



TOWN OF OCCOQUAN
Circa 1734 • Chartered 1804 • Incorporated 1874

314 Mill Street
PO BOX 195
Occoquan, VA 22125
(703) 491-1918
www.OccoquanVA.gov
info@occoquanva.gov

Occoquan Town Council
Special Meeting
September 16, 2014 | 6:45 p.m.

1. Call to Order
2. Public Hearings
 - a. Joint Town Council and Planning Commission Public Hearing: Zoning Text Amendment to Address Ramps, Structures and Equipment for Emergency Services Access
3. Regular Business
 - a. Request to Approve Zoning Text Amendment to Address Ramps, Structures and Equipment for Emergency Services Access
 - b. Request to Approve Lease between Fairfax Water and the Town of Occoquan Regarding the Future River Park Site
4. Adjournment

Occoquan Town Council
Work Session
September 16, 2014 | 7:15 p.m.

1. Call to Order
2. Regular Business
 - a. Craft Show Report - Fall Show Update
3. Adjournment



TOWN OF OCCOQUAN
TOWN COUNCIL MEETING
Agenda Communication

2. Public Hearing	Meeting Date: September 16, 2014
2 A: Joint Town Council and Planning Commission Public Hearing: Zoning Text Amendment to Address Ramps, Structures and Equipment for Emergency Services Access	

Explanation and Summary:

This is a joint public hearing to provide the public the opportunity to comment on the proposed Zoning Text Amendment to address ramps, structures and equipment for emergency services access as a permitted exception within mandatory setback areas.

Cost and Financing: N/A

Account Number: N/A

Proposed/Suggested Motion:

"I move to close the public hearing."

OR

Other action Council deems appropriate.

Attachments: (2) Draft Zoning Text Amendment
Meeting Notice

**NOTICE OF JOINT PUBLIC HEARING OF THE TOWN COUNCIL AND
PLANNING COMMISSION
TOWN HALL - 314 MILL STREET
TOWN OF OCCOQUAN**

SEPTEMBER 16, 2014 - 6:45 P.M.

Notice is hereby given that the Occoquan Town Planning Commission and the Town Council will conduct a Public Hearing on the following item:

Zoning text amendment to Section 66-12 of the Town Code to address ramps, structures and equipment for emergency services access as a permitted exception within mandatory setback areas.

The draft zoning text amendment to be adopted by the Town Council of the Town of Occoquan is available for review in Town Hall, 314 Mill Street, Occoquan, Virginia 22125.

This hearing is being held at the Occoquan Town Hall, located at 314 Mill Street, Occoquan, Virginia 22125. The location of this public hearing is believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact the Town Clerk at the above address or by telephone at (703) 491-1918 x 1. Persons needing interpreter services for the hearing impaired and/or vision impaired should notify the Town Clerk no later than one week prior to the hearing.

The Council of the Town of Occoquan, Virginia

Instruction to Publisher:

Run This Notice Twice

September 3, 2014

September 10, 2014

- (a) Notwithstanding the setback requirements set forth in this Ordinance, upon application and demonstration to the satisfaction of the Zoning Administrator that the same is reasonably necessary to allow for access or egress or for emergency services (“Modification”), the Zoning Administrator shall allow a reasonable modification of setback requirements by permitting ramps, structures, and equipment needed to provide access or egress or for emergency services for a specific, identified individual with disabilities under the United States Americans with Disabilities Act of 1990 to encroach into any setback to the minimum distance necessary to provide the access or egress or for emergency services.
- (b) The Zoning Administrator may seek guidance from appropriate governmental building and life safety officials when considering the application for Modification. The Zoning Administrator shall report approval of such Modification to the Town Council at the next regularly scheduled meeting.
- (c) Any such Modification approved by the Zoning Administrator shall:
 - 1. Be constructed in accordance with the Virginia Uniform Statewide Building Code and is subject to all applicable review permitting and inspections requirements and fees.
 - 2. Be promptly removed and the setback restored to conform to this Ordinance upon discontinuance of the need.
- (d) The Zoning Administrator may require reasonable documentation and access to the property to substantiate the extent of the need for the Modification.



TOWN OF OCCOQUAN
TOWN COUNCIL MEETING
Agenda Communication

3. Regular Business

Meeting Date: September 16, 2014

3 A: Request to Approve Zoning Text Amendment to Address Ramps, Structures and Equipment for Emergency Services Access

Explanation and Summary:

The Town Code does not currently permit encroachments into required setback areas around structures, except by the process of granting a variance. A variance for an encroachment is not a satisfactory option for the property owner because it is slow and expensive, requires proof of unnecessary or unreasonable hardship to the property owner, and can only be granted by the Board of Zoning Appeals on specified factual findings. Virginia law expressly prohibits granting a variance where the condition or situation of the property concerned is "of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance." That provision implies that localities should formulate a general regulation to be adopted as an amendment to the zoning ordinance when situations are likely to recur, and the proposed amendment does formulate a general regulation for ADA ramps, structures and equipment.

Town Attorney's Recommendation: Recommend approval.

Engineer's Recommendation: Recommend approval.

Town Manager's Recommendation: Recommend approval.

Cost and Financing: N/A

Account Number: N/A

Proposed/Suggested Motion:

"I move to approve the ordinance as presented, and place it in the Zoning Ordinance as Section 66-12 with the title 'Setback Encroachments for ADA Ramps, Structures and Equipment.'"

OR

Other action Council deems appropriate.

Attachments: (1) Draft Zoning Text Amendment

- (a) Notwithstanding the setback requirements set forth in this Ordinance, upon application and demonstration to the satisfaction of the Zoning Administrator that the same is reasonably necessary to allow for access or egress or for emergency services (“Modification”), the Zoning Administrator shall allow a reasonable modification of setback requirements by permitting ramps, structures, and equipment needed to provide access or egress or for emergency services for a specific, identified individual with disabilities under the United States Americans with Disabilities Act of 1990 to encroach into any setback to the minimum distance necessary to provide the access or egress or for emergency services.
- (b) The Zoning Administrator may seek guidance from appropriate governmental building and life safety officials when considering the application for Modification. The Zoning Administrator shall report approval of such Modification to the Town Council at the next regularly scheduled meeting.
- (c) Any such Modification approved by the Zoning Administrator shall:
 - 1. Be constructed in accordance with the Virginia Uniform Statewide Building Code and is subject to all applicable review permitting and inspections requirements and fees.
 - 2. Be promptly removed and the setback restored to conform to this Ordinance upon discontinuance of the need.
- (d) The Zoning Administrator may require reasonable documentation and access to the property to substantiate the extent of the need for the Modification.



TOWN OF OCCOQUAN
TOWN COUNCIL MEETING
Agenda Communication

3. Regular Business	Meeting Date: September 16, 2014
3 B: Request to Approve Lease Between the Fairfax County Water Authority and the Town of Occoquan Regarding the Future River Park Site	

Explanation and Summary:

The attached lease between the Fairfax County Water Authority and the Town of Occoquan is needed in order to permit the Town to operate the site as a park once Fairfax Water completes renovations at the site. Initially, the lease was intended to be a tri-party agreement between Fairfax Water and Prince William County, with the Town leasing from the County. After further discussions regarding the conceptual plan and associated costs, the lease was revised to an agreement directly between Fairfax Water and the Town, with the County listed as a party to the lease.

Town Attorney's Recommendation: Recommend approval.

Town Manager's Recommendation: Recommend approval.

Cost and Financing: N/A

Account Number: N/A

Proposed/Suggested Motion:

"I move to approve the attached lease, subject to such reasonable insertions and minor changes as may be approved by the Town Attorney, and authorize the Mayor to sign."

OR

Other action Council deems appropriate

Attachments: (1) River Park Lease

September 12, 2014

DEED OF LEASE

between

FAIRFAX COUNTY WATER AUTHORITY

as Landlord,

and

THE TOWN OF OCCOQUAN, VIRGINIA

as Tenant

with

THE COUNTY OF PRINCE WILLIAM, VIRGINIA

as Third Party Beneficiary

Dated: _____, 2014

September 12, 2014

DEED OF LEASE

THIS DEED OF LEASE (this “**Lease**”) is between **FAIRFAX COUNTY WATER AUTHORITY**, a public body politic and corporate (“**FCWA**”), the **TOWN OF OCCOQUAN, VIRGINIA**, a municipal corporation (“**Tenant**” or “**Town**”) and the **COUNTY OF PRINCE WILLIAM, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“**the County**”). This Lease will be effective as of 11:59 p.m. on _____, 2014 (the “**Effective Date**”).

RECITALS

1. FCWA is the owner of certain real property located in the Town of Occoquan, Virginia (the “**Town**”). That property will be referred to as the “**Premises**” and a description of the Premises is shown on **Exhibit A**.

2. FCWA desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from FCWA pursuant to the terms and conditions of this Lease.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by FCWA, Tenant, and the County (together, the “**Parties**” and each a “**Party**”), the Parties agree as follows:

ARTICLE 1 THE PREMISES

1.1 **Demise**. Subject to the terms and conditions of this Lease, and during the Term (as defined in **Section 2.4**), FCWA leases to Tenant, and Tenant leases from FCWA, the Premises.

1.2 **“As-Is” Condition**. Subject to FCWA’s completion of the FCWA Work (as defined in **Section 1.3(a)**) and delivery of the Premises to Tenant, Tenant accepts the Premises “**AS IS**,” “**WHERE IS**” and “**WITH ALL FAULTS**.” Except as provided in **Section 19.2**, FCWA makes no representation, warranty, statement or promise to Tenant, whether express or implied, regarding the Premises or Tenant’s permitted use of the Premises.

1.3 **FCWA Work**.

(a) **General**. On the FCWA Work Commencement Date (as defined in **Section 1.3(d)**), FCWA will demolish and remove from the Premises the structures identified in **Exhibit B** and undertake such other work as FCWA determines, in its sole discretion, is necessary to prepare the Premises for Tenant’s occupancy (the “**FCWA Work**”). The FCWA Work will be undertaken in a manner, and at times, determined by FCWA in its sole discretion.

(b) **FCWA Plans.** The plans and specifications for the FCWA Work (the “**FCWA Plans**”) are attached as **Exhibit B-1.** The Parties agree that the FCWA Plans are acceptable. Notwithstanding the foregoing, FCWA may change the FCWA Plans at any time, but FCWA must provide those changes to Tenant.

(c) **Permits.** If not already obtained, FCWA will obtain all permits, approvals and consents required for the commencement of the FCWA Work.

(d) **Commencement of the FCWA Work.** At a time to be reasonably determined by FCWA, FCWA will commence the FCWA Work (the “**FCWA Work Commencement Date**”).

(e) **Reimbursable Costs.** If the FCWA Plans and FCWA Work include any improvements to the Premises (including, without limitation, the construction and installation of any walkways, paths, landscaping), then Tenant must reimburse FCWA for the reasonable costs, fees, and expenses related to those improvements (including both hard and soft costs). Tenant’s reimbursement must be made within 30 days after receiving written demand from FCWA.

1.4 **Delivery Date.** FCWA will deliver the Premises to Tenant on the date that the FCWA Work is complete (the “**Delivery Date**”). The date that the FCWA Work is complete will be reasonably determined by FCWA.

1.5 **Tenant Work.**

(a) **General.** After the Delivery Date, and in compliance with the terms of this **Section 1.5,** Tenant will perform certain work, and undertake certain other actions, on or with respect to the Premises (the “**Tenant Work**”).

(b) **Zoning.** Prior to the date of this Lease, Tenant has established a zoning classification for the Property which is attached as **Addendum 1 (the “Zoning Classification”)**.

(c) **Tenant Plans.** Promptly after the Effective Date, but at least 90 days before commencing the Tenant Work, Tenant must submit detailed plans and specifications to FCWA showing, in detail, the Tenant Work (the “**Tenant Plans**”). The Tenant Plans must be sealed by a professional engineer licensed by the Commonwealth of Virginia and must demonstrate how the FCWA Existing Facilities (as defined in **Section 1.6**) will be impacted or affected, if at all, by the Tenant Work. If any structural elements of the FCWA Existing Facilities will be impacted or affected by the Tenant Work (which FCWA will determine in its sole discretion), then the Tenant Plans must demonstrate that the Tenant Work will not damage, alter or impair those structural elements. The Tenant Plans must clearly demonstrate that Fairfax Water will have continued access to the Premises, the FCWA Existing Facilities, all other improvements and facilities on the Premises, and all access and roads leading to and from the Premises at all times during the performance of the Tenant Work and all times thereafter unless otherwise agreed by FCWA. In all cases, the Tenant Plans must be approved by FCWA, but FCWA will not withhold or condition its approval unless (i) any Tenant Work impacts or affects any structural element of any of the FCWA Existing Facilities; (ii) the Tenant Plans do not meet the requirements of this **Section 1.5(d)**; and/or (iii) the Tenant Plans do not, in FCWA’s

reasonable opinion, show sufficient barriers, fences and other safety devices, in which case FCWA may withhold or condition its approval for any reason. Tenant must reimburse FCWA for the costs, fees and expenses incurred by FCWA in reviewing the Tenant Plans including, but not limited to, the costs, fees and expenses (as appropriate) of FCWA's employees and consultants who review the Tenant Plans. Tenant's reimbursement must be made within 30 days after receiving written demand from FCWA. Once the Tenant Plans are approved by FCWA, Tenant must submit the Tenant Plans to the appropriate governmental authorities (as required by applicable law) which must approve the Tenant Plans. The Tenant Plans will be deemed final once approved by FCWA and the required governmental authorities.

(d) **Permits**. After the Tenant Plans are final, Tenant will apply for and diligently pursue all required permits, and all other approvals and consents, necessary for the Tenant Work.

(e) **Contractors**. Once the Tenant Plans are approved by FCWA, Tenant must engage a qualified general contractor and/or subcontractors to perform the Tenant Work. All contractors and subcontractors engaged by Tenant must be acceptable to FCWA in its sole but reasonable discretion.

(f) **Performance of the Tenant Work**. The Tenant Work must be performed in a good, safe and workmanlike manner and under such conditions and limitations as FCWA may reasonably require. However, FCWA may limit or restrict any of the Tenant Work, in FCWA's sole discretion, to the extent that the Tenant Work may impact or affect any structural element of the FCWA Existing Facilities. FCWA may require that the Tenant Work be stopped if the Tenant Work violates the terms of this Lease or if FCWA determines, in its reasonable discretion after consultation with Tenant, that there is a safety or other concern relating to the Tenant Work.

(g) **FCWA Representatives**. At any time during the performance of the Tenant Work, FCWA will have the right to have an employee, consultant and/or engineer present to monitor and inspect the Tenant Work. Tenant must reimburse FCWA for all costs, fees and expenses incurred by FCWA in connection with the monitoring and inspection described in this **Section 1.5(h)**. Tenant's reimbursement must be made within 30 days after receiving written demand from FCWA.

(h) **Insurance**. During the performance of the Tenant Work, and in addition to all other insurance coverages which Tenant must maintain under this Lease, Tenant must cause its contractors and subcontractors to maintain, the following insurance coverages: (i) builder's risk insurance in the amount of [\$ _____], and (ii) commercial general liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. All insurance policies must contain deductibles, and contain such terms, conditions, and limitations as may be agreed to by FCWA in its sole but reasonable discretion. All insurance policies must name FCWA as an additional insured. Prior to commencing the Tenant Work, Tenant must (i) consult with FCWA to ensure that all insurance policies meet the requirements of this **Section 1.5(i)**, and (ii) provide copies of binders of the required insurance policies to FCWA. With FCWA's approval, the required builder's risk policy may be maintained by Tenant's approved general contractor.

(i) **Cost of the Tenant Work; Bonds.** The Tenant Work will be performed at the sole cost and expense of Tenant. FCWA will have no obligation to pay for any portion of the Work. FCWA may require that Tenant, or any general contractor of Tenant, obtain payment and/or performance bonds in amounts, and issued by companies, reasonably acceptable to FCWA.

1.6 **FCWA Existing Facilities.** Tenant acknowledges that the Premises contain certain structural facilities, equipment and property of FCWA which include, but are not limited to, water lines, pressure control facilities, and other equipment and facilities, whether above or below ground (collectively, the “**FCWA Existing Facilities**”). As provided in this Lease, FCWA has the continuing right to repair, replace, maintain, relocate, monitor, inspect, or otherwise work on the FCWA Existing Facilities during the Term.

1.7 **FCWA Reimbursement Estimates.** Upon Tenant’s reasonable request, FCWA will provide an estimate for any costs, fees or expenses for which Tenant is obligated to reimburse FCWA under this Lease. FCWA will use reasonable efforts to provide the requested estimate, but FCWA’s failure to provide any estimate will not affect Tenant’s obligations to make any required reimbursement.

ARTICLE 2 **TERM**

2.1 **Initial Term.** The term of this Lease (the “**Initial Term**”) will commence on the Effective Date and will end at 11:59 p.m. on the date that is 30 years after the Effective Date (the “**Termination Date**”) unless sooner terminated as provided in this Lease.

2.2 **Extensions.** Subject to the satisfaction of the Extension Conditions (as defined in **Section 2.3**), Tenant will have the option to extend the Initial Term for four additional periods of five years each (each, an “**Extension Term**”). If any of the Extension Conditions are not satisfied, then Initial Term, or any current Extension Term, will end on the scheduled date.

2.3 **Extension Conditions.** The following conditions (the “**Extension Conditions**”) must each be satisfied prior to the commencement of any Extension Term: (a) there must be no Default (as defined in **Section 20.1**); (b) Tenant must have provided written notice to FCWA that it is exercising its option at least one year prior to the end of the Initial Term or the current Extension Term and that notice must include a statement that FCWA has the right to approve the Extension Term; (c) FCWA has approved the Extension Term (which FCWA may approve or reject in its sole discretion); (d) FCWA has not exercised any right to terminate this Lease; and (e) there has been no Transfer (as defined in **Section 11.1**) of this Lease. With respect to clause (c) in the preceding sentence, FCWA must approve or reject any proposed Extension Term in writing within six months after receiving Tenant’s extension notice.

2.4 **Definition of Term.** As used in this Lease, and unless otherwise noted, the term “**Term**” will mean the Initial Term and, if applicable, any Extension Term.

ARTICLE 3
CERTAIN FCWA RIGHTS TO TERMINATE THIS LEASE.

3.1 **General.** In addition to any other rights FCWA has to terminate this Lease, FCWA will have the right to terminate this Lease if FCWA determines:

(a) in its reasonable discretion, that the Premises, or any part of the Premises, are required for FCWA's operations and other reasonably acceptable alternatives are not available or practicable to FCWA, and/or

(b) in its sole discretion, (i) any portion of the Premises is, or may become, unsafe or if a dangerous condition exists at the Premises; (ii) that temporarily suspending use of the Premises (as provided in **Section 7.8**) is not sufficient to remedy the unsafe or dangerous condition; and (iii) the unsafe or dangerous condition is not capable of being remedied or corrected to FCWA's satisfaction, which FCWA will determine in its sole discretion, within three months.

3.2 **Written Notice.** To exercise its termination rights in this Article, FCWA must provide written notice to Tenant.

ARTICLE 4
RENT AND OPERATIONAL COSTS

4.1 **Rent.** During the Term, Tenant must pay FCWA annual rent under this Lease ("**Rent**") without demand, deduction, or offset. Rent must be paid on each January 1st during the Term commencing with the January 1st first occurring after the Effective Date. Rent will equal **\$1.00** per year.

4.2 **Operational Costs.** During the Term, and commencing on the Delivery Date, Tenant must pay all costs, fees and expenses associated with Tenant's use and occupancy of the Premises (the "**Operational Costs**"). The Operational Costs include, but are not limited to, all general and special taxes (including all real estate and other property taxes), assessments levies, fees and all other governmental charges of every kind and nature, whether foreseen or unforeseen, by any municipal, county, state, federal or other taxing or assessing authority; all utilities (as provided in **Article 5**); all maintenance and repair costs (except as provided in this Lease); all legal, accounting and professional costs, fees and expenses; security costs; and all other costs, fees and expenses that relate to, or arise out of, Tenant's use and occupancy of the Premises. Except as provided in this Lease, FCWA will have no obligation to pay any cost, fee, or expense relating to the Premises or Tenant's use and occupancy of the Premises. If FCWA receives any bill, invoice or request for payment relating to Tenant's use and occupancy of the Premises, FCWA will forward the bill, invoice or request to Tenant and Tenant must promptly pay the same.

ARTICLE 5
UTILITIES AND SERVICES

5.1 **Utilities.** Tenant must obtain directly from third party service providers and pay when due all charges for electricity, water and sewer service, gas, telephone, cable or fiber-optic, trash disposal, and any and all other utilities furnished to the Premises during the Term.

5.2 **Other Services.** Tenant must obtain and pay for any other services it requires as part of its use of the Premises.

ARTICLE 6
FCWA'S RESERVATIONS OF ACCESS RIGHTS

6.1 **General.** In addition to the other rights of FCWA provided in this Lease, FCWA, its agents, representatives and employees will have the right, upon reasonable prior notice to Tenant, to enter upon the Premises at all reasonable times, whether or not a Default exists or is suspected, for the purposes of (a) inspecting the Premises; (b) reviewing the performance by Tenant of its obligations under this Lease; (c) performing FCWA's obligations, or exercising its rights, under this Lease; and/or (d) preparing for, investigating, studying, or reviewing FCWA's future intended use of the Premises. FCWA will use reasonable efforts not to interrupt, delay, or hinder any of Tenant's operations on the Premises. In the event of an emergency or if there is a risk to any of FCWA's operations or property, or any person or persons, FCWA must only endeavor to provide reasonable notice to Tenant before FCWA enters the Premises; if that notice cannot be given, FCWA will endeavor to provide notice as soon as practicable after the emergency has been addressed.

6.2 **FCWA Existing Facilities.** In addition to the rights of FCWA provided in **Section 6.1**, FCWA, its agents, representatives and employees will have the right, at anytime, without providing notice to Tenant, to enter upon the Premises for the purposes of repairing, replacing, maintaining, relocating, monitoring, inspecting, or otherwise working on the FCWA Existing Facilities. FCWA will use reasonable efforts in connection with its entries not to interrupt, delay, or hinder any of Tenant's operations on the Premises.

6.3 **FCWA Access Road.** Tenant must not block, limit or restrict access to any service or access roads used by FCWA to enter the Premises or to inspect repair, replace, maintain, relocate, monitor, inspect, or otherwise work on the FCWA Existing Facilities (collectively, the "**Service Roads**"). Neither the Permitted Use nor any Special Events (as such terms are defined in **Section 7.1**) may block, limit or restrict access to any of the Service Roads. Tenant must enforce the provisions of this **Section 6.3**, provided that FCWA may, at any time, (a) locate signs and other notices at the entrance to any Service Roads stating, among other things, that the Service Roads must not be blocked and that any vehicle blocking a Service Road may be towed at the expense of the vehicle's owner, and (b) take such other reasonable actions to enforce this **Section 6.3**.

ARTICLE 7
USE OF THE PREMISES

7.1 **Permitted Uses; Special Events.** Tenant must use the Premises only as a public park and for Special Events (collectively, the “**Permitted Use**”). The term “**Special Events**” means events that are planned by Tenant such as concerts, games, educational activities, and other similar events or activities. Tenant must obtain FCWA’s prior approval before any Special Event, and FCWA must not unreasonably withhold or condition its approval. At least 30 days before any Special Event, Tenant must provide FCWA with (a) all information available to Tenant regarding each Special Event including the type of event, the number of people expected, what facilities or structures may need to be temporarily installed on the Premises (such as stages or bandstands) including the proposed method of installation and removal of such facilities or structures, (b) all licenses, agreements and documents relating to the Special Event, and (c) such other information reasonably requested by FCWA. FCWA may, in its reasonable discretion, require that Tenant obtain additional insurance for any Special Event. It will not be unreasonable for FCWA to withhold or condition its approval if any Special Event (i) could, in FCWA’s sole opinion, damage any FCWA Existing Facility; (ii) is inconsistent with the use of the Premises as a public park facility; (iii) could be dangerous to the public or any occupants of the Premises; (d) could damage or injure the reputation of FCWA; and/or (iv) Tenant fails to provide any additional insurance required by FCWA. All Special Events must comply with the Operating Standards (as defined in **Section 7.3**).

7.2 **No Other Uses.** Except for the Permitted Use, Tenant must not use the Premises for any other purposes.

7.3 **Operating Standards.** Tenant’s use of the Premises must, at all times during the Term, comply with the standards and conditions set forth on **Exhibit C** (the “**Operating Standards**”). Tenant must cause all persons and entities entering the Premises to comply with the Operating Standards. Upon reasonable prior written notice to Tenant, FCWA may reasonably modify, supplement or replace the Operating Standards from time to time. At the request of FCWA, Tenant must promptly post notices in the Premises, in areas reasonably designated by FCWA, stating the Operating Standards. Any notices to be posted by Tenant must be approved in advance by FCWA. If Tenant does not promptly post such notices, FCWA may post the notices and Tenant must reimburse FCWA for any costs and expenses incurred by FCWA relating to those notices.

7.4 **Compliance with Applicable Laws; Permits.** Tenant must comply with all laws, statutes, regulations, codes, orders, ordinances, rules, decrees, mandates, and court or other administrative opinions whether now in effect or which may come into effect in the future (collectively, “**Laws**”) applicable to Tenant’s use of the Premises. Tenant must obtain, pay for, comply with and maintain all licenses, permits, consents and/or other authorizations required under all Laws related to the Premises and Tenant’s use of the Premises.

7.5 **No Interference with the FCWA Existing Facilities.** Tenant must not relocate, remove, alter, adjust, modify, place any soil or any other equipment or materials on top of, or otherwise interfere with, any of the FCWA Existing Facilities in connection with its operations on the Premises.

7.6 **Additional Standards.** Tenant must comply with all declarations, covenants, documents, agreements, memorandums, or other binding writings relating to the Premises and/or Tenant's use of the Premises whether effective on or after the Effective Date and whether those documents are between FCWA and Tenant or other parties.

7.7 **Vehicular Access.** No vehicles will be allowed on the Premises unless approved in advance by FCWA. FCWA may withhold its approval in its sole discretion. As of the Effective Date, FCWA approves of the vehicles listed in **Exhibit D** (subject to the specified limitations) provided that those vehicles may only be used in the load zones which are also shown in **Exhibit D**.

7.8 **FCWA Right to Suspend Operations.** If, at any time, FCWA determines in its sole discretion that any portion of the Premises is, or may become, unsafe or if a dangerous condition exists at the Premises then FCWA, upon notice to Tenant, may temporarily suspend Tenant's use of the Premises (including all access to the Premises). FCWA's suspension of Tenant's use of the Premises may be for so long as FCWA determines is necessary.

ARTICLE 8 **COMPLIANCE WITH LAWS GENERALLY**

8.1 **Compliance with Laws.** During the Term, and in addition to Tenant's requirements under **Section 7.4**, Tenant must comply with all Laws applicable to the Premises generally.

ARTICLE 9 **MAINTENANCE AND IMPROVEMENTS**

9.1 **FCWA Obligations.**

(a) **General.** At least once every two years, FCWA may cause the structural elements of the FCWA Existing Facilities to be inspected by a qualified engineer. If any repairs, maintenance, replacement or other work is required with respect to those structural elements (each, a "**FCWA Repair**"), Fairfax Water will (i) promptly notify Tenant, and (ii) prepare and deliver (or cause to be prepared and delivered) a reasonably detailed report to Tenant indicating the nature and anticipated cost of the FCWA Repair. Fairfax Water will determine in its sole discretion as to whether any FCWA Repair is required but such determination must be made in accordance with generally accepted engineering standards.

(b) **Making of FCWA Repairs; Costs, Fees and Expenses.** FCWA will make each FCWA Repair, but Tenant must reimburse FCWA for all costs, fees and expenses incurred by FCWA in connection with each FCWA Repair. Tenant's reimbursement must be made within 30 days after receiving written demand from FCWA. Tenant, however, will have the right to terminate the Lease if the cost of any one FCWA Repair is more than **\$20,000** or if all FCWA Repairs over any five year period exceed **\$50,000**. Tenant must notify FCWA in writing if Tenant is going to terminate the Lease within 30 days after FCWA notifies Tenant of the need for any FCWA Repair. If Tenant terminates this Lease, it will not be obligated to pay for any additional FCWA Repairs. Before terminating this Lease, however, if the Town is the

Tenant then it must give notice to the County and allow the County to receive assignment of the Lease as permitted under **Section 11.2**.

(c) **Other FCWA Rights**. FCWA may pump any accumulated water from the structural elements of the FCWA Existing Facilities at such times as FCWA, in its sole discretion, deems appropriate. FCWA may undertake any other work on the Premises that FCWA reasonably deems necessary or appropriate, but FCWA will, at its own cost, repair any damage to the Premises caused by that additional work at its own expense.

9.2 **Tenant Obligations**.

(a) **General**. During the Term, Tenant must, at its own cost and expense, maintain the Premises (i) in a good, clean, safe and attractive condition, (ii) in such a manner as to preserve, and not damage, the structural elements of the FCWA Existing Facilities, (iii) in compliance with all applicable Laws.

(b) **Specific Requirements**. As a part of Tenant's obligations, Tenant must, at its own cost and expense, (i) perform all landscaping, mowing, and other similar activities on the Premises; (ii) maintain and replace as necessary all safety barriers, fences, benches and other improvements on the Premises; (iii) maintain all stormwater facilities on, or serving, the Premises; and (iv) repair or replace any part of the Premises that is damaged due to natural or other events (subject to FCWA's rights in **Article 15**), vandalism, or any activities conducted on the Premises.

(c) **Coordination with FCWA**. Tenant must coordinate all of its maintenance and repair activities with FCWA.

(d) **Certain FCWA Rights**. FCWA will have the right to perform any activity that Tenant is required to perform but fails to perform after a reasonable opportunity to cure that failure has been given by FCWA (with such period not exceeding three business days). In the case of an emergency, FCWA will not be required to give Tenant notice. Tenant must reimburse FCWA for any costs, fees and expenses incurred by FCWA in connection with FCWA exercising its rights under this **Section 9.2(d)**. Tenant's reimbursement must be made within 30 days after receiving written demand from FCWA.

(e) **Evidence of Performance**. At FCWA's written request, Tenant must provide reasonable updates, reports, and other evidence to FCWA demonstrating that Tenant is maintaining the Premises in the manner required by this Lease.

9.3 **Improvements**. After completion of the Tenant Work, Tenant must not construct, install, or place any improvements or landscaping (nor alter nor demolish any existing improvements or landscaping) on the Premises, whether temporary or permanent, without FCWA's prior written approval which FCWA may withhold or condition in its sole discretion.

ARTICLE 10
LIENS

Tenant must not permit any mechanics,' materialmen's, contractors' or subcontractors' liens (each a "**Lien**") to be filed against the Premises. If any Lien is recorded against the Premises, Tenant must cause that Lien to be removed within 30 days after the Lien is recorded. If Tenant fails to cause any Lien to be removed within the specified time period, FCWA will have the right, but not the obligation, to cause the Lien to be released by such means as FCWA deems proper, including payment of the claim giving rise to the Lien or posting of a bond sufficient to remove the Lien. Tenant must reimburse FCWA on demand for any amounts paid by FCWA to satisfy or release any Lien on the Premises, plus all related costs, fees (including reasonable attorneys' fees) and expenses incurred by FCWA in connection with the satisfaction or release of any Lien.

ARTICLE 11
TRANSFERS

11.1 **Transfers Prohibited.** Other than for assignment to the County (as provided in **Section 11.2**), Tenant must not assign, lease, sublet, convey, sell, mortgage, pledge, encumber or otherwise transfer (including any transfer occurring by operation of law) its interest in this Lease, the Premises, or any portion thereof or interest therein (each a "**Transfer**") without the prior written approval of FCWA in each instance, which FCWA may withhold or condition in its sole discretion. Any Transfer in violation of this **Section 11.1** will be null and void and will constitute a Default by Tenant.

11.2 **Permitted Transfer.** Tenant may transfer this Lease to the County voluntarily, with the consent of the County. The County may also require the Tenant to transfer this Lease to the County if Tenant intends to terminate under **Section 9.1 (b)** or if Tenant is in default and has not remedied the default within thirty (30) days or such longer time as the County and FCWA may agree to, in their sole discretion. In neither case is FCWA's consent necessary for the transfer, but Tenant and County shall provide notice to FCWA of the effective date of the transfer. After transfer, the County shall be treated as the Tenant for all purposes under this Lease and the Town shall have no responsibilities or liabilities under this Lease except for such liabilities as arose prior to the effective date of the transfer and the obligation to provide notice under **Article 23**.

ARTICLE 12
ENCUMBRANCES BY TENANT; NO EASEMENTS OR PROPERTY RIGHTS

12.1 **Encumbrances.** Without the prior written approval of FCWA in each instance, which FCWA may withhold or condition in its sole discretion, Tenant must not encumber all or any portion of its interest in this Lease and/or the leasehold estate created by this Lease by deed of trust, mortgage or other security instrument for the purpose of securing any obligation of Tenant or for any other reason.

12.1 **No Easements or other Property Rights.** Without the prior written approval of FCWA in each instance, which FCWA may withhold or condition in its sole discretion, or except

as otherwise provided in this Lease, Tenant must not grant any easements, rights of way, licenses, or other property rights to any other person or entity relating to, or affecting, the Premises.

ARTICLE 13
ENCUMBRANCES BY FCWA; SUBORDINATION AND ATTORNMENT

13.1 **FCWA's Right to Encumber.** FCWA may, without the consent, approval or input from Tenant, encumber all or any portion of its interest in the Premises and/or its interest in this Lease, by deed of trust, mortgage or other security instrument (each a "**Fee Mortgage**") for the purpose of securing money or any other obligations of FCWA.

13.2 **Subordination by Tenant.** This Lease will, at the direction of FCWA or any mortgagee or beneficiary of any Fee Mortgage (which direction may be given by written notice), be subordinate to any Fee Mortgage and to any renewals, replacements and extensions of a Fee Mortgage. Tenant must execute any reasonable instrument requested by FCWA, or any mortgagee or beneficiary of any Fee Mortgage, reasonably required to carry out the intent of this **Section 13.2.**

13.3 **Attornment.** In the event of the conveyance of the Premises by foreclosure or deed in lieu of foreclosure, Tenant must attorn to and recognize FCWA's successor in interest as "Landlord" under this Lease. Tenant must execute any reasonable instrument requested by FCWA, and/or FCWA's successor, reasonably required to carry out the intent of this **Section 13.3.**

ARTICLE 14
INSURANCE; MATTERS RELATING TO LIABILITY AND NON-LIABILITY

14.1 **Required Insurance.** During the Term, Tenant must procure and maintain in full force and effect at all times insurance in the types, coverages, amounts and forms set forth in **Exhibit F** (collectively, the "**Policies**").

14.2 **General Insurance Provisions.**

(a) All Policies must be written by a company or companies (i) reasonably acceptable to FCWA which are permitted by applicable Laws to write and provide insurance in the Commonwealth of Virginia, and (ii) which have an A.M. Best financial rating of A- or better during each policy year.

(b) All Policies must name FCWA, and such other parties as FCWA may direct, as additional insureds, unless otherwise directed by FCWA.

(c) All Policies, or any certificates of any Policies, must contain a special endorsement stating "This policy will not be canceled or materially changed without first giving thirty (30) days prior written notice to Fairfax County Water Authority by certified mail, return receipt requested." The standard language that the insurer "endeavor to" give notice and releasing the insurer from any liability or obligation for failure to give such notice must be

deleted. The certificates and endorsements for each of the Policies must be signed by a person authorized by that insurer to bind coverage on its behalf.

(d) On or prior to the Effective Date, on each yearly anniversary of the Effective Date, and upon FCWA's reasonable request, Tenant must deliver complete copies of the Policies or certificates of insurance evidencing that the Policies are in full force and effect and that FCWA, and such other parties as designated by FCWA, are named as additional insureds.

(e) Tenant must pay any and all deductibles and self-insured retentions in, or required by, the Policies.

14.3 **FCWA's Right.** FCWA reserves the right to adjust the amounts, types and other aspects of the Policies and to require additional insurance coverages (each, an "**Adjustment**"). Each Adjustment must be reasonable under the circumstances. Tenant must promptly comply with each Adjustment.

14.4 **No Limitation on Liability.** Tenant's failure to take out or maintain any of the Policies will not relieve Tenant from any liability under this Lease. The requirements of this **Article 14** may not be construed to conflict with or otherwise limit any other provisions of this Lease.

14.5 **No Actions to Void Insurance.** Tenant must not in any manner do, permit, or suffer any act or thing in or upon the Premises that may void, or make voidable, any of the Policies.

14.6 **Tenant's Failure to Insure.** If at any time Tenant fails or neglects to purchase and/or maintain the Policies, or to comply with any Adjustment, as required by this **Article 14**, FCWA may, but will not be obligated to, purchase the required insurance by obtaining policies issued by companies satisfactory to FCWA. Tenant must reimburse FCWA on demand for all amounts paid by FCWA for any insurance FCWA purchases under this **Section 14.6**.

14.7 **Waiver of Subrogation.** Tenant waives any rights it may have against FCWA on account of any loss or damage arising from any risk covered by the Policies. Tenant must use reasonable efforts to cause each of its insurers issuing the Policies to include endorsements to the Policies waiving any right of subrogation which the insurer may otherwise have against FCWA. Evidence of those endorsements must be provided to FCWA on or prior to the Effective Date and upon FCWA's reasonable request.

14.8 **Liability.** Tenant agrees to be responsible for the acts and omissions of its employees and agents, acting within the scope of their authority, that may arise during the performance of, or failure to perform, any obligations under lease. This provision shall in no way be construed to create any rights or causes of action in any third parties. This **Section 14.8** will survive the expiration or termination of this Lease.

14.9 **Non-liability of FCWA.** FCWA and its Board Members, directors, officers, employees, agents, attorneys, consultants and contractors (collectively the "FCWA Released Parties") will not be liable for, and Tenant forever and irrevocably releases the FCWA Released

Parties from, any loss, injury, death, or damage (including consequential damages) to persons, property, or Tenant's business occasioned by theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling objects, steam, water, rain, leak or flow of water, rain or snow from the Premises or into the Premises from any place, or from the use, operation, maintenance, condition, repair, construction or alteration of the Premises or from any acts or omissions of any other occupant or visitor of the Premises. This **Section 14.9** will survive the expiration or termination of this Lease.

ARTICLE 15 **DAMAGE AND DESTRUCTION**

15.1 **Notification.** If the Premises or any improvements located on or at the Premises are damaged or destroyed in whole or in part by fire or other casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (collectively, "**Damage**"), Tenant must promptly notify FCWA of the nature and extent of the Damage.

15.2 **FCWA Option.** After any Damage, FCWA may immediately elect to restrict or prevent access to the Premises if, in FCWA's reasonable opinion, the Damage has made the use and operation of the Premises unsafe and/or unusable for the Permitted Use. FCWA may continue to restrict or prevent access to the Premises until the Damage is repaired (if the Damage is to be repaired as provided in this Lease).

15.3 **Repair Plan.** Within 30 days after any Damage, Tenant may request that FCWA prepare, or cause to be prepared, a reasonably detailed plan to restore the Premises to a condition that is suitable for the Permitted Use (the "**Repair Plan**"). FCWA will deliver the Repair Plan to Tenant once the Repair Plan is approved by FCWA. Within 90 days after receiving the Repair Plan, Tenant must notify FCWA in writing whether Tenant has elected to accept the Repair Plan. If Tenant does not accept the Repair Plan, then FCWA may terminate this Lease by providing written notice to Tenant. If Tenant accepts the Repair Plan, FCWA will carry out the Repair Plan unless FCWA elects to terminate this Lease as provided in **Section 15.4**. After FCWA's completes the work required by the Repair Plan, Tenant must restore the Tenant Work, or undertake such other work, as may be agreed by FCWA and Tenant. Whether or not Tenant accepts the Repair Plan, Tenant must reimburse FCWA for the costs, fees and expenses incurred by FCWA in preparing the Repair Plan including, but not limited to, the costs, fees and expenses (as appropriate) of FCWA's employees and consultants.

15.4 **Insurance Proceeds.** FCWA's obligations to restore the Premises pursuant to any Repair Plan are conditioned on FCWA receiving sufficient insurance proceeds. If such insurance proceeds are not available (which will be determined by FCWA in its sole discretion), FCWA may terminate this Lease.

ARTICLE 16 **CONDEMNATION**

16.1 **Total Taking.** If any governmental authority with the power of eminent domain (a "**Condemning Authority**") takes or condemns the entirety of the Premises, or if the entirety

of the Premises is conveyed to the Condemning Authority in lieu of a taking or condemnation, then this Lease will terminate on the date of the taking, condemnation or conveyance.

16.2 **Partial Taking**. If any Condemning Authority takes or condemns a part, but not the whole, of the Premises, or if that part of the Premises is conveyed to the Condemning Authority in lieu of a taking or condemnation, then this Lease will terminate as to the part of the Premises taken or conveyed.

16.3 **Allocation of Award**. FCWA will have the exclusive rights to receive and collect any award, payment or other consideration that is provided, given or paid by any Condemning Authority as a result of any taking or condemnation of the Premises (collectively, an “Award”). Tenant will not be entitled, and Tenant waives any rights it may have under applicable Laws or otherwise, to claim any Award.

ARTICLE 17 **HAZARDOUS MATERIALS**

17.1 **Certain Definitions**. For the purposes of this Lease, the following terms shall have the following meanings:

(a) “**Environmental Laws**” means all Laws relating to protection of human health or safety, the environment and/or the storage, use, treatment, transportation, management, installation, generation, handling, manufacture, importation, processing, release, threatened release, or disposal of Hazardous Materials, including, without limitation, any “Superfund” law or “Super Lien Law,” the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. §9601 et seq., the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j-26, and the Occupational Safety and Health Act of 1970, 29 U.S.C. §661 et seq., as the same may be amended or replaced from time to time.

(b) “**Hazardous Materials**” means any substance, material, chemical, pollutant, contaminant, radioactive material, waste (including, without limitation, toxic, hazardous, infectious, sanitary, solid, radioactive, and petroleum waste), oil or petroleum product, and any mixture, solution or derivative thereof, that is listed, defined, designated as, or determined to be a “pollutant,” “contaminant,” “radioactive material,” “solid waste,” “toxic substance,” “hazardous substance,” “extremely hazardous substance,” “hazardous material,” or “hazardous waste” by any Environmental Law, or which the use, manufacture, generation, treatment, storage, disposal or release of those materials are now or hereafter regulated by any Environmental Law, including, without limitation, asbestos, asbestos-containing materials, urea-formaldehyde insulation, polychlorinated biphenyls and all substances defined as “hazardous substances” pursuant to Section 101(14) of CERCLA.

(c) “**Permitted Materials**” means reasonable amounts of cleaning and maintenance products that are typically Managed or otherwise necessary in the ordinary course

of the operation of the Premises for the purposes set forth in this Lease, provided that any Permitted Materials are properly Managed in a manner and location meeting all applicable Environmental Laws.

(d) “**Manage**” or “**Managed**” means to use, store, treat, transport, dispose of, generate, install, manufacture, handle, import, process or Release.

(e) “**Release**” means, without limitation, any emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, or release of Hazardous Materials into or upon the environment, including the air, soil, improvements, surface water, groundwater, or sewer, septic system, storm drain, publicly owned treatment works, or waste treatment, storage or disposal systems.

17.2 Tenant’s Covenants Regarding Environmental Laws and Hazardous Materials. Tenant must: (a) comply with applicable Environmental Laws; (b) obtain and maintain all necessary permits, consents and/or other authorizations required by applicable Environmental Laws for the operation of the Premises; (c) not Manage any Hazardous Materials on or from the Premises, except for Permitted Materials; (d) not cause or allow any Release of any Hazardous Materials from the Premises; and (e) take all reasonable precautions and implement commercially reasonable practices to avoid Releases of Hazardous Materials in, on, from or under the Premises.

17.3 Discovery of Hazardous Materials. Upon Tenant’s discovery of the presence of any Hazardous Materials (other than Permitted Materials) on, under, in or about the Premises, Tenant must, in addition to the other provisions of this **Article 17** and this Lease, promptly notify FCWA of that discovery and, unless the Hazardous Materials arise as a result of an act or omission of FCWA, Tenant must, within 30 days after its discovery of those Hazardous Materials, submit a written plan to FCWA setting forth a description of the action Tenant proposes to take with respect to those discovered Hazardous Materials (the “**Remediation Plan**”). The Remediation Plan must include the proposed corrective work, the estimated time of completion, the persons or entities that will perform the work and such other information that is relevant to the action to be taken or as FCWA may request. FCWA, in its reasonable discretion, will have the right to approve, reject or require modifications to the Remediation Plan. Once the Remediation Plan is approved by FCWA, Tenant must cure each violation in accordance with the Remediation Plan or as otherwise required by any Environmental Laws.

ARTICLE 18 **PREMISES NAME; SIGNAGE**

Tenant may name the Premises provided that such name is approved in advance by FCWA. FCWA may withhold or condition its approval of any name of the Premises in its sole discretion. At the end of the Term, Tenant must take all steps necessary to remove the name from the Premises. Tenant may install temporary signage on the Premises only with the prior written consent of FCWA, which FCWA may withhold or condition in its reasonable discretion. Tenant must submit preliminary design specifications to FCWA prior to, or in conjunction with, Tenant’s request for signage approval. FCWA will have the right, as a condition to providing its consent, to request reasonable modifications or alterations to Tenant’s proposed signage

(whether as to substance, location, or otherwise). If those modifications or alterations are not made by Tenant, FCWA may continue to withhold its consent until the proposed signage is acceptable to FCWA. At the end of the Term, Tenant must remove all signage from the Premises and repair all damage caused by that removal.

ARTICLE 19 **REPRESENTATIONS AND WARRANTIES**

19.1 **Representations and Warranties by Tenant.** In addition to the other representations, warranties, covenants, and agreements of Tenant under this Lease, Tenant represents and warrants to FCWA as of the Effective Date and throughout the Term that: (a) Tenant has all requisite power and authority, has taken all actions required by all applicable Laws, and has obtained all necessary consents, to execute and deliver this Lease and to perform Tenant's obligations under this Lease; (b) Tenant's execution of this Lease does not (i) violate any restriction to which Tenant is subject, (ii) constitute a violation of any Laws applicable to Tenant, or (iii) other than Tenant's leasehold estate in the Premises, result in the creation of any lien, charge, or encumbrance upon any portion of the Premises; (c) this Lease is the legal, valid, and binding agreement of Tenant, enforceable against Tenant in accordance with its terms; and (d) Tenant has, and will maintain, all permits, consents, authorizations and/or other required documentation required under any applicable Laws or by any applicable authority to (i) perform its obligations under this Lease, and (ii) operate and use the Premises as permitted by this Lease.

19.2 **Representations and Warranties by FCWA.** FCWA represents and warrants to Tenant that FCWA has all requisite power and authority, has taken all actions required by its organizational documents and applicable laws, and has obtained all necessary consents, to execute and deliver this Lease.

ARTICLE 20 **DEFAULTS AND REMEDIES**

20.1 **Defaults by Tenant.** The occurrence of any of the following events will be a default and breach by Tenant of this Lease and, after the expiration of any applicable cure periods, will constitute a "Default":

(a) the failure of Tenant to comply timely with any monetary obligations of Tenant under this Lease; or

(b) the failure of Tenant to observe, perform or comply with any other term, covenant, condition, requirement, restriction, provision or agreement of this Lease; or

(c) the filing by or against Tenant of a petition, or any other filing, (i) to have Tenant adjudged bankrupt, and/or (ii) for the reorganization or arrangement of Tenant under any Laws relating to bankruptcy, insolvency or creditors' rights.

20.2 **Tenant's and County's Right to Cure.** Tenant and County will each have ten (10) days to cure any monetary default or breach of this Lease after written notice of the default or breach from FCWA. Tenant and County each will have thirty (30) days to cure any other default or breach of this Lease after written notice of the default or breach from FCWA.

20.3 **FCWA's Remedies after a Default.** After a Default, FCWA may exercise any one or all of the following remedies in addition to all other rights and remedies available at law or in equity:

(a) **Terminate the Lease.** FCWA may terminate this Lease and Tenant's right to possession of the Premises, in which case Tenant must immediately surrender possession of the Premises to FCWA. In such event, FCWA will be entitled to recover from Tenant all damages incurred by FCWA by reason of the Default, including, but not limited to, all Rent and other sums due under this Lease that (i) were due from the date of the Default until the date that FCWA recovers possession of the Premises (the "**Recovery Date**"); (ii) would have been due if this Lease had not been terminated from the Recovery Date to the end of the Term; and (iii) all costs, fees and expenses (including, but not limited to, reasonable attorneys' fees) incurred by FCWA in connection with the Default.

(b) **Maintain the Lease.** FCWA may maintain Tenant's right to possession, in which case this Lease will continue in effect and FCWA will be entitled to enforce all of FCWA's rights and remedies under this Lease, including the right to recover all Rent and other sums due under this Lease as Rent and those other sums become due and all costs, fees and expenses (including, but not limited to, reasonable attorneys' fees) incurred by FCWA in pursuit of its remedies under this **Section 20.3(b).**

(c) **Injunction.** FCWA will have the right to bring an action to enjoin any violations by Tenant of this Lease, it being acknowledged by Tenant that monetary damages may be insufficient to compensate FCWA for certain violations of this Lease.

(d) **Damages.** FCWA may pursue one or more claims against Tenant for all damages incurred by FCWA as a result of any Default, including, without limitation, the collection of any Rent and/or other sums due from Tenant and all costs, fees and expenses (including, but not limited to, reasonable attorneys' fees) incurred by FCWA in pursuit of its remedies under this Lease.

(e) **Remedies Cumulative.** Suits for the recovery of any damages may be brought by FCWA from time to time at its election, and nothing in this Lease may be deemed to require FCWA to postpone suit until the date when this Lease would have expired. All of FCWA's remedies will be cumulative and concurrent with each other and with any remedies that FCWA may have at law or in equity.

(f) **Certain Tenant Waivers.** To the fullest extent permitted by applicable Laws, Tenant waives (i) any notice required by statute or other law as a condition to bringing an action for possession of, or eviction from, the Premises (including, without limitation, any unlawful detainer action); (ii) any right of re-entry or repossession; (iii) any objections, defenses, claims or rights with respect to the exercise by FCWA of any rights or remedies; (iv) any right of redemption whether pursuant to statute, at law or in equity; (v) all presentments, demands for performance, notices of nonperformance, protest, notices of protest, notices of dishonor, notices to quit and any other notice or demand of any kind (except for those required by this Lease); and (vi) any obligation FCWA may have to mitigate Tenant's damages.

(g) **No Waiver.** Any failure or delay by FCWA to enforce one or more of its remedies will not be deemed or construed to constitute a waiver of FCWA's right to enforce its remedies.

20.4 **FCWA's Right to Cure.** After a Default, and in addition to all other rights and remedies available to FCWA, FCWA may elect to perform or pay, or cause to be performed or paid, any obligation or liability of Tenant under this Lease. FCWA will not be required to cure, or attempt to cure, any Default, and FCWA's exercise of its remedies under this **Section 20.4** will not be deemed a waiver of any Default. Tenant must pay to FCWA, on demand, all sums, amounts, costs, fees (including, but not limited to, reasonable attorneys' fees) and expenses that Tenant paid and/or incurred as a result of FCWA's exercise of its rights under this **Section 20.4**.

ARTICLE 21 **SURRENDER**

21.1 **Surrender of Possession.**

(a) **General.** On the Termination Date, or upon the earlier termination of this Lease, Tenant must surrender the Premises to FCWA in the condition the Premises were in on the Delivery Date (which means, among other things, that Tenant must remove all Tenant Work and all other structures and facilities from the Premises). Tenant must repair any damage to the Premises caused by any work Tenant undertakes to satisfy its obligations under this **Section 21.1(a)**

(b) **Tenant's Equipment and Materials.** If any of the Tenant's improvements, equipment and/or materials (collectively, the "**Tenant's Equipment and Materials**") are not removed by Tenant as required by this Lease, then (i) FCWA will have the right to sell or dispose of all, or any individual item of, the Tenant's Equipment and Materials in whatever commercially reasonable manner it elects and, if sold, retain the proceeds of any sale, and (ii) Tenant will be required to reimburse FCWA, on demand, for all of FCWA's costs, fees (including, but not limited to, reasonable attorneys' fees) and expenses incurred by FCWA in connection with FCWA's sale or disposal of the Tenant's Equipment and Materials.

ARTICLE 22 **HOLDOVER**

22.1 **Holdover.** If Tenant remains in possession of the Premises, or any part of the Premises, after the expiration or earlier termination of the Term, Tenant will become a Tenant at sufferance, and FCWA may exercise any rights or remedies it has under applicable Laws. While holding over, Tenant will subject to all of the provisions of this Lease. Nothing in this Lease constitutes permission granted to Tenant to remain in possession of the Premises, or any part of the Premises beyond the dates specified in this Lease.

22.2 **Waiver of Notice.** To the fullest extent permitted by applicable Laws, Tenant waives any right it may have to receive notice of any unlawful detainer, eviction or other

proceeding which may be filed by FCWA as a result of Tenant's remaining in possession of the Premises after the end of the Term.

ARTICLE 23
ZONING

Tenant must notify Fairfax Water in writing if the Zoning Classification is proposed to be amended, replaced, changed, modified, terminated, revoked or otherwise altered (a "Zoning Change"). Tenant's notice must be delivered to Fairfax Water no later than 60 days before any public hearing on such Zoning Change. Either before or after any Zoning Change becomes effective, Fairfax Water may terminate this Lease by providing 15 days written notice to Tenant if the Zoning Change, in the sole discretion of Fairfax Water, may limit, restrict or otherwise interfere with the FCWA Existing Facilities or with the use Fairfax Water intends to make of the Premises after the date that this Lease expires or terminates. Subject to any applicable Law, Tenant agrees to take such additional actions and steps as may be required to enforce and further the provisions of this Article 23.

ARTICLE 24
GENERAL PROVISIONS

24.1 **Conditions and Covenants.** All of the provisions of this Lease will be deemed as running with the land, and construed to be "**conditions**" as well as "**covenants**" as though the words specifically expressing or imparting conditions and covenants were used in each separate provision.

24.2 **Notices.** All notices required or permitted by this Lease must be in writing. Notices given under this Lease must be given or served by mailing the notice by registered or certified mail, return receipt requested, by overnight courier service or by hand delivery. Notices will be deemed given on the date received (which may be evidenced by a computer generated "notification" or other reasonable means). Notices must be addressed to FCWA or Tenant, and the other parties listed below, as follows:

FCWA: Fairfax County Water Authority
8670 Executive Park Avenue
Fairfax, Virginia 22031
Attention: General Manager

with a copy to:

John C. McGranahan, Esq.
Hunton & Williams LLP
1751 Pinnacle Drive
Suite 1700
McLean, Virginia 22102

Tenant: Town of Occoquan
314 Mill Street
Occoquan, Virginia 22125
Attention: Town Manager

With a copy to:

Martin Crim, Town Attorney
Vanderpool, Frostick & Nishanian, P.C.
9200 Church Street, Suite 400
Manassas, Virginia 20110

County: _____

With a copy to:

Any Party may change its address for receiving notices by giving written notice to the other Party.

24.3 **Default Rate.** All Rent and other amounts payable under this Lease by Tenant, if not paid when due, will bear interest at the greater of ten percent (10%) or the maximum amount of interest chargeable under applicable Laws (the “**Default Rate**”). The Default Rate will apply from the date that the required payment was due until the date of payment.

24.4 **Gender; Singular and Plural Terms.** Except as otherwise expressly provided, (a) words of any gender used in this Lease will be held and construed to include any other gender, and (b) any definitions set forth in this Lease will be equally applicable to the singular and plural forms of the terms defined.

24.5 **Captions.** Captions in this Lease are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Lease or any of the terms of this Lease.

24.6 **No Oral Agreements.** No oral representations, agreements, understandings and/or statements made by either Party regarding the subject matter of this Lease will be of any force and effect.

24.7 **Waiver; Amendment.** Any modification, waiver, amendment, discharge or change of this Lease must be in writing and must be signed by each Party.

24.8 **Expenses and Legal Fees.** The Party prevailing in any action or proceeding regarding or relating to this Lease will be entitled to recover its costs, fees and expenses (including, but not limited to, reasonable attorneys' fees) from the non-prevailing Party, and the non-prevailing Party must pay those costs, fees and expenses on demand.

24.9 **Governing Law.** This Lease will be construed and enforced in accordance with the laws of the Commonwealth of Virginia without regard to principles of conflicts of law.

24.10 **Binding Effect.** This Lease will bind and inure to the benefit of the permitted successors and assigns of the Parties.

24.11 **Execution of Other Instruments.** Each Party agrees that it shall, upon the other's request, take any and all steps, and execute, acknowledge and deliver to the other party all further instruments necessary or expedient to effectuate the purpose of this Lease.

24.12 **Severability.** If any term, provision, covenant or condition of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will remain in full force and effect and shall in no way be affected, impaired or invalidated.

24.13 **Counterparts.** This Lease may be executed in one or more counterparts, each of which will be deemed an original and when taken together will constitute one instrument.

24.14 **Estoppel Certificates.** Within twenty (20) days after written request by FCWA, Tenant must execute a written statement certifying, if true at the time of the request, that this Lease is unmodified and in full force and effect, the dates for which Rent and other charges due under this Lease have been paid, any alleged defaults and claims against FCWA, and any other factual information reasonably requested by FCWA.

24.15 **Memorandum of Lease.** On or before the Effective Date, FCWA and Tenant must execute and acknowledge a Memorandum of this Lease (the "**Memorandum**") in the form attached hereto as **Exhibit E.** The Memorandum will be recorded in the Clerk's Office of the Circuit Court of Prince William County, Virginia by FCWA. Tenant must pay all recording, transfer, documentary stamp and similar taxes and fees levied or assessed upon the recordation of the Memorandum. Upon the expiration or termination of this Lease, Tenant must, upon demand, execute a release of the Memorandum in recordable form.

24.16 **Broker.** FCWA and Tenant each represent and warrant that it has had no dealings or conversations with any broker, sales person or other intermediary in connection with the negotiation and execution of this Lease. To the extent that any broker, sales person or other intermediary claims a fee or commission in connection with this Lease as a result of the actions of either FCWA or Tenant, then the party responsible for those actions must pay the claimed fee or commission, if found or agreed to be due.

24.17 **Third Parties; No Partnership or Joint Venture.** This Lease does not, and will not be deemed or construed to, grant any third party or parties the right to (a) claim any damages under this Lease; (b) bring any suit, action or other proceeding against either FCWA or Tenant because of any breach of this Lease; or (c) enforce any of the terms, covenants, agreements and

conditions of this Lease. This Lease does not constitute a partnership or joint venture of or between FCWA and Tenant.

24.18 **No Construction Against Preparer.** This Lease may not be construed against or interpreted to the disadvantage of FCWA by reason of FCWA having prepared this Lease.

24.19 **Recitals, Exhibits and Schedules.** The Recitals, and all exhibits and schedules referenced in this Lease, are fully incorporated into this Lease.

WITNESS THE FOLLOWING SIGNATURES:

[Signature pages follow.]

SIGNATURE PAGE OF THE TOWN OF OCCOQUAN, VIRGINIA TO THE DEED OF LEASE BETWEEN FAIRFAX COUNTY WATER AUTHORITY, AS LANDLORD AND THE TOWN OF OCCOQUAN, VIRGINIA, AS TENANT

TENANT:

THE TOWN OF OCCOQUAN, VIRGINIA

By: _____ (SEAL)

Name: _____

Title: _____

Commonwealth of Virginia: _____

County of _____

The foregoing instrument was acknowledged before me this __ day of __, 201_ by _____, as _____ of THE TOWN OF OCCOQUAN, VIRGINIA.

My commission expires:

Notary Public

(Serial Number, if any)

SIGNATURE PAGE OF THE COUNTY OF PRINCE WILLIAM TO THE DEED OF LEASE BETWEEN FAIRFAX COUNTY WATER AUTHORITY, AS LANDLORD AND THE TOWN OF OCCOQUAN, VIRGINIA, AS TENANT

COUNTY:

**THE COUNTY OF PRINCE WILLIAM,
VIRGINIA**

By: _____ (SEAL)

Name: _____

Title: _____

Commonwealth of Virginia: _____

County of _____

The foregoing instrument was acknowledged before me this ___ day of ___, 201_ by _____, as _____ of THE COUNTY OF PRINCE WILLIAM, VIRGINIA.

My commission expires:

Notary Public

(Serial Number, if any)

SIGNATURE PAGE OF THE FAIRFAX COUNTY WATER AUTHORITY TO THE DEED OF LEASE BETWEEN
FAIRFAX COUNTY WATER AUTHORITY, AS LANDLORD AND THE COUNTY OF PRINCE WILLIAM,
VIRGINIA, AS TENANT

FCWA:

FAIRFAX COUNTY WATER AUTHORITY

By: _____ (SEAL)

Name: _____

Title: _____

Commonwealth of Virginia: _____

County of _____

The foregoing instrument was acknowledged before me this __ day of __, 201_ by _____, as
_____ of FAIRFAX COUNTY WATER AUTHORITY, on behalf of the authority.

My commission expires:

Notary Public

(Serial Number, if any)

List of Schedules and Exhibits

Exhibit A – Description of the Premises

Exhibit B – Structures to be removed

Exhibit B-1 – FCWA Plans

Exhibit C – Operating standards

Exhibit D – Permitted Vehicles; Limitations

Exhibit E – Memorandum of Lease

Exhibit F – Tenant Insurance Policies

Addendum 1 – Zoning Classification

Exhibit A

Exhibit B

Exhibit B-1

Exhibit C

Operating Standards

1. Hours and Operation

- a) **Hours.** Except for unusual and unforeseen emergencies and short periods for scheduled maintenance, Tenant must cause the Premises to be open to the public every day of the year between hours that must be reasonably approved by Fairfax Water. Tenant must not allow any person or entity to enter or remain in the Premises except during the designated hours unless approved by FCWA pursuant to Section (b) below.
- b) **Special Event Status.** Tenant must obtain the prior approval of FCWA in the manner required for Special Events if any person or entity desires to enter or remain in the Premises other than during the designated hours. Any such entry to, or remaining in, the Premises will be considered a Special Event.
- c) **Garbage and Recycling.** Tenant must provide an adequate number of fly tight, watertight and rodent proof containers for all garbage and recycling. Garbage and recycling must be collected for disposal as often as necessary to prevent a nuisance or any unsanitary conditions and not less than once per week.

2. Prohibited and/or Restricted Uses and Activities

- a) **Waters.** Tenant must not allow the throwing, discharging, releasing or placement of any substance, matter, liquid or solid in any stream, lake, river, pond or other body of water that is in, adjacent to, or accessible from the Premises (the “**Waters**”).
- b) **Watercraft.** Tenant must not allow any boats, vessels or personal watercrafts of any sort to be used, operated, or placed in the Waters.
- c) **Bathing, Swimming, or Wading.** Tenant must not allow bathing, swimming or wading in the Waters.
- d) **Motorized Vehicles.** Except as provided in the Lease or as otherwise required by applicable Law, Tenant must not allow the operation of any motorized vehicle or motor-assisted device of any type, including any automobile, truck, motorcycle, motorbike, motor scooter, or all-terrain vehicle, in the Premises.
- e) **Non-Motorized Vehicles.** Tenant must not allow the use or operation of skateboards, rollerblades, roller skates, bicycles, or any type of rolling vehicle on any brickwork, ornamental surface, picnic table, bench, tennis or basketball or volleyball court, playground, equipment, surface used for ADA access, fountain area, planter, or sculpture or where such activity is specifically forbidden in the Premises. This prohibition does not apply to the use of mobility assistance vehicles on accessible paths.
- f) **Horseback Riding.** Tenant must not allow any horses or horseback riding activity in the Premises.
- g) **Leashed Dogs.** Tenant must not allow any dogs in the Premises unless on a leash and otherwise in accordance with applicable Law.

- h) **Animals.** Except as provided above or as otherwise required by applicable Law, Tenant must not allow any other animals in the Premises.
- i) **Glass Containers.** Tenant must not allow glass containers in the Premises.
- j) **Fires.** Tenant must not allow any grilling or fires in the Premises.
- k) **Sounds.** Except in connection with a Special Event, Tenant must not allow any loud sounds to come from the Premises including from any concerts, fireworks, or other similar events. Tenant must cause all operations from the Lease Premises to comply with all local noise restrictions and ordinances.

3. Vending; Alcohol

- a) **Selling, Advertising, and Signage.** Tenant must not allow (i) the sale, or offer for sale, of any service or item, including food and beverages, and (ii) any signs, posters, billboards, or other advertisements in the Premises.
- b) **Alcohol.** Except in connection with a Special Event, Tenant must not allow the sale, offer for sale, and consumption of alcoholic beverages in the Premises. Tenant must cause any sale, or offer for sale, and consumption of alcoholic beverages in connection with a Special Event to comply with all applicable Laws.

Exhibit D

Permitted Vehicles; Limitations²¹

PERMISSIBLE VEHICLES AND LIMITATIONS:

Lawn Mowing Vehicle

Operating Weight: 1,000 Pounds (maximum)

Wheelbase: 3'-0" (must be exact)

Pickup Truck/Utility Vehicle: 2013 F150 or Equivalent

Operating Weight: 8,200 Pounds (maximum)

Wheelbase: 6'-0" (must be exact)

The vehicles described above will be permitted in Load Zone 2 and Load Zone 3 as shown on the schematic attached to this Exhibit provided that Load Zone 2 and Load Zone 3 continue to meet the following standards:

Both Load Zones:

Minimum Concrete Strength: 3,000 PSI

Reinforcing Steel Yield Strength: 60 KSI

Load Zone 2:

8 Inch Slab Thickness

Maximum Slab Span: 8'-9"

Slab Reinforcing: #6 @ 9" o.c. Top and Bottom

Fill above roof: 2 feet of Soil

Load Zone 3:

12 Inch Slab Thickness

Maximum Slab Span: 8'-0"

Slab Reinforcing: #6 @ 8" o.c.

Fill above roof: 3 feet of Soil

Exhibit D
(continued)

Load Zone Schematic

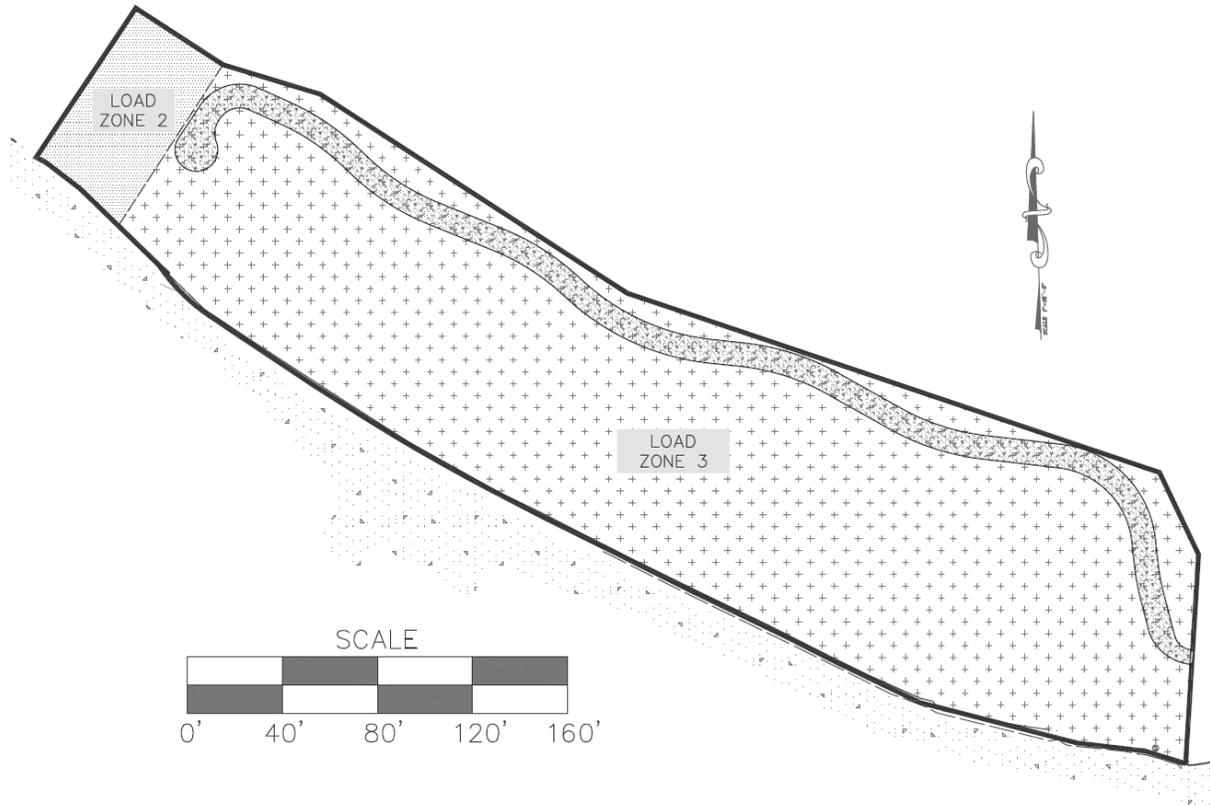


Exhibit E

Exhibit F

Tenant Insurance Policies

In addition to any other requirements in the Lease, Tenant must obtain and maintain in full force and effect, in accordance with the requirements of the Lease:

- 1) **Commercial General Liability**: a commercial general liability policy in the amount of **\$5,000,000** per occurrence and in the aggregate which must insure against, and cover, any sums that Tenant, FCWA or any other additional insured becomes legally obligated to pay due to any bodily injury, death, or property damage occurring on the Premises or arising out of Tenant's operations on the Premises.
- 2) **Workers Compensation**: worker's compensation insurance in an amount not less than the minimums required by the Commonwealth Virginia or any agency or subdivision thereof (as may be established from time to time).
- 3) **Environmental Impairment Liability**: an environmental impairment liability insurance policy of not less than **\$5,000,000** per occurrence which must insure against, and cover, first and third party pollution incidents that result in bodily injury, death or environmental damage to the air, atmosphere, land, or any waterway or body of water.

Addendum 1

Zoning Classification



TOWN OF OCCOQUAN
TOWN COUNCIL MEETING
Agenda Communication

2. Work Session - Regular Business	Meeting Date: September 27, 2014
2 A: Craft Show Report - Fall Show Update	

Explanation and Summary:

Krista Foricer, Craft Show Director, will provide a presentation to Town Council regarding the status of the upcoming Fall Arts and Crafts Show.

Attachments: None.