VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FAIRFAX COUNTY WATER AUTHORITY,	)	
Plaintiff,	)	
v.	)	Case No. 2008-16114
CITY OF FALLS CHURCH,	)	
Defendant.	)	

CONSENT DECREE

THIS ACTION came before the Court on the joint motion of the parties for the entry of this Consent Decree; and

IT APPEARING TO THE COURT that this Consent Decree is proper and has been endorsed by all counsel of record, it is, therefore,

ADJUDGED, ORDERED AND DECREED that:

1. This Consent Decree is entered into by the parties in settlement and compromise of Counts I, II, and IV of the Amended Complaint and is not an admission of liability or fault by any of the parties.

2. Absent mutual written agreement between the parties otherwise, the Fairfax County Water Authority ("Fairfax Water") and the City of Falls Church (the "City") shall each have a full, free and fair opportunity to provide water service within the City's traditional service area in Fairfax County. Absent such mutual written agreement, the City shall not represent to any person or entity that it has an exclusive legal right to provide public water service to any property located in Fairfax County outside of the City limits.

3. The parties shall seek, in good faith, to resolve all current, remaining disagreements relating to the provision of water service by the City in Fairfax County. The parties' failure to resolve such remaining disagreements, however, shall not affect the validity of this Consent Decree.

4. With respect to any property located in Fairfax County for which the property owner, customer, contract purchaser, or developer requests to relocate the City's water lines or facilities, or easements for the water lines or facilities, at the sole expense of the owner, customer, contract purchaser, or developer, without cost or charge to the City, the City shall not condition its permission for the relocation on that person or entity's promise to connect the property to the City's water system. Nor shall the City require as a condition of such relocation that the owner, customer, contract purchaser, or developer refuse to accept public water service from the Fairfax County Water Authority.

5. The City of Falls Church shall not renew its objections to the site plan submission by DSF/Long Metro II, LLC and DSF/Long Metro III, LLC (the "Halstead Developer"), Fairfax County Application No. RZ 2007-PR-001 and Plan 24817-SP-01-1 (the "Halstead Development"), and, in the event the Halstead Developer selects Fairfax Water as its water service provider, shall reasonably cooperate with the Halstead Developer's relocation of the City's waterline easements (to be made at the developer's sole expense) and its efforts to construct the project.

6. Nothing in this agreement shall prevent the City from exercising any authority it currently has to impose reasonable conditions on the relocation of any water line or any easement, at the sole expense of the owner, customer, contract purchaser, or developer, in order to protect the physical integrity of City's water system; provided, however, that the City may not

impose any condition that unreasonably interferes with the ability of any owner, customer, contract purchaser, or developer in Fairfax County to obtain public water service from Fairfax Water.

7. The City of Falls Church shall not, directly or indirectly, seek to exclude Fairfax Water from offering public water service to customers in Fairfax County, other than as provided in Paragraph 2 of this Agreement. Fairfax Water shall not, directly or indirectly, seek to exclude the City of Falls Church from offering public water service to customers in Fairfax County, other than as provided in Paragraph 2 of this Agreement. Nothing in this Consent Decree, however, shall be deemed to prevent the City or Fairfax Water from lawfully endeavoring to provide public water service to customers in Fairfax County. Nor shall anything in this Consent Decree be deemed to preclude Fairfax Water or the City from lawfully pursuing or exercising any of their common law or statutory rights and powers, including (but not limited to) any rights under Code §§ 15.2-2111, 15.2-2112, 15.2-5137 (or any successor statutes).

8. The foregoing provisions shall be binding on the City of Falls Church, its council members, officers, employees, agents and representatives. The foregoing provisions shall be binding on Fairfax Water, its board members, officers, employees, agents and representatives.

9. Within 30 days of the date of this Agreement, the City of Falls Church shall pay, or cause to be paid, $750,000 to Fairfax Water in full compromise and settlement of all claims for damages, fees and costs of any kind that have been made or could have been made by Fairfax Water in the First Amended Complaint. Nothing in this Consent Decree, however, affects the Court's previous disposition of Count V, including the "Final Decree on Count V Concerning the City's Water Rates and Water Fund Transfers," dated January 6, 2010, which is the subject

of the City's pending appeal to the Supreme Court of Virginia, and the Court's "Order on Costs (Count V)," dated January 26, 2010.

10. A constructive trust is imposed on 45% of the tap fees paid by the Halstead Developer (or any of its affiliates, successors or assigns) to the City of Falls Church in connection with the Halstead Development (which is currently planned to include four buildings). Within 30 days of its receipt of any availability fee or connection charge from the Halstead Developer (or its affiliates, successors or assigns) in connection with the Halstead Development, Falls Church shall tender payment to Fairfax Water of 45% of the actual fee paid by the Halstead Developer. This constructive trust does not extend to any payment of commodity charges by retail water users who occupy the premises, nor to any charge or expense related to the relocation of water lines or easements

11. All remaining claims for relief contained in Counts I, II, and IV of Fairfax Water's First Amended Complaint are hereby dismissed with prejudice. The City waives any appeal of the Court's Order of August 14, 2009, dismissing the City's Counterclaim and Third-Party Complaint with prejudice. Within 7 days of the entry of this Consent Decree, the City shall move to dismiss with prejudice its petition before the Special Court established under Code § 15.2-2143, Case No. 09-001645 (Hampton Circuit Court).

12. This Consent Decree may be modified by the Court for good cause shown or upon joint motion of the parties.

THIS DECREE IS FINAL.

ENTER.

Date: February 25, 2010

JUDGE, CIRCUIT COURT OF FAIRFAX COUNTY

WE ASK FOR THIS:

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FAIRFAX COUNTY WATER AUTHORITY

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