

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“**MOA**”) is made and effective as of this ____ day of _____, 2022 (the “**Effective Date**”) by and between the City of Falls Church, Virginia, a body corporate and politic, (the “**City**”) and the City of Falls Church Economic Development Authority, a political subdivision of the Commonwealth of Virginia (the “**FCEDA**”) and with the City, collectively, the “**Parties**”).

WHEREAS, the City sought proposals, pursuant to the Virginia Public-Private Education Facilities and Infrastructure Act of 2002, as amended Va. Code Ann. §56-575.1 *et seq.* and the City of Falls Church Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, from a private entity or group that would purchase and/or lease from the City and develop the approximately ten-acre site located at the northwest corner of Leesburg Pike and Haycock Road (“**Site**”) in order to help defray the City’s costs of building a new High School; and

WHEREAS, the City selected a group to be the developer of the Site, and has negotiated and worked with the group to enter into an agreement for the purpose of providing for the timely design, construction, improvement, equipping, and installation of education facilities and other public infrastructure that serves a public need and purpose, as well as economic development on the site, and generating tax revenues from the mixed-use development to be built there; and

WHEREAS, the City and FCGP Development, LLC (“**FCGP**”) entered into that certain Comprehensive Agreement, authorized by the City Council of the City on May 13, 2019 and dated as of June 12, 2019, as amended by that certain First Amendment to Comprehensive Agreement, dated February 26, 2021, as further amended by that certain Second Amendment to Comprehensive Agreement dated January 24, 2022, and as further amended by that certain Third Amendment to Comprehensive Agreement dated January 25, 2022 (collectively the “**Comprehensive Agreement**”); and

WHEREAS, the Comprehensive Agreement contemplates that a portion of the site, now identified as Parcel D-2 of the Site (the “**Leased Site**”) as shown on the subdivision plat, a copy of which is attached as Attachment A hereto, will be leased, either in whole or in part, to FCGP (or affiliate(s) or approved designees of FCGP) for a period of ninety-nine years (the “**Lease(s)**”) to be developed into and maintained as a multi-use comprehensive development; and

WHEREAS, in order for FCGP (or affiliate(s) or approved designee(s) of FCGP) to lease (through one or more leases) all or portions of the Leased Site for a period of more than forty (40) years, the City plans to convey the Leased Site to the FCEDA, which shall own the Leased Site solely for the purpose of leasing the Leased Site, in whole or in part, to FCGP (or affiliate(s) or approved designee(s)) in accordance with and pursuant to the terms set forth in the Comprehensive Agreement.

NOW, THEREFORE, in consideration of the mutual obligations contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The above recitals are incorporated in and made a part of this MOA. Any capitalized terms in this MOA that are not otherwise defined herein shall have the definition(s) as provided in the Comprehensive Agreement.
2. The Parties understand, acknowledge and agree that the purpose of this MOA and the transactions contemplated hereby are to further economic development in the City in order to pay the costs of debt service on bonds issued to pay for, and other costs of the new Meridian High School that was recently built in the City, and therefore, any and all payments called for (and received) under the Lease(s) shall be paid to the FCEDA. The FCEDA hereby expressly authorizes the City Manager and his staff to transfer any such payments received on behalf of the EDA to the City.
3. The City will transfer, in Fee Simple, the Leased Site to the FCEDA, at or before the time of the Phase 1 Closing, by deed substantially in the form attached hereto as Attachment B.
4. The FCEDA agrees and acknowledges that the Leased Site is being conveyed to it for the sole purpose of carrying out the purposes, goals, terms, and conditions of the Comprehensive Agreement, the City's obligations under the Comprehensive Agreement, and the express provisions of this MOA. The FCEDA agrees to enter into the Lease(s), the form of which is Attachment C hereto, as well as any other agreements or documents contemplated in the Comprehensive Agreement, or as otherwise necessary to carry out the transactions agreed to therein and herein. The FCEDA agrees that it shall make no other use of the Leased Site (in whole or in part) nor permit any use of the Leased Site other than that expressly permitted by the terms of this MOA. Further, the FCEDA shall not pledge the Leased Site (in whole or in part) as collateral for any purpose nor shall it place or allow to be placed any liens upon the Leased Site that are not approved, in writing, in advance, by the City, acting in its sole and absolute discretion, and any action by the FCEDA in contravention of the express provisions of this section shall be void ab initio.
5. The FCEDA is not responsible for the scope and/or contents of any agreement to which the FCEDA is not a party (expressly including, but not limited to, the Comprehensive Agreement. Notwithstanding the aforementioned, the FCEDA shall be responsible for fully carrying out the purposes, goals, terms, and conditions of the Comprehensive Agreement and the City's obligations under the Comprehensive Agreement (as they pertain to the Leased Premises) and the responsibilities and obligations of the Lease(s), as contemplated by this MOA. The FCEDA, by entering into this MOA, designates the City Manager, his staff, and other employees of the City to act as its agent to enforce the terms and conditions of the Lease(s) and any ancillary documents.
6. The term of this MOA shall commence on the Effective Date and shall continue so long as the FCEDA has any interest in the Leased Site. In the event that any part or portion of the Leased Site should not be subject to any lease or other interest by an entity other than the FCEDA, then the FCEDA shall, within thirty (30) days of notice by the City or such other amount of time as may be agreed between the Parties, enter into such documents as the City shall request to return the Leased Site, or applicable portion(s) thereof, to the City's ownership in the City's sole discretion and at no cost to the City.

7. City staff will be responsible for administration of the terms of the Comprehensive Agreement and shall draft and/or have the right to approve any and all documents executed to carry out its terms.
8. The Parties shall use their best efforts to work together and cooperate to ensure that the tenant(s) of the Leased Site develop, maintain and manage the Leased Site in accordance with the Comprehensive Agreement and the terms of the Lease(s).
9. Nothing contained herein shall be interpreted or operate as a pledge of the full faith and credit of the City or shall bind the City to appropriate funds for any expenditures related to this MOA. Neither the City nor the FCEDA can expend funds unless appropriated by the City Council of the City of Falls Church, Virginia and the FCEDA. Neither the City nor the FCEDA can obligate a future City Council.
10. Unless expressly provided for elsewhere in this MOA, no party shall be responsible for the debts, liabilities or other financial obligations incurred by the other Party in performing their obligations under this MOA.
11. The relationship of the Parties to this MOA is that of independent contractors. Nothing contained herein shall be interpreted or operate to create a relationship of partners, joint ventures, brokers, or employment between the Parties. It is agreed that no party shall act as the agent for the other Party, except as expressly provided in this MOA, without an express written authorization to act as an agent. Each party shall maintain sole and exclusive control over its personnel and operations.
12. To the extent permitted by law, the Parties agree that each party shall be solely responsible for the negligent acts or omissions of its employees causing harm to persons not a party to this MOA. Nothing in this MOA shall be deemed a waiver of the sovereign immunity of the City or the FCEDA.
13. Should any section or part of any section of this MOA be rendered void, invalid or unenforceable for any reason by any court of law exercising competent jurisdiction, such a determination shall not render void, invalid or unenforceable any other section or part of any section of this MOA.
14. This MOA may not be assigned without the prior written consent of all Parties.
15. This MOA contains the entire understanding of the Parties with respect to the transactions that are the subject hereof, and supersedes all prior oral or written agreements regarding the same. No party has relied on any oral or written representation of the others unless such representation is incorporated in this MOA. This MOA cannot be modified except by written document signed by all the Parties.

16. If either party shall fail to perform any of its obligations hereunder, the parties shall attempt to resolve that dispute pursuant to paragraph 18, below. Notwithstanding that paragraph, however, if such failure to perform is not corrected within ten (10) days following receipt of written notice from the other party, then the party giving such notice shall have the right to bring an action in a court of competent jurisdiction to enforce this MOA.
17. The Parties will work cooperatively to resolve any dispute regarding or arising under this MOA. Any dispute or claim arising out of or relating to this MOA shall be resolved first by a meeting of the City Manager on behalf of the City, with the Chair of the FCEDA to attempt to reach a mutually agreeable resolution, and if no such resolution is agreed upon, then in a meeting with the City Manager and the Chair of the FCEDA and the Mayor or Vice-mayor.
18. This MOA shall be governed, interpreted and construed under the laws of the Commonwealth of Virginia, without regard to choice of law principles.
19. This MOA may be executed in one or more counterparts, each one of which may be deemed an original, and all of which, taken together, shall constitute one and the same agreement.

AGREED to by the duly authorized representatives of:

CITY OF FALLS CHURCH, VIRGINIA

F. Wyatt Shields, City Manager

Date

Approved as to form:

City Attorney

CITY OF FALLS CHURCH ECONOMIC DEVELOPMENT AUTHORITY

Robert Young, Chairperson

Date