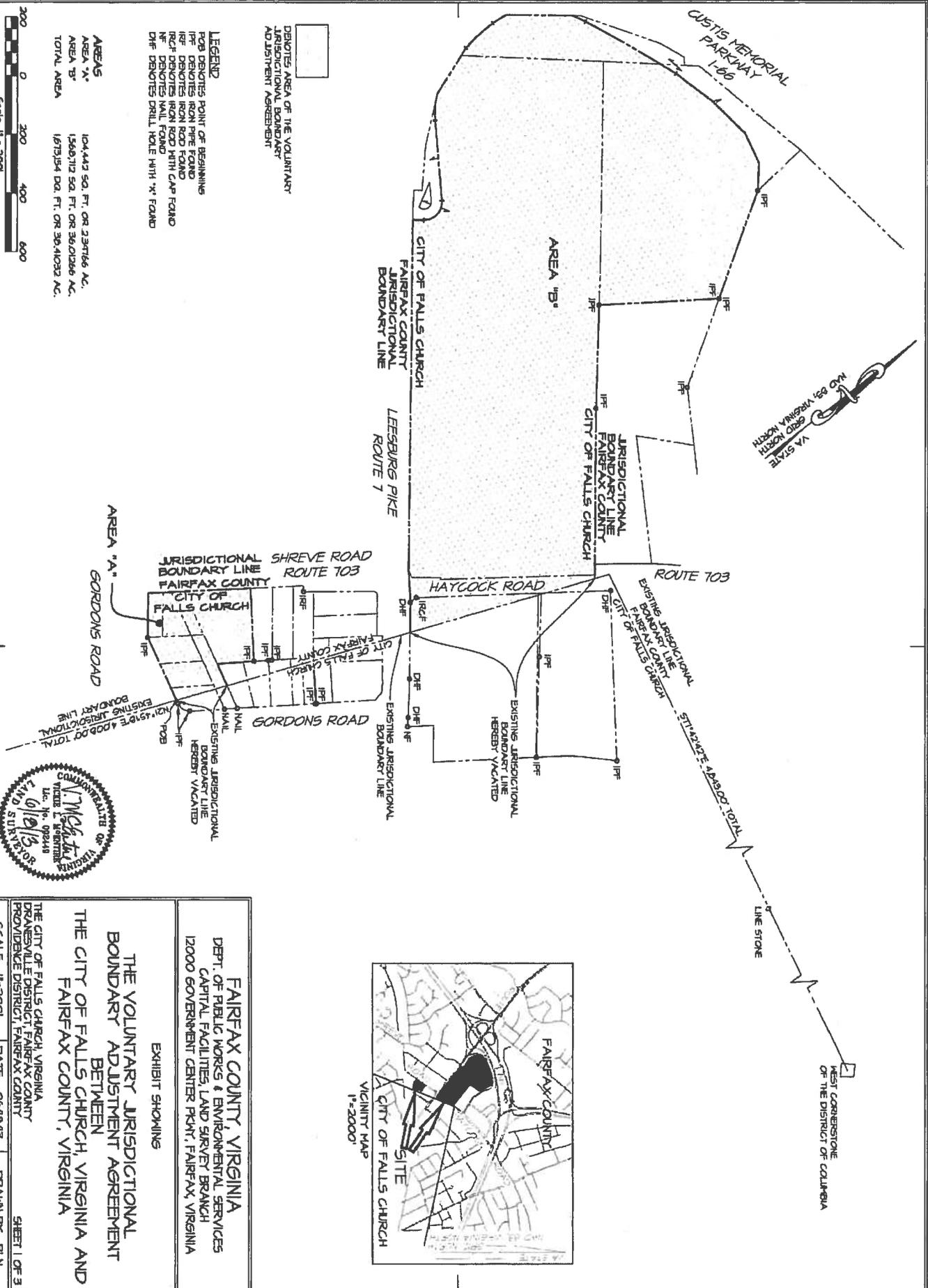
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73 affirming and validating the Agreement giving it full force and effect. The Agreement
74 provides, among other things, that at least 70% of the total acreage of the School-
75 Related Parcels will be used for school purposes for a period of 50 years after the
76 County and the City have each adopted ordinances confirming the incorporation of the
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78 To effectuate this Ordinance and the Agreement, pursuant to Va. Code
79 § 15.2-3400(5), the City and the County must petition for appointment of a special court
80 pursuant to Va. Code §§ 15.2-3000 *et seq.* and -3400 *et seq.*; the Supreme Court of
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84 existing governmental services to the Parcels on the same basis and at the same level as
85 such services are then, or may thereafter be, provided to areas within the City’s current
86 corporate limits where like conditions exist.

87
88 1st Reading: _____
89 2d Reading: _____

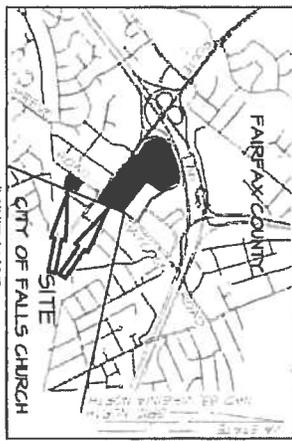




AREAS
 AREA "A" 124,443 SQ. FT. OR 2.87166 AC.
 AREA "B" 1,566,712 SQ. FT. OR 36.01266 AC.
 TOTAL AREA 1,673,154 SQ. FT. OR 36.41032 AC.

LEGEND
 POB DENOTES POINT OF BEGINNING
 IPF DENOTES IRON PIPE FOUND
 IRF DENOTES IRON ROD FOUND
 RCF DENOTES IRON ROD WITH CAP FOUND
 MF DENOTES MAIL FOUND
 DIF DENOTES DRILL HOLE WITH "X" FOUND

□ DENOTES AREA OF THE VOLUNTARY JURISDICTIONAL BOUNDARY ADJUSTMENT AGREEMENT



FAIRFAX COUNTY, VIRGINIA
 DEPT. OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
 CAPITAL FACILITIES, LAND SURVEY BRANCH
 12000 GOVERNMENT CENTER PKWT, FAIRFAX COUNTY, VIRGINIA

EXHIBIT SHOWING
 THE VOLUNTARY JURISDICTIONAL BOUNDARY ADJUSTMENT AGREEMENT BETWEEN THE CITY OF FALLS CHURCH, VIRGINIA AND FAIRFAX COUNTY, VIRGINIA

THE CITY OF FALLS CHURCH, VIRGINIA
 DRAVESVILLE DISTRICT, FAIRFAX COUNTY
 PROVIDENCE DISTRICT, FAIRFAX COUNTY

SCALE: 1"=200' DATE: 06/12/13 DRAWN BY: BLN SHEET 1 OF 3

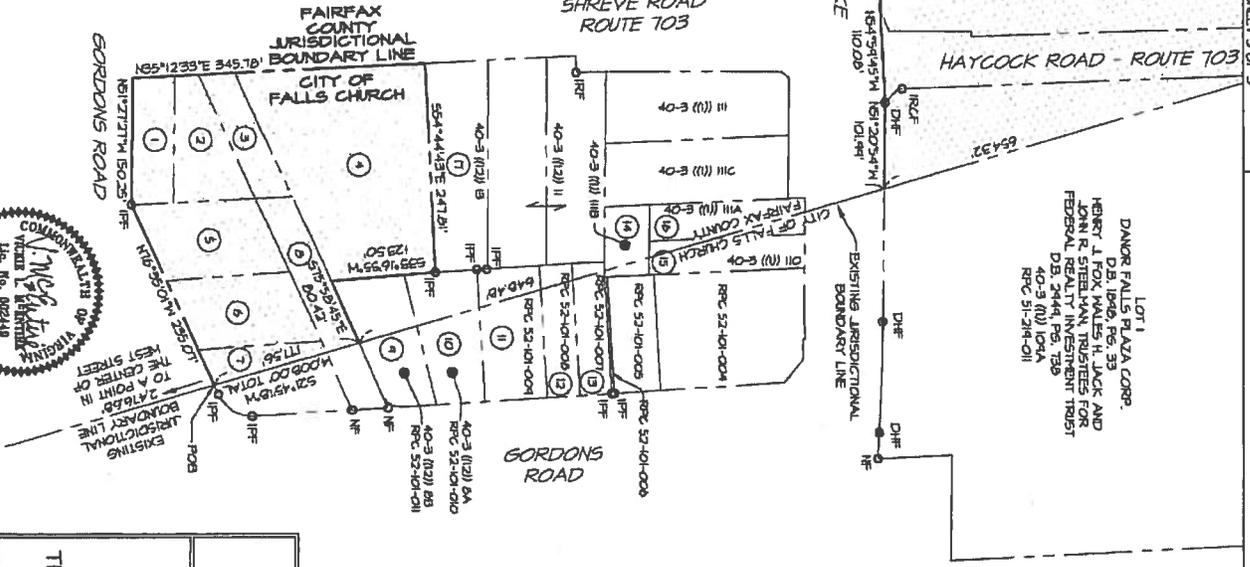
SCHOOL BOARD OF
THE CITY OF FALLS CHURCH, VIRGINIA
D.B. 1983, PG. 350
40-3 (II) 44

LOT 1
DANOR FALLS PLAZA CORP.
D.B. 1984, PG. 233
HENRY R. STEWART, TRUSTEES FOR
FEDERAL REALTY INVESTMENT TRUST
D.B. 2444, PG. 139
40-3 (II) 109A
RPC 51-241-011

PROPERTY DATA

- ① LOTS 15 & 14 (RESPECTIVELY)
GORDON'S ADDITION TO H. FALLS CHURCH
LIBER P-13, PG. 461
- ② LOTS 14 & 15
CITY OF FALLS CHURCH, VIRGINIA
D.B. 5445, PG. 755
- ③ 40-3 (II) 29A, RPC 52-101-001
THE CITY OF FALLS CHURCH
D.B. 5704, PG. 1965
- ④ 40-3 (II) 18A
CITY OF FALLS CHURCH, VIRGINIA
D.B. 4413, PG. 544
- ⑤ LOT 26
GORDON'S ADDITION TO H. FALLS CHURCH
LIBER P-13, PG. 461
- ⑥ THE CITY OF FALLS CHURCH, VIRGINIA
D.B. 1801, PG. 400
- ⑦ LOTS 25 & 24 (RESPECTIVELY)
GORDON'S ADDITION TO H. FALLS CHURCH
LIBER P-13, PG. 461
- ⑧ 40-3 (II) 25 & 24 (RPC 52-101-001 FOR LOT 24)
CITY OF FALLS CHURCH
D.B. 1200, PG. 545
- ⑨ 40-3 (II) 26A, RPC 52-101-001
THE CITY OF FALLS CHURCH, VIRGINIA
D.B. 2330, PG. 741
- ⑩ LOT 8A
REDIVISION OF LOT 8, GORDON'S
ADDITION TO WEST FALLS CHURCH
D.B. 1560, PG. 257
- ⑪ 40-3 (II) 8B, RPC 52-101-011
DONALD S. BERTER, SR. AND NANCY H. BERTER
D.B. 4982, PG. 342
- ⑫ LOT 8A
REDIVISION OF LOT 8, GORDON'S
ADDITION TO WEST FALLS CHURCH
D.B. 1560, PG. 257
- ⑬ 40-3 (II) 8A, RPC 52-101-010
DONALD S. BERTER, SR. AND NANCY H. BERTER
D.B. 4982, PG. 342
- ⑭ LOT 4
GORDON'S ADDITION TO H. FALLS CHURCH
LIBER P-13, PG. 13
RPC 52-101-004
PARAVANT TERRITE CONTROL CO., INC.
D.B. 5091, PG. 357
- ⑮ LOT 10B
REDIVISION OF LOT 10
GORDON'S ADDITION TO
WEST FALLS CHURCH
D.B. 1844, PG. 32
RPC 52-101-008
PARAVANT TERRITE CONTROL CO., INC.
D.B. 5091, PG. 357
- ⑯ LOT 10A
REDIVISION OF LOT 10
GORDON'S ADDITION TO
WEST FALLS CHURCH
D.B. 1844, PG. 32
PARAVANT TERRITE CONTROL CO., INC.
D.B. 5091, PG. 357
- ⑰ 40-3 (II) 111B
BROAD STREET CORPORATION
D.B. 6406, PG. 1845
- ⑱ 40-3 (II) 112
LONGORIA, LLC
D.B. 12890, PG. 19
- ⑳ LOT 1
LAWRENCE H. BUTT
D.B. 1454, PG. 314
RPC 52-101-007
LIBERT CORPORATION
D.B. 6406, PG. 1845
- ㉑ LOT 13
GORDON'S ADDITION TO H. FALLS CHURCH
LIBER P-13, PG. 461
40-3 (II) 13
BERTER LIMITED PARTNERSHIP
D.B. 4952, PG. 190

LEGEND
POB DENOTES POINT OF BEGINNING
RPF DENOTES IRON PIPE FOUND
RFF DENOTES IRON ROD FOUND
NF DENOTES NAIL FOUND
DHF DENOTES DRILL HOLE WITH 3/4" FOUND
RHC DENOTES IRON ROD WITH GUY FOUND

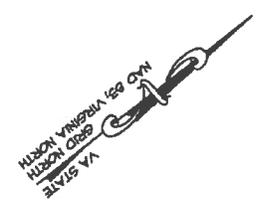


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THE CITY OF FALLS CHURCH, VIRGINIA
DRAWNSVILLE DISTRICT, FAIRFAX COUNTY
PROVIDENCE DISTRICT, FAIRFAX COUNTY

SCALE: 1"=100' DATE: 06/18/13 DRAWN BY: BLN SHEET 2 OF 3



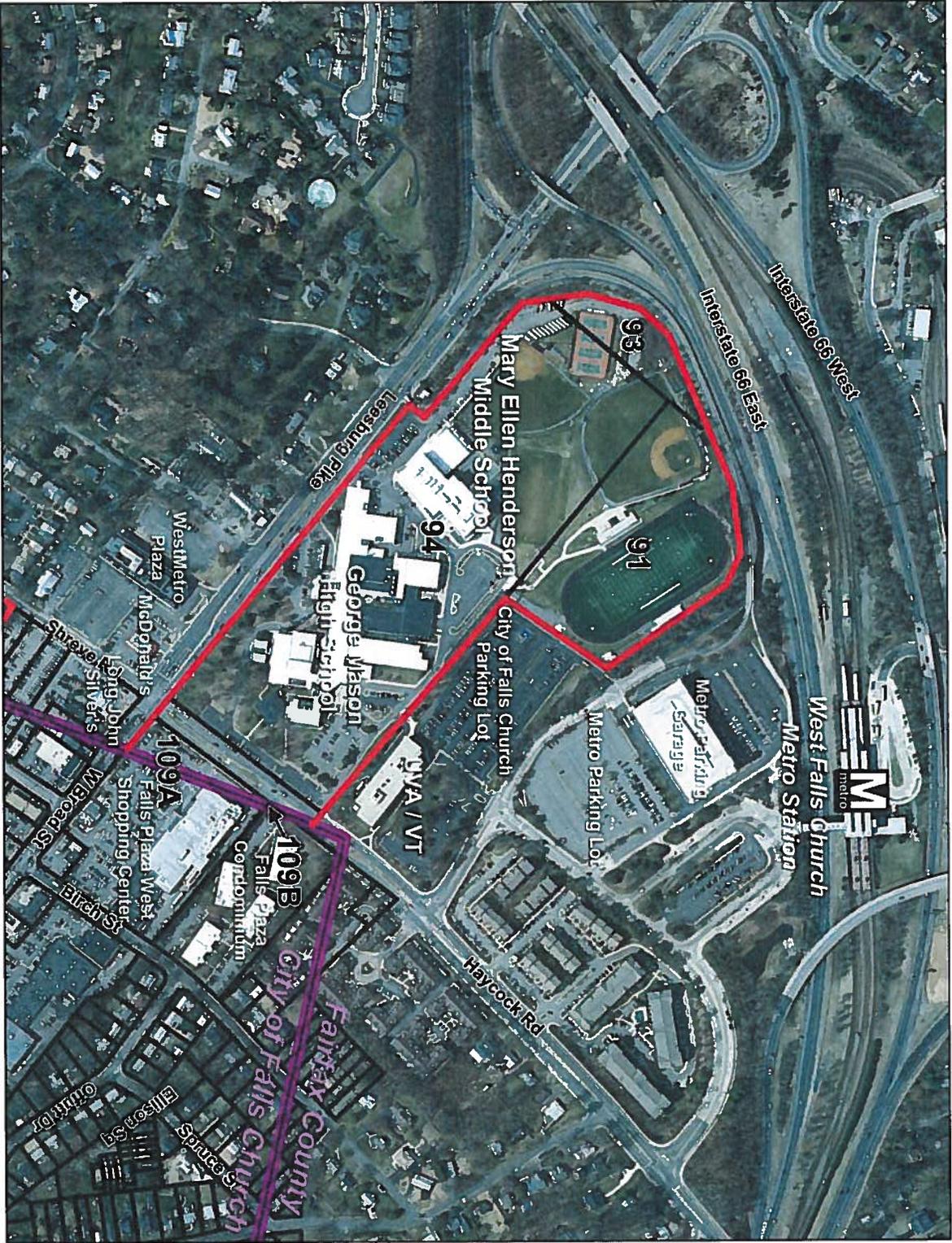


Exhibit 2

Schools

Proposed Boundary Changes



City of Falls Church

Legend

- █ Existing Boundary
- █ Proposed Boundary
- Lot Lines

91 Lot Number

5/21/2013



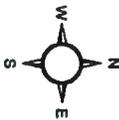
Appendix 5 to Voluntary Boundary Adjustment Agreement: Aerial Photo of School-Related and Adjacent Parcels



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

