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**HERNDON TOWN COUNCIL**  
**Tuesday**  
**August 13, 2019**

The Town Council met in public session on Tuesday, August 13, 2019, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer K. Baker; Cesar del Aguila; Pradip Dhakal; and Signe Friedrichs.

Councilmember Bill McKenna was absent.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Viki L. Wellershaus, Town Clerk; Elizabeth Gilleran, Director of Community Development; Jennie Tripoli, Director of Finance; Page Kalapasev, Director of Information Technology; Cindy Roeder, Director of Parks and Recreation; Scott Robinson, Director of Public Works; Captain Jim Moore and Corporal Damien Austin, Herndon Police; Bryce Perry, Deputy Director of Community Development; Tammy Chastain and John Irish, Deputy Directors of Public Works; David Stromberg, Zoning Administrator; Dennis Holste, Economic Development Manager; and Amanda Morrow Kertz, Deputy Town Clerk.

Mayor Merkel called the meeting to order at 7:00 p.m., all members present with the exception of Councilmember McKenna, who was absent, and with Mayor Merkel presiding.

Mayor Merkel led the audience in the Pledge of Allegiance to the Flag of the United States of America.

**August 13, 2019  
(public hearing)**

### **ANNOUNCEMENTS**

Mayor Merkel warmly welcomed the town's newly appointed Director of Public Works, Scott Robinson, who had received his oath of office earlier this evening.

Mayor Merkel stated that Councilmember McKenna would be absent from tonight's meeting.

### **APPROVAL OF MINUTES**

#### **Vote on July 2, 2019 Work Session Minutes**

On motion of Vice Mayor Olem, seconded by Councilmember Friedrichs, and carried by a vote of 5-0, the minutes of the July 2, 2019 work session were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs and Vice Mayor Olem voting "Aye." Mayor Merkel abstaining. Councilmember McKenna was absent.

#### **Vote on July 9, 2019 Public Hearing Minutes**

On motion of Councilmember Friedrichs, seconded by Vice Mayor Olem, and carried by a vote of 6-0, the minutes of the July 9, 2019 public hearing were approved. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem and Mayor Merkel voting "Aye." Councilmember McKenna was absent.

### **PRESENTATION**

#### **3. Proclamation, to recognize the 30<sup>th</sup> Anniversary of Dr. Finley's Family Eyecare.**

Mayor Merkel stated it was her great privilege to read the proclamation recognizing the 30<sup>th</sup> Anniversary of Dr. Finley's Family Eyecare into the record.

Following comments from Council, Mayor Merkel recognized Dr. Finley, who provided comments on the proclamation.

The proclamation was presented to Dr. Finley and his family members, staff, and others who attended the presentation with him.

**August 13, 2019  
(public hearing)**

**TOWN OF HERNDON, VIRGINIA  
PROCLAMATION  
30<sup>TH</sup> ANNIVERSARY  
DR. FINLEY'S FAMILY EYECARE**

The Mayor and Town Council of the Town of Herndon, Virginia, hereby recognize and celebrate the **30<sup>th</sup> Anniversary of Dr. Finley's Family Eyecare** in the Town of Herndon; highlight Dr. Finley's practice, which opened in 1989 and serves as the leading provider of quality vision care and personalized optometry in Herndon; express our appreciation to Dr. Finley and his staff, who offer comprehensive vision examinations, diagnosis, and treatment of a wide array of eye conditions. Throughout the past 30 years, the eye professionals at **Dr. Finley's Family Eye Care** have provided exceptional service and are dedicated to the health and welfare of their patients.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby congratulate Dr. Finley, who in addition to his excellent service as a family eye doctor, has spent countless hours of his time volunteering for several groups and organizations in the Herndon area. Dr. Finley is an active member of the Herndon Rotary Club, serving as its past president; Herndon Chamber of Commerce, where he was a board member; Herndon Optimist Club; Knights of Columbus, where he was a past board member; and as a past board member and contributor for the Jeanie Schmidt Free Clinic ~ now Healthworks for Northern Virginia. Dr. Finley has also received many awards and accolades for his community service and exceptional eye care. He received the town's "Distinguished Service Award;" the Chamber of Commerce's "Small Business of the Year Award;" Times Community Newspapers "Best Eye Doctor" award several times; Jeanie Schmidt Free Clinic's "Medical Specialty Practice of the Year;" and was named the Virginia Optometric Association's "Distinguished Optometrist of the Year."

Further, the Mayor and Town Council of the Town of Herndon, Virginia hereby honor and thank Dr. Finley and **Dr. Finley's Family Eye Care** for their dedicated efforts in the community ~ helping to promote overall wellness and a healthier Herndon.

**4. COMMENTS FROM THE TOWN MANAGER**

William H. Ashton, II, Town Manager stated that the town would celebrate 30 years of "Keeping Green and Counting," which included 30 years of: the Herndon Farmers Market, hiring of the Community Forester, and being designated a Tree City USA. To celebrate, the town would give away reusable grocery totes and cork coasters at the Farmers Market next Thursday, August 22, while supplies last.

August 13, 2019  
(public hearing)

5. COMMENTS FROM THE TOWN COUNCIL

Councilmember Dhakal: Stated that he had attended many events recently where he met a lot of wonderful people. The most memorable for him was National Night Out, which was held on Tuesday, August 6. He thanked the Herndon Police Department for holding the event, which he enjoyed, and for inviting the Council.

Councilmember Baker: Stated that there were two Friday Night Live events left, which would start the countdown to the end of summer.

Councilmember Baker encouraged those interested to attend the annual Labor Day Festival, hosted by the Parks and Recreation Department and the Herndon Woman's Club. It would be held Monday, September 2, 11:00 a.m. – 4:00 p.m. in downtown Herndon.

Councilmember Baker encouraged those interested to get tickets for the upcoming season of NextStop Theatre. There would be six shows throughout the season. The first show was "Beehive," which would go from August 22 to September 22 and would feature 1960's music.

Councilmember del Aguila: Stated that for those who were not at last week's work session, the Mayor and Council committed to holding another Community Roundtable meeting. The date was not yet set, but it was planned for October. He looked forward to hearing from residents.

Councilmember Friedrichs: Gave a "shoutout" to those from Herndon who participated in the Lake Anne Cardboard Boat Regatta on Saturday, August 10. She congratulated the boats from Herndon: "Herndon Hobnobers," "Bucket List," and the team from the Dulles Triangles, for finishing the race.

Councilmember Friedrichs observed that the changes to the former Kmart Shopping Center were going well and the new businesses appeared to be making progress.

Councilmember Friedrichs echoed Councilmember del Aguila's comments about the next Community Roundtable. She was also looking forward to the new Heritage Preservation Review Board (HPRB) Guidelines and receiving an update on Comstock.

Vice Mayor Olem: Provided comments about this year's National Night Out, which she thoroughly enjoyed.

Vice Mayor Olem echoed Councilmember Baker's comments about NextStop Theatre's upcoming show, Beehive, which she planned to see.

Vice Mayor Olem encouraged those interested to see ArtSpace's newest exhibit, which featured modern art and opened last weekend. It would be there for about a month.

**August 13, 2019  
(public hearing)**

Vice Mayor Olem stated that she was looking forward to Labor Day weekend and fall weather.

Mayor Merkel: Provided comments about the tour of the town for the Washington Metropolitan Area Transit Authority (WMATA) that she and Dennis Holste, Economic Development Manager, participated in on Monday, August 5. She was honored to discuss the town's upcoming development projects and highlight the Herndon Festival. She was excited to see the pylon for the Herndon Metro Station and stated that one of the first things she did on Council in 2010 was help put up a sign showing where the future Metro stop would be located. WMATA has a projected opening day of July 16, 2020 for Phase II of the Dulles Metrorail Project.

Mayor Merkel stated that the League of American Bicyclists recently posted an article that featured the town as part of its Bicycle Friendly America Program. She stated that 60 communities applied for the program this year and the League of American Bicyclists cited Herndon's plan as an example.

**6. COMMENTS FROM THE AUDIENCE**

The following members of the audience provided comments:

- Elaine Tholen, 182 River Park Drive, Great Falls, stated that she was running for the Dranesville District School Board Seat. She discussed her experience with schools and community service in the Dranesville District. She explained why she was running for this seat and how she would make a difference in the community.
- Arthur Nachman, 866 Vine Street, Herndon, stated that there was a drain pipe on Vine Street adjacent to his driveway and as it collects sediment, it slows down the water flow. This flooded his neighbor's basement, eroded the ditch where the pipe empties, and would affect the asphalt on Vine Street. He had reported this issue through the website and to the appropriate staff, but stated that it had not been resolved after three months. He asked for an answer to this problem.

Mayor Merkel stated that staff would contact Mr. Nachman on this matter.

- Bessie Denton, 496 Virginia Avenue, Herndon, provided comments about trash, high grass/weeds, and bugs in Bruin Park. She stated that she walks through the park several times a week and that it has not been cleaned up or properly maintained all summer. She stated that she constantly picks up trash and asked that the town work to clean up the park.

Mayor Merkel thanked Ms. Denton for bringing this matter to the town's attention. She stated that it was her understanding that both the town and Fairfax County maintained this park.

**August 13, 2019  
(public hearing)**

Ms. Denton stated that she had contacted Fairfax County and they indicated it was the town's responsibility.

Mayor Merkel stated that staff would work to correct the issue.

**PUBLIC HEARINGS**

**7. Ordinance 19-O-23, to grant a ten-year telecommunications franchise to MCImetro Access Transmission Services of Virginia, Inc.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the Friday, July 26 and August 2, 2019 issues.

Mayor Merkel opened the public hearing and announced that the town received one bid from MCImetro Access Transmission Services of Virginia, Inc., which has been entered into the record and is on file in the Town Clerk's office. She asked Ms. Chastain if staff had received any additional bids. Hearing none, she closed the bidding process and recognized Tammy Chastain, Deputy Director of Public Works, for the staff report.

Ms. Chastain presented the staff report dated August 7, which is on file in the Town Clerk's office. This franchise agreement between MCImetro Access Transmission Services of Virginia, Inc. and the town would permit a 10-year franchise for maintenance of underground telecommunications facilities existing from their previous franchise with the town. The current agreement had expired and a new one was required for the conduit in the town. Staff recommends approval of the proposed ordinance, as presented.

Following the public hearing (there were no comments from the audience), on motion of Councilmember Baker, seconded by Councilmember Friedrichs, and carried by a 6-0 roll call vote, Ordinance 19-O-23 was approved, as presented. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem and Mayor Merkel voting "Aye," Councilmember McKenna being absent.

**Ordinance 19-O-23, to grant a ten-year telecommunications franchise to MCImetro Access Transmission Services of Virginia, Inc.**

**BE IT ORDAINED** by the Town Council for the Town of Herndon, Virginia that:

1. The Town Council accepts the bid of and grants to MCImetro Access Transmission Services of Virginia, Inc. a ten-year telecommunications franchise to use Town streets as set out in the franchise dated August 13, 2019 for maintenance of underground telecommunications facilities existing from their previous franchise with the Town. This franchise is on file in the office of the Town Attorney and incorporated by reference.

**August 13, 2019  
(public hearing)**

2. The franchise shall provide for a franchise fee determined by the public rights-of-way use fee legislation, § 56-468.1, Code of Virginia; shall provide for tree preservation, restoration of streets, utility marking standards, and insurance and indemnity provisions in favor of the Town; and shall be on such form as approved by the Town Attorney.
3. The Mayor is authorized to sign and deliver the proposed franchise and any instrument necessary or convenient to effect or support the franchise.
4. This ordinance shall be effective on and after the date of its adoption.

**[Note: Attached for reference is the franchise agreement dated August 13, 2019 by the Town of Herndon & MCI metro Access Transmission Services of Virginia, Inc. and Exhibit A to the franchise agreement.]**

August 13, 2019  
(public hearing)

## TOWN OF HERNDON, VIRGINIA

### FRANCHISE AGREEMENT

#### TERMS AND CONDITIONS FOR USE OF TOWN'S RIGHTS OF WAY

This Agreement (the "Agreement") is dated this 13<sup>th</sup> day of August, 2019, by and between the TOWN OF HERNDON, a Virginia municipal corporation (the "Town") and MCImetro ACCESS TRANSMISSION SERVICES OF VIRGINIA, INC., a Virginia corporation ("Franchisee"), having an office at 600 Hidden Ridge, Irving, Texas 75038.

Section 1 In consideration of Franchisee's collection and transmission to the Town of a monthly public rights-of-way use fee as set by the Virginia Department of Transportation (VDOT) pursuant to §56-468.1, Code of Virginia (1950), as amended, Town awards to Franchisee, its successors and assigns, for the term of ten years after the Effective Date (as defined in Section 11), and subject to the conditions and limitations described herein, a non-exclusive franchise to use the streets, alleys, rights-of-way, and public places of the Town as shown on the drawing attached as Exhibit A (the "Drawing"). The purpose of this grant is to allow Franchisee to continue to occupy the Town's streets, alleys, rights-of-way, and public places with Franchisee's existing underground telecommunications facilities and future construction of additional underground telecommunications facilities for which permits may be issued by the Town ("Facilities") for the purpose of placing the Franchisee's wires, cables and appurtenances thereto for providing telecommunications services.

If the General Assembly of Virginia or other authority repeals or voids the public rights-of-way fee, or if and to the extent that Franchisee under this Franchise provides service other than local exchange or interexchange telecommunications services, and where allowed by law, on and after the effective date of the repeal, or the provision of such other services, and where allowed by law the Franchise fee shall be the Virginia Department of Transportation's Right-of-Way Use Fee which is adjusted annually. In consideration of Franchisee's operation of the Network in the Town ROW, Franchisee shall collect and remit to the Town a monthly Public Right-of-Way Use Fee as set by the Virginia Department of Transportation (VDOT) pursuant to § 56-468.1, Code of Virginia as amended. In the event that the applicable law regarding compensation is amended or repealed, the parties agree to work in good faith to establish consideration in accordance with applicable law.

All Virginia Department of Transportation projects that will begin design and/or construction over the next 6 years are posted on their website. In the near future there are projects in the Town of Herndon that will affect Elden Street, Van Buren Street and Spring Street. Existing telecommunications providers with facilities in these areas are and will be participating in joint design and relocation projects. Franchisee shall either participate in, or coordinate with and accommodate, the joint designs and relocation projects as a condition to use of the public right-of-way on streets affected by these Virginia Department of Transportation projects.

**August 13, 2019  
(public hearing)**

No construction under this Agreement on any route described by Exhibit A may feature Facilities that exceed four conduits, whether free conduits or conduits encased in steel, plastic, or concrete; and no conduit may exceed two inches in diameter.

**Section 2** All Facilities, under or along streets, alleys, rights-of-way, and public places of the Town authorized by this Agreement to be placed and constructed, shall be located as shown on the Drawing, attached as Exhibit A and incorporated by reference. Prior to construction in and under the streets, alleys, rights-of-way, and public places of the Town, Franchisee must obtain (if it can) approval from the Town of Franchisee's plans, showing the location of the proposed Facilities. Any approval will be in the form of an excavation permit. If such Facilities are already in existence, Franchisee is authorized to use those Facilities.

Franchisee shall assure that all utility markings it makes shall meet these standards. (i) Utility markings in the Heritage Preservation Districts, as shown on the Town of Herndon Zoning Map, must be accomplished by flags or stakes, or by "spot markings" with water soluble paint. (ii) Outside of the Heritage Preservation Districts, utility markings shall be made with water soluble paint. The Town supports and encourages utility markings with flags or stakes, or by "spot markings" with water soluble paint.

**Section 3** Franchisee agrees to relocate, at its own expense unless otherwise provided by general law of this Commonwealth and by the ordinance of the Town, within one hundred twenty days of written notification from the Town, all Facilities which, in the reasonable discretion of the Town using recognized engineering standards, interfere, disturb or conflict with the Town's operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, rights-of-way, public grounds, storm drainage systems, sewer systems, water mains or other of the Town's public facilities.

Franchisee shall relocate the Facilities using like construction, or better, if technological advances warrant such, to such places designated by the Town. The Town shall use reasonable good faith efforts to designate locations for any relocated Facilities that will permit Franchisee to continue efficiently to serve its existing and future customers. Any Town permits needed as a result of a relocation request by the Town, shall be of no cost to Franchisee. All Facilities shall be relocated underground. Any reimbursement for relocation costs for new installations allowed by general law of this Commonwealth and ordinances of the Town, shall be in accordance with Va. Code Ann. §56-468.2, and any other relevant laws, if the General Assembly has not repealed the public rights-of-way use fee legislation.

**Section 4** In the location, erection, operation and maintenance of Facilities, Franchisee shall comply with the requirements of Article II, "Tree Protection and Preservation," Chapter 26 "Environment," Herndon Town Code (2000), as amended, and as may be amended. This article, among other things, provides that "[n]o person, public utility or other firm shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any tree within any public right-of-way or town owned property without first filing an application and procuring a tree permit from the urban forester. The person, public utility or firm receiving the tree permit shall abide by the

**August 13, 2019  
(public hearing)**

Arboriculture Specifications and Standards of Practice adopted by the National Arborist Association Standards."

Section 5 If Franchisee shall, in the construction, operation, replacement, maintenance, removal or repair of its Facilities, damage any pavement, street, alley, sidewalk, sewer, water or other pipe or other public property belonging to the Town, Franchisee shall promptly repair the same at its own cost and expense. If Franchisee shall default in this obligation, the Town may cure such default and shall charge the work to the Franchisee in accordance with the Town's then current standard rates for such work. However, prior to performing any such work, the Town will give Franchisee written notice of the default and a period of thirty days after receipt of such notice within which to cure the default. The Town shall extend the thirty-day period for a reasonable time if such default cannot reasonably be cured within such period and Franchisee has commenced and is diligently pursuing such cure. If Franchisee does not so cure the default, the Town will provide Franchisee with a written notice advising of the expiration of the cure period and stating the date (which date shall be no less than three business days after Franchisee's receipt of such notices) on which the Town intends to commence the work on Franchisee's behalf.

Notwithstanding the foregoing, if such default threatens the public health or safety, the Town shall make a reasonable effort to provide Franchisee with telephonic notice at 1.800.MCL.WORK (1.800.624.9675) and an opportunity to immediately cure such default. If the Town is unable to reasonably provide such notice or Franchisee fails to immediately cure the default, the Town may commence the cure on Franchisee's behalf. In any event, the Town shall immediately thereafter provide Franchisee with written notice of Town's performance of such emergency work.

Except in an emergency, prior to commencing work on any street, alley, right-of-way, or public ground, Franchisee shall obtain an excavation permit or other necessary approval to do such work and shall exercise reasonable judgment in order to avoid any inconvenience to the general public or the Town's work forces. Franchisee shall not impede the flow of traffic to any greater extent than is reasonably necessary in performing any maintenance, removal, replacement, construction or repairs. Franchisee shall strictly abide by the permit or approval requirements, including those requirements relating to time limitations.

Franchisee is bound by all applicable police power measures now or in the future adopted by the Town, in addition to the terms of this Agreement.

Section 6 Franchisee shall indemnify the Town, its officers, officials and employees (for purposes of this section only, collectively the "Town"), and shall hold the Town harmless from liability on account of injury, death or damage to persons or property arising out of the construction, improvement, removal, maintenance, repair or operations of its Facilities. If such suit shall be brought against the Town, either independently or jointly with Franchisee, Franchisee will defend, indemnify and hold the Town harmless in any such suit, at the cost of Franchisee. If a final judgment is obtained against the Town, either independently or jointly with Franchisee, Franchisee will pay the judgment, including all reasonable costs, and will hold the Town harmless therefrom. This

**August 13, 2019  
(public hearing)**

indemnity shall not apply to claims for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting solely from the negligence of the Town, its agents or employees.

Franchisee shall obtain and maintain during the life of this Agreement general and motor vehicle liability insurance with commercially reasonable limits of coverage, insuring against liability arising under this Agreement. Franchisee shall name Town as an additional insured on this coverage and shall, on the Town's demand, provide to the Town an insurance certificate indicating such coverage.

**Section 7** If Franchisee does not comply with the terms of this Agreement within thirty days after written notice of such non-compliance from the Town, the Town, at its option, may terminate the Franchise. However, such thirty-day period will be extended for an additional period of time as is reasonable under the circumstances if Franchisee's non-compliance cannot reasonably be cured within the thirty-day period and if Franchisee has commenced a cure within such period and continues to diligently pursue such cure.

**Section 8** If this Agreement is terminated for default, Franchisee shall remove its Facilities or convey to the Town all right, title and interest that Franchisee has in the Facilities and shall release any and all permits it may have to operate the Facilities.

**Section 9** This Agreement and the franchise are not assignable or transferable without the express written permission of the Town, which permission shall not be unreasonably conditioned, withheld or delayed. However, Franchisee may assign, transfer or sublet its rights, without the consent of the Town, to any person or entity that controls, is controlled by or is under common control with Franchisee, or to any entity into which Franchisee may be merged or consolidated or which purchases all or substantially all of the assets of Franchisee, or to any lender of Franchisee, provided the Town is advised of the action prior to enactment. Any successor(s) of Franchisee shall be bound by all of the terms and conditions of this Franchise and shall be subject to all the provisions, obligations, and stipulations here prescribed.

**Section 10** The rights, privileges and duties here granted shall continue for ten years, after the Effective Date (as defined in Section 11). Prior to the expiration of this Agreement, the parties may make a good faith effort to negotiate and enter into a Franchise agreement upon reasonable terms and conditions. Franchisee shall remove all Facilities from the streets, alleys and public places of the Town at the expense of Franchisee as soon as possible after the expiration, termination or abandonment of this Agreement, or by such reasonable time to be prescribed by the Town Council. Such Facilities may be abandoned without removal upon approval by the Town.

**Section 11** This Agreement shall become effective on the date of Franchisee's written acceptance of this Franchise (the "Effective Date"). Franchisee shall then enter into a bond in the sum of Ten thousand dollars with good and sufficient surety, acceptable to the Town Attorney, conditioned to the effect that Franchisee will construct and maintain, or if constructed, will maintain,

**August 13, 2019  
(public hearing)**

the Facilities in good order throughout the term of the grant, and (subject to the cure rights set forth in Section 7 hereof) will comply with this Agreement in all respects. This Agreement shall be void if the Effective Date does not occur within one year after the Town adopts an ordinance approving this Franchise, or if Franchisee does not obtain (or has not obtained) an initial permit for installation of Facilities within one year after the date of Town's adoption of the approving ordinance.

**Section 12** Any notice given under this Agreement shall be mailed or delivered to the Town of Herndon, Attention: Town Manager, 777 Lynn Street, Herndon, Virginia 20172-0427, and to Franchisee at 600 Hidden Ridge, Irving, Texas 75038, Attn: Manager, Right of Way and Municipal Affairs, with a copy (except for invoices) to 1320 N. Courthouse Rd., 9th Floor, Arlington, VA 22201, Attn: Network Counsel, by registered or certified mail, if mailed, return receipt requested; and shall be deemed delivered when received or refused by the addressee. The parties may change addresses by like notice.

**Section 13** Both the Town and Franchisee reserve and may seek any and all remedies available at law. Neither the Town nor Franchisee shall be deemed to have waived any rights or remedies at law by virtue of executing this Agreement.

MCImetro ACCESS TRANSMISSION  
SERVICES OF VIRGINIA, INC.

By: \_\_\_\_\_

Robert J. Hayes

Sr. Manager; Network Engineering and Ops.

Date of Acceptance:

07-17-2019

TOWN OF HERNDON, VIRGINIA

By: \_\_\_\_\_

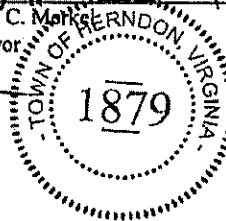
Lisa C. Marks

Mayor

Attest:

\_\_\_\_\_

Town Clerk



APPROVED AS TO FORM:

\_\_\_\_\_

Lisa J. Yeatts

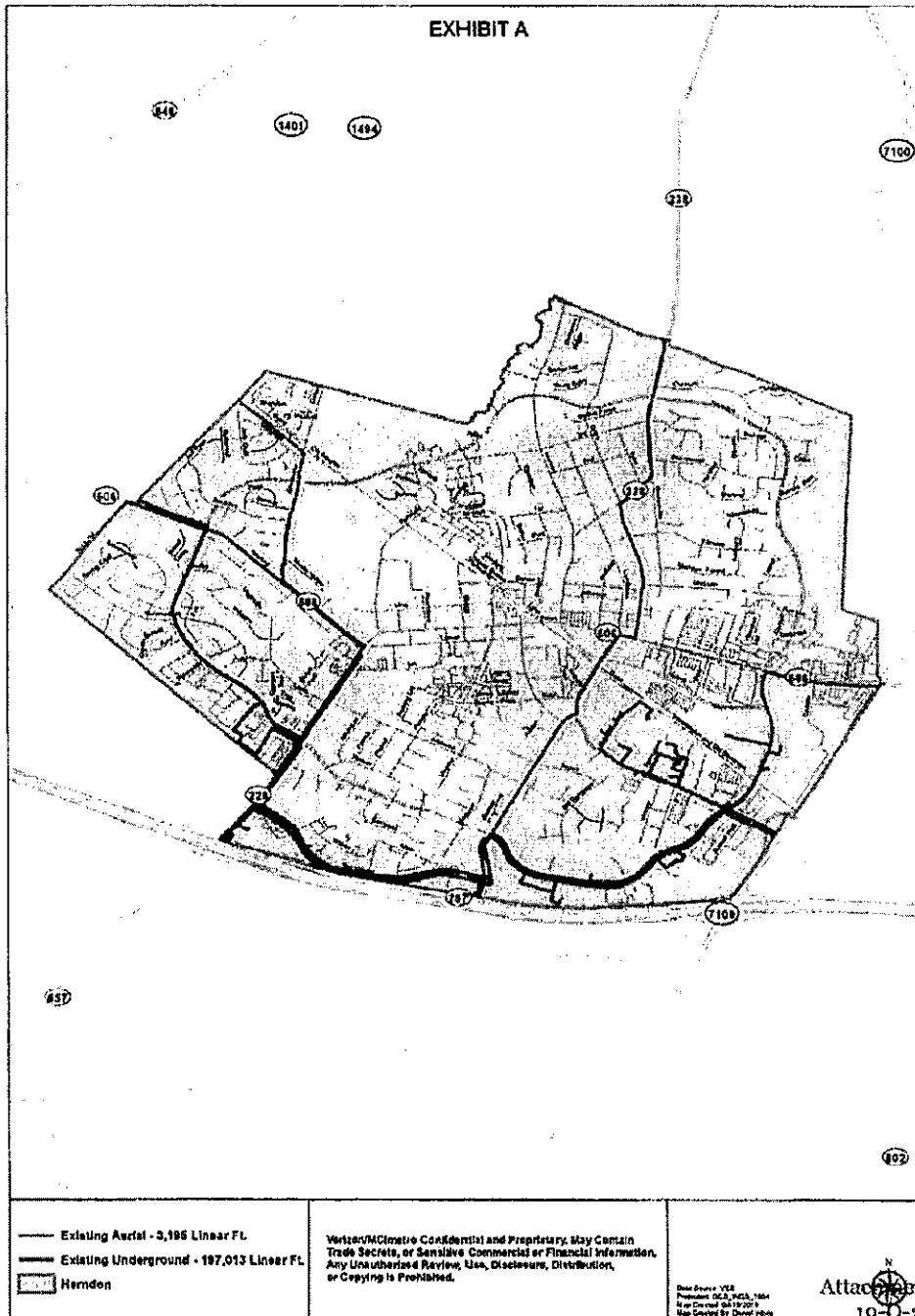
Town Attorney

August 13, 2019  
(public hearing)

Pg.1 of 1

MCimetro Access Transmission Services of Virginia, Inc.  
Exhibit A to Franchise Agreement dated August 13, 2019.  
Town of Herndon, VA

EXHIBIT A



August 13, 2019  
(public hearing)

8. **Ordinance 19-O-24, to approve the conveyance of Town-owned property on Elden Street to the Virginia Department of Transportation (VDOT) for the widening of East Elden Street.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the Friday, July 26 and August 2, 2019 issues.

Mayor Merkel opened the public hearing and recognized John Irish, Deputy Director of Public Works, for the staff report.

Mr. Irish presented the staff report and PowerPoint dated August 13, 2019, which are on file in the Town Clerk's office. The proposed ordinance would convey the necessary town and property rights to the state, acting by and through the Virginia Department of Transportation (VDOT), for the widening of Elden Street. The town must grant the right of way and easements to VDOT for construction, who would then convey the easements back to the town at the end of the project. He stated that this process was needed for the funding from the Department of Transportation. Staff has thoroughly vetted the proposed agreement and recommends approval of the proposed ordinance, as presented.

There was a brief discussion amongst Council and staff on this item.

Following the public hearing (there were no comments from the audience), Vice Mayor Olem moved approval of Ordinance 19-O-24, as presented. Councilmember del Aguila seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 6-0 roll call. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem and Mayor Merkel voting "Aye," Councilmember McKenna being absent.

**Ordinance 19-O-24, to approve the conveyance of Town-owned property on Elden Street to the Virginia Department of Transportation (VDOT) for the widening of East Elden Street.**

**BE IT ORDAINED** by the Town Council for the Town of Herndon that:

1. The conveyance by donation to the Commonwealth of Virginia, acting by and through the Commissioner of Highways, of interests in Town-owned real property on Elden Street designated in the Fairfax County Tax Records as Tax Map # 0171-04-0004 & 0171-04-0005 necessary for the

**August 13, 2019  
(public hearing)**

completion of Project U000-235-110 to widen or improve state highway route 6656 (known as Elden Street) as shown on the attached plan sheets is approved.

2. The right to valuation is waived.
3. The Mayor is authorized to sign and deliver the necessary Acknowledgments and Deeds or any other instrument consistent with this ordinance to evidence, or otherwise effectuate the conveyance.
4. This ordinance shall be effective on and after the date of its adoption.

**[Note: Attached for reference, at the end of the minutes, are: Exhibit A; acknowledgement of the conveyance of land and/or easements to the Commonwealth of Virginia; the deed of gift and donation b/n the town and VDOT; and the deed of easement b/n between the town and the Commonwealth.]**

**9. Resolution 19-G-51, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event.**

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearings had been duly advertised in the Friday, August 2, 2019 issue.

Mayor Merkel opened the public hearing and recognized Lesa Yeatts, Town Attorney, for the staff report.

Ms. Yeatts presented the staff report dated August 7, 2019, which is on file in the Town Clerk's office. Jimmy's Old Town Tavern ("Jimmy's") was seeking a Temporary Use Permit for designated alley public space adjacent to Jimmy's for outdoor seating September 1, 2019. This resolution would authorize the Mayor to sign the necessary license agreement to permit Jimmy's to utilize the town's property. She stated that Jimmy's had obtained the necessary permits and required insurance. Staff recommends approval of the proposed resolution, as presented.

There was a brief discussion amongst Council and staff on this item.

Following the public hearing (there were no comments from the audience), on motion of Councilmember Baker, seconded by Councilmember Friedrichs, and carried by a 6-0 vote, Resolution 19-G-51 was approved, as presented. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem and Mayor Merkel voting "Aye," Councilmember McKenna being absent.

**August 13, 2019  
(public hearing)**

**Resolution 19-G-51, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event**

**BE IT RESOLVED** by the Town Council for the Town of Herndon that:

1. The Town Council approves a temporary license agreement dated August 13, 2019 between the Town of Herndon as licensor and JOTT, INC. d/b/a Jimmy's Old Town Tavern (Jimmy's) as licensee. The license allows Jimmy's to use designated alley public space adjacent to Jimmy's for outdoor seating during an event on September 1<sup>st</sup> of 2019. The license agreement may contain other terms agreed to by the Mayor and is on file in the office of the Town Attorney.
2. The Mayor is authorized to sign and deliver this license agreement and any other instrument to evidence or support the license agreement
3. This resolution shall be effective on and after the date of its adoption.

**[Note: Attached for reference is the temporary license agreement dated August 13, 2019 b/n the town and JOTT, Inc. d/b/a Jimmy's Old Town Tavern (Jimmy's).]**

**August 13, 2019  
(public hearing)**

**AGREEMENT**

This Agreement ("Agreement") is made this 13<sup>th</sup> day of August 2019 by and between JOTT, INC. d/b/a Jimmy's Old Town Tavern ("Jimmy's") and the TOWN OF HERNDON, VIRGINIA, ("Town").

WHEREAS Jimmy's represents that they have a Temporary Use Permit to conduct an event in the Town of Herndon on September 1<sup>st</sup> of 2019 represented in "Exhibit 1" attached hereto ("Permit") and that Jimmy's would like to use the Town's property behind Jimmy's Old Town Tavern Restaurant as shown on the Permit and known as the "Alley";

WHEREAS the Town desires to permit the use of the Alley by Jimmy's on these dates as described in the Permit (on September 1<sup>st</sup> of 2019 only).

Now therefore the parties agree as follows:

1. The Town hereby grants Jimmy's authorization to temporarily use the Alley for purposes described in the Permit
2. Jimmy's shall comply with the terms of the Permit and all applicable town, state and federal laws and regulations obtaining and maintaining at all times any other permit(s) required under applicable law for this use.
3. The parties expressly agree and contract that there shall be no fee for the use of the Town property on this occasion only.
4. The permission to use the property granted by this agreement is nonexclusive in nature, and the Town reserves the right to make concurrent use of the Property.
5. Jimmy's hereby assumes all risk of damage by reason of its occupation of the Alley caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and Jimmy's hereby agrees to hold harmless and indemnify the Town, its officers, agents and employees, from and against any such liability for such damage or injury to the extent permitted under the laws of the Commonwealth of Virginia.
6. Jimmy's shall secure, provide and maintain insurance to protect the Town of such type and in such amount as is described below naming the Town as an additional insured. This Agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives Jimmy's written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

**Commercial General Liability** – Combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate. Policy shall be endorsed to name the Town as an additional insured.

**August 13, 2019  
(public hearing)**

The insurance required hereunder shall be maintained in effect during the duration of this Agreement. Insurance Policy(s) shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) calendar days advance written notice thereof to the Town.

7. Termination: The Town may terminate this Agreement upon 24 hours notice to Jimmy's for cause.

8. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.

9. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

JOTT, INC.

d/b/a Jimmy's Old Town Tavern

By *James C. Cirrito*  
James C. Cirrito  
President

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of July, 2019 by JAMES C. CIRRITO, President of JOTT, INC. d/b/a Jimmy's Old Town Tavern, a Virginia corporation, on its behalf.



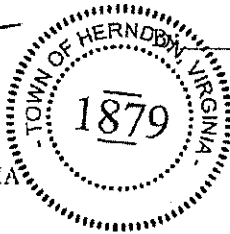
*Sarah Wheeler*  
Notary Public  
My Commission Expires: 5/31/2022  
Registration No.: 7771261

**August 13, 2019**  
**(public hearing)**

ATTEST:

TOWN OF HERNDON, VIRGINIA

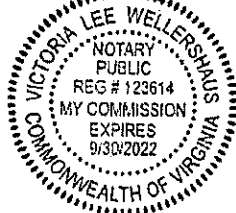
  
 Town Clerk

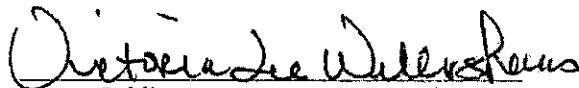


  
 Lisa C. Merkel  
 Mayor

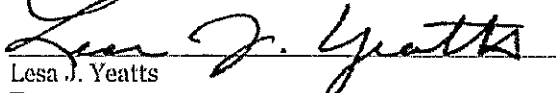
COMMONWEALTH OF VIRGINIA  
 COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of August, 2019 by LISA C. MERKEL, MAYOR of the TOWN OF HERNDON, VIRGINIA, a Virginia municipal corporation, on its behalf.



  
 Notary Public  
 My Commission Expires: 9-30-22  
 Registration No.: #123614

APPROVED AS TO FORM:

  
 Lesa J. Yeatts  
 Town Attorney

**August 13, 2019  
(public hearing)**

**10. Resolution 19-G-52, to consider the Herndon Bicycle Network Master Plan to be used as a long-range planning document focused on improving bicycle service levels in the Town.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the Friday, July 26 and August 2, 2019 issues.

Mayor Merkel opened the public hearing and recognized Bryce Perry, Deputy Director of Community Development, for the staff report.

Mr. Perry presented the staff report and PowerPoint dated August 13, 2019, which are on file in the Town Clerk's office. The Herndon Bicycle Network Master Plan would be the first official planning document dedicated to bicycle facilities and infrastructure. Mr. Perry reviewed the background, history, purpose of the proposed master plan. It would build and expand on the town's Comprehensive Plan and Fairfax County's Bicycle Plan. He stated that the Pedestrian and Bicycle Advisory Committee (PBAC) steered the scope and the concept of the proposed plan. The draft was reviewed and recommended to the Council by PBAC and the Planning Commission.

Mr. Perry reviewed the process and development of the plan. The plan was made of four chapters, which were: the introduction; an articulation of the guiding principles and objectives for bicycle planning and design; an overview of the existing network and identification of the long-term planned network improvements; and a profile of the bicycle program and ongoing initiatives. Staff and PBAC would examine the plan annually and would recommend any updates beyond administrative changes for Council's review.

Mr. Perry discussed the network map, which referenced existing and proposed routes and was included as part of the plan. Staff would maintain a larger, published version of the network map, along with a web-based interactive version. Staff recommends approval of the proposed resolution, as presented.

Following the public hearing (there were no comments from the audience), Councilmember del Aguila, as chair of PBAC, moved approval of Resolution 19-G-52, as presented. Councilmember Dhakal seconded the motion.

There were brief comments from Council.

All members of Council present and Mayor Merkel thanked staff for their work on the plan and expressed excitement moving forward.

**August 13, 2019  
(public hearing)**

The question was called on the motion, which carried by a vote of 6-0. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem and Mayor Merkel voting "Aye," Councilmember McKenna being absent.

**Resolution 19-G-52, to consider the Town of Herndon Bicycle Master Plan.**

**WHEREAS,** in 2008 the Town Council adopted the 2030 Comprehensive Plan which guides the town to *facilitate alternative modes of transportation within the town and provide safe streets that are friendly to pedestrians and bicyclists and continue to integrate pedestrian and bicycle facilities with the street and transit network*; and

**WHEREAS,** the Town Council's adopted 2035 Vision Statement expresses that *Residents walk, cycle, drive, or use public transit to their jobs, restaurants, and cultural events and Through thoughtful planning, the town has a network of sidewalks, trails, streets and connections to public transportation that provides residents the opportunity for one-car or no-car living*; and

**WHEREAS,** on August 14, 2012, the Town Council adopted a resolution endorsing specific bicycle route and facility improvements in coordination with the Fairfax County Bicycle Master Plan; and

**WHEREAS,** the Code of Virginia §15.2-2231 requires each locality to develop a transportation plan that designates a system of transportation infrastructure needs and recommendations that may include the designation of new and expanded transportation facilities and that support the planned development of the territory covered by the plan and shall include, as appropriate, bicycle accommodations; and

**WHEREAS,** the Town Council appointed Pedestrian & Bicycle Advisory Committee steered the development of the plan at several meetings and recommends its adoption; and

**WHEREAS,** the Planning Commission reviewed the plan at its public hearing on June 24, 2019, endorses the plan, and recommends its adoption;

**NEW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Herndon, Virginia that the Town Council hereby adopts the Town of Herndon Bicycle Network Master Plan.

**August 13, 2019  
(public hearing)**

**BE IT FURTHER RESOLVED** that, the Town Council authorizes staff to make certain revisions to the Bicycle Network Master Plan, without prior Town Council approval for correction of clerical and administrative errors, updates of an administrative nature, excluding substantive changes.

**BE IT FURTHER RESOLVED** that, the Bicycle Network Master Plan shall be forwarded to Fairfax County transportation planning staff for integration into the County's Bicycle Master Plan.

**BE IT FURTHER RESOLVED** that, the Town Council recommends the Planning Commission to consider updates to the 2030 Comprehensive Plan transportation chapter to reference the Bicycle Network Master Plan and reinforce its content.

**[Note: The Bicycle Network Master Plan, reviewed by the Herndon Planning Commission on June 24, 2019, is on file in the Department of Community Development.]**

**11. CONSENT AGENDA**

On motion of Vice Mayor Olem, seconded by Councilmember Baker, and carried by a vote of 6-0, the following consent agenda item was approved, without comment. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, Vice Mayor Olem and Mayor Merkel voting "Aye," Councilmember McKenna being absent.

**Ordinance, to amend Chapter 54 (PERSONNEL), Article V (Conflict of Interest), Section 54-111 (Disclosure by town officers and employees), to revise the positions required to complete a disclosure statement of personal interests identified in Code of Virginia, §§ 2.2-2115 and 2.2-3117.**

**BE IT ORDAINED** by the Council for the Town of Herndon that:

1. Chapter 54, (PERSONNEL) of the Herndon Town Code is amended and reenacted as follows.

**Sec. 54-111. - Disclosure by town officers and employees.**

As a condition to assuming office or employment, the town manager, the town attorney, the director of finance, the director of parks and recreation, the director of public works, the director of community development, the chief of police, the director of information technology, the director of human resources, the director of golf, the deputy town attorney, the deputy director of finance and the purchasing agent ~~town attorney~~ shall each file, under oath or affirmation, a disclosure statement

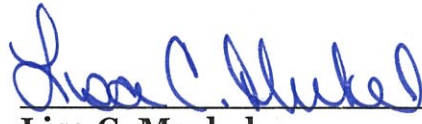
**August 13, 2019  
(public hearing)**

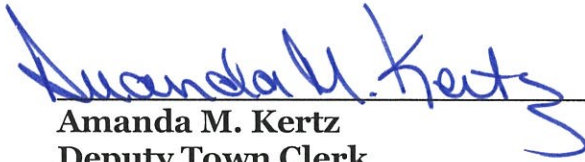
of personal interests and other information as required on the form or forms identified in Code of Virginia, §§ 2.2-2115 and 2.2-3117 at such times and for such periods as required by state law. The town clerk shall distribute the statement of economic interest form to the designated individuals at least 20 days prior to the filing deadline.

(Code 1992, § 17-101; Ord. No. 05-O-36, § 1, 9-27-2005; Ord. No. 12-O-29, § 1, 11-13-2012; Ord. No. 15-O-05, § 1, 1-13-2015; Ord. No. 17-O-02, 1-24-2017)

**12. ADJOURNMENT**

There being no further business, the meeting adjourned at 7:54 p.m.

  
\_\_\_\_\_  
**Lisa C. Merkel**  
**Mayor**

  
\_\_\_\_\_  
**Amanda M. Kertz**  
**Deputy Town Clerk**



**Minutes approved by Town Council: September 10, 2019.**

**August 13, 2019  
(public hearing)**

**CONVEYANCE OF LAND AND/OR EASEMENTS  
TO THE COMMONWEALTH OF VIRGINIA  
ACKNOWLEDGMENT**

The Town of Herndon, Virginia (the "OWNER") is the owner of the property identified in the Plat attached to this **ACKNOWLEDGMENT**. It is the intention of OWNER to convey the described property right to the Commonwealth of Virginia (the "Commonwealth") to be used for highway or other transportation purposes.

The property right is identified on said Plat and further described in an executed Deed to be filed at Land Records with this acknowledgement.

OWNER's authorized agent (whose signature appears below) has been advised, pursuant to Virginia Code Section 25.1-417, A, 10, by a representative of the Virginia Department of Transportation (the "Department"), whose name is printed below, that OWNER is entitled to be monetarily compensated for this property right and is under no legal obligation to convey it to the Commonwealth. OWNER, by its authorized agent, hereby waives its right to be monetarily compensated for the property right being conveyed and hereby agrees, upon presentation, to execute deed conveying the property right to the Commonwealth.

By the signature of its authorized agent, OWNER also acknowledges that, prior to the conveyance, the Department will perform a valuation of the property right being donated and provide OWNER, in writing, with the Department's determination of the value of the property right being conveyed. OWNER, through its authorized agent, acknowledges that it has the right to waive this valuation and, by the signature of OWNER's authorized agent, does hereby ☐waive ☐not waive its right to receive such valuation.

OWNER's authorized agent hereby warrants and represents that he/she has the full and unrestricted authority to execute this document on behalf of the OWNER and to waive or claim the rights set forth herein.

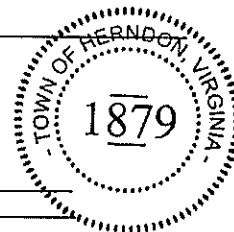
VDOT REPRESENTATIVE: \_\_\_\_\_

GIVEN this 13<sup>th</sup> day of August, 2019

OWNER: TOWN OF HERNDON, VIRGINIA, a municipal corporation

*Lisa C. Merkel* (SEAL)  
Signature

Name: Lisa C. Merkel  
Title: Mayor

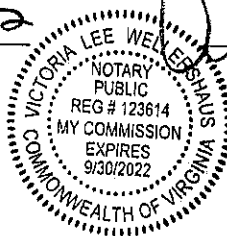


City/County of Fairfax )  
Commonwealth of Virginia )

to-wit

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of August, 2019 by Lisa C. Merkel as Mayor of the Town of Herndon, Virginia, a municipal corporation.

My commission expires: 9-30-22  
Registration #: #123614



*Victoria Lee Weimer*  
Notary Public

**APPROVED AS TO FORM**

By *Lisa J. Yeatts*  
Lisa J. Yeatts, Town Attorney  
Town of Herndon, Virginia  
Date: 8/15/2019

Attachment  
19-0242408

TAX MAP # 0171-02-0008 & 0171-06-J4

UPC 50100  
Parcel 022

**PREPARED BY VDOT  
UNDER SUPERVISION OF THE  
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes  
and fees under Sections 58.1-811(A)(3),  
58.1-811(C)(5), 58.1-3315, 25.1-418,  
42.1-70, 17.1-266, and 17.1-279(E)

This **DEED OF GIFT AND DONATION**, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **THE TOWN OF HERNDON, VIRGINIA**, a municipal corporation, ("**GRANTOR**"), and the **COMMONWEALTH OF VIRGINIA**, acting by and through the **VIRGINIA DEPARTMENT OF TRANSPORTATION**, ("**GRANTEE**").

**WITNESSETH:**

**THAT WHEREAS**, it is proposed by the Commonwealth to widen or improve State Highway Route 6656, Project U000-235-110, RW-201, C-501, from Monroe Street (Route 228) to 0.006 miles West of Town of Herndon Limits in the Town of Herndon, Virginia; and

**WHEREAS**, **GRANTOR** is the Owner of certain real property situated in the Town of Herndon, which is designated in the Fairfax County Tax Records as Tax Map # 0171-02-0008 & 0171-06-J4 and is designated in the Commonwealth's Project plans as "Parcel 022" as shown on Sheets 8, 8 RW, 19(7(1)) and 19(8(1)) of the plans for Route 6656, Project U000-235-110, RW-201, C-501, which Plan Sheets are attached hereto;

**NOW, THEREFORE** in consideration of the good will and public benefit to be derived from this donation including the improvement of the roads of the Commonwealth, and other good and valuable consideration, the **GRANTOR** hereby gives, grants and conveys unto the **GRANTEE** in fee simple, with General Warranty and English Covenants of Title, the land located in the Town of Herndon and more particularly described as follows:

**PARCEL 022** - Being as shown on sheets 8, 8RW, 19(7(1)) and 19(8(1)) of the plans for Elden Street (Route 6656), Project U000-235-110, RW-201, C-501, and beginning on the South (right) side of the East Elden Street (Route 6656) Construction Baseline Station from a point in the lands of the landowner opposite Station 48+13.95 to a point in the lands now or formerly belonging to Herndon Investments, LLC, opposite approximate Station 51+56, containing 8,450 square feet, more or less, land; together with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a permanent storm drainage easement, from opposite Station 49+19.37 to opposite Station 49+61.35 and from opposite Station 50+70.05 to opposite approximate Station 51+56, altogether containing 3,594 square feet, more or less; together with the temporary right and easement to use the additional areas shown as being required for the proper construction of cut and/or fill slopes and for the proper construction of a utility duct bank containing 30,071 square feet, more or less. Said temporary easements will terminate at such time as the construction of the aforesaid project is completed.

Being part of the land acquired by the Grantor from SCUDDER H. DARRAGH, TRUSTEE, and ROBERT D. LANNING, TRUSTEE, by Certificate dated August 1, 1974 and recorded August 19, 1974 as Deed Book 4089, Page 271, confirmed by Order dated January 2, 1976 and recorded January 23, 1976 as Deed Book 4341, Page 165; and being part of the land acquired by the Grantor from NATHAN GLASSMAN, TRUSTEE, and MARVIN DAVIS, TRUSTEE, by Certificate dated August 1, 1974 and recorded August 19, 1974 as Deed Book 4089, Page 275, confirmed by Order dated September 2, 1975 and recorded September 15, 1975 as Deed Book 4268, Page 585; and being part of the land part of the land acquired by the Grantor by Deed of Dedication and Subdivision from W. EVANS BUCHANAN COMPANY dated June 20, 1974 and recorded August 1, 1974 as Deed Book 4080, Page 182; and being part of the land acquired by the Grantor from UNION LAND AND MANAGEMENT COMPANY, DANIEL R. BAKER, REBECCA BAKER, ROBERT W. MOBLEY, CAROLYN MOBLEY, WILLIAM C. HOWLETT and ELEANOR N. HOWLETT by Deed of Dedication and Resubdivision dated December 14, 1984 and recorded January 15, 1985 as Deed Book 6084, Page 365 in the office of the Clerk of the Circuit Court of Fairfax County.

For a more particular description of the land herein conveyed, reference is made to Sheets 8, 8RW, 19(7(1)) and 19(8(1)) of the aforementioned project showing outlined in RED the land conveyed in fee simple, GREEN the permanent easement for storm drainage and ORANGE the temporary construction easements for cut /fill slopes and a utility duct bank, which is hereto attached as a part of this conveyance and recorded simultaneously herewith in the Clerk's Office of the County of Fairfax, Virginia in the State Highway Plat Book \_\_\_\_\_, Page(s) \_\_\_\_\_.

1) The **GRANTOR** by the execution of this instrument acknowledges that the land being conveyed hereunder is being donated to the Commonwealth of Virginia for highway use or associated uses. **GRANTOR** also acknowledges that he is entitled to be compensated for the land hereby conveyed and, pursuant to Virginia Code Section 25.1-417 A 10 and by this donation, hereby waives its right to

such compensation. A copy of **GRANTOR'S** acknowledgment of its rights is attached to and made a part of this deed.

2) The **GRANTOR** covenants and agrees for itself, its heirs, successors and assigns, that the consideration hereinabove mentioned shall be in lieu of any and all claims to compensation for land, and for damages, if any, to the remaining lands of the **GRANTOR** which may result by reason of the use to which the **GRANTEE** will put the land being conveyed, including such drainage facilities as may be necessary. This paragraph, however, does not apply to any physical damages caused by **GRANTEE**, its agents and contractors done to **GRANTOR's** remaining property after construction of the aforesaid project begins.

[Signatures follow on next page]

WITNESS the following signatures and seals:



TOWN OF HERNDON, VIRGINIA

[Signature] (SEAL)

Name: Lisa C. Merkel

Title: Mayor

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Fairfax

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Lisa C. Merkel as Mayor of the TOWN OF HERNDON, VIRGINIA, a municipal corporation whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

My Commission expires:

9-30-22

Registration No:

# 123614



[Signature]  
Notary Public

**GRANTEE'S MAILING ADDRESS**

Virginia Department of Transportation  
Right of Way and Utilities Division  
Attn: Acquisitions/Legal Section  
4975 Alliance Drive  
Fairfax, VA 22030

**APPROVED AS TO FORM**

By [Signature]  
Lesa J. Yeatts, Town Attorney  
Town of Herndon, Virginia  
Date: 8/5/2019

TAX MAP # 0171-02-0008 & 0171-06-J4

SF-39  
Rev. 4/14  
UPC 50100  
Parcel 022

**PREPARED BY VDOT  
UNDER SUPERVISION OF THE  
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes  
and fees under Sections 58.1-811(A)(3),  
58.1-811(C)(5), 58.1-3315, 25.1-418,  
42.1-70, 17.1-266, and 17.1-279(B)

**THIS DEED OF EASEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between TOWN OF HERNDON., a municipal corporation, Grantor, and the COMMONWEALTH OF VIRGINIA, acting by and through the Commissioner of Highways, Grantee,

**WITNESSETH: THAT WHEREAS**, it is proposed by the Commonwealth to widen or improve State Highway Route 6656, Project U000-235-110, RW-201, C-501, from Monroe Street (Route 228) to 0.006 miles West of the Town of Herndon Limits in the Town of Herndon, Virginia; and

**WHEREAS**, in the improvement it is necessary that the Grantee enter upon the lands of the Grantor located in the aforesaid town to establish and/or relocate utility facilities on the lands herein conveyed;

**NOW THEREFORE**, , in consideration of the good will and public benefit to be derived from this donation including the improvement of the roads of the Commonwealth, and other good and valuable consideration, the Grantor does hereby grant and convey to the Grantee, its agents, permittees, successors and assigns, the perpetual right and easement, to install, construct, operate, maintain, inspect, improve, relocate, alter, replace or remove one or more of the following, which shall collectively be referred to as "Utility Facilities":

- (a) communication systems, to be installed, operated, owned and maintained by Summit IG, Verizon Business, Cox Cable (formerly Media Cable), and Zayo, their agents, successors or

assigns, including, but not limited to telephone, cable television and high speed internet services, consisting of buried cables, buried wires, posts, terminals, pedestals, vaults, conduits, manholes, handholes, and related above-ground facilities including, but not limited to, cables, wires, poles, posts, terminals, location markers, cabinets, equipment housings, remote terminal units, and other appurtenances as may be from time to time required;

- (b) gas systems to be installed, operated, owned and maintained by Columbia Gas of Virginia, their agents, successors or assigns, for transmitting and distributing natural gas, consisting of various size gas pipelines, or pipelines, service pipes, valves, regulators and accessories, including wire or fiber optic communication cables;
- (c) water systems to be installed, operated, owned and maintained by Town of Herndon, Virginia their agents, successors or assigns, for transmitting and distributing water, consisting of various size pipes, mains, service pipes, valves, manholes, water meters, vaults and appurtenances; and
- (d) sanitary sewer systems to be installed, operated, owned and maintained by Town of Herndon, Virginia, their agents, successors or assigns, for the collection and transmission of sewage, consisting of various size sewer pipes and lines, service pipes, manholes, valve boxes and appurtenances;

over, under, through, upon and across the lands and property of the Grantor adjacent to Route 6656, situated in the Town of Herndon, Virginia, and including the right of reasonable egress and ingress to these Utility Facilities, said easement being more particularly bounded and described as follows:

Being as shown on Sheets 8RW, 19(7(1)) and 19(8(1)) of the plans for Route 6656, State Highway Project U000-235-110, RW-201, C-501, Parcel 022, and beginning on the South (right) side of the East Elden Street (Route 6656) Construction Baseline from the lands now or formerly belonging to the Herndon Lodge, LLC. opposite approximate Station 47+20 to the lands of now or formerly belonging

to Herndon Investments, LLC. opposite approximate Station 51+56 and containing 26,476 square feet in proposed permitted utility easement as shown in **PINK**, a copy of which is attached hereto to be recorded herewith in State Highway Plat Book \_\_\_\_\_, Page \_\_\_\_\_.

Being part of the land acquired by the Grantor from SCUDDER H. DARRAGH, TRUSTEE, and ROBERT D. LANNING, TRUSTEE, by Certificate dated August 1, 1974 and recorded August 19, 1974 as Deed Book 4089, Page 271, confirmed by Order dated January 2, 1976 and recorded January 23, 1976 as Deed Book 4341, Page 165; and being part of the land acquired by the Grantor from NATHAN GLASSMAN, TRUSTEE, and MARVIN DAVIS, TRUSTEE, by Certificate dated August 1, 1974 and recorded August 19, 1974 as Deed Book 4089, Page 275, confirmed by Order dated September 2, 1975 and recorded September 15, 1975 as Deed Book 4268, Page 585; and being part of the land part of the land acquired by the Grantor by Deed of Dedication and Subdivision from W. EVANS BUCHANAN COMPANY dated June 20, 1974 and recorded August 1, 1974 as Deed Book 4080, Page 182; and being part of the land acquired by the Grantor from UNION LAND AND MANAGEMENT COMPANY, DANIEL R. BAKER, REBECCA BAKER, ROBERT W. MOBLEY, CAROLYN MOBLEY, WILLIAM C. HOWLETT and ELEANOR N. HOWLETT by Deed of Dedication and Resubdivision dated December 14, 1984 and recorded January 15, 1985 as Deed Book 6084, Page 365 in the office of the Clerk of the Circuit Court of Fairfax County.

The utility easements and all utility facilities installed thereon as hereinabove described are subject to the following conditions:

1. The Grantee, its agents, permittees, successors or assigns, and the respective owners of the utility facilities ("Utility Owners") shall have full and free use of the said easement and right of way for the purposes named, and shall have all rights and privileges reasonably necessary to exercise use of the easement and right of way as their interests are set forth herein, including the right of reasonable ingress to and egress from this easement over the

remaining land of Grantor by such private roads as may now or hereafter exist on the property of Grantor. The right, however, is reserved to Grantor to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, then the Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall have such right of reasonable ingress and egress over the lands of the Grantor adjacent to the easement.

2. The Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall each conduct their operations within the easement area in a manner that does not materially interfere with or is otherwise inconsistent with the other easements, rights of way or interests in land acquired hereunder. Any material interference or inconsistency between users of any joint utility easement created hereunder that is not otherwise resolved by the text of this deed shall be resolved in favor of the entity that held, prior to the recording date of this deed, the first in time easement, right of way, other interest in land or occupancy of land under a claim of right or with the apparent acquiescence of the Grantor. Notwithstanding the foregoing, should the operations of the Grantee, its agents, permittees, successors or assigns necessitate material interference with the easements, rights of way or interests of land acquired hereunder, the Grantee, its agents, permittees, successors or assigns shall, in accord with applicable law, have the right and obligation to provide a replacement easement to, or pay the relocation costs of, the affected entity, to the extent necessary to resolve such interference, provided the affected entity held an easement, right of way, other interest in land or occupancy of land under a claim of right or with the apparent acquiescence of the Grantor prior to the recording date of this deed.
3. The Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall have the right to trim, cut and remove trees, shrubbery, fences, structures, or other

obstructions or facilities inside and outside the boundaries of the easement deemed to interfere with the proper and efficient use of the easement for the purposes named and/or the safe and proper operation of the utility facilities; provided, however, the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, at their own expense, shall restore, as nearly as possible, the property to its original condition, including the back-filling of trenches, the replacement of curbing and asphalt pavement, and the reseeding of grass areas, but not the replacement of structures, trees, or other obstructions. The right to trim, cut and remove trees or shrubbery inside the boundaries of the easement shall be in accordance with each Utility Owner's trimming specification, e.g., in compliance with the National Electric Safety Code; Virginia State Corporation Commission Guidelines on Tree-Trimming; the Virginia Overhead High Voltage Safety Act, Va. Code §§ 59.1-406 - 59.1-414; ANSI A-300 and ANSI Z-133. Outside the boundaries of the easement, the Utility Owners may only trim, cut and remove trees or shrubbery (including but not limited to weak, diseased and/or dead vegetation) that pose a danger to the safe and reliable operation of the utility facilities in order to eliminate the hazard. All trees and limbs cut by the Grantee, its agents, permittees, successors and assigns, or the Utility Owners shall remain the property of Grantor.

4. The Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall, consistent with the purposes named, have the right to inspect, rebuild, repair, remove and relocate their respective utility facilities or any part thereof, within the easement area, and may make such changes, alterations, substitutions, additions in and to, or extensions of its facilities as it deems advisable, and consistent with the purposes named, without the prior consent of the Grantor.

5. The Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall, subject to the rights acquired herein, repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement and right of way and (b) outside the boundaries of the easement caused by the Grantee, its agents, permittees, successors or assigns, or the Utility Owners in the process of the construction, inspection, and maintenance of facilities by the Grantee, its agents, permittees, successors or assigns, and the Utility Owners, or in the exercise of their right of ingress and egress, provided that Grantor gives written notice thereof to Grantee, its agents, permittees, successors or assigns, or the Utility Owners, as appropriate, within sixty (60) days after such damage occurs.
6. The communications and electrical systems constructed hereunder are and shall remain the property of the Grantee, its agents, permittees, successors or assigns, and the Utility Owners. The Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall, consistent with the purposes named, have the right to inspect, rebuild, repair, remove and relocate their individual utility facilities or any part thereof, within the easement area, and may make such changes, alterations, substitutions, additions in and to, or extensions of their facilities as they deem advisable, and consistent with the purposes named, without the prior consent of the Grantor. In making any such changes, alterations, substitutions, additions in and to, or extensions of its utility facilities after the initial installations for the Project herein described, the Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall not install any above ground pole, cabinet, transformer, fence or appurtenance within any existing paved parking area or entrance way without the prior consent of the Grantor; such consent shall not be unreasonably withheld. Manholes, vaults, handholes and similar types of appurtenances can be installed under paved areas

and sidewalks provided they are load-bearing and are set flush with the existing pavement or sidewalk.

7. The Grantor, his successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby acquired , provided such use does not interfere with the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, in their exercise of any of the rights acquired hereunder. Grantor shall not have the right to construct any building, structure, or other above-ground obstruction or to change the existing ground elevation, or to impound any water, on the easement; provided, however, Grantor may construct on the easement fences, landscaping (subject, however to the tree trimming rights in Paragraph 3 hereof), paving, sidewalks, curbing, gutters, street signs, and below-ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs and below-ground obstructions do not interfere with the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, in their exercise of any of its rights acquired hereunder. In the event such use by the Grantor does interfere with the exercise of any of the rights acquired by the Grantee, its agents, permittees, successors or assigns, or the Utility Owners hereunder, the Grantee, its agents, permittees, successors or assigns, and the Utility Owners may, in their reasonable discretion, relocate such of its utility facilities as may be practicable to a new site designated by Grantor and acceptable to the Grantee, its agents, permittees, successors or assigns, and the Utility Owner. In the event any such facilities are so relocated, Grantor shall reimburse the Grantee, its agents, permittees, successors or assigns, or the Utility Owners for the cost thereof and convey to the Grantee, its agents, permittees, successors or assigns, and the Utility Owners an equivalent easement at the new site.

Grantee shall have the right to assign or permit usage of this easement, or portions thereof, said assignment and usage to be only for the purposes and subject to the limitations set forth herein.

The Grantor by the execution of this instrument acknowledges that the plans for the aforesaid project as they affect its property have been fully explained to it or its authorized representative.

Grantor covenants that it is seized of the property and has the right to convey the easement and the rights and privileges herein conveyed to Grantee and that Grantee shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement and the rights and privileges hereby granted.

The Grantor covenants and agrees for itself, its heirs, successors and assigns that it has been made aware of its right to receive just compensation for the easement herein conveyed, and that the considerations aforementioned and paid to it shall be in lieu of any and all claims to compensation and damages, if any, by reason of the location, construction, operation and maintenance of the utility facilities described herein.

**[Signatures follow on next page]**

WITNESS the following signatures and seals:



TOWN OF HERNDON, VIRGINIA

[Signature] (SEAL)

Name: Lisa C. Merkel

Title: Mayor

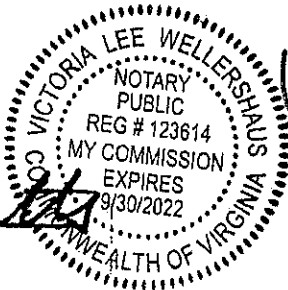
COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Fairfax

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Lisa C. Merkel as Mayor of the TOWN OF HERNDON, VIRGINIA, a municipal corporation, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

My Commission expires: 9.30.22

Registration No: \*123614



[Signature]

Notary Public

**APPROVED AS TO FORM**

By [Signature]  
Lesa J. Yeatts, Town Attorney  
Town of Herndon, Virginia

Date: 8/5/2019

**CONVEYANCE OF LAND AND/OR EASEMENTS  
TO THE COMMONWEALTH OF VIRGINIA  
ACKNOWLEDGMENT**

The Town of Herndon, Virginia (the "OWNER") is the owner of the property identified in the Plat attached to this **ACKNOWLEDGMENT**. It is the intention of OWNER to convey the described property right to the Commonwealth of Virginia (the "Commonwealth") to be used for highway or other transportation purposes.

The property right is identified on said Plat and further described in an executed Deed to be filed at Land Records with this acknowledgement.

OWNER's authorized agent (whose signature appears below) has been advised, pursuant to Virginia Code Section 25.1-417, A, 10, by a representative of the Virginia Department of Transportation (the "Department"), whose name is printed below, that OWNER is entitled to be monetarily compensated for this property right and is under no legal obligation to convey it to the Commonwealth. OWNER, by its authorized agent, hereby waives its right to be monetarily compensated for the property right being conveyed and hereby agrees, upon presentation, to execute deed conveying the property right to the Commonwealth.

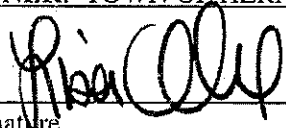
By the signature of its authorized agent, OWNER also acknowledges that, prior to the conveyance, the Department will perform a valuation of the property right being donated and provide OWNER, in writing, with the Department's determination of the value of the property right being conveyed. OWNER, through its authorized agent, acknowledges that it has the right to waive this valuation and, by the signature of OWNER's authorized agent, does hereby ☐waive | ☐not waive its right to receive such valuation.

OWNER's authorized agent hereby warrants and represents that he/she has the full and unrestricted authority to execute this document on behalf of the OWNER and to waive or claim the rights set forth herein.

VDOT REPRESENTATIVE: \_\_\_\_\_

GIVEN this 13<sup>th</sup> day of August, 2019

OWNER: TOWN OF HERNDON, VIRGINIA, a municipal corporation

Signature  (SEAL) Name: Lisa C. Merkel  
Title: Mayor

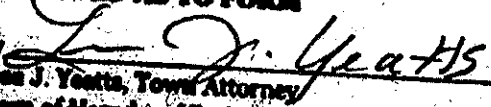
City/County of Fairfax )  
Commonwealth of Virginia ) to-wit



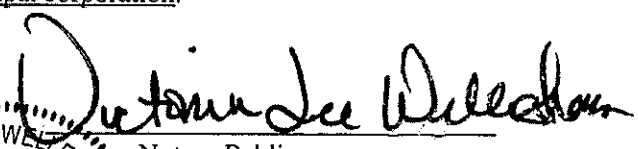
The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of August, 2019 by Lisa C. Merkel as Mayor of the Town of Herndon, Virginia, a municipal corporation.

My commission expires: 9.30.22  
Registration #: #123614

**APPROVED AS TO FORM**

By   
Lisa J. Yeatts, Town Attorney  
Town of Herndon, Virginia  
Date: 8/3/2019



  
Notary Public

Attached:  
19-04-248

TAX MAPS # 0171-04-0005 & 0171-04-0004

UPC 50100  
Parcel 021

**PREPARED BY VDOT  
UNDER SUPERVISION OF THE  
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes  
and fees under Sections 58.1-811(A)(3),  
58.1-811(C)(5), 58.1-3315, 25.1-418,  
42.1-70, 17.1-266, and 17.1-279(E)

This **DEED OF GIFT AND DONATION**, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **THE TOWN OF HERNDON, VIRGINIA**, a municipal corporation, ("GRANTOR"), and the **COMMONWEALTH OF VIRGINIA**, acting by and through the **VIRGINIA DEPARTMENT OF TRANSPORTATION**, ("GRANTEE").

**WITNESSETH:**

**THAT WHEREAS**, it is proposed by the Commonwealth to widen or improve State Highway Route 6656, Project U000-235-110, RW-201, C-501, from Monroe Street (Route 228) to 0.006 miles West of Town of Herndon Limits in the Town of Herndon, Virginia; and

**WHEREAS, GRANTOR** is the Owner of certain real property situated in the Town of Herndon, which is designated in the Fairfax County Tax Records as Tax Map # 0171-04-0004 & 0171-04-0005 and is designated in the Commonwealth's Project plans as "Parcel 021" as shown on Sheets 8, 8 RW and 19(8(1)) of the plans for Route 6656, Project U000-235-110, RW-201, C-501, which Plan Sheets are attached hereto;

**NOW, THEREFORE** in consideration of the good will and public benefit to be derived from this donation including the improvement of the roads of the Commonwealth, and other good and valuable consideration, the **GRANTOR** hereby gives, grants and conveys unto the **GRANTEE** in fee simple, with General Warranty and English Covenants of Title, the land located in the Town of Herndon and more particularly described as follows:

**PARCEL 021** - Being as shown on sheets 8, 8RW and 19(8(1)) of the plans for Elden Street (Route 6656), Project U000-235-110, RW-201, C-501, and beginning on the North (left) side of the East Elden Street (Route 6656) Construction Baseline Station from a point in the lands now or formerly belonging to Herndon Park, A Condominium opposite approximate Station 50+80 to a point in the lands now or formerly belonging to GMP Investments, LLC, opposite approximate Station 53+46, containing 6,743 square feet, more or less, land; together with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a permanent storm drainage easement, from opposite approximate Station 50+80 to opposite approximate Station 51+10 and from opposite Station 51+31.10 to opposite Station 51+60.98, altogether containing 1,302 square feet, more or less; together with the temporary right and easement to use the additional areas shown as being required for the proper construction of cut and/or fill slopes and for the proper construction of a utility duct bank together containing 26,471 square feet, more or less. Said temporary easements will terminate at such time as the construction of the aforesaid project is completed.

Being part of the land acquired by the Grantor from BETTY JANE CAMP, widow, by Deed of Gift dated October 22, 2001 and recorded December 12, 2001 as Deed Book 12468, Page 1223 in the office of the Clerk of the Circuit Court of Fairfax County.

For a more particular description of the land herein conveyed, reference is made to Sheets 8, 8RW and 19(8(1)) of the aforementioned project showing outlined in RED the land conveyed in fee simple, GREEN the permanent easement for storm drainage and ORANGE the temporary construction easements for cut /fill slopes and a utility duct bank, which is hereto attached as a part of this conveyance and recorded simultaneously herewith in the Clerk's Office of the County of Fairfax, Virginia in the State Highway Plat Book \_\_\_\_\_, Page(s) \_\_\_\_\_.

1) The **GRANTOR** by the execution of this instrument acknowledges that the land being conveyed hereunder is being donated to the Commonwealth of Virginia for highway use or associated uses. **GRANTOR** also acknowledges that he is entitled to be compensated for the land hereby conveyed and, pursuant to Virginia Code Section 25.1-417 A 10 and by this donation, hereby waives its right to such compensation. A copy of **GRANTOR'S** acknowledgment of its rights is attached to and made a part of this deed.

2) The **GRANTOR** covenants and agrees for itself, its heirs, successors and assigns, that the consideration hereinabove mentioned shall be in lieu of any and all claims to compensation for land, and for damages, if any, to the remaining lands of the **GRANTOR** which may result by reason of the use to

which the **GRANTEE** will put the land being conveyed, including such drainage facilities as may be necessary. This paragraph, however, does not apply to any physical damages caused by **GRANTEE**, its agents and contractors done to **GRANTOR**'s remaining property after construction of the aforesaid project begins.

[Signatures follow on next page]

WITNESS the following signatures and seals:



TOWN OF HERNDON, VIRGINIA

*Lisa C. Merkel* (SEAL)

Name: Lisa C. Merkel

Title: Mayor

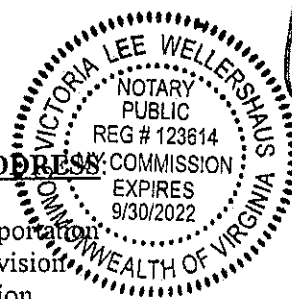
COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Fairfax

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Lisa C. Merkel as Mayor of the TOWN OF HERNDON, VIRGINIA, a municipal corporation whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

My Commission expires: 9-30-22

Registration No. #123614



*Victoria Lee Wellershaus*  
Notary Public

**GRANTEE'S MAILING ADDRESS**

Virginia Department of Transportation  
Right of Way and Utilities Division  
Attn: Acquisitions/Legal Section  
4975 Alliance Drive  
Fairfax, VA 22030

**APPROVED AS TO FORM**

By *Lee J. Yeatts*  
Lee J. Yeatts, Town Attorney  
Town of Herndon, Virginia  
Date: 8/5/2019

TAX MAP # 0171-04-0005 & 0171-04-0004

SF-39  
Rev. 4/14  
UPC 50100  
Parcel 021

**PREPARED BY VDOT  
UNDER SUPERVISION OF THE  
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes  
and fees under Sections 58.1-811(A)(3),  
58.1-811(C)(5), 58.1-3315, 25.1-418,  
42.1-70, 17.1-266, and 17.1-279(E)

**THIS DEED OF EASEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between TOWN OF HERNDON., a municipal corporation, Grantor, and the COMMONWEALTH OF VIRGINIA, acting by and through the Commissioner of Highways, Grantee,

**WITNESSETH: THAT WHEREAS**, it is proposed by the Commonwealth to widen or improve State Highway Route 6656, Project U000-235-110, RW-201, C-501, from Monroe Street (Route 228) to 0.006 miles West of the Town of Herndon Limits in the Town of Herndon, Virginia; and

**WHEREAS**, in the improvement it is necessary that the Grantee enter upon the lands of the Grantor located in the aforesaid town to establish and/or relocate utility facilities on the lands herein conveyed;

**NOW THEREFORE**, , in consideration of the good will and public benefit to be derived from this donation including the improvement of the roads of the Commonwealth, and other good and valuable consideration, the Grantor does hereby grant and convey to the Grantee, its agents, permittees, successors and assigns, the perpetual right and easement, to install, construct, operate, maintain, inspect, improve, relocate, alter, replace or remove one or more of the following, which shall collectively be referred to as "Utility Facilities":

- (a) communication systems, to be installed, operated, owned and maintained by Summit IG, Verizon Business, Cox Cable (formerly Media Cable), and Zayo, their agents, successors or

assigns, including, but not limited to telephone, cable television and high speed internet services, consisting of buried cables, buried wires, posts, terminals, pedestals, vaults, conduits, manholes, handholes, and related above-ground facilities including, but not limited to, cables, wires, poles, posts, terminals, location markers, cabinets, equipment housings, remote terminal units, and other appurtenances as may be from time to time required;

(b) electrical systems to be installed, operated, owned and maintained by Dominion Energy, their agents, successors or assigns, for transmitting and distributing electric power by one or more circuits, telephone and other communications systems relating thereto, and street lighting, consisting of wires, conduits, poles, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connection boxes, accessories and appurtenances desirable in connection therewith;

(c) (c) gas systems for transmitting and distributing natural gas, consisting of various size gas pipelines, or pipelines, service pipes, valves, regulators and accessories, including wire or fiber optic communication cables;

over, under, through, upon and across the lands and property of the Grantor adjacent to Route 6656, situated in the Town of Herndon, Virginia, and including the right of reasonable egress and ingress to these Utility Facilities, said easement being more particularly bounded and described as follows:

Being as shown on Sheets 8RW and 19(8(1)) of the plans for Route 6656, State Highway Project U000-235-110, RW-201, C-501, Parcel 021, and beginning on the North (left) side of the East Elden Street (Route 6656) Construction Baseline from the lands now or formerly belonging to Herndon Park, A Condominium, opposite approximate Station 50+80 to the lands of now or formerly belonging to GMP Investments, LLC. opposite approximate Station 53+30 and containing 7,503 square feet in proposed

permitted utility easement as shown in **PINK**, a copy of which is attached hereto to be recorded herewith in State Highway Plat Book \_\_\_\_\_, Page \_\_\_\_\_.

Being part of the land acquired by the Grantor from Betty Jane Camp, by Deed of Gift dated October 22, 2001 and recorded December 12, 2001 as Deed Book 12468, Page 1223 in the office of the Clerk of the Circuit Court of Fairfax County.

The utility easements and all utility facilities installed thereon as hereinabove described are subject to the following conditions:

1. The Grantee, its agents, permittees, successors or assigns, and the respective owners of the utility facilities ("Utility Owners") shall have full and free use of the said easement and right of way for the purposes named, and shall have all rights and privileges reasonably necessary to exercise use of the easement and right of way as their interests are set forth herein, including the right of reasonable ingress to and egress from this easement over the remaining land of Grantor by such private roads as may now or hereafter exist on the property of Grantor. The right, however, is reserved to Grantor to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, then the Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall have such right of reasonable ingress and egress over the lands of the Grantor adjacent to the easement.
2. The Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall each conduct their operations within the easement area in a manner that does not materially interfere with or is otherwise inconsistent with the other easements, rights of way or interests in land acquired hereunder. Any material interference or inconsistency between users of any joint utility easement created hereunder that is not otherwise resolved by the text of this deed shall be resolved in favor of the entity that held, prior to

the recording date of this deed, the first in time easement, right of way, other interest in land or occupancy of land under a claim of right or with the apparent acquiescence of the Grantor. Notwithstanding the foregoing, should the operations of the Grantee, its agents, permittees, successors or assigns necessitate material interference with the easements, rights of way or interests of land acquired hereunder, the Grantee, its agents, permittees, successors or assigns shall, in accord with applicable law, have the right and obligation to provide a replacement easement to, or pay the relocation costs of, the affected entity, to the extent necessary to resolve such interference, provided the affected entity held an easement, right of way, other interest in land or occupancy of land under a claim of right or with the apparent acquiescence of the Grantor prior to the recording date of this deed.

3. The Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall have the right to trim, cut and remove trees, shrubbery, fences, structures, or other obstructions or facilities inside and outside the boundaries of the easement deemed to interfere with the proper and efficient use of the easement for the purposes named and/or the safe and proper operation of the utility facilities; provided, however, the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, at their own expense, shall restore, as nearly as possible, the property to its original condition, including the back-filling of trenches, the replacement of curbing and asphalt pavement, and the reseeding of grass areas, but not the replacement of structures, trees, or other obstructions. The right to trim, cut and remove trees or shrubbery inside the boundaries of the easement shall be in accordance with each Utility Owner's trimming specification, e.g., in compliance with the National Electric Safety Code; Virginia State Corporation Commission Guidelines on Tree-Trimming; the Virginia Overhead High Voltage Safety Act, Va. Code §§ 59.1-406 - 59.1-414; ANSI A-300 and ANSI Z-133. Outside the boundaries of the easement, the

Utility Owners may only trim, cut and remove trees or shrubbery (including but not limited to weak, diseased and/or dead vegetation) that pose a danger to the safe and reliable operation of the utility facilities in order to eliminate the hazard. All trees and limbs cut by the Grantee, its agents, permittees, successors and assigns, or the Utility Owners shall remain the property of Grantor.

4. The Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall, consistent with the purposes named, have the right to inspect, rebuild, repair, remove and relocate their respective utility facilities or any part thereof, within the easement area, and may make such changes, alterations, substitutions, additions in and to, or extensions of its facilities as it deems advisable, and consistent with the purposes named, without the prior consent of the Grantor.
5. The Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall, subject to the rights acquired herein, repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement and right of way and (b) outside the boundaries of the easement caused by the Grantee, its agents, permittees, successors or assigns, or the Utility Owners in the process of the construction, inspection, and maintenance of facilities by the Grantee, its agents, permittees, successors or assigns, and the Utility Owners, or in the exercise of their right of ingress and egress, provided that Grantor gives written notice thereof to Grantee, its agents, permittees, successors or assigns, or the Utility Owners, as appropriate, within sixty (60) days after such damage occurs.
6. The communications, electrical and gas systems constructed hereunder are and shall remain the property of the Grantee, its agents, permittees, successors or assigns, and the Utility Owners. The Grantee, its agents, permittees, successors or assigns, and the Utility

Owners shall, consistent with the purposes named, have the right to inspect, rebuild, repair, remove and relocate their individual utility facilities or any part thereof, within the easement area, and may make such changes, alterations, substitutions, additions in and to, or extensions of their facilities as they deem advisable, and consistent with the purposes named, without the prior consent of the Grantor. In making any such changes, alterations, substitutions, additions in and to, or extensions of its utility facilities after the initial installations for the Project herein described, the Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall not install any above ground pole, cabinet, transformer, fence or appurtenance within any existing paved parking area or entrance way without the prior consent of the Grantor; such consent shall not be unreasonably withheld. Manholes, vaults, handholes and similar types of appurtenances can be installed under paved areas and sidewalks provided they are load-bearing and are set flush with the existing pavement or sidewalk.

7. The Grantor, his successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby acquired, provided such use does not interfere with the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, in their exercise of any of the rights acquired hereunder. Grantor shall not have the right to construct any building, structure, or other above-ground obstruction or to change the existing ground elevation, or to impound any water, on the easement; provided, however, Grantor may construct on the easement fences, landscaping (subject, however to the tree trimming rights in Paragraph 3 hereof), paving, sidewalks, curbing, gutters, street signs, and below-ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs and below-ground obstructions do not interfere with the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, in their

exercise of any of its rights acquired hereunder. In the event such use by the Grantor does interfere with the exercise of any of the rights acquired by the Grantee, its agents, permittees, successors or assigns, or the Utility Owners hereunder, the Grantee, its agents, permittees, successors or assigns, and the Utility Owners may, in their reasonable discretion, relocate such of its utility facilities as may be practicable to a new site designated by Grantor and acceptable to the Grantee, its agents, permittees, successors or assigns, and the Utility Owner. In the event any such facilities are so relocated, Grantor shall reimburse the Grantee, its agents, permittees, successors or assigns, or the Utility Owners for the cost thereof and convey to the Grantee, its agents, permittees, successors or assigns, and the Utility Owners an equivalent easement at the new site.

Grantee shall have the right to assign or permit usage of this easement, or portions thereof, said assignment and usage to be only for the purposes and subject to the limitations set forth herein.

The Grantor by the execution of this instrument acknowledges that the plans for the aforesaid project as they affect its property have been fully explained to it or its authorized representative.

Grantor covenants that it is seized of the property and has the right to convey the easement and the rights and privileges herein conveyed to Grantee and that Grantee shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement and the rights and privileges hereby granted.

The Grantor covenants and agrees for itself, its heirs, successors and assigns that it has been made aware of its right to receive just compensation for the easement herein conveyed, and that the considerations aforementioned and paid to it shall be in lieu of any and all claims to compensation and damages, if any, by reason of the location, construction, operation and maintenance of the utility facilities described herein.

[Signatures follow on next page]

WITNESS the following signatures and seals:



TOWN OF HERNDON, VIRGINIA

[Signature] (SEAL)

Name: Lisa C. Merkel

Title: Mayor

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Fairfax

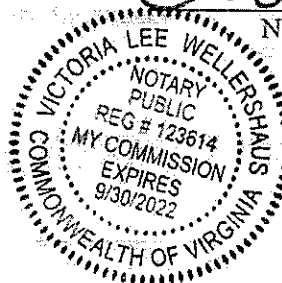
I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Lisa C. Merkel as Mayor of the TOWN OF HERNDON, VIRGINIA, a municipal corporation, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

My Commission expires: 9.30.22

Registration No. #123614

**APPROVED AS TO FORM**

By [Signature]  
 Lisa J. Yeatts, Town Attorney  
 Town of Herndon, Virginia  
 Date: 8/3/2019



[Signature]  
 Notary Public

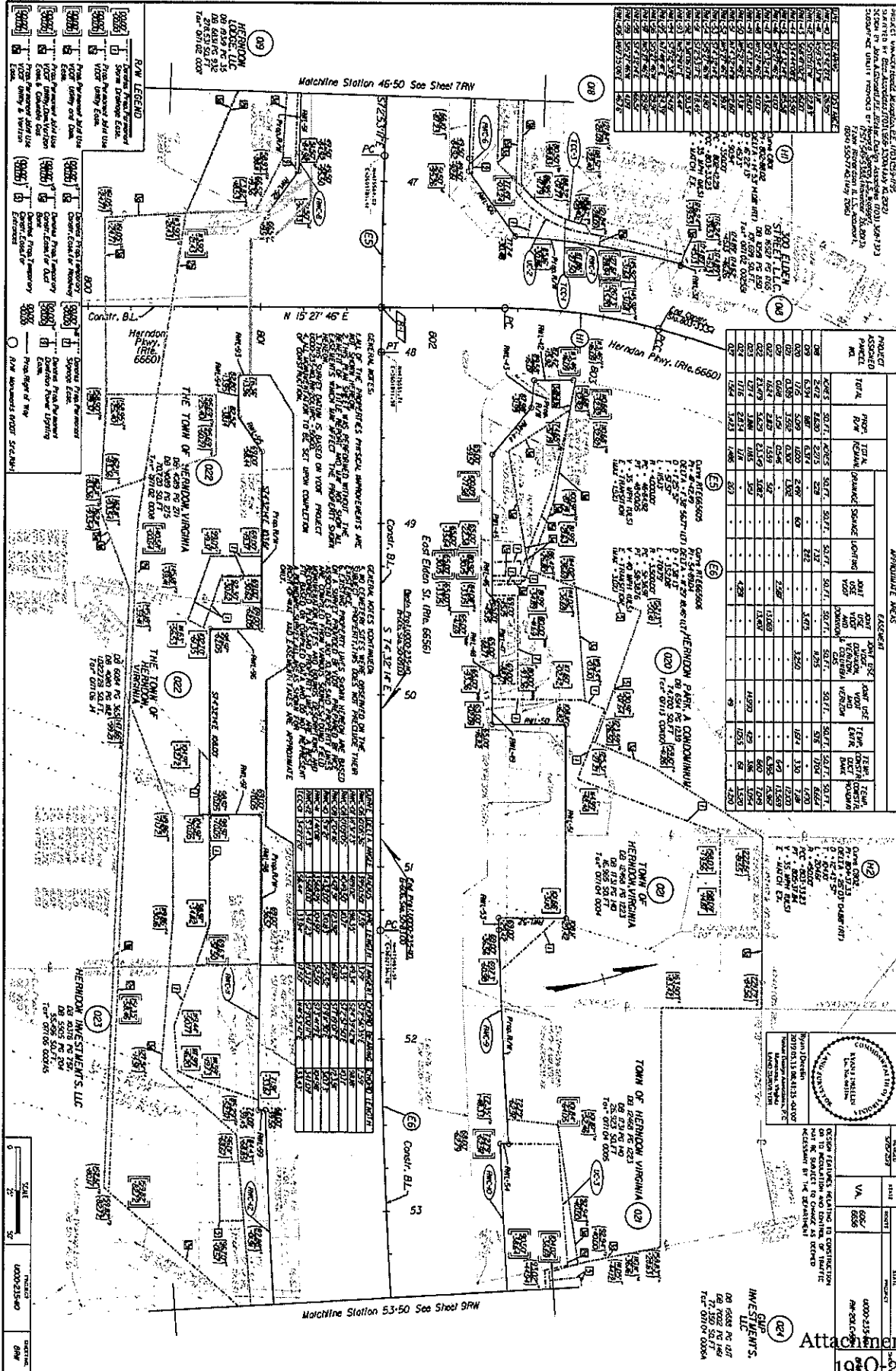
5/14/2018

NORTHERN VIRGINIA  
DISTRICT



R/W PLANS

THESE PLANS ARE PREPARED AND ARE NOT  
TO BE USED FOR ANY OTHER CONSTRUCTION.



| PROJECT INFORMATION |                            | APPROPRIATE AGENCIES |                                                                                    |
|---------------------|----------------------------|----------------------|------------------------------------------------------------------------------------|
| PROJECT NO.         | 0000-235-00                | STATE OF VIRGINIA    | DEPARTMENT OF TRANSPORTATION                                                       |
| PROJECT NAME        | HERNDON PARK A CONDOMINIUM | LOCAL GOVERNMENT     | TOWN OF HERNDON                                                                    |
| PROJECT LOCATION    | HERNDON PARK A CONDOMINIUM | UTILITY COMPANIES    | VA. POWER & LIGHTING CO., VIRGINIA ELECTRIC & POWER CO., VIRGINIA WATER SUPPLY CO. |
| PROJECT DESCRIPTION | HERNDON PARK A CONDOMINIUM | ADJACENT PROPERTIES  | HERNDON PARK A CONDOMINIUM, HERNDON PARK B CONDOMINIUM, HERNDON PARK C CONDOMINIUM |
| PROJECT OWNER       | HERNDON PARK A CONDOMINIUM | ADJACENT PROPERTIES  | HERNDON PARK A CONDOMINIUM, HERNDON PARK B CONDOMINIUM, HERNDON PARK C CONDOMINIUM |
| PROJECT DESIGNER    | HERNDON PARK A CONDOMINIUM | ADJACENT PROPERTIES  | HERNDON PARK A CONDOMINIUM, HERNDON PARK B CONDOMINIUM, HERNDON PARK C CONDOMINIUM |
| PROJECT DATE        | HERNDON PARK A CONDOMINIUM | ADJACENT PROPERTIES  | HERNDON PARK A CONDOMINIUM, HERNDON PARK B CONDOMINIUM, HERNDON PARK C CONDOMINIUM |
| PROJECT STATUS      | HERNDON PARK A CONDOMINIUM | ADJACENT PROPERTIES  | HERNDON PARK A CONDOMINIUM, HERNDON PARK B CONDOMINIUM, HERNDON PARK C CONDOMINIUM |
| PROJECT NOTES       | HERNDON PARK A CONDOMINIUM | ADJACENT PROPERTIES  | HERNDON PARK A CONDOMINIUM, HERNDON PARK B CONDOMINIUM, HERNDON PARK C CONDOMINIUM |

Attachment  
19-O-24

