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HERNDON TOWN COUNCIL
Meeting Minutes
Tuesday, July 12, 2022

The Town Council met in public session on Tuesday, July 12, 2022, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Sheila A. Olem; Vice Mayor Cesar del Aguila; and Councilmembers Naila Alam, Pradip Dhakal, Signe Friedrichs, Sean M. Regan, and Jasbinder Singh.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Captain Steven Pihonak, Herndon Police; Lisa Gilleran, Director of Community Development; Scott Robinson, Director of Public Works; John Irish, Deputy Director of Public Works; Cindy Roeder, Director of Parks and Recreation; and Margie Tacci, Deputy Town Clerk.

CALL TO ORDER

1. Pledge of Allegiance

Mayor Olem led the Pledge of Allegiance.

2. Roll Call and Determination of Quorum

Mayor Olem called the meeting to order at 7:00 p.m. and asked the Deputy Town Clerk to call the roll for attendance. Following the roll call, Mayor Olem confirmed there was a quorum present.

Mayor Olem reminded those participating to follow the town's Meeting Guidelines that are used for all government meetings to maintain good order, which include: refrain from participation unless and until recognized by the chair; be respectful; refrain from threatening or intimidating language; profane, vulgar, obscene, or threatening remarks are not permitted; and attacks or other harmful are not tolerated.

**July 12, 2022
(public hearing)**

APPROVAL OF MINUTES

Vote on April 5, 2022

Town Council Work Session Minutes

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, and carried by unanimous roll call vote, the minutes of the April 5, 2022 Town Council Work Session were approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Vote on April 12, 2022

Town Council Public Hearing Minutes

On motion of Councilmember Dhakal, seconded by Councilmember Alam, and carried by unanimous roll call vote, the minutes of the April 12, 2022 Town Council Public Hearing were approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Vote on April 19, 2022

Town Council Work Session Minutes

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, and carried by unanimous roll call vote, the minutes of the April 19, 2022 Town Council Work Session were approved. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

COMMENTS

Mayor Olem stated that National Night Out is on August 2, and communities throughout Herndon will be celebrating with the Herndon Police Department, as well as with other public safety personnel from throughout the area. As a result, the Town Council has moved its work session from Tuesday, August 2, to Wednesday, August 3, 2022.

Mayor Olem shared that her grandchild is one week old, and she is very excited about being a grandparent.

3. Comments from the Town Manager

Mayor Olem recognized Town Manager William H. Ashton II for his comments.

Mr. Ashton reminded those present that the August work session has moved from Tuesday, August 2, 2022 to Wednesday, August 3, 2022. He further stated that the upcoming agenda will have a number of items and that one of the more significant items will be the Lerner Redevelopment in the Transit Oriented Core and recommended that members review the Planning Commission public hearings and associated materials and be prepared to have a substantive work session regarding this project.

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Mayor Olem stated that it is helpful to review the questions received at the Planning Commission meetings.

Councilmember Singh asked when the Planning Commission meeting was scheduled. Mr. Ashton stated that the items were discussed during the May and June Planning Commission meetings and that the meeting videos and materials are available on the Town's website.

4. Comments from the Town Council

Councilmember Alam: No comments.

Councilmember Dhakal: Stated that the fireworks were great and congratulated Parks and Recreation on the event.

Councilmember Friedrichs: Echoed Councilmember Dhakal and stated that July is Parks and Recreation Month in the Town of Herndon. She quoted a recent e-mail received from Parks and Recreation staff: "This month we are bringing attention to how important it is to rise up and support the field of Parks and Recreation, because everyday Parks and Recreation professionals rise up for their communities in service of equity, climate readiness, overall health and wellbeing." She thanked Parks and Recreation staff for the work they have been doing all summer, despite being down a number of employees. She further recognized the support Public Works employees have provided.

Councilmember Friedrichs announced that the Town has been approved for a \$4.5 million grant to assist in funding a project to alleviate congestion near the Herndon Metrorail Station. The project will include multimodal transportation facilities, walk/bike track, and other ways for people to get to metro without using their vehicles.

Options for Changing Town Elections

Councilmember Friedrichs requested that the Council consider waiting until the next term beginning in January 2023 to send to the General Assembly any recommendations for changes the Town's election cycles. Councilmember Friedrichs asked if she had the Council's concurrence on this request, or if they would rather discuss it at a work session.

Mayor Olem stated that due to the timing of the General Assembly, no changes could be made until the next term.

Councilmember Regan asked for confirmation that the action item coming out of the work session was to dedicate staff time towards researching the matter and potentially preparing draft language. Councilmember Friedrichs confirmed.

Councilmember Singh stated that he was in support of postponing the discussion to January.

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Councilmember Friedrichs stated that she recalls that staff was directed to draft language to present to the town's people that would create new staggered four-year terms. She further stated that there were two other options on the table that staff was not given direction on and requested that those two options be removed if Council was not going to act on those items.

Vice Mayor del Aguila requested clarification on the request. He stated that technically Council can have staff continue to work on the draft language, hold public hearings, and approve draft language. Vice Mayor del Aguila clarified that it is not that the current Town Council cannot take action, but that the request is to pull back and allow the next Council to continue the process.

Councilmember Singh stated that his preference is to wait until the next Town Council term in January.

Following discussion and with the concurrence of Council, Mayor Olem directed staff to disregard the direction received at the work session pertaining to elections at this time. Councilmember Friedrichs agreed that was what she was asking.

Ms. Yeatts stated that the next time something could be presented to the General Assembly would be December 2023.

Councilmember Regan: Expressed his appreciation to the Town Attorney for her thorough research on the elections matter and stated that he felt they were better educated on this issue because of the information she provided.

Councilmember Regan stated that there is an organization in Arlington called "Our Stomping Ground" that provides services to young adults with disabilities who are transitioning from being minors to becoming young adults living independently. They have a program to help place small numbers of adults with disabilities in market rate buildings and provide support to those individuals. He stated that it is his understanding that the development on the other side of the toll road has set aside a small number of units for this program. Our Stomping Ground is holding an information session on July 27, from 5:00 to 7:00 p.m. at Sorento Restaurant. Families with minors or young adults with disabilities that may be interested can register for the information session at ourstompingground.org

Councilmember Regan stated that through his work on the Committee for Dulles, he understands that the Dulles Toll Road is considering changing the rates and the method of tolling. There is a virtual information session currently in progress and an in-person information session scheduled for July 18, 2022 at the Dulles Marriott. He encouraged Herndon residents to attend.

Councilmember Singh: No comments.

Vice Mayor del Aguila: No comments.

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(public hearing)**

Mayor Olem: Echoed her colleagues' commendations to Parks and Recreation, Herndon Police Department, and Public Works for their work at the Town's July 4th event.

Mayor Olem stated she attended one of three Transit Related Growth (TRG) planning consultant meetings held at the end of June and commented that it was well worth attending to hear what the community had to say. She attended the meeting that included residents who were adjacent to the property and indicated that there was also a meeting held for businesses, and one for those who lived within a 15-minute walk from the property.

Mayor Olem stated the Herndon Swimming Olympics was held that morning on Hidden Brook Road for the area swim clubs. She noted that an Olympic Champion has participated in the event for the last 14 years.

Comments and Disclosures for the Record

Mayor Olem asked Margie Tacci, Deputy Town Clerk, if she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda. Ms. Tacci stated that the Clerk did not receive any comments for the record or disclosures from Council on any item listed on the agenda that evening.

5. Comments from the Audience

Mayor Olem reviewed the process for speaking and providing comments and called on those who wanted to provide Comments from the Audience to come forward.

The following individual came forward and provided comments:

- Jay Hadlock, 515 Alabama Drive, provided comments on traffic patterns related to Resolution 22-G-47, the Herndon Parkway Improvements at Worldgate Drive Extension project. Mr. Hadlock commented on the design of Van Buren work project.

PUBLIC HEARINGS

6. Ordinance 22-O-17, to approve the conveyance and assignment of easements to Washington Metropolitan Area Transit Authority (WMATA) for construction and maintenance of rail facility improvements associated with the Herndon Metrorail Station that is part of the Dulles Corridor Metrorail Project Phase 2

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing items had been duly advertised in the Friday, June 24, and July 1, 2022 issues.

Mayor Olem opened the public hearing.

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Mayor Olem called on John Irish, Deputy Public Works Director, who presented the staff report and PowerPoint dated July 12, 2022. The proposed ordinance would approve the conveyance and assignment of easements to Washington Metropolitan Area Transit Authority (WMATA) for construction and maintenance of rail facility improvements associated with the Herndon Metrorail Station that is part of the Dulles Corridor Metrorail Project Phase 2.

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

Councilmember Regan asked what limitations the Town may face in granting an easement regarding a future promenade and community programming in this area. Mr. Irish stated that the limits would be in respect to WMATA's access to maintain the utilities within the easement. He further stated that the Deed of Easement will outline those limitations.

There was brief discussion amongst Council and staff regarding the inclusion of bike lockers at the metro station and lack of coverage over the pathway to protect users from the elements.

Seeing no comments from the audience, Mayor Olem closed the public hearing and moved to Council level for discussion and action.

Councilmember Dhakal moved approval Ordinance 22-O-17, to approve the conveyance and assignment of easements to Washington Metropolitan Area Transit Authority (WMATA) for construction and maintenance of rail facility improvements associated with the Herndon Metrorail Station that is part of the Dulles Corridor Metrorail Project Phase 2 and to authorize the Mayor to sign and deliver the Deed of Easement and Assignment of Easements (Silver Line – Herndon Station) and associated instruments necessary to evidence, effect, and correct this deed, as presented.

Motion seconded by Vice Mayor del Aguila.

There were brief comments from Council.

The question was called on the motion, which carried by unanimous roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Ordinance 22-o-17, to approve the conveyance and assignment of easements to Washington Metropolitan Area Transit Authority (WMATA) for construction and maintenance of rail facility improvements associated with the Herndon Metrorail Station that is part of the Dulles Corridor Metrorail Project Phase 2.

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(public hearing)**

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

1. The Town Council approves the Deed of Easement and Assignment of Easements (Silver Line – Herndon Station) conveying, assigning and designating the following easements to Washington Metropolitan Area Transit Authority (WMATA) for the construction and maintenance of rail facility improvements associated with the Herndon Metrorail Station that is part of the Dulles Corridor Metrorail Project Phase 2:
 - a. Conveying a surface easement, an exclusive surface easement, utility easements and pedestrian bridge easement over and across a Town owned parcel of land known as Fairfax County Tax Map No. 0164-02-0026B1 to Washington Metropolitan Area Transit Authority (WMATA) for construction and maintenance of rail facility improvements.
 - b. Assigning a pedestrian bridge easement, a utility easement and a plaza easement that was previously convey to the Town by ERGS HMP, LLC, over and across a parcel of land known as Tax Map No. 0164-02-0026A1 to Washington Metropolitan Area Transit Authority (WMATA) for the benefit of the Project.
 - c. Designating WMATA as the permitted user of the ingress-egress easement and the right to use designated parking spaces over and across a parcel of land owned by Parkview Executive Center Joint Venture, R.L.L.P., known as Tax Map No. 0164-10-0007C (the “Parkview Property”) for the benefit of the Project.
2. The Mayor is authorized to sign and deliver the Deed of Easement and Assignment of Easements (Silver Line – Herndon Station) and associated instruments necessary to evidence, effect, or correct this deed. This deed shall be on such form as approved by the Town Attorney.
3. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is the draft Deed of Easement and Assignment of Easements (Silver Line – Herndon Station) between the Town and WMATA.]

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(public hearing)**

**DEED EASEMENT AND ASSIGNMENT OF EASEMENTS
(SILVER LINE – HERNDON STATION)**

Tax Map Numbers:
0164-02-0026B2; 0164-02-0026A1

This instrument was prepared by
Jo Anne S. Bitner, Esquire
Odin, Feldman & Pittleman, P.C.
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190
VSB #35773

After recordation return to Grantee's Address:
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
ATTN: Anabela Talaia, Contracting Officer

**Exempted from Grantor taxes under Section 58.1-811(C)(4) and
from Grantee taxes and fees pursuant to Section 78 of the WMATA
Compact Va. Code Sections 56-529 and 56-530 and as set forth in full in the
2009 Acts of Assembly of Virginia Chapter 771**

THIS DEED OF EASEMENT AND ASSIGNMENT OF EASEMENTS ("Deed") is
made as of the ____th day of _____, 20__, by and between **THE TOWN OF**
HERNDON, VIRGINIA, a municipal corporation (the "Town") (Grantor); **ERGS HMP, LLC**,
a Delaware limited liability company (Grantor for indexing purposes only), and **WASHINGTON**
METROPOLITAN AREA TRANSIT AUTHORITY, a body corporate and politic, organized
and existing under the Interstate Compact by and between the State of Maryland, the District of
Columbia and the Commonwealth of Virginia, Public Law 89-774, for the purpose of providing a
public transit system to serve the Washington Metropolitan Area including but not limited to the
Town of Herndon and Fairfax County, Virginia ("WMATA") (Grantee).

WITNESSETH:

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(public hearing)**

WHEREAS, the Town is the owner and proprietor of certain real property in fee simple located in the Town of Herndon, Virginia consisting of approximately 0.6795 acre or 29, 601 square feet, a portion of which is identified as Fairfax County Tax Map No. 0164-02-26B2 as more particularly shown on the plat entitled "Plat Showing DCMP Phase 2 Rail Facilities Easements TOWN OF HERNDON," dated June 28, 2022 prepared by Wiles Mensch Corporation of Reston, Virginia, attached hereto as **Exhibit A** and made a part hereof by this reference (the "**Property**"), having acquired the Property by deeds recorded among the land records of Fairfax County, Virginia in Deed Book 25276 at Page 0750; Deed Book 25315 at Page 1230 and Deed Book 25834 at Page 0647; and

WHEREAS, the Town is the owner of a Plaza Use and Maintenance Easement, a Pedestrian Bridge Easement, and a Utility Easement (referred to herein as the "Existing Plaza Use and Maintenance Easement", the "Existing Pedestrian Bridge Easement" and the "Existing Utility Easement" and collectively, the "Existing Easements"), and located on land adjacent to the Property and identified as Tax Map No. 0164-02-0026A1, having acquired the foregoing Existing Easements by Deed of Dedication and Easement, dated July 24, 2019 and recorded among the Land Records in Deed Book 25834 at Page 0647; and

WHEREAS, the Metropolitan Washington Airports Authority (the "**Airports Authority**") has facilitated the construction and installation of various structures, improvements, facilities, utilities and equipment on the Property as part of the Dulles Corridor Metrorail Project, Silver Line Extension Phase 2 (the "**Project**"), in accordance with the terms of that certain Letter Agreement, dated March 31, 2015, by and between the Airports Authority and the Town, as may be amended from time to time (the "**Cooperative Agreement**"); and

WHEREAS, the Property is not subject to the lien of any deed of trust; and

WHEREAS, as contemplated by the Cooperative Agreement, the Town desires to grant and convey or assign to WMATA certain easements and WMATA desires to accept, such easements and assignments of easements through the Property and adjacent land as provided herein.

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(public hearing)**

NOW, THEREFORE, in consideration of the sum of Ten Dollars, (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, the Town does hereby grant and convey unto WMATA, its successors and assigns, without warranty, the following described easements, for the purposes set forth below and subject to the conditions set forth herein:

Pedestrian Bridge Easement, Surface Easement, and Utility Easement (collectively, the “**Rail Facilities Easements**”), said Rail Facilities Easements being located in, upon, over, under and across the Property, to construct, operate, maintain, repair, replace, modify, relocate, reconstruct and remove a rail transit system and related transit facilities and appurtenances, including without limitation passenger pavilions, plazas, lighting, pedestrian bridges, parking areas, structures, columns, piers, footings, foundations, structural components, drainage facilities, cable, safety fences, tiebreaker stations, conduits and lines providing power, sanitary sewer, water or communications services to the Project, traction power stations, duct banks and related facilities constructed or installed within the Rail Facilities Easements (collectively, the “**Rail Facilities**”). The term “Rail Facilities” as used herein shall specifically exclude those facilities and improvements located on the Property and owned, operated and maintained by the Town and which do not otherwise serve the Project. All Rail Facilities located within exclusive areas of the Rail Facilities Easements will be owned and operated by WMATA.

The locations and limits of the Rail Facilities Easements shall be as described herein and as generally shown on the plans attached hereto as Exhibit A. The Rail Facilities Easements shall be permanent and perpetual in nature, except as provided below.

“**Pedestrian Bridge Easement**” refers to those portions of the Rail Facilities Easements containing Rail Facilities consisting of pedestrian bridge providing access to or otherwise serving the Herndon passenger station and pavilions. The boundary of the Pedestrian Bridge Easement shall be a three-dimensional “envelope” defined by and conforming to the “exteriormost” upper, lower and lateral surfaces of all Rail Facilities constructed within the Pedestrian Bridge Easement, as shown on Exhibit A. The Pedestrian Bridge Easement shall be for WMATA’s exclusive use, and the Town shall not have any right to enter the Pedestrian Bridge Easement for any purpose without WMATA’s express written consent pursuant to any applicable provisions of the Operation and Maintenance Agreement of even date herewith to which the Town and WMATA are both a party (the “**Maintenance Agreement**”).

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“Surface Easement” refer to those portions of the Rail Facilities Easements containing Rail Facilities constructed at grade level or partially below grade level (such as foundations, supporting structures, utility lines and traction power facilities). The boundaries of the Surface Easement shall be a three-dimensional “envelope” defined by and conforming to the “exteriormost” upper, lower and lateral surfaces of all Rail Facilities constructed within the Surface Easements, as shown on Exhibit A. Notwithstanding the foregoing Surface Easement boundaries, with respect to those portions of the Surface Easements located at grade level, including, without limitation, driveways or plaza areas, WMATA shall have the right to enter the area immediately above the Surface Easement to the extent necessary for the full and free use and operation of its Rail Facilities located within such Surface Easements, provided that such use does not interfere with the use and operation of the Property by the Town. That portion of the Surface Easement identified on Exhibit A as “Surface Easement (Exclusive) Area = 4,176 SQ FT” shall be for WMATA’s exclusive use, and the Town shall not have any right to enter such Exclusive Area for any purpose without WMATA’s express written consent pursuant to any applicable provisions of the Maintenance Agreement. Any portion of a Surface Easement which is not located within an Exclusive Area shall be for WMATA’s non-exclusive use, and the Town shall have the right to enter such non-exclusive areas to the extent permitted by and pursuant to any applicable provisions of the Maintenance Agreement.

“Utility Easements” refer to those portions of the Rail Facilities Easements containing utility systems and appurtenant equipment and facilities serving the Rail Facilities as set forth in subsections (a), (b) and (c) below. The boundaries of the Utility Easements shall be a three-dimensional “envelope” defined by and conforming to the “exteriormost” upper, lower and lateral surfaces of all utility lines, utility facilities and equipment constructed and installed within the Utility Easements, as shown on Exhibit A.

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

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desirable in connection therewith, shown on Exhibit A as "Utility Easement (COMM) = 5,695 SQ.FT. Hereby Granted";

(b) electrical systems for transmitting and distributing electric power by one or more circuits, or other systems relating thereto, and lighting, consisting of wires, conduits, poles, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connection boxes, accessories and other equipment and appurtenances desirable in connection therewith, shown on Exhibit A as "Utility Easement (ELEC. COMM) = 3,141 SQ.FT. Hereby Granted"; and

(c) water lateral systems consisting of various size water pipes and lines, lateral service lines, valves, manholes, water meters and appurtenances for the transmission of water, shown on Exhibit A as "Utility Easement (WATER) = 446 SQ.FT. Hereby Granted".

The Rail Facilities Easements shall be subject to the following terms:

1. All Rail Facilities which are constructed or installed within the Rail Facilities Easements shall be and remain the property of WMATA, its successors and assigns. WMATA and its agents shall have full and free use of the Rail Facilities Easements for the purposes named, and in addition to any existing public access rights, WMATA shall have the right of access thereto, including the right to use designated parking spaces as shown on Exhibit A as "Ex. 2 Maintenance Vehicle Parking Spaces within Ex. Ingress-Egress Easement DB 25315 PG 1230", via an existing easement granted to the Town by Deed of Dedication and Easement dated January 26, 2018 and recorded among the Land Records in Deed Book 25315 at Page 1230, shown on Exhibit A as "Ex. Ingress-Egress Easement Deed Book 25315 at Page 1230 (the "Existing Access and Parking Easement"), and any applicable provisions of the Maintenance Agreement. The Town hereby designates WMATA as a permitted user of the Town's easement rights under the Existing Access and Parking Easement.
2. It is understood that WMATA may in the future need minor modifications, including but not limited to, extensions of the Rail Facilities Easements to accommodate additional Rail Facilities. In such cases, WMATA will request a modification of the applicable Rail Facilities Easement from the Town, which will not be unreasonably denied, and the parties agree to amend this Deed of Easement to reflect any approved modification of the Rail

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Facilities Easements and to record such amendment among the land records of the Town. Notwithstanding the foregoing, the Town shall not be required to approve any requested modification that would unreasonably restrict or interfere with the Town's use or operation of, or access to any facility or property controlled by the Town, or for which the Town has an obligation to maintain.

3. Nothing in this Deed of Easement shall be construed to: (i) impose upon the Town any provisions of the WMATA Adjacent Construction Project Manual outside the Rail Facilities Easements or within any non-exclusive Rail Facilities Easement areas, unless otherwise agreed by WMATA and the Town; (ii) prohibit WMATA, during any coordination and review process contemplated by Article IV of the Maintenance Agreement, from making comments and recommendations on the proposed activity that are based on the WMATA Adjacent Construction Project Manual; or (iii) prohibit WMATA from applying the WMATA Adjacent Construction Project Manual, in whole or in part, to any request from the Town to enter any Exclusive Area within the Rail Facilities Easements. Additional provisions regarding activities occurring (i) within non-exclusive areas of the Rail Facilities Easements, or (ii) within the Property and outside the Rail Facilities Easements are set forth in the Maintenance Agreement.
4. WMATA also shall have the right to install, operate, maintain and replace communications systems, equipment and facilities, including, without limitation, fiber optic cabling, within the Rail Facilities Easements as and to the extent required for WMATA to comply with applicable state or federal regulations, ordinances or statutes mandating the provision of such systems, equipment and facilities within the Rail Facilities for the benefit of its passengers and patrons.
5. The Maintenance Agreement shall apply to the operation and maintenance of the Rail Facilities, including access and permits for maintenance.
6. WMATA shall have the right to assign the Rail Facilities Easements in whole or in part to a successor entity or agency to WMATA as the owner or operator of the Rail Facilities. An assignment to any other entity or agency shall require the prior written consent of the Town.
7. In no event shall any provision in this Deed of Easement be construed so as to constitute a waiver of any sovereign immunity of the Town or WMATA.

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8. Nothing contained herein, express or implied, is intended to or shall confer upon any non-party any rights, benefits or remedies of any nature whatsoever under or by reason of this Deed of Easement.
9. This Deed of Easement shall be construed in accordance with laws of the Commonwealth of Virginia.
10. The easement rights conveyed herein are easements in gross, personal to WMATA, but subject to WMATA's assignment rights set forth in this Deed, and further subject to any right, privilege, easement, condition or restriction encumbering the Property of record, whether located above, upon, or under the surface. The Rail Facilities Easements granted to and covenants received from WMATA shall run with the land and shall be binding on the parties hereto, and their successors and assigns.
11. If the Rail Facilities Easements, or any portion of them, cease to be used for a public transit system, the Rail Facilities Easements, or such portion, shall automatically terminate and all real property interests within such terminated Rail Facilities Easements or portion thereof conveyed or established under this Deed shall revert to the Town, without cost, in a condition which will not harm or decay Town facilities.

ASSIGNMENT OF PEDESTRIAN BRIDGE AND UTILITY EASEMENTS

THIS DEED FURTHER WITNESSETH, that in consideration of sum of Ten Dollars, (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, the Town does hereby quitclaim, release, and assign unto WMATA, and WMATA does hereby accept from the Town, all right, title, and interest of the Town in and to the following Existing Easements, together with any and all obligations, conditions and restrictions binding the Town thereunder and all utility facilities and improvements within the bounds thereof:

- (i) The Existing Pedestrian Bridge Easement in the location as shown on the Plat as "Ex. Pedestrian Bridge Easement 25834 Page 0647 Hereby Assigned"; and
- (ii) The Existing Utility Easement in the location as shown on the Plat as "Ex. Utility Easement 25834 Page 0647 Hereby Assigned."

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The foregoing easement rights were acquired by the Town pursuant to that certain Deed of Dedication and Easement, dated July 24, 2019 and recorded among the Land Records in Deed Book 25834 at Page 0647 (the "Deed of Dedication and Easement"). The foregoing assignment is expressly subject to the terms and conditions set forth in the Deed of Dedication and Easement, and WMATA hereby accepts such easement rights and obligations in accordance with the terms of this Deed.

PARTIAL ASSIGNMENT OF PLAZA EASEMENT

THIS DEED FURTHER WITNESSETH, that in consideration of sum of Ten Dollars, (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the reservations and conditions set forth herein, the Town does hereby quitclaim, release and assign unto WMATA, and WMATA does hereby accept from the Town, all right, title and interest of the Town to operate a public plaza area pursuant to the terms of that certain Plaza Easement acquired by the Town by the Deed of Dedication, in the location identified on the Plat as "Plaza Use and Maintenance Easement Deed Book 25834 Page 0647 Hereby Assigned" (the "Plaza Easement"). The foregoing assignment of the Plaza Easement is subject to the following reservations and conditions:

- (i) The Town reserves to itself all rights and obligations under the Plaza Easement to provide to for maintenance (including replacement and repair) of the public plaza located within the Plaza Easement and serving the adjacent passenger pavilion and pedestrian bridge (the "Plaza Area"), including, without limitation, hardscaped areas, drainage facilities, utilities, conduits, and related facilities, equipment and appurtenances. WMATA shall have the right to use the Plaza Easement to perform maintenance (including replacement and repair) of the passenger pavilion and pedestrian bridge located adjacent to the Plaza Area.
- (ii) The Town and WMATA shall comply with any and all conditions of the Plaza Easement as set forth in the Deed of Dedication when exercising or performing their respective rights or obligations under the Plaza Easement, including without limitation, Conditions 1, 2 and 3 of the Plaza Easement.
- (iii) The Town and WMATA shall be responsible for performing any and all maintenance, repair and replacement of the facilities and improvements located

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within the Plaza Easement as required by the terms and conditions set forth in the Plaza Easement and the Maintenance Agreement.

- (iv) WMATA shall comply with all conditions and restrictions set forth in the Deed of Easement and Assignment of Easements binding the Town thereunder and all utility facilities and improvements within the bounds thereof.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

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IN WITNESS WHEREOF, the parties hereto have caused this Deed of Easement and Assignment of Easements to be executed pursuant to due and proper authority as of the date set forth on Page 1 above.

TOWN:

TOWN OF HERNDON, VIRGINIA

Sheila Olem, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX:

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Sheila Olem, Mayor of the Town of Herndon, a Virginia municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires: _____

Notary Registration No.: _____

**July 12, 2022
(public hearing)**

**WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY**

By: _____ (SEAL)

Name: _____

Title: _____

_____ OF _____)

_____ OF _____) to-wit:

The foregoing instrument was acknowledged before me this ____ day of

_____, 20____, by _____, as

_____ on behalf of the Authority.

Notary Public

My Commission Expires: _____

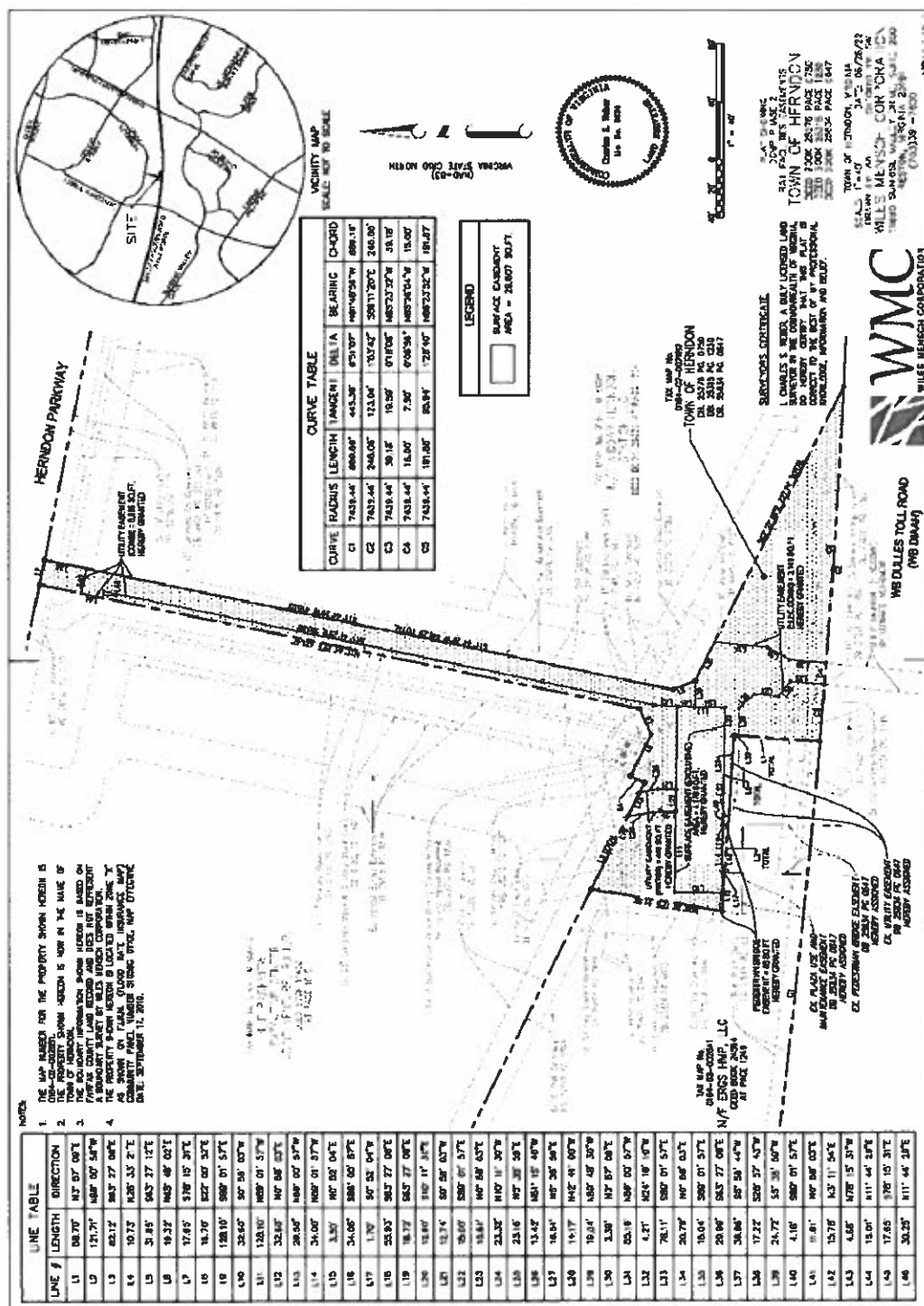
Notary Registration Number: _____

#4243866v5 Deed of Easement Hemdon to WMATA - Silver Line Phase 2 080092/000002

**July 12, 2022
(public hearing)**

EXHIBIT A
PLAT SHOWING LOCATION OF EASEMENT AREAS

July 12, 2022
(public hearing)



**July 12, 2022
(public hearing)**

CONSENT

7. **Resolution 22-G-42, to adopt Parks and Recreation Fee Waiver Procedure; and**
8. **Resolution 22-G-47, to endorse and approve the submission of a funding application to the Virginia Department of Transportation (VDOT) for FY26-FY27 Smart Scale Funding to be directed towards the project titled 'Herndon Parkway Improvements at Worldgate Drive Extension'**

On motion of Councilmember Friedrichs, seconded by Councilmember Alam, the Consent agenda items were approved and carried by unanimous roll call vote, without comment. The vote was: Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."

Resolution 22-G-42, to adopt Parks and Recreation Fee Waiver Procedure.

WHEREAS, the Parks and Recreation Department has had a Town Council adopted fee waiver and scholarship program since 1991; and

WHEREAS, the program provides discounted registration to eligible classes and programs for qualifying applicants; and

WHEREAS, peer jurisdictions throughout the northern Virginia region designate their fee reduction program for only their residents; and

WHEREAS, reducing financial barriers particularly for the town's youth which is central to the department's mission, the procedure provides a 50% fee reduction for residents ages 17 & under, and a 25% fee reduction for residents ages 18 & older; and

WHEREAS, 10-visit admission passes, and programs and classes meeting three or more times are eligible for the fee reduction encouraging the development of life skills and healthy behaviors; and

WHEREAS, the Fee Waiver program is limited to \$10,000 in fiscal year 2023.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, hereby adopts the Parks and Recreation Department Fee Waiver procedure.

[Note: Attached for reference is the Parks & Recreation Department Administrative Manual, Recreation Fee Waiver Procedures and Request Form dated and revised on July 12, 2022.]

**July 12, 2022
(public hearing)**

Town of Herndon Parks & Recreation Department – Administrative Manual

Effective date: May 1991

Section: 230a

Revision date: July 12, 2022

Supersedes: May 3, 2010
July 29, 2013
November 10, 2014

Approved by: Cindy S. Roeder, Director

Policy established by Town Council (91-G-85) May 14, 1991

Subject: RECREATION FEE WAIVER PROCEDURES

I. PROGRAM

The Town of Herndon Parks and Recreation Department (HPR) offers a fee-waiver program for eligible classes, programs and admission passes for Town of Herndon (TOH) residents who are currently eligible; see below. If qualified, participants ages 17 & under receive a 50% fee reduction on eligible classes, programs, and admission passes. If qualified, participants ages 18 & older receive a 25% fee reduction on eligible classes, programs, and admission passes.

The fee waiver program is available for programs and classes meeting three times or more. The fee waiver is also available for 10-visit admission passes. The fee waiver is not available for classes or programs meeting two times or less. It is not available for daily admissions, passes other than the 10-visit pass, special admission rates, or any facility rentals.

II. ELIGIBILITY

An individual or family who participates in one of the following federal, state or local government low-income programs is eligible for assistance: Women Infant and Children Program (WIC), Electronic Benefits Transfer (EBT), Families Access to Medical Insurance Security (FAMIS), Temporary Assistance to Needy Families (TANF), or the Free or Reduced Lunch Program administered at Fairfax County Public Schools.

Alternatively, the Town of Herndon Parks and Recreation Department will accept a letter from the Fairfax County Department of Family Services, the Fairfax Department of Housing and Community Development, or the Virginia Department of Social Services that states the family's income falls below the Federal Poverty Level.

Questions about eligibility should be directed to the Community Center Supervisor II who is responsible to verify that all requirements of the fee waiver program are met.

**July 12, 2022
(public hearing)**

III. PROCEDURES

- a. The person requesting financial assistance must make that request known to Community Center staff. The staff member receiving the request should verify that the person is a Town of Herndon (TOH) Resident per section 220 of the Town of Herndon Parks and Recreation Department Administrative Manual. If they are not a TOH resident, they should be informed the Fee Waiver program is only for TOH residents. If they are a TOH resident, they should be given the Fee Waiver Request Form.
- b. In all instances, the completed Fee Waiver Request Form should be turned into the front desk. The person requesting assistance should bring proof that they are currently enrolled in the program selected on the Fee Waiver Request Form or bring a letter, as per the eligibility section. The Recreation Assistant should review the information provided and confirm they witnessed the information. Only the Fee Waiver Request Form will be retained by staff.
 - i. For class registrations, the Class Registration form should be turned into the front desk with the Request form. The Recreation Assistant will verify that the class is eligible for the fee waiver. Only the Fee Waiver Request form and Class Registration form will be retained by staff.
 - ii. For the 10-visit pass, only the completed Fee Waiver Request form is needed.
- c. The Recreation Assistant will complete the transaction at the discounted rate. To reduce the fee, the Fee Waiver - Youth or Fee Waiver - Adult coupon codes should be used. The class fee should never be adjusted. The participant is responsible for the remaining fees. The requester should be told that the request will be reviewed, and the individual will be contacted to confirm the status.
- d. The Fee Waiver Request form and Registration forms are given to the Community Center Supervisor II who will review the request. If correct, the Center Supervisor will sign and authorize the request. In the absence of the Community Center Supervisor II, the request may be authorized by the Community Center Manager, Deputy Director, or Director.
- e. For classes, the Fee Waiver Request form will be attached to the registration form(s). All request forms will be stored with the registration forms per the town's document retention policy.

IV. Reporting

The Community Center Supervisor II is responsible for generating a quarterly report tracking the total dollars awarded and the amount of financial assistance will be reported on the department's quarterly report.

V. Limits

The Fee Waiver Program has an annual limit of \$10,000.

#

HERNDON PARKS & RECREATION DEPARTMENT
FEE WAIVER REQUEST FORM

Address _____
 Street City State Zip

Please list any household members 17 and under that are included in this request. Anyone 18 and over needs to complete their own form.

Household Member	Date of birth
1. Head of household	
2. Spouse	
3. Child	
4. Other household member	

The above requester provided information affirming they participate in one of the assistance programs below, or they provided a letter from Fairfax County or the State of Virginia confirming a qualifying income level. Any Town of Herndon resident participating in one of the recognized programs or who presents the required letter, confirms he/she qualifies for the Town of Herndon Parks and Recreation Department Fee Waiver.

I hereby declare that the information provided is true and correct to the best of my knowledge. I also understand that any willful dishonesty may result in refusal of this request.

For Department Use Only

Information Witnessed by:

Town of Herndon Staff Signature

Reviewed and Approved By:

Town of Herndon Staff Signature

**July 12, 2022
(public hearing)**

Resolution 22-G-47, to endorse and approve the submission of a funding application to the Virginia Department of Transportation (VDOT) for FY26-FY27 Smart-Scale Funding to be directed towards the project titled '*Herndon Parkway Improvements at Worldgate Drive Extension*'

WHEREAS, VDOT has requested that its member jurisdictions propose candidate projects to be evaluated and scored for Smart-Scale funding under the VDOT FY2023-FY2028 Six-Year Improvement Program; and

WHEREAS, the Town of Herndon's Smart-Scale funding application for future multimodal and signalized intersection improvements at Herndon Parkway and Worldgate Drive Extension was approved by the Town Council on May 24, 2022 by Resolution 22-G-37; and

WHEREAS, since the adoption of Resolution 22-G-37, VDOT has advised staff to amend the town's funding application and include both the future Worldgate Drive Extension roadway, connecting Van Buren Street to Herndon Parkway, as well as the signalized intersection of Herndon Parkway and Worldgate Drive Extension; and

WHEREAS, the revised project scope, for the funding application, now contains the roadway extension and the previously adopted signalized intersection project and includes the applicable right-of-way acquisition costs associated with the project; and

WHEREAS, the project will include extending Worldgate Drive from Van Buren Street to Herndon Parkway, providing additional roadway and turning lane capacity to the street network for Metrorail redevelopment, while enhancing pedestrian and dedicated cycle track facilities at the intersection along with enhanced crosswalks, pedestrian and vehicle signalization; and

WHEREAS, the design of the improvements will incorporate Americans with Disabilities Act (ADA) standards and also continue the installation of utilities underground; and

WHEREAS, this resolution with the modified scope and revised cost estimate ***supersedes*** Resolution 22-G-37; and

WHEREAS, the overall 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, while providing roadway capacity and turning lane improvements at each intersection approach; all in a concerted effort to reduce congestion and accommodate increasing density and subsequent traffic resulting from Herndon Metrorail multi-land use TOD redevelopment; and

**July 12, 2022
(public hearing)**

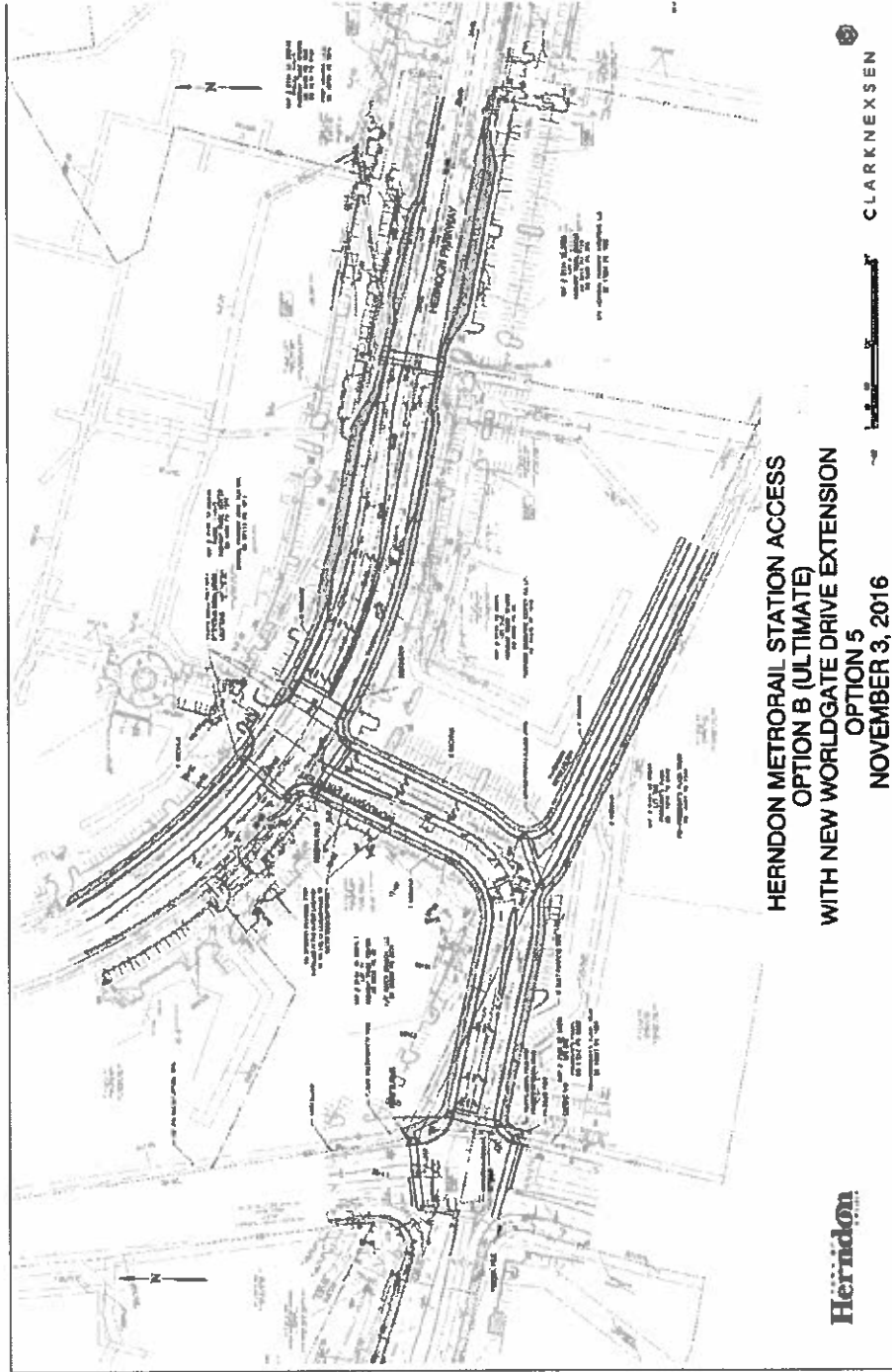
- WHEREAS,** this project is included in the VDOT Six-Year Improvement Program and the Metropolitan Washington Council of Governments, Transportation Planning Board's Constrained Long-Range Plan as well as listed in the Northern Virginia Transportation Authority (NVTA) adopted regional TransAction Plan (identified under Herndon Metrorail Multimodal Improvements, Project 12e); and
- WHEREAS,** the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008 and as amended through May 24, 2022, advises roadway access and capacity improvements for future Worldgate Drive Extension as well as multimodal improvements along Herndon Parkway at the future signalized intersection of Herndon Parkway and Worldgate Drive Extension; and
- WHEREAS,** on March 11, 2014, the Town Council adopted Resolution 14-G-22 that authorized the mayor to sign a Memorandum of Agreement for the distribution of NVTA's Local Share funding revenues to the town for Public Works staff and the town's transportation consultant to begin right-of-way survey, concept and the engineering design for the Worldgate Drive Extension project; and
- WHEREAS,** on December 13, 2016, the Town Council adopted Resolution 16-G-75 that had selected Option 5 as the preferred engineering design for this project, based on review of the traffic data analysis, safety considerations, private property owner feedback and land acquisition requirements; and
- WHEREAS,** the adopted Option 5 and its roadway design for Worldgate Drive Extension had also included the engineering design for the intersection with Herndon Parkway and its adjoining bus bay drop-off/pick-up facility to access the northside of the Herndon Metrorail Station; and
- WHEREAS,** the total project cost to construct the '*Herndon Parkway Improvements at Worldgate Drive Extension*' project is estimated at up to \$30 million; and
- WHEREAS,** the town has previously utilized approved NVTA Local Share revenue of \$150,000 to complete the initial engineering design phase, and since 2017 the town has accumulated \$3.4 million of NVTA approved Congestion Mitigation and Air Quality (CMAQ) funding and \$4.5 million of NVTA Regional funding for this project; and
- WHEREAS,** for this year's FY26-FY27 Smart-Scale funding application, the town is to utilize the aforementioned NVTA and CMAQ funding totaling \$7.9 million and will seek a funding request totaling up to \$22.1 million to be directed towards the remaining project balance.

**July 12, 2022
(public hearing)**

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby endorses and approves the submission of one funding application to VDOT with a funding request of up to \$22.1 million, under VDOT's FY26-FY27 SmartScale funding program, to be directed towards the project titled '*Herndon Parkway Improvements at Worldgate Drive Extension.*'

[Note: Attached for reference is the Herndon Metrorail Station Access Option 5 dated November 3, 2016.]

July 12, 2022
(public hearing)



ATTACHED
22-0-47

**July 12, 2022
(public hearing)**

ADJOURNMENT

Vice Mayor del Aguila moved to adjourn the meeting of the July 12, 2022 public hearing at 7:41 p.m., and Councilmember Singh seconded the motion. The question was called on the motion which carried by unanimous roll call vote. The vote was: Councilmembers Alam, Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye."



**Sheila A. Olem
Mayor**



**Kirstyn Jovanovich
Town Clerk**

Minutes approved by Town Council: October 25, 2022

**July 12, 2022
(public hearing)**

NOTE:

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