

**REPORT ON THE
TOWN OF LEESBURG –
LOUDOUN COUNTY
VOLUNTARY SETTLEMENT
AGREEMENT**



Commission on Local Government

**Department of Housing and Community Development
Commonwealth of Virginia**

<http://www.dhcd.virginia.gov>

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Executive Summary

On February 28th, 2024, the Town of Leesburg and Loudoun County submitted a notice of a proposed Voluntary Settlement Agreement to the Commission on Local Government for review. This Proposed Agreement was negotiated under § 15.2-3400 of the Code of Virginia, which allows localities to settle interlocal issues through negotiated agreements. However, before localities may enact any negotiated agreement, the Commission must review the agreement and issue an advisory report on whether the agreement is in the best interest of the Commonwealth. When issuing its advisory report, the Commission is directed to “hold hearings, make investigations, analyze local needs,” and then submit its findings of fact and recommendations as to whether the voluntary settlement agreement is in the best interest of the Commonwealth to the affected local governments. The local governments may then adopt any recommendations before the agreement is sent to a special court for ultimate disposition.

The Proposed Agreement provides for Leesburg to annex the remaining 402.8 acres of the Compass Creek development that is located in Loudoun County with certain preconditions. Additionally, it addresses utility service provisions, provides for financial incentives and economic development payments, and sets limitations on Leesburg seeking city status and further annexations. The Commission finds that the Proposed Agreement is in the best interest of the Commonwealth and recommends its adoption because the provisions, taken as a whole, are beneficial to the orderly growth and continued viability of the Town and County and do not negatively affect the citizens of the localities or the Commonwealth. While the agreement is acceptable in its current form, the Commission recommends technical changes to the provision regarding Leesburg seeking city status.

What follows is the Commission’s advisory report on the Proposed Agreement. First, this report overviews the proceedings before the Commission that led to this report. Second, it explains the characteristics of the Parties, highlighting those that are most relevant to the Commission’s review. Third, it discusses the relevant standard of review and applies that standard to the Proposed Agreement through findings of fact and recommendations. Finally, the report concludes that the Proposed Agreement is in the best interest of the Commonwealth.

Proceedings of the Commissions

This case began as an adversarial annexation action when, on September 28, 2022, the Town of Leesburg (“the Town”) filed its Notice of its Intention to Petition for Annexation (“the Notice”) under § 15.2-2907A of the Code of Virginia.¹ The Notice stated the Town’s intention to annex into the Town the remaining area within the Compass Creek development that was still in Loudoun County (the “Annexation Area”). On July 7, 2023, Loudoun County (“the County”) filed its Responsive Pleading (“the County’s Response”), which refuted the Town’s argument that the annexation should be allowed.² The Town filed its Reply (“the Town’s Reply”) to the County’s Response on October 13, 2023.³

On December 21, 2023, the County filed a notice with the Commission of its desire to attempt to negotiate an agreement of the annexation issues through a formal mediation process,⁴ and on January 5, 2024, the Commission approved the relevant portions of the request for formal mediation.⁵ On January 10, 2024, the Town and the County (collectively “the Parties”) participated in a successful mediation process that resulted in a terms sheet that would form the basis of the voluntary settlement agreement to settle the outstanding issues.

With the basic terms in place, the Parties drafted a voluntary settlement agreement (“the Proposed Agreement” or “the VSA”) that would moot the pending annexation case before the Commission and convert the proceedings into an approval of the VSA. On February 6, 2024, the County Board of Supervisors adopted a resolution approving of and stating its intent to adopt the Proposed Agreement.⁶ On February 27, 2024, the Town Council also adopted a resolution approving of and stating its intent to adopt the Proposed Agreement.⁷ On February 28, 2024, the

¹ Town of Leesburg, NOTICE BY THE TOWN OF LEESBURG OF ITS INTENTION TO PETITION FOR ANNEXATION OF TERRITORY IN THE COUNTY OF LOUDOUN AND SUPPORTING DATA, September 28, 2022 [hereinafter *the Notice*].

² County of Loudoun, RESPONSIVE PLEADING OF THE COUNTY OF LOUDOUN AND SUPPORTING NARRATIVE, INFORMATION, CITATIONS, AND MATERIALS, July 7, 2023.

³ Town of Leesburg, REPLY OF THE TOWN OF LEESBURG IN SUPPORT OF ITS INTENTION TO PETITION FOR ANNEXATION OF TERRITORY IN THE COUNTY OF LOUDOUN AND SUPPORTING DATA, October 13, 2023 [hereinafter *the Town’s Reply*].

⁴ County of Loudoun, NOTICE BY THE COUNTY OF LOUDOUN OF ITS DESIRE TO ATTEMPT TO NEGOTIATE AN AGREEMENT, REQUEST TO HONOR AUTOMATIC STAY PURSUANT TO VIRGINIA CODE § 15.2-2907(E), AND RESPONSE TO TOWN OF LEESBURG’S MOTION FOR ENTRY OF ADMINISTRATIVE CASE MANAGEMENT ORDER, December 21, 2023.

⁵ See *Minutes of January 5, 2024 Regular Meeting*, COMM. ON LOCAL GOV’T, Jan. 5, 2024, at 4, <https://www.dhcd.virginia.gov/sites/default/files/DocX/clg/minutes/final-meeting-minutes-january2024.pdf>.

⁶ *The VSA Notice* cited *infra* note 8, at Exhibit B; included in Appendix on page 31

⁷ *The VSA Notice* cited *infra* note 8, at Exhibit C; included in Appendix on page 48

Parties, through counsel, submitted a Notice of the Proposed Agreement (“the VSA Notice”) for review.⁸ The VSA Notice contained the final Proposed Agreement, supporting evidence, narratives, and a motion to convert the proceedings from a contested annexation into a voluntary settlement agreement approval governed by the terms of § 15.2-3400 of the Code of Virginia and related Commission regulations.⁹ Consistent with the Commission’s regulations, the VSA Notice was also sent to the political subdivisions that are contiguous to the Town and County or with which they share functions, revenue, or tax sources.¹⁰

A hearing before the Commission to review the Proposed Agreement was held on March 21, 2024.¹¹ The Commission heard oral presentations from the Parties in support of the VSA at the Town’s Municipal Offices in Leesburg, Virginia.¹² The Commission also held a public hearing, advertised in accordance with § 15.2-2907(B) of the Code of Virginia,¹³ in the evening on March 21, 2024, at the Ida Lee Recreation Center for the purpose of receiving public comment.¹⁴ The public hearing was attended by approximately 15 people and produced testimony from two individuals in support of the Proposed Agreement. To permit receipt of additional public comment, the Commission agreed to keep its record open for written testimony through 5:00 pm on April 5, 2024. The Commission did not receive any additional written testimony.

⁸ Town of Leesburg, NOTICE BY THE TOWN OF LEESBURG OF A VOLUNTARY SETTLEMENT AGREEMENT WITH LOUDOUN COUNTY AND MOTION TO CONVERT PROCEEDINGS, February 28, 2024 [hereinafter *the VSA Notice*]. The VSA Notice contains 1) a narrative outlining the procedural history of the case that led to the agreement; 2) facts and data to support the agreement; 3) the text of the proposed Voluntary Settlement Agreement (Exhibit A); 4) a resolution of the Loudoun County Board of Supervisors approving the agreement (Exhibit B); 5) a resolution of the Leesburg Town Council approving the agreement (Exhibit C); 6) a map of the annexation area (Exhibit D); 7) the list of localities notified (Exhibit E); 8) a survey plat of the annexation area; and 9) a metes and bounds description of the annexation area.

The VSA Notice and selected submissions from the Parties are available in the official public record of this case, which was produced in accordance with 1VAC 50-20-640, is attached to this report, and is hereinafter referred to as “Appendix A”. Other materials cited in this report, including previous filings, are on file with the Commission.

⁹ The Town submitted *the VSA Notice* and the County submitted an additional letter stating its support for the agreement on March 18, 2024. The County’s letter is included in Appendix on page 90.

¹⁰ *The VSA Notice*, at Exhibit E; included in Appendix on page 67.

¹¹ See *Minutes of February 16, 2024 Special Meeting*, COMM. ON LOCAL GOV’T, Feb. 16, 2024, at 4, <https://www.dhcd.virginia.gov/sites/default/files/DocX/clg/minutes/final-meeting-minutes-Februaryspecialmeeting.pdf>

¹² Audio/visual recordings of the oral presentations and the public hearing are on file with the Commission and can be found at the following links: <https://www.youtube.com/watch?v=hBHFbXwaLX4>; <https://www.youtube.com/watch?v=tPW-uluozym>

¹³ See Appendix, at page 120.

¹⁴ *Minutes of Public Hearing*, COMM. ON LOCAL GOV’T, March 21, 2024, https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\40\39497\Minutes_DHCD_39497_v1.pdf.

The Commission is obligated to render a report with its findings of fact and recommendations within six months of receiving notice of a voluntary settlement agreement.¹⁵ However, the Commission may extend that deadline either by 60 days on its own motion or to a date agreed upon by both Parties.¹⁶ The Parties previously agreed to a report due date of May 3, 2024, when the case was contested. In an effort to retain the original report due date, this report was adopted at a Special Meeting of the Commission on April 30, 2024, and sent to the Parties for their consideration and approval by their respective governing bodies.¹⁷ Following this Commission report, the Proposed Agreement (either in original or modified form) shall not become binding on the Town or County until it has been adopted by ordinance by both Parties after a public hearing and subsequently affirmed by a special court.¹⁸

Overview of the Proposed Agreement

The Proposed Agreement represents years of negotiations between the Parties and addresses contentious issues that were raised in the Notice, the County's Response, and the Town's Reply. As such, the key provisions of the agreement address a broad range of issues and represent concessions by both the Town and the County that allowed this case to be converted to a voluntary settlement agreement approval instead of continuing as a contested annexation. The key terms of the VSA are:

- i) *Town Annexation of the Remainder of Compass Creek*: The main provision of the VSA is the annexation of the remainder of the Compass Creek Development area (discussed below) into the Town.¹⁹ All the subsequent terms represent compromises or reconciliations to allow for the Parties to agree on this provision.
- ii) *Preconditions to Town Annexation*: As a precondition to annexing the remainder of the Compass Creek Development into the Town, the County is requiring the Town to obtain consent from the property owners who will be annexed into the Town.²⁰

¹⁵ Va. Code Ann. § 15.2-3400; 15.2-2907(A) (2024).

¹⁶ Va. Code Ann. § 15.2-3400; 15.2-2907(A) (2024).

¹⁷ The Commission voted unanimously to adopt the draft report subject to necessary additions indicated by staff. *Minutes of April 30, 2024 Special Meeting*, COMM. ON LOCAL GOV'T, April 30, 2024, at 2, <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=39675>

¹⁸ Va. Code Ann. § 15.2-3400(4) (2024).

¹⁹ *The VSA Notice*, at Exhibit A, p. 5; included in Appendix on page 18.

²⁰ *The VSA Notice*, at Exhibit A, p. 5; included in Appendix on page 18.

- iii) *Utility Service Provisions*: The agreement also contains several utility provisions related to the Town's provision of water and sewer for the Annexation Area. The Town will provide water and sewer service to all of Compass Creek, and Microsoft will retain an option to use Loudoun Water for future development.²¹ Additionally, the Town will no longer charge out-of-town water and sewer customers a higher rate for their utilities subject to the County paying the economic development incentive.²²
- iv) *Financial and Economic Development Payments*: The financial provisions of the agreement state that the Town will not charge out-of-town utility rates each year the County pays the Town a \$2 million economic development incentive payment that will be increased by 3% each year hereafter to account for inflation.²³ Additionally, the Town will set its business personal property tax rate applicable to data center computer equipment at \$0.75 per \$100 in assessed value and will hold that rate for a five-year period.²⁴
- v) *Limitation on Seeking City Status and Further Annexations*: The Town has agreed not to seek city status for a period of twenty-five years following the lifting of the moratorium on city status in § 15.2-3201 of the Code of Virginia. The Town has further agreed to a twenty-five-year limitation on the Town's ability to adversely annex land in the County. The annexation limitation does not apply if the County agrees and the property owner(s) give consent.
- With these compromises in place, the Parties agreed to an effective date of December 31, 2024, and will work together to have the agreement approved by a special court before that effective date.²⁵

Characteristics of the Town and County

The Town of Leesburg and Loudoun County are located in the western portion of Northern Virginia, bordering the state of Maryland along the northern boundary (Potomac

²¹ *The VSA Notice*, at Exhibit A, p. 6; included in Appendix on page 18.

²² *The VSA Notice*, at Exhibit A, p. 7; included in Appendix on page 18.

²³ *The VSA Notice*, at Exhibit A, pp. 3, 7; included in Appendix on page 18.

²⁴ *The VSA Notice*, at Exhibit A, p. 5; included in Appendix on page 18; The agreement between the Town and Microsoft requires the Town to lower its tax rate for five years as a condition of Microsoft consenting to the Annexation, and the terms of the consent letter are incorporated into the VSA by reference. The agreement, in relevant part, reads, "[t]he Town will establish a tax rate applicable to computer equipment and peripherals associated with the operation of a data center that will apply to all such equipment within the Town... Such equipment will be taxed at a rate not to exceed \$0.75 per \$100 of assessed value. The Town will not raise that tax rate for a period of at least five years from the date when Microsoft becomes subject to the Town's personal property tax." Microsoft's consent letter is on file with the Commission.

²⁵ *The VSA Notice*, at Exhibit A, p. 5; included in Appendix on page 18.

River). Adjacent to Fairfax, Prince William, Fauquier and Clarke Counties, the County is divided into a densely populated eastern half (closer to the Washington D.C. metro region) and a more rural, bucolic western half (adjacent to the Shenandoah mountains). The Town and County are some of the most populated localities in the state, with a County population of 436,347 and a Town population of 48,974.²⁶ These are also some of the most diverse localities within the state, with nearly half of the Town and County’s population belonging to a racial or ethnic minority (49.8% and 49.6%, respectively).²⁷

As part of Northern Virginia, the Town and County are in Growth and Opportunity Virginia Region #7, characterized by strong economic output from computer and cybersecurity services, consulting services, engineering and scientific services, and other service provisions. In addition, the Town and County also benefit from their proximity to Washington, D.C. and industry related federal spending.²⁸

The Town and County are also among some of the most affluent and well-educated localities in Virginia due in part to the heavy presence of scientific and government services in the area. The median household incomes for both the County and Town are substantially greater than the statewide median of \$87,249, with the median household in the Town earning approximately \$132,300 per year and the median household in the County earning approximately \$170,500 per year - nearly twice the statewide median. Similarly, while 41% of Virginians have attained a bachelor’s degree or higher, 56.1% of Town residents and 63.5% of County residents have done so.

Population Characteristics	Virginia	Town of Leesburg	Loudoun County
Total Population	8,715,698	48,974	436,347
Median Household Income	\$87,249	\$132,298	\$170,463

²⁶ See Table 1, *infra*, for details and citations of these population characteristics.

²⁷ While both the Town and County have diverse populations, the distribution of minority groups differs between the two jurisdictions. Leesburg has a large Hispanic/Latino population and a large biracial population (individuals reporting belonging to two or more racial groups), equaling 16.7 and 11.9% of their total population respectively. In contrast, Loudoun County possesses a large Asian population, comprising over one fifth (22.6%) of the County population.

²⁸ See The Geo. Mason Univ. Center for Regional Analysis, *Economic Growth and Diversification Plan 2021 Update*, at v, https://www.gonorthernva.com/_files/ugd/1e2263_896224d24f894a598378e3a6efc05947.pdf

Educational Attainment (Bachelor’s Degree or Greater)	41.0%	56.1%	63.5%
Percent Minority*	41.9%	49.6%	49.8%
<p>Source: Census Quickfacts, 2018-2022 ACS 5-year estimates</p> <p>*Includes all individuals who identified as Black or African American, American Indian, Asian, Native Hawaiian or Pacific Islander, Two or More Races, or Hispanic or Latino.</p>			

The Town of Leesburg is a major commercial and economic hub for the County. Located in the north central portion of the County by the Maryland boarder, the Town serves as the seat of the Loudoun County government with the County’s Municipal Offices and Courts located within Town limits.²⁹ It is the largest Town within Loudoun and lies at the intersection of U.S. Route 15, running North and South, and U.S. Route 17, running East and West, thus acting as a “crossroads” connecting the urban east and rural western portions of the County, and the region more generally.³⁰

Perhaps the most striking characteristic of the Town and County is their rapid economic and population growth over the last several decades. From 1980 to 2020, Leesburg’s population increased nearly five-fold (from ~8,350 in 1980 to ~48,250 in 2020). The County has also seen a more than eight-fold population increase over the same period (from ~52,420 in 1980 to 432,100 in 2020).³¹ Since 2010, the Town’s population has increased by 28% and the County’s by 35%.³²

Given this population growth, both the Town and County experience continued demand for land as exhibited by the Parties’ competitive commercial and residential development markets. As demonstrated by Table 2, both the Town and County have rent and home values far above the statewide median, indicating a high demand for property in the Town and County. In the Town specifically, there is also a low supply of developable land. The Town currently has less than 90 acres of vacant commercially zoned land and less than 70 acres of industrially zoned land; thus, almost all development within the Town is redevelopment of existing facilities or

²⁹ Oral Presentation before the Commission on Local Government, March 21, 2024, *Presentation Accompanying Testimony of Kaj Dentler, Leesburg Town Manager*, at slide 1 [hereinafter *Dentler Presentation*]. Presentation is on file with the Commission.

³⁰ *Dentler Presentation*, at slide 2.

³¹ *Dentler Presentation*, at slide 3.

³² *Dentler Presentation*, at slide 4.

structures.³³ As to commercial development, aerial imagery of the Annexation Area³⁴ shows the broader rapid development of property for commercial purposes throughout the County, particularly from 2008 to 2023.³⁵

Table 2: Selected Residential Statistics			
Population Characteristics	Virginia	Town of Leesburg	Loudoun County
Total Size (Square miles)	39,482.11	12.4	515.74
Persons/Square Mile	218.6	3,861.4	816.2
Median Home Value	\$339,800	\$572,500	\$657,000
Median Gross Rent (Residential)	\$1,440	\$1,859	\$2,195
Source: Census Quickfacts , 2018-2022 ACS 5-year estimates			

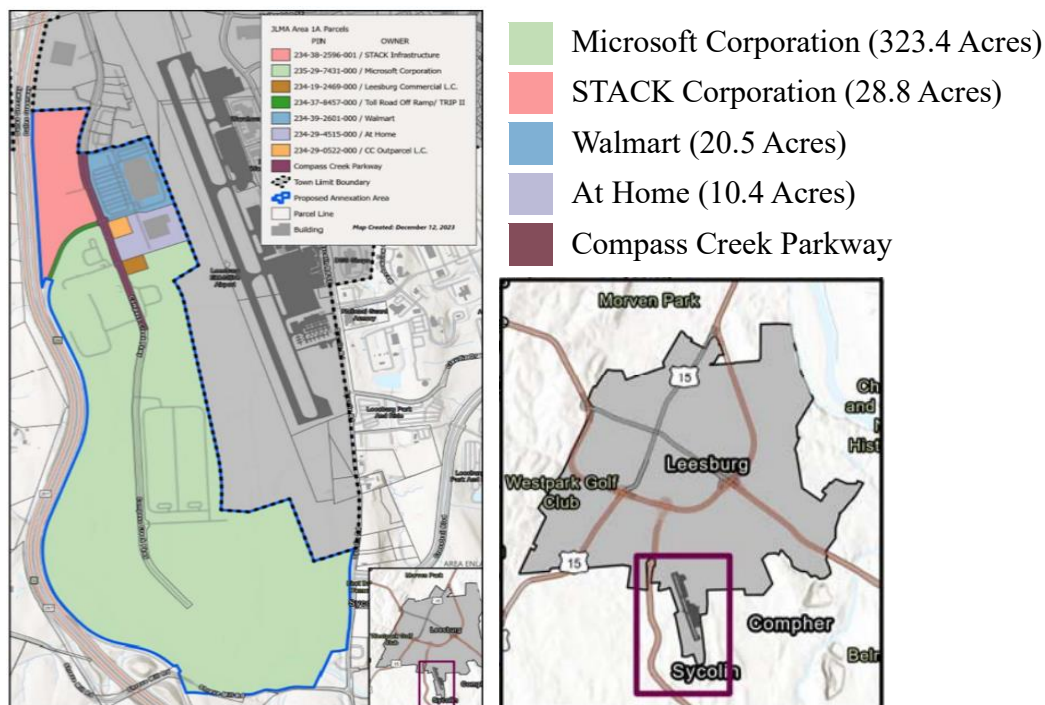
³³ *Dentler Presentation*, at slide 6; see generally, Oral Presentation Before the Commission on Local Government, March 21, 2024, *Testimony of Kaj Dentler, Leesburg Town Manager*. While the County has maintained some of its rural nature through local planning decisions, the Town is now a densely populated urban center with a highly competitive residential and commercial real estate market. As indicated in the Parties' testimony, the County takes pride in both elements of the County and takes steps to preserve the rural nature of the western half of the Locality, while working to promote economic development in the eastern half.

³⁴ See Oral Presentation Before the Commission on Local Government, March 21, 2024, *Materials accompanying site visit* [hereinafter *Site Visit Information*]. Materials are on file with the Commission.

³⁵ *Site Visit Information*, at tab 3, 4.

Characteristics of the “Annexation Area” (Compass Creek Park)

Figure 1: Compass Creek Park Area and Associated Occupants.³⁶



The Annexation Area at issue in this agreement is entirely within the Compass Creek development (“Compass Creek”). This area lies at the southernmost point of the Town adjacent to the Leesburg Executive Airport, which is owned and operated by the Town. Consisting of 402.8 acres in total, the area contains only commercial developments and land zoned for commercial or industrial purposes. The greatest portion of the land area is owned by the Microsoft Corporation, occupying 323.4 acres of the total 402.8 acres (light green in Figure 1 above). In addition to Microsoft’s parcel, other Compass Creek occupants include the STACK Corporation (also a data center facility) and several retail establishments (e.g., Walmart, At Home, etc.).³⁷

The Annexation Area is one of three parts of the County located in the Joint Land Management Area (JLMA).³⁸ Within the JLMA, the Town and County work cooperatively on

³⁶ *Site Visit Information*, at tab 1.

³⁷ See *The VSA Notice*, at Exhibit D.

³⁸ *Dentler Presentation*, at slide 11. The Annexation Area within the Compass Creek development is identified as JLMA 1A. There are two other sections of the County located to the South and East of the Town that are identified as JLMA 1 and JLMA 2, respectively, that are not affected by the VSA.

land use matters including zonings and rezonings, development applications, provision and expansion of utilities, and transportation access to the JLMA.³⁹ While the JLMA is an area of cooperative development for the Parties, the Town has made significant investments in developing and providing infrastructure servicing for Compass Creek. For example, the Town has expanded water and sewer service to encompass the entire Compass Creek development over decades and currently provides water and sewer to the entire area.⁴⁰ The most recent expansion approval was in February of 2024 to increase the services for the Microsoft parcel.⁴¹ In addition to water and sewer services, the Town has also invested in providing access to Compass Creek through expanding and maintaining Town streets to the area. This includes Battlefield Parkway at the northmost end, which is significant because it is the only two-way access point for Compass Creek.⁴²

As part of providing these service expansions, the Parties had previously indicated that the JLMA would eventually become part of the Town through annexations and boundary line adjustments.⁴³ This arrangement was demonstrated several times through prior agreements and boundary line adjustments to bring smaller sections of Compass Creek into Town boundaries.⁴⁴ The current VSA would allow the Town to annex the remaining portion of Compass Creek and would be the largest integration of Compass Creek into the Town to date.

Scope and Standard of Review

The Proposed Agreement was negotiated under § 15.2-3400 of the Code of Virginia, which allows localities to settle interlocal issues through negotiated agreements. However, before localities enact any negotiated agreement, the Commission must review the negotiated agreement and issue an advisory report on “whether the proposed settlement is in the best interest of the Commonwealth.”⁴⁵ When issuing its advisory report, the Commission is directed “to hold

³⁹ Oral Presentation Before the Commission on Local Government, March 21, 2024, *Presentation Accompanying Testimony of Andrew Bowman, attorney representing the Town*, at slide 5, quoting the Loudoun County 2001 Revised General Town Plan [hereinafter *Bowman Presentation*]. Presentation is on file with the Commission.

⁴⁰ *Bowman Presentation*, at slide 6; *Site Visit Information*, at tab 3.

⁴¹ *Bowman Presentation*, at slide 7.

⁴² *Bowman Presentation*, at slide 8.

⁴³ See *Bowman Presentation*, at slide 5, quoting the Loudoun County 2001 Revised General Plan.

⁴⁴ *The VSA Notice*, at Exhibit D; included in Appendix on page 65. The Town performed two recent boundary line adjustments in the Park – one in 2020 to annex the Ion International Training Center and other commercial parcels, and another in 2022 to include the Walmart and At Home parcels.

⁴⁵ Va. Code Ann. § 15.2-3400(3) (2024).

hearings, make investigations, analyze local needs,” and then submit its findings of fact and recommendations to the affected local governments.⁴⁶ The local governments may then adopt any recommendations before the Agreement is sent to a special court for ultimate disposition.⁴⁷ The Commission’s report shall be admissible as evidence in any court proceedings on the Agreement, but it shall not be binding upon any court and shall be advisory in nature only.⁴⁸

As noted in previous Commission reports, it is evident that the General Assembly encourages local governments to attempt to negotiate settlement of their interlocal concerns. One of the statutory responsibilities of the Commission is to assist local governments in such efforts.⁴⁹ In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as the Proposed Agreement being considered, should be approached with respect and presumption of their compatibility with applicable statutory standards. The Commission notes, however, that the General Assembly requires interlocal agreements to be reviewed by this body prior to their final adoption by the local governing bodies and review by a court.⁵⁰ The Commission is obliged to conclude, therefore, that while interlocal agreements are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be permitted to render the Commission’s review a pro forma endorsement of any proposed settlement. The Commission’s responsibility to the Commonwealth and to the affected localities requires more.

This Proposed Agreement, as noted previously, is the product of negotiations by the Parties and represents a reconciliation of the needs, interests, and legal prerogatives of the Parties that has been accepted by the elected bodies of each locality. Its main provision is an annexation that would otherwise be decided by an adversarial proceeding, but that provision is only one element in this multi-faceted agreement. When applying the “best interest of the Commonwealth” standard of review to voluntary settlement agreements like the Proposed Agreement that contain a mixture of annexation and other provisions, the Commission considers whether the agreement will be beneficial to the orderly growth and continued viability of the localities, whether it would promote strong and viable units of government, and whether there

⁴⁶ Va. Code Ann. § 15.2-3400(3) (2024); 15.2-2907(A) (2024).

⁴⁷ Va. Code Ann. § 15.2-3400(3) (2024).

⁴⁸ Va. Code Ann. § 15.2-2904(B) (2024); 15.2-3400 (2024).

⁴⁹ Va. Code Ann. § 15.2-2903(3) (2024).

⁵⁰ Va. Code Ann. § 15.2-3400(3) (2024).

are ramifications of the proposed annexation for other parties and the Commonwealth.⁵¹ This standard is derived from the stated purpose of voluntary settlement agreements in § 15.2-3400 of the Code of Virginia, the court’s standards of review, and Commission precedents.⁵² Applying this standard to this Proposed Agreement, the Commission therefore finds it necessary to consider whether the VSA is in the best interest of the Town, the County, and the property owners in the Annexation Area.

Findings of Fact

The Proposed Agreement has significant, long-term impacts on the Town, the County, their respective citizens, and the businesses in the annexation area. The Commission must review these impacts under the “best interest of the Commonwealth” standard by providing findings of fact and recommendations. The findings of fact for each entity, noted in terms of the impact of the Proposed Agreement on each, are provided in this section, and the analysis of whether the Proposed Agreement is in the best interest of the Commonwealth is provided in the next section. Additionally, recommendations that may be considered by the local governments before the Proposed Agreement is sent to the special court are included at the end of the recommendations section.

Impact on the Town of Leesburg

The compromises presented in the Proposed Agreement have a greater positive impact to the Town of Leesburg than they do a negative one. The Town’s receipt of a return on its investments in the Annexation Area and, most importantly, ability to expand and diversify its tax base outweigh its interest in becoming an independent city, pursuing an adverse annexation, and charging higher out-of-town utility rates.

The Town has a strong interest in receiving a return on its investments in infrastructure in the Annexation Area, and it will be able to pursue this interest through the annexation terms of

⁵¹ Comm. on Local Gov’t, Report on the Town of New Market - Shenandoah County Voluntary Settlement Agreement, May 2023, at 8-9; <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/final-report-new-market-%26-shenandoah-wtih-appendix.pdf>

⁵² See, e.g., Id; Comm. on Local Gov’t, Report on the City of Emporia - County of Greensville Annexation Agreement, May 1983, at 15-16, <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/city-of-emporia-county-of-greensville-annexation-agreement-may-1983.pdf>; Comm. on Local Gov’t, Report on the Town of Grottoes – Augusta County Voluntary Settlement Agreement, January 2010, at 6, <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/town-of-grottoes-county-of-augusta-voluntary-settlement-agreement-january-2010.pdf>

the VSA. The Town has made extensive investments in the planning and development of Compass Creek beginning with the expansion of water and sewer infrastructure in the JLMA in 2005 under the County's JLMA policies.⁵³ As development moved forward, the County's public utility policies, growth management policies, and annexation guidelines all encouraged the Town to expand its water and sewer service into Compass Creek on the expectation that the land served by Town sewer and water would be annexed into the Town.⁵⁴ Specifically, the County's Growth Management Policies in its 2001 General Plan stated, "as water and sewer are extended into a Town JLMA, annexation of the area by the Town will be encouraged by the County."⁵⁵

This expectation changed in 2019 when the County changed its JLMA policies such that it would no longer encourage annexation for land served by Town utilities in the JLMA.⁵⁶ Regardless of the reasons for these changes, the Town had already "invested millions of dollars to develop the infrastructure and capability to serve the JLMA, including the Annexation Area," as evidenced by the approval of water and sewer service for the Ion Center, Walmart, At Home, and the commercial center within Compass Creek in 2015 before construction began in 2016.⁵⁷ The Commission recognizes both this investment and the fact that development would have occurred on a different timeline had the Town not been the provider of water and sewer in the JLMA. Because of these investments, the Town has a strong interest in taxing the land that it extended sewer and water service to. The Town will be able to pursue this interest by annexing the area under the terms of the Proposed Agreement and levying taxes from it. This is a positive result that fulfills a previous expectation of the Town when it began expanding water and sewer infrastructure into Compass Creek under the previous County JLMA policies.

The other positive impact that the Proposed Agreement will have on the Town is that it allows the Town to expand and diversify its tax base. Since 2010, the percentage of Leesburg's real estate taxes that come from commercial and industrial properties as a percentage of the whole has decreased from 28% to 18%.⁵⁸ While there is no way to determine the ideal ratio of commercial/industrial property tax to residential property tax, a healthy and viable local

⁵³ *Dentler Presentation*, at slide 15.

⁵⁴ Oral Presentation before the Commission on Local Government, March 21, 2024, *Testimony of Kaj Dentler, Leesburg Town Manager; The Town's Reply*, at 5.

⁵⁵ *Bowman Presentation*, at slide 5.

⁵⁶ *The Town's Reply*, at 5-6.

⁵⁷ *The Town's Reply*, at 26-29, 32; *Dentler Presentation*, at slide 17.

⁵⁸ *Dentler Presentation*, at slide 9.

government generally has a diverse tax base. Therefore, the decreasing percentage of commercial and industrial taxes and increasing reliance on residential taxes shows a lack of diversity and does not support Leesburg’s long-term growth and viability as a unit of local government.

Given that the Annexation Area is entirely commercial property, adding the annexation area to the Town will both increase the amount of commercial and industrial property tax available to the Town and add a new class of personal property, data center business property, to its tax rolls. Specifically, the annexation will bring in approximately \$16 million in additional revenue per year by 2035, with most of that revenue stemming from tangible business property taxes on data center equipment on top of an estimated \$1.3 million from commercial and industrial property taxes in the Annexation Area from new, non-residential sources.⁵⁹ The addition of these new taxes and tax sources will reduce reliance on Town residents’ real property and will allow the Town to invest in its municipal services and facilities.

The Commission notes the repeated testimony from the Town that it is “running out” of available commercial and industrial land to develop. Because much of the land in the Annexation Area is still vacant, this assertion could mean that this annexation is about adding more land that the Town can exercise its zoning authority over and develop how it pleases. However, the Commission finds that this annexation does not add more vacant and developable land to the Town because the development in the Annexation Area has already been planned and, in the case of the STACK Parcel, is already under development. Therefore, the Commission emphasizes the fact that the Proposed Agreement is not about adding land to develop in any way that the Town wishes, but instead, is about adjusting for the reality that the Town finds itself in— that it wants to receive a return on its infrastructure investments and diversify its tax base at a time when it cannot feasibly do either within its current boundaries.

As to the provisions that negatively affect Leesburg, the effects of these provisions do not outweigh the benefits of the Proposed Agreement, and the Parties have taken steps to mitigate any negative impacts. First, the Proposed Agreement includes economic development incentive payments that are specifically designed to offset the cost of Leesburg not charging out-of-town utility rates. Second, Leesburg not seeking city status has no impact on its long-term viability as a Town. Furthermore, the Town giving up seeking its political right to be a city is proof that the Parties negotiated in good faith. Leesburg has given up something that it previously said it would

⁵⁹ *The VSA Notice*, at 9; included in Appendix on page 13.

want to pursue in filings before the Commission and in return gained long-term financial stability.⁶⁰ Therefore, the Commission concludes that the Proposed Agreement has an overall positive impact on the Town.

Impact on Loudoun County

The Proposed Agreement also has a positive impact on Loudoun County. The main benefit of the Agreement will flow to the County residents not residing within the Town limits who are receiving Town water and sewer. However, as the County's testimony highlighted, this Proposed Agreement does have several positive impacts on Loudoun County as a unit of government.⁶¹ First, the Proposed Agreement protects the County's investments in Leesburg as the County seat of government. Loudoun County recently invested in an expanded County Courthouse, and as noted above, has several other municipal buildings and investments in the Town. Since Leesburg will not pursue city status for 25 years after the moratorium is lifted, Loudoun County now has the protection it needs to realize its investments in the Town. This agreement to postpone Leesburg seeking independent city status is a significant positive result for the County.

Second, the Proposed Agreement ensures that Loudoun County benefits from continued economic growth and business activity in the Annexation Area. Since Leesburg will remain a town within the County for the foreseeable future, Leesburg's health and economic growth will be Loudoun's. Because both localities will be able to levy real and personal property taxes on future data center developments in the Annexation Area, Loudoun County will reap financial benefits from this agreement. Taxes on data center business property have been and will continue to be an important revenue source for the County, and under this agreement, the Town of Leesburg will facilitate the development of additional data centers that will add to the County's continually growing data center tax revenues.⁶² Therefore, this Proposed Agreement will positively affect the County by increasing its tax revenues with reduced costs and responsibilities for development.

⁶⁰ See Comm. on Local Gov't, Report on Annexation Alternatives, November 2018, "Comments from the Town of Leesburg," at 54-55 ("the Town of Leesburg... urges the Commission on Local Government to recommend to the Virginia General Assembly to lift the current moratorium, or to create an exception for large towns like Leesburg in order to enable Leesburg the future opportunity to become a city."), <https://rga.lis.virginia.gov/Published/2018/HD11>.

⁶¹ Oral Presentation Before the Commission on Local Government, March 21, 2024, *Testimony of Andrew McRoberts, attorney representing Loudoun County*.

⁶² See *The Notice*, Figure 9.

The Commission also finds that the Proposed Agreement will have a negligible financial impact on the County.⁶³ While the County will bear a slight financial cost through the economic development incentive payments, this cost is offset by an indeterminate, but substantially greater increase in tax revenue that has been and will be made available by the Town's investments. Additionally, the economic development incentive payments do not outweigh the indeterminate positive impacts of the moratorium on seeking city status noted above.

Impact on the Citizens of Leesburg and Loudoun

The provisions of the Proposed Agreement will have a direct, positive impact on the citizens of the County who live near Leesburg, and an indirect, positive impact on the citizens of the Town. As noted above, the Town will no longer charge out-of-town water and sewer rates for customers in the County, which is a significant benefit to the citizens of the County who are served by Town utilities. As also noted above, the increased tax revenue for the Town will reduce the Town's reliance on residential property taxes moving forward and allow the Town to continue to provide high-quality municipal services without raising taxes on its citizens. This is an indirect, long-term benefit to the citizens of the Town and those in the County who use the Town's municipal services. Additionally, there was no public opposition to the Proposed Agreement.

Impact to the Landowners in the Annexation Area

The Commission received unanimous public testimony that this Proposed Agreement will have a positive impact on the landowners in the Annexation Area.⁶⁴ As noted in the Proposed Agreement itself, all of the property owners in the Annexation Area have voluntarily consented to the annexation. However, more importantly, the Commission received testimony at its public hearing from two business owners in Leesburg stating that they supported the Proposed Agreement and wanted to see Leesburg continue to grow in a sustainable way.⁶⁵ Specifically, Mitra Satayesh, the co-founder and CEO of Ion International Training Center, which is located in the portion of Compass Creek that is already in the Town, unequivocally supported the Proposed

⁶³ *The Notice* at 127. Since the land and personal property can continue to be taxed by the County, the only tax revenue it will lose is the Business, Professional, and Occupational License (BPOL) tax, which will be paid to the Town for businesses in the Annexation Area.

⁶⁴ *Minutes of Public Hearing*, COMM. ON LOCAL GOV'T, March 21, 2024, https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\40\39497\Minutes_DHCD_39497_v1.pdf.

⁶⁵ *Id.*

Agreement.⁶⁶ She testified that the responsiveness and diligence of the Town's police department combined with being a full member of a small municipality that is responsive to her concerns more than compensates for the increased property tax bills.⁶⁷ Based on these facts and the lack of registered opposition to the Proposed Agreement, it is clear that the Proposed Agreement is good for the businesses in the Annexation Area and will have a positive impact on the landowners.

The Town has also sufficiently demonstrated that it can provide the Annexation Area with governmental services related to public safety. The Town has successfully provided the Ion International Training Center with police services after a previous boundary line adjustment, and the business owners will benefit from the full range of services provided through incorporating Compass Creek Parkway into the Town's street system. Because there is no residential land in the Annexation Area, there is no reason to believe that other properties, which are all businesses, will receive decreased service levels or be treated any differently than the Ion Center.⁶⁸

With respect to the Town's ability to provide utilities to future data centers in the Annexation Area, the Town's actions and the Proposed Agreement's provisions sufficiently address this issue. The Town has shown its commitment to providing utilities to data centers and its ability to increase capacity when needed through the following: providing capacity for the current phases of the Microsoft Development, increasing capacity for Microsoft by 639,000 gallons per day contemporaneously with this Proposed Agreement, and having 4.25 million gallons per day in reserve.⁶⁹ Because of the lack of available land suitable for commercial development noted above, a substantial amount of this additional capacity will be at Microsoft's disposal. Additionally, in the unlikely event that Microsoft's demands for water are greater than what the Town can provide, future phases of development of the Microsoft property may be served by Loudoun Water under the Proposed Agreement.⁷⁰

Finally, the Commission concludes that Leesburg's introductory tax rate for data center business property, which will be set at \$.75 per \$100 for five years before being increased back to the current rate of 1.00 per \$100, is a good-faith concession to meet the needs of Microsoft and will be an additional boon to other existing businesses with data center property in the

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ See *the VSA Notice*, at Exhibit A, p. 6; included in Appendix on page 18.

⁶⁹ *The VSA Notice* at 8; included in Appendix on page 12.

⁷⁰ *The VSA Notice*, at Exhibit A, p. 6; included in Appendix on page 18.

Annexation Area. Leesburg's willingness to accept the terms of Microsoft's consent to be annexed into the Town is further evidence of the Parties' willingness to work together not only for their mutual interests but also for the mutual benefit of their overlapping corporate citizens. As explained in the analysis of the impact on the Commonwealth, below, this willingness to work together is an integral part of the Proposed Agreement that should be emulated by other localities.

Impact on the Commonwealth

The Proposed Agreement has a clear positive impact on the Commonwealth because it was reached voluntarily by consensus among all of the interested parties. This Proposed Agreement can serve as a model for other Towns and Counties that need to resolve issues related to annexation in the future. The Commission applauds both parties for coming to the table and reaching a mutually beneficial agreement that settles other longstanding and previously litigated disputes, such as utility surcharges and the potential for Leesburg to become an independent city, in a creative way. Additionally, the Parties have managed to save time, resources, and energy for all of those involved, including the Commonwealth, by settling this through a VSA rather than adversarial action, and this is commendable.

Furthermore, the Proposed Agreement benefits the Commonwealth because the Parties reached unanimous consensus with all impacted parties – including property owners in the Annexation Area. In this case, low participation at the public hearing combined with there being no outstanding disputes between the Parties shows agreement between the localities and their citizens and business owners. Indeed, the Commission believes that absent its oversight and hearing deadlines, an agreement would have been much less likely. Agreement between the localities and their citizens is good for both the localities and the Commonwealth because it reduces the likelihood of negative political fallout from adopting the agreement. Therefore, this Proposed Agreement also has a positive impact on the Commonwealth, and specifically the Commission.

The Commission further commends the Parties for utilizing outside counsel where necessary and hiring experienced mediators to resolve the final issues. This Proposed Agreement shows that two localities with sometimes competing interests can, with the right help and appropriate resources, compromise on an important annexation that will benefit both localities and their citizens long-term. At a time when previous voluntary settlement agreements have

failed to take effect after Commission review, adopting this Proposed Agreement will encourage other localities to come before the Commission and find creative solutions through negotiations and mediation that will allow them to ultimately resolve disputes for their mutual benefit and the benefit of the Commonwealth.

Analysis and Recommendations

Analysis

According to the Commission's standard of review, the Proposed Agreement must be in the best interest of the Commonwealth for the Commission to recommend its adoption. It must therefore be beneficial to the orderly growth and continued viability of the localities, promote strong and viable units of government, and not be outweighed by negative ramifications for other parties and the Commonwealth.

The Commission concludes that the Proposed Agreement is beneficial to the orderly growth and continued viability of each locality. The Proposed Agreement represents the culmination of decades of investment in the planning and infrastructure of Compass Creek by the Town, and allowing the Town to levy taxes on the land to recoup its costs promotes its orderly growth. Furthermore, development within the Annexation Area would not have happened as quickly if the Town had not provided the necessary infrastructure, which has ultimately benefitted the County by allowing economic growth in the area prior to annexation. Therefore, this VSA, and the compromises behind it, have provided for and will continue to provide for the orderly growth of the localities.

The Proposed Agreement will also promote strong and viable units of government. Leesburg relinquishing its right to become an independent city for an additional 25 years is a significant concession to include in a voluntary settlement agreement. However, the testimony of the Parties shows that both Loudoun County and Leesburg will be stronger and more viable units of local government because this specific term of the agreement will allow for the annexation of the remainder of Compass Creek. The County will be stronger because it will be less likely to lose its County seat and the tax base associated with its main economic hub. The Town will also likely be a more viable unit of government because a diverse tax base is important to the long-term planning and fiscal health of any local government. This analysis is not meant to establish the wisdom of Leesburg eventually becoming an independent city, if allowed. While Leesburg

may desire to become an independent city for any number of political reasons, there is no guarantee that it would be any stronger or more viable as a city under its current boundaries than it currently is as a town. The Commission simply concludes that the provisions requiring Leesburg to not seek independent city status for an additional 25 years after the moratorium, along with the other provisions that limit its authority in annexation cases, are in the best interest of the Commonwealth because they are part of an agreement that will clearly lead to a stronger and more viable Town.

Finally, the Commission concludes that the Proposed Agreement has few, if any, negative ramifications for any party. The Proposed Agreement is a boon to the corporate citizens of the Annexation Area, as shown by their consent to be annexed and the public testimony received by business owners in Leesburg. The Proposed Agreement has little direct impact on the natural citizens of the Town and County, and the Commission did not receive any opposition to the Proposed Agreement. All of the financial costs to the Town and County are offset by the increase in tax revenue that will come from this annexation, and most importantly, the parties are in complete agreement with each other. Their complete agreement mitigates negative effects on the Commonwealth.

Recommendations

Based on the above analysis, the Proposed Agreement is acceptable in its current form. However, the Commission suggests that the Parties consider a technical amendment to Section 7, Limitation on City Status. It is clearly the intent of the Parties to prohibit Leesburg from seeking city status for 25 years after the expiration of the current moratorium. However, the wording of Section 7 seems to suggest that the 25-year period will begin to toll only “after the effective date of *any legislation lifting the prohibition* on the granting of new city charters,” located in § 15.2-3201 of the Code of Virginia (emphasis added). A close inspection of this code section reveals that the moratorium could end on its own terms, meaning that there could be a situation where there would not be “any legislation lifting” the moratorium, and the 25-year prohibition could potentially not be triggered under a narrow reading of the provision. While the Commission in no way foresees this section being abused by the Town,⁷¹ it suggests that the Parties agree upon acceptable language to clarify that the 25-year period will toll when the moratorium is lifted, regardless of how it is lifted.

⁷¹ Because both parties drafted this agreement together, we believe that this was an unintentional drafting error.

Finally, the Commission would like to re-emphasize how important it was for the Parties to come together and compromise on their legal rights and prerogatives to reach this agreement. The Commission hopes that the localities will realize many of the foreseeable results that come from this type of economic development such as jobs created by these businesses and increased tax revenue that can be used to address the problems associated with rapid population growth. The Commission encourages other localities to see this agreement as a model for how they might craft voluntary settlement agreements to solve contentious issues for their mutual benefit.

Conclusions

Based on the findings of fact and analysis above, the Commission finds that the Proposed Agreement is in the best interest of the Commonwealth and recommends it be adopted subject to any changes considered in light of the recommendations.⁷²

⁷² This report is the recommendation of Commissioners Rosado, Linderman, Johnson, and Payne. Commissioner Lauterberg recused himself from this report due to a conflict of interest.

Appendix

Town of Leesburg – Loudoun County
Proposed Voluntary Settlement Agreement

Prepared by the Commission on Local Government

April 2024

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VIRGINIA:

BEFORE THE COMMISSION ON LOCAL GOVERNMENT

In the matter of the Notice by the TOWN OF LEESBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, of its intention to petition for the annexation of territory within THE COUNTY OF LOUDON, a political subdivision of the Commonwealth of Virginia, pursuant to Chapter 32 of Title 15.2 of the Code of Virginia (1950), as amended.

**NOTICE BY THE TOWN OF LEESBURG
OF A VOLUNTARY SETTLEMENT AGREEMENT WITH LOUDOUN COUNTY
AND MOTION TO CONVERT PROCEEDINGS**

Town Manager

Kaj H. Dentler

Town Council of Leesburg

Kelly Burk, Mayor
Neil Steinberg, Vice Mayor
Ara Bagdasarian
Zach Cummings
Kari Nancy
Patrick Wilt

Dated: February 28, 2023

Gregory J. Haley (VSB No. 23971)
Kathleen L. Wright (VSB No. 48942)
Andrew M. Bowman (VSB No. 86754)
GENTRY LOCKE
10 Franklin Road S.E., Suite 900
P.O. Box 40013
Roanoke, Virginia 24022
Telephone: 540.983.9300
Mobile: 540.353.5041
Facsimile: 540.983.9400
Email: haley@gentrylocke.com
wright@gentrylocke.com
bowman@gentrylocke.com

Christopher P. Spera (VSB No. 27904)
Jessica J. Arena (VSB No. 87642)
Town Attorney
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176
Telephone: 703.737.7000
Facsimile: 703.771.2727
Email: cspera@leesburgva.gov
jarena@leesburgva.gov

Counsel for the Town of Leesburg

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**NOTICE BY THE TOWN OF LEESBURG
OF A VOLUNTARY SETTLEMENT AGREEMENT
WITH LOUDOUN COUNTY AND MOTION TO
CONVERT PROCEEDINGS**

Pursuant to Virginia Code Ann. § 15.2-3400 and 1 Va. Admin. Code § 50-20-230, the Town of Leesburg, Virginia (the “Town” or “Leesburg”), by counsel, hereby notifies the Commission on Local Government (the “Commission”) of a Voluntary Settlement Agreement with the County of Loudoun (the “County” or “Loudoun”), and moves the Commission to convert the pending annexation proceeding to the review of the Voluntary Settlement Agreement (the “VSA Notice”). In support thereof, the Town states as follows:

INTRODUCTION

1. The Town and the County are pleased to report to the Commission that the localities have participated in a mediation process and agreed on a Voluntary Settlement Agreement to resolve the outstanding annexation and related issues. A copy of the proposed Voluntary Settlement Agreement is attached as **Exhibit A**. The terms of the Voluntary Settlement Agreement reflect extensive negotiation and compromises between Leesburg and Loudoun, and address issues

of concern to both localities. Both the Town Council and the County Board of Supervisors have approved the Voluntary Settlement Agreement.

2. The Commission should recommend approval of the Voluntary Settlement Agreement because it is in the best interests of the Town, the County, the affected property owners, and the Commonwealth, for the following reasons:

- a. Leesburg will benefit from: (i) the expansion and diversification of its local tax resources; (ii) additional land suitable for industrial and commercial development; (iii) additional employment opportunities for Leesburg residents; and (iv) the expansion of the Town's ability to provide municipal services and facilities to the Town and the region. As a result of the Voluntary Settlement Agreement, Leesburg's boundaries will be more consistent with its existing water and sewer service areas. Resolution of the annexation issues will also further cooperation between the Town and the County in providing enhanced services and facilities to both the Leesburg area and Loudoun generally.
- b. Loudoun will benefit from: (i) the continued development of Compass Creek; (ii) the presence of new corporate citizens and business owners; and (iii) enhanced employment opportunities for the area. Compass Creek will remain part of the County, and the County will continue to collect tax revenues from Compass Creek as it continues to develop. County residents and property owners who are, or become, out-of-town Leesburg water and sewer customers will also benefit from the elimination of the higher out-of-town water and sewer rate under the Economic Development Incentive Payment program.

- c. Compass Creek property owners will benefit from the continued availability of existing municipal services provided by Leesburg, including Town water and sewer service and access to the Town’s street system, and will now receive the full range of municipal services provided by Leesburg. Certain property owners will benefit from a reduced business personal property tax rate on data center computer equipment for a five-year period. Compass Creek property owners will also benefit from lower water and sewer rates. The Voluntary Settlement Agreement provides for the affected property owners to provide their written consent prior to their property being annexed into the Town. The Voluntary Settlement Agreement also includes provisions that the Town will not initiate any adverse annexation for a period of twenty-five (25) years after the effective date of annexation, and allowing for boundary line adjustments with the consent of the property owner.
- d. The Commonwealth will benefit from the resolution of interlocal issues, encouragement of economic development in the Leesburg Joint Land Management Area (“Leesburg JLMA”), and Leesburg becoming a more viable and vibrant locality with enhanced resources to provide high quality municipal services and facilities to its citizens and the surrounding region.

3. For these reasons, as set forth in more detail below, Leesburg requests the Commission convert the pending annexation proceeding to review of the Voluntary Settlement Agreement and recommend approval of the Voluntary Settlement Agreement.

PROCEDURAL HISTORY

4. On September 28, 2022, Leesburg filed its Notice by the Town of Leesburg of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data

(the “Notice”) stating its intention to annex into the Town the remaining area in Compass Creek, including parcels owned by the Microsoft Corporation, Walmart Real Estate Business Trust, Real Income Properties #18, LLC, CC Outparcel LC, and Leesburg Commercial LC (the “Annexation Area”).

5. On July 7, 2023, Loudoun filed its Responsive Pleading of the County of Loudoun and Supporting Narrative, Information, Citation and Materials.

6. On October 13, 2023, Leesburg filed its Reply of the Town of Leesburg in Support of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data (the “Reply”).

7. On December 21, 2023, the County filed a notice with the Commission of its desire to attempt to negotiate an agreement on the annexation issues through a mediation process.

8. On January 5, 2024, the Commission approved the participation of Leesburg and Loudoun in a mediation process to attempt to resolve the pending annexation matter.

9. On January 10, 2024, the Town and the County participated in a mediation process and reached an agreement in principle on the outstanding issues.

10. On February 6, 2024, the County Board of Supervisors adopted a resolution approving of and stating its intent to adopt the proposed Voluntary Settlement Agreement. A copy of this resolution is attached as **Exhibit B**.

11. On February 27, 2024, the Town Council adopted a resolution approving of and stating its intent to adopt the proposed Voluntary Settlement Agreement. A copy of this resolution is attached as **Exhibit C**.

12. This matter is set for a hearing before the Commission on March 21, 2024.

UPDATED DESCRIPTION OF ANNEXATION AREA

13. Since the filing of the Town’s Notice, there have been minor changes to the boundary lines and ownership of property in the Annexation Area.

14. On February 27, 2023, a small portion of the parcel of land previously owned by CC Skating, LLC was incorporated into the parcel owned by Leesburg Commercial L.C.¹

15. On August 15, 2023, the resulting combined parcel was sold to SI NVA06A, LLC (“STACK Infrastructure” or “STACK”) for approximately \$75.2 million.

16. The ownership and boundary lines of the other properties (At Home, CC Outparcel, Compass Creek Parkway, Dulles Greenway Toll Road, Microsoft, and the Vernal Pool properties) in the Annexation Area have remained the same.

17. An updated map of the Annexation Area is attached as **Exhibit D**.

OVERVIEW OF VOLUNTARY SETTLEMENT AGREEMENT

18. The Voluntary Settlement Agreement has six major provisions: (i) annexation of the Annexation Area into the Town’s boundary; (ii) utilities provisions; (iii) financial provisions; (iv) limitation on the Town’s ability to seek city status; (v) limitation on future Town annexations; and (vi) Commission and special court approval. These provisions are discussed below.

19. In addition to the data and information set forth in Leesburg’s Notice and Reply, which are incorporated by reference, Leesburg provides the data and information stated below, which is responsive to the relevant provisions of 1 Va. Admin. Code § 50-20-610.

20. The Town certifies that all data, exhibits, and other materials submitted to the Commission by the Town are accurate and correct to the best knowledge of Town officials.

¹ Loudoun County Zoning Application LEES-2022-0004.

21. The Town and County have concurrently given notice to all local governments which are contiguous to, or sharing functions, revenue or tax sources with the Town or the County, as listed in the attached **Exhibit E**, and also provided copies of this VSA Notice, a copy of the Voluntary Settlement Agreement, and an annotated listing of all documents, exhibits, and other material submitted to the Commission in support of the Voluntary Settlement Agreement.

ANNEXATION

22. Section 4 of the Voluntary Settlement Agreement provides that the Annexation Area will be annexed into the Town boundaries.²

23. Section 4.2 of the Voluntary Settlement Agreement provides that that Town would obtain the written consent of each of the affected property owners.

24. As noted in the Town’s filings, several of the property owners in the Annexation Area have consented to being brought into the Town’s boundaries, including:

- a. At Home (November 3, 2020)³;
- b. Walmart (May 7, 2021)⁴;
- c. CC Outparcel LC (May 25, 2021); and
- d. Leesburg Commercial L.C. (March 13, 2023), which states that the consent is binding on the successors and assigns of this property, “including without limitation STACK Infrastructure and its affiliates.”⁵

² Pursuant to 1 Va. Admin. Code § 50-20-610(1), the Town refers the Commission to the relevant portions of its Notice and Reply as data and evidence supporting this municipal boundary expansion.

³ Town Resource Notebook, Tab D(2).

⁴ Town Resource Notebook, Tab D(1).

⁵ Town Resource Notebook, Tab D(3).

25. On February 20, 2024, the Microsoft Corporation provided its written consent to the annexation of its parcel (PIN 235-29-7431) into the Town's boundaries.

26. The County has accepted each of the foregoing property consent documents as sufficient to satisfy the requirements of Section 4.2.

27. Accordingly, these property owners have given their written consent to annexation, as provided in Section 4.2 of the proposed Voluntary Settlement Agreement.

28. The Town will proceed with seeking the written consent of Leesburg Commercial L.C., owner of the vernal pool parcel (PIN 234-19-2469) and Toll Road Investors Partnership II LP, owner of the Dulles Greenway Toll Road off ramp (PIN 234-37-8457).

29. A final survey and metes and bounds description of the Annexation Area are attached as **Exhibits F and G**, respectively.

UTILITIES

30. Section 5.1 of the Voluntary Settlement Agreement provides the Town will provide water and sewer service to the Annexation Area consistent with the policies and practices to the area already within the existing Town boundaries.

31. The Town has the water and sewer capacity available to serve the Annexation Area. As noted in the Town's Reply, the Town currently provides water and sewer service to the Walmart property, the At Home property, and the existing phases of development of the Microsoft property.

32. On March 14, 2023, the Town Council approved the Town's provision of water and sewer service to the STACK property, including: commissioning water for Building 1 in the amount of 672,000 gallons; commissioning water for Building 2 in the amount of 336,000 gallons; final mechanical water for Building 1 of 128,000 gallons; final mechanical water for Building 2 of 128,000 gallons; and liquids from commissioning or mechanical cooling activities would not be

discharged into the Town’s sewer system. The Town’s provision of commissioning and final mechanical water to the STACK property are anticipated to be one-time events, with no continuing demand on the Town’s water system capacity.

33. On February 27, 2024, the Town Council approved an Amended Water and Wastewater Service Agreement with the Microsoft Corporation to increase its maximum day water consumption by 638,500 gallons per day (“GPD”) or 0.639 million gallons per day (“MGD”). Section 5.2 of the Voluntary Settlement Agreement provides that the Town will, at Microsoft’s request, allow future phases of development on the Microsoft property to be served by Loudoun Water.

34. **Table 1**, below, summarizes the impact of the Town’s provision of water service to the Annexation Area. “Approved Development” states the maximum day water demand for all of the Town’s existing and approved customers, both inside and outside the Town’s corporate limits, including the Town’s existing service to the Walmart parcel, the At Home parcel, the STACK parcel, and existing phases of the Microsoft development. “Microsoft Increase” reflects the recent increase in service capacity to the Microsoft parcel.

Table 1: Summary of Town Water Capacity	
Scenario	Max Day Demand (MGD)
Permitted Capacity	12.884
Approved Development	7.995
Microsoft Increase	0.639
Remaining Capacity	4.250

35. As shown in **Table 1** above, the Town has adequate water capacity to serve the Annexation Area. The Town is not aware of any potential concerns regarding the capacity of its sewage treatment plant to serve the Annexation Area.

FINANCIAL IMPACT OF ANNEXATION

36. The Voluntary Settlement Agreement will expand and diversify the Town’s local tax resources. The Town recognizes the impact that annexation will have on property owners—particularly, data center operators with significant computer equipment. Accordingly, pursuant to Virginia Code Ann. § 58.1-3506(A)(43) and other provisions, the Town has determined to set its business personal property tax rate applicable to data center computer equipment at \$0.75 per \$100 in assessed value and has hold that rate for a five-year period.

37. **Table 2**, below, provides updated tax revenue estimates to Leesburg assuming the Effective Date of Annexation, as stated in the Voluntary Settlement Agreement, is December 31, 2024.⁶

Table 2: Ten Year Estimated Revenue from Annexation Area					
Fiscal Year	Real Property	Personal Property	BPOL	Meals	Total
2025	\$548,088	\$1,639,235	\$328,896	\$131,036	\$2,647,254
2026	\$883,091	\$2,944,579	\$381,988	\$131,036	\$4,340,694
2027	\$1,133,453	\$5,109,730	\$381,988	\$131,036	\$6,756,207
2028	\$1,152,880	\$9,295,330	\$381,988	\$131,036	\$10,961,234
2029	\$1,172,695	\$13,239,398	\$381,988	\$131,036	\$14,925,117
2030	\$1,192,898	\$18,817,368	\$381,988	\$131,036	\$20,523,290
2031	\$1,213,488	\$16,886,828	\$381,988	\$131,036	\$18,613,339
2032	\$1,234,535	\$14,251,566	\$381,988	\$131,036	\$15,999,125
2033	\$1,255,980	\$13,325,614	\$381,988	\$131,036	\$15,094,618
2034	\$1,277,853	\$13,594,517	\$381,988	\$131,036	\$15,385,393
2035	\$1,300,164	\$14,148,906	\$381,988	\$131,036	\$15,962,094

38. The Voluntary Settlement Agreement provides for an Economic Development Incentive Payment program, initially in an amount of \$2 million (the “EDIP Program”). The EDIP

⁶ The financial projections in **Table 2** are based on the analyses in Section XI(B)(4) of the Town’s Notice, updated to apply the County’s updated business personal property tax revenue model analysis in Section V(I) of the Town’s Reply and creation of the business personal property tax on data center equipment.

Program encourages economic development in the Leesburg JLMA by providing for and allowing the elimination of the higher out-of-town utilities charges.

39. The Voluntary Settlement Agreement will benefit County residents and property owners who are, or become, Town water and sewer customers through the elimination of the Town's out-of-town surcharge, as long as the County participates in the EDIP Program.

40. Over 3,200 County residents or property owners receive water and sewer service from the Town as out-of-town customers. These County residents currently pay higher water and sewer rates than Town residents.

41. The Voluntary Settlement Agreement provides that, so long as the County participates in the EDIP Program, the Town will not charge the higher out-of-town utilities charges, as provided for in Sections 5.4 and 5.5 of the Voluntary Settlement Agreement. The Town expects that the EDIP Program will have no net financial effect to the Town, as the amount received is expected to offset the reduction in utility revenue resulting from serving existing and future development in the Leesburg JLMA and the terms of the Voluntary Settlement Agreement.

LIMITATION ON CITY STATUS AND FUTURE ANNEXATIONS⁷

42. Section 6 of the Voluntary Settlement Agreement contains a limitation on the Town's ability to seek city status. The General Assembly has enacted a moratorium on the ability of towns to petition for city status. *See* Va. Code Ann. § 15.2-3201. The Town has agreed not to seek city status for a period of twenty-five (25) years following the lifting of that moratorium.

⁷ The territory affected by these limitations include the entire County and Town. Therefore, the data and evidence set forth in 1 Va. Admin. Code § 50-20-550 is not relevant to the Commission's review. Much of this information may nevertheless be found in the parties' prior submissions. *See, e.g.*, Town Notice, at 63 (land use profile); Town Notice, at 62 (population data); Town Notice, Section X (urban services); Town Notice, Section IV (compliance with state policies); Town Notice, Section III (community of interest).

43. Section 7 of the Voluntary Settlement Agreement contains a twenty-five (25) year limitation on the Town's ability to annex land in the County. This limitation does not apply to certain annexations to which the County or the affected property owner has given their consent.

COMMISSION AND SPECIAL COURT APPROVAL

44. The Voluntary Settlement Agreement is subject to review by the Commission and approval by the special court. The Town and the County have agreed to cooperate and use their best efforts to complete this annexation, including Commission review and Court approval, by December 31, 2024.

CONCLUSION

WHEREFORE, the Town of Leesburg, Virginia respectfully requests the Commission convert these proceedings to review of the Voluntary Settlement Agreement pursuant to Virginia Code Ann. §§ 15.2-2907 and 15.2-3400, issue a report recommending approval of the Voluntary Settlement Agreement without modification, and grant such further relief the Commission deems just and proper.

Respectfully submitted this 28th day of February, 2024.

TOWN OF LEESBURG, VIRGINIA

By:  _____

Gregory J. Haley (VSB No. 23971)
Kathleen L. Wright (VSB No. 48942)
Andrew M. Bowman (VSB No. 86754)
GENTRY LOCKE
10 Franklin Road S.E., Suite 900
P.O. Box 40013
Roanoke, Virginia 24022
Telephone: 540.983.9300
Facsimile: 540.983.9400
Email: haley@gentrylocke.com
wright@gentrylocke.com

Christopher P. Spera (VSB No. 27904)
Jessica J. Arena (VSB No. 87642)
Town Attorney
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176
Telephone: 703.737.7000
Facsimile: 703.771.2727
Email: cspera@leesburgva.gov
jarena@leesburgva.gov

bowman@gentrylocke.com

Counsel for the Town of Leesburg

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 28th day of February, 2024, a true copy of the foregoing was sent via Federal Express and email to the following counsel for the County of Loudoun, Virginia:

Leo P. Rogers (VSB No. 28906)
Nicholas Lawrence (VSB No. 76964)
Loudoun County Attorney
1 Harrison Street, S.E.
Leesburg, Virginia 20177
Telephone: 703.777.0307
Facsimile: 703.771.5025
Email: leo.rogers@loudoun.gov
nicholas.lawrence@loudoun.gov

Andrew R. McRoberts (VSB No. 31882)
Maxwell C. Hlavin (VSB No. 86066)
SANDS ANDERSON PC
1111 East Main Street, 23rd Floor
Richmond, Virginia 23219
Telephone: 804.783.7211
Facsimile: 804.783.7291
Email: amcroberts@sandsanderson.com
mhlavin@sandsanderson.com

Counsel for the County of Loudoun, Virginia


Of Counsel

Town Notice of VSA

Exhibit A

**VOLUNTARY SETTLEMENT AGREEMENT
OF ANNEXATION AND RELATED ISSUES
BETWEEN THE TOWN OF LEESBURG
AND LOUDOUN COUNTY**

This Agreement (the “Agreement”) is made this ___ day of February, 2024, by and between the Town of Leesburg, Virginia (the “Town”), by and through the Town Council of the Town of Leesburg (the “Town Council”), and the County of Loudoun, Virginia (the “County”), by and through the Loudoun County Board of Supervisors (the “Board of Supervisors”) (collectively, the “Parties”), pursuant to Virginia Code Ann. § 15.2-3400.

RECITALS

WHEREAS, on September 28, 2022, the Town filed with the Commission on Local Government (the “Commission”) a Notice by the Town of Leesburg of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data (the “Notice”), pursuant to Virginia Code Ann. § 15.2-2907;

WHEREAS, the Parties entered into mediation to attempt to resolve their differences. As a result of such mediation, the Town and the County agree to resolve the Notice that is now pending before the Commission. Specifically, the Parties wish to provide for: (i) conversion of the existing proceedings into those for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400; (ii) the annexation of certain areas into the Town, conditioned on the written consent of property owners in the area to be annexed; (iii) certain utility issues; (iv) waiver of city status rights for a period of limited duration; (v) waiver of annexation rights for a period of limited duration, and agreement to reject any petition for citizen-initiated annexation for the same duration; and (vi) certain economic development incentives;

WHEREAS, the Parties have determined that it will be in the best interests of both the County and the Town to enter into this Agreement; and

WHEREAS, the Town Council approved this Agreement by resolution adopted on February 27, 2024, a copy of which is attached hereto as **Exhibit A**;

WHEREAS, the Board of Supervisors approved this Agreement by resolution adopted on February 6, 2024, a copy of which is attached hereto as **Exhibit B**; and

WHEREAS, the Parties wish to enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. Incorporation of Recitals. The foregoing Recitals are incorporated into the body of this Agreement as if the same were set forth in full below.

Section 2. Definitions. The Parties agree that the following words, terms, phrases, and abbreviations as used in this Agreement shall have the following defined meanings:

2.1. “Annexation Area” means that portion of the commercial and industrial development area, commonly referred to as Compass Creek, that remains in the County. Subject to Section 4 of this Agreement, the Annexation Area includes the following parcels: the At Home Property; the CC Outparcel Property; the Compass Creek Parkway; the Dulles Greenway Toll Road Property; the Microsoft Property; the STACK Property; the Vernal Pool; and the Walmart Property.

2.2. “At Home Property” means the approximately 10.4336 acre parcel of real property having County PIN 234-29-4515 owned by Realty Income Properties 18 LLC.

2.3. “CC Outparcel Property” means the approximately 1.5 acre parcel of real property having County PIN 234-29-0522 owned by CC Outparcel LC.

2.4. “Commission” means the Commission on Local Government.

2.5. “Compass Creek Parkway” means the approximately 15.2913 acre dedicated right of way for the Compass Creek Parkway.

2.6. “County” means the County of Loudoun, Virginia.

2.7. “Dulles Greenway Toll Road Property” means the approximately 1.34 acre portion of the parcel of real property, located in the County, having County PIN 234-37-8457 owned by Toll Road Investors Partnership II LP.

2.8. “Economic Development Incentive Payment” shall mean the sum of \$2,000,000, as increased by three (3) percent each fiscal year thereafter to account for inflation.

2.9. “Effective Date of Annexation” means the effective date of the annexation of the Annexation Area as provided in Section 4.4 of this Agreement.

2.10. “In-Town Rates” means the rates and charges established for inside town utility service pursuant to Article I, Division 2 and Article II, Division 2 of Chapter 34.1 of the Town Code, and successor sections, and set forth in Appendix B (Fee Schedule) to the Town Code.

2.11. “Loudoun Water” means the Loudoun County Sanitation Authority, created and organized under the provisions of the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*).

2.12. “Microsoft Property” means the approximately 323.3719 acre parcel of real property having County PIN 235-29-7431 owned by the Microsoft Corporation.

2.13. “Notice” means the Town’s Notice of Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data filed on September 28, 2022 with the Commission pursuant to Virginia Code Ann. §§ 15.2-2907(A), 15.2-3200, *et seq.*

2.14. “Special Court” means the special court appointed to consider and affirm this Agreement by the Supreme Court of Virginia pursuant to Virginia Code Ann. §§ 15.2-3000, 15.2-3400.

2.15. “STACK Property” means the approximately 28.943 acre portion of the parcel of real property, located in the County, having County PIN 234-38-2603 owned by SINVA06A LLC.

2.16. “Town” means the Town of Leesburg, Virginia.

2.17. “Vernal Pool” means the approximately 1.3998 acre parcel of real property having County PIN 234-19-2469 owned by Leesburg Commercial LC.

2.18. “Walmart Property” means the approximately 20.5521 acre parcel of real property having County PIN 234-39-2601 owned by the Walmart Real Estate Business Trust.

Section 3. Purpose.

3.1. The Parties enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400 to resolve the annexation proceeding initiated by the Notice. The Parties agree that upon presenting the Commission with notice of this Agreement, the annexation proceedings before the Commission shall be converted to proceedings for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400(3).

3.2. The County and the Town shall make a joint public announcement concerning this Agreement, the conversion of the Commission proceeding, the mutually satisfactory resolution of the Notice, and the presentation of this Agreement to the Commission.

Section 4. Town Boundaries.

4.1. **Annexation.** Subject to Section 4.2, the Annexation Area shall be annexed into the Town boundaries on the Effective Date of Annexation.

4.2. **Property Owner Consents.** The Town shall obtain the written consent of all property owners prior to the property being annexed into the Town of Leesburg. In the event that written consent to annexation is not obtained by the Town, such property, as applicable, shall be excluded from the definition of “Annexation Area” set forth in Section 2.1 of this Agreement. The County and the Board of Supervisors shall not advocate against any property owner in the Annexation Area giving its written consent to annexation. The Town is required to reasonably perform and cooperate with property owners providing consent letters to meet the conditions stated in the consent letters referenced in the notice of this Agreement to be delivered to the Commission in accordance with Section 3.1.

4.3. **Survey.** The Town shall prepare, at its own expense, a metes and bounds description of, and survey plat showing, the Annexation Area as annexed into the Town boundaries by order of the Special Court. The Town shall submit and file the final metes and bounds description and survey plat of the Annexation Area, as annexed into the Town boundaries, with the Commission and the Special Court.

4.4. **Effective Date.** The annexation of the Annexation Area into the boundaries of the Town shall be effective December 31, 2024. If the Special Court has not entered an order affirming this Agreement on or prior to December 31, 2024, unless otherwise agreed in writing by the County and the Town, the annexation of the Annexation Area into the boundaries of the Town shall be effective thirty (30) days after the date of the Special Court’s entry of its order affirming this Agreement.

4.5. **Extension of Municipal Services.** Following the Effective Date of Annexation, the Town shall extend its governmental services (including, for example, law enforcement, street maintenance, and zoning controls) to the Annexation Area on the same basis and at the same level as such services now are or hereafter may be provided to areas within the Town’s current corporate limits where like conditions exist.

Section 5. Utilities.

5.1. **Town to Serve Compass Creek.** The Town shall provide water and sewer service to the Annexation Area consistent with the policies and practices applied to areas within the existing Town boundaries.

5.2. **Microsoft Utilities.** In the event the Microsoft Corporation gives its written consent to annexation and the Microsoft Property is annexed into the Town boundaries, the Town shall, at the request of the Microsoft Corporation, allow future phases of development on the Microsoft Property to be served by Loudoun Water. For the purposes of this Agreement “future phase” means any development or redevelopment on the Microsoft Property subsequent to the data center described as “IAD05,” being the subject of County Plan Number STMP-2023-0004. Upon receipt of a request from the owner of the Microsoft Property to receive water and/or sewer service from Loudoun Water for a future phase of development, and a commitment to serve from Loudoun Water, the Town and Town Council shall take all steps necessary to facilitate such service.

5.3. **Town Discretion.** Nothing in this Agreement shall be construed to alter, limit, or constrain the Town’s discretion with respect to utility capacity and utility service decisions.

5.4. **Equal Service.**

5.4.1. Equal Rates and Fees. Beginning on July 1 following the Effective Date of Annexation, and subject to Section 5.5 of this Agreement, the Town shall charge all water and sewer customers the In-Town Rates as adopted for that fiscal year, whether located within or outside the Town boundaries.

5.4.2. Service; Reduction or Cessation of Service. The Town shall be obligated to provide any and all connected customers water and/or sanitary sewer services, whether within or outside the Town's boundaries, on an equal basis, subject to the Town's utility policies.

5.4.3. Amendments. The Town shall adopt any amendments of ordinances, resolutions, or policies necessary to effectuate the requirements of this Section 5.4.

5.5. **Limitations**. The provisions of Section 5.4 shall be effective for each fiscal year in which the County has satisfied the Economic Development Incentive Payment requirement in Section 6 of this Agreement.

Section 6. Economic Development Incentive Payment. Following the Effective Date of Annexation, the County shall annually pay the Economic Development Incentive Payment to the Town on or before the first day of the fiscal year (July 1).

Section 7. Limitation on City Status. The Town shall not Seek City Status for a period of twenty-five (25) years after the effective date of any legislation lifting the prohibition on the granting of new city charters as set forth in Virginia Code Ann. § 15.2-3201, or any successor statute. For purposes of this Agreement, "Seek City Status" shall mean the filing of a notice with the Commission to establish an independent city pursuant to Virginia Code Ann. § 15.2-2907(A) or any successor statute or similar legislation, or initiating a proceeding to transition to city status pursuant to Virginia Code Ann. §§ 15.2-3800, *et seq.*, or any successor statute or similar legislation.

Section 8. Annexation and Boundary Adjustment.

8.1. **Limitation on Adverse Annexations.** The Town shall not, either directly or indirectly, file any annexation notice with the Commission pursuant to Virginia Code Ann. § 15.2-2907(A) or institute any court action for annexation against the County pursuant to Virginia Code Ann. § 15.2-3200, *et. seq.*, or any successor provisions, seeking to annex any area of the County for twenty-five (25) years following the later of: (a) the Effective Date of Annexation, or (b) the most recent Boundary Adjustment. For purposes of Section 8.1, the term “Boundary Adjustment” includes any change to the Town boundaries, except those: (i) of less than one (1) acre in size; or (ii) for public improvement projects. The Town and the County may enter into a written agreement that any specific boundary adjustment shall not constitute a “Boundary Adjustment” and, therefore, not affect the twenty-five (25) year period provided in this Section. During the same period, the Town and Town Council agree to reject annexations initiated by citizen petition under Virginia Code Ann. § 15.2-3203(A), unless otherwise agreed by the Parties.

8.2. **Boundary Adjustment.** Nothing in this Agreement shall be interpreted to limit boundary adjustments by the Parties pursuant to Virginia Code Ann. § 15.2-3106, *et seq.*, provided, however, the landowner has given contemporaneous written consent to such boundary adjustment and such adjustment satisfies applicable policies, or is otherwise approved by the Parties. Both Parties are free to consent to or reject any future proposed boundary adjustment.

Section 9. Commission and Court Approval.

9.1. **Commission Review.** The Town and the County shall promptly initiate the steps required by Virginia Code Ann. § 15.2-3400 to obtain review of this Agreement by the Commission. The Parties shall cooperate in providing all information and documents required by the Commission.

9.2. **Court Approval.** Following issuance of the report of findings and recommendations by the Commission, the Town and the County shall initiate a proceeding to obtain Special Court affirmation and approval of this Agreement (as may be modified by mutual written agreement of the Parties), as provided by Virginia Code Ann. § 15.2-3400. The Parties agree that the Special Court’s entry of an Order approving of this Agreement (as may be modified by mutual written agreement of the Parties) shall constitute the Town’s withdrawal of the Notice, and no additional notification to the Commission shall be required.

9.3. **Cooperation.** The County and the Town shall cooperate and use their best respective efforts to obtain affirmation of this Agreement, including Commission review and Court approval, by December 31, 2024.

9.4. **Termination.** If the Special Court fails to approve and give full force and effect to this Agreement without modification, this Agreement shall terminate immediately, unless the Parties waive termination by mutually agreeing to the modifications requested by the Special Court in a written document, duly executed by the Parties’ authorized representatives.

Section 10. Notices. Any notice provided under this Agreement shall be in writing sent to the person, address and email provided below, unless either Party provides advanced written notice to the other Party changing its contact information:

Town Manager
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176
kdentler@leesburgva.gov

County Administrator
County of Loudoun
1 Harrison Street, S.E.
Leesburg, Virginia 20175
tim.hemstreet@loudoun.gov

With a copy to:

Town Attorney
Town of Leesburg
25 West Market Street

County Attorney
Loudoun County
1 Harrison Street, S.E.

Section 11. Miscellaneous Provisions.

11.1. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties, and each of their future governing bodies, and any successor(s) thereto upon its approval by the Special Court.

11.2. **Counterparts/Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. This Agreement constitutes the entire understanding between the Parties.

11.3. **Court Enforcement.** The terms and conditions of this Agreement shall be enforceable, pursuant to Virginia Code Ann. § 15.2-3217, by the Special Court or any successor court appointed pursuant to Virginia Code Ann. §§ 15.2-3000 through 15.2-3004, or any successor statute.

11.4. **No Third-Party Beneficiaries.** The provisions of this Agreement are intended to benefit only the Parties to this Agreement. No part of this Agreement shall be construed to confer upon any other person or party the rights of a third-party beneficiary. No person not a party to this Agreement shall be empowered to seek the enforcement of the provisions of this Agreement.

11.5. **Attorneys' Fees.** Notwithstanding the provisions of Virginia Code Ann. § 15.2-3215, the Parties agree that the Town and the County shall each be responsible for paying their own attorneys' fees and other costs associated with the Notice, the preparation of this Agreement, and the submission of the Agreement to the Commission and the Special Court.

11.6. **Amendments.** This Agreement may be amended, modified, or supplemented, either in whole or in part, by mutual agreement of the County and the Town by a written document

of equal formality and dignity, duly executed by the authorized representatives of the County and Town.

11.7. **Mediation.** No Party shall bring any legal action to enforce this Agreement without first submitting the dispute to non-binding mediation. Mediation shall be initiated by a demand for mediation. A third-party neutral shall act as mediator. If the Parties cannot agree on the mediator, McCammon Mediation Group, or its successor, shall appoint the mediator. Any mediation under this Agreement shall be completed within ninety (90) days of the demand for mediation, absent the consent of the Parties.

Section 12. Effective Date. This Agreement shall be effective upon the date of entry of the order of the Special Court affirming this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officials.

TOWN OF LEESBURG and
TOWN COUNCIL OF THE TOWN
OF LEESBURG

Approved as to form:

By: _____

Town Attorney

Its: _____

Date: _____, 2024

COUNTY OF LOUDOUN and
BOARD OF SUPERVISORS OF
LOUDOUN COUNTY

Approved as to form:

By: _____

County Attorney

Its: _____

Date: _____, 2024

Town Notice of VSA

Exhibit B



Loudoun County, Virginia

www.loudoun.gov

Office of the County Administrator

1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

Telephone (703) 777-0200 • Fax (703) 777-0325

At a business meeting of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Tuesday, February 06, 2024, at 4:00 p.m.

IN RE: Proposed Resolution Approving the Voluntary Settlement Agreement with the Town of Leesburg Regarding the Annexation of Compass Creek (Catocin & Leesburg)

Chair Randall moved that the Board of Supervisors approve the RESOLUTION OF THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY APPROVING THE COUNTY OF LOUDOUN ENTERING INTO A VOLUNTARY SETTLEMENT AGREEMENT OF ANNEXATION AND RELATED ISSUES WITH THE TOWN OF LEESBURG, included as Attachment 1 to the February 6, 2024, Board of Supervisors Business Meeting Action Item, which expresses the Board's approval and intent to adopt the Voluntary Settlement Agreement resolving the pending annexation action brought by the Town of Leesburg.

Seconded by Vice Chair Briskman.

Voting on the Motion: Supervisors Briskman, Glass, Kershner, Letourneau, Randall, TeKrony, Turner, and Umstatt – Yes; None – No; Supervisor Saines – Absent for the vote.

COPY TESTE:

DEPUTY CLERK TO THE LOUDOUN COUNTY
BOARD OF SUPERVISORS

RESOLUTION OF THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY
APPROVING THE COUNTY OF LOUDOUN ENTERING INTO A VOLUNTARY
SETTLEMENT AGREEMENT OF ANNEXATION AND RELATED ISSUES WITH THE
TOWN OF LEESBURG

WHEREAS, on September 28, 2022, the Town of Leesburg (the “Town” or “Leesburg”) notified the Commission on Local Government (the “Commission”), pursuant to Virginia Code Ann. § 15.2-2907(A), of its intention to petition the Circuit Court of Loudoun County for an order annexing to the Town approximately 402.8317 acres located in the Loudoun County (the “County” or “Loudoun”), commonly referred to as “Compass Creek;”

WHEREAS, on July 7, 2023, the County filed with the Commission a Responsive Pleading opposing the Town’s annexation of Compass Creek;

WHEREAS, on October 13, 2023, the Town filed a Reply in support of annexation;

WHEREAS, the Commission set the matter for hearing on March 5-8, 2024;

WHEREAS, on December 21, 2023, the County notified the Commission of its desire to attempt to negotiate an agreement through a mediation process with the Town on the Compass Creek annexation issues;

WHEREAS, on January 5, 2024, the Commission approved the participation of Leesburg and Loudoun in a mediation process;

WHEREAS, on January 10, 2024, the Town and the County participated in a mediation process and reached an agreement in principle on the annexation issues;

WHEREAS, the Town and the County have agreed on the terms of a Voluntary Settlement Agreement pursuant to Virginia Code § 15.2-3400, a copy of which is attached to this Resolution as **Exhibit A** (the “Agreement”);

WHEREAS, the Agreement is the product of years of negotiation between Leesburg and Loudoun, addresses areas of concern to both parties, and reflects a cooperative resolution of issues in the best interests of the parties and the Commonwealth;

WHEREAS, this Resolution states the County's intention to present the Agreement to the Commission and to adopt the Agreement upon the completion of the Commission's review and issuance of a report.

THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Loudoun, Virginia that it adopts the following statement of its approval of, and intent to adopt, a Voluntary Settlement Agreement pursuant to Virginia Code § 15.2-3400 to resolve the Compass Creek annexation issues, a copy of which is attached to this Resolution as **Exhibit A** (the "Agreement"):

1. Loudoun County intends to pursue the approval of the Agreement by the Commission and the special court, pursuant to Virginia Code §§ 15.2-2907(A) and 15.2-3400.

2. The County Administrator is authorized and directed to make such changes to the Agreement as may be necessary, appropriate, consistent with the term sheet, and approved as to form by the County Attorney, and to sign the same on behalf of the Board.

3. Loudoun County will cooperate with Leesburg in providing all required notices, in converting the pending annexation matter to a review of the Agreement and will participate in the subsequent proceedings before the Commission, culminating in a written report prepared by the Commission stating its findings of fact and recommendations on the Agreement.

4. Loudoun County will provide additional information through its filings with the Commission, materials filed with the special court, and materials presented at public hearings and proceedings.

5. Subsequent to the Commission's review and issuance of its report, the County intends to adopt the Agreement, or a modified version of the Agreement acceptable to the Town and the County, pursuant to the procedures in Virginia Code § 15.2-3400.

6. The County's principal contact with the Commission is:

Andrew McRoberts, Esq.
Sands Anderson PC
P.O. Box 1998
Richmond, Virginia 23218-1998
Telephone: (804) 783-7211
Facsimile: (804) 783-7291
Email: amcroberts@sandsanderson.com
Counsel for the County of Loudoun, Virginia

7. Following the Commission's report and adoption of ordinances approving the Agreement, the Board of Supervisors and Town Council will jointly petition the Circuit Court of Loudoun County for an order affirming the Agreement pursuant to Virginia Code § 15.2-3400.


8. The County believes the Agreement is in the best interest of the County, the Town, and the Commonwealth.

BE IT FURTHER RESOLVED, by the Board of Supervisors of the County of Loudoun, Virginia that it requests the Commission to review the Agreement in accordance with 1 Va. Admin. Code 50-20-230(A) and issue a report.

The undersigned Clerk of the Board of Supervisors of Loudoun County, Virginia, certifies that the foregoing Resolution was adopted by the Board of Supervisors on February 6, 2024.

WITNESS my signature and the seal of the Board of Supervisors of Loudoun County, Virginia, this 6th day of February 2024.





Clerk, Board of Supervisors of
Loudoun County, Virginia

**VOLUNTARY SETTLEMENT AGREEMENT
OF ANNEXATION AND RELATED ISSUES
BETWEEN THE TOWN OF LEESBURG
AND LOUDOUN COUNTY**

This Agreement (the “Agreement”) is made this ___ day of February, 2024, by and between the Town of Leesburg, Virginia (the “Town”), by and through the Town Council of the Town of Leesburg (the “Town Council”), and the County of Loudoun, Virginia (the “County”), by and through the Loudoun County Board of Supervisors (the “Board of Supervisors”) (collectively, the “Parties”), pursuant to Virginia Code Ann. § 15.2-3400.

RECITALS

WHEREAS, on September 28, 2022, the Town filed with the Commission on Local Government (the “Commission”) a Notice by the Town of Leesburg of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data (the “Notice”), pursuant to Virginia Code Ann. § 15.2-2907;

WHEREAS, the Parties entered into mediation to attempt to resolve their differences. As a result of such mediation, the Town and the County agree to resolve the Notice that is now pending before the Commission. Specifically, the Parties wish to provide for: (i) conversion of the existing proceedings into those for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400, (ii) the incorporation of certain areas into the Town, conditioned on the written consent of property owners in the areas to be so incorporated; (iii) certain utility issues; (iv) waiver of city status rights for period of limited duration; (v) waiver of annexation rights for a period of limited duration and agreement to reject any petition for citizen-initiated annexation for the same duration; and (vi) certain economic development incentives;

WHEREAS, the Parties have determined that it will be in the best interests of both the County and the Town to enter into this Agreement; and

WHEREAS, the Town Council approved the Agreement by resolution adopted on February ___, 2024, which resolution is attached hereto as Exhibit ___;

WHEREAS, the Board of Supervisors approved the Agreement by resolution adopted on February ___, 2024, which resolution is attached hereto as Exhibit ___; and

WHEREAS, the Parties wish to enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. Incorporation of Recitals. The foregoing Recitals are incorporated into the body of this Agreement as if the same were set forth in full below.

Section 2. Definitions. The Parties agree that the following words, terms, phrases, and abbreviations as used in this Agreement shall have the following defined meanings:

2.1. "Incorporation Area" means that portion of the commercial and industrial development area, commonly referred to as Compass Creek, that remains in the County. Subject to Section 4 of the Agreement, the Incorporation Area includes the following parcels: the At Home Property; the CC Outparcel Property; the Compass Creek Parkway; the Dulles Greenway Toll Road Property; the Microsoft Property; the STACK Property; the Vernal Pool; and the Walmart Property.

2.2. "At Home Property" means the approximately 10.4336 acre parcel of real property having County PIN xxx-xx-4515 owned by Realty Income Properties 18 LLC.

2.3. “CC Outparcel Property” means the approximately 1.5 acre parcel of real property having County PIN xxx-xx-0522 owned by CC Outparcel LC.

2.4. “Commission” means the Commission on Local Government.

2.5. “Compass Creek Parkway” means the approximately 15.2913 acre dedicated right of way for the Compass Creek Parkway.

2.6. “County” means the County of Loudoun, Virginia.

2.7. “Dulles Greenway Toll Road Property” means the approximately 1.34 acre portion of the parcel of real property, located in the County, having County PIN xxx-xx-8457 owned by Toll Road Investors Partnership II LP.

2.8. “Economic Development Incentive Payment” shall mean:

2.8.1. For the period beginning on the Effective Date of Incorporation and ending on the last day of that fiscal year (June 30), the sum \$5,479.45 for each day between the Effective Date of Incorporation and the last day of that fiscal year (June 30); and

2.8.2. For each fiscal year following the Effective Date of Incorporation, the sum of \$2,000,000, as increased by three (3) percent each fiscal year thereafter to account for inflation.

2.9. “Effective Date of Incorporation” means the effective date of the incorporation of the Incorporation Area as provided in Section 4.4 of this Agreement.

2.10. “In-Town Rates” means the “Inside Town Consumption Charge” established pursuant to Section 34.1-134 (water use charges) and Section 34.1-234 (sewer use charges) of the Town Code and set forth in Appendix B (Fee Schedule) to the Town Code.

2.11. “Loudoun Water” means the Loudoun County Sanitation Authority, created and organized under the provisions of the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*).

2.12. “Microsoft Property” means the approximately 323.3719 acre parcel of real property having County PIN xxx-xx-7431 owned by the Microsoft Corporation.

2.13. “Notice” means the Town’s Notice of Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data filed on September 28, 2022 with the Commission pursuant to Virginia Code Ann. §§ 15.2-2907(A), 15.2-3200, *et seq.*

2.14. “Out-of-Town Surcharge” means the “Outside Town Consumption Charge” established pursuant to Section 34.1-134 (water use charges) and Section 34.1-234 (sewer use charges) of the Town Code and set forth in Appendix B (Fee Schedule) to the Town Code.

2.15. “Special Court” means the special court appointed to consider and affirm this Agreement by the Supreme Court of Virginia pursuant to Virginia Code Ann. §§ 15.2-3000, 15.2-3400.

2.16. “STACK Property” means the approximately 28.943 acre portion of the parcel of real property, located in the County, having County PIN xxx-xx-2603 owned by SI NVA06A LLC.

2.17. “Town” means the Town of Leesburg, Virginia.

2.18. “Vernal Pool” means the approximately 1.3998 acre parcel of real property having County PIN xxx-xx-2469 owned by Leesburg Commercial LC.

2.19. “Walmart Property” means the approximately 20.5521 acre parcel of real property having County PIN xxx-xx-2601 owned by the Walmart Real Estate Business Trust.

Section 3. Purpose.

3.1. The Parties enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400 to resolve the annexation proceeding initiated by the Notice. The Parties agree that upon presenting the Commission with notice of this Agreement, the annexation proceedings before the Commission shall be converted to proceedings for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400(3) for a hearing and issuance of a report whether this Agreement is in the best interest of the Commonwealth.

3.2. The County and the Town shall make a joint public announcement concerning this Agreement, the conversion of the Commission proceeding, and the mutually satisfactory resolution of the Notice and presentation of this Agreement to the Commission in lieu of annexation.

Section 4. Town Boundaries.

4.1. **Incorporation.** Subject to Section 4.2, the Incorporation Area shall be incorporated into the Town boundaries on the Effective Date of Incorporation.

4.2. **Property Owner Consents.** The Town shall obtain a contemporaneous written consent to incorporation for each parcel of real property in the Incorporation Area. In the event that the Town does not obtain written consent for any property in the Incorporation Area, or a portion thereof, such property, or portion thereof, shall be excluded from the definition of "Incorporation Area" set forth in Section 2.1 of this Agreement. The County and the Board of Supervisors shall not advocate against any property owner in the Incorporation Area giving its written consent to incorporation.

4.3. **Survey.** The Town shall prepare, at its own expense, a survey plat showing the Incorporation Area to be incorporated into the Town boundaries by order of the Special Court. The Town shall submit and file the final survey plat of the Incorporation Area, as incorporated into the Town boundaries, with the Commission and the Special Court.

4.4. **Effective Date.** The incorporation of the Incorporation Area into the boundaries of the Town shall be effective December 31, 2024. If the Special Court has not entered an order affirming this Agreement on or prior to December 31, 2024, unless otherwise agreed in writing by the County and the Town, the incorporation of the Incorporation Area into the boundaries of the Town shall be effective thirty (30) days after the date of the Special Court’s entry of its order affirming this Agreement.

4.5. **Extension of Municipal Services.** Following the Effective Date of Incorporation, the Town shall extend its governmental services (including, for example, law enforcement, street maintenance, and zoning controls) to the Incorporation Area on the same basis and at the same level as such services now are or hereafter may be provided to areas within the Town’s current corporate limits where like conditions exist.

Section 5. Utilities.

5.1. **Town to Serve Compass Creek.** The Town shall provide water and sewer service to the Incorporation Area consistent with the policies and practices applied to areas within the existing Town boundaries.

5.2. **Microsoft Utilities.** In the event the Microsoft Corporation gives its written consent to incorporation and the Microsoft Property is incorporated into the Town boundaries, the Town shall, at the request of the Microsoft Corporation, allow future phases of development on the Microsoft Property to be served by Loudoun Water. For the purposes of this Agreement “future phase” means any development on the Microsoft Property subsequent to the data center described as “IAD05,” being the subject of County Plan Number STMP-2023-0004, or that due to the proposed use or redevelopment of the Microsoft Property would require the Town to provide utilities in excess of allocated capacity. Upon receipt of a request from the owner of the Microsoft

Property to receive water and/or sewer service from Loudoun Water for a future phase of development, and a commitment to serve from Loudoun Water, the Town and Town Council shall take all necessary steps to facilitate such service and shall adopt any zoning ordinance amendment, issue any special exception or special use permit, and grant any design and construction standard requirement waiver necessary to permit the same.

5.3. **Town Discretion.** Nothing in this Agreement shall be construed to alter, limit, or constrain the Town's discretion with respect to utility capacity and utility service decisions.

5.4. **Equal Service.**

5.4.1. Equal Rates and Fees. The Town shall charge the same rates, fees, and other charges to all utility customers of the same class, whether located within or outside the Town boundaries. Beginning on July 1 following the Effective Date of Incorporation, the Town shall charge all customers the In-Town Rates as adopted for that fiscal year.

5.4.2. Service; Reduction or Cessation of Service. The Town shall be obligated to provide any and all connected customers water and/or sanitary sewer services, whether within or outside the Town's boundaries, on an equal basis, subject to the Town's utility policies. Any reduction or cessation in water or sewer service for emergency conditions, will be applied on an equal basis to all customers, whether located within the Town or outside the Town.

5.4.3. Amendments. The Town shall adopt any amendments of ordinances, resolutions or policies necessary to effectuate the requirements of this Section 5.4.

5.5. **Limitations.** The provisions of Section 5.4, shall be effective for each fiscal year following the County's satisfaction of the Economic Development Incentive Payment pursuant to Section 6 of this Agreement.

Section 6. Economic Development Incentive Payment. Following the Effective Date of Incorporation, the County shall annually pay the Economic Development Incentive Payment to the Town on or before the last day of the fiscal year (June 30). In the event the County is delinquent in, or misses an Economic Development Incentive Payment, the Town shall give notice to the County under Section 10 of this Agreement and the County shall remit the Economic Development Incentive Payment to the Town within sixty (60) days of receipt of such notice.

Section 7. Limitation on City Status. The Town shall not Seek City Status for a period of twenty-five (25) years after the effective date of any legislation lifting the prohibition on the granting of new city charters as set forth in Virginia Code Ann. § 15.2-3201, or any successor statute. For purposes of this Agreement, “Seek City Status” shall mean the filing of a notice with the Commission to establish an independent city pursuant to Virginia Code Ann. § 15.2-2907(A) or any successor statute or similar legislation, or initiating a proceeding to transition to city status pursuant to Virginia Code Ann. §§ 15.2-3800, *et seq.*, or any successor statute or similar legislation. The Parties shall cooperate to actively oppose the passage of any legislation, specific or general, which would permit the Town to Seek City Status.

Section 8. Annexation and Boundary Adjustment.

8.1. Limitation on Adverse Annexations. The Town shall not, either directly or indirectly, file any annexation notice with the Commission pursuant to Virginia Code Ann. § 15.2-2907(A) or institute any court action for annexation against the County pursuant to Virginia Code Ann. § 15.2-3200, *et seq.*, or any successor provisions, seeking to annex any area of the County for twenty-five (25) years following the later of: (a) the Effective Date of Incorporation, or (b) the most recent Boundary Adjustment. For purposes of Section 8.1, the term “Boundary Adjustment” includes any change to the Town boundaries, except those: (i) of less than one (1) acre in size; or

(ii) for public improvement projects. The Town and the County may enter into a written agreement that any specific boundary adjustment shall not constitute a “Boundary Adjustment” and, therefore, not affect the twenty-five (25) year period provided in this Section. During the same period, the Town and Town Council agree to reject annexations initiated by citizen petition under Virginia Code Ann. § 15.2-3203(A) unless otherwise agreed by the Parties.

8.2. **Boundary Adjustment.** Nothing in this Agreement shall be interpreted to limit boundary adjustments by the Parties pursuant to Virginia Code Ann. § 15.2-3106 *et seq.*, provided, however, the landowner has given contemporaneous written consent to such boundary adjustment and such adjustment satisfies applicable policies, or is otherwise approved by the Parties. Both Parties are free to consent to or reject any future proposed boundary adjustment.

Section 9. Commission and Court Approval.

9.1. **Commission Review.** The Town and the County shall promptly initiate the steps required by Virginia Code Ann. § 15.2-3400 to obtain review of this Agreement by the Commission. The Parties shall cooperate in providing all information and documents required by the Commission.

9.2. **Court Approval.** Following issuance of the report of findings and recommendations by the Commission, the Town and the County shall initiate a proceeding to obtain Special Court affirmation and approval of this Agreement, or a modified agreement approved by the Parties, as provided by Virginia Code Ann. § 15.2-3400. The Parties agree that the Special Court’s approval of this Agreement, or a modified agreement approved by the Parties, shall constitute the Town’s withdrawal of the Notice, and no additional notification to the Commission shall be required.

9.3. **Cooperation.** The County and the Town shall cooperate and use their best respective efforts to obtain affirmation of this Agreement, including Commission review and Court approval, by December 31, 2024.

9.4. **Termination.** If the Special Court fails to approve and give full force and effect to this Agreement without modification, this Agreement shall terminate immediately, unless the Parties waive termination by mutually agreeing to the modifications requested by the Special Court in a written document, duly executed by the Parties' authorized representatives.

Section 10. Notices. Any notice provided under this Agreement shall be in writing sent to the person, address and email provided below, unless either Party provides advanced written notice to the other Party changing its contact information:

Town Manager
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176
kdentler@leesburgva.gov

County Administrator
County of Loudoun
1 Harrison Street, S.E.
Leesburg, Virginia 20175
tim.hemstreet@loudoun.gov

With a copy to:

Town Attorney
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176

County Attorney
Loudoun County
1 Harrison Street, S.E.
Leesburg, Virginia 20175

Section 11. Miscellaneous Provisions.

11.1. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties, and each of their future governing bodies, and any successor(s) thereto upon its approval by the Special Court.

11.2. **Counterparts/Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. This Agreement constitutes the entire understanding between the Parties.

11.3. **Court Enforcement.** The terms and conditions of this Agreement shall be enforceable, pursuant to Virginia Code Ann. § 15.2-3217, by the Special Court or any successor court appointed pursuant to Virginia Code Ann. §§ 15.2-3000 through 15.2-3004, or any successor statute.

11.4. **No Third-Party Beneficiaries.** The provisions of this Agreement are intended to benefit only the Parties to this Agreement. No part of this Agreement shall be construed to confer upon any other person or party the rights of a third-party beneficiary. No person not a party to this Agreement shall be empowered to seek the enforcement of the provisions of this Agreement.

11.5. **Attorneys' Fees.** Notwithstanding the provisions of Virginia Code Ann. § 15.2-3215, the Parties agree that the Town and the County shall each be responsible for paying their own attorneys' fees and other costs associated with the Notice, the preparation of this Agreement, and the submission of the Agreement to the Commission and the Special Court.

11.6. **Amendments.** This Agreement may be amended, modified, or supplemented, either in whole or in part, by mutual agreement of the County and the Town by a written document of equal formality and dignity, duly executed by the authorized representatives of the County and Town.

11.7. **Mediation.** No Party shall bring any legal action to enforce this Agreement without first submitting the dispute to non-binding mediation. Mediation shall be initiated by a demand for mediation. A third-party neutral shall act as mediator. If the Parties cannot agree on the mediator, McCammon Mediation Group, or its successor, shall appoint the mediator. Any mediation under

this Agreement shall be completed within ninety (90) days of the demand for mediation, absent the consent of the Parties.

Section 12. Effective Date. This Agreement shall be effective as of the date of execution by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officials.

TOWN OF LEESBURG, VIRGINIA AND
TOWN COUNCIL OF THE TOWN OF LEESBURG

Approved as to form:

By: _____

Town Attorney

Its: _____

Date: _____, 2024

COUNTY OF LOUDOUN, VIRGINIA
AND
BOARD OF SUPERVISORS OF LOUDOUN COUNTY

Approved as to form:

By: _____

County Attorney

Its: _____

Date: _____, 2024

Town Notice of VSA

Exhibit C

The Town of
Leesburg,
Virginia

PRESENTED: February 27, 2024

RESOLUTION NO. 2024-032

ADOPTED: February 27, 2024

A RESOLUTION: APPROVING THE TOWN OF LEESBURG ENTERING INTO A VOLUNTARY SETTLEMENT AGREEMENT OF ANNEXATION AND RELATED ISSUES WITH LOUDOUN COUNTY

WHEREAS, on September 28, 2022, the Town of Leesburg (the “Town” or “Leesburg”) notified the Commission on Local Government (the “Commission”), pursuant to Virginia Code Ann. § 15.2-2907(A), of its intention to petition the Circuit Court of Loudoun County for an order annexing to the Town approximately 402.8317 acres located in the Loudoun County (the “County” or “Loudoun”), commonly referred to as Compass Creek; and

WHEREAS, on July 7, 2023, the County filed with the Commission a Responsive Pleading opposing the Town’s annexation of Compass Creek; and

WHEREAS, on October 13, 2023, the Town filed a Reply in support of annexation; and

WHEREAS, the Commission set the matter for hearing on March 5-8, 2024; and

WHEREAS, on December 21, 2023, the County notified the Commission of its desire to attempt to negotiate an agreement through a mediation process with the Town on the Compass Creek annexation issues; and

WHEREAS, on January 5, 2024, the Commission approved the participation of Leesburg and Loudoun in a mediation process; and

WHEREAS, on January 10, 2024, the Town and the County participated in a mediation process and reached an agreement in principle on the annexation issues; and

A RESOLUTION: APPROVING THE TOWN OF LEESBURG ENTERING INTO A VOLUNTARY SETTLEMENT AGREEMENT OF ANNEXATION AND RELATED ISSUES WITH LOUDOUN COUNTY

WHEREAS, the Town and the County have agreed on the terms of a Voluntary Settlement Agreement pursuant to Virginia Code Ann. § 15.2-3400. A copy of the Voluntary Settlement Agreement is attached to this Resolution as **Exhibit A**; and

WHEREAS, the Voluntary Settlement Agreement is the product of years of negotiation between Leesburg and Loudoun. The Agreement addresses areas of concern to both Leesburg and Loudoun, and reflects compromises by all parties; and

WHEREAS, this Resolution states the Town's intention to present the Voluntary Settlement Agreement to the Commission and to adopt the Voluntary Settlement Agreement upon the completion of the Commission's review and issuance of a report. The Town will provide additional information through its Notice of Voluntary Settlement Agreement and other materials filed with the Commission, materials filed with the special annexation court, and materials presented at public hearings and proceedings.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg, Virginia as follows:

SECTION I. This Council adopts the following statement of its plan to adopt the Voluntary Settlement Agreement to resolve the Compass Creek annexation issues:

1. Leesburg intends to pursue the approval of the Voluntary Settlement Agreement by the Commission and the special annexation court, pursuant to Virginia Code Ann. §§ 15.2-2907(A) and 15.2-3400.
2. The Town Manager is authorized and directed to make such changes to the Agreement as may be necessary, appropriate, consistent with the term sheet, and approved as to form by the Town Attorney, and to sign the same on behalf of the Council.

A RESOLUTION: APPROVING THE TOWN OF LEESBURG ENTERING INTO A VOLUNTARY SETTLEMENT AGREEMENT OF ANNEXATION AND RELATED ISSUES WITH LOUDOUN COUNTY

3. Leesburg will give notice to the Commission requesting that it review the Voluntary Settlement Agreement and convert the pending annexation matter to the review of the Voluntary Settlement Agreement. This notice will include: (i) notice to the County; (ii) submission of information in support of the Voluntary Settlement Agreement; (iii) converting the pending annexation proceeding to the review of the Voluntary Settlement Agreement; (iv) notice to each local government that is contiguous to Leesburg or Loudoun or with which either shares any function, revenue, or tax source; (v) proceedings before the Commission, culminating in a written report prepared by the Commission stating its findings of fact and recommendations on the Voluntary Settlement Agreement. This process is required before the Town may file a court action seeking approval of the Voluntary Settlement Agreement.

4. Leesburg intends to adopt the Voluntary Settlement Agreement subsequent to the Commission's review and issuance of its report.

5. Leesburg's principal contact with the Commission is:

Gregory J. Haley
GENTRY LOCKE
10 Franklin Road, SE, Suite 900
P.O. Box 40013
Roanoke, Virginia 24022
Telephone: 540.983.9300
Facsimile: 540.983.9400
Email: haley@gentrylocke.com

Mr. Haley serves as counsel to Leesburg.

6. Following the Commission's report, Leesburg will petition the Circuit Court of Loudoun County for an order affirming the Voluntary Settlement Agreement, pursuant to Virginia Code Ann. § 15.2-3400. This petition will be heard by a special annexation court appointed by the Supreme Court of Virginia. The special annexation court will hold a hearing

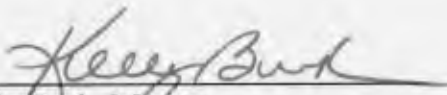
A RESOLUTION: APPROVING THE TOWN OF LEESBURG ENTERING INTO A VOLUNTARY SETTLEMENT AGREEMENT OF ANNEXATION AND RELATED ISSUES WITH LOUDOUN COUNTY

on the Voluntary Settlement Agreement and shall affirm the Agreement unless the court finds either that the Agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of Leesburg and Loudoun.

7. The Town recognizes that it will incur costs and expenses in the Voluntary Settlement Agreement proceedings, but it anticipates those costs will be reasonable when weighed against the benefits of that agreement.

8. Leesburg believes the Voluntary Settlement Agreement benefits the Town, the County, and Compass Creek property owners.

PASSED this 27th day of February 2024.


Kelly Burk, Mayor
Town of Leesburg

ATTEST:


Clerk of Council

**VOLUNTARY SETTLEMENT AGREEMENT
OF ANNEXATION AND RELATED ISSUES
BETWEEN THE TOWN OF LEESBURG
AND LOUDOUN COUNTY**

This Agreement (the “Agreement”) is made this ___ day of February, 2024, by and between the Town of Leesburg, Virginia (the “Town”), by and through the Town Council of the Town of Leesburg (the “Town Council”), and the County of Loudoun, Virginia (the “County”), by and through the Loudoun County Board of Supervisors (the “Board of Supervisors”) (collectively, the “Parties”), pursuant to Virginia Code Ann. § 15.2-3400.

RECITALS

WHEREAS, on September 28, 2022, the Town filed with the Commission on Local Government (the “Commission”) a Notice by the Town of Leesburg of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data (the “Notice”), pursuant to Virginia Code Ann. § 15.2-2907;

WHEREAS, the Parties entered into mediation to attempt to resolve their differences. As a result of such mediation, the Town and the County agree to resolve the Notice that is now pending before the Commission. Specifically, the Parties wish to provide for: (i) conversion of the existing proceedings into those for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400; (ii) the annexation of certain areas into the Town, conditioned on the written consent of property owners in the area to be annexed; (iii) certain utility issues; (iv) waiver of city status rights for a period of limited duration; (v) waiver of annexation rights for a period of limited duration, and agreement to reject any petition for citizen-initiated annexation for the same duration; and (vi) certain economic development incentives;

WHEREAS, the Parties have determined that it will be in the best interests of both the County and the Town to enter into this Agreement; and

WHEREAS, the Town Council approved this Agreement by resolution adopted on February 27, 2024, a copy of which is attached hereto as **Exhibit A**;

WHEREAS, the Board of Supervisors approved this Agreement by resolution adopted on February 6, 2024, a copy of which is attached hereto as **Exhibit B**; and

WHEREAS, the Parties wish to enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. Incorporation of Recitals. The foregoing Recitals are incorporated into the body of this Agreement as if the same were set forth in full below.

Section 2. Definitions. The Parties agree that the following words, terms, phrases, and abbreviations as used in this Agreement shall have the following defined meanings:

2.1. “Annexation Area” means that portion of the commercial and industrial development area, commonly referred to as Compass Creek, that remains in the County. Subject to Section 4 of this Agreement, the Annexation Area includes the following parcels: the At Home Property; the CC Outparcel Property; the Compass Creek Parkway; the Dulles Greenway Toll Road Property; the Microsoft Property; the STACK Property; the Vernal Pool; and the Walmart Property.

2.2. “At Home Property” means the approximately 10.4336 acre parcel of real property having County PIN 234-29-4515 owned by Realty Income Properties 18 LLC.

2.3. “CC Outparcel Property” means the approximately 1.5 acre parcel of real property having County PIN 234-29-0522 owned by CC Outparcel LC.

2.4. “Commission” means the Commission on Local Government.

2.5. “Compass Creek Parkway” means the approximately 15.2913 acre dedicated right of way for the Compass Creek Parkway.

2.6. “County” means the County of Loudoun, Virginia.

2.7. “Dulles Greenway Toll Road Property” means the approximately 1.34 acre portion of the parcel of real property, located in the County, having County PIN 234-37-8457 owned by Toll Road Investors Partnership II LP.

2.8. “Economic Development Incentive Payment” shall mean the sum of \$2,000,000, as increased by three (3) percent each fiscal year thereafter to account for inflation.

2.9. “Effective Date of Annexation” means the effective date of the annexation of the Annexation Area as provided in Section 4.4 of this Agreement.

2.10. “In-Town Rates” means the rates and charges established for inside town utility service pursuant to Article I, Division 2 and Article II, Division 2 of Chapter 34.1 of the Town Code, and successor sections, and set forth in Appendix B (Fee Schedule) to the Town Code.

2.11. “Loudoun Water” means the Loudoun County Sanitation Authority, created and organized under the provisions of the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*).

2.12. “Microsoft Property” means the approximately 323.3719 acre parcel of real property having County PIN 235-29-7431 owned by the Microsoft Corporation.

2.13. “Notice” means the Town’s Notice of Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data filed on September 28, 2022 with the Commission pursuant to Virginia Code Ann. §§ 15.2-2907(A), 15.2-3200, *et seq.*

2.14. “Special Court” means the special court appointed to consider and affirm this Agreement by the Supreme Court of Virginia pursuant to Virginia Code Ann. §§ 15.2-3000, 15.2-3400.

2.15. “STACK Property” means the approximately 28.943 acre portion of the parcel of real property, located in the County, having County PIN 234-38-2603 owned by SI NVA06A LLC.

2.16. “Town” means the Town of Leesburg, Virginia.

2.17. “Vernal Pool” means the approximately 1.3998 acre parcel of real property having County PIN 234-19-2469 owned by Leesburg Commercial LC.

2.18. “Walmart Property” means the approximately 20.5521 acre parcel of real property having County PIN 234-39-2601 owned by the Walmart Real Estate Business Trust.

Section 3. Purpose.

3.1. The Parties enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400 to resolve the annexation proceeding initiated by the Notice. The Parties agree that upon presenting the Commission with notice of this Agreement, the annexation proceedings before the Commission shall be converted to proceedings for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400(3).

3.2. The County and the Town shall make a joint public announcement concerning this Agreement, the conversion of the Commission proceeding, the mutually satisfactory resolution of the Notice, and the presentation of this Agreement to the Commission.

Section 4. Town Boundaries.

4.1. **Annexation.** Subject to Section 4.2, the Annexation Area shall be annexed into the Town boundaries on the Effective Date of Annexation.

4.2. **Property Owner Consents.** The Town shall obtain the written consent of all property owners prior to the property being annexed into the Town of Leesburg. In the event that written consent to annexation is not obtained by the Town, such property, as applicable, shall be excluded from the definition of “Annexation Area” set forth in Section 2.1 of this Agreement. The County and the Board of Supervisors shall not advocate against any property owner in the Annexation Area giving its written consent to annexation. The Town is required to reasonably perform and cooperate with property owners providing consent letters to meet the conditions stated in the consent letters referenced in the Notice.

4.3. **Survey.** The Town shall prepare, at its own expense, a metes and bounds description of, and survey plat showing, the Annexation Area as annexed into the Town boundaries by order of the Special Court. The Town shall submit and file the final metes and bounds description and survey plat of the Annexation Area, as annexed into the Town boundaries, with the Commission and the Special Court.

4.4. **Effective Date.** The annexation of the Annexation Area into the boundaries of the Town shall be effective December 31, 2024. If the Special Court has not entered an order affirming this Agreement on or prior to December 31, 2024, unless otherwise agreed in writing by the County and the Town, the annexation of the Annexation Area into the boundaries of the Town shall be effective thirty (30) days after the date of the Special Court’s entry of its order affirming this Agreement.

4.5. **Extension of Municipal Services.** Following the Effective Date of Annexation, the Town shall extend its governmental services (including, for example, law enforcement, street maintenance, and zoning controls) to the Annexation Area on the same basis and at the same level as such services now are or hereafter may be provided to areas within the Town’s current corporate limits where like conditions exist.

Section 5. Utilities.

5.1. **Town to Serve Compass Creek.** The Town shall provide water and sewer service to the Annexation Area consistent with the policies and practices applied to areas within the existing Town boundaries.

5.2. **Microsoft Utilities.** In the event the Microsoft Corporation gives its written consent to annexation and the Microsoft Property is annexed into the Town boundaries, the Town shall, at the request of the Microsoft Corporation, allow future phases of development on the Microsoft Property to be served by Loudoun Water. For the purposes of this Agreement “future phase” means any development or redevelopment on the Microsoft Property subsequent to the data center described as “IAD05,” being the subject of County Plan Number STMP-2023-0004. Upon receipt of a request from the owner of the Microsoft Property to receive water and/or sewer service from Loudoun Water for a future phase of development, and a commitment to serve from Loudoun Water, the Town and Town Council shall take all steps necessary to facilitate such service.

5.3. **Town Discretion.** Nothing in this Agreement shall be construed to alter, limit, or constrain the Town’s discretion with respect to utility capacity and utility service decisions.

5.4. **Equal Service.**

5.4.1. Equal Rates and Fees. Beginning on July 1 following the Effective Date of Annexation, and subject to Section 5.5 of this Agreement, the Town shall charge all water and sewer customers the In-Town Rates as adopted for that fiscal year, whether located within or outside the Town boundaries.

5.4.2. Service; Reduction or Cessation of Service. The Town shall be obligated to provide any and all connected customers water and/or sanitary sewer services, whether within or outside the Town's boundaries, on an equal basis, subject to the Town's utility policies.

5.4.3. Amendments. The Town shall adopt any amendments of ordinances, resolutions, or policies necessary to effectuate the requirements of this Section 5.4.

5.5. **Limitations**. The provisions of Section 5.4 shall be effective for each fiscal year in which the County has satisfied the Economic Development Incentive Payment requirement in Section 6 of this Agreement.

Section 6. Economic Development Incentive Payment. Following the Effective Date of Annexation, the County shall annually pay the Economic Development Incentive Payment to the Town on or before the first day of the fiscal year (July 1).

Section 7. Limitation on City Status. The Town shall not Seek City Status for a period of twenty-five (25) years after the effective date of any legislation lifting the prohibition on the granting of new city charters as set forth in Virginia Code Ann. § 15.2-3201, or any successor statute. For purposes of this Agreement, "Seek City Status" shall mean the filing of a notice with the Commission to establish an independent city pursuant to Virginia Code Ann. § 15.2-2907(A) or any successor statute or similar legislation, or initiating a proceeding to transition to city status pursuant to Virginia Code Ann. §§ 15.2-3800, *et seq.*, or any successor statute or similar legislation.

Section 8. Annexation and Boundary Adjustment.

8.1. **Limitation on Adverse Annexations.** The Town shall not, either directly or indirectly, file any annexation notice with the Commission pursuant to Virginia Code Ann. § 15.2-2907(A) or institute any court action for annexation against the County pursuant to Virginia Code Ann. § 15.2-3200, *et. seq.*, or any successor provisions, seeking to annex any area of the County for twenty-five (25) years following the later of: (a) the Effective Date of Annexation, or (b) the most recent Boundary Adjustment. For purposes of Section 8.1, the term “Boundary Adjustment” includes any change to the Town boundaries, except those: (i) of less than one (1) acre in size; or (ii) for public improvement projects. The Town and the County may enter into a written agreement that any specific boundary adjustment shall not constitute a “Boundary Adjustment” and, therefore, not affect the twenty-five (25) year period provided in this Section. During the same period, the Town and Town Council agree to reject annexations initiated by citizen petition under Virginia Code Ann. § 15.2-3203(A), unless otherwise agreed by the Parties.

8.2. **Boundary Adjustment.** Nothing in this Agreement shall be interpreted to limit boundary adjustments by the Parties pursuant to Virginia Code Ann. § 15.2-3106, *et seq.*, provided, however, the landowner has given contemporaneous written consent to such boundary adjustment and such adjustment satisfies applicable policies, or is otherwise approved by the Parties. Both Parties are free to consent to or reject any future proposed boundary adjustment.

Section 9. Commission and Court Approval.

9.1. **Commission Review.** The Town and the County shall promptly initiate the steps required by Virginia Code Ann. § 15.2-3400 to obtain review of this Agreement by the Commission. The Parties shall cooperate in providing all information and documents required by the Commission.

9.2. **Court Approval.** Following issuance of the report of findings and recommendations by the Commission, the Town and the County shall initiate a proceeding to obtain Special Court affirmation and approval of this Agreement (as may be modified by mutual written agreement of the Parties), as provided by Virginia Code Ann. § 15.2-3400. The Parties agree that the Special Court’s entry of an Order approving of this Agreement (as may be modified by mutual written agreement of the Parties) shall constitute the Town’s withdrawal of the Notice, and no additional notification to the Commission shall be required.

9.3. **Cooperation.** The County and the Town shall cooperate and use their best respective efforts to obtain affirmation of this Agreement, including Commission review and Court approval, by December 31, 2024.

9.4. **Termination.** If the Special Court fails to approve and give full force and effect to this Agreement without modification, this Agreement shall terminate immediately, unless the Parties waive termination by mutually agreeing to the modifications requested by the Special Court in a written document, duly executed by the Parties’ authorized representatives.

Section 10. Notices. Any notice provided under this Agreement shall be in writing sent to the person, address and email provided below, unless either Party provides advanced written notice to the other Party changing its contact information:

Town Manager
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176
kdentler@leesburgva.gov

County Administrator
County of Loudoun
1 Harrison Street, S.E.
Leesburg, Virginia 20175
tim.hemstreet@loudoun.gov

With a copy to:

Town Attorney
Town of Leesburg
25 West Market Street

County Attorney
Loudoun County
1 Harrison Street, S.E.

Leesburg, Virginia 20176

Leesburg, Virginia 20175

Section 11. Miscellaneous Provisions.

11.1. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties, and each of their future governing bodies, and any successor(s) thereto upon its approval by the Special Court.

11.2. **Counterparts/Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. This Agreement constitutes the entire understanding between the Parties.

11.3. **Court Enforcement.** The terms and conditions of this Agreement shall be enforceable, pursuant to Virginia Code Ann. § 15.2-3217, by the Special Court or any successor court appointed pursuant to Virginia Code Ann. §§ 15.2-3000 through 15.2-3004, or any successor statute.

11.4. **No Third-Party Beneficiaries.** The provisions of this Agreement are intended to benefit only the Parties to this Agreement. No part of this Agreement shall be construed to confer upon any other person or party the rights of a third-party beneficiary. No person not a party to this Agreement shall be empowered to seek the enforcement of the provisions of this Agreement.

11.5. **Attorneys' Fees.** Notwithstanding the provisions of Virginia Code Ann. § 15.2-3215, the Parties agree that the Town and the County shall each be responsible for paying their own attorneys' fees and other costs associated with the Notice, the preparation of this Agreement, and the submission of the Agreement to the Commission and the Special Court.

11.6. **Amendments.** This Agreement may be amended, modified, or supplemented, either in whole or in part, by mutual agreement of the County and the Town by a written document

of equal formality and dignity, duly executed by the authorized representatives of the County and Town.

11.7. **Mediation.** No Party shall bring any legal action to enforce this Agreement without first submitting the dispute to non-binding mediation. Mediation shall be initiated by a demand for mediation. A third-party neutral shall act as mediator. If the Parties cannot agree on the mediator, McCammon Mediation Group, or its successor, shall appoint the mediator. Any mediation under this Agreement shall be completed within ninety (90) days of the demand for mediation, absent the consent of the Parties.

Section 12. Effective Date. This Agreement shall be effective upon the date of entry of the order of the Special Court affirming this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officials.

TOWN OF LEESBURG and
TOWN COUNCIL OF THE TOWN
OF LEESBURG

Approved as to form:

By: _____

Town Attorney

Its: _____

Date: _____, 2024

COUNTY OF LOUDOUN and
BOARD OF SUPERVISORS OF
LOUDOUN COUNTY

Approved as to form:

By: _____

County Attorney

Its: _____

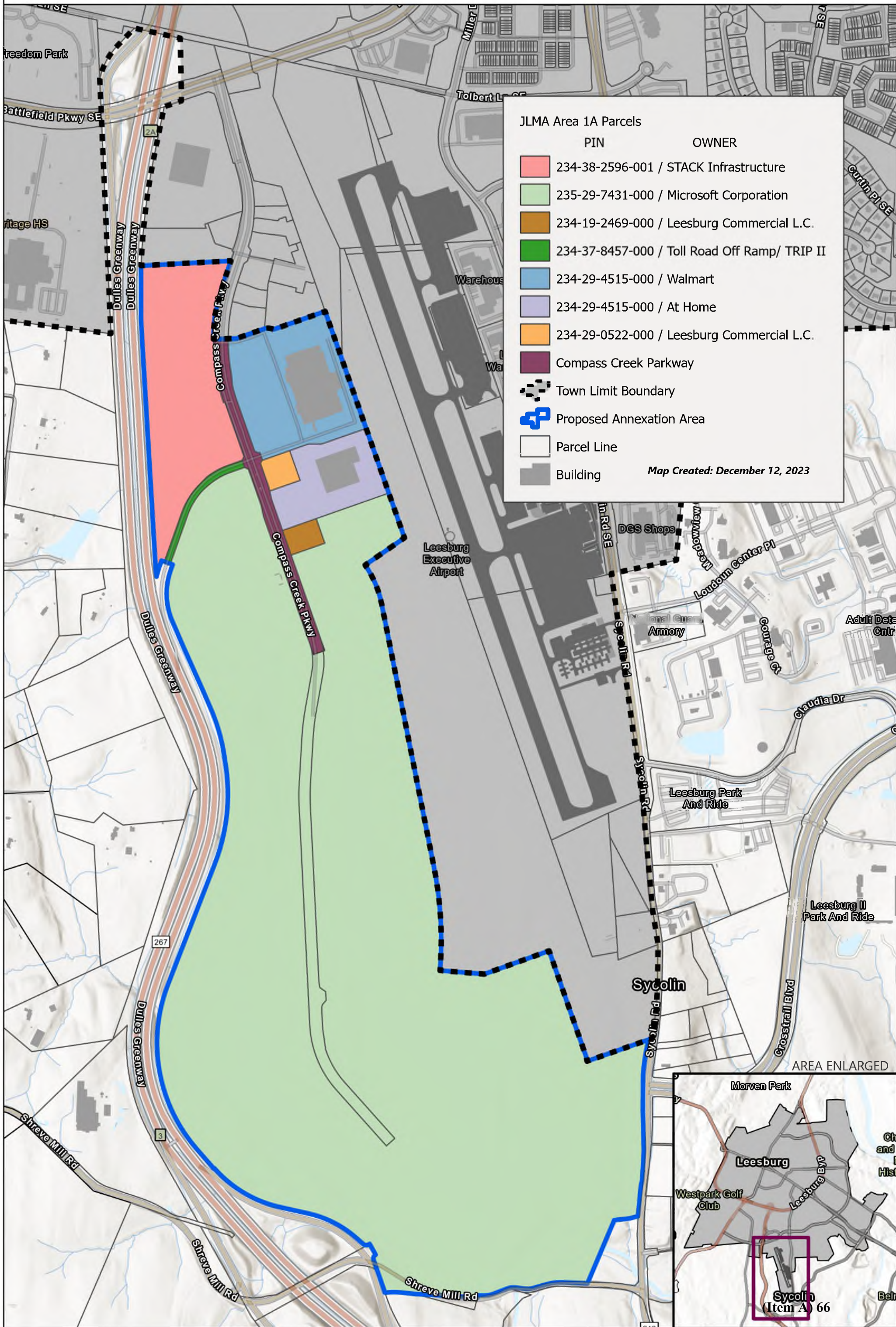
Date: _____, 2024

Town Notice of VSA

Exhibit D



JLMA Area 1A: Proposed Annexation Area

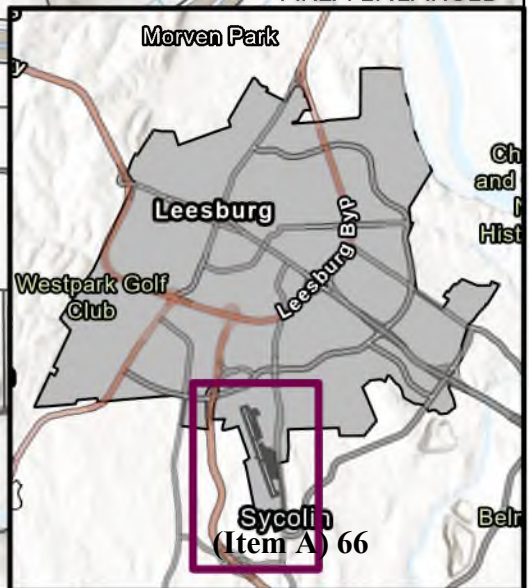


JLMA Area 1A Parcels

PIN	OWNER
234-38-2596-001	STACK Infrastructure
235-29-7431-000	Microsoft Corporation
234-19-2469-000	Leesburg Commercial L.C.
234-37-8457-000	Toll Road Off Ramp/ TRIP II
234-29-4515-000	Walmart
234-29-4515-000	At Home
234-29-0522-000	Leesburg Commercial L.C.
	Compass Creek Parkway

- Town Limit Boundary
- Proposed Annexation Area
- Parcel Line
- Building

Map Created: December 12, 2023



Town Notice of VSA

Exhibit E

Exhibit E: Localities Notified and Annotated List of Documents, Exhibits and Other Materials

Pursuant to 1 Va. Admin. Code § 50-20-230(A, C), Leesburg, concurrently with Loudoun County, provides the following list of localities that are adjacent to the Town of Leesburg, or share functions, revenue, or tax sources with the Town of Leesburg, that have been provided with a copy of this Notice, along with an annotated list of documents, exhibits, and other material submitted to the Commission:

Loudon County

Tim Hemstreet
County Administrator
1 Harrison Street, 5th Floor
P.O. Box 7000
Leesburg, Virginia 20177
Telephone: 703.777.0200
Email: coadmin@loudon.gov

Phyllis J. Randall
Board of Supervisors, Chair At-Large
P.O. Box 7000
Leesburg, Virginia 20177
Telephone: 703.777.0204
Email: Phyllis.Randall@loudoun.gov

Leo Rogers
County Attorney
1 Harrison Street
P.O. Box 7000
Leesburg, Virginia 20177
Telephone: 703.777.0307
Email: attorney@loudon.gov

Arlington County

Mark Schwartz
County Manager
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201
Telephone: 703.228.3120
Email: countymanager@arlingtonva.us

Libby Garvey
Board of Supervisors, Chair
2100 Clarendon Boulevard, Suite 300
Arlington, Virginia 22201
Telephone: 703.228.3130
Email: countyboard@arlingtonva.us

MinhChau Corr
County Attorney
2100 Clarendon Boulevard, Suite 403
Arlington, Virginia 22201
Telephone: 703.228.3100
Email: coa@arlingtonva.us

Fairfax County

Bryan Hill
County Executive
12000 Government Center Parkway
Fairfax, Virginia 22035
Telephone: 703.324.3151
Email: bryan.hill@fairfaxcounty.gov

Jeffrey C. McKay
Board of Supervisors, Chairman
12000 Government Center Parkway
Fairfax, Virginia 22035
Telephone: 703.324.3151
Email: chairman@fairfaxcounty.gov

Steve Descano
County Attorney
12000 Government Center Parkway
Fairfax, Virginia 22035
Telephone: 703.324.2421

Prince William County

Christopher Shorter
Acting County Executive
1 County Complex Court
Prince William, Virginia 22192
Telephone: 703.792.6600
Email: communications@pwcgov.org

Deshundra Jefferson
Board of Supervisors, Chair-at-Large
1 County Complex Court
Prince William, Virginia 22192
Telephone: 703.792.4640
Email: chair@pwco.org

Michelle R. Robl
County Attorney
1 County Complex Court, Suite 240
Prince William, Virginia 22192
Telephone: 703.792.6620

City of Alexandria

James F. Parajon
City Manager
301 King Street
P.O. Box 178
Alexandria, Virginia 22313
Telephone: 703.746.4311

Justin Wilson
Mayor
301 King Street
P.O. Box 178
Alexandria, Virginia 22313
Telephone: 703.746.4311
Email: justin.wilson@alexandriava.gov

Alexandria Joanna Anderson
City Attorney
301 King Street, Suite 1300
P.O. Box 178
Alexandria, Virginia 22313
Telephone: 703.746.3750

City of Fairfax

Robert A. Stalzer
City Manager
10455 Armstrong Street, Room 316
Fairfax, Virginia 22030
Telephone: 703.385.7850
Email: Rob.Stalzer@fairfaxva.gov

Catherine S. Reed
Mayor
10455 Armstrong Street
Fairfax, Virginia 22030
Telephone: 703.385.7850
Email: Catherine.Read@fairfaxva.gov

City of Falls Church

Wyatt Shields
City Manager
300 Park Avenue, Suite 203 East
Falls Church, Virginia 22046
Telephone: 703.248.5004
Email: city-manager@fallschurchva.gov

Letty Hardi
Mayor
300 Park Avenue, Suite 203 East
Falls Church, Virginia 22046
Telephone: 703.248.5014
Email: lhardi@fallschurchva.gov

Sally Gillette
City Attorney
300 Park Avenue, Suite 203 East
Falls Church, Virginia 22046
Telephone: 703.248.5010
Email: city-attorney@fallschurchva.gov

City of Manassas

W. Patrick Pate
City Manager
9027 Center Street
Manassas, Virginia 20110
Telephone: 703.257.8212
Email: citymanager@ci.manassas.va.us

Michelle David-Younger
Mayor
9027 Center Street, Suite 101
Manassas, Virginia 20110
Telephone: 571.206.8433
Email: mdavis-younger@manassasva.gov

Stephen Craig Brown
City Attorney
9027 Center Street
Manassas, Virginia 20110
Telephone: 703.257.8304
Email: cbrown@manassasva.gov

City of Manassas Park

Laszlo Palko
City Manager
1 Park Center Court
Manassas Park, Virginia 20111
Telephone: 703.361.2248

Jeanette Rishell
Mayor
1 Park Center Court
Manassas Park, Virginia 20111
Telephone: 703.401.0498
Email: j.rishell@manassasparkva.gov

Dean Crowhurst
City Attorney
1 Park Center Court
Manassas Park, Virginia 20111
Telephone: 703.335.8800

Town of Dumfries

Tangela Innis
Town Manager
17739 Main Street, Suite 200
Dumfries, Virginia 22026
Telephone: 703.221.3400

Derrick R. Wood
Mayor
17739 Main Street, Suite 200
Dumfries, Virginia 22026
Telephone: 703.221.3400
Email: hondwood@dumfriesva.gov

Sandra Robinson
Town Attorney
17739 Main Street, Suite 200
Dumfries, Virginia 22026
Telephone: 703.221.3400
Email: townattorney@dumfriesva.gov

Town of Herndon

Bill Ashton
Town Manager
777 Lynn Street
Herndon, Virginia 20170
Telephone: 703.787.7368
Email: town.manager@herndon-va.gov

Sheila A. Olem
Mayor
777 Lynn Street
Herndon, Virginia 20170
Telephone: 703.435.6805
Email: mayor.olem@herndon-va.gov

Lesa J. Yeatts
Town Attorney
777 Lynn Street
Herndon, Virginia 20170
Telephone: 703.787.7370
Email: town.attorney@herndon-va.gov

Town of Purcellville

Rick Bremseth
Town Manager
221 South Nursery Avenue
Purcellville, Virginia 20132
Telephone: 540.338.7421

Stanley J Milan, Sr
Mayor
221 South Nursery Avenue
Purcellville, Virginia 20132
Telephone: 540.338.7421
Email: kfraser@purcellvilleva.gov

Town of Vienna

Mercury T. Payton
Town Manager
127 Center Street South
Vienna, Virginia 22180
Telephone: 703.255.6370
Email: manager@viennava.gov

Linda J. Colbert
Mayor
127 Center Street South
Vienna, Virginia 22180
Telephone: 703.255.6304
Email: mayor@viennava.gov

Steven D. Briglia
Town Attorney
127 Center Street South
Vienna, Virginia 22180
Telephone: 703.255.6305
Email: sbriglia@viennava.gov

Town of Round Hill

Melissa Hynes
Town Administrator
23 Main Street
Round Hill, VA 20141
Telephone: 540.338.7878

Scott Ramsey
Mayor
23 Main Street
Round Hill, VA 20141
Telephone: 540.338.7878

Maureen Gilmore
Town Attorney
23 Main Street
Round Hill, VA 20141
Telephone: 540.338.7878

Town of Middleburg

Danny Davis
Town Manager
10 W. Marshall Street
Middleburg, Virginia 20117
Telephone: 540.687.5152
Email: ddavis@middleburgva.gov

Trowbridge Littleton
Mayor
10 W. Marshall Street
Middleburg, Virginia 20117
Telephone: 540.687.5152

Martin R. Crim
Town Attorney
10 W. Marshall Street
Middleburg, VA 20117
Telephone: 540.687.5152

Town of Lovettsville

Jason Cournoyer
Town Manager
6 East Pennsylvania Avenue
Lovettsville, Virginia 20180
Telephone: 540.755.3000
Email: townmanager@lovettsvilleva.gov

Christopher M. Hornbaker
Mayor
6 East Pennsylvania Avenue
Lovettsville, Virginia 20180
Telephone: 540.822.5788
Email: chornbaker@lovettsvilleva.gov

Matthew Bass
Town Attorney
6 East Pennsylvania Avenue
Lovettsville, Virginia 20180
Telephone: 540.822.5788

Town of Hillsboro

Roger Vance
Mayor
37098 Charles Town Pike
Hillsboro, Virginia 20132
Telephone: 540.486.8001
Email: mayorvance@hillsborova.gov

Town Attorney
37098 Charles Town Pike
Hillsboro, VA 20132
Telephone: 703.777.6808

Town of Hamilton

Kenneth C. Wine
Mayor
53 E. Colonial Highway
Hamilton, Virginia 20158
Telephone: 540.338.2811
Email: mayor@hamiltonva.gov

Maureen Gilmore
Town Attorney
53 E. Colonial Highway
Hamilton, Virginia 20158
Telephone: 540.338.2811
Email: townattorney@hamiltonva.gov

Section XVII: Annotated List of Documents, Exhibits and Other Material

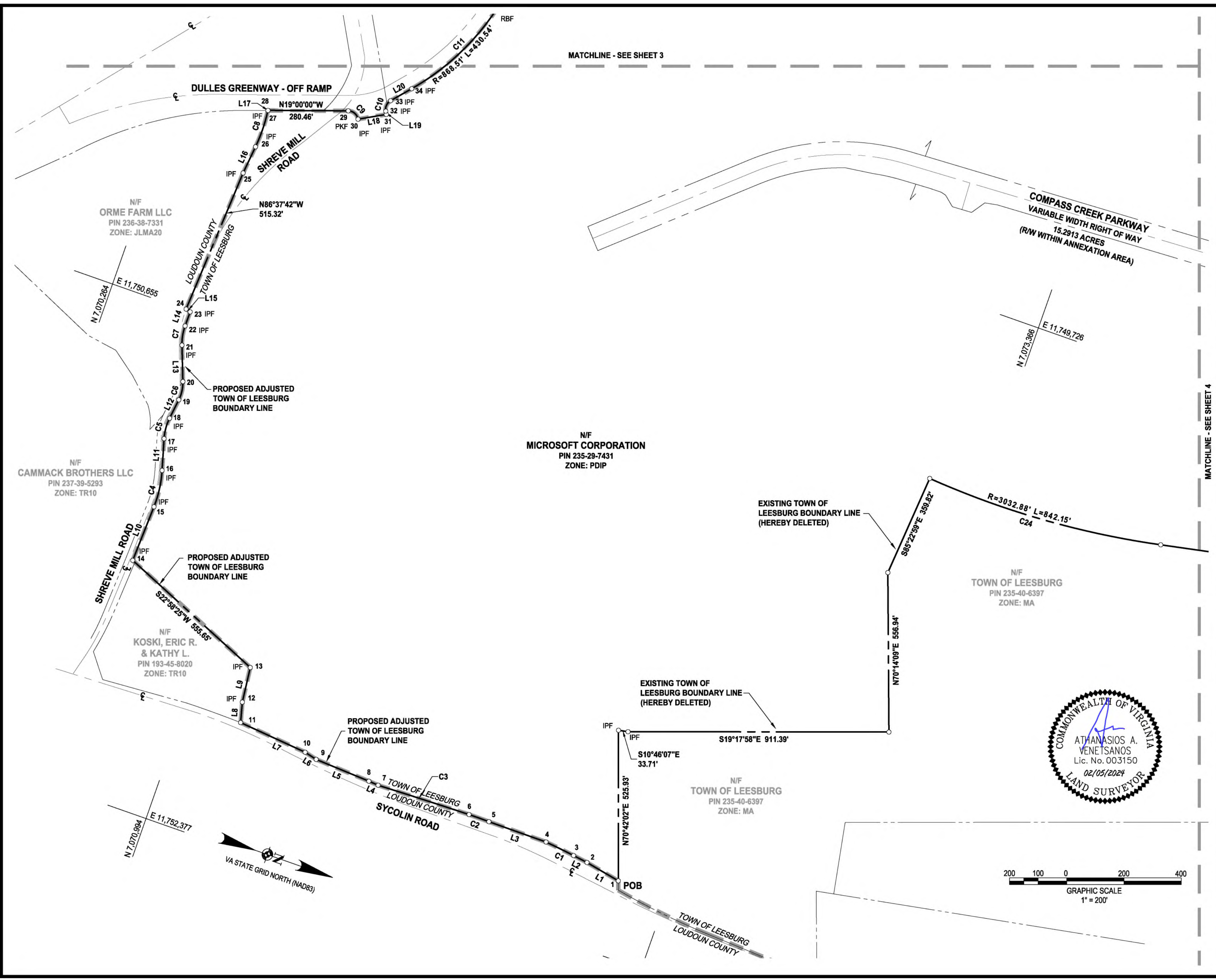
Pursuant to 1 Va. Admin. Code § 50-20-230(C), Leesburg provides the following annotated list of all documents, exhibits, or other material submitted to the Commission in connection with the Notice by the Town of Leesburg of a Voluntary Settlement Agreement with Loudoun County and Motion to Convert Proceedings:

Introduction	Attaching copy of Voluntary Settlement Agreement and overview of the best interests of the Town, the County, the affected property owners, and the Commonwealth.
Procedural History	Overview of proceedings before Commission, mediation, and locality resolutions approving the Voluntary Settlement Agreement.
Overview of Voluntary Settlement Agreement	Summary of the Voluntary Settlement Agreement, and incorporation of documents, exhibits, data, and other materials set forth in the Town’s September 28, 2022 Notice and October 13, 2023 Reply.
Annexation	Summary of annexation provisions of Voluntary Settlement Agreement.
Utilities	Summary of utility provisions of Voluntary Settlement Agreement, including data relating to Town’s water capacity.
Financial Impact of Annexation	Summary of financial impact of Voluntary Settlement Agreement, including data relating to ten year estimated revenue from Annexation Area.
Limitation on City Status and Future Annexations	Summary of provisions in Voluntary Settlement Agreement relating to limitation on Town seeking city status and future adverse annexations.
Commission and Special Court Approval	Summary of approval provisions of Voluntary Settlement Agreement

Exhibit A	Voluntary Settlement Agreement of Annexation and Related Issues Between the Town of Leesburg and Loudoun County
Exhibit B	Resolution of the Board of Supervisors of Loudoun County Approving the County of Loudoun Entering into a Voluntary Settlement of Annexation and Related Issues with the Town of Leesburg. February 6, 2024
Exhibit C	Resolution of the Council of the Town of Leesburg Approving the Town of Leesburg Entering into a Voluntary Settlement Agreement of Annexation and Related Issues with Loudoun County. February 27, 2024
Exhibit D	Map of Annexation Area
Exhibit E	List of Localities Notified and Annotated List of Documents, Exhibits and Other Materials
Exhibit F	Survey Plat of Annexation Area
Exhibit G	Metes and Bounds Description

Town Notice of VSA

Exhibit F



MATCHLINE - SEE SHEET 3

MATCHLINE - SEE SHEET 4



PH: 703.777.2755
 www.imegcorp.com
 50 CATOCTIN CIRCLE NE
 SUITE 210
 LEESBURG, VA 20176
 christopher consultants, ltd. now IMEG Corp.

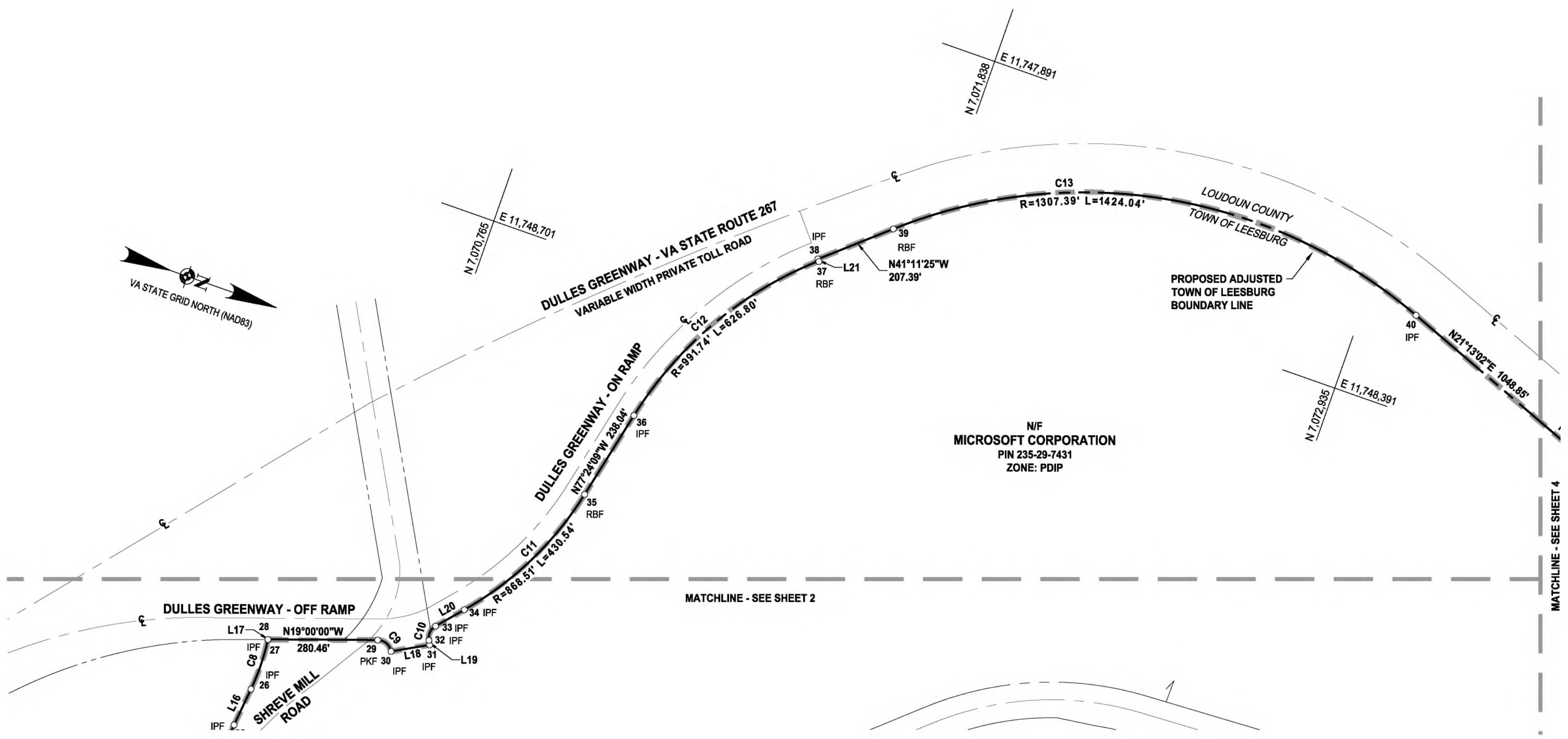
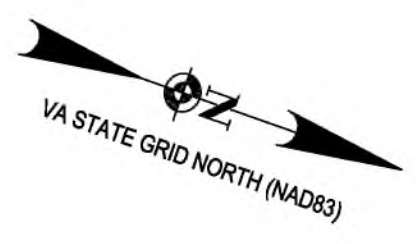
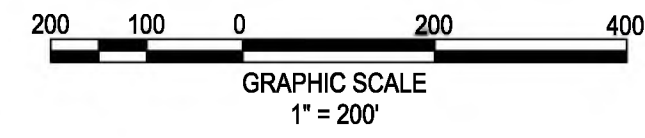
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 COMPASS CREEK ANNEXATION AREA**

LOUDOUN COUNTY, VIRGINIA

PROJ: 18192.019
 DATE: 08/12/22
 DRAWN: DAS
 CHECKED: AAV
 SHEET NO.

2 OF 5

(Item A) 81



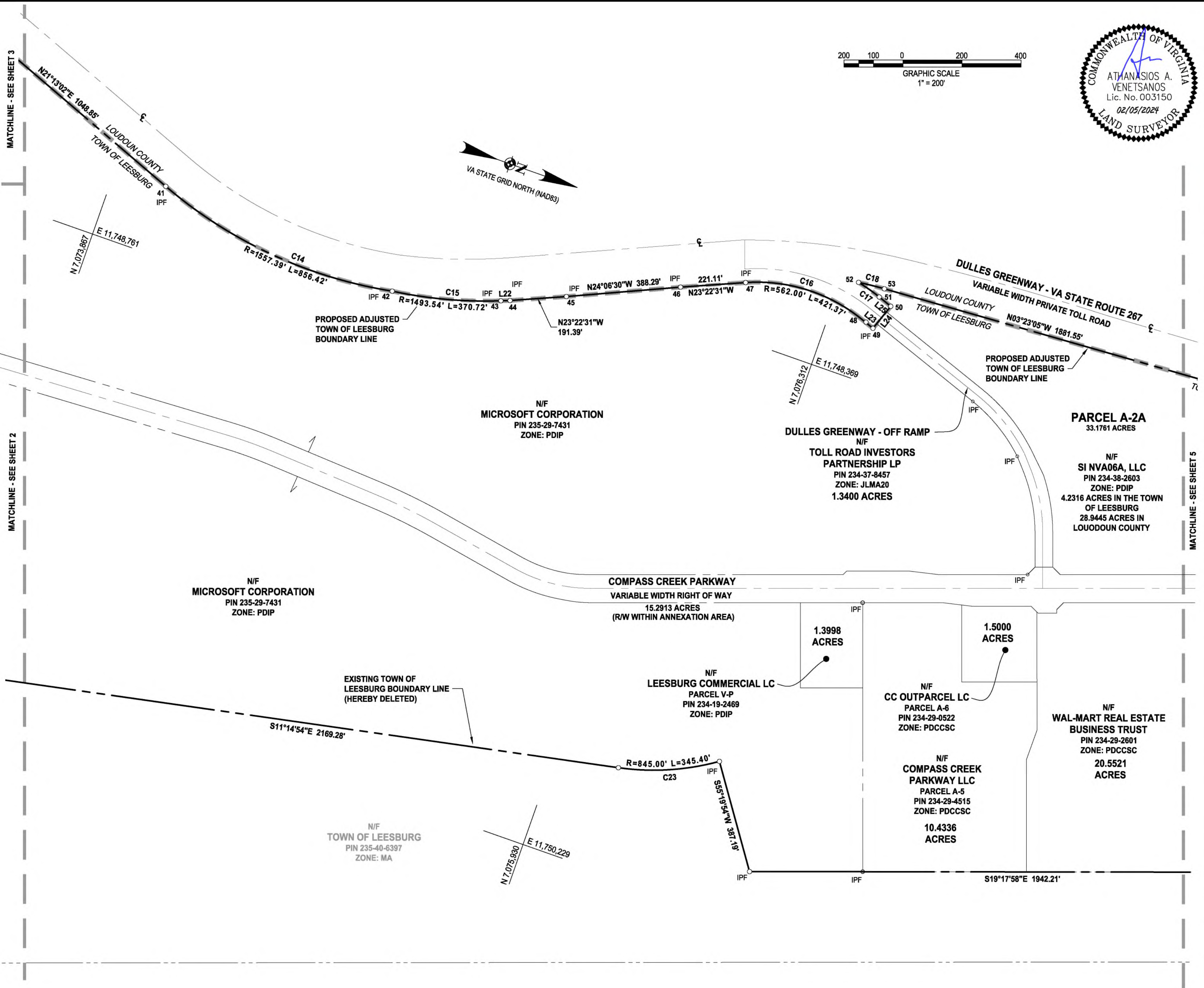
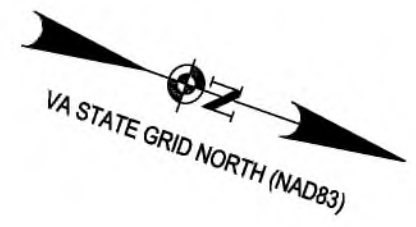
**PLAT SHOWING
 COMPASS CREEK ANNEXATION AREA**

LOUDOUN COUNTY, VIRGINIA

PROJ: 18192.019
DATE: 08/12/22
DRAWN: DAS CHECKED: AAV
SHEET NO. 3 OF 5 (Item A) 82



PH: 703.777.2755
www.imegcorp.com
50 CATOCTIN CIRCLE NE
SUITE 210
LEESBURG, VA 20176
christopher consultants, ltd. now IMEG Corp.



PLAT SHOWING
COMPASS CREEK ANNEXATION AREA

LOUDOUN COUNTY, VIRGINIA

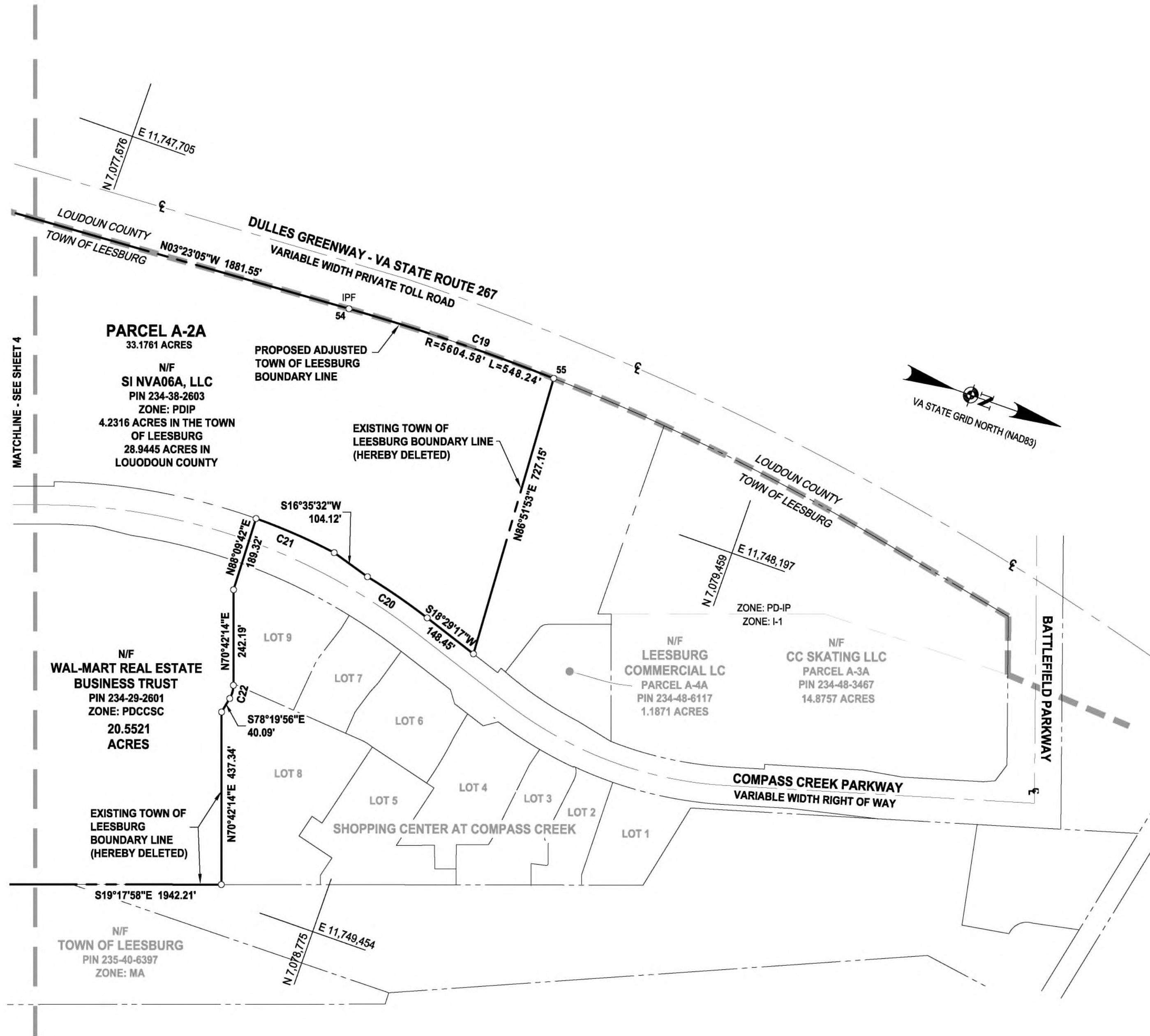
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 DATE: 08/12/22
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 CHECKED: AAV
 SHEET NO.

4 OF 5

(Item A) 83



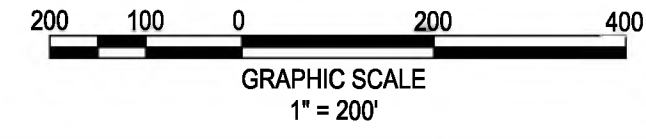
PH: 703.777.2755
www.imegcorp.com
50 CATOCTIN CIRCLE, NE
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LEESBURG, VA 20176
christopher consultants, ltd. now IMEG Corp.



MATCHLINE - SEE SHEET 4

PLAT SHOWING
COMPASS CREEK ANNEXATION AREA

LOUDOUN COUNTY, VIRGINIA



PROJ: 18192.019
DATE: 08/12/22
DRAWN: DAS
CHECKED: AAV
SHEET NO.
5 OF **5**
(Item A) 84

Town Notice of VSA

Exhibit G



METES AND BOUNDS DESCRIPTION

Of the proposed Town of Leesburg Compass Creek Annexation Area and more particularly described as follows:

Beginning at a *point* in the westerly right of way line of Sycolin Road and in the line of the existing Leesburg Corporate Limits; thence running with Sycolin Road the following courses and distances:

S 11°00'42" W a distance of **126.69** feet to a *point*;
S 07°57'26" W a distance of **52.70** feet to a *point*;

Along the arc of a curve to the left with a radius of **2,710.24** feet, having a chord bearing of **S 06°49'23" W** and a chord distance of **107.28** feet, and an arc length of **107.29** feet to a *point*;

S 00°12'10" W a distance of **211.78** feet to a *point*;

Along the arc of a curve to the left with a radius of **2698.21** feet, having a chord bearing of **S 00°25'29" W** and a chord distance of **73.76** feet, and an arc length of **73.76** feet to a *point*;

Along the arc of a curve to the right with a radius of **23586.09** feet, having a chord bearing of **S 01°30'44" E** and a chord distance of **333.70** feet, and an arc length of **333.70** feet to a *point*;

S 04°05'49" W a distance of **35.32** feet to a *point*;
S 03°05'31" W a distance of **199.05** feet to a *point*;
S 13°37'59" W a distance of **46.08** feet to a *point*;
S 05°17'35" W a distance of **247.98** feet to a *point*.

Thence departing Sycolin Road the following courses and distances:

S 75°20'50" W a distance of **71.75** feet to an iron pipe found;
S 83°36'13" W a distance of **123.91** feet to iron pipe found;
S 22°58'25" W a distance of **555.65** feet to an iron pipe found in the northerly line of Shreve Mill Road;

Thence running generally with Shreve Mill Road the following courses and distances:

N 87°44'55" W a distance of **201.32** feet to an iron pipe found;

Along the arc of a curve to the left with a radius of **415.00** feet, having a chord bearing of **S 83°13'53" W** and a chord distance of **130.13** feet, and an arc length of **130.67** feet to an iron pipe found;

S 74°12'41" W a distance of **111.31** feet to an iron pipe found;

Along the arc of a curve to the right with a radius of **185.00** feet, having a chord bearing of **S 85°42'39" W** and a chord distance of **73.76** feet, and an arc length of **74.26** feet to an iron pipe found;

N 82°47'19" W a distance of **71.87** feet to a *point*;

Along the arc of a curve to the left with a radius of **135.00** feet, having a chord bearing of **S 83°12'44" W** and a chord distance of **65.32** feet, and an arc length of **65.97** feet to a *point*;

S 69°12'41" W a distance of **127.11** feet to an iron pipe found;

Along the arc of a curve to the right with a radius of **185.00** feet, having a chord bearing of **S 79°50'04" W** and a chord distance of **68.21** feet, and an arc length of **68.60** feet to an iron pipe found;

N 89°32'33" W a distance of **52.09** feet to an iron pipe found;

S 15°03'44" W a distance of **17.37** feet to a *point*;

N 86°37'42" W a distance of **515.32** feet to an iron pipe found;

N 84°02'22" W a distance of **101.25** feet to an iron pipe found;

Along the arc of a curve to the left with a radius of **593.80** feet, having a chord bearing of **S 89°28'53" W** and a chord distance of **134.01** feet, and an arc length of **134.30** feet to a *point*;

S 83°00'09" W a distance of **0.55** feet to an iron pipe found in the easterly line of the Dulles Greenway Access Ramps;

Thence generally running with the Dulles Greenway Access Ramp the following courses and distances:

N 19°00'00" W a distance of **280.46** feet to a PK nail found;

Along the arc of a curve to the right with a radius of **35.00** feet, having a chord bearing of **N 21°00'02" E** and a chord distance of **45.00** feet, and an arc length of **48.87** feet to an iron pipe found;

N 29°00'00" W a distance of **100.00** feet to an iron pipe found;

S 61°00'00" W a distance of **11.81** feet to a *point*;

Along the arc of a curve to the right with a radius of **35.00** feet, having a chord bearing of **S 84°00'02" W** and a chord distance of **40.15** feet, and an arc length of **42.76** feet to an iron pipe found;

N 49°00'00" W a distance of **84.77** feet to an iron pipe found;

Along the arc of a curve to the left with a radius of **868.51** feet, having a chord bearing of **N 63°12'04" W** and a chord distance of **426.14** feet, and an arc length of **430.54** feet to a rebar found;

N 77°24'09" W a distance of **238.04** feet to an iron pipe found;

Along the arc of a curve to the right with a radius of **991.74** feet, having a chord bearing of **N 59°17'47" W** and a chord distance of **616.42** feet, and an arc length of **626.80** feet to a rebar found;

S 48°48'35" W a distance of **5.00** feet to an iron pipe found in the easterly line of Dulles Greenway;

Thence generally running with the easterly line of Dulles Greenway the following courses and distances:
N 41°11'25" W a distance of **207.39** feet to a rebar found;

Along the arc of a curve to the right with a radius of **1,307.39** feet, having a chord bearing of **N 09°59'11" W** and a chord distance of **1,354.67** feet, and an arc length of **1,424.03** feet to an iron pipe found;

N 21°13'02" E a distance of **1,048.86** feet to an iron pipe found;

Along the arc of a curve to the left with a radius of **1,557.39** feet, having a chord bearing of **N 05°27'49" E** and a chord distance of **845.67** feet, and an arc length of **856.42** feet to an iron pipe found;

Along the arc of a curve turning to the left with a radius of **1,493.54** feet, having a chord bearing of **N 14°19'19" W** and a chord distance of **369.77** feet, and an arc length of **370.72** feet to an iron pipe found;

N 21°06'35" W a distance of **31.03** feet to an iron pipe found;
N 23°22'31" W a distance of **191.39** feet to an iron pipe found;
N 24°06'30" W a distance of **388.29** feet to an iron pipe found;
N 23°22'31" W a distance of **221.11** feet to an iron pipe found;

Along the arc of a curve to the right with a radius of **562.00** feet, having a chord bearing of **N 01°53'46" W** and a chord distance of **411.57** feet, and an arc length of **421.37** feet to a *point*;

N 19°35'02" E a distance of **49.99** feet to an iron pipe found;
N 70°24'58" W a distance of **96.02** feet to a *point*;
S 19°35'02" W a distance of **50.00** feet to a *point*;

Along the arc of a curve to the left with a radius of **658.00** feet, having a chord bearing of **S 15°50'02" W** and a chord distance of **86.07** feet, and an arc length of **86.13** feet to a *point*;

Along the arc of a curve to the right with a radius of **1,307.39** feet, having a chord bearing of **N 05°21'41" W** and a chord distance of **90.19** feet, and an arc length of **90.21** feet to a *point*;

N 03°23'05" W a distance of **1,881.55** feet to an iron pipe found;

Along the arc of a curve to the right with a radius of **5,604.58** feet, having a chord bearing of **N 00°34'57" W** and a chord distance of **548.02** feet, and an arc length of **548.24** feet to a *point*;

Thence departing Dulles Greenway and running with the Town of Leesburg Corporate Limits with a bearing of **N 86°51'53" E** a distance of **727.15** feet to a *point* in the westerly right of way line of Compass Creek Parkway;

Thence running with Compass Creek Parkway the following courses and distances:

S 18°29'17" W a distance of **148.45** feet to a *point*;

Along the arc of a curve to the left with a radius of **1,584.50** feet, having a chord bearing of **S 15°09'54" W** and a chord distance of **183.73** feet, and an arc length of **183.83** feet to a *point*;

S 16°35'32" W a distance of **104.12** feet to a *point*;

Along the arc of a curve to the left with a radius of **1,596.50** feet, having a chord bearing of **S 04°13'53" E** and a chord distance of **216.21** feet, and an arc length of **216.37** feet to a *point*;

Thence crossing Compass Creek Parkway **N 88°09'42" E** a distance of **189.32** feet to a *point*;

Thence running with Lot 9 Shopping Center at Compass Creek the following courses and distances:

N 70°42'14" E a distance of **242.19** feet to a *point*;

Along the arc of a curve to the right with a radius of **65.00** feet, having a chord bearing of **N 86°11'09" W** and a chord distance of **34.70** feet, and an arc length of **35.12** feet to a *point*;

S 78°19'56" E a distance of **40.09** feet to a *point*;

N 70°42'14" E a distance of **437.36** feet to a *point* in the westerly line of the Town of Leesburg Corporate Limits;

Thence running with the Town of Leesburg Corporate Limits the following courses and distances:

S 19°17'58" E a distance of **1558.54** feet to an iron pipe found;

S 19°17'58" E a distance of **383.67** feet to a *point*;

S 55°19'54" W a distance of **387.19** feet to an iron pipe found;

Along the arc of a curve to the right with a radius of **845.00** feet, having a chord bearing of **S 22°57'30" E** and a chord distance of **343.00** feet, and an arc length of **345.40** feet to a *point*;

S 11°14'54" E a distance of **2,169.28** feet to a *point*;

Along the arc of a curve to the right with a radius of **3,032.88** feet, having a chord bearing of **S 03°21'26" E** and a chord distance of **839.45** feet, and an arc length of **842.15** feet to a *point*;

S 85°22'59" E a distance of **359.82** feet to a *point*;

N 70°14'09" E a distance of **556.94** feet to a *point*;

S 19°17'58" E a distance of **911.39** feet to an iron pipe found;

S 10°46'07" E a distance of **33.71** feet to an iron pipe found;

N 70°42'02" E a distance of **525.93** feet to *the point of beginning*,

containing **17,547,340** square feet or **402.8315** acres more or less.



Andrew R. McRoberts
Attorney

Direct: (804) 783-7211
AMcRoberts@SandsAnderson.com

RICHMOND | CHRISTIANSBURG |
FREDERICKSBURG DURHAM | WILLIAMSBURG

SANDSANDERSON.COM

919 East Main Street
Post Office Box 1998
Richmond, VA 23218-1998
Main: (804) 648-1636
Fax: (804) 783-7291

March 18, 2024

BY FIRST CLASS U.S. MAIL

Edwin S. Rosado, Chair
Commission on Local Government
Virginia Department of Housing and Community Development
600 East Main Street, Suite 300
Richmond, VA 23219

**Re: Presentation of a Voluntary Settlement Agreement between the Town of
Leesburg and County of Loudoun**

Honorable Chair Rosado:

On behalf of the County of Loudoun, Virginia (“Loudoun”) and its Board of Supervisors (the “Board”) please accept this correspondence presenting the Commission on Local Government (the “Commission”) with a proposed voluntary settlement agreement with the Town of Leesburg, Virginia (the “Town”), a copy of which is enclosed herewith as Exhibit A (the “Agreement”).¹ This correspondence follows Leesburg’s February 28, 2024 Notice of a Voluntary Settlement Agreement with Loudoun County and Motion to Convert Proceedings (the “VSA Notice”), which referred the Agreement to the Commission for a public hearing and report in accordance with Virginia Code § 15.2-3400 and 1 Va. Admin. Code § 50-20-230.

By resolution adopted on February 6, 2024, the Board approved and indicated its intent to adopt a voluntary settlement agreement with the Town, a copy of which is enclosed herewith as Exhibit B (the “Board Resolution”).² Consistent with the Board Resolution, the Agreement has been deemed consistent with the “term sheet,” which was the product of voluntary mediation between the parties under the direction of the Commission, and approved as to form by the County Attorney. The County presents the Agreement to the Commission believing it to be in the best interests of the Commonwealth, the Town, and the County.

By filings submitted to the Commission, including on September 28, 2022, July 7, 2023, October 13, 2023, and February 28, 2024, the Town and County submitted data and evidence responsive

¹ See VSA Notice, Ex. A, at Tab 2.

² See VSA Notice, Ex. B, at Tab 3.

March 18, 2024

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to the relevant provisions of 1 Va. Admin. Code § 50-20-540.³ The County stands prepared to provide the Commission any supplemental data or information it desires to assist in evaluating the Agreement or reporting its findings and recommendations.

Pursuant to 1 Va. Admin. Code § 50-20-230(C), Loudoun, concurrently with Leesburg, provided a copy of the VSA Notice, Settlement Agreement, and an annotated list of all documents, exhibits, and other material submitted to the Commission.⁴

The County and the Board thank the Commission for its consideration. We look forward to seeing you all on March 21st and please let us know if the Commission has any questions or if we can assist in any way.

Very truly yours,



Andrew McRoberts

Enclosures:

Voluntary Settlement Agreement
February 6, 2024 Board of Supervisors Resolution

cc: W. LeGrand Northcutt, Commission on Local Government (*via email only*)
Leo Rogers, County Attorney (*via email only*)
Gregory J. Haley, Counsel for the Town of Leesburg (*via email only*)
Christopher P. Spera, Town Attorney (*via email only*)

³ See Va. Admin Code §§ 50-20-230, 50-20-610.

⁴ See VSA Notice, ¶ 21 & Ex. E, at Tab 6.

**VOLUNTARY SETTLEMENT AGREEMENT
OF ANNEXATION AND RELATED ISSUES
BETWEEN THE TOWN OF LEESBURG
AND LOUDOUN COUNTY**

This Agreement (the “Agreement”) is made this ___ day of February, 2024, by and between the Town of Leesburg, Virginia (the “Town”), by and through the Town Council of the Town of Leesburg (the “Town Council”), and the County of Loudoun, Virginia (the “County”), by and through the Loudoun County Board of Supervisors (the “Board of Supervisors”) (collectively, the “Parties”), pursuant to Virginia Code Ann. § 15.2-3400.

RECITALS

WHEREAS, on September 28, 2022, the Town filed with the Commission on Local Government (the “Commission”) a Notice by the Town of Leesburg of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data (the “Notice”), pursuant to Virginia Code Ann. § 15.2-2907;

WHEREAS, the Parties entered into mediation to attempt to resolve their differences. As a result of such mediation, the Town and the County agree to resolve the Notice that is now pending before the Commission. Specifically, the Parties wish to provide for: (i) conversion of the existing proceedings into those for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400; (ii) the annexation of certain areas into the Town, conditioned on the written consent of property owners in the area to be annexed; (iii) certain utility issues; (iv) waiver of city status rights for a period of limited duration; (v) waiver of annexation rights for a period of limited duration, and agreement to reject any petition for citizen-initiated annexation for the same duration; and (vi) certain economic development incentives;

WHEREAS, the Parties have determined that it will be in the best interests of both the County and the Town to enter into this Agreement; and

WHEREAS, the Town Council approved this Agreement by resolution adopted on February 27, 2024, a copy of which is attached hereto as **Exhibit A**;

WHEREAS, the Board of Supervisors approved this Agreement by resolution adopted on February 6, 2024, a copy of which is attached hereto as **Exhibit B**; and

WHEREAS, the Parties wish to enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. Incorporation of Recitals. The foregoing Recitals are incorporated into the body of this Agreement as if the same were set forth in full below.

Section 2. Definitions. The Parties agree that the following words, terms, phrases, and abbreviations as used in this Agreement shall have the following defined meanings:

2.1. “Annexation Area” means that portion of the commercial and industrial development area, commonly referred to as Compass Creek, that remains in the County. Subject to Section 4 of this Agreement, the Annexation Area includes the following parcels: the At Home Property; the CC Outparcel Property; the Compass Creek Parkway; the Dulles Greenway Toll Road Property; the Microsoft Property; the STACK Property; the Vernal Pool; and the Walmart Property.

2.2. "At Home Property" means the approximately 10.4336 acre parcel of real property having County PIN 234-29-4515 owned by Realty Income Properties 18 LLC.

2.3. "CC Outparcel Property" means the approximately 1.5 acre parcel of real property having County PIN 234-29-0522 owned by CC Outparcel LC.

2.4. "Commission" means the Commission on Local Government.

2.5. "Compass Creek Parkway" means the approximately 15.2913 acre dedicated right of way for the Compass Creek Parkway.

2.6. "County" means the County of Loudoun, Virginia.

2.7. "Dulles Greenway Toll Road Property" means the approximately 1.34 acre portion of the parcel of real property, located in the County, having County PIN 234-37-8457 owned by Toll Road Investors Partnership II LP.

2.8. "Economic Development Incentive Payment" shall mean the sum of \$2,000,000, as increased by three (3) percent each fiscal year thereafter to account for inflation.

2.9. "Effective Date of Annexation" means the effective date of the annexation of the Annexation Area as provided in Section 4.4 of this Agreement.

2.10. "In-Town Rates" means the rates and charges established for inside town utility service pursuant to Article I, Division 2 and Article II, Division 2 of Chapter 34.1 of the Town Code, and successor sections, and set forth in Appendix B (Fee Schedule) to the Town Code.

2.11. "Loudoun Water" means the Loudoun County Sanitation Authority, created and organized under the provisions of the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*).

2.12. "Microsoft Property" means the approximately 323.3719 acre parcel of real property having County PIN 235-29-7431 owned by the Microsoft Corporation.

2.13. "Notice" means the Town's Notice of Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data filed on September 28, 2022 with the Commission pursuant to Virginia Code Ann. §§ 15.2-2907(A), 15.2-3200, *et seq.*

2.14. "Special Court" means the special court appointed to consider and affirm this Agreement by the Supreme Court of Virginia pursuant to Virginia Code Ann. §§ 15.2-3000, 15.2-3400.

2.15. "STACK Property" means the approximately 28.943 acre portion of the parcel of real property, located in the County, having County PIN 234-38-2603 owned by SINVA06A LLC.

2.16. "Town" means the Town of Leesburg, Virginia.

2.17. "Vernal Pool" means the approximately 1.3998 acre parcel of real property having County PIN 234-19-2469 owned by Leesburg Commercial LC.

2.18. "Walmart Property" means the approximately 20.5521 acre parcel of real property having County PIN 234-39-2601 owned by the Walmart Real Estate Business Trust.

Section 3. Purpose.

3.1. The Parties enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400 to resolve the annexation proceeding initiated by the Notice. The Parties agree that upon presenting the Commission with notice of this Agreement, the annexation proceedings before the Commission shall be converted to proceedings for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400(3).

3.2. The County and the Town shall make a joint public announcement concerning this Agreement, the conversion of the Commission proceeding, the mutually satisfactory resolution of the Notice, and the presentation of this Agreement to the Commission.

Section 4. Town Boundaries.

4.1. **Annexation.** Subject to Section 4.2, the Annexation Area shall be annexed into the Town boundaries on the Effective Date of Annexation.

4.2. **Property Owner Consents.** The Town shall obtain the written consent of all property owners prior to the property being annexed into the Town of Leesburg. In the event that written consent to annexation is not obtained by the Town, such property, as applicable, shall be excluded from the definition of “Annexation Area” set forth in Section 2.1 of this Agreement. The County and the Board of Supervisors shall not advocate against any property owner in the Annexation Area giving its written consent to annexation. The Town is required to reasonably perform and cooperate with property owners providing consent letters to meet the conditions stated in the consent letters referenced in the notice of this Agreement to be delivered to the Commission in accordance with Section 3.1.

4.3. **Survey.** The Town shall prepare, at its own expense, a metes and bounds description of, and survey plat showing, the Annexation Area as annexed into the Town boundaries by order of the Special Court. The Town shall submit and file the final metes and bounds description and survey plat of the Annexation Area, as annexed into the Town boundaries, with the Commission and the Special Court.

4.4. **Effective Date.** The annexation of the Annexation Area into the boundaries of the Town shall be effective December 31, 2024. If the Special Court has not entered an order affirming this Agreement on or prior to December 31, 2024, unless otherwise agreed in writing by the County and the Town, the annexation of the Annexation Area into the boundaries of the Town shall be effective thirty (30) days after the date of the Special Court’s entry of its order affirming this Agreement.

4.5. **Extension of Municipal Services.** Following the Effective Date of Annexation, the Town shall extend its governmental services (including, for example, law enforcement, street maintenance, and zoning controls) to the Annexation Area on the same basis and at the same level as such services now are or hereafter may be provided to areas within the Town's current corporate limits where like conditions exist.

Section 5. Utilities.

5.1. **Town to Serve Compass Creek.** The Town shall provide water and sewer service to the Annexation Area consistent with the policies and practices applied to areas within the existing Town boundaries.

5.2. **Microsoft Utilities.** In the event the Microsoft Corporation gives its written consent to annexation and the Microsoft Property is annexed into the Town boundaries, the Town shall, at the request of the Microsoft Corporation, allow future phases of development on the Microsoft Property to be served by Loudoun Water. For the purposes of this Agreement "future phase" means any development or redevelopment on the Microsoft Property subsequent to the data center described as "IAD05," being the subject of County Plan Number STMP-2023-0004. Upon receipt of a request from the owner of the Microsoft Property to receive water and/or sewer service from Loudoun Water for a future phase of development, and a commitment to serve from Loudoun Water, the Town and Town Council shall take all steps necessary to facilitate such service.

5.3. **Town Discretion.** Nothing in this Agreement shall be construed to alter, limit, or constrain the Town's discretion with respect to utility capacity and utility service decisions.

5.4. **Equal Service.**

5.4.1. Equal Rates and Fees. Beginning on July 1 following the Effective Date of Annexation, and subject to Section 5.5 of this Agreement, the Town shall charge all water and sewer customers the In-Town Rates as adopted for that fiscal year, whether located within or outside the Town boundaries.

5.4.2. Service; Reduction or Cessation of Service. The Town shall be obligated to provide any and all connected customers water and/or sanitary sewer services, whether within or outside the Town's boundaries, on an equal basis, subject to the Town's utility policies.

5.4.3. Amendments. The Town shall adopt any amendments of ordinances, resolutions, or policies necessary to effectuate the requirements of this Section 5.4.

5.5. **Limitations.** The provisions of Section 5.4 shall be effective for each fiscal year in which the County has satisfied the Economic Development Incentive Payment requirement in Section 6 of this Agreement.

Section 6. Economic Development Incentive Payment. Following the Effective Date of Annexation, the County shall annually pay the Economic Development Incentive Payment to the Town on or before the first day of the fiscal year (July 1).

Section 7. Limitation on City Status. The Town shall not Seek City Status for a period of twenty-five (25) years after the effective date of any legislation lifting the prohibition on the granting of new city charters as set forth in Virginia Code Ann. § 15.2-3201, or any successor statute. For purposes of this Agreement, "Seek City Status" shall mean the filing of a notice with the Commission to establish an independent city pursuant to Virginia Code Ann. § 15.2-2907(A) or any successor statute or similar legislation, or initiating a proceeding to transition to city status pursuant to Virginia Code Ann. §§ 15.2-3800, *et seq.*, or any successor statute or similar legislation.

Section 8. Annexation and Boundary Adjustment.

8.1. **Limitation on Adverse Annexations.** The Town shall not, either directly or indirectly, file any annexation notice with the Commission pursuant to Virginia Code Ann. § 15.2-2907(A) or institute any court action for annexation against the County pursuant to Virginia Code Ann. § 15.2-3200, *et. seq.*, or any successor provisions, seeking to annex any area of the County for twenty-five (25) years following the later of: (a) the Effective Date of Annexation, or (b) the most recent Boundary Adjustment. For purposes of Section 8.1, the term “Boundary Adjustment” includes any change to the Town boundaries, except those: (i) of less than one (1) acre in size; or (ii) for public improvement projects. The Town and the County may enter into a written agreement that any specific boundary adjustment shall not constitute a “Boundary Adjustment” and, therefore, not affect the twenty-five (25) year period provided in this Section. During the same period, the Town and Town Council agree to reject annexations initiated by citizen petition under Virginia Code Ann. § 15.2-3203(A), unless otherwise agreed by the Parties.

8.2. **Boundary Adjustment.** Nothing in this Agreement shall be interpreted to limit boundary adjustments by the Parties pursuant to Virginia Code Ann. § 15.2-3106, *et seq.*, provided, however, the landowner has given contemporaneous written consent to such boundary adjustment and such adjustment satisfies applicable policies, or is otherwise approved by the Parties. Both Parties are free to consent to or reject any future proposed boundary adjustment.

Section 9. Commission and Court Approval.

9.1. **Commission Review.** The Town and the County shall promptly initiate the steps required by Virginia Code Ann. § 15.2-3400 to obtain review of this Agreement by the Commission. The Parties shall cooperate in providing all information and documents required by the Commission.

9.2. **Court Approval.** Following issuance of the report of findings and recommendations by the Commission, the Town and the County shall initiate a proceeding to obtain Special Court affirmation and approval of this Agreement (as may be modified by mutual written agreement of the Parties), as provided by Virginia Code Ann. § 15.2-3400. The Parties agree that the Special Court's entry of an Order approving of this Agreement (as may be modified by mutual written agreement of the Parties) shall constitute the Town's withdrawal of the Notice, and no additional notification to the Commission shall be required.

9.3. **Cooperation.** The County and the Town shall cooperate and use their best respective efforts to obtain affirmation of this Agreement, including Commission review and Court approval, by December 31, 2024.

9.4. **Termination.** If the Special Court fails to approve and give full force and effect to this Agreement without modification, this Agreement shall terminate immediately, unless the Parties waive termination by mutually agreeing to the modifications requested by the Special Court in a written document, duly executed by the Parties' authorized representatives.

Section 10. Notices. Any notice provided under this Agreement shall be in writing sent to the person, address and email provided below, unless either Party provides advanced written notice to the other Party changing its contact information:

Town Manager
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176
kdentler@leesburgva.gov

County Administrator
County of Loudoun
1 Harrison Street, S.E.
Leesburg, Virginia 20175
tim.hemstreet@loudoun.gov

With a copy to:

Town Attorney
Town of Leesburg
25 West Market Street

County Attorney
Loudoun County
1 Harrison Street, S.E.

Section 11. Miscellaneous Provisions.

11.1. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties, and each of their future governing bodies, and any successor(s) thereto upon its approval by the Special Court.

11.2. **Counterparts/Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. This Agreement constitutes the entire understanding between the Parties.

11.3. **Court Enforcement.** The terms and conditions of this Agreement shall be enforceable, pursuant to Virginia Code Ann. § 15.2-3217, by the Special Court or any successor court appointed pursuant to Virginia Code Ann. §§ 15.2-3000 through 15.2-3004, or any successor statute.

11.4. **No Third-Party Beneficiaries.** The provisions of this Agreement are intended to benefit only the Parties to this Agreement. No part of this Agreement shall be construed to confer upon any other person or party the rights of a third-party beneficiary. No person not a party to this Agreement shall be empowered to seek the enforcement of the provisions of this Agreement.

11.5. **Attorneys' Fees.** Notwithstanding the provisions of Virginia Code Ann. § 15.2-3215, the Parties agree that the Town and the County shall each be responsible for paying their own attorneys' fees and other costs associated with the Notice, the preparation of this Agreement, and the submission of the Agreement to the Commission and the Special Court.

11.6. **Amendments.** This Agreement may be amended, modified, or supplemented, either in whole or in part, by mutual agreement of the County and the Town by a written document

of equal formality and dignity, duly executed by the authorized representatives of the County and Town.

11.7. **Mediation.** No Party shall bring any legal action to enforce this Agreement without first submitting the dispute to non-binding mediation. Mediation shall be initiated by a demand for mediation. A third-party neutral shall act as mediator. If the Parties cannot agree on the mediator, McCammon Mediation Group, or its successor, shall appoint the mediator. Any mediation under this Agreement shall be completed within ninety (90) days of the demand for mediation, absent the consent of the Parties.

Section 12. Effective Date. This Agreement shall be effective upon the date of entry of the order of the Special Court affirming this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officials.

TOWN OF LEESBURG and
TOWN COUNCIL OF THE TOWN
OF LEESBURG

Approved as to form:

By: _____

Town Attorney

Its: _____

Date: _____, 2024

COUNTY OF LOUDOUN and
BOARD OF SUPERVISORS OF
LOUDOUN COUNTY

Approved as to form:

By: _____

County Attorney

Its: _____

Date: _____, 2024



Loudoun County, Virginia

www.loudoun.gov

Office of the County Administrator

1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

Telephone (703) 777-0200 • Fax (703) 777-0325

At a business meeting of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Tuesday, February 06, 2024, at 4:00 p.m.

IN RE: Proposed Resolution Approving the Voluntary Settlement Agreement with the Town of Leesburg Regarding the Annexation of Compass Creek (Catoclin & Leesburg)

Chair Randall moved that the Board of Supervisors approve the RESOLUTION OF THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY APPROVING THE COUNTY OF LOUDOUN ENTERING INTO A VOLUNTARY SETTLEMENT AGREEMENT OF ANNEXATION AND RELATED ISSUES WITH THE TOWN OF LEESBURG, included as Attachment 1 to the February 6, 2024, Board of Supervisors Business Meeting Action Item, which expresses the Board's approval and intent to adopt the Voluntary Settlement Agreement resolving the pending annexation action brought by the Town of Leesburg.

Seconded by Vice Chair Briskman.

Voting on the Motion: Supervisors Briskman, Glass, Kershner, Letourneau, Randall, TeKrony, Turner, and Umstattd – Yes; None – No; Supervisor Saines – Absent for the vote.

COPY TESTE:

DEPUTY CLERK TO THE LOUDOUN COUNTY
BOARD OF SUPERVISORS

RESOLUTION OF THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY
APPROVING THE COUNTY OF LOUDOUN ENTERING INTO A VOLUNTARY
SETTLEMENT AGREEMENT OF ANNEXATION AND RELATED ISSUES WITH THE
TOWN OF LEESBURG

WHEREAS, on September 28, 2022, the Town of Leesburg (the “Town” or “Leesburg”) notified the Commission on Local Government (the “Commission”), pursuant to Virginia Code Ann. § 15.2-2907(A), of its intention to petition the Circuit Court of Loudoun County for an order annexing to the Town approximately 402.8317 acres located in the Loudoun County (the “County” or “Loudoun”), commonly referred to as “Compass Creek;”

WHEREAS, on July 7, 2023, the County filed with the Commission a Responsive Pleading opposing the Town’s annexation of Compass Creek;

WHEREAS, on October 13, 2023, the Town filed a Reply in support of annexation;

WHEREAS, the Commission set the matter for hearing on March 5-8, 2024;

WHEREAS, on December 21, 2023, the County notified the Commission of its desire to attempt to negotiate an agreement through a mediation process with the Town on the Compass Creek annexation issues;

WHEREAS, on January 5, 2024, the Commission approved the participation of Leesburg and Loudoun in a mediation process;

WHEREAS, on January 10, 2024, the Town and the County participated in a mediation process and reached an agreement in principle on the annexation issues;

WHEREAS, the Town and the County have agreed on the terms of a Voluntary Settlement Agreement pursuant to Virginia Code § 15.2-3400, a copy of which is attached to this Resolution as **Exhibit A** (the “Agreement”);

WHEREAS, the Agreement is the product of years of negotiation between Leesburg and Loudoun, addresses areas of concern to both parties, and reflects a cooperative resolution of issues in the best interests of the parties and the Commonwealth;

WHEREAS, this Resolution states the County's intention to present the Agreement to the Commission and to adopt the Agreement upon the completion of the Commission's review and issuance of a report.

THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Loudoun, Virginia that it adopts the following statement of its approval of, and intent to adopt, a Voluntary Settlement Agreement pursuant to Virginia Code § 15.2-3400 to resolve the Compass Creek annexation issues, a copy of which is attached to this Resolution as **Exhibit A** (the "Agreement"):

1. Loudoun County intends to pursue the approval of the Agreement by the Commission and the special court, pursuant to Virginia Code §§ 15.2-2907(A) and 15.2-3400.
2. The County Administrator is authorized and directed to make such changes to the Agreement as may be necessary, appropriate, consistent with the term sheet, and approved as to form by the County Attorney, and to sign the same on behalf of the Board.
3. Loudoun County will cooperate with Leesburg in providing all required notices, in converting the pending annexation matter to a review of the Agreement and will participate in the subsequent proceedings before the Commission, culminating in a written report prepared by the Commission stating its findings of fact and recommendations on the Agreement.
4. Loudoun County will provide additional information through its filings with the Commission, materials filed with the special court, and materials presented at public hearings and proceedings.

5. Subsequent to the Commission's review and issuance of its report, the County intends to adopt the Agreement, or a modified version of the Agreement acceptable to the Town and the County, pursuant to the procedures in Virginia Code § 15.2-3400.

6. The County's principal contact with the Commission is:

Andrew McRoberts, Esq.
Sands Anderson PC
P.O. Box 1998
Richmond, Virginia 23218-1998
Telephone: (804) 783-7211
Facsimile: (804) 783-7291
Email: amcroberts@sandsanderson.com
Counsel for the County of Loudoun, Virginia

7. Following the Commission's report and adoption of ordinances approving the Agreement, the Board of Supervisors and Town Council will jointly petition the Circuit Court of Loudoun County for an order affirming the Agreement pursuant to Virginia Code § 15.2-3400.


8. The County believes the Agreement is in the best interest of the County, the Town, and the Commonwealth.

BE IT FURTHER RESOLVED, by the Board of Supervisors of the County of Loudoun, Virginia that it requests the Commission to review the Agreement in accordance with 1 Va. Admin. Code 50-20-230(A) and issue a report.

The undersigned Clerk of the Board of Supervisors of Loudoun County, Virginia, certifies that the foregoing Resolution was adopted by the Board of Supervisors on February 6, 2024.

WITNESS my signature and the seal of the Board of Supervisors of Loudoun County, Virginia, this 6th day of February 2024.





Clerk, Board of Supervisors of
Loudoun County, Virginia

**VOLUNTARY SETTLEMENT AGREEMENT
OF ANNEXATION AND RELATED ISSUES
BETWEEN THE TOWN OF LEESBURG
AND LOUDOUN COUNTY**

This Agreement (the "Agreement") is made this day of February, 2024, by and between the Town of Leesburg, Virginia (the "Town"), by and through the Town Council of the Town of Leesburg (the "Town Council"), and the County of Loudoun, Virginia (the "County"), by and through the Loudoun County Board of Supervisors (the "Board of Supervisors") (collectively, the "Parties"), pursuant to Virginia Code Ann. § 15.2-3400.

RECITALS

WHEREAS, on September 28, 2022, the Town filed with the Commission on Local Government (the "Commission") a Notice by the Town of Leesburg of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data (the "Notice"), pursuant to Virginia Code Ann. § 15.2-2907;

WHEREAS, the Parties entered into mediation to attempt to resolve their differences. As a result of such mediation, the Town and the County agree to resolve the Notice that is now pending before the Commission. Specifically, the Parties wish to provide for: (i) conversion of the existing proceedings into those for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400, (ii) the incorporation of certain areas into the Town, conditioned on the written consent of property owners in the areas to be so incorporated; (iii) certain utility issues; (iv) waiver of city status rights for period of limited duration; (v) waiver of annexation rights for a period of limited duration and agreement to reject any petition for citizen-initiated annexation for the same duration; and (vi) certain economic development incentives;

WHEREAS, the Parties have determined that it will be in the best interests of both the County and the Town to enter into this Agreement; and

WHEREAS, the Town Council approved the Agreement by resolution adopted on February __, 2024, which resolution is attached hereto as Exhibit ;

WHEREAS, the Board of Supervisors approved the Agreement by resolution adopted on February , 2024, which resolution is attached hereto as Exhibit __; and

WHEREAS, the Parties wish to enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. Incorporation of Recitals. The foregoing Recitals are incorporated into the body of this Agreement as if the same were set forth in full below.

Section 2. Definitions. The Parties agree that the following words, terms, phrases, and abbreviations as used in this Agreement shall have the following defined meanings:

2.1. "Incorporation Area" means that portion of the commercial and industrial development area, commonly referred to as Compass Creek, that remains in the County. Subject to Section 4 of the Agreement, the Incorporation Area includes the following parcels: the At Home Property; the CC Outparcel Property; the Compass Creek Parkway; the Dulles Greenway Toll Road Property; the Microsoft Property; the STACK Property; the Vernal Pool; and the Walmart Property.

2.2. "At Home Property" means the approximately 10.4336 acre parcel of real property having County PIN xxx-xx-4515 owned by Realty Income Properties 18 LLC.

2.3. "CC Outparcel Property" means the approximately 1.5 acre parcel of real property having County PIN xxx-xx-0522 owned by CC Outparcel LC.

2.4. "Commission" means the Commission on Local Government.

2.5. "Compass Creek Parkway" means the approximately 15.2913 acre dedicated right of way for the Compass Creek Parkway.

2.6. "County" means the County of Loudoun, Virginia.

2.7. "Dulles Greenway Toll Road Property" means the approximately 1.34 acre portion of the parcel of real property, located in the County, having County PIN xxx-xx-8457 owned by Toll Road Investors Partnership II LP.

2.8. "Economic Development Incentive Payment" shall mean:

2.8.1. For the period beginning on the Effective Date of Incorporation and ending on the last day of that fiscal year (June 30), the sum \$5,479.45 for each day between the Effective Date of Incorporation and the last day of that fiscal year (June 30); and

2.8.2. For each fiscal year following the Effective Date of Incorporation, the sum of \$2,000,000, as increased by three (3) percent each fiscal year thereafter to account for inflation.

2.9. "Effective Date of Incorporation" means the effective date of the incorporation of the Incorporation Area as provided in Section 4.4 of this Agreement.

2.10. "In-Town Rates" means the "Inside Town Consumption Charge" established pursuant to Section 34.1-134 (water use charges) and Section 34.1-234 (sewer use charges) of the Town Code and set forth in Appendix B (Fee Schedule) to the Town Code.

2.11. "Loudoun Water" means the Loudoun County Sanitation Authority, created and organized under the provisions of the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*).

2.12. "Microsoft Property" means the approximately 323.3719 acre parcel of real property having County PIN xxx-xx-7431 owned by the Microsoft Corporation.

2.13. "Notice" means the Town's Notice of Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data filed on September 28, 2022 with the Commission pursuant to Virginia Code Ann. §§ 15.2-2907(A), 15.2-3200, *et seq.*

2.14. "Out-of-Town Surcharge" means the "Outside Town Consumption Charge" established pursuant to Section 34.1-134 (water use charges) and Section 34.1-234 (sewer use charges) of the Town Code and set forth in Appendix B (Fee Schedule) to the Town Code.

2.15. "Special Court" means the special court appointed to consider and affirm this Agreement by the Supreme Court of Virginia pursuant to Virginia Code Ann. §§ 15.2-3000, 15.2-3400.

2.16. "STACK Property" means the approximately 28.943 acre portion of the parcel of real property, located in the County, having County PIN xxx-xx-2603 owned by SI NVA06A LLC.

2.17. "Town" means the Town of Leesburg, Virginia.

2.18. "Vernal Pool" means the approximately 1.3998 acre parcel of real property having County PIN xxx-xx-2469 owned by Leesburg Commercial LC.

2.19. "Walmart Property" means the approximately 20.5521 acre parcel of real property having County PIN xxx-xx-2601 owned by the Walmart Real Estate Business Trust.

Section 3. Purpose.

3.1. The Parties enter into this Agreement pursuant to Virginia Code Ann. § 15.2-3400 to resolve the annexation proceeding initiated by the Notice. The Parties agree that upon presenting the Commission with notice of this Agreement, the annexation proceedings before the Commission shall be converted to proceedings for approval of this Agreement pursuant to Virginia Code Ann. § 15.2-3400(3) for a hearing and issuance of a report whether this Agreement is in the best interest of the Commonwealth.

3.2. The County and the Town shall make a joint public announcement concerning this Agreement, the conversion of the Commission proceeding, and the mutually satisfactory resolution of the Notice and presentation of this Agreement to the Commission in lieu of annexation.

Section 4. Town Boundaries.

4.1. **Incorporation.** Subject to Section 4.2, the Incorporation Area shall be incorporated into the Town boundaries on the Effective Date of Incorporation.

4.2. **Property Owner Consents.** The Town shall obtain a contemporaneous written consent to incorporation for each parcel of real property in the Incorporation Area. In the event that the Town does not obtain written consent for any property in the Incorporation Area, or a portion thereof, such property, or portion thereof, shall be excluded from the definition of "Incorporation Area" set forth in Section 2.1 of this Agreement. The County and the Board of Supervisors shall not advocate against any property owner in the Incorporation Area giving its written consent to incorporation.

4.3. **Survey.** The Town shall prepare, at its own expense, a survey plat showing the Incorporation Area to be incorporated into the Town boundaries by order of the Special Court. The Town shall submit and file the final survey plat of the Incorporation Area, as incorporated into the Town boundaries, with the Commission and the Special Court.

4.4. **Effective Date.** The incorporation of the Incorporation Area into the boundaries of the Town shall be effective December 31, 2024. If the Special Court has not entered an order affirming this Agreement on or prior to December 31, 2024, unless otherwise agreed in writing by the County and the Town, the incorporation of the Incorporation Area into the boundaries of the Town shall be effective thirty (30) days after the date of the Special Court's entry of its order affirming this Agreement.

4.5. **Extension of Municipal Services.** Following the Effective Date of Incorporation, the Town shall extend its governmental services (including, for example, law enforcement, street maintenance, and zoning controls) to the Incorporation Area on the same basis and at the same level as such services now are or hereafter may be provided to areas within the Town's current corporate limits where like conditions exist.

Section 5. Utilities.

5.1. **Town to Serve Compass Creek.** The Town shall provide water and sewer service to the Incorporation Area consistent with the policies and practices applied to areas within the existing Town boundaries.

5.2. **Microsoft Utilities.** In the event the Microsoft Corporation gives its written consent to incorporation and the Microsoft Property is incorporated into the Town boundaries, the Town shall, at the request of the Microsoft Corporation, allow future phases of development on the Microsoft Property to be served by Loudoun Water. For the purposes of this Agreement "future phase" means any development on the Microsoft Property subsequent to the data center described as "IAD05," being the subject of County Plan Number STMP-2023-0004, or that due to the proposed use or redevelopment of the Microsoft Property would require the Town to provide utilities in excess of allocated capacity. Upon receipt of a request from the owner of the Microsoft

Property to receive water and/or sewer service from Loudoun Water for a future phase of development, and a commitment to serve from Loudoun Water, the Town and Town Council shall take all necessary steps to facilitate such service and shall adopt any zoning ordinance amendment, issue any special exception or special use permit, and grant any design and construction standard requirement waiver necessary to permit the same.

5.3. **Town Discretion.** Nothing in this Agreement shall be construed to alter, limit, or constrain the Town's discretion with respect to utility capacity and utility service decisions.

5.4. **Equal Service.**

5.4.1. Equal Rates and Fees. The Town shall charge the same rates, fees, and other charges to all utility customers of the same class, whether located within or outside the Town boundaries. Beginning on July 1 following the Effective Date of Incorporation, the Town shall charge all customers the In-Town Rates as adopted for that fiscal year.

5.4.2. Service; Reduction or Cessation of Service. The Town shall be obligated to provide any and all connected customers water and/or sanitary sewer services, whether within or outside the Town's boundaries, on an equal basis, subject to the Town's utility policies. Any reduction or cessation in water or sewer service for emergency conditions, will be applied on an equal basis to all customers, whether located within the Town or outside the Town.

5.4.3. Amendments. The Town shall adopt any amendments of ordinances, resolutions or policies necessary to effectuate the requirements of this Section 5.4.

5.5. **Limitations.** The provisions of Section 5.4, shall be effective for each fiscal year following the County's satisfaction of the Economic Development Incentive Payment pursuant to Section 6 of this Agreement.

Section 6. Economic Development Incentive Payment. Following the Effective Date of Incorporation, the County shall annually pay the Economic Development Incentive Payment to the Town on or before the last day of the fiscal year (June 30). In the event the County is delinquent in, or misses an Economic Development Incentive Payment, the Town shall give notice to the County under Section 10 of this Agreement and the County shall remit the Economic Development Incentive Payment to the Town within sixty (60) days of receipt of such notice.

Section 7. Limitation on City Status. The Town shall not Seek City Status for a period of twenty-five (25) years after the effective date of any legislation lifting the prohibition on the granting of new city charters as set forth in Virginia Code Ann. § 15.2-3201, or any successor statute. For purposes of this Agreement, "Seek City Status" shall mean the filing of a notice with the Commission to establish an independent city pursuant to Virginia Code Ann. § 15.2-2907(A) or any successor statute or similar legislation, or initiating a proceeding to transition to city status pursuant to Virginia Code Ann. §§ 15.2-3800, *et seq.*, or any successor statute or similar legislation. The Parties shall cooperate to actively oppose the passage of any legislation, specific or general, which would permit the Town to Seek City Status.

Section 8. Annexation and Boundary Adjustment.

8.1. **Limitation on Adverse Annexations.** The Town shall not, either directly or indirectly, file any annexation notice with the Commission pursuant to Virginia Code Ann. § 15.2-2907(A) or institute any court action for annexation against the County pursuant to Virginia Code Ann. § 15.2-3200, *et seq.*, or any successor provisions, seeking to annex any area of the County for twenty-five (25) years following the later of: (a) the Effective Date of Incorporation, or (b) the most recent Boundary Adjustment. For purposes of Section 8.1, the term "Boundary Adjustment" includes any change to the Town boundaries, except those: (i) of less than one (1) acre in size; or

(ii) for public improvement projects. The Town and the County may enter into a written agreement that any specific boundary adjustment shall not constitute a "Boundary Adjustment" and, therefore, not affect the twenty-five (25) year period provided in this Section. During the same period, the Town and Town Council agree to reject annexations initiated by citizen petition under Virginia Code Ann. § 15.2-3203(A) unless otherwise agreed by the Parties.

8.2. **Boundary Adjustment.** Nothing in this Agreement shall be interpreted to limit boundary adjustments by the Parties pursuant to Virginia Code Ann. § 15.2-3106 *et seq.*, provided, however, the landowner has given contemporaneous written consent to such boundary adjustment and such adjustment satisfies applicable policies, or is otherwise approved by the Parties. Both Parties are free to consent to or reject any future proposed boundary adjustment.

Section 9. Commission and Court Approval.

9.1. **Commission Review.** The Town and the County shall promptly initiate the steps required by Virginia Code Ann. § 15.2-3400 to obtain review of this Agreement by the Commission. The Parties shall cooperate in providing all information and documents required by the Commission.

9.2. **Court Approval.** Following issuance of the report of findings and recommendations by the Commission, the Town and the County shall initiate a proceeding to obtain Special Court affirmation and approval of this Agreement, or a modified agreement approved by the Parties, as provided by Virginia Code Ann. § 15.2-3400. The Parties agree that the Special Court's approval of this Agreement, or a modified agreement approved by the Parties, shall constitute the Town's withdrawal of the Notice, and no additional notification to the Commission shall be required.

9.3. **Cooperation.** The County and the Town shall cooperate and use their best respective efforts to obtain affirmation of this Agreement, including Commission review and Court approval, by December 31, 2024.

9.4. **Termination.** If the Special Court fails to approve and give full force and effect to this Agreement without modification, this Agreement shall terminate immediately, unless the Parties waive termination by mutually agreeing to the modifications requested by the Special Court in a written document, duly executed by the Parties' authorized representatives.

Section 10. Notices. Any notice provided under this Agreement shall be in writing sent to the person, address and email provided below, unless either Party provides advanced written notice to the other Party changing its contact information:

Town Manager
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176
kdentler@leesburgva.gov

County Administrator
County of Loudoun
1 Harrison Street, S.E.
Leesburg, Virginia 20175
tim.hemstreet@loudoun.gov

With a copy to:

Town Attorney
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176

County Attorney
Loudoun County
1 Harrison Street, S.E.
Leesburg, Virginia 20175

Section 11. Miscellaneous Provisions.

11.1. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties, and each of their future governing bodies, and any successor(s) thereto upon its approval by the Special Court.

11.2. **Counterparts/Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. This Agreement constitutes the entire understanding between the Parties.

11.3. **Court Enforcement.** The terms and conditions of this Agreement shall be enforceable, pursuant to Virginia Code Ann. § 15.2-3217, by the Special Court or any successor court appointed pursuant to Virginia Code Ann. §§ 15.2-3000 through 15.2-3004, or any successor statute.

11.4. **No Third-Party Beneficiaries.** The provisions of this Agreement are intended to benefit only the Parties to this Agreement. No part of this Agreement shall be construed to confer upon any other person or party the rights of a third-party beneficiary. No person not a party to this Agreement shall be empowered to seek the enforcement of the provisions of this Agreement.

11.5. **Attorneys' Fees.** Notwithstanding the provisions of Virginia Code Ann. § 15.2-3215, the Parties agree that the Town and the County shall each be responsible for paying their own attorneys' fees and other costs associated with the Notice, the preparation of this Agreement, and the submission of the Agreement to the Commission and the Special Court.

11.6. **Amendments.** This Agreement may be amended, modified, or supplemented, either in whole or in part, by mutual agreement of the County and the Town by a written document of equal formality and dignity, duly executed by the authorized representatives of the County and Town.

11.7. **Mediation.** No Party shall bring any legal action to enforce this Agreement without first submitting the dispute to non-binding mediation. Mediation shall be initiated by a demand for mediation. A third-party neutral shall act as mediator. If the Parties cannot agree on the mediator, McCammon Mediation Group, or its successor, shall appoint the mediator. Any mediation under

this Agreement shall be completed within ninety (90) days of the demand for mediation, absent the consent of the Parties.

Section 12. Effective Date. This Agreement shall be effective as of the date of execution by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officials.

TOWN OF LEESBURG, VIRGINIA AND
TOWN COUNCIL OF THE TOWN OF LEESBURG

Approved as to form:

By: _____

Town Attorney

Its: _____

Date: _____, 2024

COUNTY OF LOUDOUN, VIRGINIA
AND
BOARD OF SUPERVISORS OF LOUDOUN COUNTY

Approved as to form:

By: _____

County Attorney

Its: _____

Date: _____, 2024

LoudounNow

AFFIDAVIT OF PUBLICATION

I, Norman K. Styer, Publisher of Loudoun Now, a newspaper printed in the English language in Loudoun County, Commonwealth of Virginia, do hereby certify that this notice was Published in Loudoun Now on the following dates, to-wit

03/07/24	1
03/14/24	1

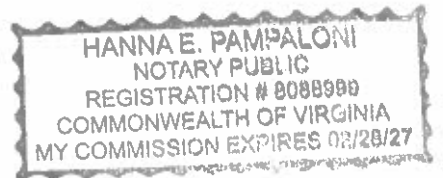
Town of Leesburg Notice of Public Hearing
County of Loudoun Voluntary Settlement
Agreement

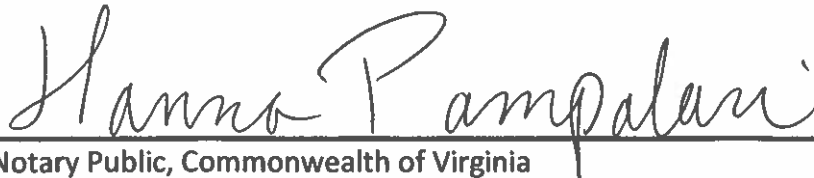
\$511.80



Publisher of Loudoun Now

Subscribed and Sworn on this
14th day of March, 2024





Notary Public, Commonwealth of Virginia

List of Selected Documents on File with the Commission

Below is a list of selected documents that are referenced in the report, on file with the Commission, and available at the embedded hyperlinks.

- The Notice of the Town of Leesburg of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data (September 28, 2022)
- Responsive Pleading of the County of Loudoun and Supporting Narrative, Information, Citations, and Materials (July 7, 2023)
- The Reply of the Town of Leesburg in Support of its Intention to Petition for Annexation of Territory in the County of Loudoun and Supporting Data (October 13, 2023)
- Notice by the County of Loudoun of its Desire to Attempt to Negotiate an Agreement Pursuant to Virginia Code § 15.2-2907(E) (December 21, 2023)
- Video recording of the Oral Presentations before the Commission on March 21, 2024
- Video recording of the Public Hearing on March 21, 2024
- Letter indicating the Microsoft Corporation’s consent to be annexed into the Town of Leesburg (February 12, 2024)
- Letter indicating Leesburg Commercial, LC’s consent to be annexed into the Town of Leesburg (February 28, 2024)
- Presentation accompanying testimony of Kaj Dentler at the Oral Presentations before the Commission on March 21, 2024
- Site visit information presented to the Commission on March 21, 2024
- Presentation accompanying testimony of Andrew Bowman at the Oral Presentations before the Commission on March 21, 2024