

**COOPERATIVE AGREEMENT BETWEEN THE FAIRFAX COUNTY BOARD OF
SUPERVISORS, AND THE TOWN OF VIENNA, and TOWN OF HERNDON TO
SHARE CERTAIN STORMWATER SERVICE DISTRICT FEES AND
RESPONSIBILITY FOR RELATED SERVICES**

This Agreement (“Agreement”) is entered into on this _____ day of _____, 2016~~2013~~, by

and between the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

(“FAIRFAX”), the TOWN COUNCIL OF VIENNA, VIRGINIA (“VIENNA”), and the TOWN
COUNCIL OF HERNDON, VIRGINIA (“HERNDON”) (referenced”)~~and~~ collectively as the
“Parties” or “the Governing Bodies”, and individually as the “Party”).

WITNESSETH:

WHEREAS the Towns~~Town~~ of Vienna and Herndon (also referenced herein as “the
Towns” ~~are~~Town”)~~is~~ located within Fairfax County (also referenced herein as “the County”);
and

WHEREAS Fairfax County, and the Town of Vienna, and the Town of Herndon each
maintain, operate, and improve stormwater systems that affect one another; and

WHEREAS Fairfax County and the Towns are each subject to a Municipal Separate
Storm Sewer System (“MS4”) permit issued by the Virginia Department of Environmental
Quality (“DEQ”); and

WHEREAS FAIRFAX has~~and~~ VIENNA have cooperated with VIENNA and
HERNDON~~each other~~ to maintain, operate, and improve their respective~~collective~~ stormwater
systems and wish to continue such cooperation in the future in the best interests of their
residents; and

WHEREAS pursuant to Va. Code Ann. § 15.2-2400 (2012), FAIRFAX has established a
Stormwater Service District (“Service District”)~~and~~, and is authorized~~and~~ pursuant to Va. Code Ann.

§ -15.2403(6) (Supp. 2016) to levy and collect an annual fee upon any property located within such Service District (“the Service District Fee”); and

WHEREAS the TownsTown of Vienna and Herndon areis located within Fairfax County’s Service District; and

WHEREAS, pursuant to this Va. Code Ann. § 15.2-24032303(6), Fairfax County collects revenues from properties located within the TownsTown of Vienna and Herndon; and

WHEREAS, pursuant to Va. Virginia Code Ann. § -15.2-2403.3 (Supp. 20162012), by virtue of the Towns’Town’s maintenance of separatean MS4 permitspermit and theirits location within the Service District, the Towns areTown is entitled to its share of the Service District Fee revenues collected by Fairfax County within their respective jurisdictions; and

WHEREAS, the actual amount of revenues collected from the Service District Fee will vary from year to year; and

WHEREAS, each MS4 permit, among other things, assigns jurisdiction-specific, pollutant -load -reduction requirements for nitrogen, phosphorus, and sediment to address the Chesapeake Bay Total Maximum Daily Load (referred to herein as “TMDL”2,2) and requires each MS4-permit jurisdiction to develop a Chesapeake Bay TMDL Action Plan that identifies the practices, means, and methods that are to be implemented by the permittee to achieve the required pollutantto demonstrate how reductions will be achieved and tracked in the respective MS4 permit jurisdiction; and

WHEREAS, the Commonwealth’s Chesapeake Bay TMDL Watershed Implementation Plan (referred to herein as “the WIP”) establishes the total pollutant reduction loads required to achieve the Chesapeake Bay TMDL and the timeframe for MS4-permit jurisdictions to achieve their assigned pollutant reductions; and

WHEREAS, each MS4 permit also requires the development of action plans for other pollutants where a TMDL assigns a wasteload allocation (“WLA”) to the permittee; and

WHEREAS, pursuant to their respective MS4 permits, the Towns submitted their initial Chesapeake Bay TMDL Action Plans to DEQ prior to the deadline of October 1, 2015 while the County’s initial Chesapeake Bay TMDL Action Plan will be submitted to DEQ prior to the deadline of April 1, 2017. Action plans for other TMDLs are submitted in accordance with the schedule contained in each MS4 permit; and

WHEREAS, while each MS4-permit jurisdiction is ultimately responsible for compliance with its MS4 permit, MS4 permits allow and encourage cooperation and coordination among permit holders, and such cooperation and coordination can mutually benefit MS4-permit jurisdictions through more effective and cost-efficient protection of water resources in each jurisdiction; and

WHEREAS, the purpose this Agreement, in part, is for the Parties to work cooperatively to satisfy the pollutant load reduction requirements of their current and future MS4 permits by implementing stormwater management practices within the Parties’ jurisdiction that reduce the discharge of pollutants; and

WHEREAS, FAIRFAX, VIENNA, or HERNDON~~WHEREAS, VIENNA or FAIRFAX~~ may terminate this Agreement as set forth by the terms herein if, pursuant to applicable law, either locality chooses not to participate under this Agreement or chooses not to share the Stormwater Service District Fees; and

WHEREAS FAIRFAX, ~~and~~ VIENNA, ~~and~~ HERNDON have determined and agreed that the best interests of each locality’s residents are fulfilled if FAIRFAX utilizes a portion of ~~and~~ VIENNA share the Service District Fees collected by FAIRFAX from properties within the

TownsVIENNA to assist the TownsVIENNA in maintaining, operating, and improving their respectiveVIENNA's stormwater systemssystem to achieve the goals of effective regional water quality improvement and local initiatives in these localities and to satisfy certain MS4 permit requirements;

NOW, THEREFORE, in consideration of the mutual obligations set forth herein and other good and valuable consideration, so long as FAIRFAX continues to administer the Service District in FAIRFAX that encompasses VIENNA and HERNDON, and so long as VIENNA and HERNDON qualifyqualifies to receive the Service District Fees collected by FAIRFAX from properties within the Towns, FAIRFAX, VIENNA, FAIRFAX and HERNDONVIENNA agree as follows:

1. FAIRFAX, and VIENNA, and HERNDON will continue to engage in a coordinated approach to maintaining and operating their respective stormwater systems throughout the incorporated and unincorporated parts of FAIRFAX. Moreover, FAIRFAX, and VIENNA, and HERNDON will engage in a coordinated approach for future improvements to their respective stormwater systems.

2. This Agreement's duration shall be for one fiscal year and shall renew at the beginning of each fiscal year thereafter unless terminated pursuant to the terms set forth herein below. For the purposes of this Agreement, "fiscal year" shall mean Fairfax County's fiscal year, which, at the time of the execution of this agreement, ends on June 30.

3. This Agreement's purpose is to set forth how the Parties shall share revenues to be collected pursuant to the Service District Fee, including revenues collected from properties within VIENNA and HERNDON, and the respective obligations of the Parties with respect to the stormwater management services described herein.

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STORMWATER FEE REVENUE SHARING

4. FAIRFAX shall collect all revenues to be collected pursuant to the Service District Fee, including revenues collected from properties within the TownsTown of Vienna
5. ~~Revenues~~ actually collected throughout the Service District are referred to herein as "STORMWATER FEE REVENUES."
6. ~~At the end of each fiscal year, FAIRFAX shall calculate separately the total amount of stormwater fee revenues that were actually collected from properties within VIENNA and HERNDON~~separately from the amount of stormwater fee revenues collected elsewhere in FAIRFAX (the "VIENNA STORMWATER FEE" and "HERNDON STORMWATER FEE").
7. On or before October 30th of each fiscal year, FAIRFAX shall estimate the anticipated VIENNA STORMWATER FEE and HERNDON STORMWATER FEE for that year, and shall pay to VIENNA and HERNDON an amount equal to twenty-five percent (25%) of the estimated VIENNA STORMWATER FEE and HERNDON STORMWATER FEE, respectively, for that fiscal year, rounded to the nearest penny -(the "PAID VIENNA REVENUES" and PAID HERNDON REVENUES).²
8. The Parties acknowledge and agree that PAID VIENNA REVENUES and/or PAID HERNDON REVENUES may be more or less than the amount that is actually due and owing to either or both of the TownsVIENNA, and which amount is calculated at the end of each fiscal year.
9. If the PAID VIENNA REVENUES for a particular fiscal year are determined to have been less than 25% of the actual VIENNA STORMWATER FEE actually collected for that fiscal year, then FAIRFAX shall pay VIENNA the difference between the PAID VIENNA REVENUES and 25% of the VIENNA STORMWATER FEE actually collected for that fiscal

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year. FAIRFAX shall pay this difference at the same time as it pays the next fiscal year's PAID VIENNA REVENUES.

10. If the PAID HERNDON REVENUES for a particular fiscal year are determined to have been less than 25% of the actual stormwater fee actually collected for that fiscal year in HERNDON, then FAIRFAX shall pay HERNDON the difference between the PAID HERNDON REVENUES and 25% of the HERNDON STORMWATER FEE actually collected for that fiscal year in HERNDON. FAIRFAX shall pay this difference at the same time as it pays the next fiscal year's PAID HERNDON REVENUES.

10.11. If the PAID VIENNA REVENUES for a particular fiscal year are determined to have been more than 25% of the actual VIENNA STORMWATER FEE actually collected for that fiscal year, then FAIRFAX shall deduct the difference between the PAID VIENNA REVENUES and 25% of the VIENNA STORMWATER FEE actually collected for that fiscal year from the amount that FAIRFAX pays for the next fiscal year's PAID VIENNA REVENUES.

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12. If the PAID HERNDON REVENUES for a particular fiscal year are determined to have been more than 25% of the actual HERNDON STORMWATER FEE actually collected for that fiscal year, then FAIRFAX shall deduct the difference between the PAID HERNDON REVENUES and 25% of the HERNDON STORMWATER FEE actually collected for that fiscal year from the amount that FAIRFAX pays for the next fiscal year's PAID HERNDON REVENUES.

12.13. Once FAIRFAX has determined the amount of the actual VIENNA STORMWATER FEE and HERNDON STORMWATER FEE, which shall occur within 90³⁰ days of the fiscal year end, FAIRFAX shall forward the respective amounts^{this amount} to the

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Comment [CAB1]: It may be that the process set forth in this paragraph can be wholly avoided, and simply added to the existing process by which Fairfax County returns tax revenue to the Town. Fairfax is consulting with its Department of Tax Administration to determine whether this can be accomplished.

Towns' Mayors~~Town's Mayor~~ in writing ("FINAL ACCOUNTING"). If VIENNA and/or HERNDON disputes the amount of the FINAL ACCOUNTING, then within 30 days of the Mayors' Mayor's receipt of this FINAL ACCOUNTING, VIENNA and/or HERNDON~~its~~ designee, shall state the complete factual basis for any such dispute in writing to the Fairfax County Executive, and the Parties~~PARTIES~~ shall endeavor in good faith to resolve any such dispute. Upon the resolution of any such dispute, or if VIENNA and/or HERNDON fails to dispute the amount of the FINAL ACCOUNTING within 30 days of either~~the~~ Mayor's receipt thereof, then VIENNA and/or HERNDON shall be deemed to have accepted payment of the respective fiscal year's PAID VIENNA REVENUES or PAID HERNDON REVENUES, which shall result in the waiver of, and VIENNA waives any right to and shall not request from FAIRFAX any additional amount~~the 75% balance of~~ the collected~~VIENNA~~ STORMWATER FEE REVENUES~~for that fiscal year~~. VIENNA's and/or HERNDON's waiver of any such balance, however, is conditioned upon FAIRFAX's obligations to VIENNA and/or HERNDON pursuant to this Agreement.

12.14. Pursuant to Va. Code Ann. § 15.2-2403.3 VIENNA and HERNDON shall expend the PAID VIENNA REVENUES and PAID HERNDON REVENUES, respectively, only for costs directly related to the Towns'~~VIENNA's~~ stormwater systems and not for non-stormwater-system costs, such as public safety, schools, or road maintenance.

13.15. Under this Agreement, neither VIENNA nor HERNDON is not required to expend any of the paid revenues~~PAID VIENNA REVENUES~~ within any specific amount of time. This Agreement does not affect any other authority that VIENNA or HERNDON might have to carry over revenues from year-to-year or to expend revenues in one fiscal year when the revenues were collected in a previous fiscal year.

14.16. If, at any time in the future, either VIENNA or HERNDON becomes unincorporated or ceases to qualify to receive paid revenues PAID VIENNA REVENUES for any reason or terminates its stormwater program or ceases to maintain its stormwater systems, none of the previously paid revenues PAID VIENNA REVENUES shall be expended for anything other than the maintenance, operation, and improvement of such Town's VIENNA's stormwater systems. If any such amounts are returned to FAIRFAX they may be used for other qualified uses in the Service District as FAIRFAX, or its designee, in its or his sole discretion, deems appropriate.

JOINT CHESAPEAKE BAY TMDL COMPLIANCE ACTION PLAN AND THE TMDL ADVISORY COMMITTEE

17. Fairfax, Vienna, and Herndon agree that Fairfax will implement stormwater management practices throughout the County and in the Towns sufficient to achieve the TMDL pollutant load reduction requirements that are incorporated into each Party's respective current and future MS4 permit.

15. A TMDL Compliance~~In accordance with their respective MS4 permits,~~
~~FAIRFAX and VIENNA will develop a Joint Chesapeake Bay TMDL Action Plan (referred to herein as the "Joint Action Plan") in lieu of each locality establishing its own Chesapeake Bay TMDL Action Plan. Upon agreement of the Parties or their authorized designees, the Town of Herndon, Virginia, or any other locality may participate in the Joint Action Plan.~~

16. Fairfax County will implement and maintain the Joint Action Plan in a manner that is sufficient to ensure that both FAIRFAX and VIENNA comply with their respective MS4 permit obligations.

17. Consistent with the Parties' respective MS4 permits, the Joint Action Plan shall be developed and implemented as follows:

a. Each governing body, or its designee, shall select representatives to establish a Joint Action Plan Advisory Committee (hereinafter referred to as the "Advisory Committee") shall be established and shall be comprised of one or more ".

18. b. Upon agreement of the Parties, representatives from each governing body the Town of Herndon, Virginia, or any other locality may also participate in the Advisory Committee. Any such representatives shall also be selected by his or her respective governing body, or its designee.

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19. e. Regardless of the number of representatives appointed by each governing body, each locality will have one vote on the Advisory Committee.

20. d. The Advisory Committee shall: develop an initial Joint Action Plan, which is defined and described below, and review any subsequent amendments or updates thereto.

a. establish, pursuant to each Party's respective MS4 permit, the nitrogen, phosphorus, and sediment (referred to as "pollutants of concern" or "POCs") load reductions necessary for each individual Party to achieve full compliance with the Chesapeake Bay TMDL and the WIP (referred to herein as "the Chesapeake Bay TMDL Endpoint").

b. establish the "TOTAL POLLUTANT REDUCTION," which is the total amount of each POC that the Parties must reduce in order to reach the Chesapeake Bay TMDL Endpoint.

establishe. Decisions, conclusions, and recommendations set forth in the Joint Action Plan shall be made via a simple majority vote of the Advisory Committee's members.

f. The Parties acknowledge and agree that the Joint Action Plan is intended only as a guidance document and FAIRFAX is not bound or obligated to implement any of its provisions. Accordingly, once finalized, the Advisory Committee shall send the Joint Action Plan to the Director of the Fairfax County Department of Public Works and Environmental Services (“DPWES”), or his designee(s) (“the Director”), who shall be authorized, in his sole discretion, to receive the Joint Action Plan as submitted, or to any make any modifications, changes, or amendments thereto.

g. The Director shall then forward the final version of the Joint Action Plan to the respective governing bodies for formal adoption.

h. FAIRFAX and VIENNA must formally adopt the Joint Action Plan in accordance with the approval procedures established by each locality in accordance with its MS4 permit. Any subsequent amendments or changes to the Joint Action Plan shall be approved in the same manner.

i. Once the Parties adopt a final Joint Action Plan, FAIRFAX shall cause the Joint Action Plan to be sent to the Virginia Department of Environmental Quality and/or any other appropriate state or federal government agency that regulates the localities’ MS4 permits (referred to herein as “DEQ”).

j. In the event that each locality does not adopt the Joint Action Plan, then this Agreement shall automatically cease, and each Party shall be solely responsible for all of its stormwater and MS4 permit obligations. Upon such termination, FAIRFAX will pay to VIENNA the entirety of the VIENNA STORMWATER FEE for that fiscal year, but the balance of any fees for prior fiscal years will be deemed waived by VIENNA.

18. The Joint Action Plan shall include the following:

a. Establish the total nitrogen, phosphorus, and sediment load reductions required for all participating localities.

b.c. Establish the percentage of the TOTAL POLLUTANT REDUCTION~~total load reductions~~ for which each locality is responsible. That percentage assigned to each Party shall hereinafter be referred to, respectively, as the “FAIRFAX PERCENTAGE,” “VIENNA PERCENTAGE,” and “HERNDON PERCENTAGE.” ~~will be responsible~~.

d. as determined by the Advisory Committee, the FAIRFAX PERCENTAGE, VIENNA PERCENTAGE, and the HERNDON PERCENTAGE may be established for each POC, an average of POCs, or by another mutually agreed ~~Set forth an annual date~~ upon methodology that will allocate pollutant reduction credits for projects completed under this Agreement as provided for in paragraph 27 below, in a manner necessary to meet the Chesapeake Bay TMDL Endpoint.

e. establish a watershed-specific FAIRFAX PERCENTAGE, VIENNA PERCENTAGE, and HERNDON PERCENTAGE to allocate pollutant reduction credits for projects implemented within a watershed to meet a non-Chesapeake Bay TMDL Endpoint.

e.21. VIENNA and HERNDON may at any time which VIENNA will provide FAIRFAX with a list of stormwater management projects to be considered for implementation. Before submitting any such project, VIENNA and HERNDON will thoroughly investigate and analyze each project to ensure that any such project is feasible. Any project submitted before June 30 of each year will be considered by FAIRFAX for implementation during the following fiscal year. If a project is not implemented, it will continue to be considered for implementation

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in subsequent fiscal years until such time that the project is determined to be infeasible.

Selection of projects for implementation and determination of final feasibility are at the sole discretion of the Director of the Fairfax County Department of Public Works and Environmental Services (“Director”).

19.22. By April 1 of each year Pursuant to the Joint Action Plan, the Director will send to the Towns of VIENNA and HERNDON and/or their designees a proposed list of projects within their jurisdictionto the Mayor of VIENNA or her designee.

20.23. Within 30 days after each Mayor’s receipt of this list, the Towns VIENNA shall provide comments and suggestions regarding each project, its timing, and its costs for implementation, lifetime maintenance, and replacement. If the Towns provideVIENNA provides any comments or suggestions, the Director, in his sole discretion, shall fully consider any such comments, and may, but shall not be obligated to implement or adhere to them. —In the event that a dispute exists regarding implementation of any project on the list sent byJoint Action Plan, the Director, the Director and the disputing Town Parties shall endeavor in good faith to resolve any such dispute, but final authority for the implementation of any such projects rests solely with Fairfax County and the Director.

24. FAIRFAX will pay for the development of the updated Chesapeake Bay TMDL Action Plan for each Town that is due at the beginning of each new MS4 permit cycle. Each Town will be responsible for routine annual updates as required in the MS4 permits. FAIRFAX will also pay for the initial development of other TMDL action plans necessary for compliance with each Town’s MS4 permit and any substantial updates to these action plans required in future permit cycles. The action plans will include all information necessary to demonstrate

compliance with MS4 permit requirements. Changes or additions to projects identified in the action plans will be reported to each Town annually in accordance with paragraph 31.

21.25. FAIRFAX shall be solely responsible for implementing projects under this Agreement, excluding the acquisition of any permanent or temporary land rights necessary to construct and maintain in accordance with the Joint Action Plan. Where FAIRFAX deems appropriate, FAIRFAX shall request that VIENNA agree to a project's design that might set forth the maintenance and replacement obligations for each locality for a particular project located within a Town. The Parties may, as necessary, also have agreements that are separate from this Agreement that address the Parties' responsibilities over specific projects, and facilities, and other funding.

26. A project is subject to this Agreement if it is funded in whole or in part by the Service District Fee and substantially completed on or after July 1, 2009.

22. For each project substantially completed under this Agreement on or after July 1, 2009, whether the project or facility is located within Fairfax County, the Town of VIENNA, HERNDON, or elsewhere within Fairfax County, the Parties each locality will receive a pollutant reduction credit for each POC. The reduction credit is determined by applying that is in proportion to the percentage of the VIENNA PERCENTAGE and the HERNDON PERCENTAGE to the estimated total POC load reductions for each project that is substantially completed pursuant to this Agreement (the "VIENNA CREDIT," "HERNDON CREDIT," "FAIRFAX CREDIT," and collectively "REDUCTION CREDITS"). that is established for each locality in the initial Joint Action Plan. This percentage will remain constant regardless of whether the actual total load reductions change over time. For completed projects and facilities, the REDUCTION CREDITS a locality's receipt of this percentage share of credit shall survive

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any termination of this Agreement unless otherwise agreed to by the Parties or in the event that a constructed .

23.27. By mutual Agreement, FAIRFAX may purchase VIENNA's percentage share of credit related to any such project or facility or improvement is not maintained in accordance with paragraph 28 of this Agreement.

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28. The Party in whose jurisdiction any stormwater management facility or improvement is constructed under this Agreement shall ensure that the long-term maintenance of such facility or improvement is performed as necessary to maintain the functionality and performance thereof. Each party shall ensure long-term maintenance in accordance with Va. Code Ann. § 62.1-44.15.15:27(E)(2) and 9 Va. Admin. Code §§ 25-870-58 and 112. In the event that a Party's failure to maintain a project completed under this Agreement results in a decrease in the amount of POCs removed therefrom, as determined by DEQ, then that Party shall, at its sole cost, maintain or improve the facility to restore the facility to its original functionality.

29. In the event that a Party is unable to meet its load reduction requirement for a specific reporting period, and another Party has exceeded its load reduction requirement, the Director may, with written notification to the Parties, transfer credit from shared credit projects among Parties in a manner to ensure that each Party is able to meet its load reduction requirement. Any such transfer shall be temporary and last only as long as it is needed to address the immediate shortfall. Further, no transfer will occur or stay in force that would result in a donating Party being in non-compliance with an MS4 permit condition.

30. Any Party that completes a stormwater management project from funds not generated by or transferred through Fairfax County shall be entitled to claim all resulting load reduction credits for purposes of satisfying its MS4 permit requirements.

24.31. FAIRFAX will prepare an annual report that details the activities performed under this Agreement associated with the Joint Action Plan. The report will provide sufficient detail so that each locality may use it to meet their respective MS4 permit reporting obligations to DEQ. Fairfax will provide the report annually report annually no later than one month before prior to the date the annual report is due to DEQ.

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OTHER NON-CHESAPEAKE BAY TMDL ACTION PLANS

25. FAIRFAX will be responsible for developing any of VIENNA's non-Chesapeake Bay TMDL action plans that are required by VIENNA's MS4 permit. FAIRFAX will develop any such Action Plans on a schedule that is in accordance with VIENNA's MS4 permit.

26. The Advisory Committee or other joint planning committee agreed to by FAIRFAX and VIENNA may guide the development of an Action Plan for any other TMDLs.

27. FAIRFAX and VIENNA must formally adopt any such Action Plan for any other TMDLs. Formal adoption of an Action Plan for any other TMDLs or subsequent amendments or updates shall be subject to the approval procedures established by each locality in accordance with its MS4 permit.

28. FAIRFAX will be responsible for implementing individual elements of any such Action Plan for any other TMDLs unless the Action Plan states otherwise.

STAFF TRAINING

29.32. Without any additional invitation or payment, VIENNA's and/or HERNDON's staff may attend MS4 or Virginia Stormwater Management Plan industrial stormwater permit-related training programs that are conducted or hosted by FAIRFAX. FAIRFAX will provide

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VIENNA and HERNDON with at least one-month's advance notice of such training opportunities.

TERMINATION

30.33. Any~~In addition to a termination by a refusal to adopt the Joint Action Plan, either~~

Party may terminate this Agreement by resolution of that Party's governing body. Any such resolution shall be at a public meeting with notice~~notified~~ in writing to the non-terminating Parties. Notice shall be made~~VIENNA~~ Mayor or, as applicable, the Fairfax County Executive at least three weeks in advance of any such meeting to the Mayor(s) or, as applicable, the County Executive, of Fairfax County. After adoption of any such resolution, the terminating Party shall notify~~promptly inform the Mayor or~~ the remaining Parties~~County Executive~~, as applicable. The termination shall be effective no earlier than the end of the fiscal year in which the governing body's vote for the resolution for the termination occurs.

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34. If this Agreement is terminated by any~~either~~ party other than FAIRFAX, the

Agreement shall remain in force as to the remaining parties. The terminating Town, VIENNA shall have responsibility to maintain and replace as necessary, any facility constructed under this Agreement that is located within its boundaries~~VIENNA~~ and shall assume all liability for such facility. Unless otherwise agreed to by the Parties, neither Town~~VIENNA~~ shall ~~not~~ have any liability or responsibility for any facility that is located outside of its jurisdictional boundaries~~VIENNA~~ and ~~that~~ was developed and implemented under this Agreement.

34.

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ADDITIONAL PROVISIONS

32.35. This Agreement is integrated and contains all provisions of the Agreement~~agreement~~ between the Parties~~parties~~.

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33.36. In the event of a conflict between any ~~—~~ term(s) of this Agreement and either of the Parties' MS4 permits or other permit requirements, either Party's ~~—~~respective permit provision(s), shall control.

34.37. ~~—~~Any provision or term of this Agreement may be modified only by a writing that is approved by resolution at a public meeting of each of the localities' respective governing bodies.

35.38. This Agreement shall be binding on the Parties' respective agencies, employees, agents, and successors-in-interests.

36.39. This Agreement shall not be assigned by either of the Parties unless both of the Parties agree to such an assignment in writing.

37.40. Nothing in this Agreement otherwise limits the respective regulatory and police powers of the Parties.

41. The Parties agree that nothing in this Agreement creates a third-party beneficiary.

The Parties also agree that this Agreement does not confer any standing or right to sue or to enforce any provision of this Agreement or any other right or benefit to any person who is not a party to this Agreement, including but not limited to a citizen, resident, private entity, or local, state, or federal governmental or public body.

38.42. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same Agreement.

39.43. This Agreement shall be governed by Virginia law, and any litigation relating to this Agreement shall be brought and/or maintained only in the Circuit Court of Fairfax County, Virginia.

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IN WITNESS WHEREOF, the Parties have executed this Agreement, as verified by their signatures below.

[Signatures appear on the following pages.]

TOWN OF VIENNA

By: _____
(*Name and Title*)

STATE OF VIRGINIA :
: to-wit
COUNTY OF FAIRFAX :

The foregoing Agreement was acknowledged before me by _____
of the Town of VIENNA, this _____ day of _____ 20162013 on behalf of the
Town of VIENNA.

Notary Public

My commission expires: _____
Notary Registration Number: _____

TOWN OF HERNDON

By:

(Name and Title)

STATE OF VIRGINIA :
COUNTY OF FAIRFAX : to-wit

The foregoing Agreement was acknowledged before me by _____
of the Town of HERNDON, this _____ day of _____ 2016 on behalf of the Town
of HERNDON.

Notary Public

My commission expires:

Notary Registration Number:

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

By: _____

Edward L. Long Jr.
County Executive
Fairfax County, Virginia

STATE OF VIRGINIA :
: to-wit
COUNTY OF FAIRFAX :

The foregoing Agreement was acknowledged before me by _____ of the
County Executive, on behalf of the Board of Supervisors of Fairfax County, Virginia this
| _____ day of 20162013.

Notary Public

My commission expires: _____
Notary Registration Number: _____

Approved as to form: _____
Office of the County Attorney
Fairfax, Virginia

| Prolaw Doc No. 538443