

TEMPORARY CONSTRUCTION, USE AND MAINTENANCE AGREEMENT

This TEMPORARY CONSTRUCTION, USE AND MAINTENANCE AGREEMENT (“Agreement”) is made this ____ day of _____, 20____, by **THE CITY OF ALEXANDRIA, VIRGINIA**, a body corporate and politic (“City”); and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic (“County”). (The City and the County are hereinafter sometimes referred to as a “Party” or the “Parties”).

RECITALS:

R-1. The City is the owner of Parcel 501, Potomac Yard, Map # 008.03-02-013, City of Alexandria, Virginia (“City Parcel”).

R-2. By Deed of Easement, dated September 10, 2015, and recorded in the land records of Arlington County, Virginia as Instrument # 20150100027268, the County acquired an easement for public use and access purposes over the property more particularly described therein (“County Easement Area”).

R-3. The Parties are cooperating on the development of a park (“Park”) on the City Parcel and County Easement Area. As part of the development of the Park, the County plans to construct a ten (10) foot wide connector trail (“Connector Trail”) over portions of the County Easement Area and City Parcel to connect with the existing portion of the Four Mile Run Trail on the City Parcel.

NOW THEREFORE, for and consideration the sum of one dollar (\$1.00), the mutual benefits to be derived by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Recitals are hereby incorporated into this Agreement.
2. **Permissions/Licenses Granted.**
 - a. **Temporary Construction License.** The City hereby grants to the County the permission and license to temporarily use that portion of the City Parcel labeled as “Temporary Construction License Area = 19,539 SF” (“Temporary Construction License Area”) on the plan, attached hereto and made a part hereof, entitled “Exhibit Plan, Potomac Yard – Four Mile Run Trail Connection, City of Alexandria, Parcel 501”, dated June 8, 2020 (“Plan”) for: i) construction and installation of the Connector Trail, a relocated electrical conduit, landscaping, trees, shrubs, signage and other park related facilities installed or constructed by the County (collectively, “Improvements”); ii) staging of construction equipment and materials; and iii) grading of portions of the City Parcel, all per the Park plans jointly agreed to by the City and the County.

- b. **Maintenance License:** The City hereby further grants to the County the permission and license to use that portion of the City Parcel labeled as “Maintenance License Area = 771 SF” (“Maintenance License Area”) on the Plan for the construction, maintenance, repair, reconstruction, replacement and/or removal of all Improvements located on the City Parcel within the Maintenance License Area.

The County and its agents shall have the full and free use of the Temporary Construction License Area and Maintenance License Area for the purposes herein described, including the right of access over the City Parcel to and from the Temporary Construction License Area and Maintenance License Area, and shall have all rights and privileges reasonably necessary to construct and maintain all Improvements located within the Maintenance License Area.

3. **Terms.** The Terms of the Temporary Construction License and the Maintenance License shall each commence on the Effective Date (as hereinafter defined in Paragraph 19 of this Agreement and shall continue, for the following periods of time, unless earlier terminated pursuant to the provisions of this Agreement:

- a. **Temporary Construction License:** - for a period of three (3) years commencing from the date specified in a written notice from the County to the City specifying the start date of construction work on the Connector Trail.
- b. **Maintenance License** - until otherwise terminated by either of the Parties by giving one (1) year prior written notice to the non-terminating Party, as provided by Section 8 this Agreement.

4. **Fee.** No compensation shall be required by the City for the County’s use of the Temporary Construction License Area or the Maintenance License Area during the Term.

5. **Site Preparation.** The County shall be responsible for obtaining all permits and for preparing the Maintenance License Area for the construction and installation of the Improvements. All work shall be completed in accordance with the City’s permitting procedures. The City shall cooperate with the County in obtaining any permits required for construction of the Improvements.

6. **Restoration.** The County agrees that, as soon as practicable after the completion of construction of the Improvements, the County will, at no cost to the City: restore the disturbed area to original condition on and adjacent to the Temporary Construction License Area in accordance with the Grading Park Plan, GRD2020-00004, as approved by the City.

7. **Maintenance.** After completion of the construction of the Improvements, the County, at its own cost, shall: (i) maintain, repair and replace all Improvements located within the Maintenance License Area and keep them in good condition and repair; and (ii) remove trash and debris from the portion of the Connector Trail located within the County Easement Area and within the City Parcel.

8. **Termination of Agreement.** Unless this Agreement earlier terminates or expires pursuant to another provision hereof, either Party may terminate this Agreement, without liability or further obligation, at any time upon one (1) year prior written notice to the non-terminating Party. Upon termination of this Agreement, any remaining Improvements shall become the property of the Party where the Improvements are located.

9. **Notices.** Any notice or request which may be given or is required to be given by any Party to the other Party shall be in writing, and shall be either hand delivered by Federal Express or other similar company or sent by United States certified mail, return receipt requested, with proper first-class postage prepaid, properly and fully addressed, as follows:

If to the County: County Board of Arlington County, Virginia
2100 Clarendon Boulevard, Suite 300
Arlington, Virginia 22201

With a copy to: Real Estate Bureau Chief
Arlington County
Department of Environmental Services
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201

If to the City City Manager
City of Alexandria, Virginia
301 King Street
Alexandria, Virginia 22314

With a copy to: City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314

Notices shall be effective upon receipt, except in the case of notices sent by United States certified mail, return receipt requested, with proper first- class postage prepaid, notice shall be effective three (3) days after mailing.

10. **No Assignment.** The rights and obligations under this Agreement are not assignable.

11. **No Waiver of Sovereign Immunity.** Nothing in this Agreement, nor any action taken by any of the Parties pursuant to this Agreement, nor any document or documents that arise out of this Agreement, shall constitute or be construed as a waiver of the sovereign immunity of the City or County, including their elected and appointed officials, officers, and employees.

12. **No Indemnification or Hold Harmless.** Notwithstanding any other term or provision or this Agreement to the contrary, neither Party shall have any obligation to explicitly or implicitly indemnify or hold harmless the other Party or any third party or parties

from any liability whatsoever. No insurer may hold any rights of subrogation arising out of this Agreement against any Party.

13. **No Rights in Third Parties.** The Parties agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, any right as a third-party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.

14. **Appropriation of Funds.** All of the County's obligations under this Agreement are subject to appropriation of funds by the County Board, for the specific purpose of satisfying the payment and performance of such obligations. If funds are not appropriated for the specific purposes of satisfying the obligations of the County Board under this Agreement at the beginning of any one of the County Board's fiscal years during the Term, then this Agreement shall become null and void and shall terminate on the last day of the County Board's fiscal year for which appropriations were received for such purpose, without any termination fee or other liability whatsoever to the County Board. The Parties agree that, notwithstanding any provision in this Agreement to the contrary, this section shall supersede any and all obligations imposed by any other provisions of this Agreement. No subsequent amendment to this Agreement shall abrogate, diminish, or compromise the full legal effect or implication of this section.

15. **Disputes.** This Agreement is governed by, and must be construed and enforced in accordance with, the laws of the Commonwealth of Virginia. For every dispute regarding this Agreement: (i) each Party shall pay its own attorney fees (whether incurred at trial, on appeal, or otherwise) incurred in resolving or settling the dispute; (ii) each Party consents to the jurisdiction of the Commonwealth of Virginia, and avers that Virginia courts have personal jurisdiction over each Party. All rights and remedies are cumulative and nonexclusive.

17. **Severability.** If any of the terms and conditions in this Agreement are, at any time during the Term or any extension thereof, held by any court of competent jurisdiction to be invalid or unenforceable, then such terms and conditions shall be severed from the remainder of this Agreement, and such severance shall not affect the enforceability of the remaining terms and conditions in accordance with the intent of this Agreement.

18. **Approval of Agreement by County.** This Agreement shall not become effective unless and until the County Board approves this Agreement and the Agreement is executed on behalf of the County Board by a person so authorized.

19. **Effective Date.** The Effective Date is the date that this Agreement is signed on behalf of the County. The County shall execute this Agreement last.

20. **Entire Agreement/Applicable Law.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof. The Parties expressly acknowledge and represent that they have not relied on any oral or written representations, warranties, promises, statements, covenants or agreements, express or implied, direct or indirect, given or made by or on behalf of the other, except those representations, if any,

expressly contained herein. This Agreement shall not be modified, changed or terminated, in whole or in part except by an agreement, in writing, signed by duly authorized representatives of the Parties.

21. **Final Agreement.** This Agreement incorporates all agreements between the parties hereto and shall be binding upon the Grantors, and Grantor's successors in title and interest. No representations or statements have been made which would modify, add to or change the terms of this Deed.

WITNESS the following signature(s):

[Signatures appear on the following page(s)]

CITY OF ALEXANDRIA, VIRGINIA

By: _____

Commonwealth of Virginia
City of Alexandria

The foregoing instrument was acknowledged before me by
_____ who is _____, on behalf of THE CITY
COUNCIL OF THE CITY OF ALEXANDRIA, VIRGINIA, a body corporate, this _____
day of _____, 2019.

Notary Public

My Commission expires: _____
Notary Registration No: _____

APPROVED AS TO FORM:

CITY ATTORNEY

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA,
a body corporate and politic

Accepted this ____ day of _____, 20 __, on behalf of the County Board of Arlington County, Virginia, pursuant to a resolution, motion, or action of the said Board duly adopted on _____, 20__.

By: _____
For the County Board of Arlington County, Virginia

Name: Uri Arkin
Title: Real Estate Bureau Chief

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me on this ____ day of _____, 20__ by _____, on behalf of the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic, Licensee.

Notary Public: _____
My Commission Expires: _____

APPROVED AS TO FORM:

COUNTY ATTORNEY