

ARLINGTON COUNTY, VIRGINIA



**County Board Agenda Item
Meeting of September 25, 2010**

DATE: September 1, 2010

SUBJECT: Approval of an Agreement of Sale for the County's Purchase of a Parcel of Land Owned by Monument Associates, Located along U.S. Route 50 in Arlington (RPC #17001013).

C. M. RECOMMENDATIONS:

1. Approve the attached Agreement of Sale between Mounument Associates, a Virginia general partnership, and the County Board of Arlington County, Virginia, for the purchase by the County Board of a parcel of land, containing 15,855 square feet, along U.S. Route 50; and
2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, to execute the attached Agreement of Sale and all related documents necessary for the acquisition, subject to approval as to form of all documents by the County Attorney.

ISSUE: This Board Report requests the approval of an Agreement of Sale for the County Board to purchase a parcel of land lying between the U.S. Route 50 right-of-way and land owned by Arland, L.L.C. The parcel is needed for the construction of the Potomac Interceptor sanitary sewer improvements. There are no issues identified with this Report.

SUMMARY: The Agreement of Sale, a copy of which is attached as Attachment 1, is an offer by Monument Associates, a Virginia general partnership, to sell to the County Board a 15,855 square foot parcel of land located between the right-of-way for U.S. Route 50 and the land owned by Arland, L.L.C. (i.e. the River Place South and River Place East cooperative buildings). The subject parcel is identified as RPC #17001013 (the "Property"). The purchase price is thirty-one thousand seven hundred and ten dollars (\$31,710). The Property is necessary for the installation of a major sanitary sewer junction structure, which structure is a part of the ongoing Potomac Interceptor sanitary sewer project.

County Manager:

County Attorney:

27.

Staff: Michael Halewski – DES, Real Estate Bureau

ARLINGTON COUNTY, VIRGINIA

BACKGROUND: The Property is located between the U.S. Route 50 right-of-way and parcels owned by Arland, L.L.C., which parcels are currently improved as the River Place South and

River Place East cooperative buildings. The location of the Property is more particularly shown on the vicinity maps, attached as Attachments 2, 3, and 4. The acquisition of the Property is necessary to construct a significant sanitary sewer junction structure as part of the Department of Environmental Services sanitary sewer project known as the "Potomac Interceptor" Project ("Project"). The Property is zoned S-3A. The Property is located within the Radnor/Fort Meyer Heights Civic Association.

DISCUSSION: County staff has concluded negotiations with the Property owner for the County's acquisition of the Property. In January 2009, County staff obtained a summary appraisal report from a real property appraiser licensed in the Commonwealth of Virginia. The report indicated the fair market value of the Property as being thirty-one thousand seven hundred and ten dollars (\$31,710). The proposed purchase price of the Property is the appraised value. The Property is to be conveyed to the County as vacant land.

A Phase I environmental study of the Property, prepared for the County by Greenhorne & O'Mara, indicates that there are no reported environmental conditions on the Property. A title report obtained by the County reveals no liens or unacceptable encumbrances attached to the Property. County surveyors have prepared an American Land Title Association / American Congress on Surveying and Mapping land title survey of the Property.

The Agreement of Sale becomes null and void if the County Board does not approve the Agreement on or before September 30, 2010. Closing will occur within thirty days after the resolution of any survey or title matters.

As noted above, the County needs the Property to construct a portion of a large sanitary sewer junction structure within the Property as part of the ongoing Project. County staff sought a permanent easement for sanitary sewer purposes over, under, across, and through a portion of the Property. However, the owner of the Property was unwilling to grant such a permanent easement to the County. The owner of the Property was only willing to sell the entire Property to the County.

FISCAL IMPACT: Funds in the amount of \$31,700, plus additional closing costs, for the purchase of the Property are available in the Potomac Interceptor project (519.43544.SA21.339.0000).

County Manager:

County Attorney:

Staff: Michael Halewski – DES, Real Estate Bureau

ATTACHMENT 1
AGREEMENT OF SALE

This AGREEMENT OF SALE (the "Agreement") is made on _____, 20__ by and between by MONUMENT ASSOCIATES, a Virginia general partnership ("Seller"), and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic ("Purchaser").

In consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual benefits to be received by the parties, Seller agrees to sell, and Purchaser agrees to buy pursuant to the terms and conditions of this Agreement, in fee simple absolute, all that land, together with the improvements thereon, situate, lying and being in Arlington County, Virginia, and being more particularly described in paragraph 1 below:

1. **THE PROPERTY:** The entire parcel, also identified by Arlington County, Virginia Real Property Code Number 17001013, is hereinafter referred to as "the Property", and is further described as:

BEING as shown on Sheets 3 and 4 of the plans for Route 50, State Highway Project 0050-000-101, RW-201 and being all the land lying between the north existing right of way line and the north limited access line of Route 50 (Arlington Boulevard) and beginning at a point 118.99 feet opposite Station 2 + 12.36 (centerline Route 50), said point being the southeastern corner of the lands of Grantee. From the point of beginning thus established, thence along the said limited access line of Route 50 the following courses and distances: N. 64° 01' 01" W., 248.459 feet; N. 51° 42' 42" W., 152.208 feet; N. 52° 48' 26" W., 78.113 feet; N. 57° 32' 43" W., 236.01 feet; and N. 49° 03' 45" W., 47.552 feet to a point at the connection of the said limited access and existing right of way lines of Route 50 (Arlington Boulevard); thence continuing along the existing right of way line of Route 50 (Arlington Boulevard) on a curve to the right, the radius of which is 1,246.00 feet, an arc distance of 235.50 feet, to a point; thence along said right of way line S. 55° 48' 00" E., 524.76 feet to the point of beginning and containing 15,855.08 square feet, more or less, land.

2. **PRICE:** The total purchase price of the Property is Thirty-one Thousand Seven Hundred Ten Dollars (\$31,710.00), subject to adjustments as provided for in this Agreement, to be paid by Purchaser to Seller as set forth hereafter (the "Purchase Price").

3. **SETTLEMENT:**

- a. The settlement of the sale of the Property in accordance with this Agreement (the "Settlement" or "Settlement Date") shall take place within Thirty (30) days after the completion of the requirements of Paragraph 10 (Hazardous Materials), unless extended to meet the conditions and requirements of Paragraph 5 (Title), Paragraph 11 (Survey), or as provided in Paragraph 3b.
- b. The Real Estate Bureau Chief, Engineering and Capital Projects Division of the Arlington County Department of Environmental Services is authorized to extend the Settlement Date on behalf of the Purchaser pursuant to any provision of this Agreement, or upon written agreement of the Seller and Purchaser.
- c. Settlement shall take place in the offices of Walker Title, LLC, 2009 14th Street North, Suite 603, Arlington, Virginia 22201, or at such other place, and by such other person or entity as Purchaser desires (the "Settlement Agents").
- d. On or before Settlement, Purchaser shall deliver good funds to the Settlement Agents for the Purchase Price. The settlement proceeds due to Seller, after prorations and adjustments made pursuant to this Agreement, will be disbursed by the Settlement Agents' trustee check or wired funds upon the completion of the bring-down of title and recording of the deed of conveyance.
- e. Seller represents and warrants to Purchaser that Seller is not a "foreign person" as defined by §1445 of the Internal Revenue Code, and is a resident of Virginia. At the time of Settlement, Seller shall execute necessary forms and affidavits stating the same under penalty of perjury and providing Seller's true and correct address and United States Taxpayer Identification Number for a proper 1099 Internal Revenue Service Form. Seller and Purchaser shall also execute such other settlement documents as are reasonably required by the Settlement Agents.
- f. Seller warrants and represents that it has the full legal right and authority to execute this Agreement and to convey the Property to Purchaser and to execute any and all other documents necessary or desirable to effectuate

Seller's obligations under this Agreement of Sale. If additional signatures, authority or documentation is required by the title insurance company or the Settlement Agents, Seller shall promptly and at its own cost supply the same. If the Seller is a legal entity such as a corporation, partnership, limited liability company or is a fiduciary, such as a trustee, executor or administrator, then the Seller warrants and represents that it has the authority to execute this Agreement on behalf of Seller, and to bind Seller to the terms of this Agreement.

- g. **DISCLOSURES:** a. **Choice of Settlement Agent:** You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement attorney who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.
- h. **ESCROW, CLOSING, AND SETTLEMENT GUIDELINES:** The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement, or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provisions of the Consumer Real Estate Settlement Protection Act. (1997, c.716.)

4. **ENCUMBRANCES:** Seller shall not, either by commission or omission, cause or permit the Property to be encumbered in any way after Seller's execution of this Agreement.

5. **TITLE:** Seller agrees to execute and deliver a good and sufficient General Warranty deed with English Covenants of Title to the Property to Purchaser at Settlement. The Property shall be conveyed free and clear of all deeds of trust, judgments, liens, indebtedness or encumbrances, and without restrictions, easements, rights of way, covenants of record, title and survey exceptions, or leases, which, in the sole opinion of Purchaser, restrict or adversely affect the use of the Property by Purchaser for public purposes (together "Title Exceptions"). In addition, title shall be marketable and fully insurable ("Marketability") at usual and normal rates by a highly reliable national title insurance company licensed to do business in the Commonwealth of Virginia and approved by Purchaser, and free of Title Exceptions. Seller shall, at its sole expense, remove any such Title Exceptions or objectionable Marketability matters prior to Settlement. So long as Seller is actively pursuing the removal of such Title Exceptions or objectionable Marketability matters in good faith, the Settlement Date shall be extended until such Title Exceptions or objectionable Marketability matters are corrected, at the sole option of Purchaser. If at any time Purchaser concludes that such Title Exceptions or objectionable Marketability matters cannot be removed in a timely and satisfactory fashion, then the Purchaser may declare this Agreement void, and neither party will have further rights or responsibilities hereunder.

6. **CHARGES:** Examination of title, notary fees, State and local recording taxes (except the Virginia grantor tax) if any such taxes are applicable to this transaction, and Purchaser's attorney's fees are to be the cost of Purchaser. Seller shall pay for its own attorney's fees and costs, the preparation of the deed, the Virginia grantor tax, a reasonable settlement fee, the release of any liens or encumbrances against the Property, and the costs and attorney's fees to cure or remove any Title Exceptions or objectionable Marketability matters. Real estate taxes, water, sewer, utility and all other charges are to be pro-rated to the Settlement Date. The records of the Arlington County Treasurer's Office do not indicate that there are any current or delinquent real estate taxes, penalties, or interest due assessed against the Property.

7. **ELECTION REGARDING RELOCATION ASSISTANCE:** By executing this Agreement, Seller acknowledges that Seller has been fully informed of all payments and assistance to which Seller is entitled, and Seller chooses not to accept any such payments or assistance.

8. **DAMAGE PRIOR TO POSSESSION:** Risk of loss shall be on Seller until the recordation of the deed. If, prior to delivery of possession, the Property is damaged by any casualty, Purchaser may, at Purchaser's sole option, terminate this Agreement.

9. **POSSESSION AT SETTLEMENT:** Seller agrees to give possession of the Property at Settlement.

10. **HAZARDOUS MATERIALS:**

- a. Purchaser has obtained a Phase I Environmental Site Assessment (the "Environmental Report") regarding the Property from Greenhorne & O'Mara, Inc., dated April 23, 2010. Based on the Environmental Report, as of April 23, 2010, the Property is in an environmental condition acceptable to the Purchaser, as described in the Environmental Report.
- b. Seller shall not, either by commission or omission, cause or permit the disposal, release, or deposit of any actionable quantities of hazardous or toxic wastes or substances, including asbestos or lead, in violation of applicable Federal, State or Local environmental, health, and safety laws, regulations, ordinances, or standards ("Hazardous Materials") on or within any part of the Property after the date this Agreement is executed on behalf of the Purchaser.
- c. Purchaser shall have the right, at any time after the date this Agreement is executed on behalf of the Purchaser, to obtain additional environmental survey(s) of the Property by Greenhorne & O'Mara, Inc., or any successor entity ("G&O"), solely to verify that no new (subsequent to the date this Agreement is executed on behalf of the Purchaser) releases of Hazardous Materials have occurred on the Property that have adversely changed the environmental condition of the Property since the date this Agreement is executed on behalf of the Purchaser. If it is determined by such subsequent assessment or testing that new releases of Hazardous Materials are present on the Property to be conveyed to the County in actionable amounts (amounts requiring remediation under applicable law), then Purchaser's sole remedy upon such an event shall be the option to terminate this Agreement prior to Settlement by providing written notice to Seller, at which point Purchaser and Seller shall have no further duties, liabilities and obligations to any other party under this Agreement.
- d. Seller represents that, to the best of Seller's knowledge: (i) neither Seller, nor its predecessors in title, have disposed of, released, or deposited hazardous or toxic wastes or substances, including asbestos, regulated by the most stringent applicable Federal, State or Local environmental, health,

and safety laws, regulations, ordinances, or standards ("Hazardous Materials") on or within any part of the Property; and (ii) Seller has no actual knowledge of any such disposal, release, or deposit of Hazardous Materials on or within any part of the Property. Seller further warrants that Seller has not disposed of, released, or deposited any Hazardous Materials originating on the Property, except as provided by law at a site or facility approved by Federal, or State or Local regulatory agencies for the disposal of such materials. These representations and warranties in this paragraph shall survive conveyance of the Property to Purchaser.

- c. Notwithstanding the forgoing, if any additional environmental survey shows the presence of Hazardous Materials, Purchaser shall have the option, after receipt of such additional environmental survey, to terminate this Agreement prior to Settlement by providing written notice to Seller, at which point Purchaser and Seller shall have no further duties, liabilities and obligations to the other party under this Agreement.
- f. If Purchaser is satisfied, in its sole discretion, that the Property is free of Hazardous Materials, or that the amount of such materials is not sufficient to prevent purchase of the Property, then Purchaser shall proceed with the purchase of the Property and Settlement shall take place in accordance with the terms and conditions of this Agreement. The Seller shall have no liability to the Purchaser, after Settlement, for the presence of any Hazardous Materials on the Property, even if said Hazardous Materials existed on the Property prior to Settlement, unless Purchaser establishes that: (i) Seller violated its representations and warranties in Paragraph 10.d. of this Agreement; or (ii) Seller is otherwise liable or responsible by law.

11. **SURVEY:** The boundaries and acreage of the Property to be conveyed may be determined and depicted by a survey prepared by a registered land surveyor or engineer, conducted at the direction and expense of Purchaser. The survey may locate and depict all improvements, easements, rights of way, set backs, encroachments, flood plain and flood fringe areas and any other particulars which may be required by Purchaser. Purchaser shall provide Seller with a copy of the survey and, with a list of any matters which, in Purchaser's sole discretion, restrict or adversely affect Purchaser's intended use of the Property, encumber the Property, or otherwise adversely affect the marketability, use or enjoyment of the Property (all of the aforesaid being referred to as "Survey Exceptions"). Thereafter, Seller, at its own expense, shall remove any such Survey

Exceptions prior to Settlement. Notwithstanding the foregoing, so long as Seller is actively pursuing the removal of Survey Exceptions in good faith, the Settlement Date shall be extended until such Survey Exceptions are corrected, at the option of Purchaser. If at any time Purchaser concludes that the Survey Exceptions cannot be removed in a timely and satisfactory fashion, then the Purchaser may declare this Agreement void, and neither party will have further rights or responsibilities hereunder.

12. INSPECTION OF PREMISES: Sellers will permit the agents, designees and employees of Purchaser access to the Property at all reasonable times for the purpose of making the inspections necessary in connection with paragraph 10 (Hazardous or Toxic Materials), a building condition survey, and the survey pursuant to paragraph 11 (Survey), and for any other purpose contemplated by this Agreement.

13. NOTICES: All notices, demands, and requests which may be given, or are required to be given by either party to the other shall be in writing, and shall be either hand delivered by Federal Express or sent by United States certified mail, return receipt requested, with proper first class postage prepaid, properly and fully addressed:

If to Seller: Monument Associates
C/O Kenneth Mahieu, Esq.
Matson Freyvogel PC
8200 Greensboro Drive, Suite 325
McLean, Virginia 22102

If to Purchaser: Real Estate Bureau Chief
Arlington Co. Dept. of Environmental Services
2100 Clarendon Blvd, Suite 800
Arlington, Virginia 22201

Notice shall be deemed effective upon delivery.

Any party may, by like notice given at least ten (10) days before such change becomes effective, designate a new address to which such notices shall be sent.

14. COMMISSIONS: Seller and Purchaser represent and warrant to each other that neither has dealt with any real estate broker, agent or finder with respect to the transaction contemplated by this Agreement. Seller shall indemnify, defend and hold Purchaser, its elected and appointed officials, officers and employees, harmless of, from and against any demand, suit, claim or liability, for any broker's, agent's or finder's fee asserted by any person or entity claiming to be engaged by or on behalf of Seller.

15. DAMAGES: In the event Seller fails or refuses to perform its obligations under this Agreement, including but not limited to its obligation to convey the Property,

Purchaser shall be entitled to recover all of its costs and expenses incurred in connection with this Agreement, any breach of this Agreement, or the enforcement of this Agreement, including but not limited to its costs for the preparation of this Agreement, for all inspections, studies and surveys performed or contracted for in connection with this Agreement, and all of its attorney's fees and court costs incurred pursuant to this paragraph. In addition to the foregoing, Purchaser shall be entitled to all other damages it has suffered, in accordance with law. Without limiting or waiving the foregoing, Purchaser may also seek all remedies to which it is entitled in equity, including the right to an injunction or restraining order and the right to seek specific performance.

16. PURCHASER APPROVAL REQUIRED: The execution of this Agreement by the Seller constitutes an offer to sell the Property to the Purchaser. This offer shall become null and void if the County Board of Arlington County, Virginia does not approve the Agreement on or before September 30, 2010.

17. BINDING AGREEMENT: The parties to this Agreement mutually agree that it shall be binding upon them, and each of the respective heirs, executors, administrators, successors and assigns; that the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein except as specifically provided herein; that this Agreement contains the final and entire agreement between the parties hereto; and that they shall not be bound by any terms conditions, statements, warranties or representations, oral or written, not contained herein.

18. APPLICABLE LAW: This Agreement shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia. All legal actions brought by either Purchaser or Seller concerning this Agreement shall be brought in the Arlington County Circuit Court.

19. SELLER'S AUTHORITY: The person executing this Agreement on behalf of the Quito Corporation hereby represents and warrants all of the following:

- a. he/she is the President of Quito Corporation, that he/she is duly authorized to enter into this Agreement on behalf of Quito Corporation, and that he/she is authorized to bind Quito Corporation in this conveyance;
- b. Quito Corporation exists as of the date of execution of this Agreement, that Quito Corporation is in good standing as of the date of execution of this Agreement, that Quito Corporation is a general partner of P&Z Landmark Associates (Arlington), a New York general Partnership, and that P&Z Landmark Associates (Arlington) is a general partner of Monument Associates as of the date of execution of this Agreement; and

- c. Quito Corporation is authorized to act on behalf of, and to bind, Monument Associates to this Agreement, without the necessity of any further acts, signatures or authority from any other person or entity.

This Paragraph 19 is in addition to, and not in lieu of, any other requirements of this Agreement.

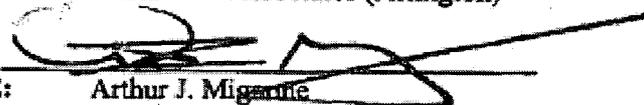
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WITNESS the following signatures:

SELLER: MONUMENT ASSOCIATES, a Virginia general partnership

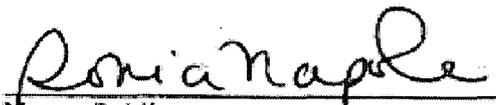
BY: P&Z LANDMARK ASSOCIATES (ARLINGTON), a New York general partnership, general partner of Monument Associates

BY: QUITO CORP., a Delaware corporation, general partner of P&Z Landmark Associates (Arlington)

BY: 
NAME: Arthur J. Mignone
TITLE: President

STATE/Commonwealth of New York
CITY/COUNTY OF Westchester

The foregoing instrument was acknowledged before me this 24th day of MAY, 2010, by Arthur J. MIGNONE of QUITO CORPORATION, a Delaware corporation, general partner of P&Z Landmark Associates (Arlington), a New York general partnership, itself a general partner of Monument Associates, a Virginia general partnership.


Notary Public

My Commission expires: 01/27/2014

SONIA NAPOLI
Notary Public, State of New York
Qualified in Westchester County
Reg. No. 6114836100
My Commission Expires 01-27-2014

PURCHASER: THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of Arlington County, Virginia.

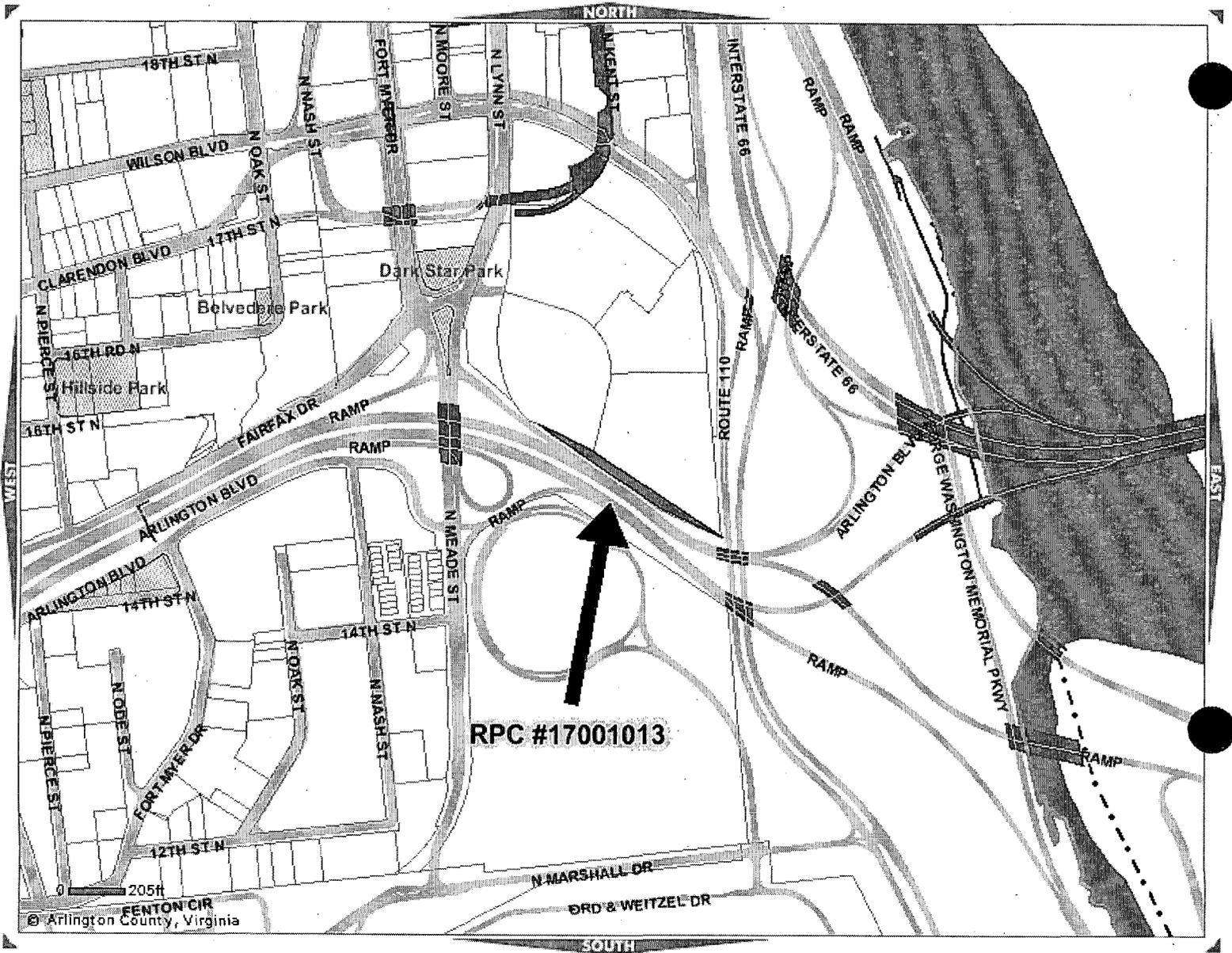
Notary Public

My Commission expires: _____

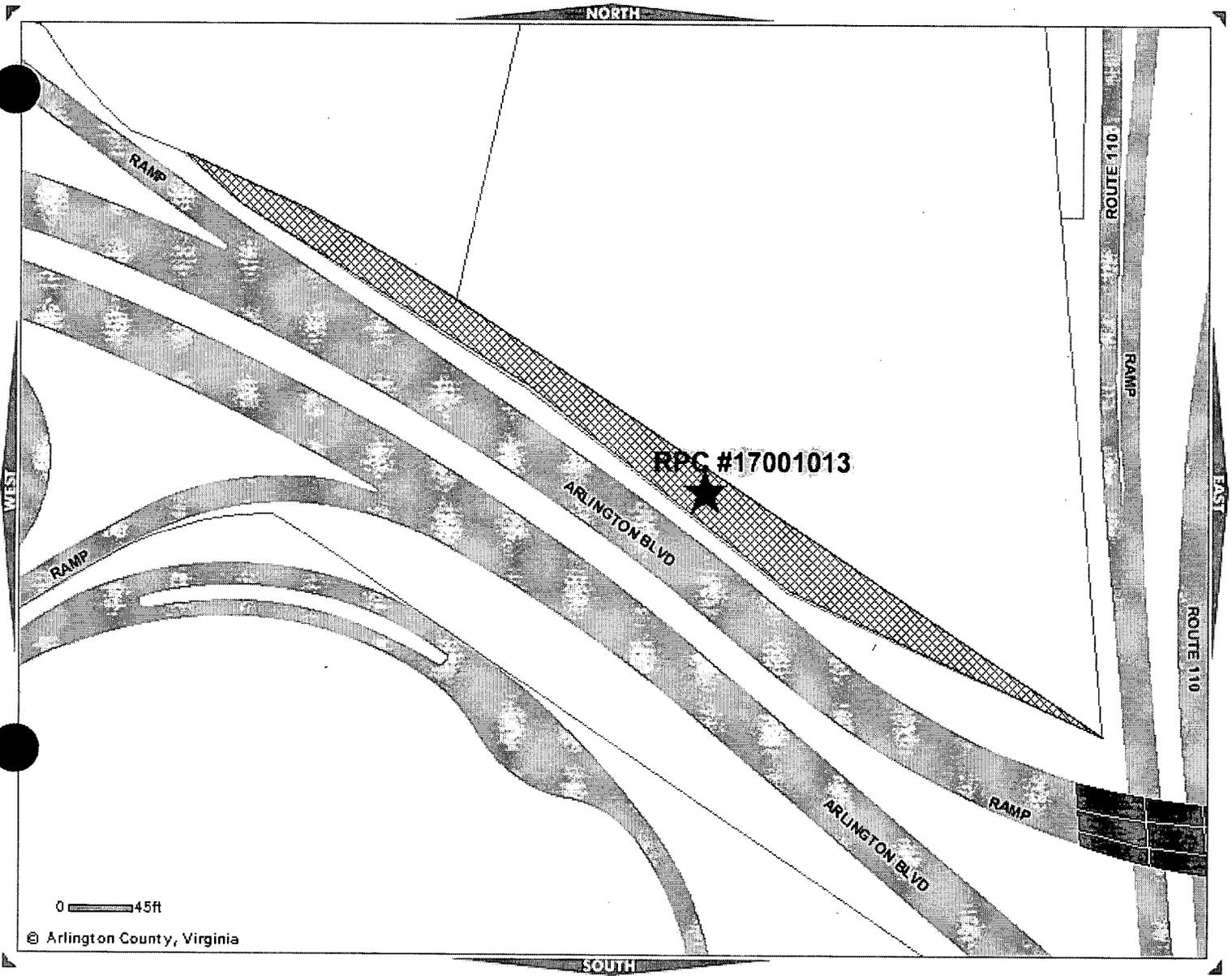
Approved as to form:

County Attorney

ATTACHMENT 2



ATTACHMENT 3



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© Arlington County, Virginia

ATTACHMENT 4

