



This does not represent a verbatim transcript of the Town Council meeting. Visit www.herndon-va.gov "agendas & minutes" to view agendas and videos. Copies of videotapes of the public hearing meetings are available on request by contacting HCTV at 703-689-2323. Work sessions are not videotaped, but audio files are available. Individuals not having access to the town's website may contact the Town Clerk's office at 703-435-6804 or town.clerk@herndon-va.gov.

HERNDON TOWN COUNCIL
Tuesday
July 13, 2021

The Town Council met in public session on Tuesday, July 13, 2021, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Sheila A. Olem; Vice Mayor Cesar del Aguila; and Councilmembers Pradip Dhakal; Signe Friedrichs; Sean M. Regan; and Jasbinder Singh. Councilmember Naila Alam was absent.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief of Police, Maggie DeBoard; Elizabeth Gilleran, Director of Community Development; Anne Curtis, Chief Communications Officer; Deputy Director of Public Works, Tammy Chastain; Scott Robinson; Dave Bracamonte, IT Operations Manager; and Margie Tacci, Deputy Town Clerk.

Mayor Olem called the meeting to order at 7:00 p.m., all members present, except for Councilmember Alam who was absent, and with Mayor Olem presiding.

PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE

Mayor Olem led the audience in the Pledge of Allegiance to the Flag of the United States of America. She asked everyone to observe a moment of silence for the young mother and her children who were murdered over Father's Day weekend.

ANNOUNCEMENTS

Mayor Olem stated she attended a vigil on June 24, 2021 after the tragic triple homicide that happened in Herndon. She indicated she heard nothing but positive remarks about the first responders and the Herndon Police Department. She mentioned other local officials, leaders, and town staff who attended and stated the event was both heartbreaking and heartwarming.

**July 13, 2021
(public hearing)**

Mayor Olem also welcomed everyone to the first in person meeting since March 2020 and thanked staff for all their preparation work.

APPROVAL OF MINUTES

Vote on April 20, 2021

Town Council Work Session Minutes

On motion of Councilmember Singh, seconded by Councilmember Friedrichs and carried by 6-0 roll call vote, the minutes of the April 20, 2021 Town Council Work Session were approved. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.

Vote on April 27, 2021

Town Council Public Hearing Minutes

On motion of Councilmember Regan, seconded by Councilmember Dhakal and carried by 6-0 roll call vote, the minutes of the April 27, 2021 Town Council Public Hearing were approved. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.

3. COMMENTS FROM THE TOWN MANAGER

Mayor Olem recognized Town Manager, William H. Ashton II who provided additional comments about the June 24, 2021 vigil and echoed Mayor Olem's comments about it being a moving event. He said it was uplifting to see the community come together.

Mr. Ashton stated the next Council Strategic Planning Meeting would be on Thursday, August 5, 2021. He reiterated the process that Council adopted for prioritizing initiatives.

He then provided information about the Elden and Center Street Intersection Improvement Program and a tree taken down as part of this project. Information about this was available in the October 27, 2015 public hearing agenda and minutes. Mr. Ashton said the existing intersection was unsignalized and had sight distance issues that the tree was part of. He indicated the intersection was dangerous at times and had been exacerbated by heavier pedestrian traffic. They would be trying to address these issues through signals, streetscapes, pedestrian and bicycle accessibility which would be ADA compliant, better pedestrian flow, and hoping to improve sight lines through left turn lines and other signals.

He stated the council, at the time in 2015, met with the public and eight of 12 people selected the option that was being implemented now. The other options were not selected. He provided information about the concerns presented that night as well. That

**July 13, 2021
(public hearing)**

council selected a design option that would remove the tree and that plan was what was being implemented. That council had decided, for the safety conditions, this was needed to better serve the needs of the area.

He also mentioned they were starting the Monroe Street Project at the same time.

Councilmember Friedrichs asked Mr. Ashton about the tree, and Mr. Ashton stated the urban forester had been involved since 2015. It was identified that the tree was beginning to fail, with such a robust root system it was likely they would have still lost the tree while also not addressing some of the other issues of the intersection. Looking to get it closer to a T-intersection to enhance safety.

Councilmember Friedrichs provided comments about a tree in her own yard which she is trying to preserve and was sorry they had to lose this tree for safety reasons.

4. COMMENTS FROM THE TOWN COUNCIL

Vice Mayor del Aguila: Thanked everyone who was joining them that evening and thanked staff for their work the past year and a half. Regarding Strategic Initiatives, Vice Mayor del Aguila commented that they should add and preserve greenspace.

He thanked Council for their support on the traffic calming initiative discussed at their last work session. He looked forward to having that in more detail and said he had been working with some other members of Council about housing allowances. He said there was a housing crisis in the region.

He stated it was good to be back in person and he was looking forward to meeting more.

Councilmember Dhakal: Said he was glad to be there in person. Councilmember Dhakal thanked staff for making this happen, and thanked Mr. Ashton for addressing the projects and the tree. He indicated residents were asking about updates from the American Rescue Plan Act and asked if there were any state or local updates to share.

Councilmember Dhakal asked about the Multicultural Advisory Board presentation being available to the public. He said residents want to see that presentation and asked that it be made available.

Councilmember Friedrichs: Congratulated Councilmember Dhakal and his wife Sushma who were expecting a baby girl.

Councilmember Friedrichs thanked the Dulles Regional Chamber of Commerce for bearing with the town for having to cancel the first Friday Night Live! (FNL) event. She appreciated the response of those who planned to attend the event when they learned why it had been cancelled. She stated that learning of Claudia Menjivar and her two children who had been murdered put everything into perspective.

**July 13, 2021
(public hearing)**

As the former Membership Manager of the Chamber and the former Director of several nonprofits, Councilmember Friedrichs said she was deeply conscious of the sacrifice that the Chamber, their volunteers, and their vendors made. She said FNL is a community event that people in Herndon and around the region look forward to all year. It is also a fundraiser for the Chamber and many other nonprofits such as the Herndon High School All Night Grad Party, the Optimist Club, and others. She also stated it brings people to the restaurants and bars downtown. Further, she said that losing the momentum and joy of that first concert was a significant loss financially and emotionally for the Chamber and local businesses. She appreciated their sacrifice. Councilmember Friedrichs also thanked Jimmy Cirrito of Jimmy's Old Town Tavern for helping secure parking for the funeral. She stated it was well-attended by people paying their respects. She thanked everyone who was involved who was disappointed but understood. Councilmember Friedrichs said they were why Herndon was such a great community.

Councilmember Regan: Said he went to FNL the prior Friday and had a wonderful time. He said he was happy to give money to vendors and support organizations, enjoyed the music, and could not wait to go back.

Councilmember Regan also said he attended his first in-person meeting last month for the Committee for Dulles that supports Dulles International Airport. He said he was on that Executive Committee and they got an update on the state of the airports from their CEO. He reported that passenger volume was off 50% from 2019 levels, domestic travel was increasing, and international was lagging. That was holding Dulles back. He stated the CEO indicated they needed business travel to start back and for the Smithsonian museums and attractions in the area to reopen and bring back tourists and other travelers to the district.

He also stated that airline traffic and noise was at an all-time low, but there were more complaints about it because 2020 was so quiet. He said to remember it is so loud because it has been so quiet.

Councilmember Singh: Councilmember Singh expressed his happiness at being back on Council, said he was ready to go, and he wanted to make one comment.

Councilmember Singh was thrilled to hear Vice Mayor del Aguila and Councilmember Dhakal speak about their initiatives. He said, "that is the first time it seems like the tone of the Council, view to that has changed ... whereas some people used to stop me from talking, here we are now talking about whatever they want to talk about and give their ideas." He discussed how he did not have to agree with the initiatives, said that he was ready with his initiatives and that the "positive atmosphere that has already been created is going to serve the entire town well." He encouraged citizens to listen and read about Council's initiatives, and to give the Councilmembers their comments, whether in the formal setting or less formally passing by in town. He was excited and looking forward to that. Councilmember Singh said Mayor Olem had really participated and encouraged them to bring their initiatives.

**July 13, 2021
(public hearing)**

Mayor Olem: She said she also attended FNL the past weekend and received a lot of good comments from the volunteers about the decisions they made.

Mayor Olem shared that Councilmember Friederichs was named Herndon Rotarian of the Year. She also mentioned that Councilmember Friedrichs and a group have been cleaning up trash and collecting donations during the pandemic.

Mayor Olem echoed Councilmember Friedrichs' congratulatory statement toward Councilmember Dhakal.

She said what really got her about the vigil was, when she lost her husband and had two small children in 1994, she decided she was not leaving because the two years when she settled her affairs she was embraced by the community. She said she knew that community was feeling the love pouring out to them and they appreciated it. She encouraged people to support the community and the children at Herndon Elementary School.

5. COMMENTS FROM THE AUDIENCE

Mayor Olem reminded everyone they could comment on any items that were not public hearings and stated there were no public hearings that evening. Mayor Olem also indicated that items ten through 13 would be on the Consent Agenda. She stated this did not upload to Granicus, if people were looking online.

The following members of the audience provided comments:

- Sherri Blanton, 549 Florida Avenue, Apt. T3: Stated that she was a Herndon mom and member of Moms Demand Action. She provided comments about guns in the town.
- Cara Chaapel, 22969 White Hall Terrace, Sterling: Said she was a music teacher from Herndon Elementary School for 25 years. She commented on affordable housing in Herndon.
- Ann Vayda Null, 631 Oak Street, Herndon: Thanked Council for efforts toward traffic calming and bicycle safety. She also provided comments about the Second Amendment, workforce housing for staff, the Heritage District, drainage, and DPW.
- Nicole Wickenheiser, 1109 Burwick Drive, Herndon: Supported Ms. Chaapel's comments and provided comments about trees and urban development in the town.
- Katie Whitaker, 1232 Tottenham Court, Reston: Echoed Ms. Blanton's comments about the proposed gun ordinance.

July 13, 2021
(public hearing)

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Olem asked the Deputy Town Clerk whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and the Deputy Town Clerk stated no comments or disclosures had been received disclosures from Council on any items listed on the agenda that evening.

GENERAL

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.

Mayor Olem recognized Scott Robinson, Director of Public Works to present the staff report.

Mr. Robinson stated this ordinance was to approve a new five-year lease agreement with the Fairfax County School Board for space at 397 Herndon Parkway. Fairfax County School Board has been there since March 2005, and the current lease was set to expire on August 31, 2021. He stated they had gone through a series of extensions and the amount of space and parking would remain the same. The lease term would end August 31, 2026. It also included two five-year options for a total of 15 years. With both options, the lease would end August 31, 2036.

The price would be \$20 per square foot with a two percent escalation over five years. For option years, the rent would be negotiated beforehand. The rent would be \$271,860 for the first year and \$291,270 for the fifth year with a total of around \$1.4 million.

Staff recommended approval.

Councilmember Friedrichs asked if Mr. Robinson had a chance to check on commercial property becoming more valuable. Mr. Robinson stated he did not go back to the current broker who helped them negotiate this and the new broker contract had not yet signed, so he did not talk to them about that. He said he structured rent this way so that it was limited to the five-year period and neither side would get too far outside of what the market would bear, and they could look at it again before negotiating the option period. Responding to further queries from Councilmember Friedrichs, Mr. Robinson said that the escalation was two percent, per year. These were negotiated in late winter, early spring and that was about what the market showed for similar properties.

Councilmember Friedrichs moved to approve Ordinance 21-O-15, authorizing the Mayor to sign a five-year lease for space at 397 Herndon Parkway to the Fairfax County School Board.

Councilmember Singh seconded the motion.

**July 13, 2021
(public hearing)**

The question was called on the motion, which carried by 6-0 roll call vote. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.

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.

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.

[Note: Attached for reference at the end of the minutes is the Deed of Lease dated July 13, 2021 b/n town and the Fairfax County School Board.]

**July 13, 2021
(public hearing)**

7. **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.**

Mayor Olem recognized Lesa Yeatts, Town Attorney to present the staff report.

Ms. Yeatts stated this was a resolution to ratify a Third Extension of License. The License Agreement that had 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 would expire on August 30, 2021 to allow time for finalization of a new three-year License Agreement. It was expected that the new agreement would be presented to Council for consideration at its August Public Hearing.

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

Council needed to 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.

Staff recommended approval.

Responding to Councilmember Friedrichs' query, Ms. Yeatts confirmed Council was being asked to ratify pursuant to the Continuity of Government Ordinance which allowed the Town Manager to sign agreements and have Council ratify at the next meeting.

Councilmember Regan moved to approve Resolution 21-G-62, ratifying the Third Extension of License dated June 30, 2021 & signed by the Town Manager b/n the Town & Nafis Peter & Ruth Llabres Ahmed for the Town's use of the lot at the corner of Lynn & Station Streets for public parking & other public purposes.

Vice Mayor del Aguila seconded the motion.

Mayor Olem provided brief comments about parking.

The question was called on the motion, which carried by 6-0 roll call vote. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.

**July 13, 2021
(public hearing)**

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.

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 Licensor 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.

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.

[Note: Attached for reference is the Third Extension of License dated June 30, 2021 b/n town and Nafis Peter Ahmed and Ruth Llabres Ahmed.]

**July 13, 2021
(public hearing)**

**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

Attachment
21-G-62

July 13, 2021
(public hearing)


Nafis Peter Ahmed


Ruth Labres Ahmed
By: *labres* w/ permission: 001

TOWN OF HERNDON, VIRGINIA


William H. Ashton II
Town Manager

APPROVED AS TO FORM:


Lesa J. Yeatts
Town Attorney

July 13, 2021
(public hearing)

8. 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).

Mayor Olem recognized Scott Robinson, Deputy Director of Public Works to present the staff report.

Mr. Robinson stated this was a resolution to approve an Easement Encroachment 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).

Earlier in the year there was a zoning map amendment that allowed subdividing of the property with new amenities. Mr. Robinson provided information about proposed improvements. This would recognize those easements were able to be made and worked on. The town would have the ability to work on emergency or standard maintenance if needed without the obligation of restoring the improvements at the end.

Staff was requesting that the Town Council approve the Resolution, as proposed.

Responding to Vice Mayor del Aguila, Mr. Robinson confirmed there were no changes since the work session.

Responding to Mayor Olem's query about the easement agreement, Mr. Robinson clarified it was their site, they granted the town easements so the town could maintain some of the town's infrastructure and in the case the town made repairs they would not be obligated to replace or correct anything.

Councilmember Dhakal moved to approve Resolution 21-G-63, authorizing the Mayor to sign the Easement Encroachment Agreement w/Springpark Place LLC, substantially in the form & 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.

Vice Mayor Dhakal seconded the motion.

The question was called on the motion, which carried by 6-0 roll call vote. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.

**July 13, 2021
(public hearing)**

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).

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).

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.

[Note: Attached for reference, at the end of the minutes, is the Easement Encroachment Agreement dated July 13, 2021 b/n town and Springpark Place LLC.]

July 13, 2021
(public hearing)

9. 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.

Mayor Olem recognized Scott Robinson, Director of Public Works to present the staff report and PowerPoint dated July 13, 2021.

The Deputy Director of Public Works provided an overview and information about the East Spring Street Widening Improvements, a long-standing CIP project. The project was administered by the Commonwealth of Virginia, Department of Transportation (VDOT) who were designing and building the improvements. VDOT was requesting, and staff was recommending that Council approve the Resolution to ratify a License Agreement between the town, 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.

Mayor Olem stated the diagrams requested at the work session had been added.

Councilmember Regan asked if the Herndon Bicycle Network Master Plan was developed with input from PBAC. Mr. Robinson indicated this plan predated his time with the town, but they did put it together in conjunction with PBAC.

Councilmember Dhakal asked if this was to ratify the already signed contract and Mr. Robinson confirmed.

Councilmember Friedrichs asked if there would be any fiscal impact to the town's budget, and Mr. Robinson indicated it would probably be negligible. It would be rolled into regular sidewalk and street maintenance.

Vice Mayor del Aguila moved to approve Resolution 21-G-56, ratifying the License Agreement for facilities & improvements for a bike trail, sidewalk & retaining wall signed by the Town Manager between the Town of Herndon, Northern Virginia Regional Park Authority & the Virginia Department of Transportation for the East Spring Street Widening Improvement project in Herndon.

Councilmember Friedrichs seconded the motion.

Vice Mayor del Aguila provided supportive comments.

The question was called on the motion, which carried by 6-0 roll call vote. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.

**July 13, 2021
(public hearing)**

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.

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.

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.

[Note: Attached for reference, at the end of the minutes, is the License Agreement b/n town, the Northern Virginia Regional Park Authority, and the Virginia Department of Transportation.]

CONSENT

10. **Resolution 21-G-59, to change the Meeting Schedule for the Town Council Work Session in August 2021;**
11. **Resolution 21-G-60, to award contract IFB #21-10, Air-Supported Structure Services, to service the Town's tennis bubble;**
2. **Resolution 21-G-61, to award contract RFP #21-08, Commercial Property Management Services, for 397 Herndon Parkway; and**

**July 13, 2021
(public hearing)**

13. 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.

On motion of Councilmember Friedrichs, seconded by Councilmember Dhakal, the Consent Agenda items were approved by 6-0 roll call vote, without comment. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.

Resolution 21-G-59, 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.

Resolution 21-G-60, 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) an 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

**July 13, 2021
(public hearing)**

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.

Resolution 21-G-61, 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:

**July 13, 2021
(public hearing)**

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 rental; and

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.

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.

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

**July 13, 2021
(public hearing)**

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

[Note: Attached for reference is the legal services contract dated June 30, 2021 b/n the town and The Fitzgerald Law Group, LLC.]

**July 13, 2021
(public hearing)**

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 30 days of presentation of invoice to the Town for same.

Attachment
21-G-05

**July 13, 2021
(public hearing)**

5. Fitzgerald at his 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

**July 13, 2021
(public hearing)**

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. [Signature]
Town Manager

By John J. Yeatts
Town Attorney

THE FITZGERALD LAW GROUP, LLC

By Ellen Kay Fitzgerald
Ellen Kay Fitzgerald
its Partner

**July 13, 2021
(public hearing)**

ADJOURNMENT

Vice Mayor del Aguila moved to adjourn the meeting of the July 13, 2021 public hearing at 8:04 p.m., and Councilmember Dhakal seconded the motion. The question was called on the motion which carried by 6-0 roll call vote. The vote was: Councilmembers Dhakal, Friedrichs, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmember Alam was absent.


Sheila A. Olem
Mayor




Jessica Sizemore
Legislative Assistant

Minutes approved by Town Council: October 26, 2021.

EASEMENT ENCROACHMENT AGREEMENT

This Easement Encroachment Agreement is made this 13th day of July, 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.

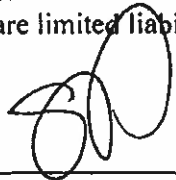
7. Owner shall provide the Town with its name, mailing address (if different from the parcel address), phone number, and email address for the purpose of notices to be given hereunder. Owner agrees to notify the Town prior to any change in ownership and to provide the new notice contact information as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

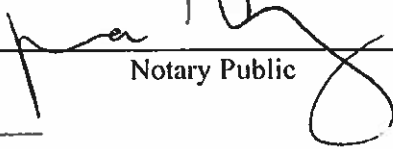
By: Penzance DC Real Estate Fund REIT Manager
 LLC, a Delaware limited liability company, its
 manager

By: 
 Michael Lefkowitz,
 Authorized Signatory

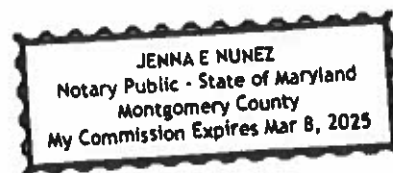
COMMONWEALTH OF ~~VIRGINIA~~ Maryland
 COUNTY OF Montgomery, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that
Michael Lefkowitz as authorized signatory of
Springpark Place LLC, 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 8 day of July, 2021.


 Notary Public

My Commission Expires: March 8, 2021
 My Notary Registration Number: _____



TOWN:
TOWN OF HERNDON, VIRGINIA,
a municipal corporation

Sheila A. Olem
Sheila A. Olem, Mayor



ATTEST:

Margarita C. Tacci
Margarita C. Tacci
Town Clerk

COMMONWEALTH OF VIRGINIA
COUNTY OF Fairfax, to wit:

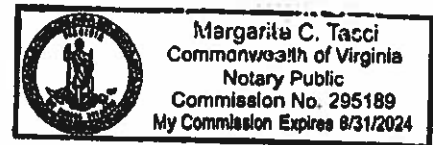
I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Sheila A. Olem as Mayor of the Town of Herndon, Virginia, a Virginia municipal corporation, whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction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

GIVEN under my hand and seal this 13th day of July, 2021.

Margarita C. Tacci
Notary Public

My Commission Expires: 8-31-2024

My Notary Registration Number: 295189



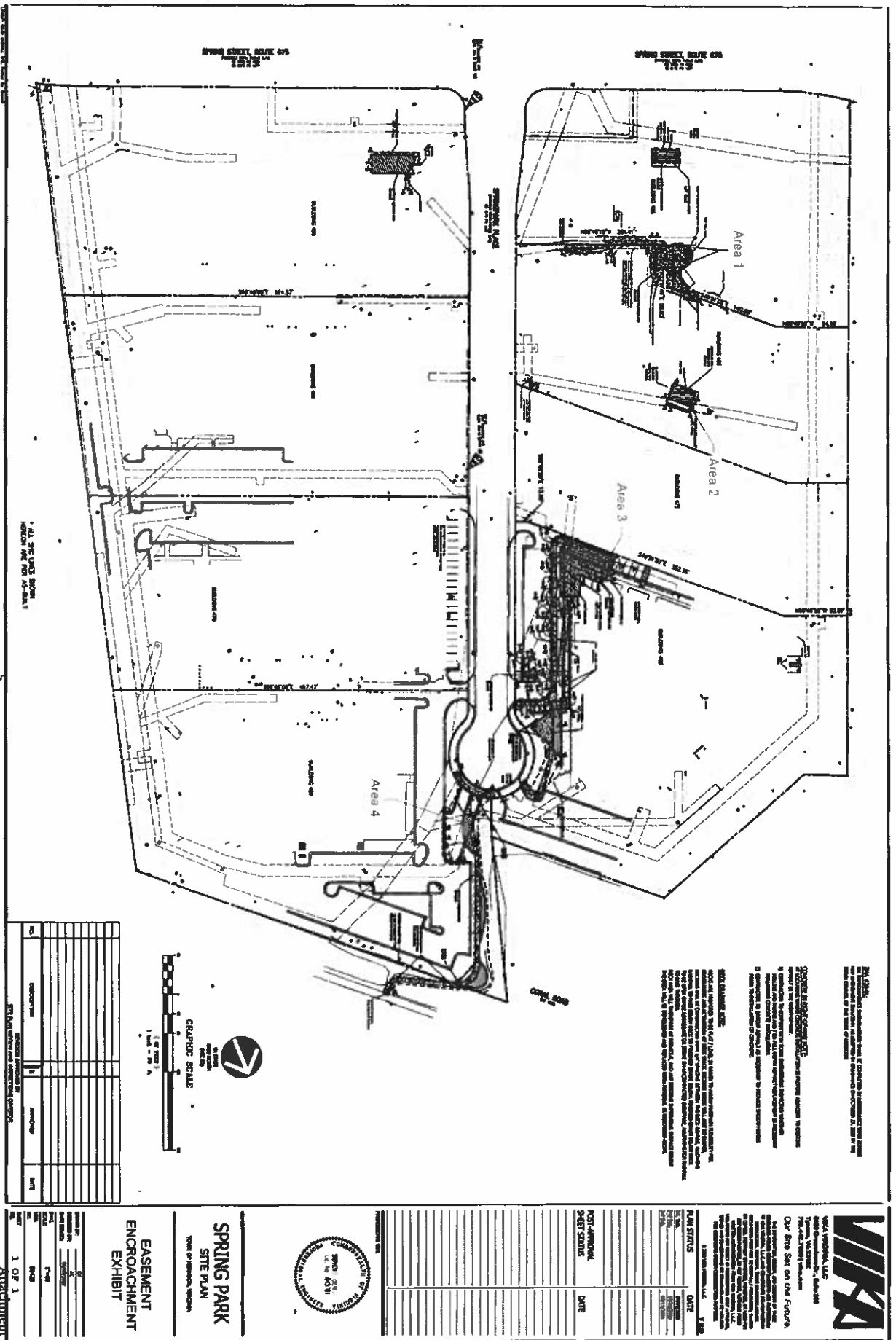
APPROVED AS TO FORM:

Leah D. Lyatts
Town Attorney

APPROVED:

R. Smith

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



UPC 105521
Parcel 015

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. Ashten

Name: WILLIAM H. ASHTEN

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

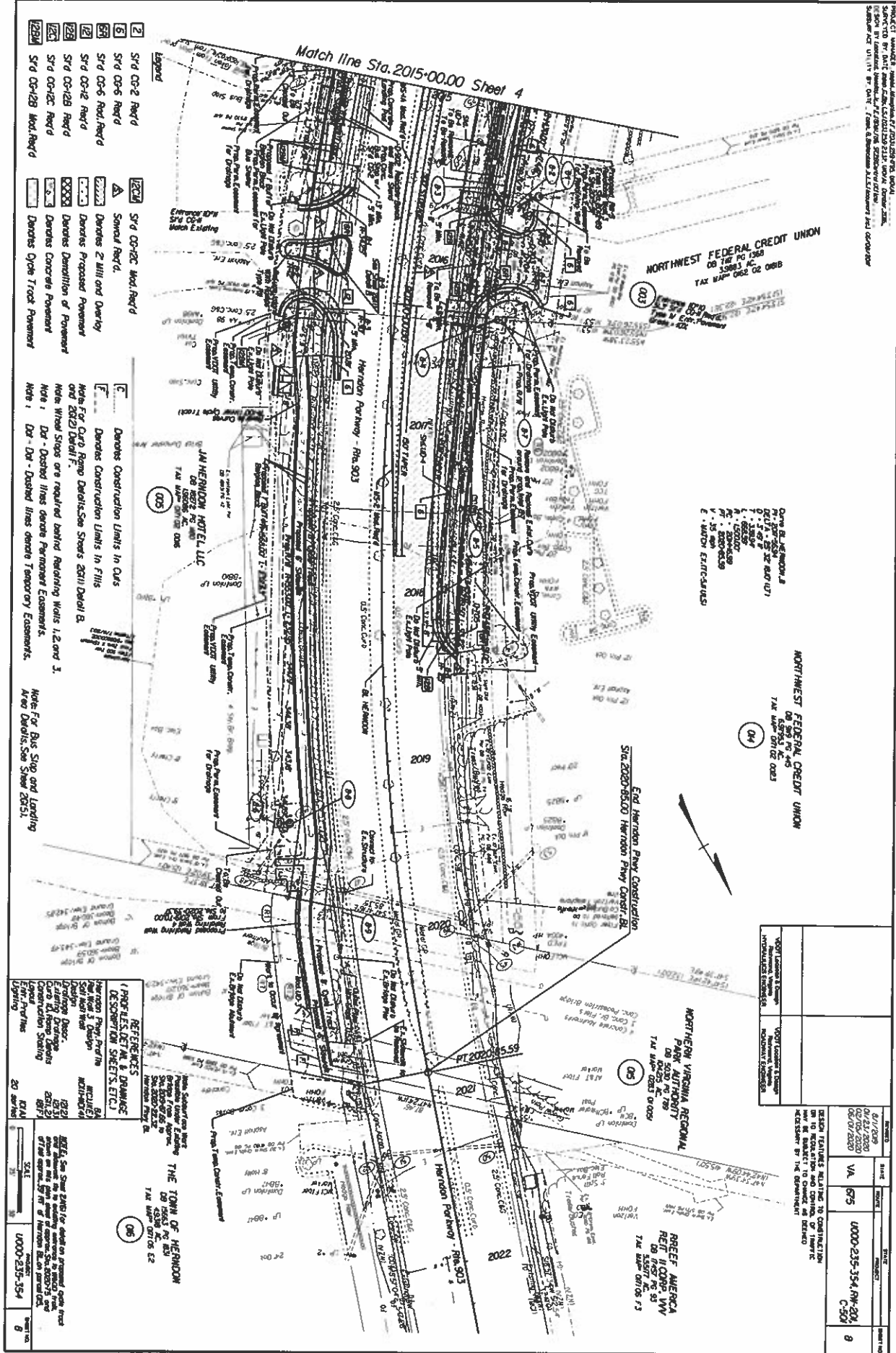


Exhibit A

[illegible]

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