

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON COUNCIL CHAMBERS BUILDING
765 LYNN STREET
DECEMBER 3, 2019
7:00 P.M.**

PRESENTATION

1. Presentation of the Town's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended June 30, 2019 (by Brown Edwards and Company, LLP, Certified Public Accountants) **(Presentation at the December 10 TCPH)**

PUBLIC HEARINGS

2. Ordinance, to consider Zoning Ordinance Text Amendment ZOTA #18-03, to amend Chapter 78 (ZONING), Article III (Residential Districts), Article V (Planned Development Districts), Article VIII (Accessory Uses), to permit and establish limitations on short-term rentals as an accessory use to residential dwelling units provided certain standards are met, whereas they are currently not permitted, and to define the term. A maximum fee of \$200 will be established in Section 78-152.2(b)(3) (Fees), for a two-year permit and inspection for short-term rental establishments pursuant to Virginia Code 15.2-2286(A)(6)
3. Ordinance, to approve and authorize the Mayor to sign a Lease Agreement between the Town and The Elden Street Players, for space at 750 Center Street
4. Ordinance, to approve and authorize the Mayor to sign a Lease Agreement between the Town and Arts Herndon, Inc., for space in 750 Center Street
5. Ordinance, to approve and authorize the Mayor to sign a Lease Agreement between the Town and Delegate Samirah for space at 397 Herndon Parkway
6. Ordinance, to approve and authorize the Mayor to sign a Third Lease Amendment between the Town and Evince Analytics, Inc., for space at 397 Herndon Parkway
7. Resolution, to approve and authorize the Mayor to sign a second amendment to the Pilot Project Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town of Herndon, Virginia (Resolution 18-G-31) adopted on June 12, 2018, to extend the project termination date
8. Resolution, to approve and authorize the Mayor to sign an amendment to the License Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town of Herndon, Virginia, dated June 30, 2019, to include EV Charging stations and related equipment

GENERAL

9. Resolution 19-G-68, to authorize Project Administration Agreements between the Town and Fairfax County for the administration of Herndon Metrorail Station Access Management Study (HMSAMS) Projects (**Continued from November 12**)
10. Resolution, to support RSTP and CMAQ applications title: To consider authorization of project applications to the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program / Congestion Mitigation-Air Quality (RSTP/CMAQ) funding for Fiscal Year 2026 and to endorse the town's transportation projects included in VDOT's FY2020-2025 Six-Year Improvement Program

CONSENT AGENDA

11. Resolution, to reappoint Yung C. Kim to the Town of Herndon's Board of Zoning Appeals
12. Resolution, to reappoint Randy Jaegle as the Town of Herndon member to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board
13. Resolution, to appoint Erin Wolff as a "citizen" member to the Town Council's Pedestrian and Bicycle Advisory Committee
14. Resolution, Award of Contract, Herndon Festival Carnival Operations – RFP 20-02

DISCUSSION

Community donations process (Discussion by Director of Finance and Budget Manager)

ROUNDTABLE



STAFF REPORT

Town Council

December 3, 2019

Title: ZONING ORDINANCE TEXT AMENDMENT – ZOTA #18-03 – Short-term rentals

Staff Contact: David Stromberg, AICP, Zoning Administrator
david.stromberg@herndon-va.gov (703)787-7380

Elizabeth Gilleran, AICP, Director of Community Development
Elizabeth.gilleran@herndon-va.gov (703) 787-7380

Summary Information:

The purpose of this zoning ordinance text amendment is to establish regulations for short-term rentals within the town. The zoning ordinance is silent on the use of short-term rentals and the adoption of language will allow operators of short-term rentals to obtain proper permits and give enforcement staff the tools needed for effective enforcement.

The Town Council approved the initiating resolution for this ordinance on June 12, 2018. The language has been refined over the past 18 months during several work session meetings and public hearings with the Planning Commission. On October 28, 2019, the Planning Commission passed a resolution recommending adoption of the zoning text amendment. The resolution further resolved that the Town Council direct staff to reevaluate the standards for short-term rentals with the Planning Commission within 24 months of the effective date of the ordinance.

Background:

This text amendment was initiated based on language in the Code of Virginia (VA Code § 15.2-983) which granted localities the ability to create a short-term rental registry and affirmed a locality's right to regulate short-term rentals through its general land use and zoning authority.

The Planning Commission held six public work session meetings and six public hearings on this text amendment. The public provided input throughout the process by submitting comments online or speaking during the public hearings.

Staff and the commission worked to balance the interests of short-term rental operators with the need to protect the health, safety, and welfare of the community. Several existing operators of short-term rentals discussed the need to have the supplemental income provided by the rentals. Some of the largest concerns from neighborhood residents were that absentee investors would purchase properties solely for the purpose of operating short-term rentals as a de-facto hotel in the middle of residential neighborhoods.

Staff Analysis:

The proposed language defines short-term rentals as an accessory use and takes a two-pronged approach to regulation of the short-term rentals. Much of the review and verification of compliance with the standards will occur at the beginning of the process through administrative review of the short-term rental application. This will then be followed up with an inspection. Below is a summary of the requirements.

- A short-term rental permit is required to be submitted for review along with a \$200 review fee.
- Any operator of a short-term rental must be a permanent resident of the property. This means that the operator must have lived at the property for 7 of the previous 12 months in order to be eligible to operate a short-term rental. Two forms of documentation must be provided to establish compliance with the residency requirement.
- If the operator of the short-term rental is not the owner of the property, then they must provide written authorization from the owner granting permission to operate a short-term rental.
- Proof of notification must be supplied if the property is part of a homeowner's association or condo association.
- A site plan must be provided showing that the property can accommodate the required parking for a short-term rental. A minimum of one off-street parking space is required for a short-term rental in a condominium or townhouse. A minimum of two off-street parking spaces is required for a short-term rental in a single-family residence.
- The maximum occupancy during any rental period is six adults, unless further restricted by the Virginia Uniform Statewide Building Code.
- Weddings, banquets, concerts or other types of entertainment events are prohibited during rental periods to prevent the establishment of a rental "party house."

- Operators are limited to one contract or booking per night. This can include one adult on one contract or one family on one contract but cannot include separate individuals under separate contracts.
- Safety equipment such as smoke and carbon monoxide detectors and fire extinguishers must be installed and egress requirements must be met.
- Short-term rental operators are limited to renting their entire property for a maximum of 90 days per year. There is no limitation on the number of nights when the operator is present and is renting out a spare room(s).
- The short-term rental permit is valid for a two-year period and then must be reapplied for.

Town Council Alternatives:

The following alternatives are available to the Town Council for its decision on Zoning Ordinance Text Amendment ZOTA #18-03:

1. Approve ZOTA #18-03 with the Planning Commission's recommendation that staff reevaluate the ordinance within 24 months of adoption.
2. Approve ZOTA #18-03 without the Planning Commission's recommendation that staff reevaluate the ordinance with 24 months of adoption.
3. Deny ZOTA #18-03.
4. Continue the public hearing on ZOTA #18-03 to a date certain.
5. Refer ZOTA #18-03 back to the Planning Commission for further discussion.

Planning Commission Recommendation:

Refinements to the draft language have been made after every set of meetings (work session and public hearing) with the Planning Commission. Some members of the Commission suggested that the town should adopt a pilot program that limits short-term rentals to single family residences only. Ultimately the Commission passed a resolution recommending short-term rentals in all housing types. The Commission also recommended that the Town Council direct staff to reevaluate the ordinance within 24 months.

Staff Recommendation:

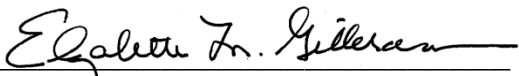
Staff recommends the Town Council approve ZOTA #18-03 in accordance with **alternative 1**.

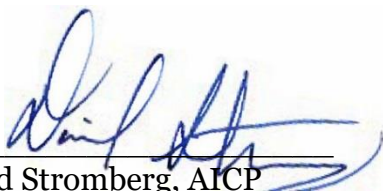
There is always a chance when drafting a zoning text amendment that changes will be needed in the future. One of the differences with this ZOTA is the strong opinions held by both proponents and opponents of short-term rentals. The debate on the benefits and costs of short-term rentals is not unique to the town and has been occurring in localities on the regional and national level.

The staff recommended language is intended to be the best balance between establishing standards and giving some certainty to operators of short-term rentals while allowing staff to more effectively go after the bad actors. The evaluation at 24 months will provide an opportunity to change any provisions that aren't working well or that reflect changes in the overall market and operation of short-term rentals.

Attachments:

1. Draft Ordinance
2. Planning Commission Resolution


Elizabeth Gilleran, AICP
Director of Community Development


David Stromberg, AICP
Zoning Administrator

TOWN OF HERNDON, VIRGINIA

ORDINANCE

DECEMBER 10, 2019

Ordinance - to amend Chapter 78 (ZONING), Article III (Residential Districts), Section 78-30.1 (R-15 - Residential Single-Family District), Section 78-30.2 (R-10 - Residential Single-Family District), Section 78-30.3 (RTC - Residential Townhouse cluster District), Section 78-30.4 (RM - Residential Multi-Family District), Article V (Planned Development Districts), Section 78-50.4 (PD-R - Planned Development Residential District), Section 78-50.6 (PD-D - Planned Development Downtown District), Section 78-50.7 (PD-TD - Planned Development Traditional Downtown District), Section 78-50.8 (PD-TOC - Planned Development Transit-Oriented Core District), Section 78-50.9 (PD-W - Planned Development - Worldgate District), Section 78-51.1 (PD-UR - Planned Development - Urban Residential), Article VIII (Accessory Uses), Section 78-80.4 (Standards for Specific Accessory Uses and Structures by Use Type), by adding subsection 78-80.4(U), to permit and establish limitations on short-term rentals as an accessory use to residential dwelling units provided certain standards are met, whereas they are currently not permitted. Section 78-80.2 (Table of Permitted and Allowed Accessory Uses and Structures) and Section 78-180 (Definitions) will be updated to reflect the new use. A fee of \$200 will be established in Section 78-152.2(b)(3) (Fees), for a two-year permit and inspection for short-term rental establishments pursuant to Virginia Code 15.2-2286(A)(6). ZOTA #18-03.

Recital

In adopting this ordinance, the Town Council has considered the factors set out in §15.2-2284, Code of Virginia.

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

1. Chapter 78, Zoning Ordinance, adopted March 28, 2006, of the Herndon Town Code (2000) as amended.

Section 78-30.1 – R-15 – Residential Single-Family District

D. Accessory Uses and Structures

(3) *Table of permitted and allowed accessory uses in the R-15 district .*

Table 78-30.1(d)(3): Permitted and Allowed Accessory Uses R-15 KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	R-15	Supplemental Use Regulations

<i>Short-term rental</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-30.2 – R-10 – Residential Single-Family District

D. Accessory Uses and Structures(3) *Table of permitted and allowed accessory uses in the R-10 District .*

Table 78-30.2(d)(3): Permitted and Allowed Accessory Uses R-10 KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	R-10	Supplemental Use Regulations

<i>Short-term rental</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-30.3 – RTC – Residential Townhouse Cluster District

D. Accessory Uses and Structures

(3) Table of permitted and allowed accessory uses in the RTC district.

Table 78-30.3(d)(3): Permitted and Allowed Accessory Uses RTC KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	RTC	Supplemental Use Regulations

<i>Short-term rental</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-30.4 – RM – Residential Multi-Family District

D. Accessory Uses and Structures*(3) Table of permitted and allowed accessory uses in the RM district.*

Table 78-30.4(d)(3): Permitted and Allowed Accessory Uses RM KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	RM	Supplemental Use Regulations

<i>Short-term rental</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-50.4 – PD-R – Planned Development Residential District

D. Accessory Uses and Structures(4) *Table of permitted and allowed accessory uses in the PD-R district.*

Table 78-50.4(d)(4): Permitted and Allowed Accessory Uses PD-R KEY: P = Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z = Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-R	Supplemental Use Regulations

<i>Short-term rental</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-50.6 – PD-D – Planned Development Downtown District

D. Accessory Uses and Structures(4) *Table of permitted and allowed accessory uses in the PD-D district.*

Table 78-50.6(d)(4): Permitted and Allowed Accessory Uses PD-D KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-D	Supplemental Use Regulations

<i>Short-term rental</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-50.7 – PD-TD – Planned Development Traditional Downtown District

D. Accessory Uses and Structures

(4) *Table of permitted and allowed accessory uses in the PD-TD district.*

Table 78-50.7(d)(4): Permitted and Allowed Accessory Uses PD-TD KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-TD	Supplemental Use Regulations

<i>Short-term rentals</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-50.8 – PD-TOC – Planned Development Transit-Oriented Core District

D. Accessory Uses and Structures

(4) *Table of Accessory Uses PD-TOC .*

Table 78-50.8.F - Permitted Accessory Uses in PD-TOC KEY: P = Use Permitted By Right; S=Use Permitted Subject to Special Exception Approval; D = Use Permitted Subject to Development Plan Approval Uses may be subject to use specific standards as noted in the last column		
ACCESSORY USE	PD-TOC	See Supplemental Regulations

<i>Short-term rentals</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-50.9 – PD-W – Planned Development Worldgate District

D. Secondary uses permitted. The following secondary uses shall be permitted only in a PD-W district which contains one or more principal uses; only when such uses are presented on an approved Fairfax County final development plan prepared in accordance with the provisions of Article 16 of the Fairfax County Zoning Ordinance if developed prior to January 2, 2005, or on an approved town general development plan if developed after January 2, 2005, and subject to the use limitations set forth in section 78-50.90(e) below.

(7) *Dwellings*

a. Short-term rentals in accordance with the provisions of Section 78-80.4(u).

Section 78-51.1 – PD-UR – Planned Development-Urban Residential

D. Accessory Uses and Structures

(4) *Table of permitted and allowed accessory uses in the PD-UR district.*

Table 78-51.1(d)(4): Permitted and Allowed Accessory Uses PD-UR KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval <i>Uses may be subject to use specific standards as noted in the last column</i>		
ACCESSORY USE	PD-UR	Supplemental Use Regulations

<i>Features such as fences, walls, retaining walls, gate houses, trash enclosures, refuse containers, screening enclosures, storage sheds, and swimming pools</i>	<i>P</i>	<i>§78-80.3(c) §78-21(f) §78-114</i>
<i>Short-term rentals</i>	<i>P</i>	<i>§78-80.4(u)</i>

Section 78-80.2 – Table of Permitted and Allowed Accessory Uses and Structures

C. Table of Permitted and Allowed Accessory Uses and Structures

	Table 78-80.2(d): TABLE OF PERMITTED AND ALLOWED ACCESSORY USES & STRUCTURES KEY: P=Use Permitted By Right; S=Use Allowed Subject to Special Exception Approval; Z=Use Allowed Subject to Zoning Map Amendment Approval													
	Notes: 1. A blank cell means the use is prohibited in the district; 2. Uses may be subject to use specific standards noted in the last column. ** For Permitted Accessory Uses in PD-TOC see section 78-50.78; For Accessory Uses Permitted and Allowed in PD-W see section 78-50.89													
	Residential Districts				Business Districts					Planned Development District				Suppl Reqs.
ACCESSORY USE	R 15	R 10	R TC	RM	CC	CS	CO	O& LI	PD- R	PD- B	PD- TD PD- D	PD- UR	PD- TOC PD- W	See Section
School Uses in Conjunction with, and on the same site as, Religious Institution	S	S			S			S	Z	Z	Z		**	§78-80.4(r)
<i>Short-Term Rental</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>					<i>P</i>		<i>P</i>	<i>P</i>	**	<i>§78-80.4(u)</i>
Social Service and Similar Community Service Uses	S	S	S	S	S	S							**	§78-80.4(s)

Section 78-80.4 Standards for Specific Accessory Uses and Structures by Use Type. Accessory uses and structures listed below shall comply with the following specific standards.

U. Short-Term Rentals. *Short-term rentals are permitted as an accessory use to a dwelling unit, as defined in Section 78-180, provided the following conditions are met:*

- (1) *Zoning permit required. Prior to operating within the town, the operator of a short-term rental shall apply for and obtain a short-term rental zoning permit. No short-term rental zoning permit shall be considered unless the following documents are provided:*
 - a. *A completed short-term rental zoning permit application provided by the town and submitted to the Zoning Administrator along with a filing fee of \$200.*
 - b. *Two forms of identification with address displayed to establish primary residency at the location of the proposed short-term rental. Acceptable forms include a government-issued ID, mortgage or lease documents, or other forms deemed appropriate by the zoning administrator.*
 - c. *Written authorization from the property owner if the primary resident is not the property owner.*
 - d. *A site plan indicating the number and location of off-street parking spaces.*
 - e. *Proof of notification to the homeowners association or condo association of intention to operate a short-term rental, if applicable.*
 - f. *A short-term rental permit shall be good for a period of two years from the date of issuance.*
- (2) *Residency. Any operator of a short-term rental must be the primary resident of the property. For the purposes of this Section, primary resident shall mean an individual who has occupied the dwelling unit for 7 of the previous 12 months.*
- (3) *Occupancy. The maximum occupancy during any rental period shall not exceed 6 adults, except where the Virginia Uniform Statewide Building Code allows fewer occupants.*
- (4) *Entertainment. Events and activities including, but not limited to, luncheons, banquets, parties, amplified or acoustic concerts, weddings, meetings, fund raising, commercial or advertising activities to include filming, and any other gathering of persons other than the authorized renters, whether for direct or indirect compensation, are prohibited in association with any short-term rental. This language must be included in the advertisement for the rental of the property.*
- (5) *Parking. Parking must be located on-site or in spaces reserved exclusively for the use of the operator of the short-term rental property.*
 - a. *For any single-family detached residence, a minimum of 2 parking spaces are required and no more than 2 non-resident vehicles are permitted on-site during a rental period.*

- b. *For any townhouse or condo, a minimum of 1 parking space is required and no more than 1 non-resident vehicle is permitted on-site during a rental period.*
- (6) *Contracts. The operator of any short-term rental is prohibited from entering into more than one contract for any given night.*
 - a. *Contract must include entertainment restrictions as described in Section 78-80.4(U)(4).*
 - b. *Contract must include parking restrictions as described in Section 78-80.4(U)(5).*
- (7) *Recreational vehicles. Any recreational vehicle located on the lot is prohibited from being used for a short-term rental.*
- (8) *Accessory dwelling units. Short-term rentals shall be prohibited within an accessory dwelling unit.*
- (9) *Limitation on nights. The operator is limited to a maximum of 90 rental nights per year where the unit may be rented without the operator present. There is no limit on nights when the operator is present during a short-term rental.*
- (10) *Safety. Each short-term rental must have the following:*
 - a. *A working multipurpose fire extinguisher.*
 - b. *Interconnected smoke detectors.*
 - c. *Carbon monoxide detector if any gas appliances or fireplaces are present.*
 - d. *A direct means of egress outside of the structure from any sleeping room available for short-term rental.*
- (11) *Noncompliance. If the owner conducting the short-term rental violates, or if the short-term rental becomes by conduct inconsistent with any provision of this article or other ordinance, law or regulation governing use of the dwelling for a short-term rental, the zoning administrator may take action pursuant to Article XVII, Enforcement Violations and Remedies, including revoking the short-term rental zoning permit.*
- (12) *Registry. Failure to register or renew on the Short-Term Rental Registry pursuant to the Herndon Town Code (2000), shall be deemed a reason for revocation.*

TABLE 78-152.2(b)(3): FEES FOR DEVELOPMENT APPLICATIONS
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TYPE OF FEE	AMOUNT
MISCELLANEOUS ADMINISTRATIVE REVIEWS	
Request for early site occupation prior to completion of improvements in accordance with section 78-204.1 <i>78-120.1</i> and 78-204.2 <i>78-120.2</i> application flat fee	\$50.00
Request for early site occupation prior to completion of improvements in accordance with section 78-204.1 <i>78-120.1</i> and 78-204.2 <i>78-120.2</i> , per inspection	\$50.00
Mobile Food Unit Preparer, Full Service Zoning Permit	\$100.00
<i>Short-term Rental Permit</i>	<i>\$200.00</i>

Section 78-180 – Definitions. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

“Short-term rental. The provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy. Such unit does not include bed and breakfast establishment, boarding house, hotel (including extended stay hotels), or motels.

2. This ordinance shall become effective on February 1, 2020.

TOWN OF HERNDON, VIRGINIA

PLANNING COMMISSION

RESOLUTION

OCTOBER 28, 2019

Resolution – to recommend approval of Zoning Ordinance Text Amendment ZOTA #18-03, to the Town Council of the Town of Herndon.

WHEREAS, the Planning Commission of the Town of Herndon, Virginia began holding public hearings on this zoning ordinance text amendment on June 12, 2018; and

WHEREAS, the proposed language has been revised based on resident input and several work session and public hearing discussions; and

WHEREAS, the Planning Commission has considered the appropriateness and benefits of the proposed text amendment compared to a no-action alternative and found the proposal to further promote the health, safety, and welfare of the residents of the town.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission for the Town of Herndon, Virginia that the Planning Commission hereby recommends approval of zoning ordinance text amendment ZOTA #18-03 to the Town Council of the Town of Herndon.

BE IT FURTHER RESOLVED that the Planning Commission recommends the Town Council direct staff to reevaluate the standards for short-term rentals with the Planning Commission within 24 months from the effective date of the ordinance.

STAFF REPORT

Town Council
December 3, 2019

Title:

Ordinance – Approving and authorizing the Mayor to sign a Lease Agreement between the Town and The Elden Street Players, for space at 750 Center Street.

Staff Contact:

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

Description:

The Town is currently party to a one year Lease with the Elden Street Players (NextStop Theatre Company) for space at 750 Center Street. The lease expires on December 31, 2019.

The rent for this space is currently and is proposed to remain \$1.00 per month, and the Lease would continue on a month-to-month basis for a maximum term of one year until December 31, 2020.

Fiscal Impact:

None.

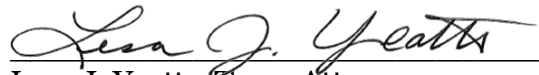
Staff Recommendation:

That the Mayor and Town Council adopt the attached ordinance approving and authorizing the Mayor to sign the new lease.

Attachments:

Ordinance
Draft Lease
Lease Exhibit A

Prepared and Approved by:



Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

December 10, 2019

Ordinance- Approving and authorizing the Mayor to sign a Lease Agreement between the Town and The Elden Street Players, for space at 750 Center Street.

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

1. The Town Council approves a lease dated December 10, 2019, by which the Town would lease to The Elden Street Players certain space in part of the Town's building at 750 Center Street, Herndon, Virginia. The rent shall be \$1.00. The term shall be from January 1, 2020 through December 31, 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 10th day of December 2019, by and between THE TOWN OF HERNDON, a municipal corporation (Landlord) and THE ELDEN STREET PLAYERS., a Virginia corporation (Tenant).

Recitals

Landlord is the owner of a building and premises located at 750 Center Street, 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, the premises commonly known as part of the building at 750 Center Street consisting of approximately 2,790 square feet as shown on Exhibit A, attached and incorporated by reference which shall be called "leased premises."

THEREFORE, the parties agree as follows:

1. Commencement and Ending Date of Term. Beginning January 1, 2020, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may remain in the leased premises on a month-to-month basis 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 30 days prior written notice to the Tenant. In any event, the term of this lease shall expire December 31, 2020. If the Lease is terminated due to redevelopment of the land at 750 Center Street, Herndon, VA, Landlord shall give ample time to Tenant to remove itself from the facility. In the event of Town's redevelopment of the land at 750 Center Street, the parties understand that Landlord will terminate this lease. This last sentence clarifies, not limits, the parties' agreement as set out in this paragraph.

2. Rent. Tenant shall pay Landlord on demand \$1.00 rent; and shall allow Town access to and from and use of the Industrial Strength Theatre at 269 Sunset Park Drive, for Landlord's Parks and Recreation Programs (IST Space). Landlord and Tenant shall confer and use their best efforts to agree as to the dates of Landlord's such use. Tenant shall provide custodial services for these events. Tenant assures, represents, and warrants to Landlord that Tenant enjoys and will enjoy right of possession of the IST space and rights to license or sublease the IST space to Landlord. Landlord shall provide a physical separation structure or device between the leased premises and Landlord's remaining space in the building. Tenant allows and assures to Landlord Landlord's right of access from the double doors on the Vine Street side of the building to and from the Landlord's remaining space on the west side of the building. Tenant shall keep this access area (which Tenant may use with Landlord for Tenant's uses) free of Tenant's property or sustained uses.

3. Use of Premises. Tenant shall use the leased premises solely for storage, construction, or dismantling of theater props, sets, and other supplies of a theatrical company.

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 with respect to the leased premises in commercially reasonable amounts, as determined by Landlord. The policy shall name the Landlord as 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, including reasonable attorney's fees, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises, or the occupancy or use by Tenant of the leased premises or any part thereof.

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

10. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any 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 13, Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

11. 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.

12. 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. With Town eventual approval of plans (both as a government and as Landlord), Tenant at its expense may make other changes to the leased premises consistent with the purposes of this lease.

13. 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. 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 13, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

18. Assignment and Subletting. Except as provided in paragraph 3, 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.

THE ELDEN STREET PLAYERS, INC.

By: Vicki Kile 11/18/19
Name: Vicki Kile
Title: President

TOWN OF HERNDON, VIRGINIA

By: _____
Lisa C. Merkel
Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesa J. Yeatts
Town Attorney



FLOOR PLAN made 1/8"

STAFF REPORT

Town Council
December 3, 2019

Title:

Ordinance – Approving and authorizing the Mayor to sign a Lease Agreement between the Town and Arts Herndon, Inc., for space in 750 Center Street.

Staff Contact:

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

Description:

I am providing to the Mayor and Town Council a proposed Lease between the Town and Arts Herndon, Inc., and a draft approving ordinance for consideration.

The Town is currently party to a one year lease with the Arts Herndon, Inc., for space at 750 Center Street. This lease expires on December 31, 2019.

The rent for this space would remain \$200.00 per month and the Lease would continue on a month-to-month basis for a maximum term of one year until December 31, 2020.

Fiscal Impact:

None.

Staff Recommendation:

The Mayor and Town Council adopt the attached ordinance.

Attachments:

Draft Ordinance
Lease
Exhibit A

Prepared and Approved by:

A handwritten signature in cursive script, reading "Lesa J. Yeatts". The signature is written in black ink and is positioned above a horizontal line.

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

December 10, 2019

Ordinance- Approving and authorizing the Mayor to sign a Lease Agreement between the Town and Arts Herndon, Inc., for space in 750 Center Street.

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

1. The Town Council approves a lease dated December 10, 2019, by which the Town would lease to Arts Herndon, Inc., the Town's building at 750 Center Street, Herndon, Virginia. The rent shall be \$200.00 per month. The term shall be from January 1, 2020 through December 31, 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 10th day of December 2019, by and between THE TOWN OF HERNDON, a municipal corporation (Landlord) and ARTS HERNDON, INC., a Virginia non-profit, charitable corporation (Tenant).

Recitals

Landlord is the owner of a building and premises located at 750 Center Street, 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 750 Center Street, (as shown on Exhibit A, attached and incorporated by reference) and outside lawn area, and gravel parking spaces, which shall be to the east and south side of the building, which shall be called "leased premises." Use of parking spaces is non-exclusive and must conform to the Zoning Ordinance (2007), Herndon Town Code. Parking and outside lawn areas that are elements of the leased premises are also shown on Exhibit A.

THEREFORE, the parties agree as follows:

1. Commencement and Ending Date of Term. Beginning January 1, 2020, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may remain in the leased premises on a month-to-month basis 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 30 days prior written notice to the Tenant. In any event, the term of this lease shall expire December 31, 2020. If the Lease is terminated due to redevelopment of the land

at 750 Center Street, Herndon, VA, Landlord shall give ample time to Tenant to remove itself from the facility. In the event of Town's redevelopment of the land at 750 Center Street, the parties understand that Landlord will terminate this lease. This last sentence clarifies, not limits, the parties' agreement as set out in this paragraph.

2. Rent. Tenant shall pay Landlord on demand \$200 per month on the first day of each calendar month rent beginning January 1, 2020.

3. Use of Premises. Tenant shall use the leased premises solely for a cultural arts center including an art gallery, meetings with artists, small group sessions with artists and the public, art classes, and artistic events. Tenant may also make all or part of the leased premises available for public or private meetings or public or private events for a fee (except as provided below), when Tenant is not using all or part of the leased premises. Subject to availability (as determined by Tenant), Tenant shall permit Landlord to use rent free the interior of the leased premises for Landlord sponsored community meetings for up to four days or part thereof per calendar year, a value of \$1,400 per calendar year. Tenant certifies to Landlord that such internal and external uses are consistent with the Town of Herndon Zoning Ordinance and architectural guidelines or ordinances of the Herndon Town Code. Tenant on at least 30 days notice from Landlord shall accommodate its exterior use of the leased premises to Landlord's predominant use of this exterior space for the yearly Herndon Festival or other periodic or unique festivals, events, or activities. Tenant shall provide janitorial service to the leased premises. Landlord shall mow the yard space surrounding the leased premises and the building. Tenant shall maintain other landscaping (approved by Landlord) on the Center Street exterior facade of the building. Landlord shall provide a physical separation structure or device between the leased premises and Landlord's remaining space in the building.

4. Utility Charges. Tenant shall maintain and pay the cost of all utilities (including telecommunications) on the leased premises. Landlord shall equitably prorate these costs based on building square footage (except telecommunications), advise Tenant quarterly of Tenant's prorata share of these costs (except telecommunications), and then settle up fairly with Tenant on the costs of these utilities, which Tenant shall pay on demand to Landlord.

5. Liability Insurance. Tenant shall keep in effect a policy of bodily injury and property damage liability insurance with respect to the leased premises in commercially reasonable amounts, as determined by Landlord. The policy shall name the Landlord 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, including reasonable attorney's fees, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises, or the occupancy or use by Tenant or its subtenants of the leased premises or any part thereof.

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

10. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any 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 13, Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

11. 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.

12. 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. With Town eventual approval of plans (both as a government and as Landlord), Tenant at its expense may make other changes to the leased premises consistent with the purposes of this lease.

13. 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. 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.

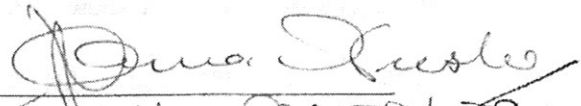
17. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease, except as provided in paragraph 13, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

18. Assignment and Subletting. Except as provided in paragraph 3, 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.

ARTS HERNDON, INC.

By: 

Name: JOANNA ORMESHER

Title: PRESIDENT & CEO

TOWN OF HERNDON, VIRGINIA

By: _____

Lisa C. Merkel

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesia J. Yeatts
Town Attorney

Not legally
Approved

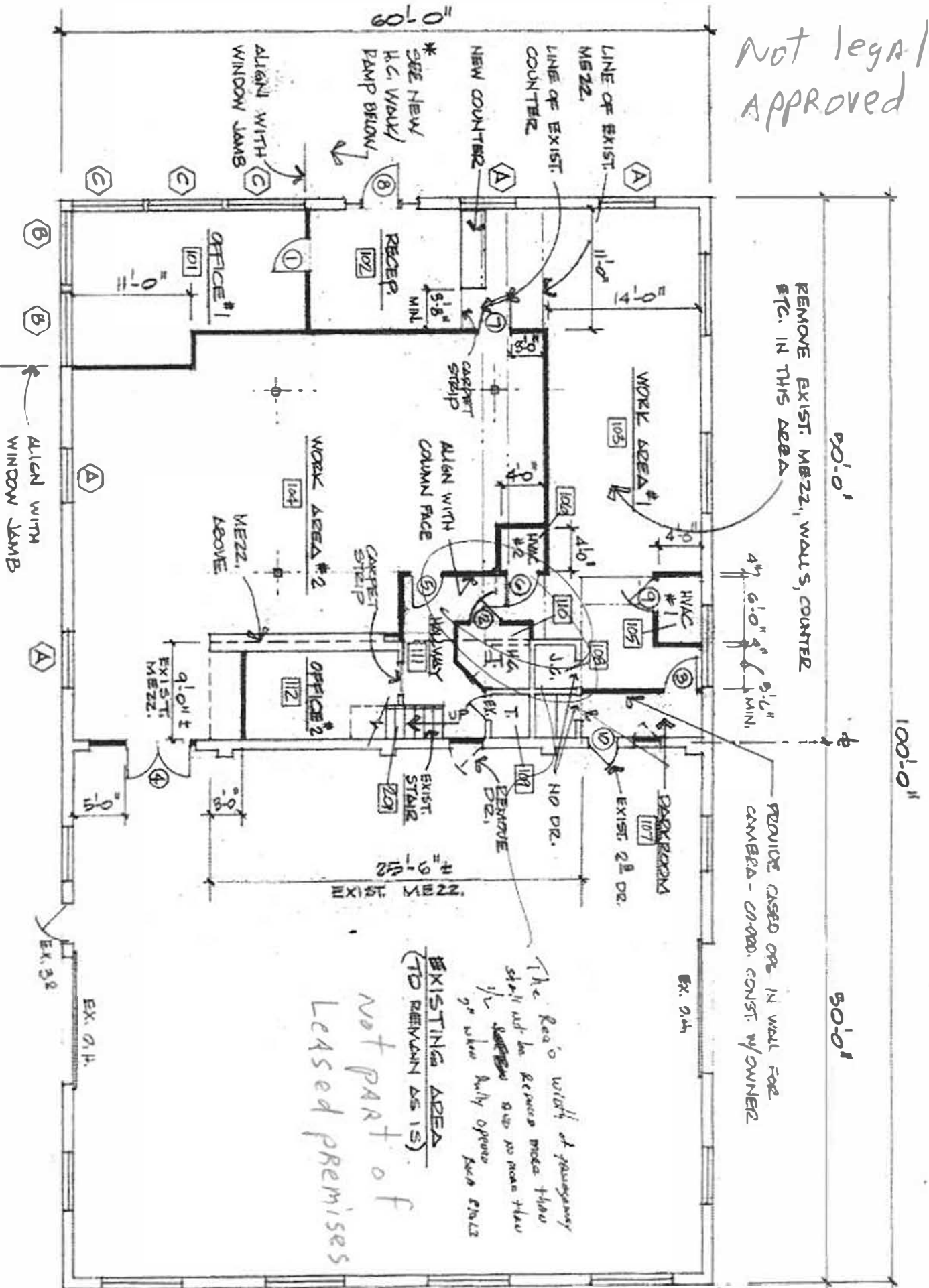


Exhibit A

Legally incomplete.

STAFF REPORT

Town Council
December 3, 2019

Title:

Ordinance - Approving and authorizing the Mayor to sign a Lease Agreement between the Town and Delegate Samirah for space at 397 Herndon Parkway

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 Delegate Samirah and a draft approving ordinance for consideration.

To be consistent with the Delegate's term, this lease expires on December 31, 2021. The rent for this space would be \$1.00 per year, consistent with leases for office space at Town Hall for the former Delegate Boysko and Delegate Samirah's current rent for this 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:

A handwritten signature in cursive script, reading "Lesa J. Yeatts".

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

December 10, 2019

**Ordinance- Ordinance - Approving and authorizing the Mayor to sign a
Lease Agreement between the Town and Delegate Samirah
for space at 397 Herndon Parkway**

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

1. The Town Council approves a lease dated December 10, 2019 by which the Town would lease to Delegate Ibraheem Samirah, 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 January 1, 2020 through December 31, 2021. 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 10th day of December 2019, by and between the TOWN OF HERNDON, a municipal corporation (Landlord) and the Honorable IBRAHEEM SAMIRAH, Member of the House of Delegates (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 January 1, 2020, 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 December 31, 2021.

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 an office for constituent services. 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.



Ibraheem Samirah
Member House of Delegates

TOWN OF HERNDON, VIRGINIA

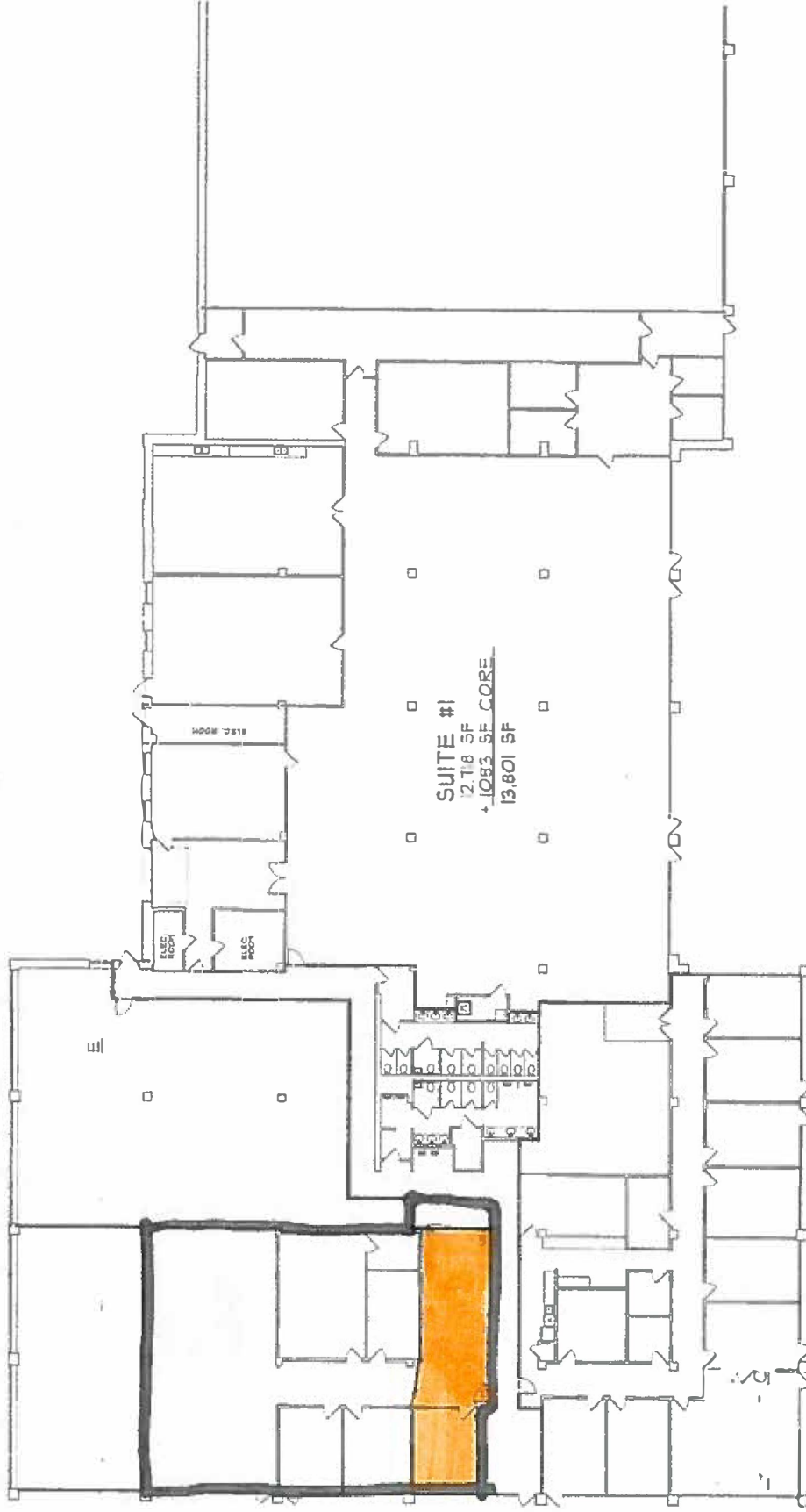
By: _____
Lisa C. Merkel
Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesa J. Yeatts
Town Attorney



BUILDING S.F. = 27,479

BASE BUILDING 397 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'

STAFF REPORT

Town Council
December 3, 2019

Title:

Ordinance approving and authorizing the Mayor to sign a Third Lease Amendment between the Town and Evince Analytics, Inc., for space at 397 Herndon Parkway.

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 Evince Analytics, Inc. and a draft approving ordinance for consideration.

Evince Analytics, Inc. is currently party to a month-to-month lease with the Town.

The proposed lease is for a one-year term and would expire on December 31, 2020. Square footage is reduced from 4,512 sq. ft. to 3,512 sq. ft. The rent for this space would be \$5,000 per month.

Fiscal Impact:

Rent is reduced from \$7,917.60 per month to \$5,000 per month.

Staff Recommendation:

The Mayor and Town Council adopt the attached ordinance.

Attachments:

1. Draft Ordinance
2. Lease
3. Exhibit A

Prepared and Approved by:

A handwritten signature in cursive script, reading "Lesa J. Yeatts".

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

December 10, 2019

Ordinance - Approving and authorizing the Mayor to sign a Third Lease Amendment between the Town and Evince Analytics, Inc., for space at 397 Herndon Parkway.

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

1. The Town Council approves a lease dated December 10, 2019 by which the Town would lease to Evince Analytics, Inc., space in the Town's building at 397 Herndon Parkway, Herndon, Virginia. The rent shall be \$5,000 per month. The term shall be from January 1, 2020 through December 31, 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.

THIRD LEASE AMENDMENT

This third lease amendment dated December 10, 2019 between the Town of Herndon, Virginia ("Landlord") and Evince Analytics, Inc., a Virginia corporation ("Tenant").

PROVIDES

In consideration of the rent paid to Landlord and the leased space provided to Tenant, the parties agree that:

1. Effective January 1, 2020, the lease dated September 18, 2012, as amended June 8, 2013, as amended July 11, 2017 is amended and confirmed, with necessary changes. The term of this lease will be for 1-year, beginning January 1, 2020 and expiring December 31, 2020.
2. Effective January 1, 2020, rent shall be \$5,000 per month due on the first day of each calendar month.
3. Square footage is reduced from 4,512 sq. ft. to 3,512 sq. ft.
4. Exhibit A is deleted in its entirety and replaced with Exhibit A dated December 10, 2019 attached hereto and incorporated herein.
5. In all other respects the lease dated September 18, 2012 as amended June 8, 2013, as amended July 11, 2017 is confirmed.

EVINCE ANALYTICS, INC.

By: _____
Name: _____
Title: _____

Additional signatures on following page

TOWN OF HERNDON, VIRGINIA

By: _____
Lisa C. Merkel
Mayor

ATTEST:

Town Clerk

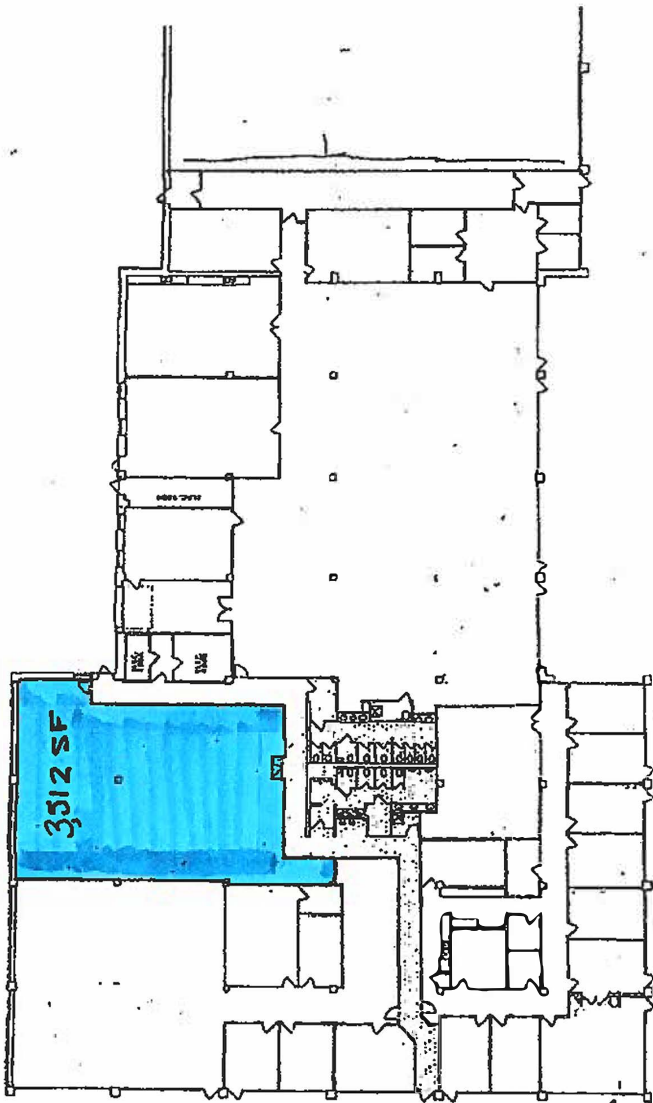
APPROVED AS TO FORM:

Lesa J. Yeatts
Town Attorney

DECEMBER 10, 2019

EXHIBIT A

Floor Plans



BUILDING S.F. = 21,479

BASE BUILDING 397 HERNDON PARKWAY HERNDON, VIRGINIA 20170	Arencibia Architects Inc. 703-733-0190 13348 POINT RIDER LANE, HERNDON, VA. 20171	SCALE 1" = 30'
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STAFF REPORT

Town Council Work Session December 3, 2019

Title:

RESOLUTION – to approve and authorize the Mayor to sign a second amendment to the Pilot Project Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town of Herndon, Virginia (Resolution 18-G-31) adopted on June 12, 2018, to extend the project termination date.

Staff Contact:

Lesa J. Yeatts, Town Attorney
(703) 435-6800 x 2140
Lesa.Yeatts@herndon-va.gov

Summary:

In June 2018, the town entered into a Pilot Project Agreement with Vivacity DC, Inc. to explore and evaluate the impact of smart city technologies and services through the installation of remote-controlled LED lights equipped with radio communications and Internet-of-Things (IoT) sensor equipment in downtown Herndon.

Due to unexpected project challenges, Vivacity requests extension of the agreement termination date from June 30, 2021 to December 31, 2021.

Fiscal Impact:

None.

Staff Recommendation:

Staff recommends that the Town Council approve the draft Resolution

Attachments:

1. Resolution
2. Proposed Amended Vivacity Pilot Project Agreement

Prepared and Approved by:

A handwritten signature in black ink, reading "Lesa J. Yeatts". The signature is written in a cursive, flowing style.

Lesa J. Yeatts
Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 10, 2019

Resolution- to approve and authorize the Mayor to sign a second amendment to the Pilot Project Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town of Herndon, Virginia (Resolution 18-G-31) adopted on June 12, 2018, to extend the project termination date.

WHEREAS, the parties have entered into a Pilot Project Agreement dated June 12, 2018 and amended December 11, 2018 and December 10, 2019 for the installation of equipment and facilities and provision of services to the Town and its inhabitants, and

WHEREAS, Vivacity DC, Inc., a Delaware corporation was converted to a Delaware limited liability company and renamed Vivacity Networks LLC on August 31, 2019; and

WHEREAS, the Town of Herndon and Vivacity Networks LLC (formerly Vivacity DC, Inc.), desire to amend the Pilot Project Agreement to extend the agreement termination date to December 31, 2021.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that the Mayor of the Town of Herndon, Virginia, is authorized to sign and deliver this second amendment on such form approved by the Town Attorney and any other instrument necessary to evidence or effectuate this agreement.

STAFF REPORT

Town Council

December 3, 2019

RESOLUTION – to approve and authorize the Mayor to sign an amendment to the License Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town of Herndon, Virginia, dated June 30, 2019, to include EV Charging stations and related equipment.

Staff Contact:

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

Description:

This Resolution will authorize amendment of the License Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town and authorize the Mayor to sign the First Amendment to the License Agreement and any associated documents.

Summary:

The Town and Vivacity Networks, LLC (formerly Vivacity DC, Inc.), entered into a license agreement dated June 30, 2019 for the use of designated public property and public right-of-way.

This first amendment will include an electric vehicle charging station (as depicted on the recently approved Revised Site Plan TPR 19-10), and associated additional network and electronic equipment required to operate the fiber, WiFi and smart city functionality located in the Herndon Municipal Center and the municipal parking lot off Station and Lynn Streets not depicted on the site plan TP 19-02 or TPR 19-10.

Fiscal Impact:

None

Staff Recommendation:

Staff recommends that the Town Council approve the draft Resolution.

Attachments:

1. Proposed License Agreement Amendment
2. Exhibit A
3. Resolution

A handwritten signature in black ink, reading "Lesa J. Yeatts". The signature is written in a cursive, flowing style.

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 10, 2019

Resolution - to approve and authorize the Mayor to sign an amendment to the License Agreement between Vivacity Networks, LLC (formerly Vivacity DC, Inc.) and the Town of Herndon, Virginia, dated June 30, 2019, to include EV Charging stations and related equipment.

WHEREAS, the parties entered into a License Agreement dated June 30, 2019 for the use of designated public property and public right-of-way, and

WHEREAS, Vivacity DC, Inc., a Delaware corporation was converted to a Delaware limited liability company and renamed Vivacity Networks LLC on August 31, 2019; and

WHEREAS, the Town of Herndon and Vivacity Networks LLC (formerly Vivacity DC, Inc.), desire to amend the License Agreement to include an electric vehicle charging station and associated additional network and electronic equipment to operate the fiber, WiFi and smart city functionality located on public property or right-of-way of the Town.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that the Mayor of the Town of Herndon, Virginia, is authorized to sign and deliver this first amendment on such form approved by the Town Attorney and any other instrument necessary to evidence or effectuate this agreement.

FIRST AMENDMENT TO VIVACITY NONEXCLUSIVE LICENSE

THIS FIRST AMENDMENT dated this ____ day of _____, 2019 is hereby made to the License dated June 30, 2019 by and between the Town of Herndon, a Virginia municipal corporation (Town) and Vivacity Networks, LLC, a Delaware limited liability company, the successor to Vivacity DC, Inc. (“Vivacity”) a Delaware corporation.

WHEREAS, the parties have entered into a Pilot Project Agreement dated June 12, 2018 and amended December 11, 2018 and December 10, 2019 for the installation of equipment and facilities and provision of services to the Town and its inhabitants, and

WHEREAS, the parties have entered into a Nonexclusive License dated June 30, 2019 for the use of designated public property and public right-of-way, and

WHEREAS, Vivacity DC, Inc., a Delaware corporation was converted to a Delaware limited liability company and renamed Vivacity Networks, LLC on August 31, 2019; and

WHEREAS, Vivacity has received approval of an amendment to site plan TP R 19-10 and now desires the Town approve the use of additional Property of the Town to install and maintain facilities as specified in TP R 19-10, as amended, and the License, and

WHEREAS, this First Amendment is not a grant of any special private privilege or sale of public property; the parties hereby agree to the following terms and conditions:

1. The Pilot Project Agreement, as amended, and the License are assigned to Vivacity Networks, LLC, as the successor to Vivacity DC, Inc.

2. All facilities and equipment to be placed and constructed for the installation and operation of a ChargePoint CT4021-GW1 electric vehicle charging station as authorized by this First Amendment shall be located in accordance with the amendment drawings to site plan TP R 19-10 (Exhibit A), attached and incorporated by reference. The electric vehicle charging station shall be owned and maintained by ChargePoint under an agreement with Vivacity for a two-year period.

3. Power to the electric vehicle charging station will be provided from an additional breaker to be installed in the existing Town panel “PL” located in the sump pump room at the Herndon Municipal Center. On a monthly basis, Vivacity will send a statement to the Town with the kwh used by the electric vehicle charging station. To align with the town’s billing cycle with the utility provider, kwh readings will be as of the 21st of each month. The monthly usage statement will include a statement certifying data accuracy. The Town will then invoice Vivacity for that amount of power at the same rate it pays the electric utility provider. Vivacity will pay such invoice within thirty (30) days of receipt. Vivacity hereby certifies that the meter used to monitor kwh usage conforms to the metering accuracy requirements of NIST Handbook 44 (2016), Section 3.40 and will notify the Town in writing if the meter is recalibrated.

4. Users of the electric vehicle charging station will be charged a fee based on the amount of power used during their session. Vivacity shall set the rates based on the local market and recovery of its costs. Vivacity represents that ChargePoint will provide all customer service and billing to users of the electric vehicle charging station.

5. Additional network and electronic equipment required to operate the fiber, WiFi and smart city functionality located in the Herndon Municipal Center and not depicted on TP

R-19-10 is hereby authorized by this License. Vivacity owns this equipment and is responsible for its maintenance. In order to do so, the Town will provide access when requested by Vivacity.

6. The new trash and recycling receptacles to be installed near pole locations L1 and C9 on concrete pads per Town specifications are hereby authorized by this License. The concrete pads were not depicted on any site plan.

7. The term of the license shall not in any event extend beyond December 31, 2021.

8. Except as specifically amended or modified herein, the terms and conditions of the License will remain in full force and effect.

Vivacity Networks, LLC

By:

Authorized Representative

Name: Danny Bottoms

Title: President & CEO

Date:

TOWN OF HERNDON,
VIRGINIA

By:

Name: Lisa C. Merkel

Title: Mayor

ATTEST:

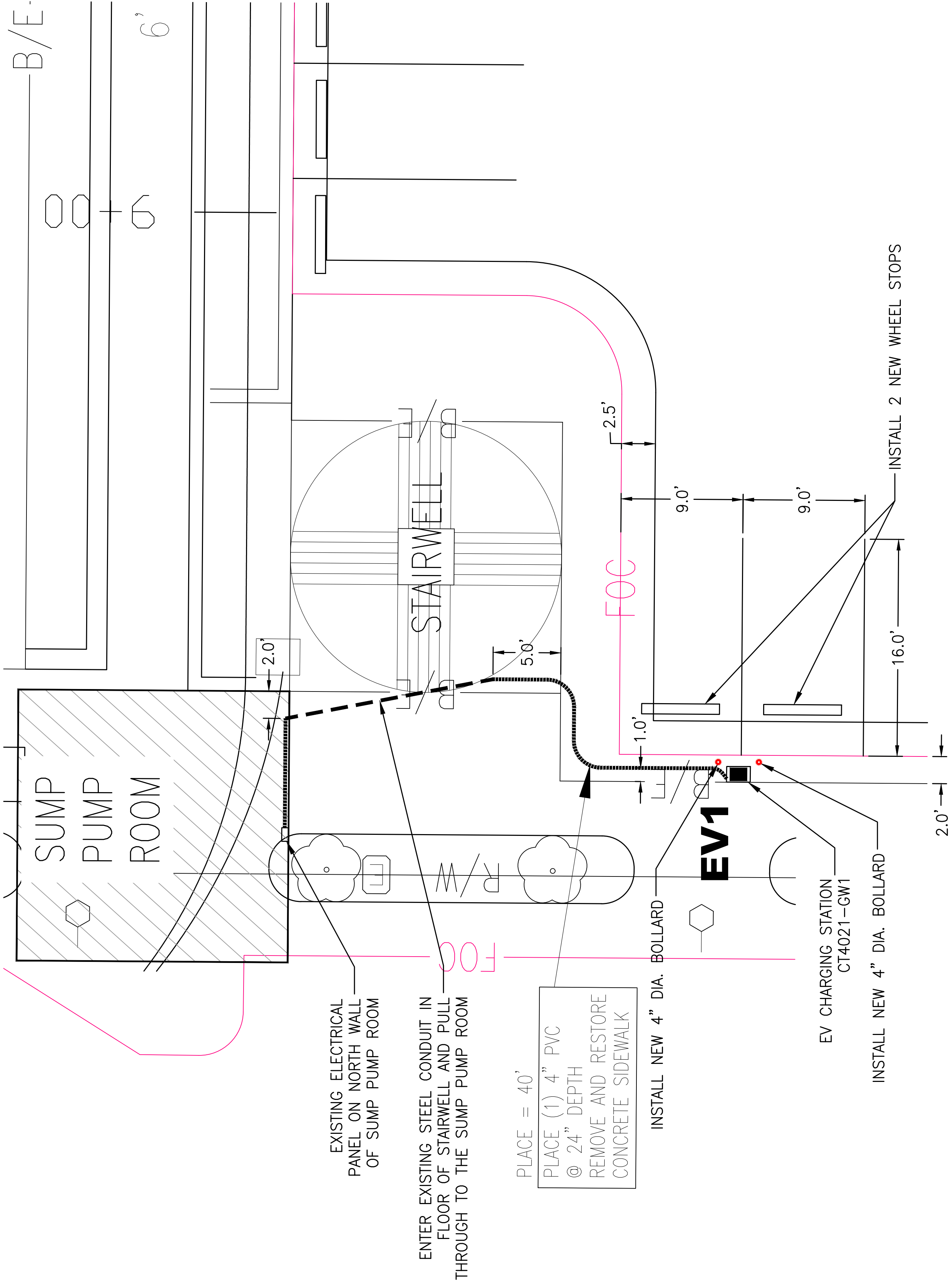
Town Clerk

APPROVED AS TO FORM:

Town Attorney

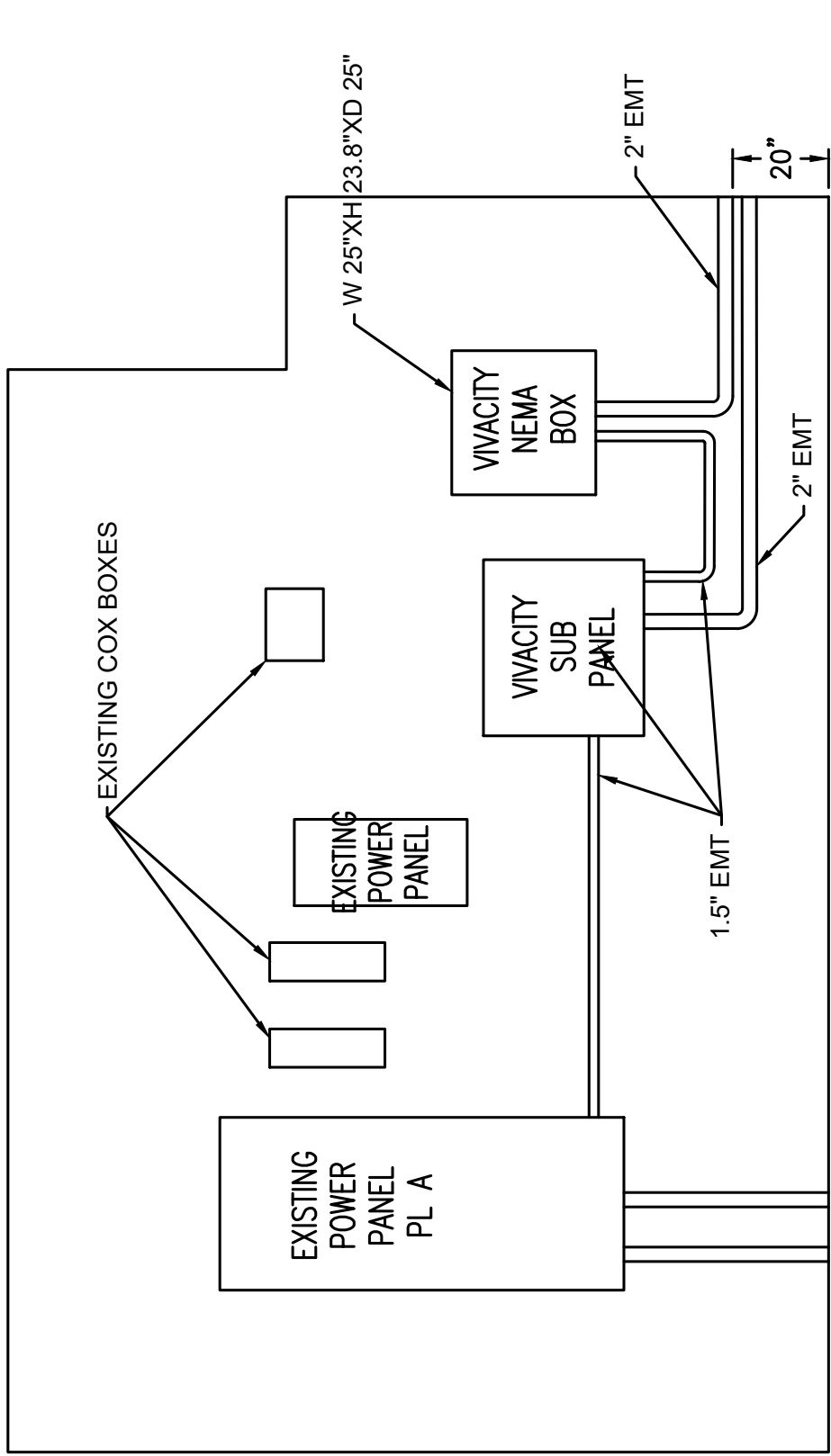
EXHIBIT A
Amendment to Site Plan TP R 19-10

28" CULVE
47" D

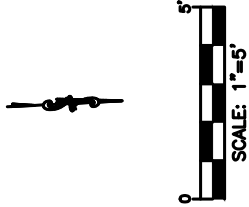


LEGEND

- FIBER RUNNING LINE
- EXISTING LIGHT POLE
- RETROFIT EXISTING POLE WITH LED ACORN FIXTURE
- INSTALL NEW POLE ON SPREAD FOUNDATION WITH LED PENDANT STYLE SMART POLE
- INSTALL NEW POLE ON DRILLED CAISON FOUNDATION WITH LED PENDANT STYLE SMART POLE
- INSTALL CAMERA AND ANTENNA ON EXISTING TRAFFIC SIGNAL POLE
- BOLLARD (6" SPACING ON CENTER)
- 4" PVC CONDUIT SCHEDULE 40
- 4" AND 1" PVC ELECTRICAL CONDUIT SCHEDULE 40
- 2" PVC ELECTRICAL CONDUIT SCHEDULE 40
- 2" HDPE ELECTRICAL CONDUITS SCHEDULE 40
- 2" EMT ELECTRICAL CONDUITS
- SYNDEO BOX (UNDERGROUND) - 50" X 50" OR 50" X 31"
- TRASH RECEPTACLE (FOR VENTING)
- RECYCLE RECEPTACLE
- GEO THERMAL WELL
- 12" X 12" HANDHOLE
- REMOVE / RESET BRICK SIDEWALK
- FLOWABLE FILL
- REMOVE / RESET LANDSCAPING
- SOD



ELEVATION VIEW LOOKING AT NORTH WALL OF SUMP PUMP ROOM



CT4000 Level 2 Commercial Charging Station

Ordering Information

Hardware

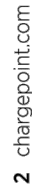
Note: All CT4000 stations include Integral Modem -G'WL

*Substitute *n* for desired years (1, 2, 3, 4, or 5 years).

If ordering this	the order code is
1830 mm (6 ft) Dual Port Ballast Networked Station with Concrete-Mounting Kit	CT4001-GW
1830 mm (6 ft) Single Port Ballast Networked Station with Concrete-Mounting Kit	CT4001-GW
3 Year Assure Commercial Service Plan, ChargePort Station Installation and Validation	CPLD-COMMERCIAL-5
ChargePort Station Installation and Validation	CT4000-INSTALL-5
3 Years of Assure Coverage	CT4000-ASSURES
1830 mm (6 ft) Single Port Wall Mount Networked Station	CT4013-GW
ChargePort Commercial Service Plan, 5 Year Subscription	CPLD-COMMERCIAL-5
3 Years of Assure Coverage	CT4000-ASSURES
Station Activation and Configuration	CPSUPPORT-ACTIVE



CT4021 1830 mm (6')
CT4025 2440 mm (8')
Bollard



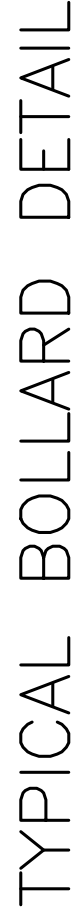
Safety and Connectivity Features

Electrical Input

Electrical Output	
Standard	72 kW (240V AC @ 30A)
Standard Power Share	n/a
Power Select 24A	5.8 kW (240V AC @ 24A)
Power Select 34A Power Share	n/a
Power Select 16A	3.8 kW (240V AC @ 16A)
Power Select 24A Power Share	n/a

Connector(s) Type	SAE J1772™	SAE J1772™ x 2
Cable Length - 180 mm (6 ft)	5.5 m (18 ft)	5.5 m (18 ft) x 2
Cable Management		
Cable Length - 2440 mm (8 ft)	n/a	7 m (23 ft)
Cable Management		
Overhead Cable Management System	Yes	
LCD Display		
Card Reader	145 mm (5.7 in) full color 640 x 480, 30 fps full motion video, active matrix, UV protected	
Loading Hoister	Yes	Yes x 2
		ISO 15693, ISO 14443, NFC

CHARGING STATION



UL US
Listed by Underwriters Laboratories Inc.

chargepoint.
ChargePoint, Inc.
240 East Hacienda Avenue
Campbell, CA 95008-6617 USA
+1.408.841.4500 or
+1.877.570.3802 US and Canada toll-free
chargepoint.com

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 10, 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 FY2015 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 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.

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.



STAFF REPORT

Town Council

December 3, 2019

Title:

Resolution authorizing two applications to the Regional Jurisdiction and Agency Coordinating Committee (RJACC) of the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) funding for Federal fiscal year 2026 and to endorse the town's transportation projects of the adopted Virginia Department of Transportation Six-Year Improvement Program for fiscal years 2020 through 2025.

Staff Contact:

Mark Duceman, AICP - Transportation Program Manager/Senior Planner

E-mail: mark.duceman@herndon-va.gov

Jaleh Moslehi, PE - Capital Projects Planner/Engineer

E-mail: Jaleh.moslehi@herndon-va.gov

Summary:

A resolution directing staff to submit two project applications to the Regional Jurisdiction and Agency Coordinating Committee (RJACC) of the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) funding for Federal fiscal year 2026 (Attachment #1). Staff is proposing to submit one RSTP application and one CMAQ application to the NVTA-RJACC. The deadline for application submittals is December 13, 2019. The proposed projects and respective funding requests are listed below, and project details are provided on the following pages.

RSTP Proposed Project (funding criteria: roadway projects that improve the region's transportation network)

- **East Elden Street Improvements and Widening (CIP #12)**
 - funding application request up to: \$2,200,000

CMAQ Proposed Project (funding criteria: advancing cost-effective transportation projects that improve air quality for regional benefit)

- **Herndon Metrorail Intermodal Access Improvements - II (CIP #13)**
- funding application request up to: \$700,000

Project Description (RSTP):

East Elden Street Improvements and Widening (Fairfax County Parkway to Monroe Street): This project is a long-term RSTP application funding effort, whereby an RSTP application should be submitted every year to NVTA until applicable funding enables the project to be completed. This multi-modal roadway improvement project has several town approved resolutions and is listed in the town's 2030 Comprehensive Plan and FY2020-2025 Capital Improvement Program as well as VDOT's Six-Year Improvement Plan.

During year 1999 a conceptual design for this project was completed and approved by Town Council. Town Council adopted a Programming Resolution on July 18, 2000, requesting VDOT to establish this project. The proposed scope of this 0.9 mile VDOT administered project is to upgrade East Elden Street with a landscaped median and appropriate turning lanes between Fairfax County Parkway and Herndon Parkway, continuing as a 4-lane section with a landscaped median and dedicated turning lanes between Herndon Parkway and Van Buren Street, and then transitioning to 2 lanes with a left-turn lane when reaching Monroe Street. The project includes the undergrounding of utilities, intersection signalization improvements, crosswalk enhancements with bike/pedestrian signalization and new sidewalk, street lighting and bus shelter facilities. On October 23, 2018, the Town Council provided final engineering design guidance and confirmation to VDOT for the project to include bike lanes, cycle tracks and to provide an upgraded bridge design to address intermittent, localized flooding of Sugarland Run onto the roadway.

According to VDOT's Six-Year Plan, the town now has \$46.3 million accumulated through various funding sources to include previous allocations of Federal RSTP funding as well as State funding under VDOT's Smart-Scale program and NVTA's HB-2313 Regional 70% program. The engineering design is now complete, the right-of-way phase is now underway and the construction phase is scheduled for 2023-2024. However, this year, the East Elden Street project has increased to \$50.7M resulting in a funding gap of \$4.4M. Accordingly, earlier this year, the town applied under VDOT's Revenue Sharing (50% State /50% Local) program to cover the project's funding gap (ie. \$2.2M State share and \$2.2M town's local share). The Commonwealth Transportation Board will announce successful project funding allocations for Revenue Sharing next year during March 2020.

This year's FY26 RSTP funding request of up to \$2,200,000 is to respond to the construction cost increase while also lowering the town's funding share obligation to the East Elden Street project.

Project Description (CMAQ):

Herndon Metrorail Intermodal Access Improvements-II: The purpose of this project is to improve and enhance intermodal connections for drivers, transit users, pedestrians and bicyclists to access the town's northside area of the future Herndon Metrorail Station. This project will accommodate vehicles, taxis and buses to pull off from the Herndon Parkway. The proposed scope is to include roadway, pedestrian, bike and transit enhancements that will serve transit-oriented development along Herndon Parkway from Van Buren Street to Spring Street. Conceptual plans show bus bays (temporary bus loading and unloading areas), streetlights, bus shelters, traffic signalization as well as costs associated with relocating underground utilities. The bus bays will provide access via a sidewalk to the northside pedestrian entrance facility of the Herndon Metrorail Station.

The initial phase of this project is fully funded and is comprised of Federal CMAQ funds and State HB-2313 regional funds as listed in the town's adopted FY2020-FY2025 Capital Improvement Program (CIP #13). For this year's CMAQ funding request, town staff is proposing a funding application amount of up to \$700,000 for fiscal year 2026 to be directed towards those improvements that may be needed beyond the initial improvements and after the opening of Dulles Metrorail. Additional CMAQ funding is anticipated for intersection signalization and safety enhancements, pedestrian/bike signalization, street lighting, ADA sidewalks and curbing, refuge median islands, cycle tracks, trail connectivity and/or bus shelter facilities along Herndon Parkway between Van Buren Street and Spring Street, as redevelopment occurs in the area.

Recommendation:

Approve the draft Resolution dated (Attachment 1) which authorizes the FY2026 RSTP/CMAQ funding applications and endorses the town's transportation projects of the adopted FY20-25 VDOT Six-Year Transportation Improvement Program. The FY2026 RSTP/CMAQ applications seek Federal funds as an alternative to the use of town general funds for capital improvement projects.

Staff Comments:

Each of the town's 2 projects proposed for RSTP/CMAQ funding are listed in the town's FY2020-FY2025 Capital Improvement Program as well as the 2030 Comprehensive Plan, as amended through February 26, 2019. Each of the town's

proposed projects for RSTP/CMAQ funding are also listed in regional documents to include VDOT Six-Year Improvement Program and National Capital Region - Transportation Planning Board (TPB) Constrained Long-Range Plan.

Federal RSTP/CMAQ transportation funding is distributed to each state and then onto regions within each state based on population. Regional organizations are responsible for selecting specific projects for funding. In Northern Virginia, the Northern Virginia Transportation Authority - Regional Jurisdiction Agency Coordinating Committee (NVTA-RJACC) recommends applicable RSTP/CMAQ transportation projects to the NVTA Board. Next, the project allocations are forwarded to the Virginia Commonwealth Transportation Board (CTB) for final approval into the VDOT Six-Year Improvement Program adopted each year in June. There is no guarantee from year to year that any projects funded in the past will continue to be funded.

The attached resolution authorizes the submittal of two project applications to the NVTA - RJACC for RSTP and CMAQ funding for Federal fiscal year 2026. And, the resolution endorses the town's transportation projects for the Urban system component of the adopted VDOT Six-Year Improvement Program for fiscal years 2020-2025.

Attached Document:

Town Council Draft Resolution (dated December 10, 2019) authorizing two applications to NVTA to include one FY26 RSTP application for the *'East Elden Street Improvements and Widening'* (UPC 50100) project and one FY26 CMAQ application for the *'Herndon Metrorail Intermodal Access Improvements-II'* (UPC 106986) project for Federal transportation funding.

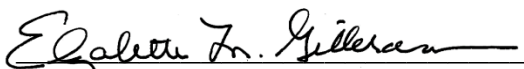
Staff:



Jaleh Moslehi, PE
Capital Projects Planner/Engineer



Mark Duceman, AICP
Transportation Program Manager



Elizabeth M. Gilleran, AICP
Director of Community Development

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 10, 2019

Resolution- Authorizing two applications to the Northern Virginia Transportation Authority (NVTA) for Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) funding for Federal fiscal year 2026 and to endorse project priorities of the Virginia Department of Transportation (VDOT) Six-Year Improvement Program for fiscal years 2020 through 2025.

WHEREAS, the town's RSTP project priority, titled '*East Elden Street Improvements and Widening*' (UPC 50100), is supported by the Northern Virginia Transportation Authority (NVTA), the Transportation Planning Board of the Metropolitan Washington Council of Governments, and the Commonwealth Transportation Board of Virginia; and

WHEREAS, the East Elden Street project is included in VDOT's Six-Year Improvement Program and Washington Council of Governments - Transportation Planning Board's Constrained Long Range Plan; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008 and as amended through February 26, 2019, advises the improvement of East Elden Street; and

WHEREAS, on October 13, 1998, the Town Council adopted a resolution to provide guidance on the design for improvements to East Elden Street, between the eastern town line and the Monroe Street intersection; and

WHEREAS, on October 23, 2018, the Town Council adopted a resolution to update the prior Town Council resolutions (dated March 18, 2014 and October 13, 1998) in order to provide final guidance on the engineering design of roadway improvements along Elden Street, between the eastern town line and Monroe Street, to include bike lanes, cycle tracks and to address intermittent, localized flooding of Sugarland Run onto the roadway; and

WHEREAS, the town's CMAQ project priority is titled '*Herndon Metrorail Intermodal Access Improvements II*' (UPC 106986) for roadway, pedestrian, bike and transit enhancements that will serve transit-oriented development along Herndon Parkway; and

WHEREAS, the Herndon Metrorail Intermodal Access project is included in VDOT's Six-Year Improvement Program and Washington Council of Governments - Transportation Planning Board's Constrained Long Range Plan; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008 and as amended through February 26, 2019, promotes the goal of facilitating alternative modes of transportation within the town; and

WHEREAS, conceptual plans, prepared by the town's transportation consultant Rummel, Klepper & Kahl (RK&K) consultants show vehicle and bus pull-off bays as well as traffic signalization, streetlights, bus shelters and intersection enhancements such as pedestrian signalization and paver crosswalks; and

WHEREAS, the vehicle / bus bays will provide access, via a wide ADA accessible sidewalk with streetlights, to the pedestrian entrance facility of the Metrorail Station, as per approved Dulles Corridor Rapid Transit Project - final Environmental Impact Statement; and

WHEREAS, the project includes roadway reconstruction as well as costs associated with relocating existing curbing, streetlights, sidewalks and underground utilities in an effort to create better pedestrian and bicycle access to the pedestrian entrance facility located on the northside of the Herndon Metrorail Station; and

WHEREAS, improvements are needed beyond the initial phase to include signalization and intersection enhancements, ADA accessible wide paver crosswalks, street lighting, traffic and pedestrian/bike signalization, refuge median islands, cycle track and bus shelter/transit facilities along Herndon Parkway between Van Buren Street and Spring Street.

WHEREAS, the town's CMAQ project will improve and integrate pedestrian and bicycle facilities within the street and transit network in concert with the Trail and Sidewalk Program and other project components of the town's Capital Improvement Program involving transportation improvements; and

WHEREAS, the above capital improvement projects are both included in the town's amended 2030 Comprehensive Plan and the town's adopted FY2020-FY2025 Capital Improvement Program.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, does hereby authorize the Town Manager to submit two applications to the Northern Virginia Transportation Authority, through the Virginia Department of Transportation, for FY2026 Federal funding for the following projects:

- a) an allocation funding request of up to \$2,200,000 in Regional Surface Transportation Program (RSTP) funding for the *East Elden Street Improvements and Widening* project (Monroe Street to Fairfax County Parkway); and

- b) an allocation funding request of up to \$700,000 in Congestion Mitigation and Air Quality (CMAQ) funding for the *Herndon Metrorail Intermodal Access Improvements* project.

BE IT FURTHER RESOLVED that the Town Council continues to support the projects included in the state adopted FY2020-2025 Virginia Department of Transportation Six-Year Improvement Program, including East Elden Street Improvements and Widening (UPC 50100), East Spring Street Widening (UPC 105521), Herndon Metrorail Intermodal Access Improvements (UPC 104328, UPC 106986), Herndon Parkway and Van Buren Street Intersection Improvements (UPC 89889), Van Buren Street Multimodal Improvements (UPC 107658), Elden Street and Monroe Street Intersection Improvements (UPC 108690), and roadway paving maintenance, milling and overlay (UPC 106979, UPC 115302, UPC 115708) projects.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 10, 2019

Resolution- to reappoint Yung C. Kim to the Town of Herndon's Board of Zoning Appeals.

BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby reappoints **Yung C. Kim** to the Board of Zoning Appeals for a five-year term ending December 31, 2024.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 10, 2019

Resolution- to reappoint Randy Jaegle as the Town of Herndon member to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board.

BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby reappoints **Randy Jaegle** as the Town of Herndon member to the Phase II Dulles Rail Transportation Improvements Tax District Advisory Board, representing an “owner or representative of an owner of real property in the Phase II District zoned or used for commercial or industrial purposes” for a four-year term expiring January 31, 2024.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 10, 2019

Resolution- to appoint Erin Wolff as a “citizen” member to the Town Council’s Pedestrian and Bicycle Advisory Committee.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby appoints **Erin Wolff** as a “citizen” member to the Town Council’s Pedestrian and Bicycle Advisory Committee to fill an unexpired a two-year term ending December 31, 2020.



STAFF REPORT

Town Council

Date: December 3, 2019

Title:

Resolution – Award of Contract, Herndon Festival Carnival Operations -RFP 20-02

Staff Contact:

Cindy S. Roeder
Director, Parks and Recreation Department
703-435-6800 x2123
cindy.roeder@herndon-va.gov

Background:

A Request for Proposal was issued to obtain carnival operations for the Herndon Festival. Proposals were solicited for a base year and to provide for four, one-year, renewable options. A single proposal was received from Frank Joseph and Sons, Inc., dba Jolly Shows.

Three objectives were sought to be achieved as part of the proposal process:

1. Maintain the quality of the rides
2. Maintain reasonable prices for ride tickets
3. Maintain or improve current levels of revenue

An evaluation committee reviewed the proposal, evaluated the quality and capacity of the rides and ride prices, and considered the professionalism of the carnival operator. Based upon negotiations with the responsive vendor, the committee has arranged an agreement that provides for revenue sharing to the Town, based on the following percentages:

Carnival Rides (these percentages remain the same from the previous contract):

39%	1 st \$150,000 gross revenue
45%	\$150,000-200,000
50%	Above \$200,000

Games (this percentage was previously a flat 25%):

20%	1 st \$40,000
25%	Above \$40,000

Food Booth Fee: \$1,800 per booth (maximum of 4)

The carnival operation contractor shall provide a pre-ticket sales program and offer one-price/all-rides programs on Thursday night, Saturday from 10 a.m. -4 p.m. and Sunday. Individual ticket prices are proposed at \$1.50 per ticket, an increase of \$.25 over the previous year.

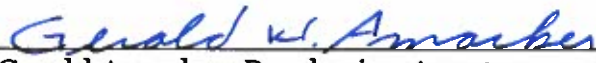
Fiscal Impact:

The carnival operation is a revenue benefit to the festival operation and maintains or exceeds current levels of revenue, based on previous festival operations.

Recommendation:

The staff recommends that the proposal be awarded to Frank Joseph and Sons, Inc, dba Jolly Shows, Inc., and that the Town Manager be authorized to enter into an annual contract to implement the carnival operation.

Reviewed By:


Gerald Amacker, Purchasing Agent

Staff:


Cindy S. Roeder, Director of Parks and Recreation

TOWN OF HERNDON, VIRGINIA

RESOLUTION

December 10, 2019

Resolution – Award of Contract-Herndon Festival Carnival Operation RFP 20-02

- WHEREAS,** the competitive negotiation process (request for proposal) was used to solicit offers from carnival operation contractors; and
- WHEREAS,** the request for proposal solicited services for an initial one (1) year contract (the 2020 Herndon Festival) with an option of four (4) one (1) year renewals; and
- WHEREAS,** the request for proposal was published on eVA for vendors to access it and a single offer was received from Frank Joseph and Sons, Inc dba Jolly Shows, Inc.; and
- WHEREAS,** an evaluation committee reviewed the proposal, evaluating quality and capacity of the rides, ride ticket prices, concession and games operation; and professionalism of the carnival operations; and
- WHEREAS,** based on the evaluation, negotiations were conducted with the responsive carnival operation vendor; and
- WHEREAS,** a favorable arrangement that maintains (1) the quality of rides, (2) reasonable prices for ride tickets, and (3) maintains or improve levels of revenue, was negotiated with Jolly Shows, Inc.; and
- WHEREAS,** the revenue share for the 2020 Herndon Festival will be:
- Carnival Rides:
 - 39 percent for the first \$150,000 of gross revenue
 - 45 percent of revenue from \$150,000 to \$200,000
 - 50 percent above \$200,000
 - Games:
 - 20 percent of the first \$40,000 of gross revenue
 - 25 percent of revenue above \$40,000
 - Food Booth:
 - \$1,800 fee for each food booth (maximum of 4); and
- WHEREAS,** single ticket prices will be one dollar and fifty cents per ticket, with multi-ticket discount booklets, a 10 percent presale discount and special all-you-can-ride passes; and

WHEREAS, the Herndon Festival carnival operation is a revenue source for the Town, that is used to offset in part the Department of Parks & Recreation operating expenditures for the festival.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, that an award of contract is granted to Frank Joseph and Sons, Inc dba Jolly Shows, Inc., for the 2020 Herndon Festival, and the contract may be renewed for up to four, one-year agreements.

BE IT FURTHER RESOLVED that the Town Manager, in conjunction with the Director of Parks & Recreation, may renew the contract on an annual basis to ensure that carnival operations are providing an appropriate revenue source to offset, in part, the Parks & Recreation Department's Herndon Festival operating expenses.