

FUNDING AND SERVICES AGREEMENT
between
The County Board of Arlington County, Virginia
and
The Northern Virginia Conservation Trust

This FUNDING AND SERVICES AGREEMENT (hereinafter "Agreement") is made on this 24 day of September 2016 by and between the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA (hereinafter "County"), and the NORTHERN VIRGINIA CONSERVATION TRUST (hereinafter "NVCT"). The County and NVCT are sometimes hereinafter referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, NVCT is a private, non-profit tax-exempt corporation (consistent with the provisions of § 501(c)(3) of the Internal Revenue Code) registered to do business in the Commonwealth of Virginia.

WHEREAS, NVCT is governed by a volunteer Board of Directors and is dedicated to protecting and expanding the natural, cultural, and historic resources of the Northern Virginia region, of which Arlington County is an integral part; and

WHEREAS, NVCT qualifies as a "Public or Private Conservation Agency", as such term is defined in § 58.1-511 of the Code of Virginia, 1950, as amended; and

WHEREAS, the County recognizes that it has areas of common interest with NVCT in the development and implementation of environmental conservation and management plans, policies and practices, and in educating Arlington County residents and landowners on the importance and benefits of natural resource protection, habitat enhancement, watershed protection, land use planning, historic lands preservation, outdoor nature-based recreation, tree canopy protection, stormwater management, and environmental sustainability; and

WHEREAS, the County is willing to provide funding to NVCT, in exchange for certain services to be performed by NVCT consistent with the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the mutual premises of the Parties set forth herein and other good and valuable consideration, the receipt and sufficiency are hereby acknowledged, the County and NVCT hereby covenant and agree as follows:

I. Term. The initial term of this MOA will begin on 24 September 2016, and will run for three (3) years. The MOA will then renew for three (3) one-year periods unless: (1) either party advises the other in writing of its intention not to renew at least 90 days before the annual renewal date; 2) the parties otherwise agree to terminate the MOA; or (3) the County terminates the MOA in accordance with the Termination provisions.

II. Purpose. The purpose of this Agreement is to establish a framework and the terms and conditions by which the County will provide funding to NVCT in exchange for services to be provided by NVCT to the County.

III. County and NVCT Contacts. The Director of the County's Department of Parks and Recreation (hereinafter "DPR"), or his or her designee, will be the lead County point of contact for NVCT under this Agreement. The Executive Director of NVCT, or his or her designee, will be the lead point of contact for the County under this Agreement.

IV. Description of NVCT Services. NVCT shall provide the following services to the County during the Term of this Agreement:

- A. NVCT shall provide support services to Arlington County and in coordination with DPR to facilitate implementation of the County's Comprehensive Plan, as hereafter amended and/or superseded. NVCT shall acquire, and/or facilitate the County's acquisition of, fee simple interests, easements, restrictive covenants, conservation easements, and other interests in real property consistent with County-identified priorities and objectives for public spaces, natural resources management, Chesapeake Bay preservation, general land use planning, historic lands preservation, tree canopy protection, and stormwater management.
- B. Consistent with County priorities identified by the County Board and in coordination with DPR and other agencies as appropriate, NVCT shall assist and provide technical advice to the County's efforts to implement the County's Watershed Management Plan, the Chesapeake Bay Ordinance and related Arlington County environmental conservation and management plans, policies and practices.
- C. Consistent with recommendations identified in elements of the Comprehensive Plan and in coordination with DPR, NVCT shall coordinate with, and provide support to, County staff efforts to educate residents and landowners on the importance and benefits of natural resource protection, habitat enhancement on private properties, watershed protection, land use planning, historic lands preservation, outdoor nature-based recreation, tree canopy protection, stormwater management, and environmental sustainability. The educational services to be provided by NVCT shall include, at minimum, the following:
 - 1. NVCT shall hold one or more educational programs per fiscal year, at a location in Arlington County, during the Term of this Agreement, providing information and guidance about land conservation. Each event shall be free and open to the general public. NVCT shall give notice to DPR of the proposed location, subject, promotion of, and curriculum and materials for each program 30 days in advance of the date proposed for the educational program.
 - 2. NVCT shall work with County staff to further develop, refine and promote existing County education and outreach programs on natural resource protection, habitat enhancement, watershed protection, land use planning,

historic lands preservation, outdoor nature-based recreation, tree canopy protection, stormwater management, and environmental sustainability, as requested by DPR or other County staff, and assist in identifying and developing new programs proposed by County staff.

- D. NVCT shall host an annual event, during each County fiscal year during the Term of this Agreement, at a location(s) in Arlington, promoting open-space preservation. NVCT shall give notice to DPR of the proposed location, nature, promotion of, and any materials for each event 30 days in advance of the date proposed for the event.

V. County Funding of NVCT Services. NVCT shall submit to the County Manager, or his or her designee, by no later than September 10 of each calendar year, a memorandum requesting County funding for the following County fiscal year (if any funding is desired by NVCT from the County), along with a line-item budget detailing the proposed uses of the requested funding. The annual amount appropriated and available for County funding for NVCT Services pursuant to this Agreement shall be determined by the Arlington County Board, and will be specified in DPR's annual fiscal year operating budget approved by the County Board. The County shall transfer appropriated funds to NVCT, in exchange for NVCT Services, consistent with the Funding Payments and Schedule specified below.

VI. Funding Payments and Schedule. Any funding by the County of NVCT services shall be divided into two categories:

- A. **Base Funding:** The County's base funding ("Base Funding") of NVCT shall be an amount equal to sixty-five percent (65%) of the total amount appropriated by the County Board to fund NVCT Services during a fiscal year. The Base Funding will be coded with a unique code marked as unrestricted in the NVCT General Ledger to facilitate reporting. The Base Funding shall be paid to NVCT by the County in semi-annual installments of sixty-five percent (65%) of the total annual Base Funding on December 10 and on June 10 of each fiscal year during the Term of this Agreement. The Base Funding may be used by NVCT only for the purposes of NVCT's general operations and staff activities conducted within Arlington County, and/or associated with properties located in Arlington County, including:
1. A portion of NVCT salaries and benefits relating to NVCT staff involved in land preservation that support the Scope of Service in Section IV of this Agreement.
 2. A portion of NVCT salaries and benefits of stewardship staff who monitor conserved Arlington properties, and associated stewardship expenses, which assure compliance with the terms of an easement. Taxes incurred due to NVCT's ownership of preserved properties in Arlington are considered stewardship expenses and shall be paid from the Base Funding.
 3. NVCT public outreach expenses, including NVCT staff costs, incurred in the production of printed materials, community presentations and other outreach

activities in Arlington County and in NVCT's service area outside of Arlington County if Arlington County residents are directly invited to the event or outreach activity held in the service area outside of Arlington County.

4. A portion of expenses for NVCT employee professional development in current and emerging issues in land conservation, such as attendance at the conference of Virginia's United Land Trusts (VaULT) and the national land conservation conference (the Land Trust Alliance Rally) and the National Conservation Training Center run by the Fish and Wildlife Service and The Conservation Fund in Shepherdstown, West Virginia.
 5. An event in Arlington (to be determined) as referenced in Section IV.C.1 or D., with in-kind assistance from the County, which would provide meeting space without cost to NVCT, and possibly other staff and materials, if deemed appropriate by the County.
- B. **Open Space Preservation Fund:** The remaining thirty-five percent (35%) of the annual NVCT Funding appropriated at budget adoption by the County Board for NVCT shall be allocated solely to fund open space acquisition / preservation costs ("Open Space Preservation Fund"), for the acquisition, pursuant to this Agreement, of fee simple interests, easements, restrictive covenants, conservation easements, and other interests in real property located within the geographical boundaries of Arlington County whose acquisition is consistent with implementation of County priorities and objectives ("Eligible Preservation Acquisition"). Costs eligible for such Open Space Preservation funding shall be limited to the purchase price, if any, actual costs of any necessary third party professional pre-acquisition due diligence (third-party vendor appraisals, title searches, title binders, land surveys, environmental surveys, legal document preparation, and other legal services approved by the Director of DPR), and standard costs and fees. The fund may also be used as a pass through grant to reimburse or offset the costs of the donor landowners' necessary third-party professional due diligence as described above and standard settlement costs and fees. Funding allocated but not used for Eligible Preservation Acquisitions during a fiscal year may be considered for carry over in the County Manager's proposal for appropriating carry over funds from the prior fiscal year. NVCT will record receipt of these funds using a sub-revenue code marked as restricted. NVCT will record expense of these funds using a sub-expenditure code marked as restricted, most usually in the 6300 Land Protection series. NVCT will annotate in the memo line each receipt and expenditure.

Pre-approval is not needed to acquire conservation easements that meet the intent of this MOA and are executed in consultation with the DPR liaison. However, fee-simple acquisitions must be pre-approved by the Director of DPR as an Eligible Acquisition, and with approval, are eligible to receive preclosing disbursements from the Open Space Preservation Fund for any required deposit, and the costs of any necessary pre-acquisition due diligence (limited to title search, title binder, land survey, environmental survey, appraisal, legal document preparation, and other legal services approved by the Director of DPR). Upon receipt by the County from NVCT of a final

signed acquisition Settlement Statement, and approval of the final Settlement Statement by the Director of DPR in consultation with the County's Real Estate Bureau and Department of Management and Finance, the County shall disburse, to a Settlement Agent designated by NVCT, an amount up to the total available funds from the Open Space Preservation Fund necessary to complete closing of the Eligible Preservation Acquisition.

VII. Coordination and Financial Monitoring.

- A. NVCT representatives and DPR staff shall meet within 30 days of the beginning of each County fiscal year and develop a work plan setting priorities for NVCT's activities and specific related tasks and events for the County fiscal year then beginning. In addition, NVCT representatives and DPR staff shall meet at least two additional times per County fiscal year, or as frequently as may be agreed by NVCT and DPR staff, at a mutually convenient time and location, to discuss progress under this Agreement and to plan for future actions.
- B. NVCT shall submit to the Director of DPR an annual report on or before September 30, or the next business day thereafter, of each year, outlining NVCT's progress with respect to its providing the services outlined in the Description of NVCT Services section of this Agreement. NVCT's annual report to the County shall include detailed financial information using sub-revenue codes about the use/expenditure of the funding received by NVCT from the County pursuant to this Agreement. The annual report shall include a report of expenditures in the following categories:
- NVCT stewardship activities in Arlington
 - Public outreach activities
 - NVCT employee professional development activities and related expenses
 - Arlington events conducted by NVCT
 - Acquisitions (Open Space Preservation Fund)
- C. On or about September 30 of each year, NVCT shall provide to the County the results of NVCT's annual audit of all funds, including a complete copy of NVCT's financial statements for the just-completed fiscal year. The statements shall include all funds received and expended by NVCT using sub-revenue codes during the County fiscal year, as well as NVCT's fiscal year-end balance sheet. Upon reasonable advance notice, and in any event within thirty (30) days of a request for same, NVCT shall make available to the County for inspection all documents, financial and otherwise, relating to the expenditures of the funds that have been appropriated by the County Board to NVCT. Any deficiencies noted in audit report must be fully resolved by NVCT within 30 days of the respective deficiency being brought to NVCT's attention. Failure by NVCT to comply with these audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

VIII. NVCT Board of Directors Nominations. The County Board of Arlington County may nominate three Arlington residents to be members of the NVCT Board of Directors. In the event one or more such nominees of the County Board are not elected by the NVCT Board of Directors as members of the NVCT Board of Directors, then the County Board may nominate additional person(s) to replace the previous nominee(s) who were not selected. This process may be repeated until such time as at least three Arlington residents nominated by the County Board have been selected as members of the NVCT Board of Directors. At least one NVCT Board member nominated by the Arlington County Board shall be appointed to the Land Stewardship Committee by the NVCT Board of Directors.

IX. Termination. The County and NVCT shall each have the right, in their respective sole discretion, to terminate this Agreement, at any time, upon sixty (60) days prior written notice to the other party. This Agreement may be terminated at any time by mutual written agreement of the County and NVCT.

X. Miscellaneous.

A. Notices. All notices or other communications hereunder shall be in writing, unless otherwise specifically provided herein, and shall be effective upon delivery. All notices or other communications hereunder shall be given to the other party by hand delivery, by a nationally-recognized overnight delivery service, or by certified mail, return receipt requested, at the following addresses or such other addresses hereafter provided by written notice to the other party:

NVCT: Northern Virginia Conservation Trust
4022-A Hummer Road
Annandale, VA 22003
Att'n: Executive Director

County: Arlington County, Virginia
Department of Parks and Recreation
2100 Clarendon Boulevard, Suite 400
Arlington, VA 22201
Att'n: Director, Department of Parks and Recreation

B. No Partnership or Joint Venture. The Parties agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the County and NVCT.

C. Non-Appropriation. All of the County's obligations under this Agreement are subject to appropriation of funds by the County Board of Arlington County, Virginia, for the specific purpose of satisfying the payment and performance of such obligations. If funds are not appropriated at or prior to the beginning of the County's fiscal year for the specific purpose of satisfying the obligations of the County under this Agreement, then this Agreement shall become null and void and shall terminate on the last day of the County's fiscal year for which appropriations were made by the County Board for

such purpose, without any termination fee or other liability whatsoever to NVCT. It is agreed by both the County and NVCT that, notwithstanding any provision in this Agreement to the contrary, this section shall supersede any and all obligations imposed by any other provision of this Agreement or exhibits hereto. No subsequent amendment of, or addendum to, this Agreement shall compromise the full legal implication of this section between the Parties hereto or their respective successors and assigns.

- D. Assignability. This Agreement may not be assigned by either the County or NVCT to any person or entity that is not a party to this Agreement, unless the other party (e.g. the County or NVCT) has agreed in writing to such assignment.
- E. No Waiver of Rights. The failure of either the County or NVCT to exercise, in any respect, a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or any other right.
- F. No Waiver of Sovereign Immunity. Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement, nor any action taken by either NVCT or the County pursuant to this Agreement, nor any document that arises out of this Agreement, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the County, or of its elected and appointed officials, officers, and employees.
- G. No Rights in Third Parties. The Parties hereto mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as parties hereto, rights as third-party beneficiaries 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.
- H. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Agreement to the contrary, the County shall have no obligation to explicitly or implicitly indemnify or hold harmless NVCT or any third party or parties from any liability whatsoever.
- I. Entire Agreement; Modification. This Agreement contains the entire agreement of the Parties hereto with respect to the subject matter hereof. All representations, inducements, or agreements, oral or otherwise, between the Parties not contained in this Agreement shall be of no force and effect. This Agreement shall not be modified, changed, or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the County and NVCT.
- J. Applicable Law; Proper Venue. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. The Parties hereto agree that all disputes arising hereunder shall be brought either in the General District Court of Arlington County, Virginia, or in the Circuit Court of Arlington County, Virginia.

which shall be the proper forums for any dispute arising hereunder, and in no other courts.

- K. Approval of Agreement by County Board; Effective Date. This Agreement shall not become effective unless and until approved by, and executed on behalf of, the County Board of Arlington County, Virginia. If this Agreement is not approved by the County Board, then no liability whatsoever shall accrue, and the Parties shall have no obligation whatsoever to each other. This Agreement shall be effective on the date the Agreement is executed on behalf of the County Board ("Effective Date").

- L. Indemnification. NVCT covenants to save, defend, hold harmless and indemnify the County and all of its officers, officials, departments, agencies, agents and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with NVTC's or its agents' or invitees' acts or omissions in performance or nonperformance of its obligations under this MOA.

- M. Virginia Freedom of Information Act. The parties understand and agree that the County is subject to the terms and provisions of Code of Virginia §§ 2.2-3700 *et. seq.*, the Virginia Freedom of Information Act ("VFOIA"). All public records in the County's custody, possession or control shall be open to the public for inspection and copying to the extent that such disclosure is required by law.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as their respective acts, intending to be legally bound by its terms.

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

By: Mark J. Schwartz

Printed Name: MARSH J. SCHWARTZ

Title: COUNTY MANAGER

Date: OCTOBER 21, 2016

NORTHERN VIRGINIA CONSERVATION TRUST

By: Margaret H. Stevens

Printed Name: MARGARET H. STEVENS

Title: Executive Director

Date: 10 - 31 - 2016

APPROVED AS TO FORM:

[Signature]
Arlington County Attorney