



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of July 21, 2012**

DATE: July 10, 2012

SUBJECT: Assignment of Second Chance Intellectual Property Rights

C. M. RECOMMENDATION:

1. Approve an agreement for the transfer and assignment of intellectual property rights in the Second Chance program curriculum to the Arlington Partnership for Children, Youth and Families Foundation, in the form attached hereto as Attachment 1, and authorize the County Manager or her designee to sign the agreement attached hereto as Attachment 1.
2. Approve an agreement for the transfer and assignment of all future intellectual property rights arising out of County employee or County Contractor's work for the Arlington Partnership for Children, Youth and Families Foundation, in the form attached hereto as Attachment 2, and authorize the County Manager or her designee to sign the agreement attached hereto as Attachment 2.

ISSUES: County Board approval is needed to transfer and assign the County's intellectual property rights of the Second Chance early intervention and substance abuse prevention program to the Arlington Partnership for Children, Youth and Families Foundation. There are no outstanding issues.

SUMMARY: To maintain the Second Chance program's integrity and ensure its viability as an evidence-based model, Staff recommends transferring and assigning current and future intellectual property rights to a single responsible entity, the Arlington Partnership for Children, Youth and Families Foundation. External Second Chance partners have agreed to this transfer and assignment.

BACKGROUND: Before they graduate from high school, 76 percent of Arlington teens will have tried alcohol at one time or another. Almost half will have used marijuana. Zero-tolerance policies may create long-term consequences, such as traditional forms of punishment that negatively impact the futures of youth and may keep some youth and their families from seeking interventions that can help. Second Chance is an early intervention and substance abuse

County Manager:

County Attorney:

MNC

37.

Staff: Tom Wallace, DHS, Child and Family Services Division

prevention program designed to provide youth who violate school prohibited substance use policy for the first time an opportunity to avoid school suspension or juvenile-justice system involvement.

The Second Chance program began as a collaborative community process. Partners include Partnerships for a Healthier Arlington; Arlington Public Schools; The Century Council; Arlington County Police, Fire and Human Services Departments; Arlington Juvenile and Domestic Relations Court; the Arlington Partnership for Children, Youth and Families; Phoenix Houses of the Mid-Atlantic; and the Arlington READY Coalition. Program developers conducted focus groups, met with other jurisdictions, and engaged students, counselors, teachers and school officials, the judicial system, public health and public safety officials, the Commonwealth's Attorney and, most important, parents, to develop a comprehensive curriculum.

The Arlington County Board appropriated \$130,000 for a two-year Second Chance pilot program (FY 2012-13). The Century Council has contributed \$50,000, and Arlington's READY Coalition contributed \$20,000 for the evaluation component of the program.

Second Chance consists of an intensive, three-day program and booster session held 60 days later. Educational components help students identify what led them to use prohibited substances. The program includes a mandatory component for parents, who learn what to watch for to help their children avoid risky choices, and how to improve communication.

Middle- and high-school students can be referred to the program by schools, police, the courts and parents. To be eligible for avoiding criminal prosecution and school suspension, it must be a student's first offense and involve alcohol or marijuana. For a second offense or a drug other than marijuana, students are not eligible for diversion. They may, however, still benefit from the educational program.

The program has successfully diverted 93 students from school suspension or juvenile-justice involvement since its inception in September 2011. This pilot phase of the Second Chance program includes data collection and an evaluation component that may result in Second Chance becoming an evidence-based model for other communities seeking to address prohibited substance use among youth.

DISCUSSION: The Arlington Partnership for Children, Youth and Families Foundation is a nonprofit 501(c)(3) corporation. Second Chance contributors have agreed to the transfer and assignment of intellectual property rights to the Arlington Partnership for Children, Youth and Families Foundation. The Foundation has agreed to its role as owner of Second Chance intellectual property rights. The intent is to maintain and protect the integrity of Second Chance education materials and to raise revenue to support ongoing substance abuse and prevention programs. Other jurisdictions have approached program contractor Phoenix Houses of the Mid-Atlantic about replicating Second Chance in their communities. This transfer will ease the ability to replicate the program in other communities, and to capture the revenue.

Two legal documents are attached to this report. Attachment 1 outlines the transfer and assignment of intellectual property rights in materials that are currently in existence, namely the Second Chance Program curriculum. Attachment 2 is a preemptive transfer and assignment of all intellectual property rights to the Foundation, for any intellectual property rights which may be created or arise out of any work contributed to the Foundation by County employees or County contractors.

FISCAL IMPACT: None. There is no impact on net tax support. The assignment of intellectual property rights will allow the Foundation to provide the Second Chance curriculum and the associated training and guidance to other localities and agencies for a fee. Any revenue generated will be used to support substance abuse intervention and prevention programs in Arlington County.

TRANSFER AND ASSIGNMENT OF INTELLECTUAL PROPERTY INTERESTS

THIS AGREEMENT is made between the Arlington Partnership for Children, Youth and Families Foundation, a nonprofit corporation organized and operated for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code ("Foundation"), and the persons named below as authors ("Authors") of the Second Chance Program materials in existence as of July 20, 2012, including but not limited to the Second Chance Program curriculum, program informational materials, and any and all materials created by the Authors for the Second Chance Program~~Materials, attached hereto as Exhibit A~~ ("the Work"), to transfer and assign all intellectual property rights of the Authors related to the Work to the Foundation.

Whereas, the Authors worked on a collaborative basis to create the Work in order to benefit the Second Chance Program, a substance abuse intervention and prevention program for youths based in Arlington County; and

Whereas, the Authors are all committed to continuing to support substance abuse intervention and prevention programs; and

Whereas, the Arlington Partnership for Children, Youth and Families Foundation is a nonprofit corporation established to support and advance the goals of the Arlington Partnership for Children, Youth and Families; and

Whereas, one such goal of the Arlington Partnership for Children, Youths and Families is the establishment and support of substance abuse intervention and prevention programs for youths.

Now, therefore, the Foundation and the Authors, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree and covenant as follows:

1. The Authors hereby transfer, convey, and assign to the Foundation all intellectual property rights which they may have in the Work, including rights to all existing and future modification, alterations, or iterations of the Work. These rights include but are not limited to copyright, trademark, and/or patent rights.
2. The Foundation agrees, in consideration for the Authors' transfer, conveyance and assignment of their intellectual property rights in the Work to the Foundation, to use all fees, royalties, or monies howsoever derived from the Work only for the purpose of supporting substance abuse intervention and prevention programs or otherwise furthering the Foundation's charitable purposes.
3. The Author's signature on this Agreement is the Author's representation and warranty that:
 - a. the Work is original and contain no material from other copyrighted or unpublished works unless it is used with the written consent of the copyright owner and of the owner of any other right(s) to or in such other works;

- b. the Work does not violate or infringe any personal or property rights of others, whether common law or statutory
- c. the Work contains nothing contrary to law; and
- d. the Authors have full power and authority to enter into this Agreement.

4. In addition, to the extent any applicable law or treaty prohibits the transfer or assignment of any moral rights or rights of restraint the Authors have in the Work, the Authors waive those rights as to the Foundation, its agents, licensees or assignees.

5. The Authors hereby agrees to execute all papers and take other actions as the Foundation may deem necessary to secure for the Foundation the rights herein assigned.

6. This Agreement is governed by the laws of the Commonwealth of Virginia and the Authors agree to the exclusive jurisdiction of the courts of the Commonwealth of Virginia in relation to this Agreement.

7. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deleted and the other provisions shall remain in effect.

IN WITNESS WHEREOF the authors have caused this agreement to be executed as of:

County Manager

Printed Name

Date

Linda Henderson

Printed Name

Date

Debby Taylor

Printed Name

Date

Arlington Partnership for Children,
Youth and Families Foundation

Printed Name and Title

Date

CONDITIONS OF ENGAGEMENT: PROPRIETARY INFORMATION AND OWNERSHIP OF INTELLECTUAL PROPERTY

THIS AGREEMENT is made between the Arlington Partnership for Children, Youth and Families Foundation, a nonprofit corporation organized and operated for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code (“Foundation”), and the County Board of Arlington County (“County”) to set forth the terms and conditions of the work and contributions made to the Foundation by County employees and certain County contractors (“the Engagement”).

Whereas, the Arlington Partnership for Children, Youth and Families Foundation is a nonprofit corporation established to support and advance the goals of the Arlington Partnership for Children, Youth and Families; and

Whereas, one such goal of the Arlington Partnership for Children, Youths and Families is the establishment and support of substance abuse intervention and prevention programs for youths; and

Whereas, the County is committed to supporting and furthering the goals and charitable purposes of the Foundation; and

Now, therefore, the Foundation and the County, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree and covenant as follows:

1. In exchange for the work and creative contributions made by County employees and contractors to the Foundation (“the Work”), the Foundation agrees to give the County access to certain proprietary and confidential information belonging to the Foundation which, in the Foundation’s sole judgment, may be necessary or helpful to aid in the development of new materials for the Foundation’s use.
2. The County agrees that all such proprietary and confidential information belongs exclusively to the Foundation. Confidential and proprietary information includes but is not limited to technical or financial information, written materials, marketing plans, program data, statistics, know-how, idea, inventions (whether or not patentable), hardware, databases, software, clinical studies, documentation, records, and techniques. However, County and Foundation agree and understand that any record or information in the possession of County may be subject to the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*), and may be subject to mandatory disclosure.
3. Further, the County hereby irrevocably transfers, assigns, sets over and conveys to the Foundation all rights, titles and interests, including the sole and exclusive copyright, trademark and patent interest, in any and all copyrightable, trademarkable, and patentable works created pursuant to County employees’ work under this Engagement, on the condition that the Foundation shall use all fees, royalties, or monies howsoever derived from the Work only for the purpose of supporting substance abuse intervention and prevention programs or otherwise furthering the Foundation’s charitable purposes. The County further agrees to execute any documents as the Foundation may request to effect any such transfer or assignment.

4. Further, the County hereby irrevocably transfers, assigns, sets over and conveys to the Foundation all rights, titles and interests, including the sole and exclusive copyright, trademark and patent interests, in any and all copyrightable, trademarkable, and patentable works created by a County contractor assigned to work under this Engagement if the County owns such rights from Contractor, and on the condition that the Foundation shall use all fees, royalties, or monies howsoever derived from the Work only for the purpose of supporting substance abuse intervention and prevention programs or otherwise furthering the Foundation's charitable purposes.

5. This Agreement is governed by the laws of the Commonwealth of Virginia and the Contributor agrees to the exclusive jurisdiction of the courts of the Commonwealth of Virginia in relation to this Agreement.

6. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deleted and the other provisions shall remain in effect.

IN WITNESS WHEREOF the parties have caused this agreement to be executed as of:

County Manager

Printed Name

Date

Arlington Partnership for Children,
Youth and Families Foundation

Printed Name and Title

Date