TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON COUNCIL CHAMBERS BUILDING
765 LYNN STREET
NOVEMBER 6, 2019
7:00 P.M.

DISCUSSION

Fairfax Connector Bus Service re Update to the Herndon/Reston Silver Line Optimization Plan (Discussion by the Fairfax County Department of Transportation)

PRESENTATIONS

1. Proclamation, to recognize Pearl Harbor Remembrance Day, December 7, 2019

PUBLIC HEARINGS

2. Ordinance, to grant a ten-year telecommunications franchise to AT&T Communications of Virginia, LLC

3. Ordinance, to grant a ten-year telecommunications franchise to Teleport Communications America, LLC

4. Ordinance, to approve a lease of space in the Town's building at 397 Herndon Parkway to the Board of Supervisors of Fairfax County, Virginia

GENERAL

5. Resolution, to authorize Project Administration Agreements between the Town and Fairfax County for the administration of Herndon Metrorail Station Access Management Study (HMSAMS) Projects

6. Ordinance, to amend Chapter 66 (STREETS, SIDEWALKS, AND CERTAIN OTHER PLACES), of the Code of the Town of Herndon, to add Article V (Shared Mobility Devices)

7. Resolution, to establish the Town of Herndon's 2020 Legislative Program to request that the 2020 Virginia General Assembly amend § 58.1-3910.1 Code of Virginia allowing the Town to enter into an agreement with Fairfax County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes; or request that the 2020 Virginia General Assembly amend the Code of Virginia to add § 58.1-3910.2 to allow the Town to enter into an agreement with Fairfax County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes and the Town's position on anticipated legislation

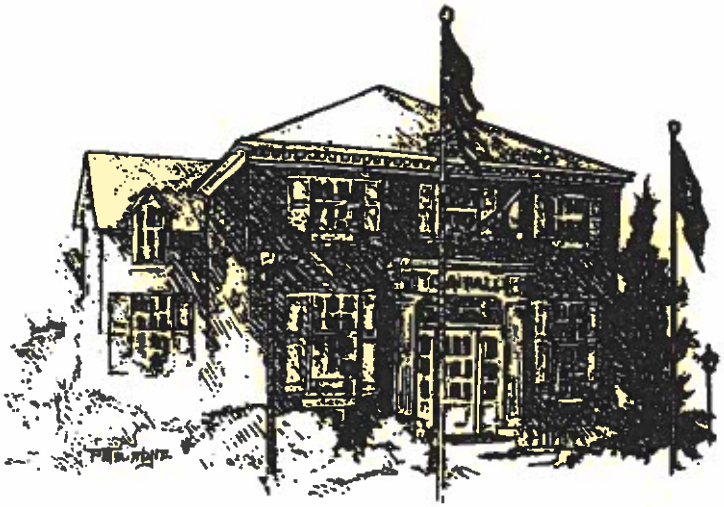
ROUNDTABLE

CLOSED MEETING

A closed meeting pursuant to the Code of Virginia:

- Section 2.2-3711(A)(1) for discussion of prospective candidates relative to appointments to boards & commissions; and

- Section 2.2-3711 (A)(3) to consider the disposition of publicly held real estate where discussion in an open meeting would adversely affect the bargaining position or negotiation strategy of the public body.



TOWN OF HERNDON, VIRGINIA

PROCLAMATION

PEARL HARBOR REMEMBRANCE DAY

DECEMBER 7, 2019

Each year, **Pearl Harbor Remembrance Day** is designated throughout the United States to remember and honor all those who died or were injured in the attack that occurred at Pearl Harbor near Honolulu, Hawaii, just before 8:00 a.m. on December 7, 1941. In this attack, more than 2,400 American military personnel were killed and the more than 1,200 were wounded. The attack on Pearl Harbor destroyed nearly 20 American naval vessels, including eight battleships and almost 200 airplanes. December 7, 1941, was a date that would "live in infamy" ~ as President Franklin Delano Roosevelt told an anxious nation after the attack.

On December 8, 1941, Congress approved President Roosevelt's declaration of war on Japan. Three days later, Japanese allies Germany and Italy declared war against the United States, and Congress reciprocated.

The Mayor and Town Council of the Town of Herndon, Virginia, proclaim December 7, 2019 as **Pearl Harbor Remembrance Day** in the Town of Herndon; call on all citizens to honor this day, which marks the 78th anniversary of the attack on the United States Armed Forces at Pearl Harbor; pay tribute with the appropriate observances and activities; and express unending appreciation for the selfless sacrifices of those who served, fought, and lost their lives during this war.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, proclaim that the town shall annually observe the 7th of December as **Pearl Harbor Remembrance Day**; salute World War II veterans, along with all those brave individuals who have served or continue to serve in our armed forces; and thank them for their courage and dedication to our country.

Sheila A. Olem, Vice Mayor

Pradip Dhaval, Councilmember

Jennifer K. Baker, Councilmember

Signe Friedrichs, Councilmember

Cesar del Aguila, Councilmember

Bill McKenna, Councilmember

Lisa C. Merkel, Mayor

Proclaimed by the Herndon Town Council November 12, 2019.

TOWN OF Herndon
DEPARTMENT OF PUBLIC WORKS

STAFF REPORT

Town Council
November 6, 2019

Title:

Ordinance –granting a ten-year telecommunications franchise to AT&T Communications of Virginia, LLC.

Staff Contact:

Tammy Chastain, Deputy Director of Public Works
(phone) 703-435-6860
(e-mail) tammy.chastain@herndon-va.gov

Background:

This franchise agreement between AT&T Communications of Virginia, Inc., a subsidiary of AT&T Corp., and the Town of Herndon, Virginia dated November 12, 2019 will permit a ten-year franchise agreement for maintenance of underground telecommunications facilities existing from their previous franchise with the Town.

The route as shown in Exhibit A indicates a combination of existing networks for AT&T Communications of Virginia, LLC and American Telephone and Telegraph Company of Virginia, Ordinance 87-O-08, known as AT&T Long Lines. The attached Exhibit A dated November 12, 2019 will replace all previous Exhibits for existing facilities under these expired agreements.

The franchise shall provide for a franchise fee determined by the public rights-of-way use fee legislation, § 56-468.1, Code of Virginia.

Fiscal Impact:

AT&T Communications of Virginia, LLC currently pays the town the required rights-of-way use fees on a quarterly basis. The rights-of-way use fee, as governed by the Code of Virginia and determined annually by the Virginia Department of Transportation shall remain in effect for this agreement.

Staff Recommendation:

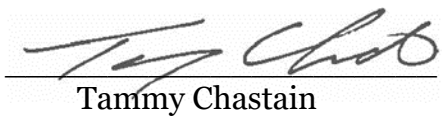
November 6, 2019
Staff Report

Staff recommends the Town Council approve the Franchise Agreement with AT&T Communications of Virginia, LLC.

Attachments:

Draft Ordinance
Agreement
Exhibit A

Staff:



Tammy Chastain
Deputy Director of Public Works

TOWN OF HERNDON, VIRGINIA

ORDINANCE

NOVEMBER 12, 2019

Ordinance – Granting a ten-year telecommunications franchise to AT&T Communications of Virginia, LLC

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 AT&T Communications of Virginia, LLC a ten-year telecommunications franchise to use Town streets as set out in the franchise dated November 12, 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.

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.

TOWN OF HERNDON, VIRGINIA

FRANCHISE AGREEMENT

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

This Agreement (the "Agreement") is dated this 12th day of November 2019, by and between the TOWN OF HERNDON, a Virginia municipal corporation (the "Town") and AT&T COMMUNICATIONS OF VIRGINIA, LLC, a subsidiary of AT&T, Corp.("Franchisee"), having its principal place of business at One AT&T Way, Bedminster, New Jersey 07921.

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.

No construction under this franchise 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 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 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, 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 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 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 costs, and will hold the Town harmless therefrom. This 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 Town's demand provide to Town an insurance certificate indicating such coverage.

Notwithstanding any other provision of this Agreement, in no event shall either party be liable for consequential, incidental, punitive, exemplary, or similar damages under this agreement.

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 Franchise is 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 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,

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 20170, and to Franchisee at, Attention: ROW Manager 3450 Riverwood Pkwy SE, Atlanta, GA 30339, 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.

AT&T COMMUNICATIONS OF VIRGINIA, LLC, a subsidiary of AT&T Corp.

By: Lana Scarlett Rowell

Name: Lana Scarlett Rowell
Title: Professional – Technical Process/Quality

Date of Acceptance:

October 15, 2019

TOWN OF HERNDON, VIRGINIA

By: _____

Name: Lisa C. Merkel
Title: Mayor

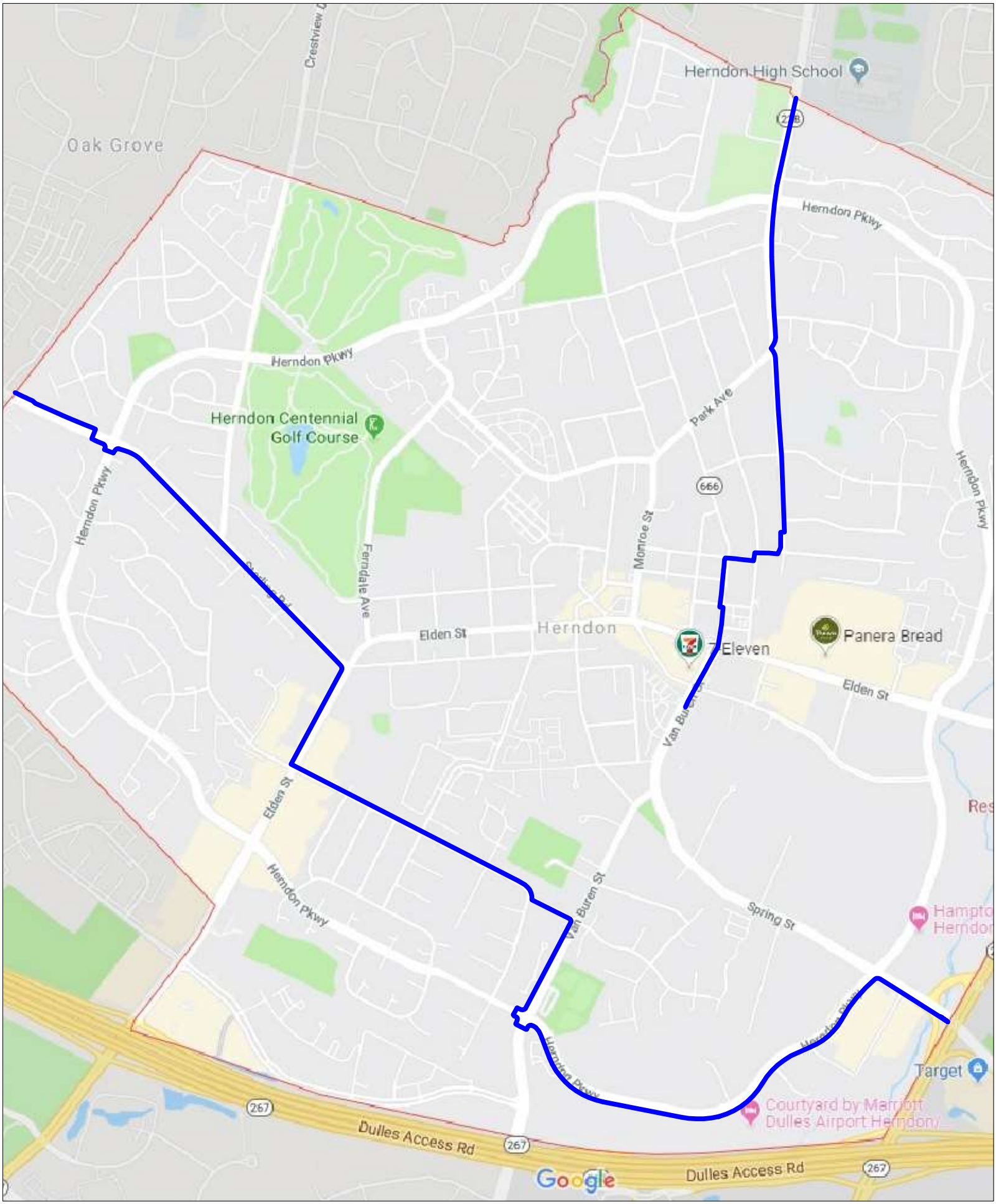
Attest:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Lesa J. Yeatts
Town Attorney

EXHIBIT A
Town of Herndon
AT&T Communications of Virginia, LLC, a subsidiary of AT&T Corp.
Date: November 12, 2019



TOWN OF Herndon
DEPARTMENT OF PUBLIC WORKS

STAFF REPORT

Town Council
November 6, 2019

Title:

Ordinance –granting a ten-year telecommunications franchise Teleport Communications American, LLC.

Staff Contact:

Tammy Chastain, Deputy Director of Public Works
(phone) 703-435-6860
(e-mail) tammy.chastain@herndon-va.gov

Background:

This franchise agreement between Teleport Communications America, LLC. and the Town of Herndon, Virginia dated November 12, 2019 will permit a ten-year franchise agreement for maintenance of underground telecommunications facilities existing from their previous franchise with the Town that has expired.

The route as shown in Exhibit A indicates existing network facilities in place. The attached Exhibit A dated November 12, 2019 will replace all previous Exhibits.

The franchise shall provide for a franchise fee determined by the public rights-of-way use fee legislation, § 56-468.1, Code of Virginia.

Fiscal Impact:

Teleport currently pays the town the required rights-of-way use fees on a quarterly basis. The rights-of-way use fee, as governed by the Code of Virginia and determined annually by the Virginia Department of Transportation shall remain in effect for this agreement.

Staff Recommendation:

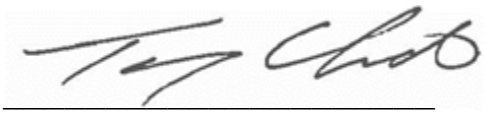
Staff recommends the Town Council approve the Franchise Agreement with Teleport Communications America, LLC.

November 6, 2019
Staff Report

Attachments:

Draft Ordinance
Agreement
Exhibit A

Staff:



Tammy Chastain
Deputy Director of Public Works

TOWN OF HERNDON, VIRGINIA

ORDINANCE

NOVEMBER 12, 2019

Ordinance – Granting a ten-year telecommunications franchise to Teleport Communications America, LLC.

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 Teleport Communications America, LLC a ten-year telecommunications franchise to use Town streets as set out in the franchise dated November 12, 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.

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.

TOWN OF HERNDON, VIRGINIA

FRANCHISE AGREEMENT

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

This Agreement (the "Agreement") is dated this 12th day of November 2019, by and between the TOWN OF HERNDON, a Virginia municipal corporation (the "Town") and TELEPORT COMMUNICATIONS AMERICA, LLC., a Virginia corporation ("Franchisee"), having its principal place of business at One AT&T Way, Bedminster, New Jersey 07921.

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.

No construction under this franchise 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 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 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, 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 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 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 costs, and will hold the Town harmless therefrom. This 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 Town's demand provide to Town an insurance certificate indicating such coverage.

Notwithstanding any other provision of this Agreement, in no event shall either party be liable for consequential, incidental, punitive, exemplary, or similar damages under this agreement.

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 Franchise is 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 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, 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 20170, and to Franchisee at One AT&T Way, Office: 3A234G, Bedminster, NJ 07921, Attention: Right of Way with a copy sent to One AT&T Way, Office: 3A105, Bedminster, NJ 07921, Attention: Legal Department 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.

TELEPORT COMMUNICATIONS AMERICA, LLC

By: _____
Name: Christopher J. Och
Title: Vice President

Date of Acceptance:

_____

TOWN OF HERNDON, VIRGINIA

By: _____
Name: Lisa C. Merkel
Title: Mayor

Attest:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Lesa J. Yeatts
Town Attorney

Exhibit A
November 12, 2019
(TCA) Teleport Communications America, LLC
Facilities in Town of Herndon, VA

Underground facilities on the ROW

TOWN OF
Herndon
OFFICE OF THE TOWN ATTORNEY

STAFF REPORT

Town Council
November 6, 2019

Title:

Ordinance approving a lease of space in the Town's building at 397 Herndon Parkway to the Board of Supervisors of Fairfax County, Virginia

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

I am providing to you a proposed Lease between the Town and the Board of Supervisors of Fairfax County, Virginia and a draft approving ordinance for consideration.

This lease is for a one-year term and expires on November 11, 2020. The rent for this space would be $1.00 per lease term, consistant with similar leases on Town property for office space.

Fiscal Impact:

None.

Staff Recommendation:

The Mayor and Town Council adopt the attached ordinance.

Attachments:

1. Draft Ordinance
2. Lease
3. Exhibit A

Prepared and Approved by:

Lesa J. Yeatts

_____

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

November 12, 2019

Ordinance- Approving a lease of space in the Town's building at 397 Herndon Parkway to the Board of Supervisors of Fairfax County, Virginia

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

1. The Town Council approves a lease dated November 12, 2019 by which the Town would lease to the Board of Supervisors of Fairfax County, Virginia space in the Town's building at 397 Herndon Parkway, Herndon, Virginia. The rent shall be $1.00 for the term. The term shall be from November 12, 2019 through November 11, 2020. The lease may contain certain other terms agreed to by the Mayor and Town Manager.

2. This ordinance shall be effective on and after the date of its adoption.

LEASE AGREEMENT

THIS LEASE made on the 12th day of November 2019, by and between the TOWN OF HERNDON, a municipal corporation (Landlord) and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia ("Tenant").

Recitals

Landlord is the owner of a building and premises located at 397 Herndon Parkway, Herndon, Virginia (the building).

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent and other benefits, and under the terms and conditions specified here, a portion of the premises commonly known as part of the building at 397 Herndon Parkway, (as shown on Exhibit A, attached and incorporated by reference).

THEREFORE, the parties agree as follows:

1. Commencement and Ending Date of Term. Beginning November 12, 2019, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may possess the leased premises with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 90 days prior written notice to the Tenant. The term of this lease shall expire November 11, 2020.

2. Rent. Tenant shall pay Landlord on demand $1.00 rent for the entire term.

3. Use of Premises. Tenant shall use the leased premises solely for rehersal. Tenant shall have access to and from the leased premises and to the restrooms. Landlord retains for itself and its employees, agents, and invitees, a right of access through the leased premises to and from spaces. Tenant certifies to Landlord that uses of this space are consistent with the Town of Herndon Zoning Ordinance and architectural guidelines or ordinances of the Herndon Town Code.

4. Utility Charges. Landlord shall maintain and pay the cost of all utilities (except telecommunications) on the leased premises.

5. Liability Insurance. Tenant shall keep in effect a policy of bodily injury and property damage liability insurance or a self-insurance program of the Commonwealth of Virginia with respect to the leased premises in commercially reasonable amounts, as determined by Landlord. Any policy shall name the Town of Herndon as an additional insured.

6. Hold Harmless of Landlord. Tenant shall hold harmless Landlord, its officers, agents, and employees from any and all claims, actions, damages, liability and expense, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises through the occupancy or use by Tenant.

7. Default. Tenant shall be in default upon failure to perform any term of this lease for more than five days after written notice of such failure shall have been given to Tenant or after Tenant's abandonment of the leased premises.

8. Rights and Remedies on Default. Landlord shall have the following rights on default of Tenant, which shall be cumulative, none excluding any other right allowed by this lease or by law.

a. Landlord may enter the leased premises and repossess the leased premises and remove Tenant and any others who may be occupying the leased premises and remove any property.

b. Landlord may seize, remove and sell all of the personal property and fixtures of Tenant on the leased premises or remove and store such property at the cost of and for the account of Tenant.

9. Custodial. Landlord shall provide custodial services, consisting of emptying trash

and vacuuming, once a week for the leased premises.

10. Waste or Nuisance. Tenant shall not commit any waste or nuisance upon the leased premises.

11. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any furnishings and equipment in the leased premises in their existing condition. Tenant shall at all times keep the leased premises in good order, condition, and repair. Tenant shall maintain the leased premises in a clean and sanitary condition. If Landlord is required to make any repairs by reason of Tenant's negligent or intentional act or omission, Tenant shall pay to Landlord the cost of the repairs as additional rent within ten days after written notice. Landlord shall be responsible for roof, structural integrity of the building, and replacement and repair of utility systems related to the leased premises. Except as provided in paragraph 14, Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

12. Notification of Hazard. Tenant and Landlord shall give immediate notice to the other in case of fire, accident, or defect in the leased premises or in any fixtures or personal property comprising the leased premises.

13. Alterations and Improvements. Except as provided in this paragraph, Tenant shall not make or cause to be made any alterations to the leased premises without first obtaining Landlord's written consent.

14. Removal of Improvements and Restoration by Tenant. All alterations except lighting not necessary for normal use of the building or conformance with the Virginia Uniform Statewide Building Code made by Tenant shall remain the property of Landlord at the expiration or termination of the lease. This property will remain part of the leased premises and Tenant shall not have any

obligation to remove it.

14. Loss and Damage. Landlord shall not be liable for any loss or damage to property of Tenant located on the leased premises. Landlord shall not be liable for any injury, death, or damage to persons or property associated with Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the leased premises. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant or its subtenants kept or stored on the leased premises shall be so kept or stored at the risk of Tenant or subtenants and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

15. Right of Entry. In addition to Landlord's right of access as described in paragraph 3, Landlord, its contractors, agents, or prospective purchasers or lessees, shall have the right to enter the leased premises during normal business hours to examine the same upon reasonable notice, either oral or written.

16. Quiet Enjoyment. Upon the observance of all Tenant's obligations of this lease, Tenant shall peaceably and quietly hold and enjoy the leased premises.

17. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease, except as provided in paragraph 14, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

18. Assignment and Subletting. Tenant may not assign this lease without prior written consent of Landlord. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

19. Binding on Successors/Assigns. All of the terms of this lease shall bind the successors and assigns of Landlord and Tenant, except where the assignment is ineffective due to lack of Landlord's consent.

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

_____
Name:_____
Title:_____

TOWN OF HERNDON, VIRGINIA

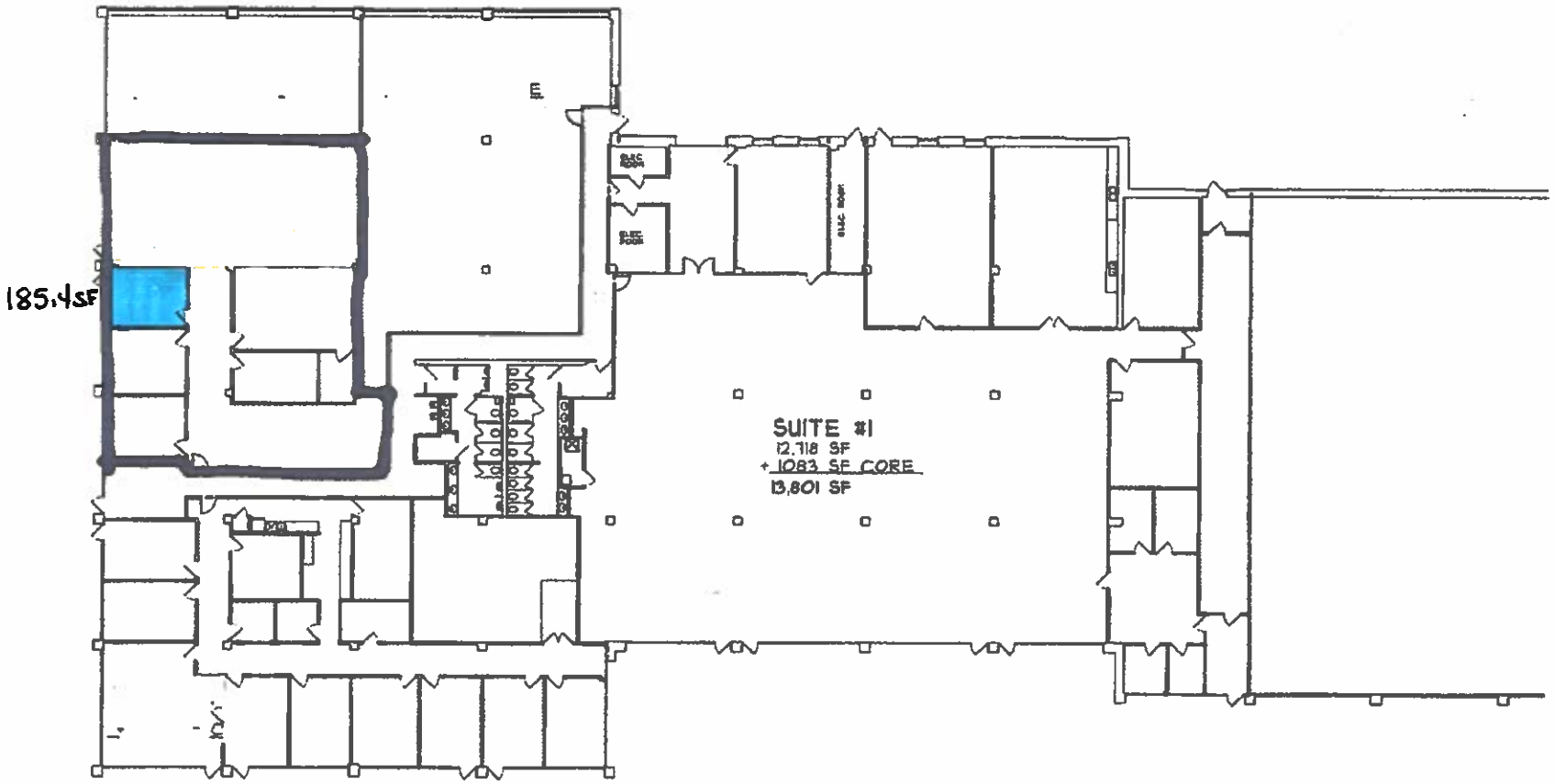
By:_____
Lisa C. Merkel
Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Lesa J. Yeatts
Town Attorney



BUILDING S.F. = 27,479

BASE BUILDING 391 HERNDON PARKWAY HERNDON, VIRGINIA 20170	Arencibia Architects Inc. 703-733-0190 13368 POINT RIDER LANE, HERNDON, VA. 20171	DATE 17 FEB. 2005 SCALE 1" = 30'

TOWN OF Herndon
DEPARTMENT OF PUBLIC WORKS

STAFF REPORT

Town Council
November 6, 2019

Title:

Resolution – To Authorize Project Administration Agreements Between the Town and Fairfax County for the Administration of Herndon Metrorail Station Access Management Study (HMSAMS) Projects

Staff Contact:

John Irish, Deputy Director of Public Works
(phone) 703-435-6853
(e-mail) john.irish@herndon-va.gov

Background:

On January 28, 2014, the Fairfax County Transportation Priorities Plan ("TPP") to facilitate funding for the design, construction, and implementation of transportation multimodal improvements in the Herndon Transit-Oriented Core ("HTOC") area was adopted. The Fairfax County Board of Supervisors approved the list of Herndon Metrorail Station Access Management Study ("HMSAMS") pedestrian and bicycle transportation projects on December 8, 2015 to be funded out of the County's Fiscal Years FY2015 to FY2020 TPP.

This agreement for two projects was developed in collaboration with the county. The agreements are based on the level of expected project delivery and they are as follows:

Project Design, Construction and Administration Agreement:

• For the design and construction of the transportation multimodal improvement project at Herndon Parkway from W&OD Trail to Fairbrook Drive in the amount of $3,639,000.

• For the design and construction for the transportation multimodal improvement project at Van Buren Street from the W&OD Trail to the Monroe Street Bridge in the amount of $2,200,000.

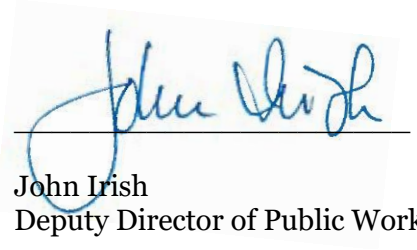
Fiscal Impact:

There is no fiscal impact to the town. The projects specified in the agreements are included in the current CIP.

Attached Documents:

Draft Resolution

Staff:



John Irish
Deputy Director of Public Works

TOWN OF HERNDON, VIRGINIA

RESOLUTION

NOVEMBER 12, 2019

Resolution- to Authorize Project Administration Agreements between the Town and Fairfax County for the Administration of Herndon Metrorail Station Access Management Study (HMSAMS) Projects.

WHEREAS, the Town of Herndon has been designated to receive funding to facilitate the design, construction, and implementation of transportation multimodal improvements in the Herndon Transit-Oriented Core "HTOC") area; and

WHEREAS, the Fairfax County Board of Supervisors approved the list of HMSAMS pedestrian and bicycle transportation projects on December 8, 2015 to be funded out of the County's Fiscal Years FY20l5 to FY2020 Fairfax County Transportation Priorities Plan; and

WHEREAS, the agreement is based on the level of expected project delivery and they are as follows:

Project Design, Construction and Administration Agreement:

• For the design and construction of the transportation multirnodal improvement project at Herndon Parkway from W&OD Trail to Fairbrook Drive in the amount of $3,639,000.

• For the design and construction for the transportation multimodal improvement project at Van Buren Street from the W&OD Trail to the Monroe Street Bridge in the amount of $2,200,000.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Mayor to execute the agreements and any amendments thereto on behalf of the Town.

TOWN OF Herndon
OFFICE OF THE TOWN ATTORNEY

STAFF REPORT

Town Council Work Session
November 6, 2019

Title:

Ordinance to amend Chapter 66 (STREETS, SIDEWALKS, AND CERTAIN OTHER PLACES), of the Code of the Town of Herndon, to add Article V (Shared Mobility Devices)

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

In February 2019, the General Assembly passed a law permitting shared mobility devices in Virginia, subject to local regulations. Local jurisdictions were given until January 1, 2020, to implement shared mobility device pilot programs or legislation.

"§ 46.2-1315. Powers of localities to regulate use of motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire.
Any county, city, town, or political subdivision may (i) by ordinance regulate or (ii) by any governing body action or administrative action establish a demonstration project or pilot program regulating the operation of motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire, provided that such regulation or other governing body or administrative action is consistent with this title. Such ordinance or other governing body or administrative action may require persons offering motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire to be licensed, provided that on or after January 1, 2020, in the absence of any licensing ordinance, regulation, or other action, a person may offer motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire."

Localities are not granted the power to ban motorized skateboards or scooter, bicycles, or electric power-assisted bicycles, but may regulate them. If a locality does not implement an ordinance or pilot program by January 1, 2020, shared mobility device companies can operate in that locality as authorized by the state legislation. Devices as addressed in state legislation: (1) are less than 100 pounds, (2) have max speed of 20 mph, (3) are permitted to ride on sidewalks unless prohibited by local ordinance, (4) have both headlight and taillight, and (5) if less than 14 years old, riders need parental supervision.

Shared mobility devices include motorized skateboards, scooters, bicycles, or electric-power assisted bicycles. These devices typically are shared among riders, operated by

private companies, and are enabled by technology or apps. Shared mobility devices are often deployed as fleets of devices throughout a geographic area. Shared mobility devices are frequently "dockless", meaning that they park in public spaces and "lock" to themselves in an app. The typical cost of an e-scooter ride involves a $1 unlock fee + $0.15 per minute. Shared mobility devices are frequently used as a first mile/last mile solution by individuals traveling to and from rail transit and are also used for other short trips, typically in denser urban or urban-suburban areas.

The expectation is that shared mobility devices will increase transportation mode choice and provide stronger connections to the regional transportation network.

Although some surrounding jurisdictions have been experiencing the influx of shared mobility device deployment for some time now, the Town has not experienced much activity. Shared mobility devices have been operating in some other jurisdictions in the region under various forms of pilot programs. Some of those jurisdictions have completed their pilot programs with e-scooter companies and have conducted studies of the viability of those programs to inform their proposed regulations.

Being that the Town does not have these experiences to draw from the staff recommendation is that in order to satisfy the December 31st deadline that the attached basic ordinance language be approved and that staff work to provide Council with a subsequent ordinance(s) to address any outstanding issues.

Fiscal Impact:

Unidentified at this point.

Staff Recommendation:

That the Mayor and Town Council adopt the attached ordinance approving and authorizing the Mayor to sign the Town Code Amendment.

Attachments:

Ordinance

Prepared and Approved by:

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

NOVEMBER 12, 2019

Ordinance- to amend Chapter 66 (STREETS, SIDEWALKS, AND CERTAIN OTHER PLACES), of the Code of the Town of Herndon, to add Article V (Shared Mobility Devices)

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

1. Chapter 66, Streets, Sidewalks, and Certain Other Places, Herndon Town Code (2000), is amended as follows:

ARTICLE V. – SHARED MOBILITY DEVICES

DIVISION 1. - IN GENERAL

Section 66-104. - Purpose.

The purpose of this article is to establish regulations and licensing requirements governing the offering of (i) bicycle or electric power-assisted bicycles and (ii) motorized skateboard or scooters (collectively, "shared mobility devices") for hire within the Town to ensure safe, reliable, adequate, and efficient service.

Regulations regarding the operation of shared mobility devices by riders shall be governed by Chapter 46.2 of the Code of Virginia and Section 66-1 of the Town Code.

State Law Reference – Code of Virginia §§ 46.2-100, 46.2-1315, 15.2-2100.

Sec.66-105 – Definitions.

All definitions of words and phrases contained in Section 46.2-100 et seq. of the Code of Virginia, as amended, shall apply to such words and phrases, when used in this article, unless clearly indicated to the contrary.

***Applicant** shall mean any person that files an application to offer shared mobility devices for hire in the Town.*

***Permittee** shall mean any person who has been granted a Shared Mobility Device Permit.*

***Town Manager** shall mean the Town Manager for the Town of Herndon or his authorized designee(s).*

Shared Mobility Devices *shall mean motorized skateboards or scooters, bicycles, or electric power-assisted bicycles as defined by Section 46.2-100 of the Code of Virginia, as amended.*

Shared Mobility Device Permit *shall mean a permit to offer for hire motorized skateboards or scooters, bicycles, or electric power-assisted bicycles as defined by Section 46.2-100 of the Code of Virginia, as amended, issued by the Town of Herndon.*

Sec. 66-106 – Shared Mobility Device Permit Required; Prerequisites to Issuance.

(a) It shall be unlawful for any person to offer shared mobility devices for hire without first obtaining a shared mobility device permit from the Town manager. For purposes of this article, offering shared mobility devices for hire shall mean offering a ride for hire that originates within the Town of Herndon.

(b) A shared mobility device permit shall not be issued unless the applicant has first obtained approval, in the form of a franchise, license or other similar agreement, from the Town Council to use public rights-of-way for this purpose pursuant to Sec. 15.2-2100 of the Code of Virginia. Such franchise, license or other agreement may include such terms as the Town Council deems necessary and appropriate, including but not limited to those pertaining to the regulation and/or limitation of the number, operation, maintenance, specifications, and parking of shared mobility devices; insurance; indemnification; community outreach and communication; records and data sharing; reporting; fees; and rider/user regulations and agreements.

(c) Nothing herein shall be construed to require the Town Council to grant a franchise, license or other similar agreement to any person or to otherwise limit the discretion of the Town Council with regard to terms of any shared mobility device agreement or shared mobility device permit condition.

(d) Compliance with this article is a separate and additional legal requirement for shared mobility devices and issuance of a shared mobility device permit shall not be construed to authorize the offering for hire of shared mobility devices in a manner that does not conform to other applicable federal, state, and local law.

State Law Reference – Code of Virginia §§ 15.2-2100 et seq., 46.2-1315.

Sec. 66-107– Shared Mobility Device Permit Requirements and Conditions.
Shared mobility device permits issued pursuant to this article shall be subject to the following general conditions. In addition, in granting a shared mobility device permit, the Town manager may impose conditions, requirements, and restrictions as are necessary to reasonably protect the public health, safety, and welfare.

(a) *Shared mobility device permitees shall be compliant with all applicable federal, state, and local laws, including but not limited to Herndon Town Chapter 30, Article VII as amended, pertaining to business licenses and Code of Virginia § 2.2-4311.2, as amended, pertaining to authorization to transact business in the Commonwealth of Virginia, and the provisions of this article.*

(b) *Shared mobility device permits shall not be non-assignable without the prior written consent of the Town manager.*

(c) *Shared mobility device permitees shall be compliant with the applicable franchise, license or other similar agreement for use of public rights-of-way. Expiration or termination of such franchise, license or other similar agreement shall be cause for immediate revocation of the shared mobility device permit.*

State Law Reference – Code of Virginia §§ 15.2-2100 et seq., 46.2-1315.

Sec. 66-108 – Application and Review Process for Shared Mobility Device Permits.

(a) *The Town manager is authorized and directed to develop an application process for shared mobility device permits, which shall be kept on file in the office of Town manager. No shared mobility device permit shall be approved until a complete application and fee is received. In order to carry out the purposes of this article, the Town manager may require the applicant to provide information in addition to that provided in the application. A fee of $300 shall accompany all applications for shared mobility device permits.*

(b) *After receipt and review of the complete application materials, the Town manager may: (1) approve the shared mobility device permit with or without additional conditions if it meets the standards for approval set forth in this article; or (2) deny the shared mobility device permit if it does not meet the standards for approval set forth in this article. Upon denial of a shared mobility device permit application, the applicant shall be apprised of the reasons for denial in writing and shall be entitled to appeal the decision as set forth in Section 66-110.*

(c) *Upon receipt of an application for a shared mobility device permit or an application for a franchise, license or similar agreement for use of shared mobility devices within public rights-of-way, the Town Council may, in its sole discretion, direct the Town manager to solicit additional proposals through a competitive bidding process and/or direct the Town manager to implement a pilot program for shared mobility devices prior to acting on an application. If a pilot program or competitive bidding process is employed, the Town Council may defer action upon or deny the permit application.*

Sec. 66-109 – Term of Shared Mobility Device Permit; Extensions.

(a) The term of any shared mobility device permit shall run concurrently with the term of the applicable franchise, license or other similar agreement for use of public rights-of-way.

Sec. 66-110– Suspension and Termination of Shared Mobility Device Permits; Appeal.

(a) A shared mobility device permit may be suspended or revoked by the Town manager upon the following conditions:

(1) Continuing violation of this article after reasonable notice to comply has been provided to permitee.

(2) Continuing violation of the terms and conditions of the shared mobility device permit after reasonable notice to comply has been provided to permitee.

(3) Expiration or termination of the franchise, license or other similar agreement for use of shared mobility devices within public rights-of-way granted to Permitee.

(4) False or misleading statements made by the Permitee or applicant in its application materials or other communications with the Town of Herndon.

(5) A determination that the Permitee is not operating the authorized shared mobility devices in such a manner as to serve the public health, safety, or welfare.

(6) Continuing violation of any federal, state, or local law after reasonable notice to comply has been provided to Permitee.

(b) In the case of revocation, a Permitee may not apply for a shared mobility device permit until one (1) year has elapsed from the date of the revocation.

(c) An aggrieved applicant or Permitee may appeal in writing the suspension, revocation, refusal to renew, or denial of a shared mobility device permit within 30 days of the date notice was sent of such fact by Town manager. Within 30 days of receipt of an appeal, the Town manager shall schedule a hearing and provide the appellant reasonable notice thereof. The decision on appeal shall be final and unappealable.

Sec. 66-111 – Enforcement of Article; Penalties.

(a) The Town manager shall have the authority to enforce all provisions of this article.

(b) Any person who violates or causes to be violated any provisions of this Article will be guilty of a misdemeanor punishable by a fine of not more than $50.00 for

the first offense and not more than $500.00 for each subsequent offense. Each day a violation continues shall constitute a separate offense.

(c) In addition to any penalties imposed, a court may enjoin the continuing violation of this article by proceedings for an injunction brought in any court of competent jurisdiction.

State Law Reference- Virginia Code § 15.2-1429, 15.2-1432.

STAFF REPORT

Town Council
November 6, 2019

Title:

Resolution- Establishing the Town of Herndon's 2020 Legislative Program to request that the 2020 Virginia General Assembly amend § 58.1-3910.1 Code of Virginia allowing the Town to into an agreement with Fairfax County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes; or request that the 2020Virginia General Assembly amend the Code of Virginia to add § 58.1-3910.2 to allow the Town to enter into an agreement with Fairfax County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes.

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 787-7370
lesa.yeatts@herndon-va.gov

Description:

There is one very important action item in the recommended legislative program on which the Town Council would request affirmative legislative change:

1. Action Items

The Town Council respectfully requests the General Assembly to pass the following legislation:

Amendment to § 58.1-3910.1. Collection of town taxes by county. Notwithstanding any other provision of law, the Loudoun County Board of Supervisors may authorize the treasurer of Loudoun County to enter into an agreement with any town located partially or wholly within Loudoun County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes owed to such town. *Notwithstanding any other provision of law, the Fairfax County Board of Supervisors may authorize the treasurer of Fairfax County to enter into an agreement with any town located partially or wholly within Fairfax County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes owed to such town.* The county treasurer collecting town taxes pursuant to an agreement made under this section shall account for and pay over to the town the amounts collected, as

provided by law. Any such agreement shall establish the terms for such collection and enforcement, including payment of reasonable compensation by the town for the services of the county treasurer and the order in which the county treasurer will credit partial payments between taxes owed to the county and those owed to the town.

OR

Amendment to § 58.1-3910.2. Collection of town taxes by Fairfax county. Notwithstanding any other provision of law, the ~~Loudoun~~ *Fairfax* County Board of Supervisors may authorize the treasurer of ~~Loudoun~~ *Fairfax* County to enter into an agreement with any town located partially or wholly within ~~Loudoun~~ *Fairfax* County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes owed to such town. The county treasurer collecting town taxes pursuant to an agreement made under this section shall account for and pay over to the town the amounts collected, as provided by law. Any such agreement shall establish the terms for such collection and enforcement, including payment of reasonable compensation by the town for the services of the county treasurer and the order in which the county treasurer will credit partial payments between taxes owed to the county and those owed to the town.

Position Statements

Based on input from the Council, Virginia Municipal League and previous position the Council has taken I recommend advising the 2020 General Assembly of the following positions without seeking any specific legislation:

Affordable Housing. The Town supports state funding for affordable housing. The state should take the lead and work with local governments to encourage the development of mixed income development and redevelopment, coupled with support for mixed use projects. The Commonwealth should give high priority to approval and funding of housing tax credit projects that incorporate affordable and subsidized units into mixed use/mixed income developments. Such projects should include a substantial share of market rate housing.

Right of Way, Wireless Communications Infrastructure. The Town Council opposes any effort to limit or eliminate local government's authority to review and approve use of their rights of way.

Local rights-of-way are public property. The rights-of-way contain numerous utility and other facilities. Any private use of public rights-of-way should be valued at fair market value. Neither the federal government nor the state should enact any laws to shift the award of franchises to use the public rights of way from the local governing body to any state or federal agency. Individuals and businesses in the community help to buy and maintain rights-of-way through their taxes. Rights-of-way should not

be used for private purposes without approval by and compensation to the local government for the right to use the space, and local governments must have authority to control the rights-of-way.

Local governments should continue to have the authority to approve the location and fees for any attachment or co-location of communications infrastructure on local government buildings and facilities.

Zoning Authority. The Town opposes any effort to limit localities' control of their land use decisions. State code provisions on zoning authority should continue to ensure that local governments have a full range of authority. The Code of Virginia must not be changed to limit local governments' authority to enact land use regulations for the benefits of all citizens.

Neither the state nor federal government should usurp or pre-empt a locality's power to make such decisions or impose processes that weaken planning and land use functions. Coordination of local land use planning and transportation planning improves the ability of all levels of government to deal with and manage growth-related issues the Commonwealth faces in the long-term.

Unfunded Local Mandates. The Town Council urges the General Assembly to oppose and reject legislation that would impose new unfunded mandates and fiscal responsibilities on local governments or reinstate any "local aid to the Commonwealth" measures.

Variances, Special Exceptions, & Conditional Use Permits. The Town supports retaining the law on variances in its current form. Because land use is controlled at the local level, the General Assembly should not require or dictate any specific procedures for special exceptions, conditional use permits or similar land use decisions.

Transportation Improvements. The Town Council supports legislation which would secure mainstream transportation funds for non-motorized improvements and construction of complete streets and improved bicycle and pedestrian infrastructure within the existing right-of-way.

Excise Taxes. The Town Council opposes legislation in which excise taxes that counties are authorized to levy would apply within towns without the explicit approval by the Town's governing body. Conflict between counties and towns can occur with taxation of Town residents by county governments at the same rate as that applied to those living in the county's unincorporated areas without comparable benefits and services being provided.

Internet-based Businesses & Services. The Town Council supports legislation that treats all types of business fairly and equally and preserves localities' ability to protect its citizens and regulate businesses whether they are traditional "brick and

mortar", electronic, Internet-based, virtual or otherwise. Specifically, the Town Council opposes any legislation that would exempt short-term rental of rooms or entire residences through booking platforms such as AirBnB from local zoning regulations or other local regulation. The Town Council supports measures which ensure that short-term rentals operate within the same taxation rules and regulations as other transient occupancy accommodations.

Public Notice, Public Hearing, and Public Procurement. The Town Council supports legislation that would give localities the option to use electronic or other forms of notification as an alternative to newspaper advertising for required notices of public hearings and public procurements. In addition, towns should be permitted to use first class mail instead of newspaper advertising to notify citizens of government actions in order to save citizens money and to communicate more effectively with them.

Northern Virginia Transportation Authority. The Town supports funding necessary for the Northern Virginia Transportation Authority as set forth in HB 2313, and the Town of Herndon opposes any revisions which reduces funding to localities in order to address the shortfall in state revenues. In addition, the Town Council supports Town voting membership on regional transportation authorities.

Towns. The General Assembly and the executive branch should recognize towns as essential units of local government, with important roles in providing services to citizens living in a concentrated environment.

The General Assembly should scrutinize bills dealing with laws of general application to local governments, to avoid enacting any laws that could be sources of possible conflicts between counties and towns.

Freedom of Information Act. The Town supports the free flow of information to citizens and the media through the conduct of governmental affairs at all levels in the open, in good faith compliance with the Freedom of Information Act. However, citizens and employees have the right to have personal information protected. Government also must be able to control its work processes so that public business can be conducted. It is in the public's interest to conduct some matters outside public view prior to official action. Accordingly, the Town strongly opposes extending limitations on closed meetings and exempt records, which would upset the Act's careful balance among a fully informed public, the protection of individuals' privacy, the ability of government to conduct its work and those matters for which the premature release would not be in the best interest of the locality or its citizens.

The Town supports legislation that allows local governments to contact and notify their citizens in the most efficient and cost-effective manner possible. Ads required by the Code of Virginia are increasingly more expensive to run in the newspaper and often are only seen by a decreasing number of citizens. The current trend is for local newspapers to reduce the number of times they are published weekly and/or going

to an online platform. This has resulted in localities needing to meet certain advertising requirements with only expensive newspapers available for legal notices.

Full Time and Attention to Driving. The Town Council supports legislation to regarding giving full time and attention to driving. The General Assembly should amend the State Code to include provisions requiring full time and attention to driving and also affirm that local governments have the ability to enforce full attention and time to driving ordinances.

Business License Tax. The Town Council opposes any effort to limit or repeal the business license tax without provision to towns, cities, and counties of an adequate replacement tax or source of revenue in a manner that protects the excise taxing prerogatives and powers of towns.

Transient Occupancy Tax. The Town Council supports legislation that would allow transient occupancy taxes to be calculated based on the full price of lodging accommodations paid by the room occupant rather than the discounted rates paid by online travel and booking companies.

Road Safety. The Town Council supports legislation to clarify the respective rights and duties of pedestrians, bicyclists, and vehicle drivers in their use of public streets in order to ensure the safety of all road users.

Solar. The Town supports clean energy sources, with both long and short-range energy usage designed to maximize conservation of energy resources.

Recycling. The Town supports recycling and reuse wherever possible to promote better and wiser use of our resources.

Recommendation:

I recommend the Mayor and Town Council adopt the resolution.

Attachments:

Resolution
Draft General Assembly Bill

Prepared and Approved by:

Lesa J. Yeatts

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

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RESOLUTION

NOVEMBER 12, 2019

Resolution- Establishing the Town of Herndon's 2020 Legislative Program to request that the 2020 Virginia General Assembly amend § 58.1-3910.1 Code of Virginia allowing the Town to into an agreement with Fairfax County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes; or request that the 2020Virginia General Assembly amend the Code of Virginia to add § 58.1-3910.2 to allow the Town to enter into an agreement with Fairfax County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes.

Recitals

The Mayor and the Town Council of the Town of Herndon, Virginia, to render the Town government more responsive to the citizens, yearly advise the Town's representatives in the General Assembly of legislative positions on important issues.

The Mayor and Town Council enjoy a favorable relationship with their representatives in the General Assembly and thank them for their interest and support.

THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia that:

1. Action Items

The Town Council respectfully requests the General Assembly to pass the following legislation:

Amendment to § 58.1-3910.1. Collection of town taxes by county. Notwithstanding any other provision of law, the Loudoun County Board of Supervisors may authorize the treasurer of Loudoun County to enter into an agreement with any town located partially or wholly within Loudoun County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes owed to such town. *Notwithstanding any other provision of law, the Fairfax County Board of Supervisors may authorize the treasurer of Fairfax County to enter into an agreement with any town located partially or wholly within Fairfax County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes owed to such town.* The county treasurer collecting town taxes pursuant to an agreement made under this section shall account for and

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pay over to the town the amounts collected, as provided by law. Any such agreement shall establish the terms for such collection and enforcement, including payment of reasonable compensation by the town for the services of the county treasurer and the order in which the county treasurer will credit partial payments between taxes owed to the county and those owed to the town.

OR

Add:

Amendment to § 58.1-3910.2. Collection of town taxes by Fairfax county. Notwithstanding any other provision of law, the ~~Loudoun~~ *Fairfax* County Board of Supervisors may authorize the treasurer of ~~Loudoun~~ *Fairfax* County to enter into an agreement with any town located partially or wholly within ~~Loudoun~~ *Fairfax* County for the county treasurer to collect and enforce delinquent or non-delinquent real or personal property taxes owed to such town. The county treasurer collecting town taxes pursuant to an agreement made under this section shall account for and pay over to the town the amounts collected, as provided by law. Any such agreement shall establish the terms for such collection and enforcement, including payment of reasonable compensation by the town for the services of the county treasurer and the order in which the county treasurer will credit partial payments between taxes owed to the county and those owed to the town.

2. Positions and Informational Items

The Town Council advises its representatives in the General Assembly of the following legislative positions without requesting any such specific legislation:

State Maintenance Funds for Roadway Paving. The Town supports efforts to require that the Virginia Department of Transportation fund road maintenance through the two programs established to help localities with roadway maintenance, the Revenue Sharing maintenance program and the State of Good Repair program.

Commercial Vehicles on Public Streets. The Town supports legislation that would amend Section 46.2-1222.1 of the Code of Virginia to allow localities to prohibit the parking of commercial vehicles weighing 8,000 lbs., or more on residential streets. The current minimum gross vehicle weight that can be regulated is 12,000 lbs.

Access to Mental Health Crisis Services and Alternative Transportation. The Town supports efforts to ensure that adults and children experiencing a mental health crisis are able to obtain timely evaluation and assistance, including emergency custody and temporary detention, as close to their home community as possible. Town supports the statewide implementation of alternative transportation options to help as many individuals in crisis get to evaluation services and treatment with the goal of eliminating the reliance on local law enforcement for extended transportation and custody services.

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Addressing Abusive Data Harvesting. The Town supports recognizing that local governments are increasingly subject to cyberattacks, Town supports the continued study by the Virginia Freedom of Information Act (FOIA) Council of the threat of attacks on citizens and public employees whose contact and private information is legally obtained as a result of a FOIA request and urges ample local government participation in the development of solutions to prevent abusive data harvesting.

Appealing Property Assessments. Article X of the Virginia Constitution mandates that all real and personal property be assessed at fair market value and that all property not constitutionally exempt be taxed.

Taxpayers have the right to contest property assessments through administrative and legal means. Taxpayers pay no local fees to challenge real property and personal property assessments. If taxpayers are displeased with the determinations made by their local commissioner of the revenue or other local assessing official, additional real property appeals can be submitted to the local Boards of Equalization. Taxpayers can also appeal real and personal property assessments in the Circuit Courts and, if still aggrieved, may appeal to the Virginia Supreme Court.

Reforms enacted in the 2011 Session of the General Assembly lowered the level of proof required by the taxpayer (from "clear preponderance" to "preponderance") to prove property is valued at more than fair market value or that the assessment is not uniform in its application and that it was not developed in accordance with generally accepted appraisal practices and applicable Virginia law relating to property valuation.

In 2017, there were more than 3.1 million taxable parcels and 20,777 appeals of which 10,472 were administratively resolved. Another 2,341 appeals were granted by local Boards of Equalization. Taxpayers filed 18 appeals in circuit courts of which seven were granted. The Town does not believe the assessment appeals process is flawed or in need of major policy changes and opposes statutory changes that would upend a process that protects taxpayers and the public.

Broadband. The Town supports programs which provide tools to localities to expand broadband access in their localities, including access to state funding for ownership by localities of broadband networks. Expanded authority, tools, and access to funding are essential for broadband service to improve for all Virginia local governments and citizens.

Commonwealth Attorney Funding. The Town urges the General Assembly to fully fund all currently authorized positions for Commonwealth's Attorney offices statewide to allow these offices to fully comply with new discovery rules being promulgated by the Virginia Supreme Court; to keep up with and effectively incorporate new sources of evidence resulting from new technology, including body worn camera video; and to make up for historic under-funding of these offices.

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Communications Sales and Use Tax. The Virginia Communications Sales and Use Tax was enacted to establish a statewide tax rate and to preempt local taxes on communications sales and services. Town supports setting the tax rate at the same level as the state sales tax rate and broadening the coverage of the tax to include audio and video streaming services and prepaid calling cards. The Town opposes transfers of these revenues to the state general fund for purposes other than those currently stipulated in the Code of Virginia.

Distracted & Inattentive Driving. The Town supports local government authority to enforce full attention and time to driving ordinances. The Town supports access to training for impartial enforcement of these ordinances by all law enforcement personnel.

Education Funding. A strong public school system is essential to economic development and prosperity. The state must be a reliable funding partner in accordance with the Virginia Constitution and state statutes. The Standards of Quality should recognize the resources, including positions, required for a high-quality public education system. The Town opposes changes in methodology and changes in the division of financial responsibility that result in a shift of funding responsibility from the state to localities.

Further, Town opposes policies that lower state contributions but do nothing to address the cost of meeting the requirements of the Standards of Accreditation and Standards of Learning.

Any approach to improving low-performing schools must include adequate state financial support. Town supports increased state funding for the Virginia Preschool Initiative, the K-3 reduced class size program and Early Reading Intervention program. Town also supports increased state stipends for highly effective teachers in high-poverty schools, and other innovative programs for teachers and students.

Equal Rights Amendment. The Town supports the passage of the Equal Rights Amendment (ERA) and urges the General Assembly to take the necessary steps to put this matter before the citizens of the Commonwealth of Virginia.

Funding the Real Cost of Education. The state funding formula for education operating costs breaks down on a statewide level as 55 percent state/45 percent local funding. However, the Standards of Quality do not recognize the true costs of education, including pupil transportation, school support staff, providing and updating broadband and other technology, and instructional staff salaries. Neither does it recognize most construction and renovation costs.

Local governments match more than is required for basic state education dollars, pay the majority of public school capital costs and struggle to find scarce local tax dollars to keep up with the demands for meeting additional and expanding state

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requirements and for creating 21st century learning environments for our children to master the challenges of tomorrow's workplace.

The Town supports actions for the Commonwealth to recognize and fund the true costs of public education, including new avenues for funding public school construction and renovation costs such as the creation of a pilot program of competitive grants using funds from the Virginia Public Building Authority to offset new construction or renovation costs for publicly-owned and operated K-12 schools in fiscally stressed communities as defined by the Virginia Commission on Local Government.

Housing Solutions. The Town supports housing solutions. Local governments are the solution for solving the housing crisis in the Commonwealth. Allowing local governments the authority to use flexible tools for achieving housing goals and greater land use authority for creative housing types is needed.

Local Option Regulation of Disposable Plastic Bags. The Town supports legislation to allow local option authority to develop incentives or regulations to decrease or otherwise regulate the distribution, sale, or offer of disposable plastic bags.

Stormwater Local Assistance. The Town supports continued investment in the Stormwater Local Assistance Fund to assist localities with critical stormwater projects to meet federal and state clean-water requirements.

Taxing, Licensing, and Regulating Internet-based Businesses and Services. In taking state action to regulate private enterprises employing a business model that emphasizes the use of the Internet to either provide retail or facilities or ride-sharing services, local government interests should be acknowledged, and localities should be included in the decision-making.

As general principles, Town believes state and local policies should 1) encourage a level playing field for competing services in the market place; 2) not provide a tax preference or tax policy advantage for one group at the expense of another group in the competitive field; 3) seek to preserve state and local revenue; 4) ensure safety, reliability, and access for consumers, providers, and the public; and 5) protect local government's ability to regulate businesses whether they are traditional, electronic, Internet-based, virtual or otherwise.

Town also believes that the state should not prohibit the sharing of financial information between the Commonwealth and appropriate local authorities that is normally treated as part of the public domain. Town further believes that the state should not prohibit a locality from exercising its authority to enter into voluntary collection agreements provided that such agreements include provisions to protect the public's interest.

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3. The Town Attorney shall mail or deliver a copy of this resolution to the Town's representatives in the General Assembly, other selected members of the General Assembly, area local governments, and to other interested persons, as appropriate.

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