

**TOWN OF HERNDON, VIRGINIA
WORK SESSION AGENDA
HERNDON POLICE DEPARTMENT – COMMUNITY ROOM
397 HERNDON PARKWAY
October 4, 2022
7:00 PM**

CALL TO ORDER

1. Roll Call & Determination of Quorum

PRESENTATION

2. Proclamation, to recognize Paul C. LeReche for Dedicated Service

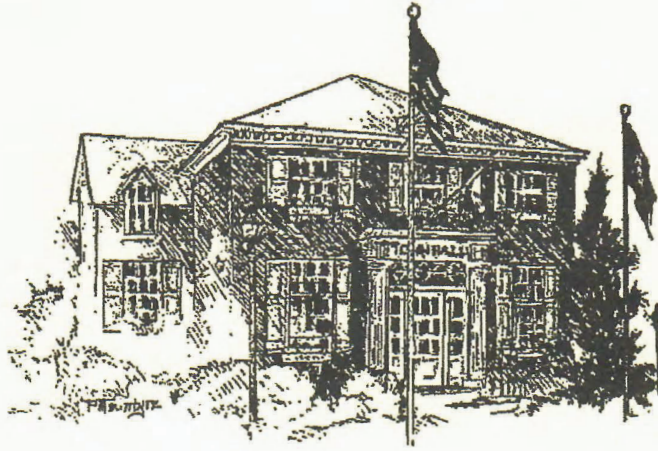
PUBLIC HEARINGS

3. Ordinance 22-O-22, to approve and authorize the Mayor to sign a third lease amendment with Celco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, drawings, and contact information at the Town's 3rd Street Water Tower
4. Ordinance 22-O-23, to approve and authorize the Mayor to sign a third lease amendment with Celco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, drawings and contact information at the Town's Alabama Drive Water Tower

GENERAL

5. Resolution 22-G-60, to approve an Agreement for Construction of Water Facilities between the Town of Herndon and Fairfax Water, for the construction of a 10 million gallon per day pump station in the Town
6. Ordinance 22-O-24, to approve and authorize the Mayor to sign a Third Lease Extension between Town of Herndon and the Board of Supervisors of Fairfax County, Virginia, to extend the expiration date to December 31, 2023 for office space at 397 Herndon Parkway

ROUNDTABLE



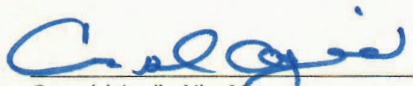
**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
RECOGNIZING PAUL C. LERECHÉ
FOR DEDICATED SERVICE**

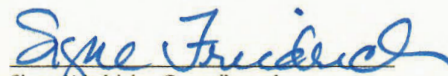
Paul C. LeReche is a longtime, dedicated representative of the Herndon community. Since 1984, he served on town boards and commissions, starting with the Building Board of Appeals, where he is the Architect Representative. He served on the Board of Zoning Appeals from 1988 to 1991, when he accepted appointment to the Architectural Review Board/Heritage Preservation Review Board. In 2002, Mr. LeReche was appointed to the Planning Commission, serving as Vice Chair for several years.

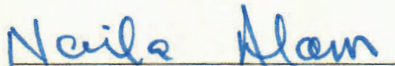
Throughout his time on town boards and commissions, Mr. LeReche was directly involved with impactful land use matters and redevelopment plans throughout the town, including the downtown, Metro Station, Herndon Transit Oriented Core, and Transit Related Growth areas. He notably championed nonmotorized and multimodal transportation ~ advocating for trails, pedestrian, and cycling improvements.

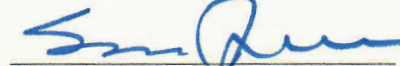
Mr. LeReche generously gave his time, talents, and expertise ~ always taking a detailed review of all matters brought before him. He selflessly served the town, its residents, his colleagues, and town staff. Herndon is a better place because of his work and contributions.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby recognize **Paul C. LeReche**, and express their deep appreciation for the more 38 years of dedicated service he has provided to the town thus far, and the more than 20 years he was a member of the Town of Herndon Planning Commission.

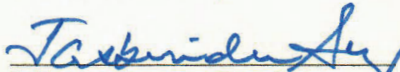

Cesar del Aguila, Vice Mayor


Signe Friedrichs, Councilmember


Naila Alam, Councilmember


Sean Regan, Councilmember


Pradip Dhakal, Councilmember


Jasbinder Singh, Councilmember


Sheila A. Olem, Mayor



STAFF REPORT

Town Council
October 4, 2022

Title:

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

Staff Contact:

Tammy Chastain
(703) 435-6860
tammy.chastain@herndon-va.gov

Description:

The original lease agreement at the Third Street Water Tower between the Town of Herndon and Verizon Wireless was dated June 9, 2002, first amended on August 15, 2012, and subsequently amended on July 14, 2020. If Verizon exercises all of their renewal options, the current lease will expire August 31, 2027.

This third amendment provides for the following changes:

- Removal of 12 antennas, 6 remote radio heads, 6 diplexers and 6 coax cables
- Installing 9 antennas, 9 remote radio heads, 3 hybrid cables, and 3 distribution boxes

The quantity and upper size limit of equipment has been revised as follows:

- 1 concrete equipment pad 18' x 18',
- 6 equipment cabinets up to 85" H x 35" W x 35" D,
- 1 15 KW diesel back-up generator,
- 12 panel antennas up to 104" H x 25" W x 12" D,
- 3 distribution boxes up to 30" H x 20" W x 12" D,
- 12 remote radio heads (RRH's) up to 36" H x 20" W x 12" D,
- 6 coax/hybrid cables up to 1-5/8" diameter.

This third amendment also updates the Town's contact information from an old P.O. Box to the current address.

Fiscal Impact:

The terms of the monthly rent will remain unchanged and have no fiscal impact on the Town. However, the lessee is subject to a 3% yearly escalation as per the original Deed of Lease.

Staff Recommendation:

Staff recommends that the Town Council approve the Ordinance as proposed.

Attachments:

Draft Ordinance
Draft Third Amendment to Deed of Lease with Exhibits

Staff:

A handwritten signature in black ink, appearing to read "Tammy Chastain", written over a horizontal line.

Tammy Chastain
Deputy Director of Public Works

TOWN OF HERNDON, VIRGINIA

ORDINANCE

OCTOBER 11, 2022

Ordinance - to approve and authorize the Mayor to sign a third lease amendment with Cellco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, drawings, and contact information 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 Third Amendment to Deed of Lease dated October 11, 2022. This instrument amends the original Deed of Lease dated June 9, 2002, as amended by the First Amendment to Deed of Lease dated August 15, 2012, and as amended by the Second Amendment to Deed of Lease dated July 14, 2020.
2. This instrument updates the approved equipment list, premises description and contact information for the Town of Herndon.
3. This instrument approves revising the approved equipment list to the following : 1 concrete equipment pad 18' x 18', 6 equipment cabinets up to 85" H x 35" W x 35" D, 1 15 KW diesel back-up generator, 12 panel antennas up to 104" H x 25" W x 12" D, 3 distribution boxes up to 30" H x 20" W x 12" D, 12 remote radio heads (RRH's) up to 36" H x 20" W x 12" D, 6 coax/hybrid cables up to 1 5/8" diameter.
4. This instrument amends Section 18 regarding Notices to reflect the following address of the Town:

If to Town:

Town of Herndon
Attn: Town Manager
777 Lynn Street
Herndon, VA 20170

With a copy to:

Town of Herndon
Attn: Department of Public Works
777 Lynn Street
Herndon, VA 20170

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.

THIRD AMENDMENT TO DEED OF LEASE

This Third Amendment to Deed of Lease ("Third Amendment"), is made this 11th day of October 2022 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, as amended by the Second Amendment to Deed of Lease dated July 14, 2020, all ordained by the Town Council of the Town of Herndon, Virginia (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 Third Amendment.
2. Exhibit A dated March 10, 2020 is deleted in its entirety and replaced with Exhibit A dated October 11, 2022, Exhibit B dated March 10, 2020, is deleted in its entirety and replaced with Exhibit B dated October 11, 2022, and Exhibit C, Pages 1-5 dated March 10, 2020, is deleted in its entirety and replaced with Exhibit C, Pages 1-5 dated October 11, 2022, all are attached hereto and incorporated herein.
3. The premises description is hereby modified as described in Exhibit B dated October 11, 2022 and its equipment list and drawings as described in Exhibit C, Pages 1-5 dated October 11, 2022, both attached hereto and incorporated herein.
4. Section 18 regarding Notices is hereby amended to reflect the following address of the Town:

If to Town:

Town of Herndon
Attn: Town Manager
777 Lynn Street

Lessee Site: Monroe/ 114940

Herndon, VA 20170

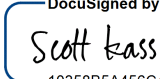
With a copy to:

Town of Herndon
Attn: Department of Public Works
777 Lynn Street
Herndon, VA 20170

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 Third 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 Third 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**

DocuSigned by:
BY: 
NAME: Scott Kass
TITLE: Sr. Manager Network RE/Regulatory
DATE: Aug 29, 2022

Additional signatures on following page

Lessee Site: Monroe/ 114940

TOWN:

TOWN OF HERNDON, VIRGINIA

BY: _____

Sheila A. Olem

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesa J. Yeatts

Town Attorney

Exhibit A
October 11, 2022

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: 0104-02-0045A

The geodetic coordinates of the Property are as follows:

North Latitude: 38° 58' 50"

West Longitude 77° 22' 59"

Exhibit B
October 11, 2022

The premises shall consist of the following:

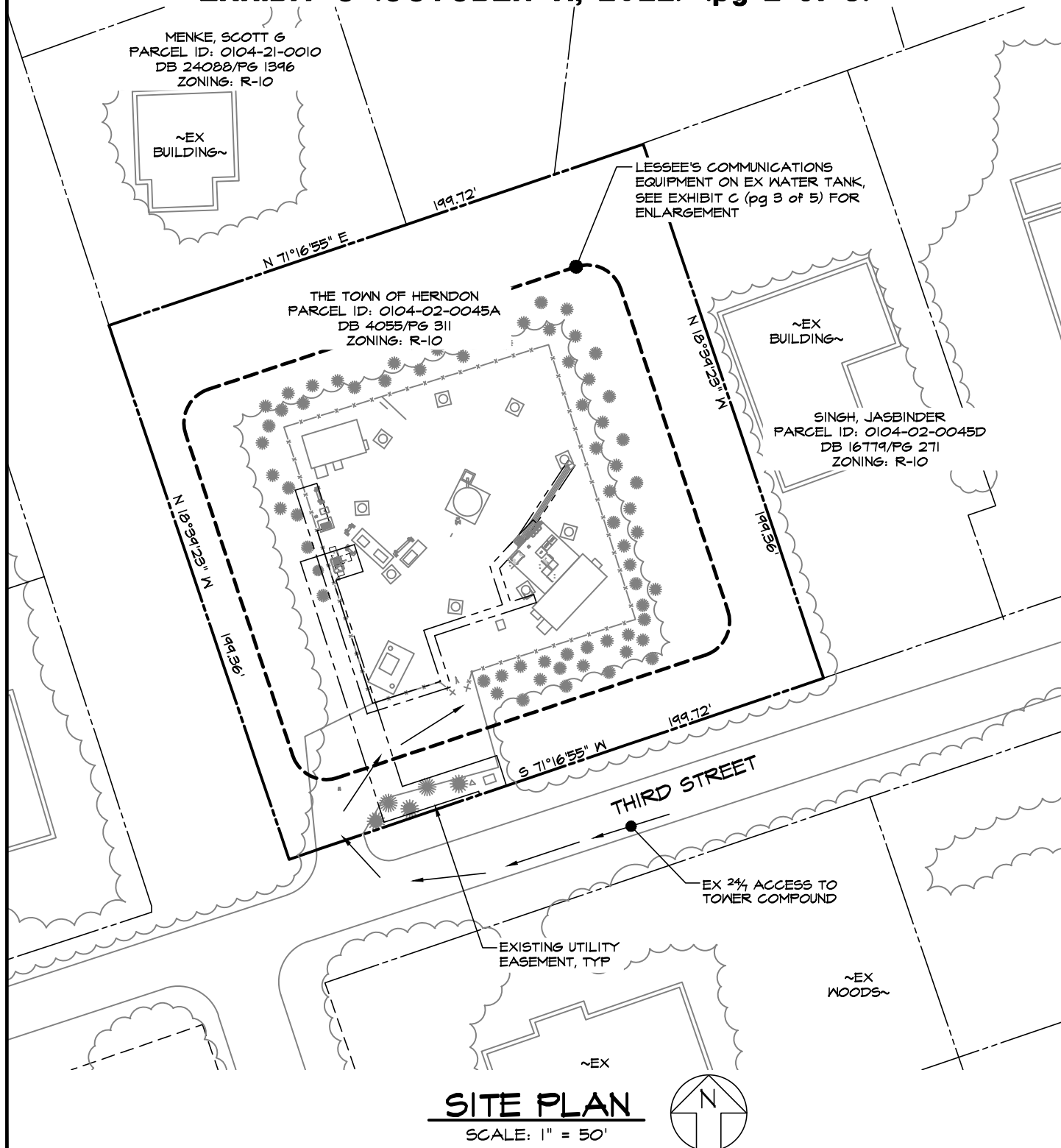
1. The Ground Space, consisting of approximately 324 square feet for placement of equipment cabinets and a back-up generator and associated concrete pad (as reflected on Exhibit C October 11, 2022).
2. Space on the Tower sufficient to accommodate the placement, installation, operation and maintenance of the equipment (as reflected on Exhibit C October 11, 2022).
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
October 11, 2022
Page 1 of 5

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 or ground space as generally shown on the attached drawings.

QTY	Type	Approximate Size
1	Concrete Equipment Pad	18' x 18'
6	Equipment Cabinets	up to 85" H x 35" W x 35" D on Equipment Pad
1	Back-Up Generator	15 KW diesel on Equipment Pad
12	Panel Antennas	up to 104" H x 25" W x 12" D
3	Distribution Boxes	up to 30" H x 20" W x 12" D
12	Remote Radio Heads (RRHs)	up to 36" H x 20" W x 12" D
6	Cables – Coax/Hybrid	up to 1-5/8" diameter

EXHIBIT C (OCTOBER 11, 2022) (pg 2 of 5)

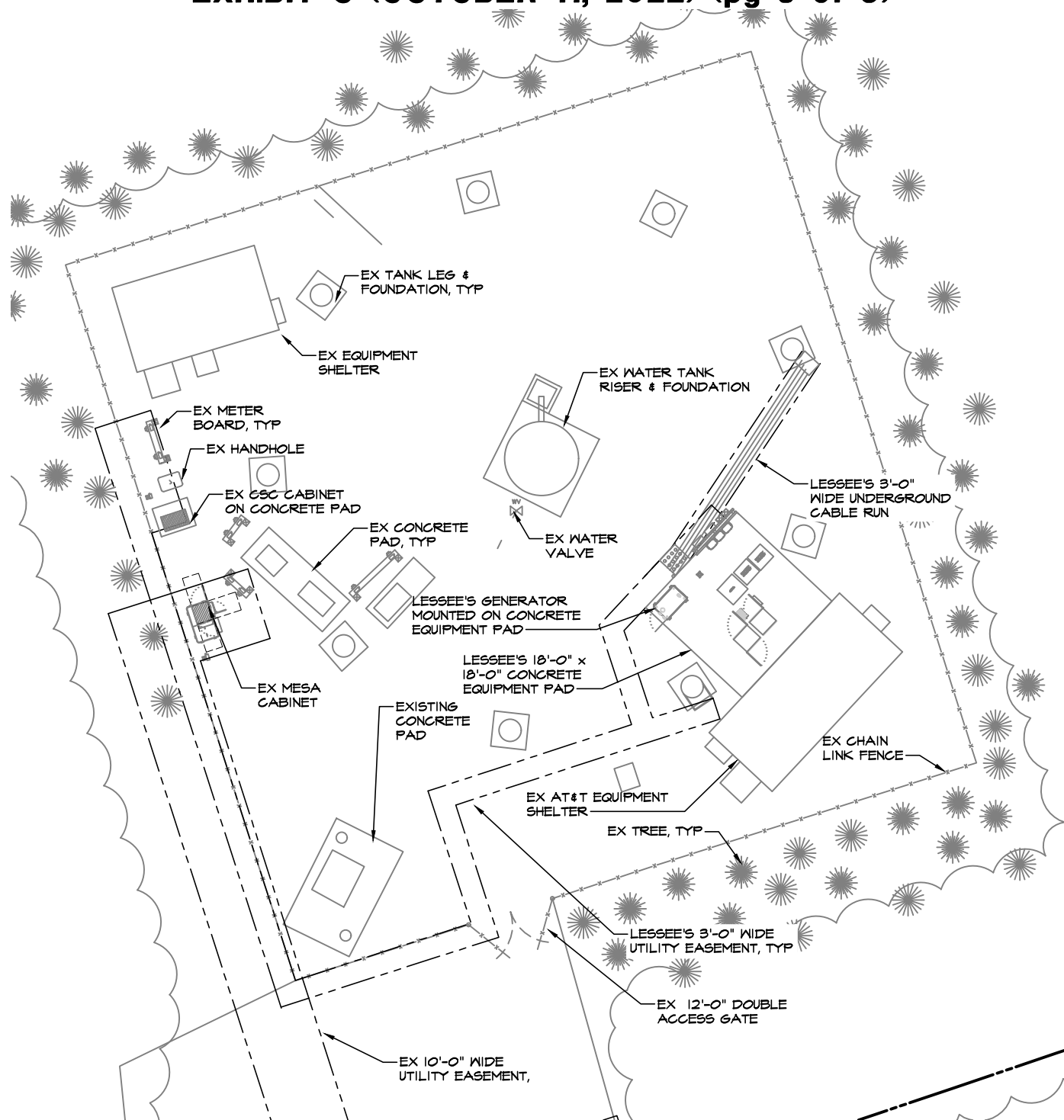
MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

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: AS NOTED	DATE: 10/11/22	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19214.144
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EXHIBIT C (OCTOBER 11, 2022) (pg 3 of 5)**ENLARGED COMPOUND LAYOUT**

SCALE: 1" = 20'



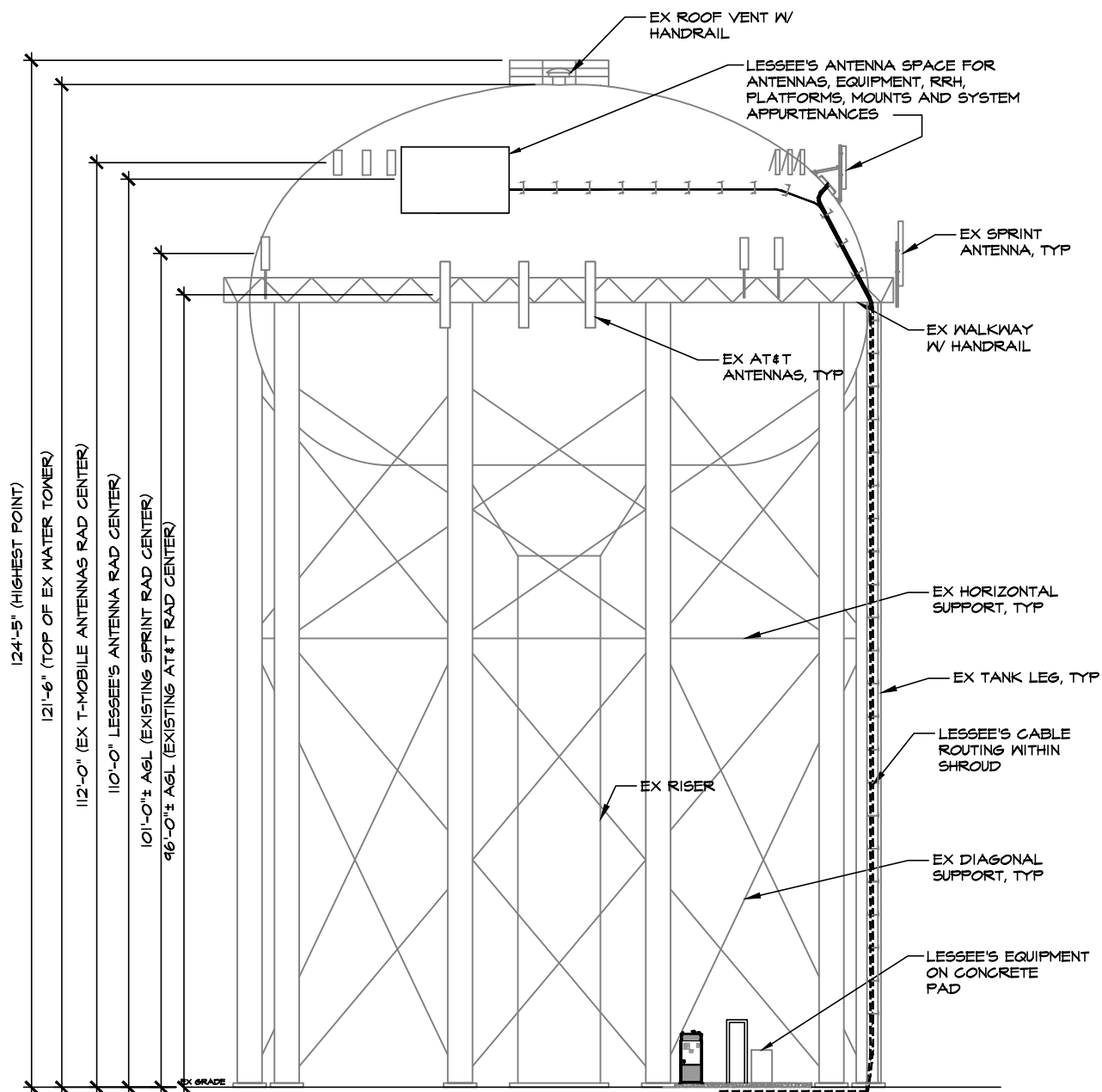
MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

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: AS NOTED	DATE: 10/11/22	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19214.144
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EXHIBIT C (OCTOBER 11, 2022) (pg 4 of 5)**WATER TOWER ELEVATION**

SCALE: 1" = 20'



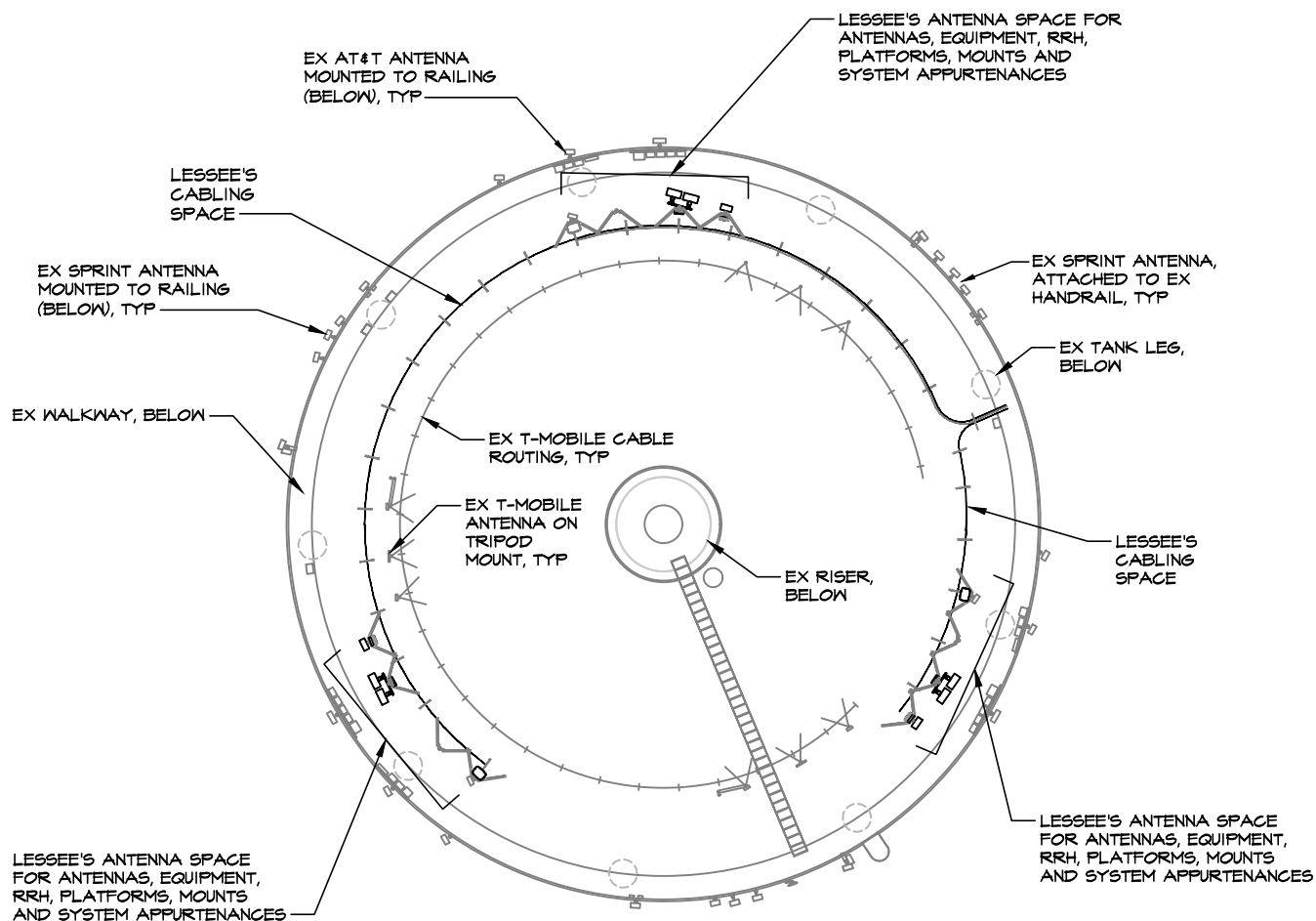
MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

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: AS NOTED	DATE: 10/11/22	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19214.144
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EXHIBIT C (OCTOBER 11, 2022) (pg 5 of 5)**ANTENNA SECTOR LAYOUT**

SCALE: 1" = 20'



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: AS NOTED	DATE: 10/11/22	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19214.144
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STAFF REPORT

Town Council
October 4, 2022

Title:

Ordinance – to approve and authorize the Mayor to sign a third lease amendment with Celco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, drawings and contact information at the Town's Alabama Drive Water Tower.

Staff Contact:

Tammy Chastain
(703) 435-6860
tammy.chastain@herndon-va.gov

Description:

The original lease agreement at the Alabama Drive Water Tower between the Town of Herndon and Verizon Wireless was dated February 15, 2008, first amended on August 15, 2012, and subsequently amended on July 14, 2020. If Verizon exercises all of their renewal options, the lease will expire on June 30, 2033.

This third amendment provides for the following changes:

- Removal of 9 antennas (3 from each sector) and 6 remote radio heads
- Addition of 12 antennas (4 at each sector) and 9 remote radio heads

The quantity and upper size limit of equipment has been revised as follows:

- 1 equipment shelter up to 12' x 20', one 15 KW diesel back-up generator
- 1 generator enclosure up to 11' x 13' with two 2' expansions,
- 12 panel antennas up to 104" H x 25" W x 12" D,
- 3 distribution boxes up to 30" H x 20" W x 12" D,
- 12 remote radio heads (RRH's) up to 36" H x 20" W x 12" D,
- 3 coax/hybrid cables up to 1-5/8" diameter.

This third amendment also updates the Town's contact information from an old P.O. Box to the current address.

Fiscal Impact:

The terms of the monthly rent will remain unchanged and have no fiscal impact on the Town. However, the lessee is subject to a 3% yearly escalation as per the original Deed of Lease.

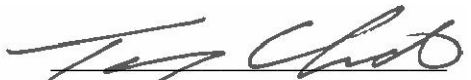
Staff Recommendation:

Staff recommends that the Town Council approve the Ordinance as proposed.

Attachments:

Draft Ordinance
Draft Third Amendment to Deed of Lease with Exhibits

Staff:



Tammy Chastain
Deputy Director of Public Works

TOWN OF HERNDON, VIRGINIA

ORDINANCE

OCTOBER 11, 2022

Ordinance - to approve and authorize the Mayor to sign a third lease amendment with Cellco Partnership d/b/a Verizon Wireless to revise the premises description, approved equipment list, drawings and contact information at the Town's Alabama Drive Water Tower.

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

1. The Town Council approves this Third Amendment to Deed of Lease dated October 11, 2022. This instrument amends the original Deed of Lease dated February 15, 2008, as amended by the First Amendment to Deed of Lease dated August 15, 2012, and as amended by the Second Amendment to Deed of Lease dated July 14, 2020.
2. This instrument updates the approved equipment list and premises description and contact information for the Town of Herndon.
3. This instrument approves revising the approved equipment list to the following: 1 equipment shelter up to 12' x 20', 1 15 KW diesel back-up generator, 1 generator enclosure up to 11' x 13' with two 2' expansions, 12 panel antennas up to 104" H x 25" W x 12" D, 3 distribution boxes up to 30" H x 20" W x 12" D, 12 remote radio heads (RRH's) up to 36" H x 20" W x 12" D, 3 coax/hybrid cables up to 1-5/8" diameter.
4. This instrument amends Section 18 regarding Notices to reflect the following address of the Town:

If to Town:

Town of Herndon
Attn: Town Manager
777 Lynn Street
Herndon, VA 20170

With a copy to:

Town of Herndon
Attn: Department of Public Works
777 Lynn Street
Herndon, VA 20170

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.

THIRD AMENDMENT TO DEED OF LEASE

This Third Amendment to Deed of Lease ("Third Amendment"), is made this 11th day of October 2022 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 February 15, 2008, as amended by the First Amendment to Deed of Lease dated August 15, 2012, as amended by the Second Amendment to Deed of Lease dated July 14, 2020, all ordained by the Town Council of the Town of Herndon, Virginia (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 Alabama Drive Water Tower located at 624 Alabama Drive in Herndon, Virginia 20170, Fairfax County Tax Map Number 0162-02-0148, 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 A dated July 14, 2020 is deleted in its entirety and replaced with Exhibit A dated October 11, 2022, Exhibit B dated July 14, 2020 is deleted in its entirety and replaced with Exhibit B dated October 11, 2022, Exhibit C, Pages 1-4 dated July 14, 2020 is deleted in its entirety and replaced with Exhibit C, Pages 1-4 dated October 11, 2022, all are attached hereto and incorporated herein.
3. The premises description is hereby modified as described in Exhibit B dated October 11, 2022 and its equipment list and drawings as described in Exhibit C, Pages 1-4 dated October 11, 2022, both attached hereto and incorporated herein.
4. Section 18 regarding Notices is hereby amended to reflect the following address of the Town:

If to Town:

Town of Herndon
Attn: Town Manager
777 Lynn Street

Lessee Site: Bruin Park / 179366

Herndon, VA 20170

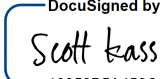
With a copy to:

Town of Herndon
Attn: Department of Public Works
777 Lynn Street
Herndon, VA 20170

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 Third 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 Third 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**

DocuSigned by:

BY: _____
NAME: Scott Kass
TITLE: Sr. Manager Network RE/Regulat
DATE: sep 1, 2022

Additional signatures on following page

Lessee Site: Bruin Park / 179366

TOWN:

TOWN OF HERNDON, VIRGINIA

BY: _____

Sheila A. Olem

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesa J. Yeatts

Town Attorney

Exhibit A
October 11, 2022

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

1. 624 Alabama Drive
Herndon, VA 20170
2. Fairfax County Tax Map Number: 0162-02-0143

The geodetic coordinates of the Property are as follows:

North Latitude: 38° 57' 40.84"

West Longitude 77° 23' 13.09"

Exhibit B
October 11, 2022

The premises shall consist of the following:

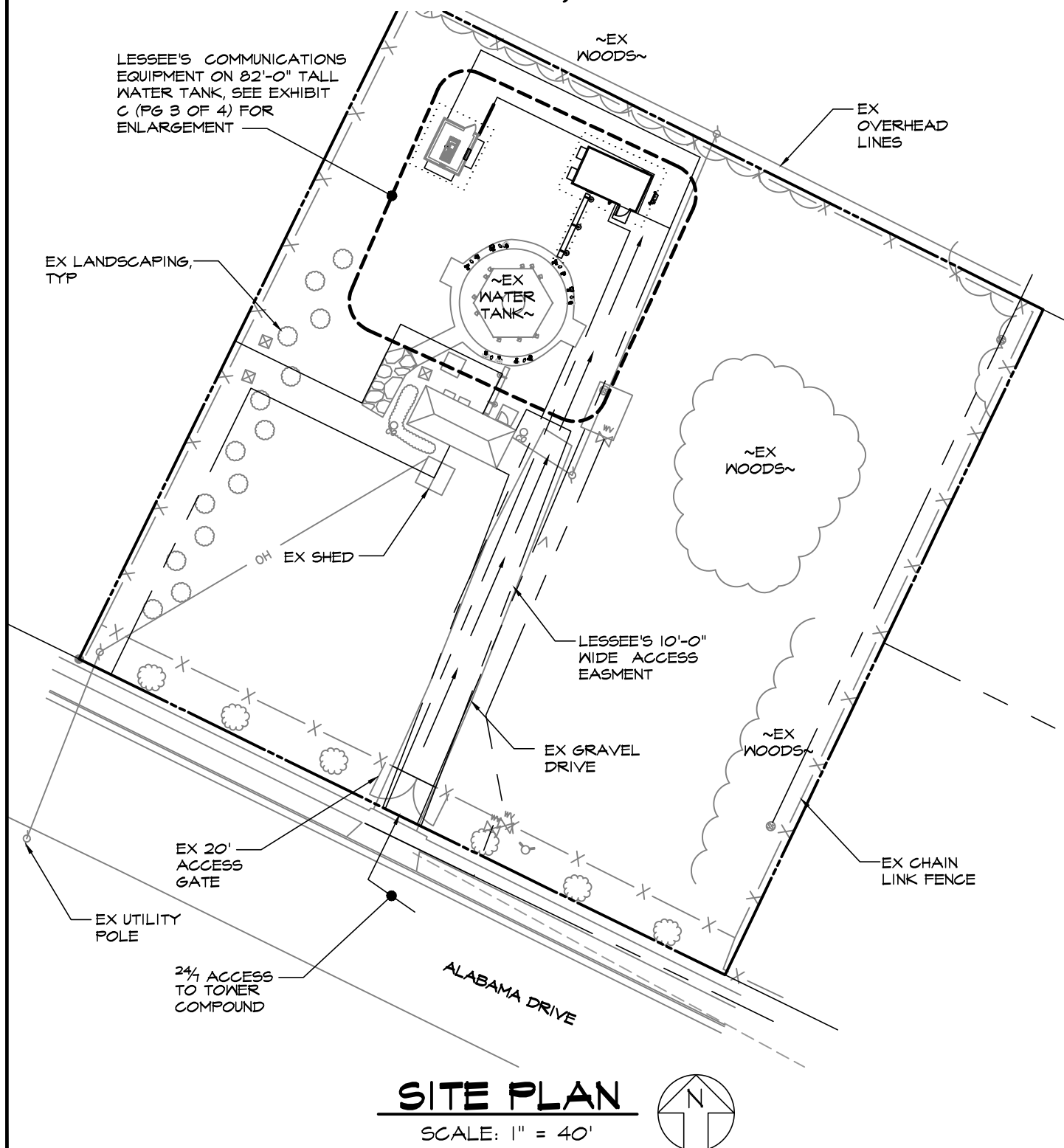
1. The Ground Space, consisting of approximately 442 square feet for placement of equipment shelter and a back-up generator enclosure (as reflected on Exhibit C October 11, 2022).
2. Space on the Tower sufficient to accommodate the placement, installation, operation and maintenance of the equipment (as reflected on Exhibit C October 11, 2022).
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
October 11, 2022
Page 1 of 4

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 or ground space as generally shown on the attached drawings.

QTY	Type	Approximate Size
1	Equipment Shelter	12'x 20'
1	Back-Up Generator	15 KW Diesel
1	Generator Enclosure	11' x 13' w/ (2) 2' expansions
15	Panel Antennas	up to 104" H x 25" W x 12" D
3	Distribution Boxes	up to 30" H x 20" W x 12" D
12	Remote Radio Heads (RRHs)	up to 36" H x 20" W x 12" D
6	Cables – Coax/Hybrid	up to 1-5/8" diameter

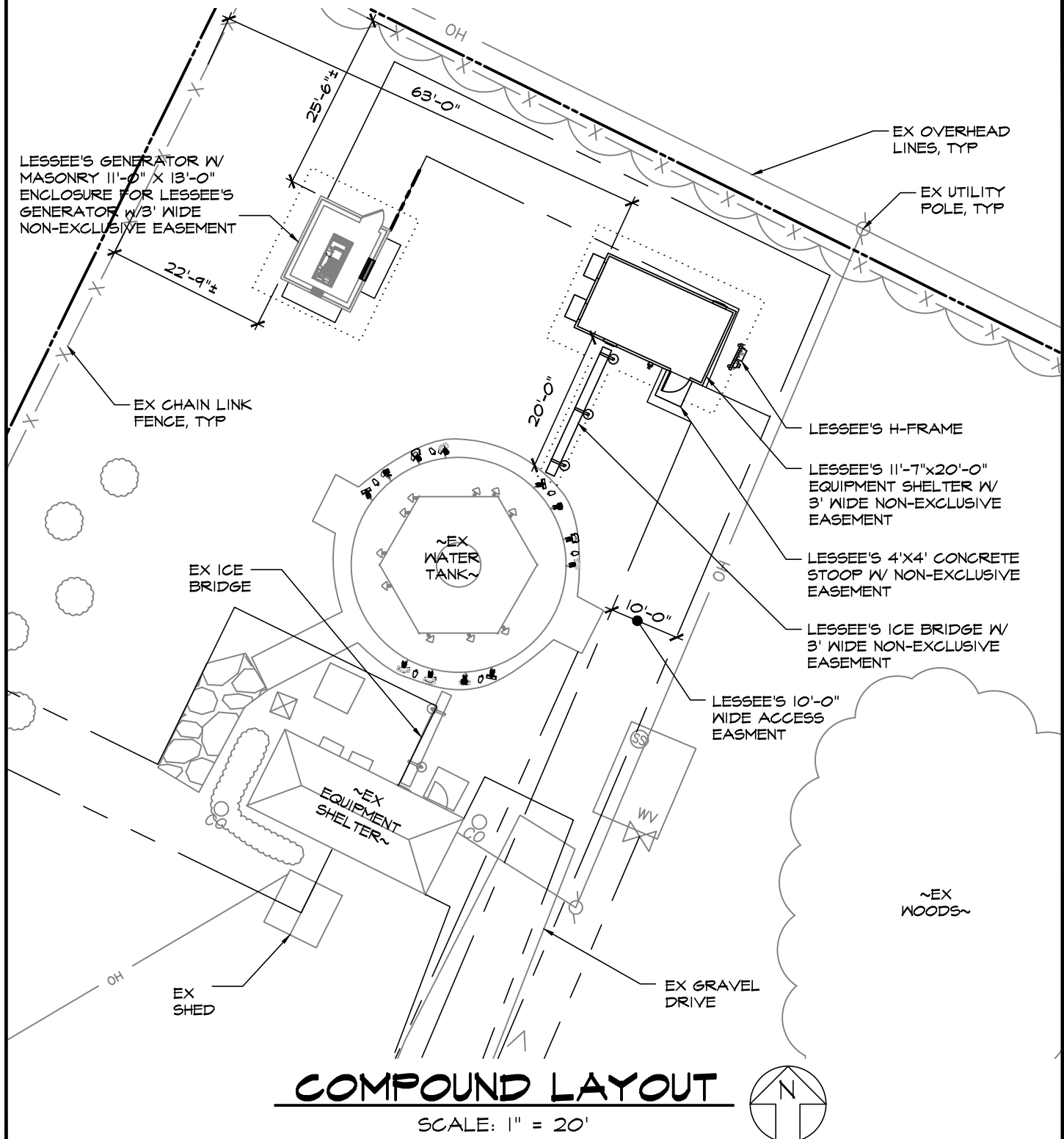
EXHIBIT C (OCTOBER 11, 2022) (PG 2 OF 4)

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

BRUIN PARK
624 ALABAMA DRIVE
HERNDON, VIRGINIA 20170
TOWN OF HERNDON

SCALE: AS NOTED	DATE: 10/11/22	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19214.142
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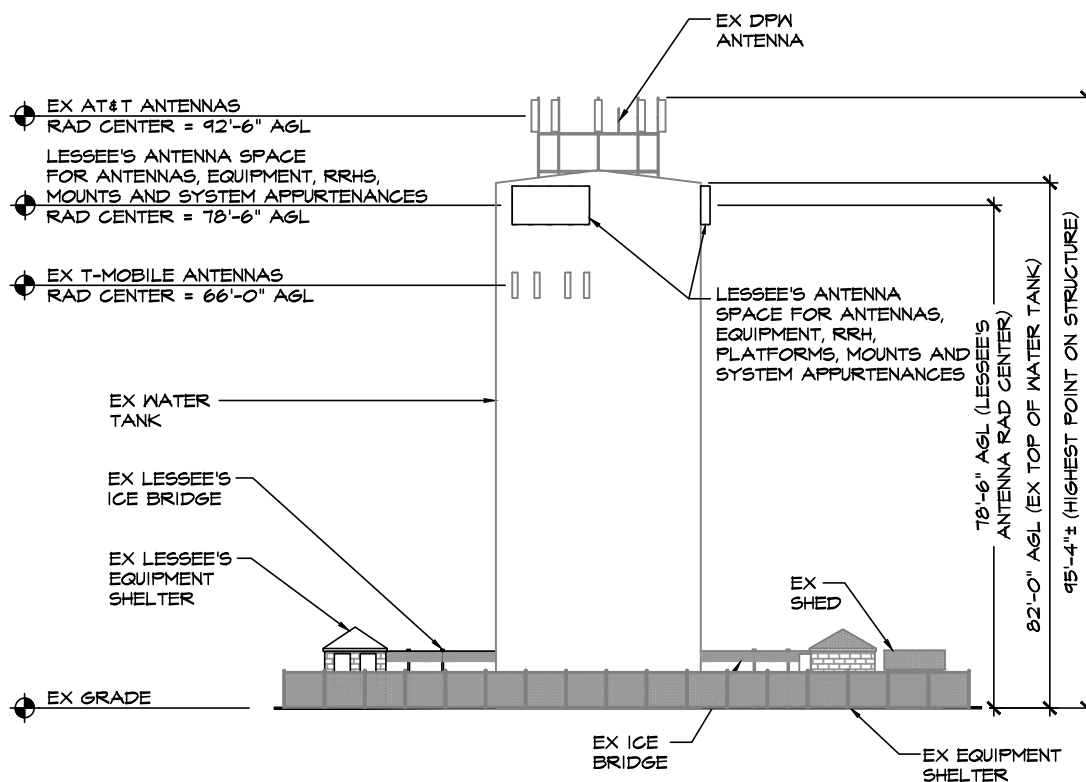
EXHIBIT C (OCTOBER 11, 2022) (pg 3 of 4)

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

BRUIN PARK
624 ALABAMA DRIVE
HERNDON, VIRGINIA 20170
TOWN OF HERNDON

SCALE: AS NOTED	DATE: 10/11/22	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19214.142
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EXHIBIT C (OCTOBER 11, 2022) (pg 4 of 4)**WATER TANK ELEVATION**

SCALE: 1" = 20'



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

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SCALE: AS NOTED	DATE: 10/11/22	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19214.142
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STAFF REPORT

Town Council
October 4, 2022

Title:

Resolution- to approve an Agreement for Construction of Water Facilities between the Town of Herndon and Fairfax Water for the construction of a 10 million gallon per day pump station in the Town.

Staff Contact:

Tammy Chastain, Deputy Director of Public Works
(phone) 703-435-6803
(e-mail) tammy.chastain@herndon-va.gov

Background:

In response to anticipated growth and planning efforts within the Herndon Transit Oriented Core, the Downtown, and possibly the Transit Related Growth Area and South Elden Street corridor, as well as potential infill development within the town, the Departments of Community Development and Public Works developed a Utility Master Plan to address, among other items, future water and sewer demands. The plan, which was presented to Town Council on February 7, 2017, called for an additional 1 MGD of water capacity by 2027. This capacity was purchased in 2018, making the town's total capacity 5.7 MGD. The plan also called for two transmission mains from the vicinity of the Corbalis Treatment Plant to the town's two water storage tanks because the existing system does not have the capacity to receive and deliver this volume of water. The estimates available at that time reflected a 40 percent residential to 60 percent commercial split based upon 2012 Herndon Metrorail planning efforts.

The development dynamic has evolved, and the staff has updated the study to reflect current mixed-use development trends of 60 percent residential to 40 percent commercial. The updated study found that a new water pump station connected to the existing 24-inch diameter pipeline within the W&OD trail right-of-way would be a more economical solution than constructing two transmission mains from Herndon to the vicinity of the Corbalis Treatment Plant. Fairfax Water has owned the pipeline in the W&OD trail right-of-way since its acquisition of the Fairfax City water system in 2013.

The new pump station facility will be designed and constructed by Fairfax Water with input and involvement by the Town of Herndon. Per the agreement, the pump station will be owned and operated by Fairfax Water. A preliminary engineering report by Fairfax Water's consultant has recommended that the new facility be located on town property between the police station and the W&OD trail. The 24-inch pipeline has the capacity to deliver the needed volumes of water, and the proposed pump station will have the capacity to supply the needed volumes of water to the town's distribution system at adequate pressure.

The attached agreement has been reviewed by the Town Attorney. Further, Fairfax Water's Board approved the agreement at their September 8, 2022 meeting.

Fiscal Impact:

The estimated cost of the design and construction of this facility is \$4,992,000, which will be financed with American Rescue Plan Act (ARPA) funds.

Staff Recommendation:

Staff recommends approval of the Resolution to approve Agreement for Construction of Water Facilities between the Town of Herndon and Fairfax Water for the construction of a 10 million gallon per day pump station in the Town.

Attachments:

Draft Resolution
Agreement for Construction of Water Facilities

Staff:

A handwritten signature in black ink, appearing to read 'Tammy L. Chastain', written over a horizontal line.

Tammy L. Chastain
Deputy Director of Public Works

TOWN OF HERNDON, VIRGINIA

RESOLUTION

OCTOBER 11, 2022

Resolution – to approve an Agreement for Construction of Water Facilities between the Town of Herndon and Fairfax Water for the construction of a 10 million gallon per day pump station in the Town.

WHEREAS, the Town of Herndon is a wholesale water customer of Fairfax Water; and

WHEREAS, the Town will require additional water transmission capacity in the future; and

WHEREAS, the Town desires that Fairfax Water design and construct a 10 MGD pump station to supply the town's future water supply needs; and

WHEREAS, Fairfax Water and the Town have developed an agreement for Fairfax Water to own and operate the pump station; and

WHEREAS, the agreement specifies the estimated cost of the facility to be funded by the town; and

WHEREAS, the Fairfax Water Board of Directors has approved the agreement on September 8, 2022.

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

AGREEMENT FOR CONSTRUCTION OF WATER FACILITIES

THIS AGREEMENT FOR CONSTRUCTION OF WATER FACILITIES (this “**Agreement**”) by and between **FAIRFAX COUNTY WATER AUTHORITY** (“**Fairfax Water**”), and the **TOWN OF HERNDON, VIRGINIA** (the “**Town**”), takes effect _____, 2022 (the “**Effective Date**”).

RECITALS:

1. Fairfax Water owns and operates a public water treatment and supply system that includes several sources of supply, supply works, treatment plants, transmission mains, booster pumping stations, and other related assets (collectively, the “**Fairfax Water System**”). Fairfax Water provides public water service within its designated jurisdictional limits on a retail basis and to certain locations outside of those jurisdictional limits on a wholesale or exchange basis.

2. The Town owns and operates a public water distribution system and provides water service within its designated jurisdictional limits (the “**Town Water System**”). The Town’s water supply is provided by Fairfax Water on a wholesale basis in accordance with the terms of the water service agreements identified on **Exhibit A** (such agreements, including the Supplemental Agreement defined below, referred to herein as the “**Water Service Agreements**”).

3. On August 14, 2018 Fairfax Water and the Town entered into a certain Amendment No. 2 to Supplemental Water Service Agreement No. 4 (the “**Supplemental Agreement**”) providing for the purchase by the Town of additional water supply capacity from Fairfax Water. Under the terms of the Supplemental Agreement, the Town’s allotted water supply from Fairfax Water increased to a total of 5.7 million gallons per day (“**MGD**”), an amount that exceeds the water supply capacity available to the Town through existing metered connections within the Fairfax Water System.

4. In order to provide the Town’s requirements for increased water supply capacity under the Supplemental Agreement and plan for potential increases of capacity in the future, Fairfax Water and the Town (each a “**Party**,” and together, the “**Parties**”) have determined that it is in their mutual interest for Fairfax Water to construct a new booster pump facility (the “**Pump Facility**” or “**Pump Facility Project**”) as generally depicted on **Exhibit B** to this Agreement.

5. The Parties now desire to set forth the terms and conditions under which Fairfax Water will design and construct the Pump Facility and the Town will pay and be responsible for all associated costs and expenses.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE 1 - CERTAIN DEFINITIONS

As employed in this Agreement, the following terms will have the meanings set forth below:

“Administrative Fee” means an amount equal to fifteen percent (15%) of the Design and Construction Cost. The Administrative Fee is intended to account for, among other things, the following overhead and administrative expenses related to the Pump Facility Project, as such term is defined in Article 2(A): (i) interest during the pre-construction phase; (ii) Fairfax Water’s office facilities and supplies; (iii) salaries of Fairfax Water’s personnel involved in design and construction of the Pump Facility who do not regularly charge costs directly to projects; (iv) fringe benefits for related Fairfax Water personnel costs; (v) general contract administration; and (vi) other miscellaneous expenses such as insurance, procurement, utilities, and the like.

“Design and Construction Cost” means and includes all costs, fees and expenses incurred by Fairfax Water in connection with the design and construction of the Pump Facility, whether incurred before or after the Effective Date. The Design and Construction Cost includes, but is not limited to, the following types of costs, fees and expenses, as they relate to the Pump Facility Project:

- (i) Easement and license agreement acquisition;
- (ii) Surveying;
- (iii) Engineering and consulting services;
- (iv) Construction services;
- (v) Utility connection fees;
- (vi) Materials and supplies;
- (vii) Inspections performed by or on behalf of Fairfax Water;
- (viii) Rental or acquisition of equipment;
- (ix) Legal fees and expenses (including, without limitation, legal fees and expenses incurred in connection with Fairfax Water’s acquisition of any necessary easements, licenses, permits and approvals, but excluding legal fees associated with the preparation of this Agreement);
- (x) Other costs, fees and expenses actually incurred by Fairfax Water in connection with the design and construction of the Pump Facility Project;
- (xi) Costs associated with securing any necessary permits, consents or approvals for the design and construction of the Pump Facility Project; and
- (xii) Costs of defending, litigating, settling, compromising and/or resolving any claims, demands, suits and/or causes of action brought by any person, entity, or authority arising from or in connection with the design and construction of the Pump Facility Project, including, without limitation, attorneys’ fees and expenses, and the fees and expenses of experts engaged by Fairfax Water (or any of Fairfax Water’s attorneys).

“**Other Agency Permits and Approvals**” means the permits, licenses, and approvals required to be obtained by Fairfax Water as listed on Exhibit C.

“**Payment Schedule**” means the schedule for payment of the Pump Facility Cost set forth on Exhibit I.

“**Permits, Approvals and Easements**” means the easements, permits, licenses, and approvals to be provided by the Town upon submittal or application by Fairfax Water, as set forth on Exhibit D.

“**Preconditions**” means the following requirements for proceeding with issuance of an Invitation for Bids for construction of the Pump Facility Project:

- (i) Fulfillment by the Town of its obligation to obtain all Permits, Approvals and Easements in accordance with Article 4(A); and
- (ii) Timely payment by the Town of all amounts due with respect to the Pump Facility Cost for planning and design of the Pump Facility Project in accordance with this Agreement and the Payment Schedule.

“**Pump Facility Cost**” means the Design and Construction Cost and the Administrative Fee, collectively.

“**Replacement Cost**” means the cost to replace a significant portion of the structural, mechanical, electrical or other major component of the facility, and does not include costs associated with routine maintenance such as lubrication, bearing replacement, painting, or other minor repairs.

ARTICLE 2 - GENERAL DESCRIPTION; ESTIMATES OF PROJECT COST

A. **Pump Facility Project.** The Parties anticipate that the Pump Facility will be designed and built: (i) to meet the Town’s allotted water supply capacity of 5.7 MGD , with a firm capacity of 6 MGD, and provisions for future expansion to 10 MGD firm capacity; (ii) in easements that will be provided by the Town in accordance with Article 4(A) (easements included among the Permits, Approvals and Easements to be developed during design to accommodate a pump facility site generally as depicted on Exhibit E);and (iii) in the manner generally depicted on Exhibit B to this Agreement. The design and construction of the Pump Facility Project will include the major components referenced on Exhibit F of this Agreement, together with all necessary meters, valves and/or other required appurtenances.

B. **Estimates and Updates of Pump Facility Cost.** In view of the current stage of planning for the Pump Facility Project, the Parties acknowledge that it is not possible to determine the Pump Facility Cost with certainty as of the Effective Date. Consequently, the Parties wish to agree upon an initial estimate of the Pump Facility Cost based upon their understandings and expectations as of the Effective Date, and establish a framework for providing updates and adjustments to estimated costs during design and construction of the Pump Facility Project. The initial cost estimate and process for updates are as follows:

(i) **Preliminary Cost Estimate.** As of the Effective Date, and without the benefit of related survey or design services, the initial estimate of the Pump Facility Cost is \$4,992,000 (the “**Preliminary Cost Estimate**”). A breakdown of costs included in the Preliminary Cost Estimate is set forth on **Exhibit G.**

(ii) **60% Design Cost Estimate.** Promptly following delivery to Fairfax Water of the design engineer’s updated estimate at the 60% stage of project design, Fairfax Water will provide written notice to the Town setting forth an updated and revised estimate of the Pump Facility Cost (the “**60% Design Cost Estimate**”).

(iii) **Final Design Cost Estimate.** Promptly following 100% completion of design of the Pump Facility Project by the design engineer and prior to issuance of an Invitation for Bid, Fairfax Water will provide written notice to the Town setting forth an updated and revised estimate of the Pump Facility Cost (the “**Final Design Cost Estimate**”).

(iv) **Bid Stage Cost.** Promptly following receipt of bids for the Pump Facility Project, and prior to award of a construction contract for such project, Fairfax Water will provide written notice to the Town (the “**Notice of Bid Stage Cost**”) setting forth: (i) the identity of the lowest responsive and responsible bidder, as determined by Fairfax Water; (ii) the bid amount submitted by such bidder, as reflected in the summary bid tabulation sheet included with such notice (the “**Bid Amount**”); and (iii) a revised estimate of the Pump Facility Cost based upon the Bid Amount (the “**Bid Stage Cost**”). In the event that the Bid Stage Cost exceeds the Final Design Cost Estimate by more than 25%, then Fairfax Water will not proceed with award of a construction contract for the Pump Facility Project unless the Town provides written approval of the Bid Stage Cost. Such required prior approval (the “**Town Approval**”) must be signed by a duly-authorized representative of the Town and submitted within 30 days following the Town’s receipt of the Notice of Bid Stage Cost. In the event that the Town disapproves the Bid Stage Cost, or otherwise fails to provide the Town Approval to Fairfax Water within the 30-day period prescribed above, then the Parties will have the right to terminate this Agreement in accordance with **Article 7.**

(v) **Construction Cost Updates.** Fairfax Water will include with each invoice submitted to the Town during construction of the Pump Facility copies of the construction contractor’s payment requests (including attachments) received by Fairfax Water since the date of the previous invoice. Fairfax Water will also include with each such invoice copies of any change orders approved by Fairfax Water since the date of the previous invoice.

ARTICLE 3 - OBLIGATIONS OF FAIRFAX WATER

Subject to and contingent upon (i) the timely and complete fulfillment by the Town of the Preconditions, and (ii) the Town’s continued payment of costs in accordance with the Payment Schedule, Fairfax Water’s obligations with respect to the Pump Facility Project are as follows:

A. **Other Agency Permits and Approvals; Cooperation and Assistance.** Following the Effective Date, and in coordination with the Town, Fairfax Water will use its best efforts to obtain all Other Agency Permits and Approvals. Fairfax Water will cooperate with and provide such assistance as is reasonably requested by the Town in connection with the Town's efforts to obtain all Permits, Approvals and Easements.

B. **Notices of Cost.** Following the Effective Date, Fairfax Water will prepare and submit to the Town the 60% Design Cost Estimate, the Final Design Cost Estimate, the Notice of Bid Stage Cost, and copies of materials relating to construction cost updates in accordance with Articles 2(B)(ii), (iii), (iv), and (v).

C. **Design and Construction of Pump Facility.** Following fulfillment of the Preconditions, and provided that all Other Agency Permits and Approvals shall have been obtained, Fairfax Water will undertake the Pump Facility Project with reasonable and customary diligence. To that end, Fairfax Water will procure engineering and construction services for the design and construction of the Pump Facility in accordance with the requirements of the Virginia Public Procurement Act, Virginia Code § 2.2-4300 *et seq.*, and will administer the performance of such services in accordance with Fairfax Water's standard practices and procedures. The parties acknowledge and agree that Fairfax Water's obligations hereunder are in all events conditioned upon (i) the Town's payment of costs in accordance with the Payment Schedule; and (ii) timely submission by the Town of the Town Approval, if such is required under Article 2(B)(iv).

D. **Final Statement of Cost.** Following completion of construction of the Pump Facility Project, Fairfax Water will provide the Town with a notice setting forth the final Pump Facility Cost which will serve as the basis for the final reconciliation described in Article 4(B)(ii).

ARTICLE 4 - OBLIGATIONS OF THE TOWN.

Subject to appropriation of sufficient funds by the Town's governing body, the Town's obligations with respect to the Pump Facility Project are as follows:

A. **Permits, Approvals and Easements.** The Town will provide all Permits, Approvals and Easements and provide Fairfax Water with copies of each. The Town acknowledges and agrees that no special exception approvals are required to construct the Pump Facility Project. The Town acknowledges and agrees that Fairfax Water will not proceed with issuance of an Invitation for Bid for construction of the Pump Facility Project unless and until the Town has satisfied the Preconditions.

B. **Responsibility for Pump Facility Cost.** The Town will pay and be responsible for 100% of the Pump Facility Cost. The Pump Facility Cost will be paid as follows:

(i) **Payment Schedule.** The Town will pay the Pump Facility Cost to Fairfax Water in accordance with the Payment Schedule. Amounts not paid by the Town within the time periods set forth on the Payment Schedule will bear interest at the rate of 1% per month until paid in full.

(ii) **Final Reconciliation.** Following completion of construction of the Pump Facility Project, Fairfax Water will prepare and submit to the Town a final reconciliation

notice (the “**Final Reconciliation Notice**”) setting forth the final Pump Facility Cost (calculated by reference to the actual Design and Construction Costs). In the event that the final Pump Facility Cost exceeds amounts paid to Fairfax Water by the Town as of such date, then the Town will pay the difference within 30 days after receiving the Final Reconciliation Notice. If, on the other hand, amounts paid to Fairfax Water by the Town as of such date exceed the final Pump Facility Cost, then Fairfax Water will reimburse the difference to the Town within 30 days. The Parties agree that the final Pump Facility Cost represents the Town’s total reimbursement to Fairfax Water for the design and construction of the Pump Facility Project.

C. **Replacement Cost.** Subject to sufficient appropriation of funds by the Town’s governing body and applicable law, the Town will pay and be responsible for 100% of any future Replacement Costs, including those costs associated with new pumps, piping, major electrical equipment, major structural components or full replacement of the Pump Facility. Fairfax Water will: (i) make reasonable efforts to notify the Town of capital replacement planning with respect to the Pump Facility and major structural components five (5) years prior to a planned replacement of such items; and (ii) provide such notice as is reasonably practicable under the circumstances with regard to emergency replacements and other matters requiring replacement that are not susceptible to planning five (5) years in advance.

**ARTICLE 5 - OWNERSHIP, OPERATION AND USE OF THE PUMP FACILITY;
WATER SERVICE AGREEMENTS UNAFFECTED**

A. **Ownership of Pump Facility.** The Pump Facility will be and will remain the property of Fairfax Water and will constitute a part of the Fairfax Water System. Nothing contained in or contemplated by this Agreement, including but not limited to payments by the Town of the Pump Facility Cost, will be deemed to grant, assign, or in any other manner create in or confer upon the Town any title, interest or other right of ownership, legal or equitable, in or to any part of the Fairfax Water System, the Pump Facility or Fairfax Water’s other property. Fairfax Water will own, operate, maintain and repair the Pump Facility in accordance with its standard practices and procedures, and in the manner provided herein.

B. **Use of Pump Facility.** Fairfax Water will use the Pump Facility for delivering water to the Town Water System in accordance with the terms and conditions of the Water Service Agreements and all applicable laws and regulations.

C. **No Reservation.** Each Party acknowledges that capacity is not being reserved under this Agreement.

D. **Water Service Agreements; Water Charges.** The Town acknowledges and agrees that: (i) the Water Service Agreements will remain in full force and effect and will not be deemed to have been modified or amended in any respect by this Agreement; and (ii) once the Pump Facility is placed into service, all payments, fees, charges and other expenses associated with water delivered by means of the Pump Facility will be governed by and paid in accordance with the Water Service Agreements.

ARTICLE 6- FURTHER OBLIGATIONS.

A. **Site Access.** In the event that the Northern Virginia Regional Park Authority or its successor revokes the license identified on **Exhibit C**, item (b), at any time during the Contract Term, the Town will promptly take all steps reasonably necessary to provide Fairfax Water with reasonably prompt, uninterrupted access to the Pump Facility by means of the parking lot to the Herndon Police Station. The Town is responsible for covering all costs associated with providing such access.

B. **Communications Equipment at Town Storage Tanks.**

(i) **Design and Installation of Communications Equipment.** Fairfax Water will complete the design for installation of the Communications Equipment (as defined below) on the Town's elevated water storage tanks (the "**Storage Tanks**") and/or tank sites, with such design to include such structural analysis as the Town determines necessary, for the Town's approval. As employed herein, "**Communications Equipment**" means the tank level transmitters, antennas and related conduit, PLC panels, and other equipment identified by Fairfax Water as necessary for providing water levels of the Storage Tanks to Fairfax Water for control of the Pump Facility. The Communications Equipment will be and remain, the property of Fairfax Water.

(ii) **Grant of License.** The Town hereby grants to Fairfax Water, and Fairfax Water hereby accepts, a non-transferable license to full, uninterrupted access to the Town property on which the Storage Tanks are located (the "**Tank Site**") to (i) install the Communications Equipment on each of the Storage Tanks, valve vaults, and one or more sheds located at the Tank Site; and (ii) thereafter, inspect, maintain, operate, repair, and replace, as needed, the Communications Equipment at the Tank Site during the Term.

C. **Pump Station and Storage Tank Operation.** The Parties agree that operation of the Pump Facility will be determined based on the water level in the Town's Storage Tanks. Following completion of the Pump Facility Project, Fairfax Water will be responsible for operation and routine maintenance of the Pump Facility, proposed Pressure Reducing Valve (PRV) vaults, and Communications Equipment at the Storage Tanks and/or tank sites, as required to operate the Pump Facility. The Town is, and will remain, responsible for independently monitoring water levels in the Storage Tanks and for installation of control valves as required to prevent tank overflow. Maintenance responsibilities are generally reflected in **Exhibit H**.

D. **Metering Facilities.** Fairfax Water will construct, own, operate, and maintain new metering facilities in the location as generally shown on **Exhibit B**, which will replace the legacy City of Fairfax meters along the 24-inch transmission main and serve as the primary metering location following completion of the Pump Facility. Existing metering facilities at Worldgate, Spring Street and Bennett Street will remain in service, with adjustments made to existing PRVs so that they open automatically only in the event of an emergency.

E. **Transmission Main.** Fairfax Water will continue to own, operate, and maintain the existing 24-inch transmission main located generally between the Pump Facility and the new PRV vaults. In the event of a failure of this main and significant leakage or discharge of water

downstream of the metering facilities, Fairfax Water agrees to adjust the Town's water charges accordingly.

ARTICLE 7 - TERM; TERMINATION

A. **Term of Agreement.** Unless terminated earlier by mutual written agreement of the Parties or as otherwise provided herein, the term of this Agreement will be deemed to begin on the Effective Date and will continue until the date upon which either the Town Water System, the Fairfax Water System, or either of its or their successors, is no longer in operation.

B. **Termination.**

(i) **By Fairfax Water.** In the event that the Town (a) fails to provide all Permits, Approvals and Easements before December 31, 2025, (b) fails to make any payment to Fairfax Water when due (and does not cure such failure within 30 days following receipt of written notice from Fairfax Water), or (c) fails to provide a Town Approval within 30 days after its receipt of the Notice of Bid Stage Cost under circumstances in which a Town Approval is required under Article 2(B)(iv), then Fairfax Water will have the right to terminate this Agreement by delivering written notice of termination to the Town.

(ii) **By the Town.** The Town will have the right to terminate this Agreement by delivering written notice of termination to Fairfax Water at any time prior to Fairfax Water's award of a contract for construction of the Pump Facility Project.

(iii) **Obligations upon Termination.** In the event that either party exercises its right to terminate this Agreement pursuant to Article 7(B)(i) or (ii), then Fairfax Water will provide the Town with an accounting of the Pump Facility Cost incurred as of the effective date of termination. If the Pump Facility Cost incurred as of the effective date of termination exceeds amounts previously paid by the Town to Fairfax Water hereunder, then the Town will be obligated to pay the difference to Fairfax Water within 30 days. If, on the other hand, amounts paid to Fairfax Water by the Town as of the effective date of termination exceed the Pump Facility Cost incurred as of such date, then Fairfax Water will reimburse the difference to the Town within 30 days.

ARTICLE 8 - GENERAL MATTERS

A. **Notices.** All notices and other communications hereunder shall be in writing and shall be hand delivered, sent by email (with a duplicate copy transmitted by another method of delivery authorized hereunder), sent by first class mail, postage prepaid, or sent by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by email (with a duplicate copy transmitted by another method of delivery authorized hereunder), three (3) days after mailing if sent by mail, and one (1) day after dispatch if sent by express courier, to the addresses and/or emails set forth beneath the signatures of each Party to this Agreement. Either Party may designate, by written notice given to the other in the manner prescribed herein, any further or different addresses and/or email addresses to which subsequent notices shall be sent.

B. **Dispute Resolution; Venue; Waiver of Jury Trial.** Any issue or dispute arising under this Agreement will be resolved, in the first instance, by the Parties. Thereafter, any issue or dispute arising hereunder that is not otherwise resolved by the Parties hereto will be decided by a court of competent jurisdiction in the Commonwealth of Virginia. Each Party hereby knowingly, voluntarily and intentionally waives any right it may have to a trial by jury of any issue or dispute arising under or relating in any way to this Agreement.

C. **Third Party Claims.** In the event of any claims by persons or entities arising from or in connection with the Pump Facility Project, Fairfax Water may employ counsel and experts to defend against any such claim or suit. Fairfax Water may settle or compromise such claims with the consent of the Town, which consent will not be unreasonably withheld.

D. **Binding Effect; No Third Party Beneficiaries.** This Agreement will inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assignees. No provision of this Agreement is intended, nor shall it be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any person or entity other than the Parties.

E. **Entire Agreement; Authority.** This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior agreements and undertakings, both written and oral, between or among the Parties with respect to the subject matter hereof. Each Party represents and warrants to the others that it: (i) possesses full legal right, power and authority to enter into this Agreement and to fulfill its obligations hereunder; and (ii) has received all required approvals and authorizations needed to enter into this Agreement.

F. **No Assignment.** This Agreement may not be assigned by either Party without the express written consent of the other Party, and any such assignment or attempted assignment without such consent will be void.

G. **No Amendment.** This Agreement may not be amended or modified, except by an instrument in writing signed by, or on behalf of, the duly authorized representatives of both of the Parties.

H. **Waiver.** No waiver of any of the provisions of this Agreement will be deemed to or will constitute a waiver of any other provision.

I. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without giving effect to any choice of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction) that would cause the application of the laws of any other jurisdiction as to all matters, including validity, construction, effect, performance and remedies.

J. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

K. **Captions; Incorporation of Exhibits.** The captions, headings, and subheadings used in this Agreement are solely for convenience of reference and do not constitute a part of this

Agreement. The Exhibits and attachments to this Agreement are a part of this Agreement, and are incorporated into this Agreement.

L. **Appropriation of Funds.** The Town's financial obligations under this Agreement are subject to appropriations by its governing body. The Town agrees to provide Fairfax Water with written notice of non-appropriation of funds within thirty (30) calendar days after such action is completed and further agrees to take reasonable steps to obtain appropriations in amounts sufficient to pay all reasonably anticipated financial obligations hereunder.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized officer as of the date hereof.

[Signatures on Following Pages]

Signature Page of the Fairfax County Water Authority

Fairfax Water:

FAIRFAX COUNTY WATER AUTHORITY

By: _____

Name: Phillip W. Allin

Title: Chairman

(SEAL)

ATTEST:

Secretary

Date

Address for Notices:

Fairfax County Water Authority
8570 Executive Park Avenue
Fairfax, Virginia 22031
Attention: Jamie Bain Hedges, General Manager

E-Mail: jhedges@fairfaxwater.org

With a copy to:

Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue
Washington, D.C. 20037-1701
Attention: John C. McGranahan, Esq.

E-Mail: jmcgranahan@huntonak.com

Signature Page of the Town of Herndon, Virginia

The Town:

TOWN OF HERNDON, VIRGINIA

By: _____
Name: Sheila A. Olem
Title: Mayor

(SEAL)

ATTEST:

Town Clerk

Date

Address for Notices:

Town of Herndon
777 Lynn Street
Herndon, Virginia 20170
Attention: Town Manager

E-Mail: town.manager@herndon-va.gov

With a copy to:

Town of Herndon
777 Lynn Street
Herndon, Virginia 20170
Attention: Town Attorney

E-Mail: town.attorney@herndon-va.gov

APPROVED AS TO FORM

Lesa J. Yeatts
Town Attorney

Exhibit A

Water Service Agreements

The Water Service Agreements consist of the following:

Water Service Agreement. Water Service Agreement, dated as of April 15, 1987, pursuant to which Fairfax Water sold 2.5 million gallons per day (“MGD”) of capacity and agreed to sell water on a wholesale basis to the Herndon.

Supplemental Water Service Agreement No. 1. Supplemental Water Service Agreement No. 1, dated as of October 1, 1989, which was amended by Amendment No. 1 to Supplemental Water Service Agreement No. 1, dated July 1, 1994, pursuant to which Herndon acquired an additional 1 MGD of capacity from Fairfax Water.

Supplemental Water Service Agreement No. 2. Supplemental Water Service Agreement No. 2, dated as of November 11, 1993, pursuant to which Fairfax Water transferred to Herndon an existing Fairfax Water customer and existing Fairfax Water facilities located within Herndon’s boundaries and acquired an additional 0.2 MGD of capacity in exchange for the capacity fees previously paid by the transferred customer.

Supplemental Water Service Agreement No. 3. Supplemental Water Service Agreement No. 3, dated October 4, 1999, providing for Herndon to pay an agreed-upon share of the cost of construction of Fairfax Water’s Frederick P. Griffith, Jr. Water Treatment Plant.

Supplemental Water Service Agreement No. 4. Supplemental Water Service Agreement No. 4, dated February 28, 2005, which has been amended by Amendment No. 1 to Supplemental Water Service Agreement No. 4 dated March 18, 2005, and Amendment No. 2 to Supplemental Water Service Agreement No. 4 dated August 14, 2018, pursuant to which Herndon acquired an additional 2 MGD of capacity from Fairfax Water.

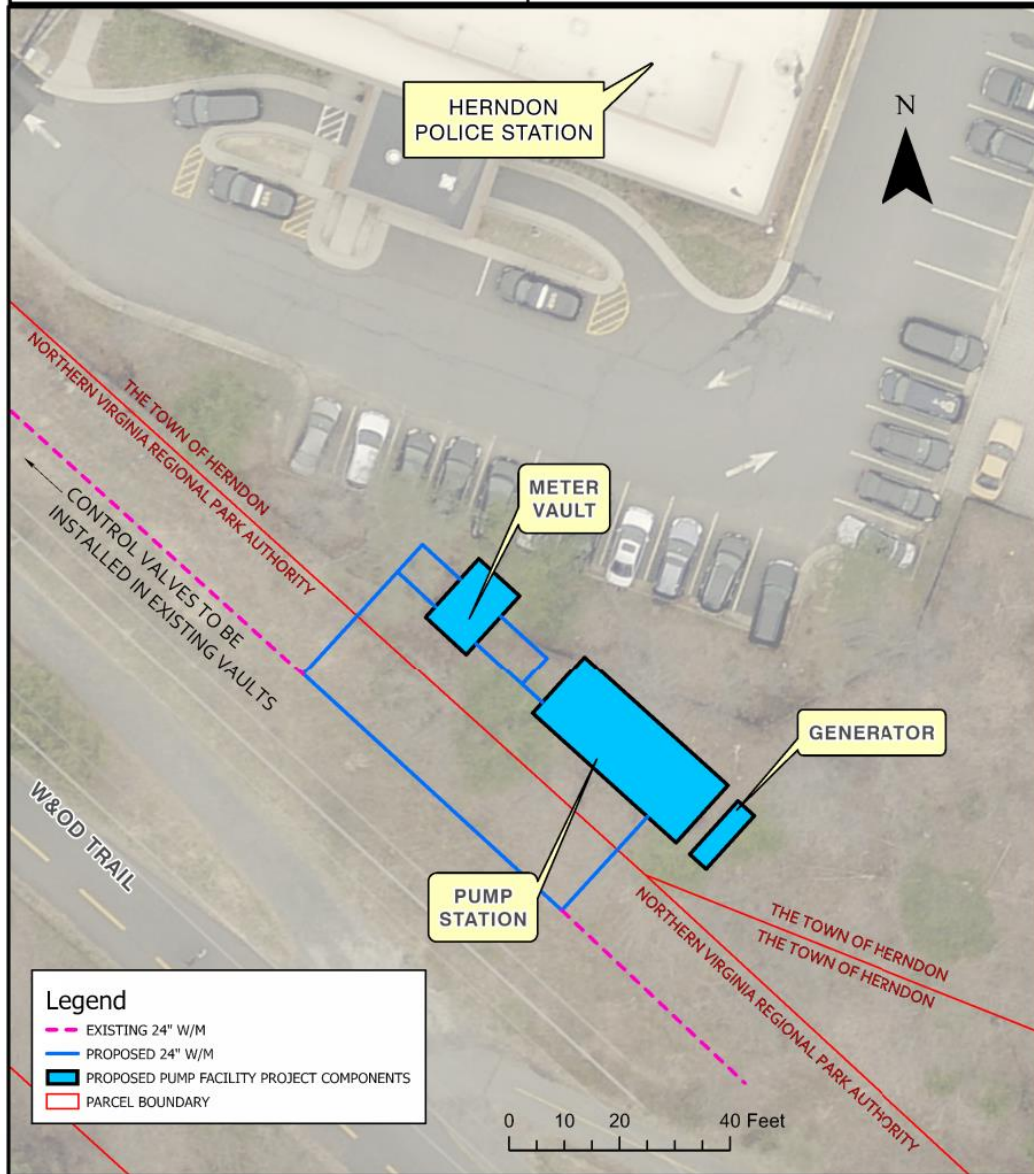
Exhibit B

Drawing/Schematic Depicting Pump Facility Project



Fairfax, Virginia

Subject	Town of Herndon Pump Station	Magisterial District	Dranesville
	EXHIBIT B	Tax Map No.	17-1
Project No.	2642	Drawn By	TQP
Division No.	001	Checked By	DB
		Approved By	TKG
		Date	05/10/2021



Sheet 1 of 1

Exhibit C

Other Agency Permits and Approvals

The Other Agency Permits and Approvals consist of the following:

- a. Virginia Department of Health Waterworks Construction Permit;
- b. Northern Virginia Regional Park Authority license agreement for access as well as approval for construction of the connecting pipes;
- c. Dominion Energy Consent Agreement for construction activities within their easement; and
- d. Other easements, licenses, permits or approvals as required for construction and/or operation of the Pump Station Project, but excluding the Permits, Approvals and Easements.

Exhibit D

Permits, Approvals and Easements to be provided by the Town of Herndon

The Permits, Approvals and Easements to be provided by the Town of Herndon, upon submittal or application of Fairfax Water, consist of the following:

- a. Town of Herndon approval of the site plan;
- b. Town of Herndon Architectural Review Board approval;
- c. Temporary and permanent easements granted by the Town of Herndon to Fairfax Water to allow construction of the Pump Facility Project on Town of Herndon property or properties;
- d. Town of Herndon contractor-controlled permits (building and utility permits);
- e. Utility easements as may be required for construction and/or operation of the Pump Facility on Town property; and
- f. All other easements, licenses, permits or approvals required for construction and operation of the Pump Facility and for which the Town of Herndon serves as the regulatory agent or authority having jurisdiction.

Exhibit E

Drawing/Schematic Depicting Proposed Easements to be Dedicated to Fairfax Water by the Town of Herndon



Fairfax, Virginia

Subject	Town of Herndon Pump Station	Magisterial District	Dranesville
	EXHIBIT E	Tax Map No.	17-1
Project No.	2642	Drawn By	TQP
Division No.	001	Checked By	DB
		Approved By	RC
		Date	06/17/2022

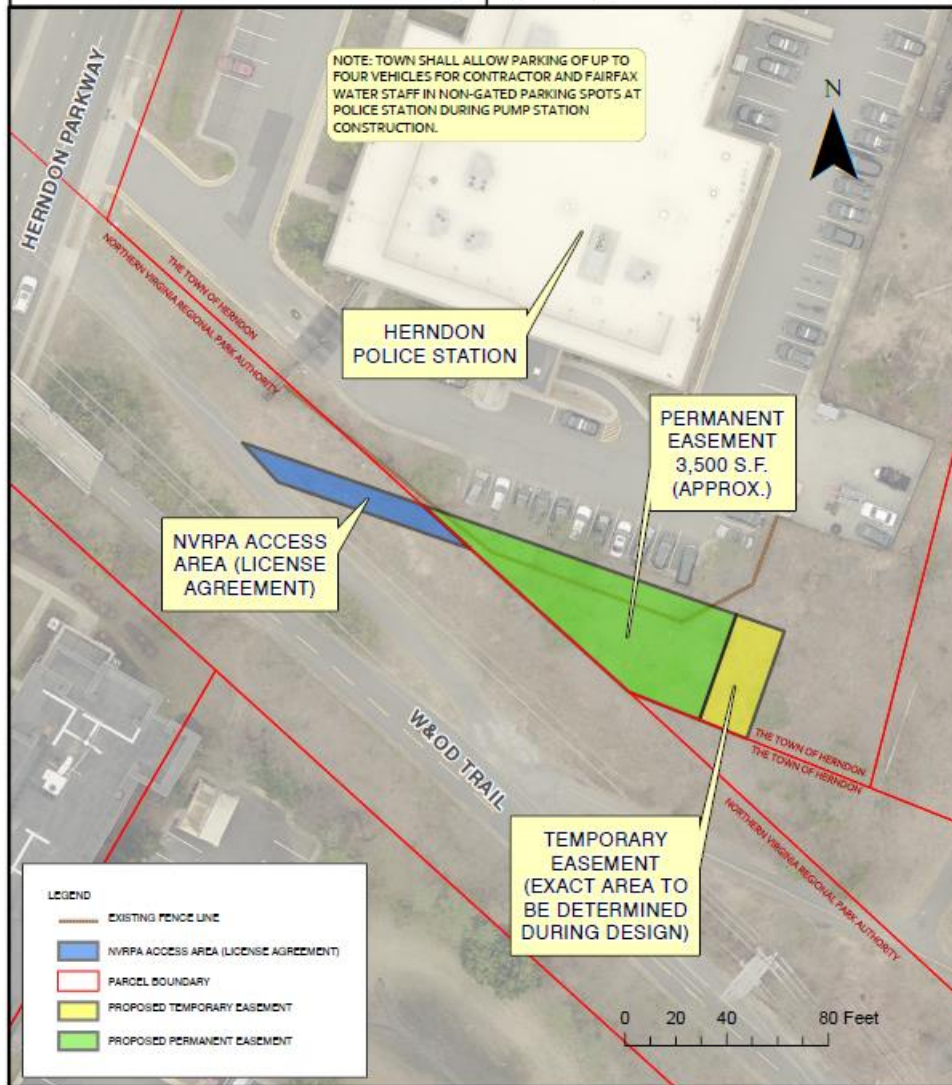


Exhibit F

Pump Facility Project Components

Major components of the Pump Facility Project are as follows:

- a. Pump Station;
- b. Standby electrical generator;
- c. Meter vault;
- d. Yard piping;
- e. Yard fencing and gates;
- f. Improvements/modifications to interconnections; and
- g. Communications Equipment at the Town's water Storage Tanks and/or tank sites.

Exhibit G

Breakdown of Estimated Project Cost

TOWN OF HERNDON PUMP STATION AND OTHER WORK PRELIMINARY COST ESTIMATE (ASSUMES PRE-FABRICATED PUMP STATION)

Base Construction Cost

Pre-Fabricated Pump Station	\$ 2,280,896	Based on Town of Herndon Booster Pump Station Revised Construction Option Evaluation by Hazen from 4/14/2022.
Interconnection Modifications at \$50k/Vault	\$ 200,000	
Tank Level at \$75k/Tank	\$ 150,000	
Base Construction Subtotal	\$ 2,630,896	

Design Expenses

Engineer	\$ 304,000	Based on 6/1/2021 Scope of Work from Hazen
Preliminary Engineering Report	\$ 100,000	
Subtotal	\$ 404,000	
Staff Time	12% \$ 48,480	
Subtotal	\$ 452,480	
Contingencies	10% \$ 45,248	
Design Subtotal	\$ 497,728	

Construction Expenses

Construction Contract	\$ 2,630,896	<= 30% is the contingency reflected in 4/14/2022 Estimate.
Engineering Services During Construction	7% \$ 184,163	
Subtotal	\$ 2,815,059	
Staff time	5% \$ 140,753	
Subtotal	\$ 2,955,812	
Contingencies	30% \$ 886,743	
Construction Subtotal	\$ 3,842,555	

SubTotal (Design plus Construction Expenses) \$ 4,340,283

Fairfax Water Administrative Fee 15% \$ 651,042

GRAND TOTAL \$ 4,992,000

Pump Station to be built for a firm capacity of 6 MGD, with provisions for future expansion to 10 MGD.

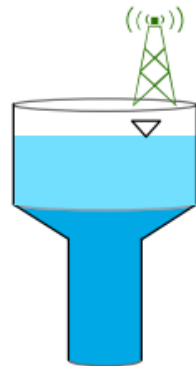
Exhibit H

Fairfax Water and the Town of Herndon Maintenance Responsibilities

[See Attached]

FW PLCs at Tanks

Transmits real-time tank level data to PLC at proposed Pump Station



Tank Overflow at 520 ft.

Town of Herndon Operation and Maintenance Responsibilities

Town of Herndon Tanks

Town of Herndon Owned Communications and Instrumentation equipment.

Tank-site Valving to Prevent Overflow

Town of Herndon Distribution

PRVs Setting at ~ 518 ft.

24-inch Diameter Transmission Main (W&OD Trail)

Fairfax Water Operation and Maintenance Responsibilities

Pump Station

Pump Station, Generator, New Metering Vault

24" Main

Pressure Reducing Valves (4)

Pressure Reducing Valves (PRVs)

Communications and Instrumentation

Fairfax Water Owned Communications and Instrumentation equipment at Town of Herndon Tanks.

Communications and Instrumentation equipment at Pump Station

Instrumentation in Metering Vault



FW PLC at Pump Station
Signals Level to MCC

Start and Stop pump at established tank levels

M
Metering Vault

Generator

Fairfax Water

**Town of Herndon
Water Supply Improvements**
Fairfax Water and Town of Herndon
Maintenance Responsibilities
Exhibit H

Failsafe Operations

- Existing metered connections converted to PRVs
- Reduced speed/pump shutoff if communication lost
- Altitude valve
- Tank-level monitoring
- PRV setting below overflow

Exhibit I

Payment Schedule

Milestone	Payment Amount
Preliminary Cost Stage/Agreement Execution	Town of Herndon to establish a Purchase Order payable to Fairfax Water in an amount reflecting Pump Facility Costs, including the 15% Administrative Fee, incurred by Fairfax Water prior to the Effective Date, with payment due within 30 days after the Effective Date of this Agreement.
Design Stage (Following Issuance of Task Order to Design Engineer)	Town of Herndon to establish a Purchase Order to Fairfax Water for design award amount, Fairfax Water staff design related services, design contingency, and the 15% Administrative Fee, such amount to be amended from time to time to reflect adjustments to the Pump Facility Cost relating to the design stage. Amounts payable under the Design Stage Purchase Order will be expended based on quarterly progress invoicing by Fairfax Water, with payments due Fairfax Water within 30 days after the Town's receipt of each invoice.
Construction Stage (Following Award of Construction Contract)	Town of Herndon to establish a Purchase Order to Fairfax Water for construction award amount, staff and contract construction related services, construction contingency, and the 15% Administrative Fee, such amount to be amended from time to time to reflect adjustments to the Pump Facility Cost relating to the construction stage. Amounts payable under the Construction Stage Purchase Order will be expended based on quarterly (or more frequent) progress invoicing by Fairfax Water, with payments due Fairfax Water within 30 days the Town's receipt of each invoice.
Final Reconciliation	Town of Herndon will pay the final, reconciled amount determined in accordance with Article 4(B)(ii) within 30 days of receiving an undisputed Final Reconciliation Notice.

STAFF REPORT

Town Council
October 4, 2022

Title:

Ordinance, to approve and authorize the Mayor to sign a Third Lease Extension between Town of Herndon and the Board of Supervisors of Fairfax County, Virginia, to extend the expiration date to December 31, 2023 for office space at 397 Herndon Parkway.

Staff Contact:

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

Description:

The Board of Supervisors of Fairfax County, Virginia currently leases 185.4 sq. ft of office space in the Town's building at 397 Herndon Parkway for Supervisor John Foust. The rent for this space is \$1.00 per year, which is consistent with similar leases on Town property for office space. This lease will expire on November 11, 2022. This Third Extension of Lease extends the current lease to the end of Supervisor Foust's current term, so that it will expire on December 31, 2023.

Fiscal Impact:

None.

Recommendation:

The Mayor and Town Council adopt the Ordinance as proposed.

Attachments:

- Draft Ordinance
- Third Extension of Lease Agreement

Prepared and Approved by:



Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

October 11, 2022

Ordinance- to approve and authorize the Mayor to sign a Third Lease Extension between Town of Herndon and the Board of Supervisors of Fairfax County, Virginia, to extend the expiration date to December 31, 2023 for office space at 397 Herndon Parkway.

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

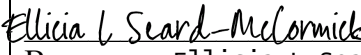
1. The Town Council approves this Third Extension of Lease dated October 25, 2022. This instrument extends the expiration date of the original Lease Agreement dated November 12, 2019, as extended by the Extension of Lease dated September 18, 2020, and as extended by the Second Extension of Lease dated October 8, 2021, so that it will expire on December 31, 2023.
2. In all other respects the original lease remains in effect.
3. The Mayor is authorized to sign and deliver the Third Extension of Lease as described in paragraph 1 above and any related document necessary to evidence or effect the lease amendment.
4. This ordinance shall be effective on and after the date of its adoption.

Third Extension of Lease

This Third Extension of Lease dated October 11, 2022, hereby extends the November 11, 2022 termination date of the existing Lease between the TOWN OF HERNDON, VIRGINIA, a municipal corporation (Landlord) and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (Tenant), dated November 12, 2019, as extended by the Extension of Lease dated September 18, 2020, and as extended by the Second Extension of Lease dated October 8, 2021 (the Lease) for 185.4 square feet of office space at 397 Herndon Parkway (the Premises).

THEREFORE, for the consideration stated in the Lease and herein, the parties agree as follows:

1. The Lease is incorporated by reference.
2. The Lease shall terminate on **December 31, 2023**.
3. In all other respects, the Lease is confirmed.

TOWN OF HERNDON, VIRGINIA _____ Sheila A. Olem, Mayor	BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA DocuSigned by:  By: 514BBE91EE64D7...Ellicia L Seard-McCormick
ATTEST _____ Town Clerk	APPROVED AS TO FORM _____ Lesa J. Yeatts, Town Attorney