

**TOWN OF HERNDON, VIRGINIA
PUBLIC HEARING AGENDA
HERNDON COUNCIL CHAMBERS BUILDING
765 LYNN STREET
APRIL 14, 2020
7:00 P.M.**

The meeting is being held electronically due to Order of the Governor EO-53 and pursuant to Ordinance 20-O-23, adopted March 24, 2020 and Code of Virginia §2.2-3708.2 (A)(3). Public comments will be received through the town clerk at town.clerk@herndon-va.gov.

CALL TO ORDER

1. Roll Call & Determination of Quorum

APPROVAL OF MINUTES

March 24, 2020	Town Council Public Hearing Draft Minutes
April 7, 2020	Town Council Work Session Draft Minutes

COMMENTS

2. Comments from the Town Manager
3. Comments from the Town Council

PUBLIC HEARINGS

4. Ordinance 20-O-19, to approve and authorize the Mayor to sign a second lease amendment to Celco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, and drawings at the Town's 3rd Street Water Tower (**Public Hearing continued from the March 10th TCPH**)

GENERAL

5. Resolution 20-G-15, to extend the July 28, 2020 due date for the first installment payment of real estate property taxes until August 28, 2020
6. Ordinance 20-O-25, to amend Chapter 30 (FINANCE AND TAXATION), Article VI (Transient Occupancy Tax), Section 30-179, of the Herndon Town Code, to temporarily extend the due dates for the remittance of Transient Occupancy Taxes

Future Town Council Meetings

April 21, 2020	Town Council Work Session	7:00 p.m.
April 28, 2020	Town Council Public Hearing	7:00 p.m.
May 5, 2020	Town Council Work Session	7:00 p.m.
May 12, 2020	Town Council Public Hearing	7:00 p.m.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 14, 2020

Ordinance - To approve and authorize the Mayor to sign a second lease amendment to Celco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, and drawings at the Town's 3rd Street Water Tower.

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

1. The Town Council approves this Second Amendment to Deed of Lease dated March 10, 2020. This instrument amends the original Deed of Lease dated June 9, 2002 and the First Amendment to Deed of Lease dated August 15, 2012.
2. This instrument updates the approved equipment list and premises description.
3. This instrument approves revising the quantity and upper size limit of the following: 1 generator enclosure up to 10' x 15', 5 equipment cabinets up to 75" H x 33" W x 33" D, 1 15 KW diesel generator up to 80" H x 30" W x 50" D, 12 antennas up to 98" H x 20" W x 10" D, 3 distribution boxes up to 20" H x 16" W x 12" D, 6 remote radio units (RRU's) up to 22" H x 15" W x 10" D, 6 coax and/or fiber hybrid cables up to 1 5/8" diameter.
4. The Herndon 3rd Street Water Tower constitutes a municipal water storage and distribution resource, its dominant function. Town may maintain, paint, repair, and use the water tower for this purpose. Lessee and Sublessee, at their respective expense, upon not less than ninety days prior written notice from Town must move, temporarily remove, relocate, or temporarily disable their respective uses to accommodate such activities by Town. Rent shall abate during such temporary removal or temporary disabling when the Equipment is rendered useless. During a temporary relocation, Lessee or Sublessee, or both, is permitted to locate on the Premises a temporary communications facility, such as a cell on wheels. In the latter case, rent shall not abate.
5. In all other respects the original lease remains in effect.
6. The Mayor is authorized to sign and deliver the lease amendment and any ancillary instruments necessary to evidence or effectuate the lease amendment, provided they are consistent with this ordinance and on such form approved by the Town Attorney.
7. This ordinance shall be in effect on and after the date of its adoption.

SECOND AMENDMENT TO DEED OF LEASE

This Second Amendment to Deed of Lease ("Second Amendment"), is made this 10th day of March 2020 by and between the **TOWN OF HERNDON, VIRGINIA**, a municipal corporation, ("**Town**") and **CELLCO PARTNERSHIP**, a Delaware general partnership, d/b/a Verizon Wireless ("**Lessee**"), as successor in interest to Washington, D.C. SMSA Limited Partnership.

WHEREAS, Town and Lessee entered into a certain Deed of Lease dated June 9, 2002, as amended by the First Amendment to Deed of Lease dated August 15, 2012, (collectively referred to herein as the "Lease") whereby the Town leased to Lessee portions of Town's water tower and adjacent land known as the Third Street Water Tower, Third and Van Buren Street, Herndon, VA 20170, Fairfax County Tax Map Number 0104-02-0045A, all as more particularly described in the Original Deed of Lease.

WHEREAS, Town and Lessee hereby affirm that, as of the date hereof: (i) no breach or default by Town or Lessee occurred; and (ii) the Lease, and all the terms, covenants, conditions, provisions and agreements thereof, except as expressly modified by this Amendment are in full force and effect, with no defenses or offsets thereto; and

WHEREAS, Town and Lessee desire to amend the Lease as follows;

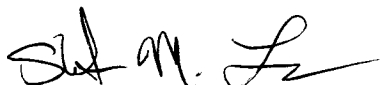
NOW THEREFORE, in consideration of the mutual covenants contained in the Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Lessee hereby agree as follows:

1. All capitalized terms shall have the meaning ascribed to them in the Lease unless otherwise defined in this Second Amendment.
2. Exhibit A1 and A2 are deleted in their entirety and replaced with Exhibit A dated March 10, 2020, Exhibit B, is deleted in its entirety and replaced with Exhibit B dated March 10, 2020, Exhibit C, is deleted in its entirety and replaced with Exhibit C, Pages 1-5 dated March 10, 2020, all are attached hereto and incorporated herein.
3. The premises description is hereby modified as described in Exhibit B dated March 10, 2020 and its equipment list and drawings as described in Exhibit C, Pages 1-5 dated March 10, 2020, both attached hereto and incorporated herein.
4. The Herndon 3rd Street Water Tower constitutes a municipal water storage and distribution resource, its dominant function. Town may maintain, paint, repair, and use the water tower for this purpose. Lessee and Sublessee, at their respective expense, upon not less than ninety days prior written notice from Town must move, temporarily remove, relocate, or temporarily disable their respective uses to accommodate such activities by Town. Rent shall abate during such temporary removal or temporary disabling when the Equipment is rendered useless. During a temporary relocation, Lessee or Sublessee, or both, is permitted to locate on the Premises a temporary communications facility, such as a cell on wheels. In the latter case, rent shall not abate.

5. Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.
6. This Second Amendment to Deed of Lease will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.
7. Town represents and warrants to Lessee that the consent or approval of a third party has either been obtained or is not required with respect to the execution of this Amendment.
8. Except as specifically amended herein, the remaining terms of the Lease shall remain in full force and effect. To the extent any provision contained in this Second Amendment conflicts with the terms of the Lease, the terms and provisions of this Amendment shall prevail.

LESSEE:

**CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS**

BY: 
NAME: Stefanie M. Lewis
TITLE: Sr. Mgr. Real Estate
DATE: 2/7/20

Additional signatures on following page

TOWN:

TOWN OF HERNDON, VIRGINIA

BY: _____

Lisa C. Merkel

Mayor

DATE: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesa J. Yeatts

Town Attorney

Exhibit A
March 10, 2020

The property lies in the Town of Herndon, Virginia and is described as follows:

1. 806 3rd Street
Herndon, VA 20170
2. Fairfax County Tax Map Number 10-4-2-45A

The geodetic coordinates of the Property are as follows:

North Latitude: 38° 58' 50"

West Longitude 77° 22' 59"

Exhibit B
March 10, 2020

The premises shall consist of the following:

1. The Ground Space, consisting of approximately 324 square feet for placement of equipment cabinets and a back-up generator and associated concrete pad.
2. Space on the Tower sufficient to accommodate the placement, installation, operation and maintenance of the equipment (listed on Exhibit "C").
3. The Access easement.
4. The Utility Easements.
5. The premises are depicted on the attached drawings.

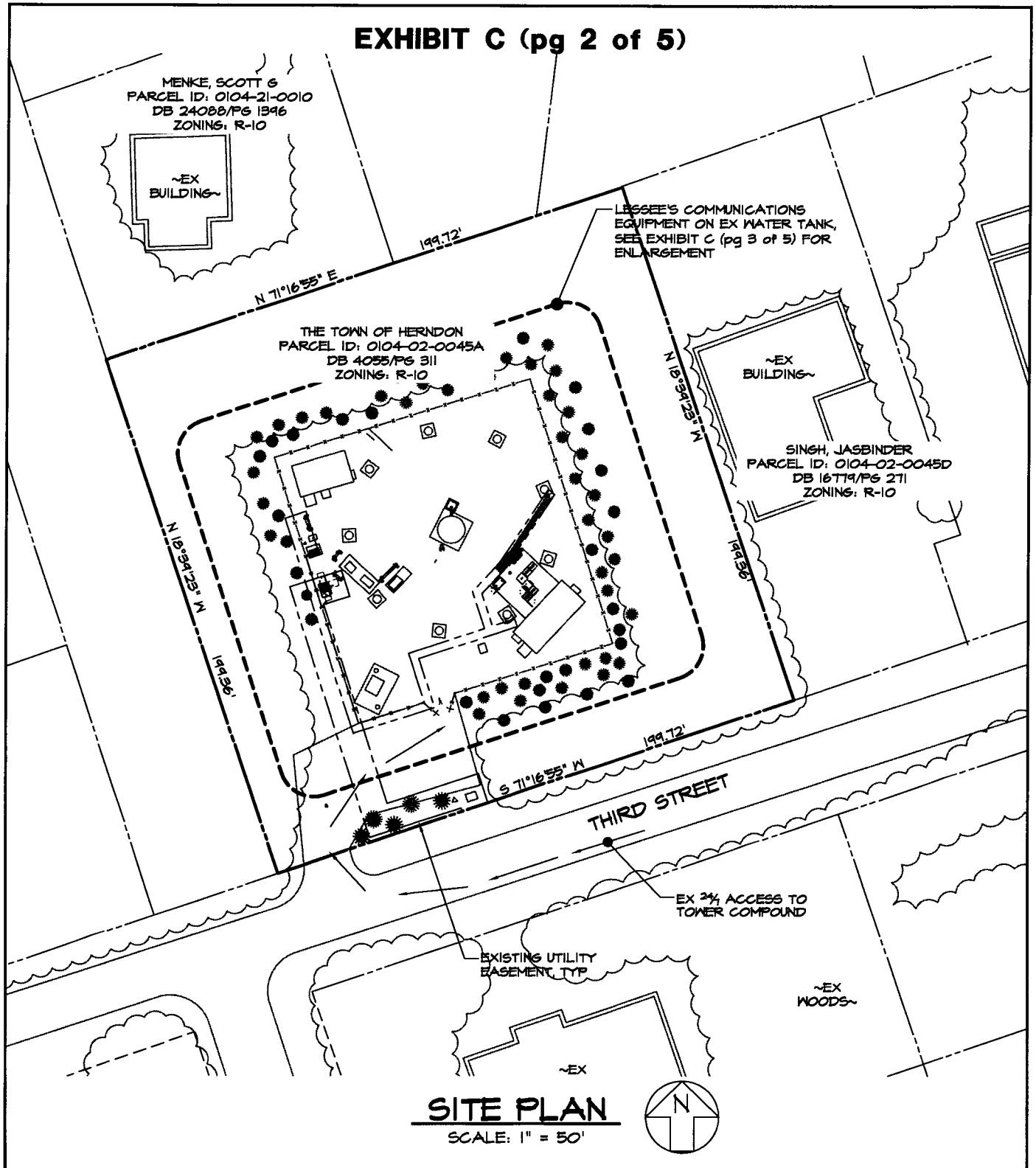
Nothing in this legal description shall convey to Lessee any rights in the Property other than what are specifically described in this Deed of Lease as to the Premises.

Exhibit C
Page 1 of 5
March 10, 2020

The following equipment together with any associated wires, cables, pipes, conduits and supporting structures associated with the equipment shall be located on the Third Street Water Tank as generally shown on the attached drawings.

<u>Quantity</u>	<u>Type</u>	<u>Approximate Size</u>
1	Generator Enclosure	10' X 15'
5	Equipment Cabinets	up to 75"H x 33" W x 33" D
1	15 KW Diesel Generator	80"H x 30" W x 50 " D
12	Antennas	up to 98" H x 20" W x 10" D
3	Distribution Boxes	up to 20" H x 16" W x 12" D
6	Remote Radio Units (RRU's)	up to 22" H x 15" W x 10 " D
6	Coax and/or Fiber Hybrid Cables	up to 1 5/8" diameter

EXHIBIT C (pg 2 of 5)



SITE PLAN

SCALE: 1" = 50'



MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

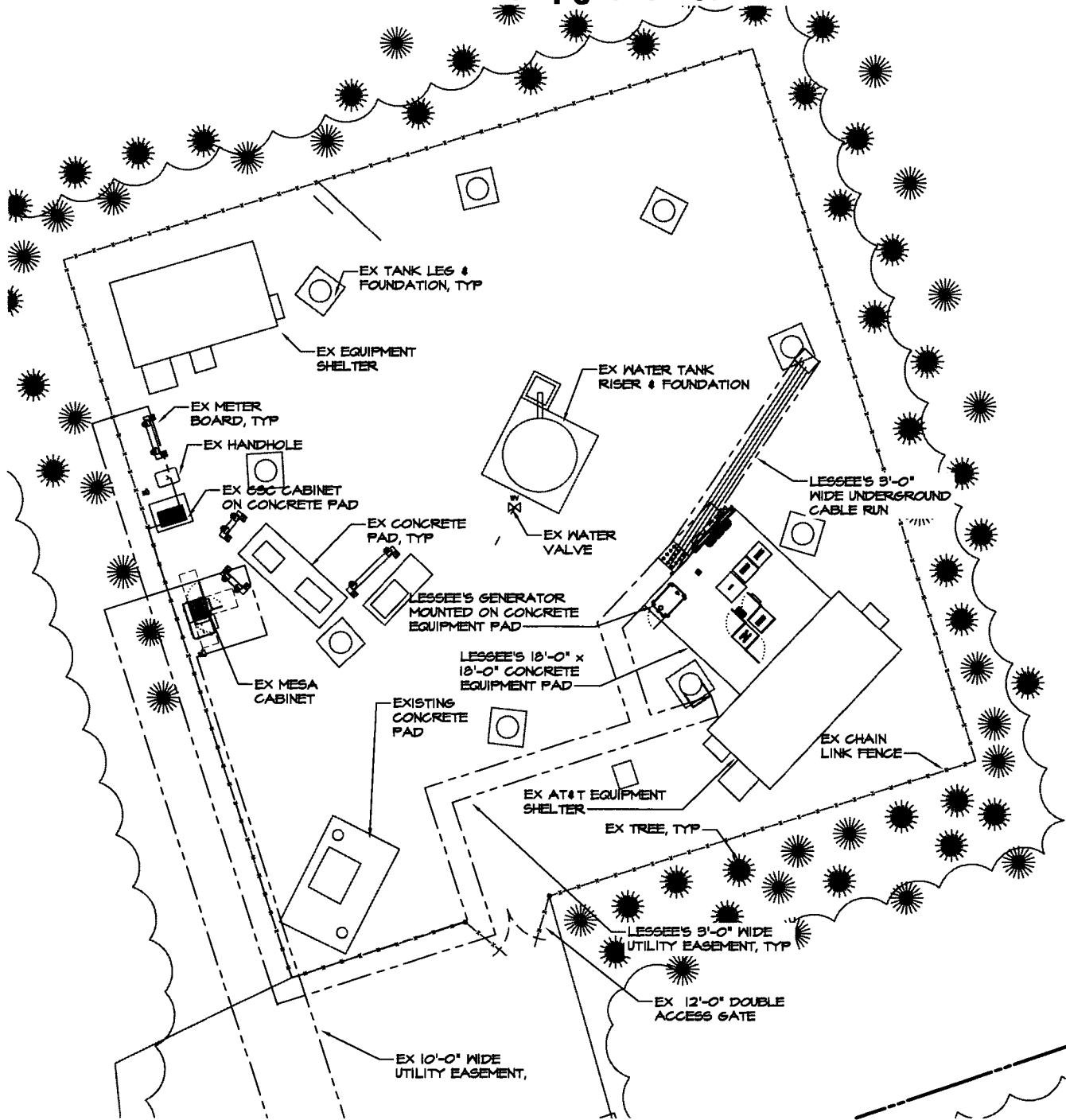
1220-C East Joppa Road, Suite 505
Towson, Maryland 21286
(410) 821-1690
Fax (410) 821-1748

**THIRD STREET WATER TANK
VZW - MONROE**

**806 THIRD STREET
HERNDON, VIRGINIA 20172**

SCALE:	DATE:	DRAWN BY:	DESIGN BY:	REVIEW BY:	JOB NO.:
AS NOTED	03/10/20	BES	BES	BES	119214.144

EXHIBIT C (pg 3 of 5)



ENLARGED COMPOUND LAYOUT

SCALE: 1" = 20'



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**THIRD STREET WATER TANK
VZW - MONROE**

**806 THIRD STREET
HERNDON, VIRGINIA 20172**

SCALE:

AS NOTED

DATE:

03/10/20

DRAWN BY:

BES

DESIGN BY:

BES

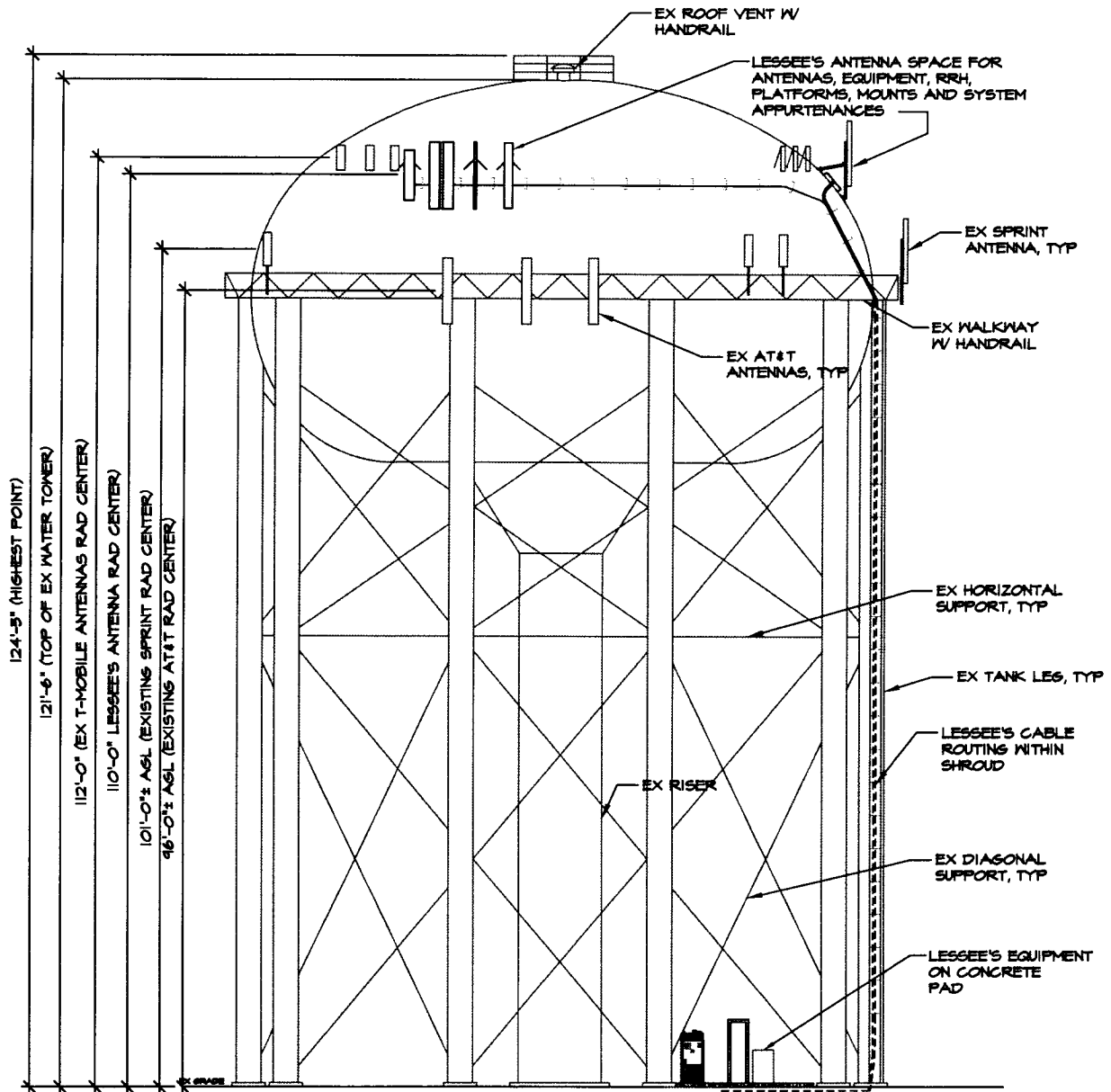
REVIEW BY:

BES

JOB NO.:

119214.144

EXHIBIT C (pg 4 of 5)



WATER TOWER ELEVATION

SCALE: 1" = 20'



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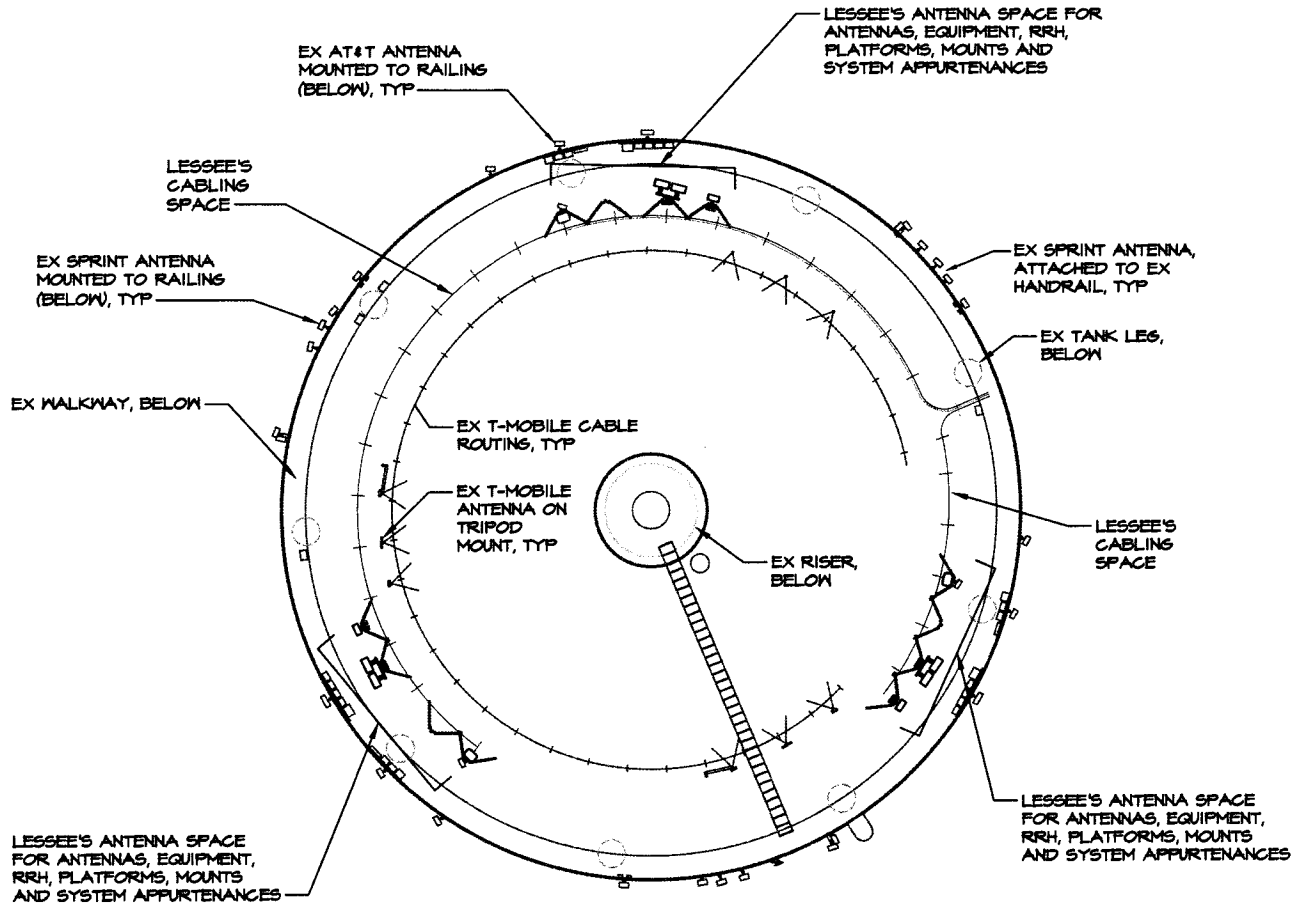
1220-C East Joppa Road, Suite 505
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**THIRD STREET WATER TANK
VZW - MONROE**

**806 THIRD STREET
HERNDON, VIRGINIA 20172**

SCALE: AS NOTED	DATE: 03/10/20	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 119214.144
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EXHIBIT C (pg 5 of 5)



ANTENNA SECTOR LAYOUT

SCALE: 1" = 20'



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TOWN OF HERNDON, VIRGINIA

RESOLUTION

APRIL 14, 2020

Resolution- **to extend the July 28, 2020 due date for the first installment payment of real property taxes until August 28, 2020**

WHEREAS, as a result of the potential spread of COVID-19, a communicable disease of public health threat, the Governor of Virginia declared a state of emergency on March 12, 2020, and directed local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency beginning March 1, 2020, due to the outbreak of COVID-19; and

WHEREAS, on March 24, 2020, in response to cases of COVID-19 confirmed in the Fairfax Health District, which includes the Town of Herndon, and to fully utilize the comprehensive emergency management planning in the Herndon Emergency Management Plan and in conjunction with Fairfax County be afforded all the powers pursuant to Virginia Code Sections 44-146.16 and 44-146.21, the Town Council declared a local state of emergency and disaster; and

WHEREAS, pursuant to the authority granted by Section 58.1-3916 of the Virginia Code, the Town Council has established by ordinance a due date of July 28 for the first of two equal installment payments of real property taxes, and pursuant to that section, the Town Council may further provide by resolution for reasonable extensions of time, not to exceed 90 days, for the payment of such taxes whenever good cause exists; and

WHEREAS, the public health threat of a potential spread of COVID-19 resulting in national, state, and local declarations of emergency constitutes good cause;

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby extends the July 28, 2020 due date for the first installment payment of real property taxes until August 28, 2020, in accordance with its authority in Section 58.1-3916 of the Virginia code.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

APRIL 14, 2020

ORDINANCE – AMENDING CHAPTER 30 FINANCE AND TAXATION, ARTICLE VI (TRANSIENT OCCUPANCY TAX), SECTION 30-179, OF THE HERNDON TOWN CODE TO TEMPORARILY EXTEND THE DUE DATES FOR THE REMITTANCE OF TRANSIENT OCCUPANCY TAXES.

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

- WHEREAS,** on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia arising from the novel coronavirus (COVID-19) pandemic, acknowledged the existence of a disaster as defined by Virginia Code Section 44-146.16 arising from the public health threat presented by a communicable disease anticipated to spread and ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive "any state requirement or regulation" as appropriate; and
- WHEREAS,** On March 23, 2020, Executive Order Fifty-Three was issued which ordered all businesses to the extent possible to adhere to social distancing recommendations, and
- WHEREAS,** On March 24, 2020, the Town's Emergency Management Coordinator issued a Declaration of Emergency and Disaster, applicable throughout the entire Town of Herndon, Virginia pursuant to the Town's Emergency Management Plan and Virginia Code Sections 44-146.21 and the Town Council affirmed the existence of a disaster and approved Resolution 20-G-13, to declare a State of Local Emergency and Disaster; and
- WHEREAS,** Also on March 24, 2020 pursuant to Virginia Code Section 15.2-1413 the Town Council approved Ordinance 20-O-23, to implement Emergency Procedures and Effectuate Temporary Changes to Address Continuity of Governmental Operations during Pandemic Disaster (COVID-19) for a period not to exceed six months; and
- WHEREAS,** On March 30, 2020, Executive Order Fifty-Five was issued which ordered all individuals in Virginia to remain at their place of residence with certain limited exceptions, and

WHEREAS, Hotel owners and operators, are an integral and essential part of the Town's economy and an important source of revenue to the Town, and the restriction on the number of patrons, ability to operate and other restrictions as they now exist and as they may be imposed in the future during the COVID-19 emergency are placing significant financial burdens on such businesses within the Town; and

WHEREAS, The Transient Occupancy Tax is deemed to be held in trust by such businesses until paid but the Town Council has determined that it is in the best interest of the Town and its businesses to delay various payment due dates for such tax.

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia that Chapter 30, Finance and Taxation, Article VI (Transient Occupancy Tax), of the Herndon Town Code (2000), is amended as follows:

ARTICLE VI. – TRANSIENT OCCUPANCY TAX

Section 30-179. – Reports and remittances.

All hotels must, before doing business in the town, register with the director of finance for collection of the tax imposed by this article. Each hotel shall make a report to the town for each calendar month during which business is conducted by the hotel, showing the amount of charges collected for the provision of lodging, and the amount of tax required to be collected. The monthly reports shall be made on forms prescribed by the director of finance and shall be delivered to the director of finance on or before the 20th day of the following calendar month. *Notwithstanding anything else in this article to the contrary, including the provisions of this section, the* Each report shall be accompanied by a remittance of the amount of tax due *on the 20th day of March 2020, April 2020, May 2020 and June 2020 respectively, may be made on or before the 20th day of June 2020, July 2020, August 2020 and August 2020, respectively,* any checks remitted being made payable to the Town of Herndon, Virginia. *Payments normally due on the March, April, May and June dates shall not be considered delinquent for purposes of this article and not subject to the imposition or penalties and interest in Sec. 30-181, if paid in full on or before the applicable due date.*