

**BEAR BRANCH AT SOUTHSIDE PARK PHASE II (AC9240A)  
STREAM RESTORATION PROJECT  
FUNDING AGREEMENT**

This Agreement (“Agreement”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA** (the "County"), a body politic, and the **TOWN OF VIENNA** (the “Town”) (collectively, the “Parties”).

**WITNESSETH:**

WHEREAS, the Town has been awarded a Stormwater Local Assistance Fund Grant from the Virginia Department of Environmental Quality for up to one million two hundred and forty seven thousand and five hundred dollars (\$1,247,500) (the “DEQ Grant”) to design and implement the Bear Branch at Southside Park Phase II (AC9240A) Stream Restoration Project (the “Project”), which will be located within the boundaries of the Town and will restore a portion of the body of water known as Bear Branch and

WHEREAS, the location of the Project is located between Longitude 38.88512N and Latitude 77.25316W and 38.87960N and 77.25289W, and is more specifically shown on the Fairfax County Real Property Identification Map as Tax Map Numbers: 48-2((3)) parcel 2350A and 48-2 ((2)) parcel 13B; and

WHEREAS, the Project is within the Chesapeake Bay, Potomac River, and Accotink Creek watersheds; and

WHEREAS, the Town is part of the County’s Stormwater Service District and the County, Town, and the Town of Herndon have entered into an agreement known as the “Cooperative Agreement Between the Fairfax County Board of Supervisors, the Town of Vienna, and Town of Herndon to Share Certain Stormwater Service District Fees and Responsibility for Related Projects” (the “Cooperative Agreement”) to share funds and responsibility to maintain, operate, and improve stormwater systems to meet the Chesapeake Bay Total Maximum Daily Load (“TMDL”) and other water quality goals; and

WHEREAS, under the Cooperative Agreement, annually, the County pays the Town a percentage of the Stormwater Service District Fees that are collected from residents of the Town (the “Paid Vienna Revenues”); and

WHEREAS, the Town and County agree that under the Cooperative Agreement, Stormwater Service District funds can be used for the Project because the Project meets the water quality objectives of each locality and their respective Chesapeake Bay TMDL obligations; and

WHEREAS, the Project is estimated to cost two million five hundred and twenty thousand dollars (\$2,520,000) (the “Total Project Cost”), a portion of which is to be paid using the DEQ Grant; and

WHEREAS, the County intends to pay one million two hundred and seventy two thousand and five hundred dollars (\$1,272,500) for the purpose of supporting the design and construction of the Project from its Stormwater Budget; and

WHEREAS, the Town intends to dedicate Town staff expertise and time for the purpose of supporting, developing, and implementing the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein as if restated as binding provisions of this agreement, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereto further agree as follows:

1. Upon execution of this Agreement, the County will grant to the Town funds in the amount of six hundred thousand dollars (\$600,000) for design (the “Design Funds”) to be paid with monies from the County’s Stream and Water Quality Improvement Project (fund I/O 2G25-029-001) of the Stormwater Budget (fund 400-C40100, Stormwater Services). Upon completion of the design of the Project, the County will grant to the Town an additional six hundred seventy-two thousand and five hundred dollars (\$672,500) for the construction of the project as designed (the “Construction Funds”), except that if those funds are unavailable in the Stormwater Budget when design is completed, they will be paid when they become available. The Design Funds plus the Construction Funds are hereinafter referred to as the “County Contribution”. Completion of the design of the project occurs when the Town informs the County that all

construction documents are completed and approved, and all permits for the construction have been obtained.

2. The County Contribution will not be charged against the PAID VIENNA REVENUES as set forth in the Cooperative Agreement, but rather, are a separate grant to the Town from the County.

3. The Town will dedicate Town staff expertise and time for the purpose of supporting, developing, and implementing the Project.

4. The Town must expend the DEQ Grant solely for the purpose of supporting the design and construction of the Project when the DEQ Grant is received.

5. The Town will expend the County Contribution solely for the purpose of supporting the design and construction of the Project, and not for the cost of any feasibility study or acquisition of any land or easements necessary for the completion of the Project.

6. The Town will provide to the County a copy of the final site plan (the “Plan”) for the Project.

7. The Town will acquire, at its sole expense, any and all land or easements, or other interests in real property, if any, that are necessary to complete the Project.

8. The Town, at its sole expense, will administer the design and construction contracts, obtain approval of all plans, and obtain all permits necessary for the completion of the Project.

9. The Town will notify the County if the Town, at any time, modifies the scope of the Project, which is generally described herein above and in the Town’s “Department of Environmental Quality Application for Stormwater Local Assistance Fund (SLAF) – Stormwater Capital Projects,” which was submitted to DEQ for the DEQ Grant (the “Plan”). If the scope of the Project’s design, in the sole judgment of the County, significantly deviates from the design scope described in the Plan, the Town must, within 30 days after notification by the County of such deviation, reimburse to the County the amount of the Total Contribution.

10. The Town must retain all invoices and all records of payments for any and all services rendered for the design, construction, and any related expenses for

completion of the Project, and copies of any such invoices and records of payments must be provided to the County upon request within three business days after such a request.

11. If at any time the Town abandons or otherwise ceases the Project for any reason, the Town must immediately return any amount of the County Contribution not expended in accordance with this agreement and all invoices and records of payments. “Abandon,” as used herein, includes, but is not limited to, the failure to initiate or the termination of the design or construction before the Project’s completion.

12. The County, in its sole discretion, may agree to pay cost overruns that exceed the Total Project Cost, including construction costs that exceed the current estimate, change orders and/or related costs that arise during construction of the Project, but only to the extent that funds are available in the County’s Stream and Water Quality Improvement Project (fund I/O 2G25-029-001) of the Stormwater Budget (fund 400-C40100, Stormwater Services ) and are not more than 10% of the estimated Project Cost.

13. The Town must complete the Project not later than four years after this agreement is executed.

14. The Project is subject to the Cooperative Agreement, and, as such, the total pollutant load reduction credits for the Project will be apportioned among the parties as established pursuant to the terms of the Cooperative Agreement or any amendments or attachments thereto.

15. This agreement can only be modified in writing and signed by both parties.

**[Signatures appear on following page]**

TOWN OF VIENNA, Virginia

By: \_\_\_\_\_  
Linda J. Colbert  
Mayor

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

The foregoing Agreement was acknowledged before me by Mayor Linda J. Colbert of the Town of Vienna, this \_\_\_\_\_ day of \_\_\_\_\_ 2021, on behalf of the Town of Vienna.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

