

**TOWN OF HERNDON, VIRGINIA
TOWN COUNCIL WORK SESSION AGENDA
HERNDON COMMUNITY CENTER
814 FERNDAL AVENUE
COMMUNITY ROOM 1
July 6, 2021**

**5:30 PM
CLOSED MEETING
COMMUNITY ROOM 2**

A closed meeting as provided under Section 2.2-3711(A)(1) of the Code of Virginia pertaining to discussion of specific public employee relative to annual performance review

**7:00 PM
WORK SESSION
COMMUNITY ROOM 1**

CALL TO ORDER

1. Roll Call & Determination of Quorum
2. Comments from the Town Manager

TOWN MANAGER UPDATES

3. Pandemic Update (Town Manager)
4. Council Initiatives Update (Town Manager)

GENERAL

5. Resolution 21-G-60, to award contract IFB #21-10, Air-Supported Structure Services, to service the Town's tennis bubble
6. Ordinance 21-O-15, to approve and authorize the Mayor to sign a five-year Lease Agreement between the Town and the Fairfax County School Board for space at 397 Herndon Parkway
7. Resolution 21-G-61, to award contract RFP #21-08, Commercial Property Management Services, for 397 Herndon Parkway
8. Resolution 21-G-62, to ratify a Third Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes

9. Resolution 21-G-63, to approve an Easement Encroachment Agreement with Springpark Place LLC to allow for certain improvements in Town of Herndon waterline and storm drain easements for Springpark Place Site Plan (TP #20-07)
10. Resolution 21-G-64, to ratify a License Agreement for facilities and improvements for a bike trail, sidewalk and retaining wall pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon, Northern Virginia Regional Park Authority and the Virginia Department of Transportation.

CONSENT

11. Resolution 21-G-59, to change the Meeting Schedule for the Town Council Work Session in August 2021
12. Resolution 21-g-65, to ratify a Contract pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Fitzgerald Law Group, PLC for legal services

DISCUSSION

13. Funding Options for Transit Related Growth Area Small Area Plan (Discussion by the Town Manager & Director of Community Development)
14. Multicultural Advisory Committee (Discussion by the Town Manager)

ROUNDTABLE

CLOSED MEETING

A closed meeting as provided under:

- Section 2.2-3711(A)(1) of the Code of Virginia, for discussion of prospective candidates relative to appointments to boards & commissions
- Section 2.2-3711(A)(3) of the Code of Virginia, for discussion or consideration of acquisition of real property for a public purpose, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body



Parks and Recreation
T (703)787-7300
F (703)318-8652
parksandrec@herndon-va.gov

TOWN COUNCIL
Sheila A. Olem, Mayor
Cesar del Aguila, Vice Mayor
Naila Alam
Pradip Dhakal
Signe Friedrichs
Sean M. Regan
Jasbinder Singh

Town Council
July 6, 2021

Title:

Resolution, to award contract IFB #21-10, Air-Supported Structure Services, to service the Town's tennis bubble

Staff Contact:

Cynthia S. Roeder, Director of Parks and Recreation
(phone) 703-435-6800 ext. 2123
(e-mail) cindy.roeder@herndon-va.gov

Background:

The Department of Parks and Recreation has a need to establish a term contract for the services of a licensed and qualified contractor with experience in the installation, assembly, inflation, deflation disassembly and removal (storage) of an air supported structure (tennis bubble).

IFB #21-10, Air-Supported Structure Services was advertised on the Town of Herndon's website and eVA Commonwealth of Virginia's procurement website and the solicitation closed on June 10, 2021. The single bid received was publicly opened and read aloud and the bid information is as follows:

BID BASED ON YEARLY COST

1. Bishop's Tennis, Inc.	\$ 23,400.00
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The single bidder, Bishop's Tennis, Inc., was found responsive and responsible.

The period of this contract is for one (1) year from date of complete execution of the contract. The Town reserves the right to renew this contract for four (4) additional one-year renewals, one (1) year at a time.

Fiscal Impact:

Funds to support the work with bid item unit costs established by the contract are available in the following budget account: 001-0334-000420610.

The full value of this contract, if renewed for the entire five (5)-year term, is \$117,000.

Staff Recommendation:

Staff recommends the awarding of Contract IFB #21 - 10, Air-Supported Structure Services, to Bishop's Tennis, Inc. in the amount of \$ 23,400.00 annually.

Attachments:

Draft Resolution

Staff:

Cynthia S. Roeder
Director of Parks and Recreation



Gerald Amacker
Purchasing Agent

TOWN OF HERNDON, VIRGINIA

RESOLUTION

JULY 13, 2021

Resolution- to award contract IFB #21-10, Air-Supported Structure Services, to service the Town's tennis bubble.

WHEREAS, the Department of Parks and Recreation has a need to establish a term contract for the services of a licensed and qualified contractor with experience in the installation, assembly, inflation, deflation disassembly and removal (storage) of an air supported structure; and

WHEREAS, town staff prepared and posted (via eVA, and the town's website) a invitation for bids for air-supported structure services with a single firm submitting a bid by the response due date of June 10, 2021; and

WHEREAS, the single bidder, Bishop's Tennis, Inc., was found responsive and responsible to conduct the installation and removal of the air-supported structure (tennis bubble) at Bready Park in FY 2022 and up to four one-year extensions; and

WHEREAS, the fee of \$23,400 for FY 2022 is based on the scope of work and is allocated within the department's budget;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards IFB #21-10, Air-Supported Structure Services, to Bishop's Tennis, Inc, to service the Town's tennis bubble for fiscal years 2022 through 2026.

STAFF REPORT

Town Council
July 6, 2021

Title:

Ordinance, to approve and authorize the Mayor to sign a five-year Lease Agreement between the Town and the Fairfax County School Board for space at 397 Herndon Parkway.

Staff Contact:

Scott Robinson, Director of Public Works
(703) 787-7388
scott.robinson@herndon-va.gov

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

Description:

The Ordinance before you is for approval of a proposed new five-year lease Agreement with the Fairfax County School Board for office space in the Town's building located at 397 Herndon Parkway.

The Fairfax County School Board currently leases office space at 397 Herndon Parkway. The current lease dated March 2, 2005, will expire on August 31, 2021.

The proposed new lease area will remain the same, which is 13,593 sq. ft of office space and allows for use of the rear parking lot for overnight and weekend storage of its maintenance vehicles as well as access to shared parking in the front of the building for non-maintenance vehicles.

The new proposed lease term would be for five (5) years from September 1, 2021 through August 31, 2026. The lease includes 2 options for five (5) year extension of terms upon mutual agreement of both parties.

- Option (1) extends the lease from September 1, 2026 through 31 August 2031.
- Option (2) extends the lease from September 1, 2031 through August 31, 2036.

The rent will be \$20.00/SF in the first lease year with a 2.0% escalation in each subsequent year of the base term. Rent for each optional five-year extension period must be mutually agreed upon prior to executing the options. The School Board will make equal monthly payments of rent on the first calendar day of the month.

Fiscal Impact:

Lease Year	Lease Period	Monthly Amount	Annual Amount
1	09/01/2021 - 08/31/2022	\$22,655.00	\$271,860.00
2	09/01/2022 - 08/31/2023	\$23,108.08	\$277,297.00
3	09/01/2023 - 08/31/2024	\$23,570.25	\$282,843.00
4	09/01/2024 - 08/31/2025	\$24,041.67	\$288,500.00
5	09/01/2025 - 08/31/2026	\$24,522.50	\$294,270.00
		Total Rent:	\$1,414,770.00

Staff Recommendation:

The Mayor and Town Council approve the attached Ordinance as proposed.

Attachments:

1. Ordinance
2. Lease Agreement
3. Exhibit A

Prepared and Approved by:



Scott Robinson, Director of Public Works



Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

ORDINANCE

July 13, 2021

Ordinance – to approve and authorize the Mayor to sign a five-year Lease Agreement between the Town and the Fairfax County School Board for space at 397 Herndon Parkway.

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

1. The Town Council approves the lease dated July 13, 2021 by which the Town would lease to Fairfax County School Board 13,593 sq. ft. of space in the Town's building located at 397 Herndon Parkway, Herndon, Virginia. (As reflected on Exhibit A)
2. The term shall be for five (5) years from September 1, 2021 through August 31, 2026 and includes 2 options for five (5) year extension of terms upon mutual agreement of both parties. Option (1) extends the lease from September 1, 2026 through 31 August 2031. Option (2) extends the lease from September 1, 2031 through August 31, 2036.
3. The rent will be \$20.00/SF in the first lease year with a 2.0% escalation in each subsequent year of the base term. Total rent paid to the town shall be (1) \$271,860.00 for September 1, 2021 through August 31, 2022, (2) \$277,297.00 for September 1, 2022 through August 31, 2023, (3) \$282,843.00 for September 1, 2023 through August 31, 2024, (4) \$288,500.00 for September 1, 2024 through August 31, 2025, (5) \$294,270.00 for September 1, 2025 through August 31, 2026 Rent for each optional five-year extension period will be mutually agreed upon prior to executing the options. The School Board will make equal monthly payments of rent on the first calendar day of the month.
4. The Mayor is authorized to sign and deliver the lease as described in paragraphs 1 through 3 above and any related document necessary to evidence or effect the lease.
5. This ordinance shall be effective on and after the date of its adoption.

LEASE
BY AND BETWEEN
TOWN OF HERNDON, VIRGINIA AND FAIRFAX COUNTY SCHOOL BOARD

THIS LEASE, is effective July 13, 2021, and is by and between **TOWN OF HERNDON, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (“Town”), and **FAIRFAX COUNTY SCHOOL BOARD**, (“School Board”). For consideration of the terms, conditions and mutual covenants contained herein, Town and School Board agree as follows:

1. **Premises.** Town leases to School Board, and School Board leases from Town, certain real estate described as follows and referred to in this Lease as the “Lease Premises”: 13,593 rentable square feet of space at 397 Herndon Parkway, Herndon, Virginia 20170. The Lease Premises are more particularly depicted in **Exhibit A/Fairfax County School Board Lease**, attached and incorporated herein by reference. Each party warrants that it has had adequate opportunity to inspect the condition of the Lease Premises, and that the Lease Premises are in a condition, acceptable to both parties and are to be leased in an “as-is” condition.
2. **Term and Possession.** The term of this Lease shall be for a period of five (5) years (“Term”), commencing on 1 September 2021 (“Commencement Date”) and expiring at midnight on 31 August 2026 (“Expiration Date”), unless sooner terminated by Town or School Board in accordance with the terms and conditions of this Lease. The lease includes 2 options for extension of term, each of five (5) years upon mutual agreement of both parties. Option (1) extends the lease from 1 September 2026 through 31 August 2031. Option (2) extends the lease from 1 September 2031 through 31 August 2036.
3. **Rent.** School Board shall pay to Town as rent for the Lease Premises, \$20.00/SF in the first lease year and 2.0% escalation in each subsequent year of the base term. Total rent paid to the Town shall be per the payment schedule below.

Lease Year	Monthly Amount	Annual Amount	Lease Period
1	\$22,655.00	\$271,860	09/01/2021 – 08/31/2022
2	\$23,108.08	\$277,297	09/01/2022 – 08/31/2023
3	\$23,570.25	\$282,843	09/01/2023 – 08/31/2024
4	\$24,041.67	\$288,500	09/01/2024 – 08/31/2025
5	\$24,522.50	\$294,270	09/01/2025 – 08/31/2026

Rent for each optional extension period will be mutually agreed upon prior to executing the options. School Board shall make equal monthly payments of rent on the first calendar day of the month. No security deposit shall be required of School Board.

4. **Taxes.** School Board share of real estate taxes is included in rent payments.

5. **Additional Services.** School Board may request services related to this lease, such as management of alterations, on a reimbursable basis.

6. **Payments.** School Board shall send payments for rent to Town at the following address:

Town of Herndon
Attention Finance Department
777 Lynn Street,
Herndon, VA 20170

7. **Utilities.** Town shall provide heating, ventilation and air conditioning ("HVAC"), hot and cold water, sewer, trash and recycling, and 24-hour access at no additional cost to the School Board. Town shall not be liable for claims for interruption caused by ruptured pipe, leakage, etc. unless result of negligence. Town shall not be liable for curtailment of utilities required by utility.

8. **Signs.** School Board shall not display or erect any exterior lettering, sign, advertisement, sales apparatus or other projection in any manner or place such that are visible from locations exterior to the Lease Premises (excluding interior window and door glass), except with the advance written approval of Town. All existing signs may remain.

9. **Use of Lease Premises.**

(A) School Board will use the Lease Premises for general office, maintenance, research and development and administration purposes. The Lease Premises shall not be utilized by School Board for any other purpose(s) without the advance written permission of Town.

(B) In its use of the Lease Premises, School Board shall comply with (i) applicable local, state and federal laws, ordinances, and regulations. School Board's obligations under this paragraph shall include, without limitation, compliance with Town and County health codes and applicable building and fire codes.

(C) School Board shall not, except for as specifically permitted by Town, keep or have, on or within the Lease Premises, any article or thing of a dangerous, flammable or explosive character which might present or increase the danger of fire. Notwithstanding the foregoing, the School Board shall be permitted to store reasonable amounts of hazardous materials that are typically used in an ordinary general office use environment such as ordinary cleaners, printer and duplication supplies and similar materials, as well as batteries for tools and equipment, provided such materials are properly used, stored and disposed of in a manner and location meeting all Environmental Laws.

(D) School Board shall have access to the Lease Premises twenty four (24) hours per day, seven (7) days per week.

(E) Tenant shall have the right to exclusive use of 43 spaces located in the parking lot to the rear of the Lease Premises for the parking and storage of maintenance vehicles and, on an unreserved basis for parking non-maintenance vehicles, 30 parking spaces located in the parking lot to the front of the Town of Herndon Public Safety Center.

10. **Alterations.** School Board shall not make alterations without Town approval. Town approval shall not be unreasonably withheld. All work must be performed by licensed contractors and done in a workman like manner. School Board shall comply with all Town of Herndon requirements and standards and shall comply with town permitting process. School Board is responsible for any fees for permitting. Town has the right to inspect and accept or reject the work. School Board is responsible to reimburse Town for its efforts for review and inspection of the alterations. School Board must restore the space to original condition upon termination unless mutually agreed otherwise.

11. **Operations, Maintenance and Repair of Lease Premises.**

(A) **Town Responsibilities:**

1. Town will provide routine maintenance for the building exterior and interior leased spaces. Town will maintain and keep in good repair the: (i) plumbing (ii) electrical wiring serving the Lease Premises; (iii) HVAC systems. Town will be responsible for changing of HVAC filters. Town will maintain fire protection systems.

2. Town will provide routine maintenance to landscaping, lawn maintenance, and removal of tree limbs, bark, leaves, and snow from the parking lots, sidewalks and areas surrounding the Lease Premises.

3. Town will provide routine pest control services.

4. Town will complete the following maintenance tasks during the first year of the lease period.

- a. Clean carpets
- b. Replace broken or stained ceiling tiles.
- c. Replace broken blinds.
- d. Paint offices, meeting areas, and hallways.
- e. Cut back vegetation along parking area fence line.

5. In addition to the Town's general maintenance responsibilities, Town will establish a budget, not to exceed \$20,000 in each of years 2, 3, 4 & 5 to make repairs and improvements mutually agreed upon by Town and School Board.

6. Normal Town operating hours for response and routine maintenance are 7am – 4pm Monday – Friday. Landlord agrees to diligently attend to any routine repairs or maintenance needs brought to its attention by Tenant as soon as reasonably practicable and in a manner calculated to minimize to the extent possible disruption of Tenant's business activities .

7. The Town will maintain HVAC set back hours to accommodate FCPS normal operating schedule of 5 am – 3:30 pm, Mon – Fri. These hours may be adjusted upon FCPS request.

(B) **School Board responsibilities:**

1. School Board, at its own expense, shall be responsible for all interior cleaning/janitorial services along with maintenance and repairs required or for School Board operations. School Board shall reimburse the Town for any request for maintenance or cleaning outside of normal Town operating hours.

2. School Board agrees to keep all windows and exterior doors closed in the Lease Premises at all times in order to assure HVAC systems are operating properly and to prevent damage to the Lease Premises, and upon failure to do so, agrees to pay for any damage caused thereby.

3. School Board shall keep and maintain the interior of the Lease Premises in the condition in which they exist on the Commencement Date, with exception of reasonable wear and tear or damage caused by accidental fire or other casualty.

4. School Board shall maintain proper control for keys and access cards to prevent theft from and unauthorized access to the building. The Town agrees to re-key the Lease Premises if required; the cost for additional keys and re-keying requests shall be borne by the School Board. A copy of all keys to all exterior doors shall be provided to the Town.

5. Notwithstanding any other provision of this Lease, School Board shall be responsible for any maintenance and repair of the Lease Premises necessitated by or attributable to actions of School Board, its invitees, agents or employees, in excess of reasonable wear and tear. The cost of any maintenance, repair or replacement of the items referenced above required as a result of negligence or willful act of School Board, its employees, agents or invitees, shall be borne by School Board.

12. **Damage and Injury to Lease Premises and Individuals; Liability.**

(A) **Buildings:** Town shall not be responsible or liable for any property damage caused by fire, explosion, water, gas, electricity, leaks from the roof or other portion of the building, the bursting or leaking of pipes, plumbing, electrical wiring and equipment or fixtures of any kind, or by any act or negligence of other tenants or occupants of the building, due to any other cause whatsoever, unless resulting from the willful acts of Town, its employees, agents or representatives for which it/they may be responsible under the laws of the Commonwealth of Virginia.

(B) **Personal Property:** All furnishings and other personal property-located on or about the Lease Premises, shall be at or on the Lease Premises at the sole risk of School Board, and Town shall not be liable for the theft or misappropriation thereof, or for any damage or injury to any furnishings, artifacts or collections.

(C) **School Board Officers, Agents, Employees and Invitees:** Town shall not be responsible or liable for any damage or injury to School Board's officers, agents, or employees, invitees or to any other persons on the Lease Premises unless resulting from the gross negligence or intentional acts of Town, its employees, agents or representative for which it/they may be responsible under the laws of the Commonwealth of Virginia.

(D) Notice: School Board shall give immediate notice to Town in case of fire or accident or occurring in or on the Lease Premises, including any and all defects, damages or injury (to persons or property) that may occur as a result. Any and all repairs to the Leased Premises performed as a result of any fire or accident occurring within the Lease Premises shall be performed only with the prior written consent of the Town and in accordance with all local permits and inspections.

13. **Insurance.**

(A) Comprehensive General Liability Insurance: School Board, at its cost, shall maintain comprehensive liability insurance with limits of not less than \$2,000,000 per occurrence, insuring against all liability of School Board and its authorized representatives arising out of and in connection with School Board's use or occupancy of the Lease Premises. The policy shall also either contain a provision for contractual liability including leases, or there shall be attached thereof an endorsement providing for such coverage. If the policy is to be written with an aggregate limit, that limit shall be not less than \$2,000,000. The Town shall be added as an additional insured to this policy.

(B) Property Insurance. School Board is responsible for any improvements and/or betterments made to the Lease Premises by School Board. School Board is also responsible for its belongings, exhibitions, collections furniture, computers, and all other personal property which School Board may use and/or store within the Lease Premises. The Town shall neither be responsible for any improvements and/or betterments nor personal items within the Lease Premises and the School Board, if School Board desires, may maintain insurance, at its own cost, for improvements, betterments and personal property. The Town does not and will not maintain insurance for improvements and betterments made to the Lease Premises by the School Board. The Town does not and will not maintain insurance for the School Board's personal property within the Lease Premises.

(C) Workers' Compensation Insurance. If School Board has employees, School Board shall procure and maintain, at its sole expense, Workers' Compensation Insurance in such amounts as will comply with the laws of the Commonwealth of Virginia.

(D) Employers' Liability Insurance. If School Board has employees, School Board shall procure and maintain, at its sole expense, Employers' Liability Insurance, with the following minimum coverage: Five Hundred Thousand Dollars (\$500,000.00) for each accident.

(E) School Board is Primary Insurer: The insurance coverage shall be primary with respect to any other insurance maintained by School Board or Town ("Required Insurance"). Prior to the Commencement Date, and thereafter, on an annual basis, School Board shall provide Town with copies of all required insurance policy/policies.

14. **Indemnification**. School Board shall indemnify, defend and save Town harmless from any and all liabilities, expenses (including attorney's fees), causes of action, suits, claims or judgments and losses incurred by Town as a result of: (A) failure by School Board to perform any covenant required to be performed by School Board in this Lease, provided such indemnification does not

constitute a waiver of sovereign immunity; (B) failure to comply with any applicable laws, ordinances, regulations or requirements of any governmental authority; and (C) any mechanics' lien or security agreement or other lien filed against the Lease Premises, or fixtures and equipment belonging to Town.

15. **Damage by Fire or other Casualty.** If the Lease Premises shall be rendered uninhabitable, as determined by the Town in its sole discretion, by fire or other casualty:

(A) Town may, at its sole option, terminate this Lease as of the date of such fire or other casualty, after 30 days' written notice to School Board; or

(B) If Town elects not to terminate this Lease under the provisions of subparagraph (A) above, School Board shall, at its own cost, restore the Lease Premises to substantially the same condition as immediately preceding such loss, provided that the cost of such work shall not exceed the insurance proceeds received by Town on account of such loss. Town shall not be required to pay for, restore or replace any furnishings, fixtures, exhibitions, collections or any other personal property of School Board. During the period in which the Lease Premises are untenable, the Term may, at Town's option, be extended by an equivalent period of time. If School Board fails to substantially complete the restoration of the Lease Premises within 90 days after such fire or other casualty (subject to allowance for delay that is not the fault of either Town or School Board) then either party may terminate this Lease by giving written notice to the other party within 15 days following the expiration of the 90-day restoration period.

16. **Assignment and Subleasing.** School Board shall not assign any of its rights or obligations under this Lease, or sublease the Lease Premises, without the prior written consent of Town, which consent shall not be unreasonably withheld, conditioned or delayed.

17. **Town's Right of Entry.** Town may enter the Lease Premises at any reasonable time for the purpose of inspecting the Lease Premises, performing any work which Town elects to undertake or is required by this Lease to perform, and for any other reasonable purposes consistent with the parties' rights and obligations under this Lease. Town shall attempt to notify School Board in advance of entering the Lease Premises, and obtain School Board's consent, but shall not be required to do so. In case of emergency, Town may enter the Lease Premises without advance notice or consent of School Board; provided, however, Town shall give notice to School Board of an emergency entry within a reasonable amount of time.

18. **Default; Surrender.**

(A) Each of the following shall constitute an Event of Default: (i) the Lease Premises is vacated or abandoned by School Board prior to the end of the Term or failure by School Board in the performance of any material obligation under this Lease for more than 15 days following written notice thereof from Town.

(B) In the event of an Event of Default, Town may, at its option, declare this Lease to be terminated and canceled, and may take possession of the Lease Premises. In such case, Town may at its option, re-let the Lease Premises, in its sole discretion.

(C) Upon the expiration or earlier termination of the Term of this Lease, or after any holdover term, School Board shall quit and surrender the Lease Premises to Town in good order and condition, ordinary wear and tear accepted. School Board shall, on or prior to the Expiration Date or earlier termination date, remove all of its furnishings and other personal property. Any property of School Board that remains on the Lease Premises after the expiration or termination of this Lease may be treated by Town as Town- owned property. School Board shall surrender all keys to Town.

Attorney's fees: In the event it becomes necessary for Town to obtain the services of an attorney and take legal action against School Board in connection with the breach of conditions herein set forth on the part of the School Board, School Board agrees that any court shall have the power, in addition to all other relief allowed by law, to require School Board to pay attorney's fees, plus the clerk's fee and any and all other additional costs that may be incurred in the event that legal action becomes necessary.

19. **Termination.** Either party may terminate this lease prior to its expiration with 12 month written notice. Should Town's notice be given less than 12 months prior to the termination date, the Town shall be obligated to give the School Board a rent credit equal to 2 months' rent. Should the School Board's notice to the Town be issued less than 12 months prior to the termination date, the School Board shall be obligated to pay a sum equal to the difference between 12 months' rent and the remaining months on the premises.

20. **Holding Over.** Should School Board remain in possession of the Lease Premises after the expiration of the Term of this Lease, School Board shall be deemed to be a tenant from month-to-month, but subject to all of the conditions and obligations hereof insofar as the same may be applicable to a month-to-month tenancy until a new lease is approved by the Town Council. School Board shall vacate the Lease Premises within thirty (30) days of written notification received by the Town. During any holdover, School Board agrees to pay a per diem charge equal to 125% of the per diem base rent.

21. **Miscellaneous Covenants.** School Board shall faithfully observe and perform the following covenants, in addition to the other terms, conditions and covenants of this Lease:

(A) School Board shall not do or permit anything to be done in the Lease Premises, or bring or keep anything therein, which will or may increase the rate of property damage insurance of Lease Premises.

(B) School Board shall not keep any animal(s) in or about the Lease Premises.

(C) School Board shall observe reasonable rules and regulations established from time to time by Town for the promotion of the convenience, safety or welfare of the public, School Board and invitees, after being given notice thereof by Town.

22. **Liens.** School Board shall keep the premises and building free from liens arising out of work performed, materials ordered, or obligations incurred on behalf of the School Board.

23. **Notices.** Notices under this Lease shall be in writing, signed by the party giving such notice, and shall be hand-delivered or sent by: (i) U.S. mail, and (ii) electronic mail, addressed to the party at its address given below, or to such other address as a party may have furnished to the other by written notice. Any notice sent by U.S. mail shall be deemed to have been given as of the time-said notice is deposited in the U.S. Mail. The parties' designated representatives and addresses for purposes of notices and communications pertaining to this Lease are as follows:

Town:

Town of Herndon
Attention Town Manager
777 Lynn Street,
Herndon, VA 20170
Email: town.manager@herndon-va.gov

Fairfax County School Board:

Department of Facilities & Transportation Services
Office of Design & Construction Services
Attn: Property Management Section
8115 Gatehouse Road, Suite 3400
Falls Church, Virginia 22042

Copy to:

Office of Division Counsel
Fairfax County Public Schools
8115 Gatehouse Road, Suite 5600
Falls Church, Virginia 22042

24. **Governing Law.** This Lease shall be construed under and governed by the laws of the Commonwealth of Virginia.

25. **Waiver.** Failure of Town to insist, in any one or more instances, upon a strict performance of any term, condition or covenant of this Lease, or to exercise any right or option herein provided, shall not be construed as a waiver or relinquishment of such right or option, and such right or option shall continue and remain in full force and effect. No waiver by Town shall be effective unless set forth in a writing signed by an authorized representative of Town.

26. **Exhibits.** Exhibit A, dated July 13, 2021, is attached and incorporated herein by reference.

27. **Entire and Binding Agreement.** This Lease sets forth the entire agreement between the parties, and there are no other terms, conditions, agreements or understandings between the parties, respecting the matters which are the subject of this Lease. No change or modification shall be binding unless in writing and signed by both parties.

28. **Jury Trial Waiver.** Town and School Board hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on all matters arising out of this Lease, or the use and occupancy of the Lease Premises.

29. **Appropriations.** All of the School Board's financial obligations under this Lease are subject to appropriation by the Board of Supervisors of Fairfax County. If the Board of Supervisors does not make the appropriation, this Lease shall terminate upon the next expiration of the current appropriation for lease payments. In that case, the School Board shall quit the Premises upon the termination date and then remove all School Board property from the Premises

WITNESS the following signatures and seals as of the date first above written.

TOWN OF HERNDON, VIRGINIA

BY: _____
Sheila A. Olem, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Lesa J. Yeatts, Town Attorney

[Additional signatures on following page]

FAIRFAX COUNTY SCHOOL BOARD

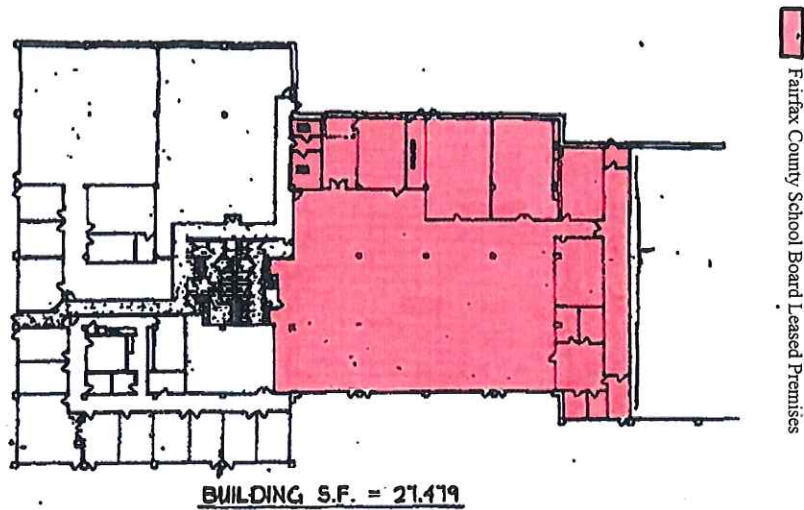
BY: Jeffrey K. Platenberg
Its: _____
Jeffrey K. Platenberg, Assistant Superintendent

ATTEST:

APPROVED AS TO FORM:

John E. Foster, Attorney & Division Counsel

Exhibit A
July 13, 2021



BASE BUILDING 317 HERNDON PARKWAY HERNDON, VIRGINIA 2010	Arencibia Architects Inc. 703-733-0190 12345 FORT RIDER LANE, HERNDON, VA 2010	SCALE 1" = 30'
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STAFF REPORT

Town Council
July 6, 2021

Title:

Resolution, to award contract RFP #21-08, Commercial Property Management Services, for 397 Herndon Parkway.

Staff Contact:

Scott Robinson, Director of Public Works
(phone) 703-435-6853
(e-mail) scott.robinson@herndon-va.gov

Background:

A request for proposal was issued to secure the services of a commercial property manager to assist the Town in leasing and managing the approximately 28,500 square feet of leasable commercial space in the Town owned property at 397 Herndon Parkway. Specific tasks to be undertaken by the selected contractor include actively marketing available commercial office space; checking credit references of potential tenants; negotiating initial leases and subsequent lease renewals; collecting and depositing tenant rents; performing routine property management tasks; minor building maintenance; and responding promptly to tenant issues.

Four offers were received in response to the Town's request for proposals. An evaluation committee composed of Public Works staff selected the following two firms for follow up oral interviews:

Colliers International Asset Services, LLC
Renaud Consulting

Following the interviews, the evaluation committee selected Colliers International Asset Services, LLC as the top-rated firm. Negotiations with Colliers International Asset Services, LLC have resulted in favorable rates for the variety of disciplines and supporting tasks that will be awarded for the assigned work to the amounts indicated:

Property Management	\$2,500.00/month
Building Engineering (Monday-Friday, Standard hours)	\$2,080.00/month
Building Engineering (After hours, weekends, Holidays)	\$90.00/hour
Janitorial (including supplies)	\$2,852.50/month
IMPAK Work Order System	\$125.00/month
New Lease (without co-broker)	3% of gross aggregate base rentals
New Lease (with co-broker)	7% of gross aggregate base rentals

Lease Renewal (without co-broker)	2% of initial full-service base rent
Lease Renewal (with co-broker)	6% of gross aggregate base rentals

Fiscal Impact:

Funds to support the services will be provided by current and future rents received through leasing of the tenant spaces.

Staff Recommendation:

Staff recommends Town Council award Contract RFP #21-08, Commercial Property Management Services to Colliers International Asset Services, LLC.

Attachments:

Draft Resolution.

Staff:



Scott Robinson
Director of Public Works

TOWN OF HERNDON, VIRGINIA

RESOLUTION

JULY 13, 2021

Resolution- to award contract RFP #21-08, Commercial Property Management Services, for 397 Herndon Parkway

WHEREAS, in 2003, the Town acquired a 56,600 square foot flex office building and land at 397 Herndon Parkway and converted approximately half of the facility into the Town's police operations center; and

WHEREAS, the building's unused office space, amounting to approximately 28,500 square feet, was placed on the commercial property market and leased to public and private entities that met the requirements of the Town's Zoning Ordinance; and

WHEREAS, to assist the Town in leasing and managing the commercial office space, the Town solicited for the services of a Commercial Property Manager through a competitive request for proposals; and

WHEREAS, on April 28, 2021 the Town received 4 proposals from commercial property management firms; and

WHEREAS, an evaluation committee reviewed the proposals and selected two of the applicants to interview; and

WHEREAS, the selection committee Colliers International Asset Services, LLC as the best qualified to provide commercial property management services; and

WHEREAS, negotiations with Colliers International Asset Services, LLC have resulted in favorable rates and unit costs for the variety of services and supporting tasks that will be required for the assigned work as follows:

Property Management	\$2,500.00/month
Building Engineering (Monday-Friday, Standard hours)	\$2,080.00/month
Building Engineering (After hours, weekends, Holidays)	\$90.00/hour
Janitorial (including supplies)	\$2,852.50/month

IMPAK Work Order System	\$125.00/month
New Lease (without co-broker) rentals	3% of gross aggregate base
New Lease (with co-broker) rentals	7% of gross aggregate base
Lease Renewal (without co-broker) base rent	2% of initial full-service
Lease Renewal (with co-broker) rental; and	6% of gross aggregate base

WHEREAS, the funds to support the services will be provided by current and future rents received through leasing of the tenant spaces.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards Contract RFP#21-08, Commercial Property Management Services, to Colliers International Asset Services, LLC, at the negotiated unit rates.



STAFF REPORT

Town Council - Work Session July 6, 2021

Title:

Resolution - to ratify a Third Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

Staff Contacts:

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

Description:

This is a Resolution to ratify a Third Extension of License. The License Agreement that has been operative for the past six years between the Town and Nafis Peter Ahmed and Ruth Llabres Ahmed for use of their lot at the corner of Lynn and Station Streets for public parking and other public purposes expired on June 30, 2021. The Town Manager signed an Extension of License dated June 30, 2021 pursuant to his authority under the Town's Continuity of Government Ordinance, as amended. This Third Extension of License extends the terms of the existing License so that it will expire on August 30, 2021 to allow time for finalization of a new three-year License Agreement. It is expected that the new agreement will be presented to Council for consideration at its August Public Hearing.

Consistent with the previous extension, the Town will continue to pay \$1250.00 per calendar month during the third extension term, which is for a period of 2 months.

The Town Council must now consider ratification of the Third Extension of License in order to extend the expiration date of the current License Agreement to August 10, 2021 to finalize its approval.

Fiscal Impact:

None.

Recommendation:

We recommend that the Town Council approve the Resolution as proposed.

Attachments:

- Resolution
- Third Extension of License Agreement

Prepared and Approved By:

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

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

JULY 13, 2021

Resolution- to ratify a Third Extension of License pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

WHEREAS, the parties entered into a License Agreement dated June 25, 2015, with an Emergency Extension dated August 20, 2020, and a Second Emergency Extension dated November 30, 2020 for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes; and

WHEREAS, the License Agreement would have expired on June 30, 2021; and

WHEREAS, Town and Licensors desired to extend the term of the Agreement to expire on August 30, 2021; and

WHEREAS, the Third Extension of License was signed by the Town Manager pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Third Extension of License dated June 30, 2021 and signed by the Town Manager between the Town of Herndon between the Town and Nafis Peter Ahmed and Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn and Station Streets for public parking and other public purposes.

**Third Extension of License Pursuant to Ordinance 20-O-23 Continuity of
Governmental Operations due to State of Emergency,
Pandemic Disaster Covid-19**

Pursuant to the powers conferred upon the Town Manager by Ordinance 20-O-23, as amended, this Third Extension of License dated June 30, 2021, hereby extends the June 30, 2021 termination date of the existing License between the TOWN OF HERNDON, VIRGINIA (Town) and NAFIS PETER AHMED AND RUTH LLABRES AHMED (Ahmed) dated June 25, 2015, with an Emergency Extension dated August 20, 2020, and a Second Emergency Extension dated November 30, 2020 for the use of the lot at the corner Lynn Street and Station Street (the License) for a period of 2 months (the Extension).

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

1. The License is incorporated by reference.
2. The License shall terminate on **August 30, 2021**.
3. Town will pay Ahmed \$1250.00 per calendar month during the Extension.
4. Town will provide Ahmed evidence of its insurance coverage for lot during the extension.
5. In all other respects, the License is confirmed.

Signatures on following pages

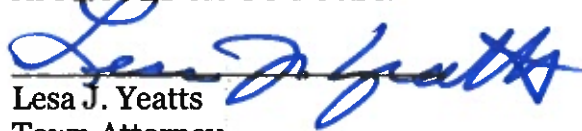

Nafis Peter Ahmed


Ruth Llabres Ahmed
By: legal w/ permission

TOWN OF HERNDON, VIRGINIA


William H. Ashton II
Town Manager

APPROVED AS TO FORM:


Lesa J. Yeatts
Town Attorney



STAFF REPORT

Town Council
July 6, 2021

Title:

Resolution - to approve an Easement Encroachment Agreement with Springpark Place LLC to allow for certain improvements in Town of Herndon waterline and storm drain easements for Springpark Place Site Plan (TP #20-07).

Staff Contacts:

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

Lauri A.N. Sigler, Deputy Town Attorney
(703)787-7370
lauri.sigler@herndon-va.gov

Description:

Before you is a Resolution to approve an Easement Encroachment Agreement (“the Agreement”) with Springpark Place LLC to allow for the construction of certain improvements in Town of Herndon waterline and storm drain easements in conjunction with the Springpark Place Site Plan (TP #20-07). Staff is requesting that the Town Council approve the Resolution, as proposed.

At the October 27, 2020 Public Hearing, the Town Council approved Ordinance 20-O-59 for ZMA #20-01, 450, 455, 460, 465, 470, 475, 480, and 485 Springpark Place, for a Unified Commercial Subdivision in accordance with the Generalized Development Plan. The rezoning allowed for the subdivision of four parcels into eight parcels with each parcel containing a building and associated improvements. The subject property is owned by Springpark Place LLC (the “Owner”) and is more particularly described as Lot 1A, Lot 2A, Lot 2B, Lot 3A, Lot 3B, Lot 4A and Lot 4B, SPRING PARK TECHNOLOGY CENTER, as duly resubdivided and platted by deed recorded in Deed Book 26895, at Page 47, among the Fairfax County land records (the “Property”).

The Owner of the Property has submitted a site plan (TP #20-07) for the construction of improvements that is currently under review by town staff. The site plan proposes the construction of certain structures on the Property (including decks, walls, patios and a putting green) (the “Improvements”) on top of waterline and storm drain easements granted to the Town by virtue of deed recorded in Deed

Book 6179, at Page 1677, among the Fairfax County land records (the “Easements”), that require Owner to obtain prior written approval of the Town to erect any building or structure on the Easements.

Both the engineering and utility maintenance staff in the Department of Public Works have reviewed and approved the terms in the Agreement that will be recorded in the Fairfax County land records. The Agreement requires the Town to provide notice to the Owner prior to maintenance or repair of the water or drainage facilities located in the Easements. The Owner is then required to remove its Improvements that will interfere with the Town’s work with the Town having no obligation to restore Owner’s Improvements. In the case of an emergency the Town will provide notice that is responsible under the circumstances and the Town has the authority to remove the Improvements if the Owner has not done so and seek reimbursement of the costs for such removal from the Owner. This Agreement must be signed by the parties and recorded prior to the approval of the site plan (TP #20-07), however staff recommends that the Mayor not sign the Agreement until after such time as town staff determines that the site plan (TP #20-07) is in approvable form.

The proposed Easement Encroachment Agreement between the Town and Springpark Place LLC and a draft resolution approving the Agreement are attached for Town Council’s consideration.

Fiscal Impact:

None.

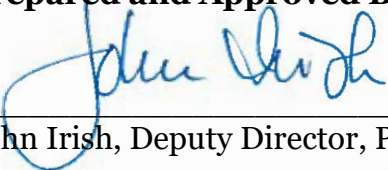
Recommendation:

Staff recommends that the Town Council approve the draft resolution as proposed.

Attachments:

1. Draft Resolution
2. Easement Encroachment Agreement with Exhibit attached

Prepared and Approved By:



John Irish, Deputy Director, Public Works

A handwritten signature in black ink on a light gray background. The signature is written in a cursive style and reads "Lauri A.N. Sigler".

Lauri A.N. Sigler, Deputy Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

JULY 13, 2021

Resolution- to approve an Easement Encroachment Agreement with Springpark Place LLC to allow for certain improvements in Town of Herndon waterline and storm drain easements for Springpark Place Site Plan (TP #20-07).

WHEREAS, Springpark Place LLC (the “Owner”) is the owner of property in the Town of Herndon more particularly described as Lot 1A, Lot 2A, Lot 2B, Lot 3A, Lot 3B, Lot 4A and Lot 4B, SPRING PARK TECHNOLOGY CENTER, as duly resubdivided and platted by deed recorded in Deed Book 26895, at Page 47, among the Fairfax County land records (the “Property”); and

WHEREAS, The Owner of the Property has submitted a site plan (TP #20-07) for the construction of improvements that is currently under review by town staff. The site plan proposes the construction of certain structures on the Property (including decks, walls, patios and a putting green) (the “Improvements”) on top of waterline and storm drain easements granted to the Town by virtue of deed recorded in Deed Book 6179, at Page 1677, among the Fairfax County land records (the “Easements”); and

WHEREAS, The Easements require Owner to obtain prior written approval of the Town to erect any building or structure on the Easements; and

WHEREAS, The Easement Encroachment Agreement grants the Owner permission to construct its Improvements with the Easements and sets the terms for the Town to provide notice to the Owner prior to maintenance or repair of the water or drainage facilities located in the Easements and does not obligate the Town to reinstall the Improvements after said work; and

WHEREAS, The Easement Encroachment Agreement must be signed by all parties and recorded prior to the approval of the site plan (TP #20-07); and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia authorizes the Mayor to sign on behalf of the Town the Easement Encroachment Agreement with Springpark Place LLC, substantially in the form and with the material terms of that considered by the Town Council on July 13, 2021, with such changes as approved by the Town Attorney after such time as town staff determines that the site plan (TP #20-07) is in approvable form.

EASEMENT ENCROACHMENT AGREEMENT

This Easement Encroachment Agreement is made this ____ day of _____, 2021, by and between SPRINGPARK PLACE LLC, a Delaware limited liability company (“Owner”), Grantor and Grantee; and the TOWN OF HERNDON, VIRGINIA, a municipal corporation (“Town”), Grantee.

WITNESSETH:

WHEREAS, by virtue of a deed recorded in Deed Book 25891, at Page 1661, among the land records of Fairfax County, Virginia, Owner owns certain real property situate in the Town of Herndon, more particularly described as Lot 1A, Lot 2A, Lot 2B, Lot 3A, Lot 3B, Lot 4A and Lot 4B, SPRING PARK TECHNOLOGY CENTER, as duly resubdivided and platted by deed recorded in Deed Book 26895, at Page 47, among the land records; and

WHEREAS, certain easements (the “Easements”) across the Property were granted to the Town by virtue of deed recorded in Deed Book 6179, at Page 1677, among the land records, that require Owner to obtain prior written approval of the Town to erect any building or structure on the easements; and

WHEREAS, Owner desires to erect, and Town desires to approve, certain structures (including decks, walls, patios and a putting green) (the “Improvements”) on the Easements in the locations depicted on Site Plan TP #20-07, Springpark Place Improvements and as shown on the Easement Encroachment Exhibit prepared by VIKA Virginia, LLC of Tysons, Virginia (the “Exhibit”), attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Town consents to Owner’s request to erect the Improvements on the Easements in the approximate locations depicted on the Exhibit and subject to the conditions set forth herein.
2. Upon fifteen (15) days’ notice from the Town, Owner shall remove any specified Improvement erected on the Easements when necessary for the proper and efficient operation and maintenance of the waterline and/or sewer facilities located within the Easements. The Town shall have no obligation to reinstall any of the Improvements removed by Owner.
3. In the event of an emergency, the Town shall not be required to provide fifteen (15) days’ notice of Improvement removal, and will instead provide notice that is reasonable under the circumstances with a description of the emergency and Owner shall remove any specified Improvement within the time requested by the Town.
4. If Owner fails to remove any Improvement requested to be removed in a timely

manner, Town shall have the right to remove the Improvement and shall have no obligation to reinstall any removed Improvement and shall have no liability for damage to any removed Improvement. If Town, pursuant to this agreement removes any Improvement, Owner shall reimburse the Town upon demand, within thirty (30) days of receipt of the demand for all costs incurred by the Town.

5. If any Improvement is removed, damaged, destroyed or otherwise is in need of replacement, Owner shall have the right to restore, repair and/or replace such Improvement in substantially the same location on the Easements that such Improvement occupied prior to removal, destruction, damage or replacement.

6. The Owner its executors, administrators, assigns, and, other successors in interest, shall indemnify and hold harmless the Town and its agents and employees for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against the Town from the construction, presence, existence or removal of the Improvements by the Owner or the Town. This paragraph shall not apply for damage arising out of bodily injury to persons or damage to property resulting solely from the negligence or intentional act of Town or its agents or employees.

In the event a claim is asserted against Town, its agents or employees, Town shall promptly notify Owner and Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the Town, its agents, officers, or employees shall be allowed, the Owner shall pay on demand the judgment and all related Town costs and expenses.

7. Owner shall provide the Town with its name, mailing address (if different from the parcel address), phone number, and email address for the purpose of notices to be given hereunder. Owner agrees to notify the Town prior to any change in ownership and to provide the new notice contact information as required above.

[SIGNATURES BEGIN ON NEXT PAGE]

OWNER:
SPRINGPARK PLACE LLC,
a Delaware limited liability company

By: Penzance DC Real Estate Fund REIT LLC,
a Delaware limited liability company, its sole
member

By: Penzance DC Real Estate Fund REIT Manager
LLC, a Delaware limited liability company, its
manager

By: _____
Michael Lefkowitz,
Authorized Signatory

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that
_____ as _____ of
_____, whose name is signed to the foregoing
Agreement, appeared before me and personally acknowledged the same in my jurisdiction
aforesaid.

GIVEN under my hand and seal this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

TOWN:
TOWN OF HERNDON, VIRGINIA,
a municipal corporation

Sheila A. Olem, Mayor

ATTEST:

Town Clerk

COMMONWEALTH OF VIRGINIA
COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Sheila A. Olem as Mayor of the Town of Herndon, Virginia, a Virginia municipal corporation, whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

APPROVED AS TO FORM:

Town Attorney

APPROVED:

Richard P. Smith, P.E., Senior Civil Engineer



STAFF REPORT

Town Council - Work Session July 6, 2021

Title:

Resolution - to ratify a License Agreement for facilities and improvements for a bike trail, sidewalk and retaining wall pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon, Northern Virginia Regional Park Authority and the Virginia Department of Transportation.

Staff Contacts:

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

Lauri A. N. Sigler, Deputy Town Attorney
(703)787-7370
lauri.sigler@herndon-va.gov

Action Requested:

The East Spring Street Widening Improvements is a long-standing CIP project (the "Project"). The Project is administered by the Commonwealth of Virginia, Department of Transportation (VDOT) who is designing and building the improvements. VDOT is requesting, and staff is recommending that the Town Council approve the Resolution to ratify a License Agreement between Town of Herndon, Northern Virginia Regional Park Authority and the Virginia Department of Transportation for facilities and improvements for a bike trail, sidewalk and retaining wall included with the Project, pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended.

Description:

The Project will widen and reconstruct Spring Street from 4 to 6 lanes between Fairfax County Parkway and Herndon Parkway; add turning lanes on approaches to the intersection of Herndon Parkway and Spring Street; reconfigure the Fairfax County Parkway off-ramp at Spring Street to accommodate an exclusive southbound left turn lane; add dedicated northbound right turn lanes on Herndon Parkway at Spring Street; add a second left turn lane on southbound Herndon Parkway at Spring Street; reconfigure existing traffic signals. Create a safe pedestrian crossing of the ramp to southbound Fairfax County Parkway along the southern side of Spring Street and connect the crossing to nearby sidewalks. Enhance safety facilities for pedestrians, cyclists and transit users.

As part of the Project, VDOT will construct certain facilities and improvements for a bike trail, sidewalk and retaining wall (the “facilities”), some of which will encroach onto the W&OD Trail property owned by Northern Virginia Regional Park Authority (the “Authority”). The License Agreement (the “License”) permits the construction of the facilities and establishes that the Town will ultimately be responsible for the maintenance of the facilities after the Project is complete. The License expires December 31, 2060 and may be renewed by the mutual consent of the Authority and the Town. Upon execution of the License, VDOT will deposit \$5,000.00 with the Authority out of the Project construction budget to be held by the Authority until six months following completion of the Project. The full amount will be returned to VDOT unless the Authority is permitted to reimbursement of certain expenditures. The Authority has waived the license administration fee and use fee.

In order to expedite the Project, the Town Manager has signed the License that will also be executed by VDOT. The Town Council must now consider ratification of the License for facilities and improvements for a bike trail, sidewalk and retaining wall with the Authority and VDOT to finalize its approval in order to facilitate the construction of the Project.

Fiscal Impact:

None.

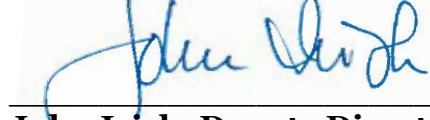
Recommendation:

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

Attachments:

- Resolution
- License Agreement between Town of Herndon, Northern Virginia Regional Park Authority and the Virginia Department of Transportation

Prepared and Approved By:



John Irish, Deputy Director, Public Works



Lauri A.N. Sigler, Deputy Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

JULY 13, 2021

Resolution- to ratify a License Agreement for facilities and improvements for a bike trail, sidewalk and retaining wall pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon, Northern Virginia Regional Park Authority and the Virginia Department of Transportation.

WHEREAS, The East Spring Street Widening Improvements is a long-standing CIP project (the “Project”) that is being administered by the Commonwealth of Virginia, Department of Transportation (VDOT) who is designing and building the improvements; and

WHEREAS, The Project construction plans call for certain facilities and improvements for a bike trail, sidewalk and retaining wall (the “facilities”), to be located on the W&OD Trail property owned by (the “Authority”); and

WHEREAS, The License Agreement permits VDOT to construct the facilities and requires the Town to maintain the facilities for the duration of the license that expires December 31, 2060; and

WHEREAS, The License Agreement was signed by the Town Manager pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the License Agreement for facilities and improvements for a bike trail, sidewalk and retaining wall signed by the Town Manager between the Town of Herndon, Northern Virginia Regional Park Authority and the Virginia Department of Transportation for the East Spring Street Widening Improvement project in Herndon.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made this _____ day of _____, 2021, by and between the NORTHERN VIRGINIA REGIONAL PARK AUTHORITY, a body corporate and politic ("Authority"), the VIRGINIA DEPARTMENT OF TRANSPORTATION ("VDOT" or "Licensee"), and the TOWN OF HERNDON, a Virginia municipal corporation (the "TOWN" or "Licensee").

WHEREAS, the Authority owns certain real property (the "Property"), extending from Arlington County to Purcellville, Virginia, on which the Authority operates and maintains a Park, including trails and related facilities, for the public's use and enjoyment, also known as the W&OD Railroad Regional Park; and

WHEREAS, VDOT and the TOWN desire to construct and maintain certain Facilities and Improvements on a portion of the Authority's Property (the "Licensed Premises"); and

WHEREAS, it is intended by the parties hereto that, ultimately, the Facilities and Improvements established hereunder by the Licensee shall be transferred and assigned to the TOWN for purposes of future operation and maintenance, and that upon acceptance of said Facilities and Improvements into its system, which acceptance shall not be withheld for any reason other than failure by VDOT to complete construction pursuant to the plans, the TOWN shall assume the status of Licensee under this License, and in so doing, shall assume the duties, obligations, liabilities, commitments and acknowledgements of the original Licensee and VDOT shall have no further obligations, liabilities or commitments hereunder; and

WHEREAS, VDOT and the TOWN acknowledge that the paramount use of the Property is for the public's use and enjoyment and that the construction and operation of VDOT's and the TOWN's Facilities and Improvements on the Property must not adversely affect the Property's paramount use for park purposes; and

WHEREAS, the Authority is willing to license to VDOT and the TOWN use of portions of the Property on the terms and conditions set forth herein.

NOW THEREFORE, the Authority, VDOT, and the TOWN in consideration of payments hereinafter stipulated and the mutual covenants hereinafter contained, hereby agree as follows:

1. Definitions

As used in this Agreement:

"Licensed Premises" means that portion of the Property as shown on the plans prepared by

VDOT for the project entitled "East Spring Street Widening", further identified by the Project Code (UPC) 105521; State Project Number U000-235-354, P101, R201, C501; and Federal Project Number STP-5A01 (749) on Right of Way Plan Sheet 8, dated August 1, 2019 and revised through June 1, 2020, hereby incorporated as Exhibit A, on which Licensee is authorized, pursuant to this Agreement, to construct, install, operate, and maintain certain Facilities and Improvements specified herein and VDOT is authorized pursuant to this Agreement to construct and install said facilities on behalf of the TOWN.

"Park" means that portion of the W&OD Railroad Regional Park Property on which the Authority maintains and operates recreational facilities and related improvements, whether existing as of the date of this Agreement or established thereafter, for the public's use and enjoyment.

"Property" means that property owned by the Authority, extending from Arlington County to Purcellville, Virginia, on which the Authority operates and maintains a public park, including trails and related facilities for the public's use and enjoyment, a portion of which is shown on Exhibit A hereto.

"Trail" means that portion of the Property as shown on Exhibit A hereto, which the Authority maintains and operates as a trail or path, both paved and unpaved, for the public's use and enjoyment, including barricades, bridges, signs, benches, fountains, and related improvements.

"Facilities and Improvements" means an 8' wide bike trail, a 6' wide sidewalk and a retaining wall as further described on Exhibit A.

2. License Grant

a. Authority hereby grants a nonexclusive license to Licensee, for the term and upon the conditions, covenants, and agreements hereinafter set forth, to use the Licensed Premises for the purposes of constructing, installing, operating and maintaining its Facilities and Improvements for a bike trail, sidewalk and retaining wall across the Property described on Exhibit A and at the location described on Exhibit A, hereby incorporated into this Agreement by reference. Authority also hereby grants to VDOT authorization pursuant to this Agreement to construct and install said facilities described on Exhibit A on behalf of the TOWN.

b. It is a specific prerequisite to VDOT's and the TOWN's use of the Licensed Premises pursuant to this Agreement that Licensee shall use and maintain the Property at all times in a safe and reasonable manner satisfactory to the Authority.

c. The rights or privileges herein granted to Licensee shall be subject to the rights and or interests held by others in and to the Property as of the date of this Agreement. The Authority makes no representations or warranties, express or implied, concerning the extent of such outstanding rights held by others and shall have no responsibility for conflicts with others as a result of this Agreement. The Authority makes no warranties with respect to the Property but gives Licensee a license to use such rights in the Property that the Authority has in the Property.

d. Nothing contained in this Agreement shall be interpreted to create anything other than a license and this Agreement shall specifically not create any right, title or interest in the Property, nor shall it create an easement or a leasehold interest.

3. Term

a. The term of this License shall begin on the date hereof and shall continue through December 31, 2060, at which time this License shall automatically expire and terminate, unless earlier terminated in accordance with paragraph 3b or c. Upon completion of construction and installation of Licensee's Facilities and Improvements, and upon the full satisfaction of the Construction Deposit requirements set forth in paragraph 5 below, VDOT shall have no further rights or privileges under this License Agreement and shall be released from further obligations to the Authority hereunder, except with respect to any then existing or future liability or claim arising out of VDOT's operations on the Property or acts or omissions under this Agreement. Upon or before the expiration of this License, and with the mutual consent of the Authority and the Licensee, the License may be renewed for an additional term of a duration to be determined at that time.

b. Should Licensee abandon or remove its Facilities and Improvements constructed on the Licensed Premises without an intention to resume the use thereof or replace within a reasonable time this License shall terminate forthwith at the election of the Authority.

c. The Authority may terminate this Agreement for the Licensee's failure to comply with the terms hereof, provided the Authority gives the Licensee written notice of the violation and a reasonable time, not to exceed thirty (30) days, to rectify it to the satisfaction of the Authority; provided, however, that if such violation is capable of being cured but not within the said 30-day period provided, then so long as VDOT or the TOWN, as applicable, commences to cure such violation within the 30-day period, and it is determined and ascertained by Authority and VDOT or the TOWN, as applicable, that the remedial action(s) being taken by VDOT or the TOWN, as applicable, to cure such violation will in fact effect such a remedy and cure, and VDOT or the TOWN, as applicable, is diligently and continually attempting to cure to completion of such remedial action, then the failure to cure the violation within the initial allotted 30-day cure period shall not be grounds for termination of this Agreement unless such violation remains uncured in excess of ninety (90) calendar days after written notice of violation to VDOT or the TOWN, as applicable. Notwithstanding this provision, violations that can be cured in less than 30 days and violations that affect public safety shall be corrected as soon as possible.

d. Licensee shall, within three (3) months after the expiration or earlier termination of this Agreement remove Licensee's Facilities and Improvements from the Licensed Premises. Licensee shall assume full responsibility for all costs and expenses incurred in connection with such removal of its Facilities and Improvements. Licensee shall leave the Property in a clean condition acceptable to the Authority. In the event Licensee does not, within the required period of time, remove its Facilities and Improvements, then the Authority may remove the same at the cost and expense of Licensee, or the Authority may, at its option, allow said Facilities and Improvements to remain on the Property, in which event Licensee shall be deemed to have abandoned such Facilities and Improvements and relinquished to the Authority all right, title and interest thereto and

said Facilities and Improvements shall be and become the property of the Authority.

e. Expiration or earlier Termination of this License shall not relieve or release Licensee from any liability or obligation that may have been incurred or assumed by Licensee hereunder prior to such expiration or termination.

4. Payments

a. Licensee placed on deposit with the Authority a license administration fee of -WAIVED-- Dollars (\$WAIVED).

b. As further compensation, Licensee shall pay Authority a use fee of WAIVED-- Dollars (\$WAIVED).

c. The TOWN agrees and covenants to pay all taxes including, but not limited to, leasehold interest taxes, assessments, use and occupancy taxes, charges for public utilities, excises and levies, levied on the Licensed Premises that arise out of Licensee's construction, maintenance, or operation of any facilities or improvements on the Licensed Premises.

5. Construction Deposit

a. Upon execution of this Agreement, Licensee VDOT shall place on deposit with the Authority a cash deposit (the "Construction Deposit") in the amount of Five Thousand Dollars (\$5,000). The purpose of said Construction Deposit shall be to provide reimbursement to the Authority for any and all expenditures including, but not limited to, attorney's fees, restoration costs and, if applicable, Liquidated Damages, as defined in Paragraph 9 of Exhibit B attached hereto, necessary to enforce the terms of this Agreement. The Authority may withdraw and expend such funds from the Construction Deposit as it may deem necessary to enforce Licensee's obligations under this Agreement, and if the funds shall become exhausted, Licensee will immediately replenish the Construction Deposit. The Authority will hold the Construction Deposit for six months following completion of construction (as determined by the Authority) of Licensee's Facilities and Improvements on the Licensed Premises and restoration to the Authority's satisfaction of any of the Property disturbed during such construction. Upon satisfaction of all requirements under this Section 5, the Authority will return to VDOT the Construction Deposit less any amounts used by the Authority pursuant hereto during such construction.

6. Notices

Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given at the time of personal delivery, the first business day after deposit with an

overnight delivery service or as of the date of first attempted delivery if sent by registered or certified mail. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the Commonwealth of Virginia. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

To AUTHORITY:

Northern Virginia Regional Park Authority
5400 Ox Road
Fairfax Station, VA 22039
Attention: Director of Planning and Development

To TOWN:

Town of Herndon, Virginia
777 Lynn Street
Herndon, VA 20170-4602
Attn: William H. Ashton, II, Town Manager

To VDOT

Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219
Attention: Lori A. Snider, Director of Right of Way and Utilities

7. Terms Incorporated by Reference

The General Terms and Conditions for License Agreements, Part B, dated January 5, 2010, is attached hereto as Exhibit B and is hereby incorporated into this Agreement by reference.

8. Automatic Transfer of License

Upon completion of construction and installation of Licensee's Facilities and Improvements, and upon the full satisfaction of the Construction Deposit requirements set forth in paragraph 5 above, VDOT shall offer said Facilities and Improvements to the TOWN for future operation and maintenance. The TOWN in its sole discretion may determine whether or not the said Facilities and Improvements are acceptable to it and whether or not it will accept them into its system for future operation and maintenance. Acceptance by the TOWN shall not be withheld for any reason other than failure by VDOT to complete construction pursuant to the plans. In the event the TOWN accepts the said Facilities and Improvements into its system, the license granted in paragraph 2 of this Agreement automatically shall transfer to the TOWN and upon such transfer, the TOWN shall assume the status of Licensee under this Agreement, shall enjoy all of the rights and privileges and assume all of the duties, obligations, liabilities, commitments and acknowledgements of the Licensee hereunder, and shall be bound by all of the terms and conditions of this Agreement. Upon acceptance of the facilities and improvements by the TOWN, VDOT shall have no further rights or privileges under this License Agreement and shall be released from further obligations to the Authority

hereunder, except with respect to any then existing or future liability or claim arising out of VDOT's operations on the Property or acts or omissions under this Agreement prior to the acceptance by the TOWN.

9. Special Conditions

Notwithstanding any other provisions of this Agreement to the contrary, the following special conditions shall apply:

a. Licensee shall access the site via Herndon Parkway for both construction and long term operation and maintenance of the Facilities and Improvements. During construction and maintenance, Licensee shall take such precautions, acceptable to the Authority, as necessary to protect the public against hazards and inconveniences, including establishment of appropriate barricades, flashing lights, orange safety fences and signs in order to protect park users from construction activities and to prevent the Licensee's encroachment outside the Licensed Premises. Excavated areas shall be separated by flashing lights and barricades or safety fences. Licensee shall not operate any tools or equipment outside of the Licensed Premises, nor shall the Licensee's personnel or vehicles block or disrupt the trails, or block trail users' sight distance at any time during construction.

b. Closure of the gravel path that connects Herndon Parkway to the W&OD Trail shall be kept to a minimum and shall be closely coordinated with the Authority. During the time that the gravel connector path does remain open, the Licensee shall maintain the continuity, safety, and convenience of public use of the connector trail.

c. Excavated areas, temporary construction zones, stockpiles, material storage and staging areas shall be appropriately protected by temporary construction safety fencing or other suitable barriers in order to confine construction activities to the approved work areas, to protect Trail users and other park patrons from construction activities.

d. Licensee shall provide regular inspection, observation and supervision of its construction crew and/or its contractors as needed to maintain control over the construction crew and/or its contractors and to ensure their full compliance with all conditions of this License, with the approved construction plans, schedules and restrictions, and with the Park rules.

e. Licensee shall provide all contractors on the project with a copy of this License Agreement and shall ensure that all construction personnel abide by the restrictions and provisions contained herein.

f. In any discrepancy between the approved construction drawings and this Agreement, this Agreement and exhibits prevail with respect to the Property.

g. A preconstruction meeting with VDOT and its contractors shall be scheduled prior to any work on the Property. Licensee shall involve the Authority in preconstruction and other information/coordination meetings with governmental agencies, contractors and utility companies

throughout the project.

h. Licensee shall not store materials or spoils on the Authority's property outside the Licensed Premises. Only equipment or materials used on the Property shall be stored on the Property. Licensee shall haul away unsuitable excess fill and dispose of such material off site.

i. Licensee shall provide erosion and sediment controls, as well as temporary drainage facilities necessary to maintain proper storm drainage on the Property. Licensee's activities shall not cause areas on the Property to hold water.

j. Failure of Licensee to comply with any provision of paragraphs 9a, c, d, e, g, h, and i, above shall be deemed to be a violation of this Agreement subjecting Licensee to the Liquidated Damages provided for in Paragraph 9 of Exhibit B and to such other remedies as may be available to the Authority. In addition, the Authority shall have the right to correct any conditions that pose a safety hazard to users of the Trail, and the costs of such corrective actions shall be paid by Licensee to the Authority within thirty (30) days of receipt of appropriate documentation from the Authority.

10. Subject to Appropriations.

Any and all financial obligations of the TOWN hereunder are subject to appropriations by the Herndon Town Council. The TOWN agrees, using reasonable efforts, to exercise all lawful and available authority to satisfy any financial obligations of the TOWN that may arise under this Agreement, including, without limitation, attempting to obtain the necessary appropriations and/or the reprogramming of available funds if such reprogramming is legal and necessary to satisfy TOWN's financial obligations.

IN WITNESS WHEREOF, the parties hereto for themselves and their successors and assigns have executed this License Agreement on the date and year first written above.

TOWN:

TOWN OF HERNDON

By: William H. Ashton II
Name: WILLIAM H. ASHTON II
Title: Town Manager

VDOT:

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: Lori A. Snider
Title: Director of Right of Way and Utilities

AUTHORITY:

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

By: _____
Name: Brian Nolan
Title: Director of Planning and Development

UPC 105521
Parcel 015

Exhibit A

PROJECT MANAGER: Hamid, Misaghian, P.E. (703) 259-1795 (NOVA)
SURVEYED BY, DATE: Jason G. Bly, L.S. (703) 259-2332 (NOVA) October, 2016
DESIGN BY: Lankford, Hankins, Jr., P.E. (804) 786-9726 (Central Office)
SUBSURFACE UTILITY BY, DATE: E. Cook, R. Blachardson, J.L.S. (Accumark Inc.) 06/08/2017

REVISED	STATE	ROUTE	PROJECT	SHEET NO.
8/11/2019 01/23/2020 02/05/2020 06/01/2020	VA.	675	U000-235-354, RW-201, C-501	8

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

VDOT Location & Design Richmond, Virginia HYDRAULICS ENGINEER	VDOT Location & Design Richmond, Virginia ROADWAY ENGINEER
---	--

Curve BL HERNDON_8
PI = 2017+56.94
DELTA = 25° 32' 18.10" (LT)
D = 3° 49' 11"
T = 339.94'
L = 668.59'
R = 1500.00'
PC = 2014+16.99
PT = 2020+85.59
V = 35 mph
E = MATCH EX. (TC-5JI ULS)

NORTHWEST FEDERAL CREDIT UNION
DB 9119 PG 445
6.97953 AC.
TAX MAP# 017102 0023

NORTHERN VIRGINIA REGIONAL
PARK AUTHORITY
DB 5030 PG 789
104.215 AC.
TAX MAP# 0283 01 0051

RREEF AMERICA
REIT II CORP. VV
DB 17457 PG 93
5.55177 AC.
TAX MAP# 017106 F3

End Herndon Pkwy Construction
Sta. 2020+85.00 Herndon Pkwy Constr. BL

Herndon Parkway - Rte. 903

JAI HERNDON HOTEL, LLC
DB 18272 PG 1180
1.96086 AC.
TAX MAP# 017102 0016

THE TOWN OF HERNDON
DB 15663 PG 1831
4.9318 AC.
TAX MAP# 017106 E2

REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
Herndon Pkwy. Profile	8A
Ret. Wall 3 Design	11(C)(J)(E)
Soil Nail Wall	11(D)(1)-11(D)(4)
Design	
Drainage Descr.	12(2)
Existing Drainage	12(3)
Curb ID, Ramp Details	2G(1, 2)
Construction Staking	18(F)
Layout	
Entr. Profiles	10(A)
Lighting	20 series

NOTE: See Sheet 2A(6) for detail on proposed cycle track and sidewalk tie to existing entrance to W&OD trail, shown on this plan sheet at approx. Sta. 2020+75 and off set approx. 39' RT of Herndon BL on parcel 015.

SCALE
0 25' 50'

PROJECT
U000-235-354

SHEET NO.
8

[2]	S'd CG-2 Req'd	[12CM]	S'd CG-12C Mod. Req'd
[6]	S'd CG-6 Req'd	[S]	Sawcut Req'd.
[6R]	S'd CG-6 Rad. Req'd	[Hatched]	Denotes 2" Mill and Overlay
[12]	S'd CG-12 Req'd	[Dotted]	Denotes Proposed Pavement
[12B]	S'd CG-12B Req'd	[Cross-hatched]	Denotes Demolition of Pavement
[12C]	S'd CG-12C Req'd	[Stippled]	Denotes Concrete Pavement
[12BM]	S'd CG-12B Mod. Req'd	[Dashed]	Denotes Cycle Track Pavement

[C] Denotes Construction Limits in Cuts
[F] Denotes Construction Limits in Fills
Note: For Curb Ramp Details, See Sheets 2G(1) Detail B, and 2G(2) Detail F.
Note: Wheel Stops are required behind Retaining Walls 1, 2, and 3.
Note: Dot - Dashed lines denote Permanent Easements.
Note: Dot - Dot - Dashed lines denote Temporary Easements.

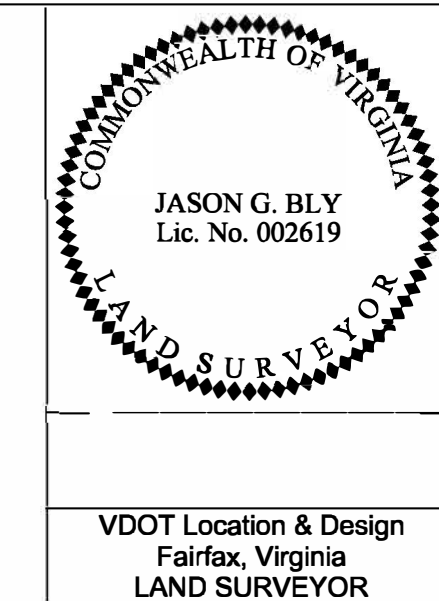
Note: For Bus Stop and Landing Area Details, See Sheet 2G(5).

PROJECT MANAGER Hamid Misaghian, P.E. (703) 259-1795 (NOVA) -----
SURVEYED BY, DATE Jason G. Bly, L.S. (703) 259-2332 (NOVA) - October, 2016 -----
DESI GNBY William Gory, P.E. (804) 786-2551 (Central Office) -----
SUBSURFACE UTILITY BY, DATE Frank R. Richardson, W.L.S. (Accumack, Inc.) 06/08/2017 -----

AREAS						
PARCEL *	PROP. RW	PROP. TEMP. CONST. ESMT.	PROP. VDOT UTIL. ESMT.	PROP. PERM. DRAIN. ESMT.	PROP. PERM. RET. WALL ESMT.	PROP. PERM. BUS. SHELTER ESMT.
003	5,749 S.F.	6,106 S.F. (R6)	13,114 S.F. (R3)	107 S.F. (R6)	1,596 S.F.	*****
005	13,306 S.F.	8,135 S.F.	14,490 S.F.	1,457 S.F.	*****	285 S.F.
014	1,975 S.F.	2,051 S.F. (R6)	3,212 S.F.	905 S.F. (R6)	*****	*****
015	*****	*****	*****	*****	*****	*****
016	*****	618 S.F.	*****	*****	*****	*****

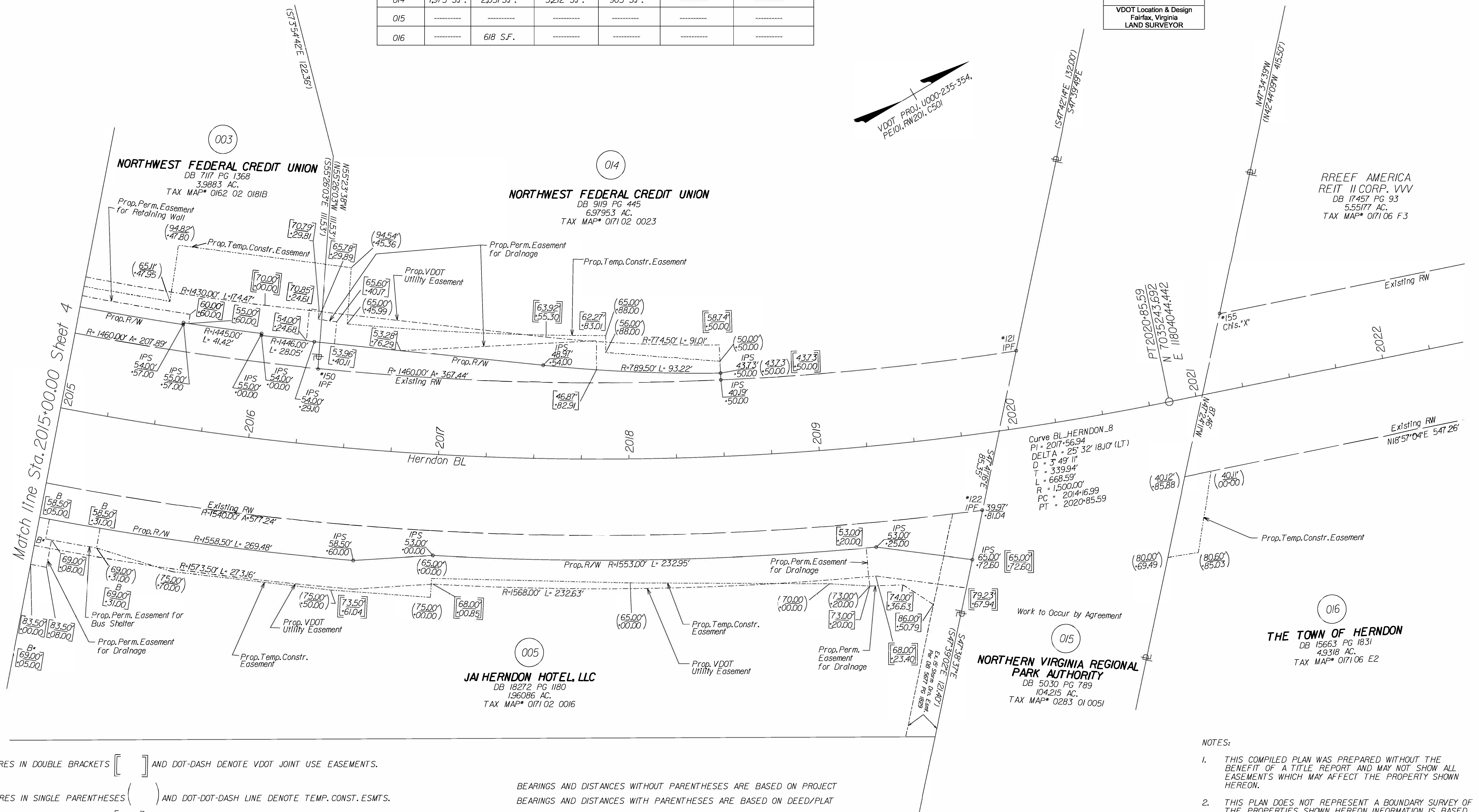
RIGHT OF WAY PLANS

THESE PLANS ARE UNFINISHED
AND ARE NOT TO BE USED FOR
ANY TYPE OF CONSTRUCTION.



	REVISED	STATE		STATE	SHEET NO.
R3	10-1-19	ROUTE	PROJECT		
R6	1-23-20	VA.	675	U000-235-354, RW-201, C-501	8RW

DESIGN FEATURES RELATING TO CONSTRUCTION
OR TO REGULATION AND CONTROL OF TRAFFIC
MAY BE SUBJECT TO CHANGE AS DEEMED
NECESSARY BY THE DEPARTMENT



FIGURES IN DOUBLE BRACKETS **[[]]** AND DOT-DASH DENOTE VDOT JOINT USE EASEMENTS.

FIGURES IN SINGLE PARENTHESES () AND DOT-DOT-DASH LINE DENOTE TEMP.CONST.ESMTS.

FIGURES IN SINGLE BRACKETS [] AND DOT-DASH DENOTE PERMANENT EASEMENTS.

FIGURES IN SINGLE BRACKETS WITH "B" ^B AND DOT-DASH DENOTE PERMANENT EASEMENTS FOR BUS SHELTER.

BEARINGS AND DISTANCES WITHOUT PARENTHESES ARE BASED ON PROJECT
BEARINGS AND DISTANCES WITH PARENTHESES ARE BASED ON DEED/PLAT

IPS - Iron Pin With R/W Cap To Be Set After Construction
 IRF - Iron Rod Found
 DHF - Drill Hole Found
 PKF - PK Nail Found
 IPF - Iron Pin Found

NOTES:

1. THIS COMPLED PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ALL EASEMENTS WHICH MAY AFFECT THE PROPERTY SHOWN HEREON.
2. THIS PLAN DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PROPERTIES SHOWN HEREON. INFORMATION IS BASED ON DEEDS AND PLATS OF RECORD.



PROJECT	
U000-235-354	

SHEET NO.
BRW

EXHIBIT B

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

GENERAL TERMS AND CONDITIONS FOR LICENSE AGREEMENTS

Revised January 5, 2010

1. Definitions

All capitalized terms in this General Terms and Conditions shall have the same meaning as set forth in the License Agreement ("Agreement").

2. Construction

a. Construction Plans and Specifications

(1) Construction of Licensee's facilities and improvements on the Property shall be restricted to the Licensed Premises and shall be performed strictly in accordance with plans and specifications approved in writing by the Authority. Licensee shall not deviate from or make changes to the construction plans and specifications approved by the Authority without the Authority's prior written approval. Only those facilities and improvements reflected on the approved construction plans and specifications shall be established on the Property. Licensee shall strictly adhere to any limitations or restrictions on construction methods or techniques as set forth in the approved construction plans and specifications, in the License Agreement, and any Exhibits thereto. After completion of the initial construction of the facilities and improvements on the Property, Licensee shall not construct additional facilities and improvements on the Property without specific written approval of the Authority, which written approval, if given, may constitute a separate license or an amendment to the Agreement.

(2) Licensee is hereby placed on notice of an existing agreement between Virginia Electric and Power Company ("VEPCO") and the Authority which provides, in part, that the Authority shall not grant any right to use the Property for certain purposes without Virginia Power's prior written approval. Licensee shall be responsible for obtaining Virginia Power's approval, and shall not enter or commence any work on the Property until such written approval is obtained and a copy of said approval is provided to the Authority by Licensee. The license granted by this Agreement shall be contingent until the written approval of VEPCO is obtained and provided to the Authority.

(3) Failure of Licensee to comply with any provision of subparagraphs 2a(1) or (2) above shall be deemed to be a violation of the Agreement subjecting the Licensee to the liquidated damages provided for in Paragraph 9 hereof and to such other remedies as may be

available to the Authority.

b. Construction Schedule

(1) Licensee shall submit to Authority for approval a proposed construction schedule, indicating when construction will begin and be completed and construction milestones. Licensee also shall provide Authority a list of the names of all contractors and subcontractors who will work on the Licensed Premises.

(2) Licensee shall perform construction only in accordance with the approved construction schedule. Licensee shall notify Authority immediately of any changes to the approved schedule. Such changes shall be subject to the prior written approval of the Authority.

(3) Licensee shall provide notice to Authority at least two (2) business days before entering the Property to perform any construction.

(4) Failure of Licensee to comply with any provision of subparagraphs 2b(1) (2) or (3) above shall be deemed to be a violation of this Agreement subjecting the Licensee to the liquidated damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

c. Confining Construction Activity. During construction, Licensee and its contractors and subcontractors shall confine all construction activity, including access and storage, within the applicable areas specified on the approved plans and any exhibits thereto. Failure of Licensee to comply with any provision of this subparagraph shall be deemed to be a violation of the Agreement subjecting the Licensee to the liquidated damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

d. Excavation

(1) Licensee shall not make or begin any excavation or other subsurface activity on the Property without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation, or other person having the right to bury underground facilities on the Property.

(2) Licensee shall not make or begin any excavation or other subsurface activity on the Property without having all underground facilities located by suitable markers or other means by the owners of such underground facilities or other qualified or authorized persons.

(3) Obtaining the information required by subparagraphs (1) and (2) of this paragraph does not excuse Licensee from making all excavation or other subsurface activity in a careful and prudent manner.

(4) In the event of any damage to or dislocation of any underground

facility in connection with the excavation or other subsurface activity, Licensee shall immediately notify the owner of such facility and shall immediately cease all work in the affected area until repairs are complete. Any such incident shall be reported immediately to the Authority, and no further excavation or subsurface activity shall be done until permission is granted by the Authority.

(5) All excavation or other subsurface activity made by Licensee shall be properly safeguarded for the prevention of accidents. All excavated or tunneled areas shall be filled in or adequately secured at the end of each work day.

(6) Failure of Licensee to comply with any provision of subparagraphs 2d(1), (2), (3), (4) or (5) above shall be deemed to be a violation of the Agreement subjecting the Licensee to the liquidated damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

e. Inspection of Construction.

(1) The construction of Licensee's facilities and improvements is subject to the Authority's inspection at all places and all reasonable times to ensure strict compliance with the terms of the Agreement.

(2) Authority inspections are for the sole benefit of the Authority and do not constitute or imply acceptance of any work as conforming with the requirements of the Agreement. The presence or absence of an Authority inspector does not relieve Licensee from any contract requirement, nor is the inspector authorized to change any term or requirement of this Agreement without the written authorization of the Authority's representative.

3. Maintenance and Operation

a. Licensee shall be responsible for maintaining and operating all facilities and improvements established by it on the Property, and shall perform such maintenance and operations in a manner and at such frequency as necessary to keep the Property safe and to protect against damage to the Property and adjoining properties.

b. Prior to commencement of any scheduled maintenance, or of any operation activity that requires entry onto the Property, Licensee shall submit a proposed maintenance or operation plan and schedule to the Authority for approval. The plan and schedule, at a minimum, shall provide a description of work to be performed, a description of equipment, vehicles, work techniques and methods to be used in connection with the maintenance or operation activity, a schedule of when maintenance or operation work will occur with an estimate as to the length of time required to perform the work, and such other information as the Authority may need in order to evaluate the proposed maintenance or operation activity.

c. Licensee shall perform maintenance and operation of the facilities and improvements strictly in accordance with plans and schedules that have been approved in writing by the Authority. Licensee shall not deviate from or make changes to the maintenance or

operation plans and schedules approved by the Authority without the Authority's prior written approval.

d. Licensee shall provide notice to Authority at least forty-eight (48) hours before entering the Property to maintain or operate Licensee's facilities; except in the case of an emergency where Licensee cannot provide the required advance notification, Licensee shall notify Authority as soon as practicable.

e. Licensee shall confine all maintenance and operation activities, including access and storage, within the applicable areas specified in the approved maintenance and operation plans.

f. Licensee shall avoid disturbing the Property and any improvements thereon while maintaining or operating Licensee's facilities and improvements. To the extent any disturbance does occur, Licensee shall restore such disturbed areas in accordance with the requirements set forth in Paragraph 4.

g. Failure of Licensee to comply with any provision of subparagraphs 3a, b, c, d, e or f above shall be deemed to be a violation of this Agreement subjecting the Licensee to the liquidated damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

h. The Authority agrees to consider and, at its discretion, grant appropriate blanket approvals for scheduled maintenance or operation activities. In such event, Licensee shall be required only to provide the required advanced notification prior to commencing scheduled maintenance or operations for which the Authority previously has granted a blanket approval.

i. In addition to any other condition which the Authority may require in consideration for approval of any maintenance or operation plan, if any maintenance or operation activity of Licensee would disturb or disrupt the land or any improvement on the Property, or would interfere with the Authority's or public's use and enjoyment of the Property, the Authority may impose upon Licensee reasonable charges and bonding (over and above any other payments or bonding required under the License Agreement) to cover its costs of reviewing, approving, administering, overseeing and inspecting the maintenance or operation activity, and to ensure the safety and well being of the public and the proper and timely restoration of the Property.

4. Restoration

a. Licensee shall, as soon as practicable after the completion of any construction, operation or maintenance activities, restore all areas disturbed during such activities. These areas shall be restored in kind to a condition substantially the same as that which existed prior to Licensee's performing such activities, and shall be restored to the satisfaction of the Authority, taking into consideration aesthetics as well as structural or design integrity.

b. Disturbed areas must be backfilled and compacted consistent with the original conditions. Where subsoil is tamped, the disturbed area will be filled to a level in kind. Disturbed areas will be reseeded or sodded in kind. Seeding required for restoration shall be of a mixture approved by the Authority. Any subsequent settling of disturbed areas will be repaired in kind. Licensee shall be responsible for any erosion which may occur as a result of Licensee's use of the Licensed Premises, and Licensee shall restore any eroded area until stabilized.

c. In the event any asphalt paths on the Trail are cut or are otherwise damaged or disturbed, repairs shall be made in accordance with the following minimum requirements:

- (1) pavement shall be saw cut and shall have straight, clean edges;
- (2) all debris shall be hauled from the Property;
- (3) the disturbed area shall be backfilled with approved material compacted to ninety-five percent (95%) of theoretical density as determined by standard proctor;
- (4) a minimum of six inches (6") of VDOT type 21-A aggregate base shall be placed and compacted;
- (5) base shall be prime coated at the rate of .3 gallons per square yard with VDOT type MC-70 or RC-250 liquid asphalt; all existing asphalt edges shall be cleaned and tack coated;
- (6) a minimum of two inches (2"), or the depth of the existing asphalt, whichever is greater, of VDOT type SM-9.5 hot-mix asphalt shall be placed and properly compacted;
- (7) all adjacent stone or turf shoulder shall be backfilled flush with the pavement edge and said turf areas seeded in accordance with the requirements in subparagraph 4b above; and
- (8) the standard minimum dimensions for patched or replaced asphalt shall be a square the width of the Trail by an equal length.

d. If the disturbed area is on a part of any path in use by the public, Licensee shall immediately restore the disturbed area with a temporary patch until the asphalt can be permanently restored in accordance with the requirements of this paragraph 4. Failure of Licensee to comply with any provision of this subparagraph shall be deemed to be a violation of this License Agreement subjecting the Licensee to the liquidated damages provided for in paragraph 9 hereof and to such other remedies as may be available to the Authority.

e. The Authority may restore any areas in case of neglect by Licensee. Licensee shall pay the cost of such restoration, including the cost of inspection and supervision.

5. Approvals

Whenever the License Agreement requires Licensee to submit plans, specifications, schedules or other items to the Authority for approval, the Authority shall review and approve, disapprove, or take other appropriate action with reasonable promptness after receipt of the required submittal. The Authority's approval of any submittal shall not be deemed to be a waiver of any requirement of the Agreement unless such waiver is explicit and in writing and specifically references the requirement of this Agreement that is being waived.

6. Access

Licensee shall enter and exit the Property during the term of the License Agreement only at those places and by those means specified on the approved construction plans and specifications and in the Agreement, including the attached exhibits. Failure of Licensee to comply with any provision of this Paragraph shall be deemed to be a violation of this Agreement subjecting the Licensee to the liquidated damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

7. General Responsibilities of Licensee

a. Compliance with Applicable Laws and Regulations. Licensee shall construct, operate, and maintain its facilities and improvements in accordance with all applicable federal, state, and county laws, orders, rules, and regulations existing on the date of the Agreement or enacted thereafter affecting Licensee's use of the Property, and Licensee shall assume all costs, expense, and responsibility in connection therewith.

b. Manner of Performance. Licensee shall construct, operate, and maintain its facilities and improvements in an orderly and workmanlike manner. The safety of the general public, Licensee's employees and all property shall be of paramount importance whenever or wherever Licensee operates on the Licensed Premises.

c. Permits. Prior to commencement of any work Licensee shall secure and pay for all permits and government fees, licenses, and inspections necessary for the proper construction, operation, and maintenance of Licensee's facilities and improvements.

d. Storage of Hazardous Materials. Licensee shall not store flammable, explosive, or other hazardous materials on the Property, and no materials shall be piled higher than fifteen (15) feet above ground level.

e. Interference. Licensee's facilities and improvements shall be constructed, operated, and maintained in a safe and proper manner so as not to endanger the general public, interfere with the public's use and enjoyment of the Park, Trail and Property, or interfere with any improvements on the Property.

f. Licensee's Personnel. Except as otherwise specifically authorized in the Agreement, Employees of Licensee and its agents and contractors shall comply with all

regulations governing the use of the Trail and Property in effect as of the date of the Agreement or enacted thereafter.

g. Vehicles. Licensee shall operate on the Property only vehicles and equipment approved by the Authority. No vehicles or other equipment shall be operated on any trail, whether paved or unpaved, unless prior written approval has been granted by Authority.

h. Failure of Licensee to comply with any provision of subparagraphs 7a, b, c, d, e, f or g above shall be deemed to be a violation of this License Agreement subjecting the Licensee to the liquidated damages provided for in paragraph 9 hereof and to such other remedies as may be available to the Authority.

8. Warranty

Licensee warrants that Licensee has inspected the Property and accepts it in its present “as is” condition. The Authority makes no representation or warranties, express or implied, concerning the condition of the Property and shall have no responsibility for repairs and maintenance during the term of the Agreement.

9. Liquidated Damages

a. At the sole and absolute discretion of the Authority, if Licensee fails to comply with ANY requirement of paragraphs 2a(1) or (2); 2b(1), (2) or (3); 2c; 2d(1), (2), (3), (4) or (5); 3a, b, c, d, e or f; 4d; 6; or 7a, b, c, d, e, f or g hereof, Licensee shall, in place of actual damages, pay to the Authority, as fixed, agreed, and liquidated damages for each day such failure to comply continues, the sum of Five Hundred Dollars (\$500.00) (the “Liquidated Damages”); provided, however, that the Authority will not assess Liquidated Damages for any violation beyond the control of the Licensee, its employees, agents, contractors, invitees or representatives. Licensee shall pay any Liquidated Damages promptly upon receipt from the Authority of a written notice assessing such damages.

b. The assessment of Liquidated Damages pursuant to this Paragraph, (or the Authority’s election not to assess Liquidated Damages), does not restrict the Authority’s power to terminate the Agreement or otherwise enforce its terms.

c. On the third anniversary of the Agreement and every three years thereafter during the term of the Agreement, the Liquidated Damages shall be increased by five percent (5%).

10. Authority’s Use of the Property

Nothing in the License Agreement shall be construed to prevent the Authority from repairing, altering, relocating, or constructing existing and additional Trails or other facilities on the Property. The Authority shall do such work, insofar as practicable, in a manner not to obstruct, injure, or prevent the free use and operations of Licensee’s facilities and improvements. If any property of the Licensee shall interfere with Authority’s planned

alteration, relocation, or construction, Licensee shall remove such property at such time and in a manner as shall reasonably be directed by the Authority so that such property shall not interfere with the work of the Authority. Such removal or replacement of Licensee's property shall be at the expense of Licensee. Authority agrees to cooperate with Licensee and to use its best efforts to accomplish any alterations, relocations, or construction of the Trail and Property in a manner least intrusive to the privileges of Licensee under this License Agreement.

11. Authority's and Licensee's Representatives

a. The Authority and Licensee shall each designate a representative who shall have the duty to coordinate all aspects of Licensee's use of the Licensed Premises and have the authority to render decisions and bind the parties upon matters which necessitate input or decisions. Any change of a party's representative shall be made in writing, and any such change shall not be effective until receipt of the writing by the other party. The Authority hereby designates its Director of Planning and Development as its representative.

b. The Authority's representative shall, at all times, have access to Licensee's construction, operation, and maintenance work whenever and wherever it is in preparation or progress.

12. Maintenance of Records

Licensee shall keep accurate maps and records, including the approved as-built construction plans and specifications, of its facilities and improvements located on the Property and shall make available to the Authority such maps and records when requested.

13. Safety

a. Licensee shall take adequate precautions (i) to insure the safety of the general public as well as Licensee's and Authority's employees, (ii) to protect the Property, and (iii) to assure safe operation of Licensee's facilities and improvements including, but not limited to, marking any temporary changes to the Trail and providing snow fences and other barricades.

b. Whenever Licensee's facilities and improvements or related construction, operation, or maintenance activities of Licensee create a serious hazard to public safety or welfare, Licensee shall take all reasonable actions to abate immediately the hazard and shall immediately notify the Authority and any other affected parties of such incidents. The Authority shall have the right to direct Licensee to halt any construction, operation, or maintenance activity for noncompliance with the provisions of this Agreement or when the Authority believes it to be necessary to protect the public's welfare or safety.

c. The Authority shall have the right, without notice to Licensee, to correct any condition in case of an emergency.

14. Indemnification

To the extent permitted by law, Licensee assumes full responsibility for injuries to or death of any person, for damages to its property, property of the Authority and the property of third parties, and for expenses arising out of Licensee's operations on the Property. To the extent permitted by law, Licensee agrees to indemnify and hold the Authority, its officers, agents, employees, or contractors harmless from all claims, losses, expenses, or suits for such injuries, death, or damages including, but not limited to, reasonable attorney's fees. Notwithstanding the provisions of this Paragraph, Licensee shall not be liable for property damage or personal injuries caused solely by the negligence or willful misconduct of the Authority.

15. No Waiver

Nothing contained in the Agreement shall be deemed to waive the requirements of the various codes, regulations, resolutions and statutes regarding permits, fees to be paid, or manner of construction, operation, or maintenance.

16. Assignment

No assignment, conveyance, apportionment, transfer or sublicense by Licensee of the Agreement or any rights hereunder as to any other parties (other than to its customers in the regular course of business) shall be made without the prior written consent of the Authority, which consent may be given or withheld in the Authority's sole discretion.

17. Entire Agreement

The Agreement (and any exhibits hereto) embodies the entire agreement between Authority and Licensee. It is not to be modified or terminated except as provided herein or by any written agreements signed by the authorized representatives of both parties. If any provision herein is invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions.

18. Attorney's Fees

In the event the Authority retains counsel to enforce its right or protect its interests pursuant to the Agreement, whether or not any formal action is instituted, the Licensee shall, in addition to and not in lieu of Liquidated Damages, be responsible for all such fees and related costs incurred by the Authority.

19. Applicable Law

The parties agree that the laws of the Commonwealth of Virginia will govern the License Agreement.

TOWN:

TOWN OF HERNDON

By: _____

Name: _____

Title: _____

VDOT:

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: Lori A. Snider

Title: Director of Right of Way and Utilities

AUTHORITY:

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

By: _____

Name: Brian Nolan

Title: Director of Planning and Development

UPC 105521

Parcel 015

TOWN OF HERNDON, VIRGINIA

RESOLUTION

JULY 13, 2021

Resolution- to change the Meeting Schedule for the Town Council Work Session in August 2021.

WHEREAS, Section 2-1, of the Herndon Town Code (2000), as amended, establishes the meeting schedule for the Herndon Town Council; and

WHEREAS, the town council may by resolution prescribe any prescribe a day or time other than those established in the code.

NOW, THEREFORE, BE IT RESOLVED that the that the Town Council of the Town of Herndon, Virginia, hereby reschedules its regularly scheduled work session on Tuesday, August 3, 2021 **TO Wednesday, August 4, 2021, at 7:00 pm,** to accommodate the participation of the elected officials in **National Night Out** activities; and

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby requests the town clerk to work in coordination with the Chief Communications Officer to ensure the change in schedule is widely-publicized.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

July 13, 2021

Resolution- To ratify a Contract pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and The Fitzgerald Law Group, PLC for legal services

WHEREAS, the Legal Services Contract (Contract) for prosecutorial services between the Town of Herndon (Town) and the The Fitzgerald Law Group, PLC (Fitzgerald) dated May 19, 2015, as amended on June 5, 2018, and as extended due to emergency was expiring on June 30, 2021; and

WHEREAS, Town and Fitzgerald desired to enter into a new Contract commencing on July 1, 2021 and expiring on June 30, 2023; and

WHEREAS, the Contract retains Fitzgerald in the person of Ellen Kay Fitzgerald to provide prosecutorial services for the Town in return for \$81,600.00 per fiscal year plus costs. For appellate work as authorized by the Town growing out of cases above the Circuit Court level, or other specific representation approved by the Town, Town shall pay Fitzgerald an hourly rate of \$315.00 for services rendered, plus actual costs incurred; and

WHEREAS, the Contract dated June 30, 2021 was signed by the Town Manager pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, which authorizes the Town Manager to sign such contracts.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the Contract dated June 30, 2021 and signed by the Town Manager between the Town of Herndon and The Fitzgerald Law Group, PLC for prosecutorial services

LEGAL SERVICES CONTRACT

This Contract dated **June 30, 2021** between Town of Herndon, Virginia (Town), 777 Lynn Street, Herndon, Virginia 20170 and The Fitzgerald Law Group, LLC (Fitzgerald), 215 Depot Court SE, Suite 305, Leesburg, VA 20175, provides as follows:

Legal Services

1. The Town desires to hire Fitzgerald to provide prosecutorial and related services for Town in the person of Ellen Kay Fitzgerald and Fitzgerald agrees.

2. Beginning July 1, 2021, Fitzgerald shall provide to the Town professional legal services to prosecute traffic or misdemeanor cases charging either a violation of Town ordinances, or the commission of misdemeanors or traffic infractions within the Town, in Fairfax County or Loudoun County General District Courts; to provide miscellaneous legal advice to the Town police officers related to these cases or legal principles related to these cases; to represent the town on any bond motions or other judicial matters relating to such cases; and to handle appeals of such cases to and in the Circuit Court.

Fees

3. Beginning July 1, 2021, Town shall pay Fitzgerald a yearly retention fee of \$81,600.00 per fiscal year, payable at \$6,800.00 per month upon submission of invoice.

4. For appellate work as authorized by the Town growing out of cases above the Circuit Court level, or other specific representation approved by the Town, Town shall pay Fitzgerald an hourly rate of \$315.00 for services rendered, plus actual costs incurred within 30days of presentation of invoice to the Town for same.

5. Fitzgerald at its own cost, shall arrange for a substitute attorney to handle the Wednesday morning docket or any other court appearance on behalf of the Town in the absence or disability of Ellen Kay Fitzgerald. Fitzgerald shall notify the Town Attorney via email or verbally of the substitution 72 hours in advance if possible.

Equipment and Supplies

6. Town shall, at its election, provide Fitzgerald with a laptop computer for use in the performance of services described herein including specifically the viewing of Officer body camera footage. Upon expiration or termination of this contract Fitzgerald shall return the laptop to Town immediately. All other equipment and supplies are to be provided by Fitzgerald.

Nature of Relationship

7. Fitzgerald, in the person of Ellen Kay Fitzgerald, may use the designation Special Deputy Town Attorney for Prosecutions in the course of her representation of the Town described herein. Fitzgerald understands that Ellen Kay Fitzgerald is not an employee of the Town and Town understands that Fitzgerald has other clients for whom services are performed.

8. Fitzgerald shall submit written reports to the Town Attorney monthly along with the monthly invoice and coordinate with the Town Attorney as needed or requested.

Termination

9. This contract is terminable by either party on thirty days' written notice to the other. In any event, this contract shall terminate June 30, 2023.

Authority

10. In accordance with §15.2-1542(D), Virginia Code, the Town authorizes Fitzgerald to prosecute such cases described herein. Fitzgerald with the concurrence of the Fairfax County Commonwealth Attorney and Loudoun County Commonwealth Attorney as appropriate may

prosecute criminal cases charging either the violation of Town of Herndon ordinances or the commission of misdemeanors or traffic offenses committed within Town. Fitzgerald shall obtain such concurrences in writing and file in the office of the Town's Town Clerk.

TOWN OF HERNDON, VIRGINIA

By Wm. H. H. H. H.
Town Manager

By Sean J. Yeatts
Town Attorney

THE FITZGERALD LAW GROUP, LLC

By Ellen Kay Fitzgerald
its Partner