

ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of April 17, 2021

DATE: April 15, 2021

SUBJECT:

- A. First Amendment to Option Agreement between South Oakland Street LLC, as Seller, and the County Board of Arlington County, Virginia, as Option Purchaser, to purchase property known as 2700 S. Nelson St./2701 S. Oakland St., Arlington County, Virginia, RPC Nos. 29-002-006 and 29-002-045; and
- B. Option notice notifying South Oakland Street LLC of the County Board's election to exercise the option to purchase the property known as 2700 S. Nelson St./2701 S. Oakland St., Arlington County, Virginia, RPC Nos. 29-002-006 and 29-002-045.

C. M. RECOMMENDATION:

- 1. Approve the First Amendment to Option Agreement between South Oakland Street LLC, as Seller, and the County Board of Arlington County, Virginia, as Option Purchaser, to purchase property and improvements known as 2700 S. Nelson St./2701 S. Oakland St., Arlington County, Virginia, RPC Nos. 29-002-006 and 29-002-045 ("First Amendment"); and
- 2. Approve execution and delivery of the Option Notice ("Option Notice") notifying South Oakland Street LLC ("Seller") of the County Board's election to exercise the option to purchase the property and improvements known as 2700 S. Nelson St./2701 S. Oakland St., Arlington County, Virginia, RPC Nos. 29-002-006 and 29-002-045 ("Property").
- 3. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute the First Amendment, the Option Notice and all related documents, including but not limited to closing related documents, subject to approval as to form of all documents by the County Attorney.

County Manager:

MJS / Mic

County Attorney:





Staff: Linda Eichelbaum Collier, DES, REB; Michelle Isabelle-Stark, AED, Cultural Affairs

ISSUES: There are no outstanding issues associated with the recommended actions as of the date of this report.

SUMMARY: If approved and executed on behalf of the County Board, the First Amendment will amend the Option Agreement by extending the closing date of the Option Agreement up to December 31, 2021, January 14, 2022, or February 15, 2022, depending upon Seller notification as set forth below. The extension of the closing date will allow the current tenants of the building on the Property additional time prior to closing to relocate or wind up their businesses after the County exercises its option to purchase the Property. Execution and delivery of the Option Notice by the County Board to the Seller will notify the Seller of the County Board's election to exercise its option to purchase the Property, consistent with the terms of the Option Agreement, as amended, for the purchase price of \$3,400,000.00.

BACKGROUND: The County Board ("Option Purchaser") and South Oakland Street, LLC ("Seller") entered into an Option Agreement dated June 5, 2019 to purchase the Property for \$3,400,000.00. The Option Agreement provides that the County pay the Seller up to three annual, non-refundable, option payments to extend the term of the Option Agreement for up to three years. The Property consists of a building of 13,500 GFA and two parcels totaling 18,813 SF. It is zoned M-1.

The County Board opted to exercise the first two options to extend the term of the Option Agreement. At this time, County staff recommends that, rather than exercising the third option to extend the term of the Option Agreement, the County Board elect to exercise its option to purchase the Property by executing and delivering to the Seller the attached Option Notice.

In order to accommodate the needs of existing tenants discussed below, County staff also recommends that the County Board approve the attached First Amendment that will amend the Option Agreement by extending the closing date of the Option Agreement up to December 31, 2021, January 14, 2022, or February 15, 2022, depending upon Seller notification as set forth below.

DISCUSSION: Upon the County Board's exercise of its option to purchase the Property, the County and the Seller will proceed to closing consistent with the terms and conditions of the Option Agreement. The Seller is required, by the terms of the Option Agreement, to convey the Property to the County free of any tenants or occupants. Currently, there are three tenants ("Tenants") leasing space in the Property, two of which are leasing on a month-to-month basis (Inner Ear and Ben & Jerry's) and one of which (Arlington Food Assistance Center ("AFAC")) has leased the space until May 30, 2021. AFAC is required by the terms of its lease to vacate its leased space if the County exercises its option to purchase the Property. AFAC is leasing the space temporarily while it is undergoing renovations to its space next door. The AFAC renovations are expected to be complete by this fall.

In order to permit the existing Tenants additional time to either relocate to new space, wrap up their existing businesses or finish their on-going renovations, Seller and the County propose to amend the Option Agreement by executing the attached First Amendment. The First Amendment would amend the Option Agreement to provide that upon exercise of the option to purchase the

Property, the County will have until December 31, 2021 to close on the sale of the Property. Under the terms of the First Amendment, there will be no charge to the County if the Tenants have vacated the Property and closing occurs on or before September 30, 2021. If the Tenants have not vacated before that date, the County will pay the Seller \$15,000.00 per month for each month from October 1, 2021 through December 31, 2021, by which time closing must occur. If the closing is extended until December 31, 2021, the total extension fee would be \$45,000.00. The \$15,000.00 per month fee is to be prorated if closing does not occur at the end of a month. The closing extension fee will be due and payable at closing. In addition, if the closing date is extended to December 31, 2021, the Seller has the option, at no cost to the County, to further extend closing to no later than January 14, 2022, upon written notice to the County. If the Seller requires additional time to remove any Tenant who has not vacated the Property by December 31, 2021, upon written request by the Seller, the County will reasonably extend the date of closing, without any further charge to the County, to a date no later than February 15, 2022 to allow Seller additional time to remove all Tenants.

The acquisition of the Property would fulfill multiple goals of several adopted plans and policies of the County as set forth below. Such adopted plans and policies also provide guidance as to the potential uses and programming (as suggested below) of the Property.

- [Four Mile Run Valley \(4MRV\) Area Plan](#) (2018) proposes a vision that the confluence of arts and creative activities will continue to evolve, and potentially grow into an Arts and Industry District for the area including the Property.
- [Public Spaces Master Plan](#) (2019) includes several specific actions related to the need for temporary uses and pop-up programming.
- [Enriching Lives: Arlington Arts and Culture Strategy](#) (2019) outlines five overarching goals, four of which are pertinent to programming and uses: integrate arts and culture; invest in a cultural ecosystem; use arts and culture to facilitate accessible and inclusive opportunities; and establish public spaces that offer opportunities for appreciating and interacting with arts and culture.
- Additionally, in late 2019, the [Community Arts Advisory Committee](#) (CAAC), provided budgetary recommendations to the County Manager and the County Board about the efficient, effective and equitable delivery of services for the arts community, and have equipment and resources deployed to align with *Enriching Lives*. Several recommendations stemmed from the CAAC's development and analysis of alternative management and service delivery proposals and funding sources for Scenic Studio, Costume Lab and Mobile Stage operations including a proposed transition for future operations. Specifically pertaining to this area and the Property, the CAAC recommended:
 - A hybrid scenario for the Scenic Studio which envisioned the relocation of the Scenic Studio to South Four Mile Run Drive as part of an Arts and Industry District, if and when such a District is established.
 - Selling or otherwise disposing of the current Mobile Stage and contracting with a vendor with a transition period to accommodate current users of the Mobile Stage. As an alternative to the CAAC's recommended transition of the

Mobile Stage, the stage could be used to support the potential Cultural Affairs programming activities outlined below.

Potential Cultural Affairs Programming for the Property: Due to its location, the Property is uniquely positioned to host a variety of diverse programming such as musical, dance, and theatre performances, and a multidisciplinary arts festival, anchored by a weekly outdoor “Valley Market.” The following potential uses and programming align with Cultural Affairs strategy to bring art to the community where they live and work and furthers the goal of the 4MRV Area Plan to create a density of cultural activity in the area. Further, the 2016 Arlington Parks and Recreation Needs Assessment identifies Special Events and Festivals as a most needed program or activity for 57% of all households. Programming of such uses could begin, at the earliest, in Summer 2022 (FY23) subject to available resources.

- **Outdoor Market** - Holiday markets and Made In Arlington pop up events have revealed a demand for more regular arts and crafts-centric markets similar to Eastern Market program in D.C
- **Performing Arts** - Positioning the County Mobile Stage at the west end of the space parallel to the street, 2700 S. Nelson can accommodate audiences for musical, dance, or theater performances.
- **Film** - Provide outdoor movie screenings along 4MRV, possibly curated for audiences not otherwise being served.
- **Festivals** – Sponsor multidisciplinary arts festival to support a diverse range of artistic and cultural expression.
- **Optional Parking** – Optional use for parking when the Property is not otherwise being used as set forth above.

County staff recommends that the building on the Property be demolished/deconstructed as soon as possible, as the existing building is not suitable for public uses, and that the area be paved to facilitate the uses and activities detailed above. The cost to demolish/deconstruct the building and add the recommended improvements is estimated to be approximately \$1,525,000.00 and will be included in the CIP request for 2022.

PUBLIC ENGAGEMENT:

Level of Engagement:

- This level of engagement is appropriate because negotiation of the terms of the First Amendment and the execution and delivery of the Option Notice are both confidential in nature.

Outreach Methods:

- Notice of a public hearing on the proposed action was given in accordance with the Code of Virginia. Due to the confidential nature of negotiations for the acquisition and lease of real property interests, public engagement is not included during the negotiations process. Staff conducted limited outreach to a few key stakeholders prior to the Board meeting.

Community Feedback:

- The public will have the opportunity to comment and provide feedback on the proposed First Amendment and Option Notice during the public hearing portion of the process.

FISCAL IMPACT: The \$3,400,000.00 purchase price, the closing extension fee of up to \$45,000.00 and estimated closing costs of approximately \$6,500.00 will be paid from account number 313.481001.91105.LA.0000.0000.

FIRST AMENDMENT TO OPTION AGREEMENT

THIS FIRST AMENDMENT TO OPTION AGREEMENT (this “*Amendment*”) is made as of April _____, 2021, by and between SOUTH OAKLAND STREET, LLC, a Virginia limited liability company, (“*Seller*”), and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate (“*Option Purchaser*”). Seller and Option Purchaser are sometimes hereinafter each referred to as a “*Party*,” and collectively referred to as, the “*Parties*.”

RECITALS:

- R-1. Seller and Option Purchaser entered into that certain Option Agreement dated June 5, 2019 (the “*Agreement*”) granting Option Purchaser the option (the “*Option*”) to purchase the property known as 2700 S. Nelson Street/2701 S. Oakland Street, Arlington County, Virginia, RPC Nos. 29-002-006 and 29-002-045, as more particularly described in the Agreement (the “*Property*”);
- R.-2. Option Purchaser intends to exercise its Option to Purchase the Property, pursuant to the terms of the Agreement, and Seller and Option Purchaser have agreed to accommodate Seller’s existing month-to-month tenants (“*Tenants*”) by providing additional time for such existing Tenants to either relocate to new rental space and/or to wind to up their existing businesses located on the Property; in addition the Option Purchaser shall be delivering its notice of exercising the Option within 10 business days of the date on which the amendment is fully-executed, approved and delivered; and
- R-3. Seller and Option Purchaser desire and, pursuant to the terms of this Amendment, hereby accordingly agree to amend the Agreement to, among other things, extend the Closing Date of the Agreement (as such term is defined in the Agreement), upon the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the mutual receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Recitals. The foregoing recitals are incorporated herein by this reference as if fully set forth at this point in the text of this Amendment.

2. Integration. The recitals and following terms and conditions shall constitute part of the Agreement and be incorporated therein by reference.
3. Extension of Closing Date. The existing Subsection 5.a of the Agreement is hereby deleted in its entirety and replaced by the following new Subsection 5.a.:

5. CLOSING:

If Option Purchaser exercises the Option during the Option Term, then closing of the sale of the Property in accordance with this Agreement (the "**Closing**" or "**Closing Date**") shall take place on a date selected by the Option Purchaser, with reasonable accommodation to the Seller, that is the earlier of: 1) fourteen (14) days after receipt of a Tenant Vacation Notice (as hereinafter defined); or 2) December 31, 2021, provided that the conditions of Section 14 (Conditions Precedent to Closing) have been satisfied, unless Closing is extended by the Real Estate Bureau Chief, pursuant to Section 5.c. of this Agreement and subject to the further provisions of this Subsection 5.a. There shall be no Closing Date Extension Fee (as hereinafter defined) due from the Option Purchaser to the Seller in the event that Closing occurs on or before September 30, 2021. However, in the event that Closing occurs between October 1, 2021 and December 31, 2021, Option Purchaser shall pay to the Seller, at Closing, the sum of \$15,000.00 for each month Closing occurs beyond September 30, 2021 ("**Closing Date Extension Fee**"), such Closing Date Extension Fee to be prorated for any portion of a month in which Closing occurs. Seller shall give written notice, no less than fourteen (14) days prior to December 31, 2021, to the Option Purchaser, of the date that all of the Tenants have vacated the Property ("**Tenant Vacation Notice**"). Notwithstanding the foregoing, in the event the Seller has not given Option Purchaser a Tenant Vacation Notice by December 1, 2021, Seller shall have the right and option, without payment by the Option Purchaser of any additional fee beyond the Closing Date Extension Fee, to further extend Closing to a date selected by the Seller that is no later than January 14, 2022, by providing Option Purchaser with written notice of Seller's election to extend Closing delivered to Option Purchaser on or before December 17, 2021. All Tenants shall have vacated the Property on or before December 31, 2021. If the Seller requires additional time to remove any Tenant who has not vacated the Property by December 31, 2021, upon written request by the Seller, Purchaser agrees to reasonably extend the date of Closing, without any further charge to

Purchaser, to a date no later than February 15, 2022 to allow Seller additional time to remove all Tenants.

4. Property and Building Condition. Section 12 of the Agreement is hereby modified and amended to reflect that the Option Purchaser agrees to accept at Closing the condition of the facilities on the Property in their presently existing condition as of the date hereof, subject to ordinary wear and tear. The building on the Property shall be transferred at Closing free of all equipment, furniture and other personal property, and in good order in its current condition, reasonable wear and tear excepted.

5. Existing Leases. The Lease Schedule annexed to the Agreement is hereby modified and amended to include the Commercial Lease dated as of November 12, 2020 between Seller, as Landlord, and Arlington Food Assistance Center, as Tenant.

6. Ratification. The terms of the Agreement, except as expressly modified hereby, shall remain in full force and effect.

7. Governing Law. This Amendment shall be governed and construed according to the laws of the Commonwealth of Virginia and shall bind and inure to the benefit of the successors and assigns of the undersigned.

8. Conflicts. To the extent that the provisions of this Amendment conflict with any provisions of the Agreement, such provisions of this Amendment shall prevail and govern for all purposes and in all respects.

9. Defined Terms. Each capitalized term used in this Amendment shall have the same meaning ascribed to it in the Agreement, unless specifically defined in this Amendment.

10. Counterparts. This Amendment may be executed in counterparts and shall be valid and binding with the same force and effect as if both Parties executed the same Amendment, and executed copies of the Agreement transmitted by email or facsimile shall be valid and binding as originals and shall be deemed delivered by either of the Parties to the other when scanned, faxed or hand-delivered by the sending Party.

11. Purchaser Approval Required. The execution of this Amendment by Seller constitutes an irrevocable offer to enter into this Amendment with Option Purchaser. This offer shall become null and void if the County Board of Arlington County, Virginia does not approve this

Amendment within thirty (30) days after this Amendment is executed by Seller and delivered to Option Purchaser.

12. Effective Date. This Amendment shall be effective upon the date executed and delivered by the Option Purchaser ("**Effective Date**"). Seller shall execute and deliver this Amendment to Option Purchaser prior to consideration of this Amendment for approval by the Arlington County Board.

[Signatures contained on following page]

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WITNESS the following signatures:

SELLER:

SOUTH OAKLAND STREET, LLC, a
Virginia limited liability company

By: [Signature]
Name: Joseph P Pezza
Title: Owner /Sole Member

STATE OF New York
COUNTY OF Nassau

The foregoing instrument was acknowledged before me this 6 day of
April 2021, by Joseph P Pezza as Owner of South
Oakland Street, LLC, a Virginia limited liability company.

[Signature]
Notary Public

My Commission expires: Feb 1 2024

My Registration No. _____



OPTION PURCHASER:

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

By: _____

Name: _____

Title: _____

STATE OF VIRGINIA
COUNTY OF ARLINGTON

The foregoing instrument was acknowledged before me this ____ day of _____
2021, by _____, as _____ on behalf of
THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA.

Notary Public

My Commission expires: _____

My Registration No. _____

Approved as to form:

County Attorney



OFFICE OF THE COUNTY MANAGER

2100 Clarendon Boulevard, Suite 302, Arlington, VA 22201
TEL 703-228-3120 FAX 703-228-3218 TTY 703-228-4611 www.arlingtonva.us

April , 2021

VIA Federal Express

South Oakland Street, LLC
c/o Joseph Pezza
13 Winding Lane
Glen Head, New York 11545

B. Aptheker, Esq.
Lazer, Aptheker, Rosella & Yedid, PC
225 Old Country Road
Melville, New York 11747

Re: Option Agreement dated June 5, 2017, by and between The County Board of Arlington County, Virginia ("Option Purchaser") and South Oakland Street, LLC, a Virginia limited liability company ("Seller"), as amended by First Amendment to Option Agreement, (collectively, the "Option Agreement"), granting Option Purchaser the option ("Option") to purchase the property known as 2700 S. Nelson Street/2701 S. Oakland Street, Arlington County, Virginia, RPC Nos. 29-002-006 and 29-002-045 (the "Property").

OPTION NOTICE

On behalf of the County Board of Arlington County, Virginia, this letter is to provide the Seller with a formal written Option Notice, pursuant to Section 1 of the Option Agreement, that the Option Purchaser elects to exercise its Option to purchase the Property. Pursuant to Section 5 of the Option Agreement, Closing shall take place on or before September 30, 2021, unless extended by the Purchaser and/or Seller pursuant to the terms of said Section 5 of the Option Agreement, provided that Sellers have met all conditions precedent to Purchaser's obligations, and all other obligations and requirements applicable to the Sellers under the terms of the Option Agreement.

The County Board of Arlington County, Virginia

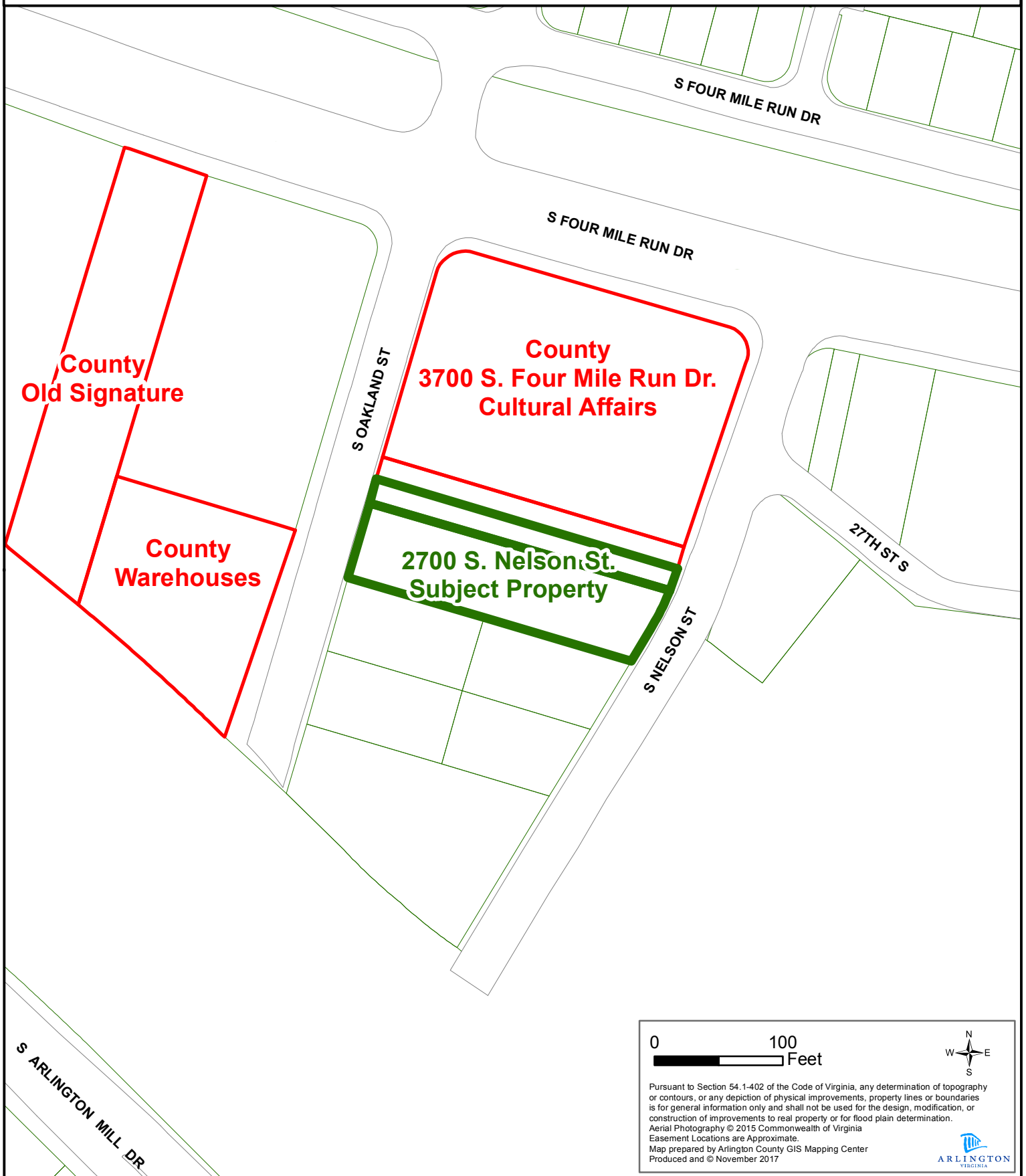
By: _____

Its: _____

Approved as to form:

Stephen A. MacIsaac, County Attorney

Vicinity Map
2700 S. Nelson Street / 2701 S. Oakland Street
RPC #'s 29002006 & 29002045



Vicinity Map
2700 S. Nelson Street / 2701 S. Oakland Street
RPC #'s 29002006 & 29002045



Vicinity Map
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