



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of July 15, 2017

**DATE:** July 3, 2017

**SUBJECT:** First Amendment to License Agreement between the County Board of Arlington County, Virginia, as Licensor, and the Arlington County School Board, as Licensee, on a Portion of County-Owned Property known as Fillmore Park located at 33 N. Fillmore St., Arlington, Virginia (RPC# 18-074-060).

#### C. M. RECOMMENDATIONS:

1. Approve the attached First Amendment to License Agreement between the County Board of Arlington County, Virginia, as Licensor, and the Arlington County School Board, as Licensee, on a Portion of County-Owned Property known as Fillmore Park located at 33 N. Fillmore St., Arlington County, Virginia (RPC# 18-074-060).
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute on behalf of the County Board, the First Amendment to License Agreement, subject to approval as to form by the County Attorney.

**ISSUES:** There are no outstanding issues related to this Board item.

**SUMMARY:** The County Board is requested to approve the attached First Amendment to License Agreement ("First Amendment"). The First Amendment will amend the terms of an existing License Agreement ("License Agreement") between the County and Arlington Public Schools ("APS") for APS use, on a temporary basis, of a portion of Fillmore Park ("County Parcel"), adjacent to Long Branch Elementary School ("School"). The First Amendment will extend the term of the License Agreement, revise the Licensed Area and modify certain other terms of the License Agreement. Following County Board approval and execution of the First Amendment, the License will be amended to extend the License term to permit APS to use the County Parcel until July 2020, replace two existing relocatable classrooms with one four-classroom unit, and modify certain other terms. All other terms of the License Agreement will remain unchanged.

County Manager:

*mga/cgm*

County Attorney:

*[Signature]*

*CR Sanders*

8. F.

Staff: Betsy Herbst, DES, Real Estate Bureau

**BACKGROUND:** On June 13, 2015, as part of its initiative to increase capacity of Long Branch Elementary School until construction of a new elementary school is completed, APS obtained approval of a Special Use Permit (U-3406-15-1) to allow APS to use a portion of the County's Fillmore Park property to install two self-contained relocatable classrooms. At the same meeting, the Board also approved a License Agreement to allow such use on the County property. APS and the County entered into the License Agreement on June 24, 2015, to permit APS's use of a portion of the County Parcel.

The school currently serves pre-kindergarten through fifth-grade students in a two-story building with an area of approximately 70,754 gross square feet. The School was built in 1973 and later renovated in 1996. A portion of the school yard and playground is on the Fillmore Park property.

**DISCUSSION:** On June 13, 2015, the County Board approved a License Agreement to allow APS to construct, install and use two relocatable classrooms on a portion of Fillmore Park adjacent to the School. APS installed the two relocatable classrooms in 2015 but has determined that projected student enrollment for the Fall of 2017 will require additional classroom space. The proposed First Amendment would allow APS to replace the two relocatable classrooms with one larger four-classroom unit.

APS has also requested that the License term be extended from the current expiration date of June 23, 2018 to July 2020. The License Term may be extended in the future by mutual agreement of the parties.

Staff from the County Department of Parks and Recreation and APS have agreed to the proposed relocation of the classrooms on the County Parcel to minimize the impact to the park and its use by the general public. The addition of the larger classroom unit is expected to have a positive impact on the learning environment at the School, until a permanent solution to the elementary school overcrowding can be achieved. The School Board approved the First Amendment at its June 29, 2017 School Board meeting.

The proposed First Amendment is attached hereto as Attachment 1. The proposed relocation of the classrooms on the County Parcel is shown on Exhibit A-1 to the First Amendment. Vicinity Maps are included herein as Attachments 2, 3 and 4.

Some of the pertinent provisions of the proposed First Amendment are as follow:

- APS will be permitted to replace the existing two relocatable classrooms with one larger four-classroom relocatable structure;
- The Licensed Area will be increased to accommodate the larger relocatable structure;
- The relocatable structure will be repositioned to maximize the space available for use of the blacktop area;

- The term of the License will be extended for a period of three years from the date it is executed on behalf of both parties until July 2020;
- The term of the License may be terminated or extended thereafter by the mutual written agreement of the parties;
- A typographical error in the Maintenance paragraph of the License Agreement is being corrected; and
- All others terms of the original License shall remain the same.

**FISCAL IMPACT:** The relocatable classrooms are being replaced at the sole cost and expense of APS. Because there is no license fee required to be paid by APS under the License Agreement, there is no fiscal impact related to this requested action.

**FIRST AMENDMENT TO LICENSE AGREEMENT**

**THIS FIRST AMENDMENT TO LICENSE AGREEMENT** (the “First Amendment”) is made this \_\_\_\_ day of \_\_\_\_\_ 2017, by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic (the “Licensor” or “County”), and **ARLINGTON COUNTY SCHOOL BOARD**, a body politic (the “Licensee” or “School Board”), hereinafter jointly referred to as the “Parties”.

R-1 Whereas, Licensor is the owner, in fee simple, of a certain parcel of real estate, with improvements thereon, and appurtenances thereto, known as Fillmore Park, located in Arlington County, Virginia (the “County Parcel”), and more particularly described in the legal description attached hereto as “Exhibit A”, (RPC No. 18-074-060);

R-2 Whereas, Licensee is the owner of a certain parcel of real estate, with improvements thereon, and appurtenances thereto, known as Long Branch Elementary School, located in Arlington County, Virginia, designated as the “School Parcel” (RPC No. 18-074-002);

R-3 Whereas, Licensor and Licensee entered into that certain License Agreement dated June 24, 2015 (“Original License”), for Licensee’s use, on a temporary basis, of a portion of the County Parcel for the purpose of constructing, installing, using and maintaining two relocatable classrooms to assist in handling the increased enrollment at Long Branch Elementary School (“School”) which will expire on June 23, 2018;

R-4 Whereas, the use of the County Parcel for Classrooms by the Licensee, consistent with the Original License and this First Amendment, is the subject of Use Permit No. U-3406-15-1, that was approved by the County Board on June 13, 2015, and amended on July \_\_, 2017 (collectively, “Special Use Permit”);

R-5 Whereas, the Licensee desires to (i) extend the term until July 15, 2020; (ii) replace the existing two relocatable classrooms with one larger 4-classroom relocatable structure (“Classrooms”) to handle increased enrollment at the School and (iii) revise the Licensed Area by relocating the Classrooms to a different location on the County Parcel; and

R-6 Whereas, by this First Amendment, the Licensor and Licensee desire to amend the License to extend the term, revise the Licensed Area and amend other terms of the License.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the sum of ten dollars (\$10.00), the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

1. Licensed Area. Section 1 of the Original License is hereby amended by deleting the entirety of Section 1 and adding in its stead:

“A. Licensed Area. Licensor grants to Licensee the right and license to use, upon the terms hereinafter provided, four thousand eight hundred six (4,806) square feet of land, more or less, of the County Parcel (the “Licensed Area”), as depicted on Exhibit A-1 attached hereto, for the Permitted Uses (as defined in Section 2 of this License), subject to all the terms and conditions of this License. The County Parcel and the Licensed Area are more particularly described in Exhibits A and A-1 attached hereto. Licensee accepts the Licensed Area in its “AS IS” condition.

B. Temporary Construction Easement. Licensor further grants to Licensee a temporary construction easement over portions of the County Parcel adjacent to the Licensed Area as hereafter defined (“Temporary Easement”), which portions shall be designated and approved in advance by the Arlington County Director of the Department of Parks and Recreation (“DPR”) prior to use, solely for the purposes of site work, installation of the Classrooms, tree protection measures, stormwater requirements and ADA requirements. During the period of removal, installation and replacement of the Classrooms, Licensee shall provide tree protection fencing and tree protection measures around all existing trees within a reasonable vicinity of the Licensed Area.

As soon as practicable after the completion of construction, installation, maintenance, repair, and/or removal of the Classrooms and associated facilities, the Licensee shall, at no cost to the Licensor: (1) restore any disturbed portion of the County Parcel outside of the Licensed Area as nearly as practicable to its original condition, including resurfacing the blacktop and paved areas, replacing the ADA pathway and landscaping; (2) reseed (or resod, at the option of the Licensee) all damaged grass area on the County Parcel outside of the Licensed Area; (3) reset, or replace all damaged, destroyed or removed trees on the County Parcel within or outside of the Licensed Area in accordance with the Arlington County Tree Replacement Policy; and (4) guarantee such reset or replaced trees for one year against damage from the date they are reset or replaced.”

2. Permitted Uses. Section 2 of the Original License is hereby amended by deleting the entirety of Section 2 and adding in its stead:

“Licensee is permitted by this License to use the Licensed Area solely for the use, maintenance, repair and removal of the Classrooms and associated facilities and utility equipment, for the benefit and use of Arlington Public Schools (“Permitted Uses”). Licensee shall, in its performance and acceptance of the Permitted Uses, comply with all applicable laws, rules, orders, ordinances and regulations of any governmental authority. Such Permitted Uses are permitted to be exercised by the Licensee and its employees twenty-four (24) hours per day, seven (7) days per week subject to the foregoing sentence. Licensee is solely responsible for funding the cost of the installation, construction, maintenance and repair of all Classrooms and associated facilities and utilities equipment for the Permitted Uses.”

3. Term. Section 3 of the Original License is hereby amended by deleting the entirety of Section 3 and adding in its stead:

“Extended Term. The term of this License is hereby extended for a period of three (3) years beginning on the date that this First Amendment is executed on behalf of the Licensee and Licensor, after approval of the First Amendment by the County Board, and shall expire at 11:59

p.m. on July 14, 2020, unless sooner terminated or extended hereunder, by mutual agreement of the Parties or as provided in Paragraphs 4, 13 or 17 below.”

4. Maintenance. Section 5 of the Original License is hereby amended by deleting the entirety of Section 5 and adding in its stead:

“Maintenance. The Licensee shall be responsible for the maintenance and repair of the Classrooms and the Licensed Area during the Term, including all associated equipment and facilities thereto, shall maintain the Licensed Area in clean, safe and sanitary condition, and shall not knowingly cause any waste or injury thereto. In the event Licensee fails to maintain the Licensed Area in good order and condition and in compliance with all applicable laws, orders and regulations, and such failure results in a health and/or safety hazard, and such failure continues following at least ten (10) days written notice from Licensors, Licensors may, but shall not be obligated to, make such repairs or remove such hazard, at Licensee’s expense. In the event such failure by Licensee results in an imminent health or safety hazard, Licensors may, but shall not be obligated, to make such repairs or remove such hazard, at Licensee’s expense, without providing prior written notice to Licensee. Within thirty (30) days after Licensors renders a reasonably detailed bill for the reasonable costs of said repairs, Licensee shall reimburse Licensors for such reasonable costs.”

5. Ratification and Confirmation of License. Except as amended and/or modified by this First Amendment, the Original License is hereby ratified and confirmed and all other terms of the License shall remain in full force and effect, unaltered and unchanged by this First Amendment. In the event of any conflict between the provisions of this First Amendment and the provisions of the Original License, the provisions of this First Amendment shall prevail. Regardless of whether specifically amended by this First Amendment, all of the terms and provisions of the License are hereby amended to the extent necessary to give effect to the purpose and intent of this First Amendment.

6. Full Force and Effect. Licensors and Licensee each represent and warrant to the other that the Original License is in full force and effect and has not been assigned, modified, supplemented or further amended in any way.

7. Entire Agreement. The Original License, as amended, contains the entire agreement of the Parties hereto with respect to the subject matter hereof. No representations, inducements, or agreements, oral or otherwise, between the Parties not contained in the Original License shall be of any force and effect. The Original License may not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the Parties hereto.

8. Incorporation of Recitals. The above recitals are hereby incorporated into this First Amendment.

IN WITNESS WHEREOF, Licensors and Licensee have caused this First Amendment to be executed and delivered as their respective acts, intending to be legally bound by its terms.

**LIST OF EXHIBITS:**

Exhibit A - Descriptions of Licensed Area and County Parcel

Exhibit A-1 – Licensed Area and County Parcel

*[Signatures appear on the following pages.]*

**LICENSOR:**

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA, a body politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2017, by \_\_\_\_\_ on behalf of the  
County Board of Arlington County, Virginia.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Registration No: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
County Attorney



**LICENSEE:**

ARLINGTON COUNTY SCHOOL BOARD,  
a body politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_ on behalf of the Arlington County School Board.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Registration No: \_\_\_\_\_

## **EXHIBIT A**

### **Descriptions of Licensed Area and County Parcel**

#### **Licensed Area:**

Four Thousand Eight Hundred Six (4,806) square feet of land, more or less, to be designated by Licensee, upon and within the Fillmore Park Parcel, located at 33 North Fillmore Street, Arlington, Virginia, being a portion of RPC No18-074-060, as more particularly shown on the attached Exhibit A-1.

#### **County Parcel:**

All of the Fillmore Park Parcel, RPC No. 18-074-060, as shown on a plat attached hereto as Exhibit A-1.





Chain link fence to be  
realigned outside building  
footprint

7" diameter tree  
to be replaced

**4,200 SF**  
**606 SF**  
**4,806 Total SF**

Licensed Area:  
APS Relocatable  
Classrooms on County  
Park Property  
(Fillmore Park)

Legend

-  4-Classroom Relocatable (4,200 SF)
-  Proposed Ramp (606 SF - 5' Width)
-  Proposed Concrete Path (4' Width)
-  Fillmore Park Boundary



0 20  
Feet



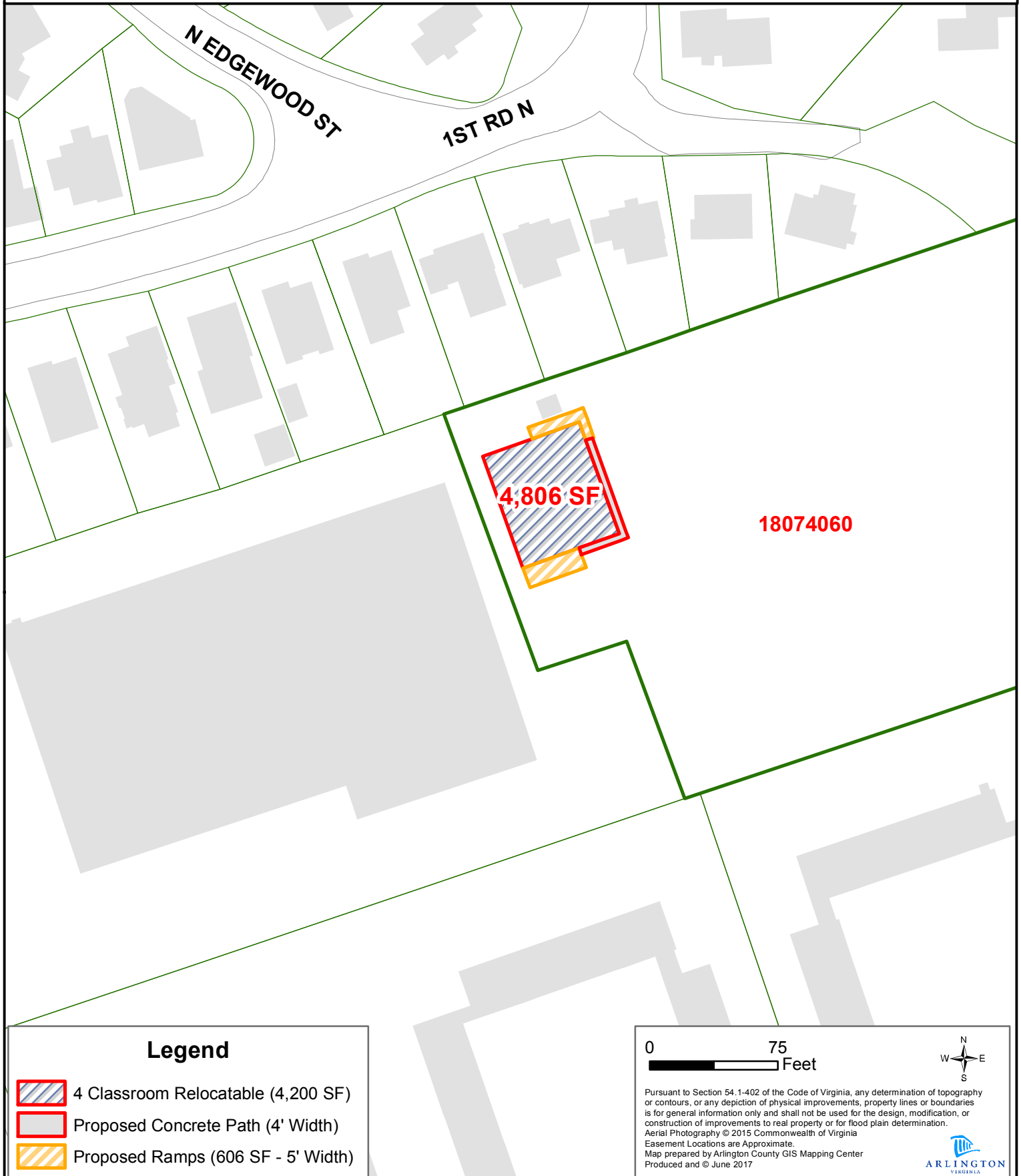
# Vicinity Map

## Attachment 2

### APS Relocatable Classrooms on County Park Property

### Fillmore Park

### RPC # 18-074-060





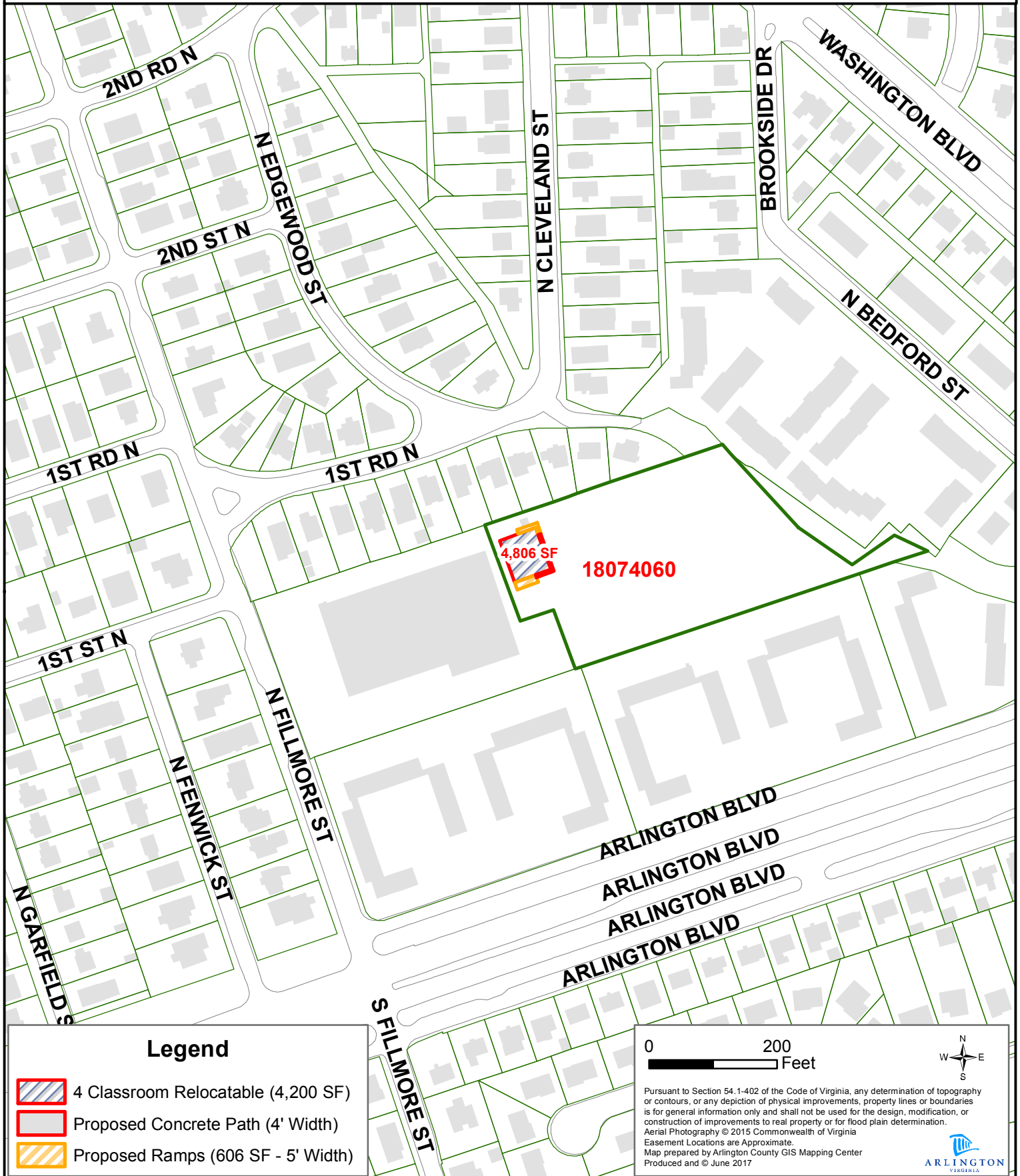
# Vicinity Map

## Attachment 3

### APS Relocatable Classrooms on County Park Property

### Fillmore Park

### RPC # 18-074-060





# Vicinity Map

## APS Relocatable Classrooms on County Park Property

### Fillmore Park

#### RPC # 18-074-060

Attachment 4

