

**MEMORANDUM OF UNDERSTANDING**

**By and Between**

**THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**

**And**

**THE RECTOR AND VISITORS OF GEORGE MASON UNIVERSITY (Mason)**

The County Board of Arlington County, Virginia (the “County”) on behalf itself and on behalf of those certain government agencies and civic groups approved and designated by Arlington County as affiliated with or sponsored by the County (the “Affiliates”), and George Mason University (“Mason” or the “University”), hereby enter into this Memorandum of Understanding (“MOU”) for the purpose of setting forth the terms by which the County and Affiliates will be able to use portions of the ground level plaza, auditorium, and multi-purpose room of the currently planned Arlington phase II building (the “Building”), and associated parking garage to be constructed as part of the Building and encompassing the parking garage located in Hazel Hall (the “Parking Garage”), to be located at 3401 Fairfax Drive, Arlington, Virginia 22201 (together, the County and Mason are referred to as the “Parties”). This MOU shall be effective beginning the first day of that certain month following final completion of the Building and Parking Garage (including final acceptance of the Building and Parking Garage by the University and the Commonwealth of Virginia has certified that the Building and Parking Garage are ready for occupancy and use) (the “Effective Date”). The University shall promptly notify the County of the Effective Date. This MOU is entered into in support of that certain *Resolution Governing George Mason University’s Arlington Campus Expansion Plans* approved by the Arlington County Board on October 13, 2007.

WHEREAS, Mason is in the process of constructing the Building and Parking Garage; and

WHEREAS, it is anticipated that the Building will be approximately 256,000 GSF, and will include faculty offices, classrooms, a general purpose library, auditorium, a café, book store, TV Studio, computer labs, an approximately 27,000 GSF outdoor plaza (the “Plaza”), an approximately 300 seat first floor auditorium (the “Auditorium”), and an approximately 5,670 gsf multi-purpose room (the “Multi-Purpose Room”) (all measurements and designations of space in this MOU shall be subject to change by Mason without notice, depending upon availability of funding and other considerations); and

WHEREAS, the Parking Garage is anticipated to be approximately 160,000 GSF; and

WHEREAS, the intended primary goal of the Plaza, Auditorium, and Multi-Purpose Room will be to support the academic and university life missions by providing an appropriate venue for academic meetings and conferences, university events, major professional/associations of higher education meetings and conferences, executive education, recruitment initiatives, and student life oriented activities; and

WHEREAS, Mason intends that the Plaza, Auditorium, and Multi-Purpose Room will provide an opportunity for Mason to reach out and respond to the needs of the surrounding local and county government communities by bringing conferences, meetings, festivals, and events onto Mason's campus, through the delivery of meeting space, food service, and audiovisual support;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

**Article I: Approved Affiliates.**

The County agrees to provide written notice to Mason of all Affiliates qualified and approved by the County to be permitted to use facilities under the terms of this MOU. Such notice shall be provided to Mason before any use of the Premises or Parking Garage may be permitted for such Affiliate pursuant to this MOU. The Parties agree that only Affiliates approved and qualified by the County may be permitted to use the Premises and Parking Garage as provided in this MOU.

The Parties agree that Affiliates will be permitted to reserve and use the Premises and Parking Garage for events on substantially the same terms and conditions as the County under the terms of this MOU; but that for each event each Affiliate must sign a separate and binding events management agreement with Mason governing the use of such facilities ("Event Agreement"), and that the use of such facilities by such Affiliate shall be governed solely by the terms of such Event Agreement.

**Article II: Use of the Premises**

**Section 2.0. Availability of Space; Compliance with Regulations**

A. Beginning on the Effective Date, Mason agrees to permit, on a nonexclusive basis, the County use of the Plaza, Auditorium, and Multi-Purpose Room (together, the "Premises") on a space available basis, subject to Mason's class schedule, major event schedule, building hours, fee schedule, facility information, all Mason regulations, and the Facility Information and Fee Schedule (as may be amended from time to time by the Plaza Operations Group (as defined herein)). Such use shall be upon request by the County, and such use shall be permitted only to the extent that such space is not being used by Mason or another client of Mason.

B. The County recognizes and agrees that University space and facilities are intended primarily for the use of University students, faculty and staff to advance the core functions of the institution, which are education and instruction, research, and community

service. University facilities and spaces may be used, provided the activities or events do not: (1) interfere with the core functions of the University, (2) prevent or interrupt the core use of the space or facility, or (3) endanger or present a safety hazard to others.

C. The County and Affiliate users shall be subject to Mason's space utilization and scheduling policies, as may be amended from time to time, and any other space usage policy implemented by Mason. This MOU is specifically subject to restrictions applicable to University property as specified in Mason's rules, regulations, and policies.

### **Section 2.1. Plaza Operations Group.**

A. The Parties shall establish a committee (the "Plaza Operations Group") composed of equal numbers of members appointed by the County and by Mason, which is intended to act as a coordinating committee between the Parties.

B. Mason shall provide a preliminary "academic needs calendar" to establish Mason priority or restricted use dates. Three months (ninety days) prior to the start of each academic term (summer, fall, and spring), the Plaza Operations Group will meet and review the schedule for the upcoming semester/session.

C. The Plaza Operations Group shall provide guidance for developing processes and procedures for scheduling use of the Premises. The Plaza Operations Group shall meet quarterly to review scheduling, operations and all issues related to use of the Premises.

D. The Plaza Operations Group will work to resolve conflicts of space usage arising from multiple event requests for same space/date/time.

**Section 2.2. Fees.** Generally, unless otherwise specified herein, the County may use the Premises at no charge. Notwithstanding the foregoing, however:

A. The County shall be charged for services in accordance with the then-current Mason Facility Information and Fee Schedule, if: (1) scheduled County activities occur outside of hours when Mason would normally have the required staffing levels on duty, or (2) the activity requires services beyond what is considered customary set-up, security, or custodial services.

B. The County shall always be charged audio-visual support fees whenever university audio-visual equipment and/or personnel services are used in support of an event.

C. Mason may impose and shall make known any/all additional charges that may apply at the time the facility reservation is made. Mason will confirm room charges to users by means of a written event estimate. In the event of damage or the need for excessive clean up, Mason may impose reasonable charges to the user commensurate with the cost of repairing the damage or the needed cleaning.

D. The County acknowledges and agrees that Mason's Facility Information and Fee Schedule may be amended from time to time, and that the Parties shall be bound by such amendments.

**Section 2.3. Scheduling.** The Premises will be made available to the County and Affiliates on a pre-scheduled basis, when not in use by Mason, and Mason agrees to use reasonable efforts to accommodate facility use requests of the County and Affiliates. Affiliates may schedule use of the Premises up to three (3) months in advance, provided that such advance scheduling is subject to any Mason rescheduling of classes or use of Arlington Campus facilities due to cancellation of classes or interruptions to Mason's academic year as a result of university closings or emergencies. Scheduling of the Premises shall be subject to improvements, renovations, and construction projects at the Arlington Campus facilities throughout the duration of the Term of this MOU.

**Section 2.4. Invoices; Payments.** Any fees charged to the County using the Premises shall be paid within thirty (30) days of receipt of Mason's invoice for such costs. All invoices shall be delivered to the County within thirty (30) days of the date such costs and services were incurred for use of the Premises. Payments shall be made on or before the invoice due date to the university's Arlington Events Scheduling Office, or to such other person or place as Mason may, from time to time, designate by written notice to the County.

**Section 2.5. Restrictions.** It is acknowledged that the primary purpose of the Premises and Parking Garage is use and occupancy by Mason, an agency of the Commonwealth of Virginia, and its agents and employees, to provide for the educational and research needs of students, faculty, and staff. Mason reserves the right to make reasonable modifications to its rules and regulations during the Term of the MOU. Mason may terminate privileges of any person or users found violating Mason's security rules and regulations. Mason also reserves the right to deny future and/or repeated access to any individual or group which, through its previous use of the Premises, has adversely impacted the University's ability to meet the core functions of the institution, or has endangered or presented a safety hazard to others.

### **Article III: Use of Arlington Parking Facilities**

**Section 3.1. Availability; Premises.** Shared, non-exclusive use of the Parking Garage by members of the public shall be available between the hours of 10:00pm through 7:00am the following morning, Monday through Friday; after 2:00pm on Saturday; and all day Sunday (until 7:00am Monday morning) (together, the "Public Use Periods"). Such use of the Parking Garage shall be at cost as provided in Mason parking regulations, except as otherwise provided herein. Any request for parking fees other than as provided in such parking regulations shall be directed to Mason's Director of Parking and Transportation.

**Section 3.2. Fees, Costs, Expenses; Payments.** Any parking fees and service charged in support of an event by the County occurring outside the Public Use Period defined in section 3.1 above, shall be in accordance with the Parking Fee Schedule adopted for all users of campus facilities, and shall be paid by the event organizer upon proper invoicing of such costs and

services by Mason. Fees for use of the Parking Garage may be charged during Public Use Periods as specified by the Events Management contract, when such Parking Garage use requires use of parking or other services. Mason will confirm any parking charges to potential users by means of a written event estimate.

### **Section 3.3 Restrictions.**

(a) It is acknowledged that the Parking Garage's primary purpose is to be used and occupied by Mason, an agency of the Commonwealth of Virginia, and its agents and employees, to provide parking for students, faculty, and staff. Mason's parking and security rules and regulations are applicable to this MOU. Mason reserves the right to make reasonable modifications to such rules and regulations during the Term of the MOU. Any/all modifications of these rules and regulations that become necessary during the Term of the MOU will be communicated by Mason to the Plaza Operations Group for negotiation. Mason may terminate parking privileges of any person found violating Mason's parking security rules and regulations.

(b) During times outside of the Public Use Periods, only vehicles and occupants displaying proper identification and permits will be permitted access to the Parking Garage.

**Section 3.4. Administration.** Mason shall provide adequate signage within the Parking Garage to direct authorized users to elevators and exits to the Mason campus. Mason reserves the right to prohibit access and parking by any person who violates university parking and security rules and regulations. Mason further reserves the right to remove any vehicle from the garage which is parked outside the Public Use Periods or which, in the opinion of Mason, creates an immediate environmental or safety hazard.

**Section 3.5. Not a Bailment.** This MOU shall not create a bailee-bailor relationship between Mason and either: (1) the County, or (2) any person not a party to this MOU, when the County or such person is using any property which is the subject of this MOU, including but not limited to the Premises and the Parking Garage.

## **Article IV: General Provisions**

**Section 4.0. Notices.** Any and all notices affecting this MOU may be served by the parties hereto, or by their duly authorized agents, as effectively as if same were served by any officer authorized by law to serve such notice. The return of such party, or its duly authorized agent, showing the time, place and manner of service of such notice shall have the same force and effect in any legal proceedings based thereon as a return of service by any officer authorized by law to serve such notice. All notices other than invoices shall be in writing and sent by U.S. Certified mail, return receipt requested or by reputable overnight courier (such as Federal Express) to the following addresses:

For the County:

County Manager  
Office of the County Manager  
2100 Clarendon Boulevard, Suite 302  
Arlington, Virginia 22201

For Mason:

Vice President, Regional Campus Operations  
George Mason University  
4400 University Drive, MSN 6D4  
Fairfax, Virginia 22030

with a copy to:

Office of University Counsel  
George Mason University  
4400 University Drive, MSN 2A3  
Fairfax, Virginia 22030

or to such other persons or places as the Parties may designate in writing from time to time.

**Section 4.1. Insurance and Liability**

A. The parties acknowledge that Mason is a State agency and is self-insured through the Risk Management Plan of the Commonwealth of Virginia for all claims up to the maximum provided by the Code of Virginia. Arlington County shall maintain general liability insurance in an amount not less than \$10,000,000, and automobile liability insurance covering any person directly or indirectly employed by the County in an amount not less than \$1,000,000 combined limit for bodily injury and property damage per occurrence, and shall name George Mason University and the Commonwealth of Virginia as an additional insured. The first \$1 million general and automobile liability exposure is covered under a formal self-insurance program enacted by resolution of the Arlington County Board pursuant to Code of Virginia, Section 15.2-1518; in addition, Arlington County maintains \$10 million excess liability insurance.

B. Nothing in this MOU shall be deemed a waiver of the sovereign immunity of the Commonwealth of Virginia, or of the sovereign immunity of the County, its agents, officers, or employees. Each Party shall be responsible for defending itself, its officers or employees against any claims made by such third parties.

**Section 4.2. Damage to Property.** The County agrees to leave any property after its or any Affiliate's use in the same state or condition such property was in prior to the use of such property by such using group. If Mason believes its property has been wrongfully damaged, it shall provide written notice to the County of such damage within thirty (30) days of the discovery of such damage, together with any evidence and reasonable documentation then in its

possession to support of any such claim, in order that the Parties may verify the claim and any cost or expenses associated with the claim.

**Section 4.3. Assignment; Independent Agents.**

(a) This MOU shall not be assigned by either Party without the prior written consent of the other Party hereto. Neither the County nor any Affiliate may sublet any property to which a license or permission to use such property has been granted under this MOU.

(b) This MOU is not intended by the Parties to constitute, create, give effect to, or otherwise recognize a joint venture, agency, partnership, or formal business organization of any kind. Each party hereto shall act independent of each other, and neither shall act as an agent of the other for other purposes. Neither Party has the authority to bind the other Party.

**Section 4.4. Term and Termination of MOU; Damage and Destruction.** The term (“Term”) of this MOU shall be from the Effective Date for a period of three (3) years, with subsequent renewal periods of five (5) years, unless sooner terminated without cause by either Party upon thirty (30) days written notice to the other Party. This MOU may also be extended by mutual agreement of the Parties. The provisions contained in this MOU which, by their terms, require performance after the expiration or termination of this MOU shall be enforceable notwithstanding the expiration or other termination of this MOU.

If either the Premises or Parking Garage are damaged by fire or other casualty so as to render same, in the opinion of Mason, unusable for its intended purpose, all obligations hereunder regarding the Premises or Parking Garage shall terminate upon written notice to the County.

**Section 4.5. Entire Agreement.** This MOU and any exhibits attached hereto constitute the entire, full and complete understanding and agreement of the parties with respect to the subject matter herein, and no representations, conditions, statements, warranties, covenants, promises or agreements previously made or given by either party to the other with respect to the subject matter herein shall be of any force or effect. The terms contained in this MOU shall not be modified or amended except as agreed to by the parties hereto in writing.

**Section 4.6. Severability; Governing Law.** If any provision of this MOU is held to be unenforceable, invalid or illegal, such provision shall be deemed severable from the MOU and the remainder of the MOU shall remain fully valid and enforceable.

**Section 4.7. Force Majeure; Appropriations Qualification.**

(a) Neither party shall be responsible for any losses resulting from delay or failure in performance resulting from any cause beyond their control, including without limitation: war, strikes, or labor disputes, civil disturbances, fires, natural disasters, and acts of God.

(b) Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia Assembly. Therefore, notwithstanding any provision in this MOU to the contrary, if

any session of the Virginia General Assembly fails to appropriate funds for the continuance of this MOU, this MOU and all obligations hereunder requiring payment from Mason shall automatically terminate upon depletion of the then currently appropriated or allocated funds.

(c) The obligations herein of the County are subject to appropriation of the Arlington County Board.

**Section 4.8. Waiver.** The failure of a party to enforce any provision in this MOU shall not be deemed to be a waiver of such right.

**Section 4.9. Compliance with Laws.** This MOU shall be governed and constructed in accordance with the laws of the Commonwealth of Virginia. All disputes arising under this MOU shall be brought before a court of competent jurisdiction in the Commonwealth of Virginia. Nothing in this MOU shall in any way supersede or alter the laws, rules, regulations, or guidelines under which the respective organizations function and are governed.

**Section 4.10. Paragraph Headings.** The paragraph headings in this MOU are inserted for convenience only and shall not be construed to limit or modify the scope of any provisions of this MOU.

**Section 4.11. Non-discrimination.** Both parties to this MOU agree not to discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, disability, or age (except where sex or age is a bona fide occupational qualification).

**Section 4.12. Third Parties.** This MOU is not intended to create and shall not be construed to create any right in any person or entity not a party to this MOU, and no provision of this MOU shall be considered to be for the benefit of any third party.

**IN WITNESS WHEREOF**, the parties hereto through duly authorized representatives have executed this MOU.

**THE COUNTY BOARD OF ARLINGTON COUNTY:**

By \_\_\_\_\_  
Ron Carlee  
County Manager

\_\_\_\_\_ Date

**THE RECTOR AND VISITORS OF GEORGE MASON UNIVERSITY:**

By: \_\_\_\_\_  
Maurice W. Scherrens  
Senior Vice President

\_\_\_\_\_ Date

By: \_\_\_\_\_  
Lawrence D. Czarda  
Executive Vice President, Regional Campuses

\_\_\_\_\_ Date