

MOTION	BAILEY	October 24, 2023
SECOND:	BODDYE	Regular Meeting
RE:	AUTHORIZE A MEMORANDUM OF UNDERSTANDING BETWEEN THE PRINCE WILLIAM BOARD OF COUNTY SUPERVISORS AND THE FRIENDS OF HORTICULTURAL THERAPY, INC. FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF THERAPEUTIC HORTICULTURAL GARDENS ON COUNTY-OWNED LAND, TRANSFER, BUDGET, AND APPROPRIATE \$435,000 IN GENERAL USE PROFFER FUNDS, AND ACCEPT, BUDGET, AND APPROPRIATE \$90,000 FROM FRIENDS OF HORTICULTURAL THERAPY, INC. – COLES MAGISTERIAL DISTRICT	
ACTION:	APPROVED	

WHEREAS, Prince William County (County) is a political subdivision of the Commonwealth of Virginia that owns a 17.9548-acre parcel of undeveloped land known as Shenandoah Park located at 13501 Bristow Road in the Coles Magisterial District (Subject Property); and

WHEREAS, the Friends of Horticultural Therapy, Inc. (FOHT) is a 501(c)(3) nonprofit corporation incorporated under Virginia law to provide volunteer and financial support for the therapeutic horticultural activities of the Psychosocial Rehabilitation Program (PSR program) provided by the Prince William County Department of Community Services (CS), a governmental agency that serves residents of the County, the City of Manassas, and the City of Manassas Park; and

WHEREAS, the PSR program serves adults with mental illness and / or intellectual disabilities by providing opportunities through therapeutic horticultural activities to improve the quality of their lives and increase their independence in the community; and

WHEREAS, in 2006, the former Prince William County Park Authority (PA) approved the Shenandoah Park Master Plan (SP Master Plan) prepared by FOHT via Resolution Number (Res. No.) 06-0726 for a horticultural therapy complex at Shenandoah Park, which generally contained garden areas, a greenhouse, and a multi-purpose indoor building; and

WHEREAS, in 2014, after the dissolution of the PA, the Board reaffirmed the SP Master Plan via Res. No. 14-380; and

WHEREAS, the 2020 Parks, Recreation, and Tourism systemwide Master Plan adopted by the Prince William Board of County Supervisors (Board) via Res. No. 20-690 called for staff to re-evaluate plans for using Shenandoah Park as a therapeutic horticultural programming location and re-master plan the park if deemed appropriate; and

WHEREAS, in 2022, FOHT reduced the SP Master Plan scope due to fundraising challenges, namely by removing the proposed indoor facility for consideration in the future; and

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WHEREAS, the revised SP Master Plan generally contains a garden area, accessible walkway, shelter, and parking (the Project) and is estimated to cost \$600,000; and

WHEREAS, the Department of Parks and Recreation (DPR), FOHT, and CS worked collaboratively to draft a Memorandum of Understanding (MOU) that stipulates the construction, operation, and maintenance of the Project improvements; and

WHEREAS, CS plans to conduct monthly therapeutic horticultural activities at the Subject Property through staff and members of the PSR; and

WHEREAS, in 2022, the Board appropriated \$25,573 towards the project using Fiscal Year (FY) 2023 Coles Magisterial District office savings (Res. No. 22-573); and

WHEREAS, the Project aligns with HW1: B of the 2021 - 2024 Board Strategic Plan: *expand or enhance the continuum of community-based care and treatment services that address human service needs on a pathway to self-sufficiency and, stability; and*

WHEREAS, upon completion of the Project, FOHT will maintain the Project improvements at the Subject Property and may provide program assistance to CS participants from time to time under the direction of CS staff as well as partner with other non-governmental entities and individual families to utilize the site for therapeutic horticultural activities not affiliated with CS; and

WHEREAS, the developer of New Dominion Square (PLN2011-00268) in the Coles Magisterial District contributed \$1,246,282.66 in general use proffers for parks and recreation purposes; and

WHEREAS, the Board desires to appropriate \$435,000 in Coles Magisterial District General Use proffers for the construction of the garden area, accessible walkway, shelter, and parking area; and

WHEREAS, the Project will expand recreational opportunities and the use of the proffer funds for this purpose is consistent with the proffer conditions; and

WHEREAS, the Parks and Recreation Proffer Fund has approximately \$8,319,804 million in available proffers countywide as of June 23, 2023, for parks and recreation facilities; and

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WHEREAS, FOHT desires to donate \$90,000 towards the estimated \$600,000 in Project costs in addition to \$50,000 worth of in-kind engineering services as well as operate the facility year-round and provide deferred maintenance of the Project improvements upon completion; and

WHEREAS, DPR and FOHT have drafted a MOU to set forth the responsibilities and obligations each party will undertake relating to FOHT's use of the Subject Property for the construction and maintenance of the Project improvements;

NOW, THEREFORE, BE IT RESOLVED that the Prince William Board of County Supervisors hereby authorizes a Memorandum of Understanding between Prince William Board of County Supervisors and the Friends of Horticultural Therapy, Inc. for the construction, operations, and maintenance of Therapeutic Horticultural Gardens on County-Owned land and transfer, budget, and appropriate \$435,000 in General Use Proffer Funds and accept, budget, and appropriate \$90,000 from Friends of Horticultural Therapy, Inc;

BE IT FURTHER RESOLVED that the Prince William Board of County Supervisors hereby authorizes the Director of Parks and Recreation to execute such documents necessary to effect the intent of this resolution and approved as to form by the County Attorney's Office.

ATTACHMENT: Memorandum of Understanding

Votes:

Ayes: Angry, Bailey, Boddye, Franklin, Lawson, Vega, Weir, Wheeler

Nays: None

Absent from Vote: None

Absent from Meeting: None

ATTEST:

Andrea P. Madden

Clerk to the Board

MEMORANDUM OF UNDERSTANDING

BETWEEN THE BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA AND THE FRIENDS OF HORTICULTURAL THERAPY, INC. FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF THERAPEUTIC HORTICULTURAL GARDENS ON COUNTY-OWNED LAND

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is entered into on the _____ day of _____, 2023, by and between the Board of County Supervisors of Prince William County, Virginia (the “Board”) and The Friends of Horticultural Therapy, Inc. (“FOHT”) for the purpose of detailing the responsibilities and obligations relating to FOHT’s use of County-owned land for the maintenance of gardens and support amenities to be used for therapeutic horticultural activities of the Psychosocial Rehabilitation Program (“PSR program”) provided by the Prince William County Department of Community Services (“CS”).

RECITALS

WHEREAS, Prince William County (the “County”) is a political subdivision of the Commonwealth of Virginia that owns a 17.9548-acre parcel of undeveloped land, known as Shenandoah Park, located at 13501 Bristow Road in the Coles Magisterial District (the “Subject Property”); and

WHEREAS, FOHT is a 501(c)(3) nonprofit corporation incorporated under Virginia law to provide volunteer and financial support for the therapeutic horticultural activities of the PSR program operated by CS, a governmental agency that serves residents of Prince William County, the City of Manassas, and the City of Manassas Park; and

WHEREAS, the PSR program serves adults with mental illness and/or intellectual disabilities by providing opportunities through therapeutic horticultural activities to improve the quality of their lives and increase their independence in the community; and

WHEREAS, in 2006, the former Prince William County Park Authority (“PA”) approved the Shenandoah Park Master Plan (“SP Master Plan”) prepared by FOHT via Resolution #06-0726 for a horticultural therapy complex at Shenandoah Park, which generally contained garden areas, a greenhouse, and a multi-purpose indoor building; and

WHEREAS, in 2014, after the dissolution of the Park Authority, the Board reaffirmed the SP Master Plan via Resolution #14-380; and

WHEREAS, the 2020 Parks, Recreation, and Tourism systemwide Master Plan adopted by the Board called for staff to re-evaluate plans for using Shenandoah Park as a therapeutic horticultural programming location and re-master plan the park if deemed appropriate; and

WHEREAS, in 2022, FOHT reduced the SP Master Plan scope due to fundraising challenges, namely by removing the proposed indoor facility for consideration in the future; and

WHEREAS, the revised Master Plan generally contains a garden area, accessible walkway, shelter, and parking (the “Project”) and is estimated to cost of \$600,000; and

WHEREAS, the Department of Parks and Recreation (DPR), FOHT, and CS worked collaboratively to draft an MOU that stipulates the construction, operation, and maintenance of the Project improvements; and

WHEREAS, CS plans to conduct monthly therapeutic horticultural activities at the Subject Property through staff and members of the PSR program; and

WHEREAS, the Project aligns with HW1: B of the 2021-2024 BOCS Strategic Plan: expand or enhance continuum of community-based care and treatment services that address human service needs on a pathway to self-sufficiency and stability; and

WHEREAS, in 2022, the BOCS appropriated \$25,573 towards the project using Fiscal Year 2023 Year End Office Savings (Res. 22-573); and

WHEREAS, the Board appropriated \$435,000 in Coles District Proffer funding for the Project via Resolution 23-[REDACTED] and \$25,573 in Year End Office Savings via Resolution 22-573; and

WHEREAS, FOHT desires to donate \$90,000 towards the Project costs and \$50,000 worth of in-kind engineering services as well as provide day-to-day maintenance and operation of the Project upon completion; and

WHEREAS, the purpose of this MOU is to set forth the responsibilities and obligations each party will undertake relating to FOHT’s use of the Subject Property for the construction and maintenance of the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree that their respective obligations under this agreement shall be as follows:

I. RESPONSIBILITIES AND OBLIGATIONS OF FOHT

- a. FOHT will provide \$90,000 to Prince William County via the Department of Parks and Recreation (“DPR”) within thirty (30) days of execution of this Agreement to be applied exclusively towards the planning and construction of the Project as shown on the proposed Master Plan attached as Exhibit A to this MOU.
- b. FOHT acknowledges the County will be the owner of all the Project improvements made using FOHT financial contributions.
- c. FOHT shall provide DPR with a draft site plan, draft grading plan, and any and all previous studies and/or tests associated with the Project which are in FOHT’s possession or control.
- d. FOHT shall be responsible for operating the Project improvements, year-round, upon completion including but not limited to garden maintenance (including fencing and all ancillary structures/features), litter and debris control, shelter cleaning, trash removal, well maintenance, and snow and ice removal from sidewalks prior to any scheduled therapeutic horticultural activity usage occurring during cold-weather months. Trash can be deposited into designated DPR dumpsters upon coordination with DPR. If maintenance of the Project improvements becomes burdensome as a result of general public use, as opposed to use for therapeutic horticultural activities, DPR and FOHT agree to cooperate in good faith to address the burden of public use, including consideration of locking the entrance gate to the Project and/or garden gate(s) except during use of the Project for therapeutic horticultural activities.
- e. FOHT shall provide a minimum of one accessible port-a-john at a location within the Project and pay all annual service fees.
- f. FOHT shall pay all utility consumption charges for operation of the Project, as applicable.
- g. FOHT shall attempt to foster relationships with, and encourage use of the Project by, other potential users of the Project who may benefit from therapeutic horticultural activities, such as veterans’ groups, vulnerable populations, and garden clubs.
- h. FOHT shall fundraise for a deferred maintenance fund (the “Maintenance Fund”) to be used exclusively for long term capital maintenance needs related to the

Project improvements, such as repaving, utility repairs, structural repairs, etc. All such funds shall be placed in a restricted Virginia Qualified Public Depositor (VQPD) FOHT account in accordance with the following provisions:

- i. FOHT shall deposit \$10,000 into the Maintenance Fund account within thirty (30) days of execution of this Agreement.
- ii. In addition to (g)(i), FOHT shall deposit a minimum of \$5,000 into the Maintenance Fund account every five (5) years of the Agreement.
- iii. Use of the funds held in the Maintenance Fund shall be restricted to repairs to the Project and DPR shall manage all work unless granting approval to FOHT to manage outside licensed and insured contractors, which shall be permissible under this Agreement, and not be unreasonably withheld.
- iv. FOHT shall issue available funds from the Maintenance Fund to DPR as requested, within thirty (30) days' notice, for deferred maintenance projects.
- v. If FOHT dissolves, all funds in the Maintenance Fund shall transfer to the County.
- i. FOHT may provide program support to CS participants from time to time on the Subject Property under the direction of CS staff as well as encourage other non-governmental entities and individual families to utilize the site for therapeutic horticultural activities not affiliated with CS.
- j. FOHT shall require County-provided waivers from individual therapeutic garden participants not affiliated with CS for all FOHT-led activities on the Subject Property in accordance with Exhibit B. FOHT shall retain all such signed waivers on file for County inspection, as necessary, for a period of two years after receipt.
- k. FOHT shall coordinate with and notify the DPR Director of all non-CS organizations which intend to conduct therapeutic horticultural activities at the Project so DPR can obtain separate agreements with, and insurance coverage and participant waivers from, such organizations. FOHT shall have no liability with respect to the use of the Project by such other organizations for non-FOHT-led activities.
1. FOHT shall (i) establish guidelines for use of the gardens, planting schedules and planting design, etc., (ii) provide such guidelines to non-FOHT individuals and groups utilizing the Project, (iii) provide general usership guidance and direction

to non-FOHT individuals or groups utilizing the Project, and (iv) address issues regarding non-FOHT individuals' or groups' non-compliance with the guidelines directly with such individuals or groups as necessary, without involvement from DPR.

- m. FOHT shall provide direct supervision for all non-CS visitors participating in FOHT-led activities, if any.
- n. If FOHT provides volunteer assistance to CS therapeutic horticultural programming, any volunteers interacting with program participants will need to adhere to policies and procedures concerning volunteers for CS which includes having background checks and insurance coverage. All such approvals shall be coordinated directly with CS.
- o. The Subject Property will open to the public from dawn to dusk. The Project shall include a gate at the entrance to the Subject Property from Bristow Road which DPR shall close and lock after hours, if necessary. FOHT will be provided the keys to the gate.
- p. FOHT shall not alter or expand the Project scope from that shown on Exhibit A without written approval from the DPR Director, which shall not be unreasonably withheld if changes do not significantly change the original design and programmatic intentions as contained herein or exceed FOHT's operating capacity.
- q. FOHT shall manage and provide insurance for all Project maintenance performed by FOHT approved volunteers.
- r. FOHT shall be permitted to host fundraising and marketing activities on the Subject Property, without charge, provided such activities are covered by FOHT insurance.
- s. FOHT shall recognize DPR as an official partner on all marketing material and agree to be featured in DPR promotional material.
- t. FOHT shall promptly notify DPR of security issues, which shall be addressed by DPR Rangers in cooperation with the Police Department, as necessary.

II. RESPONSIBILITIES AND OBLIGATIONS OF THE COUNTY

- a. The County shall be responsible for final engineering and construction of the entirety of the Project including the final site plan and other necessary approvals, permits, and contracts, within the available budget.
- b. The County reserves the right to reduce the Project scope, in coordination with FOHT, if the construction costs exceed available funding.
- c. If FOHT dissolves or cannot provide consistent programming for target clientele as described in this MOU and/or CS reduces or discontinues therapeutic horticultural activities, the County reserves the right to close the Subject Property and/or alter, remove, repurpose, or operate all Project improvements.
- d. Any programmatic matters between FOHT and CS shall be negotiated under separate agreement between both said parties.
- e. CS shall utilize the Project for therapeutic horticultural activities as long as CS programming funding is available, and the program need exists.
- f. DPR shall provide snow removal services for the parking lot, as available and necessary. The Subject Property will be low priority site for snow removal.
- g. DPR will aid FOHT with resolving security issues as resources allow.
- h. DPR shall be responsible for securing the entry gate to the Subject Property after hours if needed.
- i. The County reserves the right to make improvements to the Subject Property that complement the Project and/or expand public use by the general public utilizing County funds, in coordination with FOHT.
- j. In the instance that the County makes additional improvements, primary consideration will be given to accommodating expansionary plans by FOHT, including but not limited to, an indoor classroom building.
- k. CS shall be responsible for providing a minimum of monthly therapeutic horticultural activities at the project site through staff and members of the PSR program.

III. INSURANCE

- a. FOHT shall, at its own expense and cost, procure and maintain a general liability insurance policy or policies to be in effect during the term of this MOU. Insurance coverage shall be \$1,000,000 per Occurrence with a \$2,000,000 aggregate. Also, the County shall be named as an additional insured on the policy. Also, FOHT shall maintain automotive liability insurance with an aggregate liability of \$1,000,000. A certificate of insurance for each policy shall be provided to DPR, together with satisfactory proof of the premium payment. The policy shall contain a clause requiring the Insurer to provide written notice to DPR of nonpayment of policy premium and ten (10) days written notice of cancellation before cancellation shall be effective. In the event the Insurance policy is cancelled, FOHT shall obtain substitute insurance, and if FOHT fails to obtain such insurance within seven (7) days, the DPR may obtain said insurance and charge the cost of it to FOHT. Failure to maintain adequate Insurance pursuant to this Section shall constitute an event of default.
- b. FOHT shall require any third-party volunteer groups which are engaged in maintenance or other activities on the Subject Property and which are not affiliated with FOHT to provide their own liability insurance if not covered under FOHT's policy at the same levels as listed above.

IV. INDEMNIFICATION AND LIABILITY; WAIVER OF SUBROGATION

- a. FOHT hereby agrees to indemnify and hold harmless the Board, its officers, agents and employees, from any and all claims, losses, expenses, costs, suits, actions, proceedings, demands or liabilities for property damage, bodily injuries, personal injuries and any environmental violations or damages, including cost of investigation, all reasonable attorneys' fees, and the cost of appeals arising out of any such claims or suits that are assessed against the Board and/or the County, its officers, agents and employees, because of any willful misconduct or negligent or reckless act or omission of FOHT in connection with the operation and maintenance of the Project and the provision of any services pursuant to this MOU. All parties understand and agree that FOHT and its agents, subcontractors, employees and volunteers are at all times herein acting as an independent entity or entities.
- b. FOHT or its insurer is responsible, at FOHT's or its insurer's expense, for prosecution and defense of all legal actions affecting the Project and FOHT's officers, employees, agents and volunteers, if volunteer services are used. FOHT

shall immediately notify the County in writing whenever a claim is threatened, and the County shall make reasonable efforts to cooperate with FOHT in the prosecution or defense of legal actions; provided, however, that the County shall not be responsible for any expenses, costs, attorney's fees, damage or other loss except to the extent such loss arises from the wanton and willful acts or omissions or negligence of the County or that of its employees.

- c. Except as otherwise expressly provided herein, FOHT shall not be responsible for the acts or omissions of any of the County's contractors or any subcontractor, or any employees of the County, or any persons representing the County performing any services for or in connection with the Project or the Subject Property, or any consultants or other persons engaged by the County with respect thereto, unless and only to the extent FOHT is supervising or should be supervising the same, and FOHT shall be responsible only for the performance of FOHT's obligations hereunder in accordance with the terms hereof.
- d. The parties agree that this MOU and any disputes hereunder shall be governed by the laws of the Commonwealth of Virginia. It is further agreed that all disputes and matters arising under, in connection with or incident to this MOU shall be litigated, if litigation becomes necessary, in and before a state Court located in the County of Prince William in the Commonwealth of Virginia or a federal Court located in the Eastern District of Virginia, and any appropriate appellate Court thereof, to the exclusion of the courts of any other state, territory, country or other jurisdiction.
- e. FOHT hereby waives, releases and discharges the County and its assigns from all claims or demands arising from all damage and/or liability arising from FOHT's performance of its obligations under this MOU. FOHT agrees that its insurance policies shall be endorsed with a waiver of subrogation clause with respect to the County and its assigns, and neither FOHT nor its insurer(s) shall have any claim against the County to the extent the claim is or should have been covered by insurance.

V. APPROPRIATIONS

Nothing contained in this Agreement shall be construed as binding the County to expend in any one fiscal year any sum in excess of appropriations made by the Board, and available for the purposes of this Agreement for that fiscal year, or as involving the County in any contract or other obligation for the further expenditure of money in excess of or in advance of receipt of such appropriations or other funds.

VI. AMENDMENTS

Modifications, revisions, or additions to this Agreement shall be made in writing and will become effective only upon the written approval of both parties to this Agreement and the County Attorney. Amendments must be dated and signed by the Chair of the Board of County Supervisors or other authorized representative of the County.

VII. ASSIGNMENT

FOHT shall not assign any of its rights, responsibilities and obligations under this MOU without prior written consent of the Board, which consent shall not be unreasonably withheld.

XII. TERMINATION OF MOU

- a. The FOHT and the Board agree that the Board may terminate this MOU at any time and for any reason if the Board deems it necessary and appropriate to do so. In order to effectuate termination, the Board will give FOHT a ninety (90) day notice in writing of its intention to terminate. Upon such termination, any balance held in the Maintenance Fund shall be returned to FOHT.
- b. Either party may terminate this MOU without further obligation, for the default of the other party or its agents, employees or volunteers with respect to any obligations, responsibilities and other provisions contained herein, provided the defaulting party is given written notice of the default and is given reasonable time, as provided in the written notice, from the date of the default notice to satisfactorily cure the default. However, nothing in this Paragraph shall supersede the Board's right to terminate this MOU for convenience as provided in the preceding subsection.

NOTICES

All notices given by either party to the other hereunder shall be in writing and shall be hand delivered or sent by recognized overnight courier or by certified mail, returned receipt requested, postage prepaid. All such notices shall be addressed as follows:

If to County: Prince William County Department of Parks and Recreation
Attn: Director
14420 Bristow Road
Manassas, VA 20112

Cc:

Prince William County Community Services
Attn: Executive Director
8033 Ashton Avenue, Suite 103
Manassas VA 20109-2892

If to FOHT: The Friends of Horticultural Therapy, Inc.
15008 Cloverdale Road
Woodbridge, VA 22193

(Signatures Appear on Following Page – Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the day and year as above written.

THE FRIENDS OF HORTICULTURE THERAPY, INC.

By: _____ DATE: _____
Name

Title

**BOARD OF COUNTY SUPERVISORS
OF PRINCE WILLIAM COUNTY, VIRGINIA**

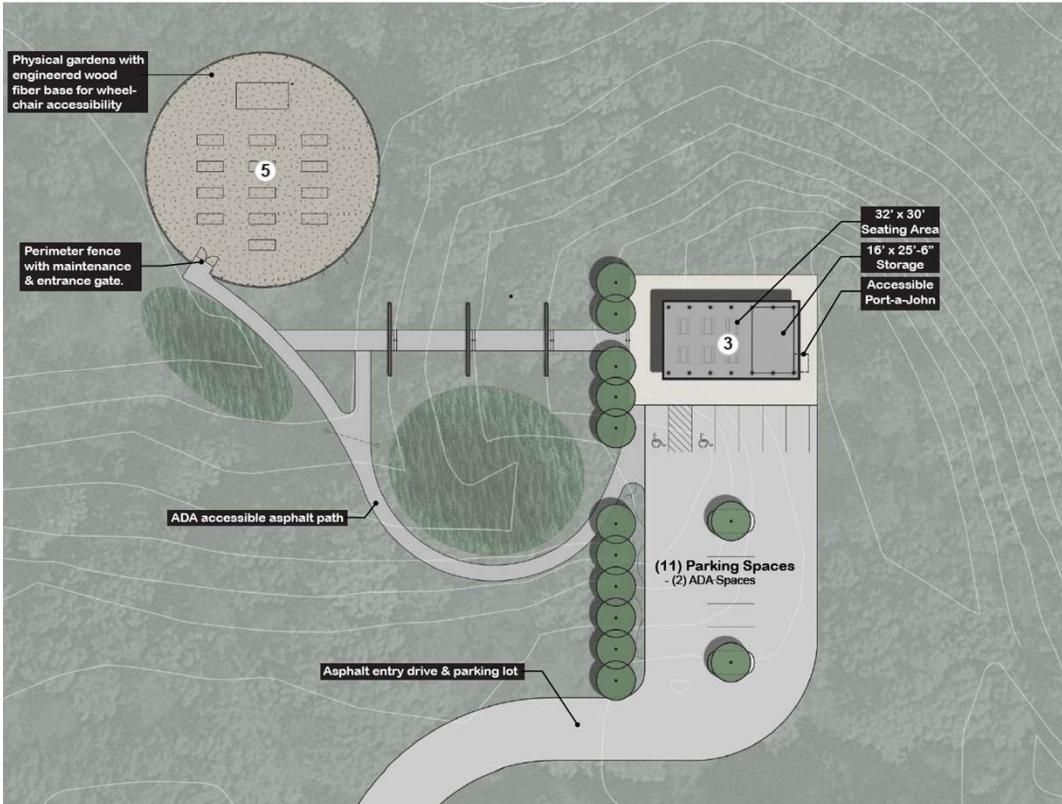
By: _____ DATE: _____
Seth Hendler-Voss
Director
Department of Parks and Recreation

By: _____ DATE: _____
Lisa Madron
Executive Director
Prince William County Community Services

APPROVED AS TO FORM
COUNTY ATTORNEY

EXHIBIT A

Proposed Master Plan | Phase I



③ 30' x 52' Pavilion with storage by RCP Shelters

⑤ Physical Gardens (Raised beds provided and maintained by Friends of Horticulture Therapy)

Proposed Master Plan | Phase I



EXHIBIT B

PRINCE WILLIAM COUNTY DEPARTMENT OF PARKS, RECREATION & TOURISM RELEASE

I, the undersigned, am volunteering to participate in horticultural activities and/or allowing a person/persons under my legal custody to participate in horticultural activities at Shenandoah Park, at 13501 Bristow Road, Nokesville, VA 20181, owned by the Prince William County Board of County Supervisors, under the supervision of the Friends of Horticulture Therapy, Inc. (FOHT). I, the undersigned, agree as follows:

- (1) I have inspected the site where the activity will take place and find it safe and suitable for my use and/or the use of those under my legal custody. I have taken all steps reasonably necessary to ensure I am physically capable and those under my legal custody are physically capable of safely participating in the activity.
- (2) I understand that the activity presents risks and I assume all risks for me and any person under my legal custody. I will follow all instructions from FOHT representatives and ensure those under my legal custody follow all instructions from FOHT representatives.
- (7) In consideration of being allowed to participate in the activity, I hereby waive, release and forever discharge the Board of County Supervisors of Prince William County, Prince William County, their officers, directors, employees, agents and volunteers ("County") from any and all claims, liabilities, and causes of action of every kind arising out of or relating in any way to my use of the property or my participation in the activity.
- (8) I agree to indemnify and hold harmless the County from any and all claims and losses of any type, including costs, attorney's fees and appeals, resulting from any of my acts or omissions, or claims or suits filed by me.
- (9) This Release and Assumption of Risk is binding on all my heirs, executors, next of kin and assigns, and all persons who may claim by or through me.

SIGNATURE: _____ Date: _____

Print Name: _____ Phone: _____

Name of participant(s) under my legal custody:

