TOWN OF HERNDON, VIRGINIA
PUBLIC HEARING AGENDA
HERNDON COUNCIL CHAMBERS BUILDING
765 LYNN STREET
December 14, 2021
7:00 PM

CALL TO ORDER

1. Pledge of Allegiance to the Flag of the United States of America
2. Roll Call & Determination of Quorum

APPROVAL OF MINUTES

August 5, 2021	Town Council Strategic Planning Draft Minutes
August 10, 2021	Town Council Public Hearing Draft Minutes
September 7, 2021	Town Council Work Session Draft Minutes

COMMENTS

3. Comments from the Town Manager
4. Comments from the Town Council
5. Comments from the Audience

PRESENTATION

6. Presentation of the Town's Annual Comprehensive Financial Report (ACFR) for the Fiscal Year Ended June 30, 2021 by Brown Edwards and Company, LLP, Certified Public Accountants

GENERAL

7. Resolution 21-G-93, to approve a Memorandum of Understanding between the Board of Supervisors of Fairfax County, Virginia and the Town of Herndon to accept a grant from the Economic Opportunity Reserve Fund in the amount of $5,000,000.00 for capital construction of the Herndon Downtown Redevelopment Project

8. Resolution 21-G-90, to Award and Disburse funds to charitable or non-profit organizations for Fiscal Year 2022 for the Town of Herndon

CONSENT

9. Resolution 21-G-91, authorizing two applications to the Regional Jurisdiction and Agency Coordinating Committee (RJACC) of the Northern Virginia Transportation Authority (NVTA) for federal Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) transportation funding for fiscal year 2028

10. Resolution 21-G-92, to ratify a License Agreement pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Green Lizard Cycling, LLC for use of a designated public parking space on Lynn Street for a portable bicycle rack for public bicycle parking purposes

Future Town Council Meetings

January 4, 2022	Town Council Work Session	7:00 PM
January 11, 2022	Town Council Public Hearing	7:00 PM
January 18, 2022	Town Council Work Session	7:00 PM
January 25, 2022	Town Council Public Hearing	7:00 PM

TOWN OF HERNDON, VIRGINIA

COMMENTS ON INTERNAL CONTROL AND OTHER SUGGESTIONS FOR YOUR CONSIDERATION

June 30, 2021

CONTENTS

BROWNEDWARDS
certified public accountants

INDEPENDENT AUDITOR'S REPORT ON COMMENTS AND SUGGESTIONS

Members of Town Council
Town of Herndon, Virginia

In planning and performing our audit of the financial statements of the Town of Herndon, Virginia as of and for the year ended June 30, 2021, in accordance with auditing standards generally accepted in the United States of America, we considered its internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in circumstances for the purpose of expressing our opinion on the financial statements and to comply with any other applicable standards, such as *Government Auditing Standards* and, as applicable, the regulations set forth in the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we do not express an opinion on the effectiveness of the entity's internal control.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

If material weaknesses or significant deficiencies were identified during our procedures, they are appropriately designated as such in this report. Additional information on material weaknesses or significant deficiencies and compliance and other matters is included in the ***Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards*** which should be read in conjunction with this report.

Additionally, during our audit, we may have become aware of certain other matters that provide opportunities for improving your financial reporting system and/or operating efficiency. Such comments and suggestions regarding these matters, if any, are also included in the attached report, but are not designated as a material weakness or significant deficiency. Since our audit is not designed to include a detail review of all systems and procedures, these comments should not be considered as being all-inclusive of areas where improvements might be achieved. We also have included information on accounting and other matters that we believe is important enough to merit consideration by management and those charged with governance. It is our hope that our suggestions will be taken in the constructive light in which they are offered.

Your Success is Our Focus
1909 Financial Drive • Harrisonburg, VA 22801 • 540-434-6736 • Fax: 540-434-3097 • www.BEcpas.com

We have already discussed these comments and suggestions with management, and we will be pleased to discuss them in further detail at your convenience, to perform any additional study of these matters, or to assist you in implementing the recommendations.

This communication is intended solely for the information and use of Town Council, management, and the appropriate state and federal regulatory agencies and is not intended to be, and should not be, used by anyone other than these specified parties.

Brown, Edwards & Company, L.L.P.

CERTIFIED PUBLIC ACCOUNTANTS

Harrisonburg, Virginia
November 19, 2021

PRIOR YEAR COMMENTS AND SUGGESTIONS

TIMELY GRANT REIMBURSEMENT REQUESTS

During our testing related to federal expenditures, we noted that reimbursement requests were not filed timely for expenditures eligible for reimbursement through the Highway Construction grant. We recommend that reimbursement requests be completed more timely, on a monthly or quarterly basis.

Current Year Status: *No longer applicable.*

ACCOUNTING AND OTHER MATTERS

NEW GASB PRONOUNCEMENTS

In this section, we would like to make you aware of certain confirmed and potential changes that are on the horizon that may affect your financial reporting and audit. The effective dates below are updated based on **Statement No. 95**, ***Postponement of the Effective Dates of Certain Authoritative Guidance*** due to the COVID-19 pandemic.

The GASB issued **Statement No. 87**, ***Leases*** in June 2017. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities.

Definition of a Lease

A lease is defined as a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction. Examples of nonfinancial assets include buildings, land, vehicles, and equipment. Any contract that meets this definition should be accounted for under the leases guidance, unless specifically excluded in this Statement.

Lease Term

The lease term is defined as the period during which a lessee has a noncancelable right to use an underlying asset, plus the following periods, if applicable:

a. Periods covered by a lessee's option to extend the lease if it is reasonably certain, based on all relevant factors, that the lessee will exercise that option.
b. Periods covered by a lessee's option to terminate the lease if it is reasonably certain, based on all relevant factors, that the lessee will not exercise that option.
c. Periods covered by a lessor's option to extend the lease if it is reasonably certain, based on all relevant factors, that the lessor will exercise that option.
d. Periods covered by a lessor's option to terminate the lease if it is reasonably certain, based on all relevant factors, that the lessor will not exercise that option.

A fiscal funding or cancellation clause should affect the lease term only when it is reasonably certain that the clause will be exercised.

Lessees and lessors should reassess the lease term only if one or more of the following occur:

a. The lessee or lessor elects to exercise an option even though it was previously determined that it was reasonably certain that the lessee or lessor would not exercise that option.

b. The lessee or lessor elects not to exercise an option even though it was previously determined that it was reasonably certain that the lessee or lessor would exercise that option.

c. An event specified in the lease contract that requires an extension or termination of the lease takes place.

Short-Term Leases

A short-term lease is defined as a lease that, at the commencement of the lease term, has a maximum possible term under the lease contract of 12 months (or less), including any options to extend, regardless of their probability of being exercised. Lessees and lessors should recognize short-term lease payments as outflows of resources or inflows of resources, respectively, based on the payment provisions of the lease contract.

Lessee Accounting

A lessee should recognize a lease liability and a lease asset at the commencement of the lease term, unless the lease is a short-term lease or it transfers ownership of the underlying asset. The lease liability should be measured at the present value of payments expected to be made during the lease term (less any lease incentives). The lease asset should be measured at the amount of the initial measurement of the lease liability, plus any payments made to the lessor at or before the commencement of the lease term and certain direct costs.

A lessee should reduce the lease liability as payments are made and recognize an outflow of resources (for example, expense) for interest on the liability. The lessee should amortize the lease asset in a systematic and rational manner over the shorter of the lease term or the useful life of the underlying asset. The notes to financial statements should include a description of leasing arrangements, the amount of lease assets recognized, and a schedule of future lease payments to be made.

Lessor Accounting

A lessor should recognize a lease receivable and a deferred inflow of resources at the commencement of the lease term, with certain exceptions for leases of assets held as investments, certain regulated leases, short-term leases, and leases that transfer ownership of the underlying asset. A lessor should not derecognize the asset underlying the lease. The lease receivable should be measured at the present value of lease payments expected to be received during the lease term. The deferred inflow of resources should be measured at the value of the lease receivable plus any payments received at or before the commencement of the lease term that relate to future periods.

A lessor should recognize interest revenue on the lease receivable and an inflow of resources (for example, revenue) from the deferred inflows of resources in a systematic and rational manner over the term of the lease. The notes to financial statements should include a description of leasing arrangements and the total amount of inflows of resources recognized from leases.

Contracts with Multiple Components and Contract Combinations

Generally, a government should account for the lease and nonlease components of a lease as separate contracts. If a lease involves multiple underlying assets, lessees and lessors in certain cases should account for each underlying asset as a separate lease contract. To allocate the contract price to different components, lessees and lessors should use contract prices for individual components as long as they do not appear to be unreasonable based on professional judgment, or use professional judgment to determine their best estimate if there are no stated prices or if stated prices appear to be unreasonable. If determining a best estimate is not practicable, multiple components in a lease contract should be accounted for as a single lease unit. Contracts that are entered into at or near the same time with the same counterparty and that meet certain criteria should be considered part of the same lease contract and should be evaluated in accordance with the guidance for contracts with multiple components.

Lease Modifications and Terminations

An amendment to a lease contract should be considered a lease modification, unless the lessee's right to use the underlying asset decreases, in which case it would be a partial or full lease termination. A lease termination should be accounted for by reducing the carrying values of the lease liability and lease asset by a lessee, or the lease receivable and deferred inflows of resources by the lessor, with any difference being recognized as a gain or loss. A lease modification that does not qualify as a separate lease should be accounted for by remeasuring the lease liability and adjusting the related lease asset by a lessee and remeasuring the lease receivable and adjusting the related deferred inflows of resources by a lessor.

Subleases and Leaseback Transactions

Subleases should be treated as transactions separate from the original lease. The original lessee that becomes the lessor in a sublease should account for the original lease and the sublease as separate transactions, as a lessee and lessor, respectively.

A transaction qualifies for sale-leaseback accounting only if it includes a sale. Otherwise, it is a borrowing. The sale and lease portions of a transaction should be accounted for as separate sale and lease transactions, except that any difference between the carrying value of the capital asset that was sold and the net proceeds from the sale should be reported as a deferred inflow of resources or a deferred outflow of resources and recognized over the term of the lease.

A lease-leaseback transaction should be accounted for as a net transaction. The gross amounts of each portion of the transaction should be disclosed.

The requirements of this Statement are effective for fiscal years beginning after June 15, 2021.

The GASB issued **Statement No. 88**, ***Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*** in March 2018. The primary objective of this Statement is to improve the information that is disclosed in notes to government financial statements related to debt, including direct borrowings and direct placements. It also clarifies which liabilities governments should include when disclosing information related to debt.

This Statement defines debt for purposes of disclosure in notes to financial statements as a liability that arises from a contractual obligation to pay cash (or other assets that may be used in lieu of cash) in one or more payments to settle an amount that is fixed at the date the contractual obligation is established.

This Statement requires that additional essential information related to debt be disclosed in notes to financial statements, including unused lines of credit; assets pledged as collateral for the debt; and terms specified in debt agreements related to significant events of default with finance-related consequences, significant termination events with finance-related consequences, and significant subjective acceleration clauses.

For notes to financial statements related to debt, this Statement also requires that existing and additional information be provided for direct borrowings and direct placements of debt separately from other debt.

The requirements of this Statement are effective for reporting periods beginning after June 15, 2019.

The GASB issued **Statement No. 89**, ***Accounting for Interest Cost Incurred before the End of a Construction Period*** in June 2018. The objectives of this Statement are (1) to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) to simplify accounting for interest cost incurred before the end of a construction period.

This Statement establishes accounting requirements for interest cost incurred before the end of a construction period. Such interest cost includes all interest that previously was accounted for in accordance with the requirements of paragraphs 5–22 of Statement No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements,* which are superseded by this Statement. This Statement requires that interest cost incurred before the end of a construction period be recognized as an expense in the period in which the cost is incurred for financial statements prepared using the economic resources measurement focus. As a result, interest cost incurred before the end of a construction period will not be included in the historical cost of a capital asset reported in a business-type activity or enterprise fund.

This Statement also reiterates that in financial statements prepared using the current financial resources measurement focus, interest cost incurred before the end of a construction period should be recognized as an expenditure on a basis consistent with governmental fund accounting principles.

The requirements of this Statement are effective for reporting periods beginning after December 15, 2020. The requirements of this Statement should be applied prospectively.

The GASB issued **Statement No. 91**, ***Conduit Debt Obligations*** in May 2019. The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This Statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures.

A conduit debt obligation is defined as a debt instrument having all of the following characteristics:

- There are at least three parties involved: (1) an issuer, (2) a third-party obligor, and (3) a debt holder or a debt trustee.
- The issuer and the third-party obligor are not within the same financial reporting entity.
- The debt obligation is not a parity bond of the issuer, nor is it cross-collateralized with other debt of the issuer.
- The third-party obligor or its agent, not the issuer, ultimately receives the proceeds from the debt issuance.
- The third-party obligor, not the issuer, is primarily obligated for the payment of all amounts associated with the debt obligation (debt service payments).

All conduit debt obligations involve the issuer making a limited commitment. Some issuers extend additional commitments or voluntary commitments to support debt service in the event the third party is, or will be, unable to do so.

An issuer should not recognize a conduit debt obligation as a liability. However, an issuer should recognize a liability associated with an additional commitment or a voluntary commitment to support debt service if certain recognition criteria are met. As long as a conduit debt obligation is outstanding, an issuer that has made an additional commitment should evaluate at least annually whether those criteria are met. An issuer that has made only a limited commitment should evaluate whether those criteria are met when an event occurs that causes the issuer to reevaluate its willingness or ability to support the obligor's debt service through a voluntary commitment.

This Statement also addresses arrangements—often characterized as leases—that are associated with conduit debt obligations. In those arrangements, capital assets are constructed or acquired with the proceeds of a conduit debt obligation and used by third-party obligors in the course of their activities. Payments from third-party obligors are intended to cover and coincide with debt service payments. During those arrangements, issuers retain the titles to the capital assets. Those titles may or may not pass to the obligors at the end of the arrangements.

Issuers should not report those arrangements as leases, nor should they recognize a liability for the related conduit debt obligations or a receivable for the payments related to those arrangements. In addition, the following provisions apply:

- If the title passes to the third-party obligor at the end of the arrangement, an issuer should not recognize a capital asset.
- If the title does not pass to the third-party obligor and the third party has exclusive use of the entire capital asset during the arrangement, the issuer should not recognize a capital asset until the arrangement ends.
- If the title does not pass to the third-party obligor and the third party has exclusive use of only portions of the capital asset during the arrangement, the issuer, at the inception of the arrangement, should recognize the entire capital asset and a deferred inflow of resources. The deferred inflow of resources should be reduced, and an inflow recognized, in a systematic and rational manner over the term of the arrangement.

This Statement requires issuers to disclose general information about their conduit debt obligations, organized by type of commitment, including the aggregate outstanding principal amount of the issuers' conduit debt obligations and a description of each type of commitment. Issuers that recognize liabilities related to supporting the debt service of conduit debt obligations also should disclose information about the amount recognized and how the liabilities changed during the reporting period.

The requirements of this Statement are effective for reporting periods beginning after December 15, 2021.

The GASB issued **Statement No. 92**, ***Omnibus 2020*** in January 2020. The primary objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB Statements. This Statement addresses a variety of topics and includes specific provisions about the following:

- The effective date of Statement No. 87, Leases, and Implementation Guide No. 2019-3, Leases, for interim financial reports.
- Reporting of intra-entity transfers of assets between a primary government employer and a component unit defined benefit pension plan or defined benefit other postemployment benefit (OPEB) plan.
- The applicability of Statements No. 73, Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68, as amended, and No. 74, Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans, as amended, to reporting assets accumulated for postemployment benefits.
- The applicability of certain requirements of Statement No. 84, Fiduciary Activities, to postemployment benefit arrangements.
- Measurement of liabilities (and assets, if any) related to asset retirement obligations (AROs) in a government acquisition.
- Reporting by public entity risk pools for amounts that are recoverable from reinsurers or excess insurers
- Reference to nonrecurring fair value measurements of assets or liabilities in authoritative literature.
- Terminology used to refer to derivative instruments.

The requirements related to the effective date of Statement 87 and Implementation Guide 2019-3, reinsurance recoveries, and terminology used to refer to derivative instruments are effective upon issuance. The requirements related to intra-entity transfers of assets and those related to the applicability of Statements 73 and 74 and application of Statement 84 to postemployment benefit arrangements and those related to nonrecurring fair value measurements of assets or liabilities are effective for fiscal years beginning after June 15, 2021. The requirements related to the measurement of liabilities (and assets, if any) associated with AROs in a government acquisition are effective for government acquisitions occurring in reporting periods beginning after June 15, 2021.

The GASB issued **Statement No. 93, *Replacement of Interbank Offered Rates*** in March 2020. Some governments have entered into agreements in which variable payments made or received depend on an interbank offered rate (IBOR)—most notably, the London Interbank Offered Rate (LIBOR). As a result of global reference rate reform, LIBOR is expected to cease to exist in its current form at the end of 2021, prompting governments to amend or replace financial instruments for the purpose of replacing LIBOR with other reference rates, by either changing the reference rate or adding or changing fallback provisions related to the reference rate.

Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments,* as amended, requires a government to terminate hedge accounting when it renegotiates or amends a critical term of a hedging derivative instrument, such as the reference rate of a hedging derivative instrument's variable payment. In addition, in accordance with Statement No. 87, *Leases,* as amended, replacement of the rate on which variable payments depend in a lease contract would require a government to apply the provisions for lease modifications, including remeasurement of the lease liability or lease receivable.

The objective of this Statement is to address those and other accounting and financial reporting implications that result from the replacement of an IBOR. This Statement achieves that objective by:

- Providing exceptions for certain hedging derivative instruments to the hedge accounting termination provisions when an IBOR is replaced as the reference rate of the hedging derivative instrument's variable payment.
- Clarifying the hedge accounting termination provisions when a hedged item is amended to replace the reference rate.
- Clarifying that the uncertainty related to the continued availability of IBORs does not, by itself, affect the assessment of whether the occurrence of a hedged expected transaction is probable.
- Removing LIBOR as an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap.
- Identifying a Secured Overnight Financing Rate and the Effective Federal Funds Rate as appropriate benchmark interest rates for the qualitative evaluation of the effectiveness of an interest rate swap.
- Clarifying the definition of reference rate, as it is used in Statement 53, as amended.

Providing an exception to the lease modifications guidance in Statement 87, as amended, for certain lease contracts that are amended solely to replace an IBOR as the rate upon which variable payments depend.

The removal of LIBOR as an appropriate benchmark interest rate is effective for reporting periods ending after December 31, 2022. All other requirements of this Statement are effective for reporting periods beginning after June 15, 2021.

The GASB issued **Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*** in March 2020**.** The primary objective of this Statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements (PPPs). As used in this Statement, a PPP is an arrangement in which a government (the transferor) contracts with an operator (a governmental or nongovernmental entity) to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset (the underlying PPP asset), for a period of time in an exchange or exchange-like transaction. Some PPPs meet the definition of a service concession arrangement (SCA), which the Board defines in this Statement as a PPP in which (1) the operator collects and is compensated by fees from third parties; (2) the transferor determines or has the ability to modify or approve which services the operator is required to provide, to whom the operator is required to provide the services, and the prices or rates that can be charged for the services; and (3) the transferor is entitled to significant residual interest in the service utility of the underlying PPP asset at the end of the arrangement.

This Statement also provides guidance for accounting and financial reporting for availability payment arrangements (APAs). As defined in this Statement, an APA is an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction.

This Statement requires that PPPs that meet the definition of a lease apply the guidance in Statement No. 87, *Leases,* as amended, if existing assets of the transferor that are not required to be improved by the operator as part of the PPP arrangement are the only underlying PPP assets and the PPP does not meet the definition of an SCA. This Statement provides accounting and financial reporting requirements for all other PPPs: those that either (1) meet the definition of an SCA or (2) are not within the scope of Statement 87, as amended (as clarified by this Statement). The PPP term is defined as the period during which an operator has a noncancellable right to use an underlying PPP asset, plus, if applicable, certain periods if it is reasonably certain, based on all relevant factors, that the transferor or the operator either will exercise an option to extend the PPP or will not exercise an option to terminate the PPP.

A transferor generally should recognize an underlying PPP asset as an asset in financial statements prepared using the economic resources measurement focus. However, in the case of an underlying PPP asset that is not owned by the transferor or is not the underlying asset of an SCA, a transferor should recognize a receivable measured based on the operator's estimated carrying value of the underlying PPP asset as of the expected date of the transfer in ownership. In addition, a transferor should recognize a receivable for installment payments, if any, to be received from the operator in relation to the PPP. Measurement of a receivable for installment payments should be at the present value of the payments expected to be received during the PPP term. A transferor also should recognize a deferred inflow of resources for the consideration received or to be received by the transferor as part of the PPP. Revenue should be recognized by a transferor in a systematic and rational manner over the PPP term. This Statement requires a transferor to recognize a receivable for installment payments and a deferred inflow of resources to account for a PPP in financial statements prepared using the current financial resources measurement focus. Governmental fund revenue would be recognized in a systematic and rational manner over the PPP term.

This Statement also provides specific guidance in financial statements prepared using the economic resources measurement focus for a government that is an operator in a PPP that either (1) meets the definition of an SCA or (2) is not within the scope of Statement 87, as amended (as clarified in this Statement). An operator should report an intangible right-to-use asset related to an underlying PPP asset that either is owned by the transferor or is the underlying asset of an SCA. Measurement of the right-to-use asset should be the amount of consideration to be provided to the transferor, plus any payments made to the transferor at or before the commencement of the PPP term, and certain direct costs. For an underlying PPP asset that is not owned by the transferor and is not the underlying asset of an SCA, an operator should recognize a liability measured based on the estimated carrying value of the underlying PPP asset as of the expected date of the transfer in ownership. In addition, an operator should recognize a liability for installment payments, if any, to be made to the transferor in relation to the PPP. Measurement of a liability for installment payments should be at the present value of the payments expected to be made during the PPP term. An operator also should recognize a deferred outflow of resources for the consideration provided or to be provided to the transferor as part of the PPP. Expense should be recognized by an operator in a systematic and rational manner over the PPP term.

This Statement also requires a government to account for PPP and non-PPP components of a PPP as separate contracts. If a PPP involves multiple underlying assets, a transferor and an operator in certain cases should account for each underlying PPP asset as a separate PPP. To allocate the contract price to different components, a transferor and an operator should use contract prices for individual components as long as they do not appear to be unreasonable based on professional judgment or use professional judgment to determine their best estimate if there are no stated prices or if stated prices appear to be unreasonable. If determining the best estimate is not practicable, multiple components in a PPP should be accounted for as a single PPP.

This Statement also requires an amendment to a PPP to be considered a PPP modification, unless the operator’s right to use the underlying PPP asset decreases, in which case it should be considered a partial or full PPP termination. A PPP termination should be accounted for by a transferor by reducing, as applicable, any receivable for installment payments or any receivable related to the transfer of ownership of the underlying PPP asset and by reducing the related deferred inflow of resources. An operator should account for a termination by reducing the carrying value of the right-to-use asset and, as applicable, any liability for installment payments or liability to transfer ownership of the underlying PPP asset. A PPP modification that does not qualify as a separate PPP should be accounted for by remeasuring PPP assets and liabilities.

An APA that is related to designing, constructing, and financing a nonfinancial asset in which ownership of the asset transfers by the end of the contract should be accounted for by a government as a financed purchase of the underlying nonfinancial asset. This Statement requires a government that engaged in an APA that contains multiple components to recognize each component as a separate arrangement. An APA that is related to operating or maintaining a nonfinancial asset should be reported by a government as an outflow of resources in the period to which payments relate.

The requirements of this Statement are effective for reporting periods beginning after June 15, 2022.

The GASB issued **Statement No. 96, *Subscription-Based Information Technology Arrangements*** in May 2020**.** This Statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This Statement (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. To the extent relevant, the standards for SBITAs are based on the standards established in Statement No. 87, Leases, as amended.

A SBITA is defined as a contract that conveys control of the right to use another party's (a SBITA vendor's) information technology (IT) software, alone or in combination with tangible capital assets (the underlying IT assets), as specified in the contract for a period of time in an exchange or exchange-like transaction.

The subscription term includes the period during which a government has a noncancellable right to use the underlying IT assets. The subscription term also includes periods covered by an option to extend (if it is reasonably certain that the government or SBITA vendor will exercise that option) or to terminate (if it is reasonably certain that the government or SBITA vendor will *not* exercise that option).

Under this Statement, a government generally should recognize a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability. A government should recognize the subscription liability at the commencement of the subscription term, —which is when the subscription asset is placed into service. The subscription liability should be initially measured at the present value of subscription payments expected to be made during the subscription term. Future subscription payments should be discounted using the interest rate the SBITA vendor charges the government, which may be implicit, or the government's incremental borrowing rate if the interest rate is not readily determinable. A government should recognize amortization of the discount on the subscription liability as an outflow of resources (for example, interest expense) in subsequent financial reporting periods.

The subscription asset should be initially measured as the sum of (1) the initial subscription liability amount, (2) payments made to the SBITA vendor before commencement of the subscription term, and (3) capitalizable implementation costs, less any incentives received from the SBITA vendor at or before the commencement of the subscription term. A government should recognize amortization of the subscription asset as an outflow of resources over the subscription term.

Activities associated with a SBITA, other than making subscription payments, should be grouped into the following three stages, and their costs should be accounted for accordingly:

- Preliminary Project Stage, including activities such as evaluating alternatives, determining needed technology, and selecting a SBITA vendor. Outlays in this stage should be expensed as incurred.
- Initial Implementation Stage, including all ancillary charges necessary to place the subscription asset into service. Outlays in this stage generally should be capitalized as an addition to the subscription asset.
- Operation and Additional Implementation Stage, including activities such as subsequent implementation activities, maintenance, and other activities for a government's ongoing operations related to a SBITA. Outlays in this stage should be expensed as incurred unless they meet specific capitalization criteria.

In classifying certain outlays into the appropriate stage, the nature of the activity should be the determining factor. Training costs should be expensed as incurred, regardless of the stage in which they are incurred.

If a SBITA contract contains multiple components, a government should account for each component as a separate SBITA or nonsubscription component and allocate the contract price to the different components. If it is not practicable to determine a best estimate for price allocation for some or all components in the contract, a government should account for those components as a single SBITA.

This Statement provides an exception for short-term SBITAs. Short-term SBITAs have a maximum possible term under the SBITA contract of 12 months (or less), including any options to extend, regardless of their probability of being exercised. Subscription payments for short-term SBITAs should be recognized as outflows of resources.

This Statement requires a government to disclose descriptive information about its SBITAs other than short-term SBITAs, such as the amount of the subscription asset, accumulated amortization, other payments not included in the measurement of a subscription liability, principal and interest requirements for the subscription liability, and other essential information.

The requirements of this Statement are effective for reporting periods beginning after June 15, 2022.

The GASB issued **Statement No. 97**, ***Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans – an Amendment of GASB Statements No. 14 and No. 84, and a Supersession of GASB Statement No. 32*** in June 2020. The primary objectives of this Statement are to (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other postemployment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans.

This Statement requires that for purposes of determining whether a primary government is financially accountable for a potential component unit, except for a potential component unit that is a defined contribution pension plan, a defined contribution OPEB plan, or another employee benefit plan (for example, certain Section 457 plans), the absence of a governing board should be treated the same as the appointment of a voting majority of a governing board if the primary government performs the duties that a governing board typically would perform.

This Statement also requires that the financial burden criterion in paragraph 7 of Statement No. 84, *Fiduciary Activities*, be applicable to only defined benefit pension plans and defined benefit OPEB plans that are administered through trusts that meet the criteria in paragraph 3 of Statement No. 67, *Financial Reporting for Pension Plans*, or paragraph 3 of Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, respectively.

This Statement (1) requires that a Section 457 plan be classified as either a pension plan or another employee benefit plan depending on whether the plan meets the definition of a pension plan and (2) clarifies that Statement 84, as amended, should be applied to all arrangements organized under IRC Section 457 to determine whether those arrangements should be reported as fiduciary activities.

This Statement supersedes the remaining provisions of Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans,* as amended, regarding investment valuation requirements for Section 457 plans. As a result, investments of *all* Section 457 plans should be measured as of the end of the plan's reporting period in all circumstances.

The requirements of this Statement that (1) exempt primary governments that perform the duties that a governing board typically performs from treating the absence of a governing board the same as the appointment of a voting majority of a governing board in determining whether they are financially accountable for defined contribution pension plans, defined contribution OPEB plans, or other employee benefit plans and (2) limit the applicability of the financial burden criterion in paragraph 7 of Statement 84 to defined benefit pension plans and defined benefit OPEB plans that are administered through trusts that meet the criteria in paragraph 3 of Statement 67 or paragraph 3 of Statement 74, respectively, are effective immediately.

The requirements of this Statement that are related to the accounting and financial reporting for Section 457 plans are effective for fiscal years beginning after June 15, 2021. For purposes of determining whether a primary government is financially accountable for a potential component unit, the requirements of this Statement that provide that for all other arrangements, the absence of a governing board be treated the same as the appointment of a voting majority of a governing board if the primary government performs the duties that a governing board typically would perform, are effective for reporting periods beginning after June 15, 2021.

ACCOUNTING AND OTHER MATTERS (Continued)

CURRENT GASB PROJECTS

GASB currently has a variety of projects in process. Some of these projects discussed below.

Conceptual Framework – Recognition. The project's objective is to develop recognition criteria for *whether* information should be reported in state and local governmental financial statements and *when* that information should be reported. This project ultimately will lead to a Concepts Statement on recognition of elements of financial statements. This project is currently in exposure draft re-deliberations period.

Conceptual Framework – Disclosure. The project's objective is to develop concepts related to a framework for the development and evaluation of notes to financial statements for the purpose of improving the effectiveness of note disclosures in government financial reports. The framework will establish criteria for the Board to use in evaluating potential note disclosure requirements during future standards-setting activities and in reexamining existing note disclosure requirements. Those concepts also will provide governments a basis for considering the essentiality of information items for which the GASB does not specifically provide authoritative disclosure guidance. This project is currently in exposure draft comment period.

Financial Reporting Model. The objective of this project is to make improvements to the financial reporting model, including Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*, and other reporting model-related pronouncements (Statements No. 35, *Basic Financial Statements – and Management's Discussion and Analysis – for Public Colleges and Universities*, No. 37, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments: Omnibus*, No. 41, *Budgetary Comparison Schedules – Perspective Differences*, and No. 46, *Net Assets Restricted by Enabling Legislation, and Interpretation No. 6, Recognition and Measurement of Certain Liabilities and Expenditures in Governmental Fund Financial Statements*). The objective of these improvements would be to enhance the effectiveness of the model in providing information that is essential for decision-making and enhance the ability to assess a government's accounting and address certain application issues, based upon the results of the pre-agenda research on the financial reporting model. This project is currently in exposure draft re-deliberations period.

Revenue and Expense Recognition. The objective of this project is to develop a comprehensive application model for the classification, recognition, and measurement of revenues and expenses. The purpose for developing a comprehensive model is (1) to improve the information regarding revenues and expenses that users need to make decisions and assess accountability, (2) to provide guidance regarding exchange and exchange-like transactions that have not been specifically addressed, (3) to evaluate revenue and expense recognition in the context of the conceptual framework, and (4) to address application issues identified in practice, based upon the results of the pre-agenda research on revenue for exchange and exchange-like transactions. This project is currently in the preliminary views re-deliberations period.

BROWN EDWARDS
certified public accountants

REQUIRED COMMUNICATION WITH THOSE CHARGED WITH GOVERNANCE

Honorable Members of Town Council
Town of Herndon, Virginia

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Herndon, Virginia, collectively hereafter referred to as the "Town", for the year ended June 30, 2021. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, *Government Auditing Standards*, and, as applicable, the Uniform Guidance, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated June 28, 2021. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the town are described in Note 1 to the financial statements. No new significant accounting policies were adopted and the application of existing polices was not changed during 2021. We noted no transactions entered into by the town during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

- The useful lives of capital assets are based on management's knowledge and judgment, which is based on history.
- The allowance for doubtful accounts is based on historical records and an analysis of the collectability of accounts.
- The net pension and net OPEB liabilities for state administered plans are based on actuarial studies provided by actuaries engaged by the Virginia Retirement System.
- The local other post-employment benefits liability is based on an actuarial study provided by the town's external actuarial firm.

Significant Audit Findings (Continued)

Qualitative Aspects of Accounting Practices (Continued)

We evaluated the key factors and assumptions used to develop these estimates in determining that the estimates are reasonable in relation to the financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the financial statements include those related to:

- Capital assets, long-term debt, commitments and contingencies, pension, and other post-employment liabilities and impacts of COVID-19.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. The following audit adjustment was proposed, which was recorded by the town, indicates a matter that had a significant effect on the town's financial reporting process.

- An increase of $1,477,000 to due from other governments in the capital projects fund and a corresponding increase to federal intergovernmental revenue.

Through a collaborative effort with management, we assisted with the financial statement and disclosure implications of closing the Downtown Parking Fund and the accounting treatment of the comprehensive agreement between Comstock Herndon Venture, LLC and the town.

Management has determined that the effect of the following unrecorded misstatement is immaterial to the financial statements taken as a whole.

<u>Uncorrected Misstatements</u>:

- A decrease of $81,000 to current year revenue in the general fund and a corresponding increase to fund balance related to 2020 and 2019 expenditures that were reimbursed by federal grants.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Significant Audit Findings (Continued)

Management Representations

We have requested certain representations from management that are included in the management representation letter dated November 19, 2021, a copy of which is attached.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the town's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the town's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Matters

We applied certain limited procedures to management's discussion and analysis and other required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

We were engaged to report on the other supplementary information and the schedule of expenditures of federal awards which accompanies the financial statements but is not RSI. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

We were not engaged to report on the introductory and statistical sections which accompany the financial statements but are not RSI. We did not audit or perform other procedures on this other information and we do not express and opinion or provide any assurance on it.

Restriction on Use

This information is intended solely for the information and use of the Town Council and management and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

Brown, Edwards & Company, L.L.P.

CERTIFIED PUBLIC ACCOUNTANTS

Harrisonburg, Virginia
November 19, 2021

Attachment

TOWN OF Herndon VIRGINIA

William H. Ashton II
TOWN MANAGER
T (703) 787-7368
Bill.ashton@herndon-va.gov

November 19, 2021

Brown Edwards & Company, L.L.P.
Certified Public Accountants
1909 Financial Drive
Harrisonburg, Virginia 22801

This representation letter is provided in connection with your audit of the financial statements of the Town of Herndon, Virginia, which comprise the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information as of June 30, 2021, and the respective changes in financial position and, where applicable, cash flows for the year then ended, and the related notes to the financial statements, for the purpose of expressing opinions as to whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. An omission or misstatement that is monetarily small in amount could be considered material as a result of qualitative factors.

We confirm, to the best of our knowledge and belief, as of November 19, 2021, the following representations made to you during your audit.

Financial Statements

1) We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated June 28, 2021, including our responsibility for the preparation and fair presentation of the financial statements in accordance with U.S. GAAP and for preparation of the supplementary information in accordance with the applicable criteria.

2) The financial statements referred to above are fairly presented in conformity with U.S. GAAP and include all properly classified funds and other financial information of the primary government and all component units required by generally accepted accounting principles to be included in the financial reporting entity.

3) We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

4) We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.

5) Significant assumptions we used in making accounting estimates, including those measured at fair value, are reasonable.

6) Related party relationships and transactions, including revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties have been appropriately accounted for and disclosed in accordance with U.S. GAAP.

7) Adjustments or disclosures have been made for all events, including instances of noncompliance, subsequent to the date of the financial statements that would require adjustment to or disclosure in the financial statements.

TOWN OF Herndon VIRGINIA

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8) The effect of the uncorrected misstatement is immaterial to the financial statements as a whole. The uncorrected misstatement is described below. In addition, you have proposed adjusting journal entries that has been posted to the entity's accounts. We are in agreement with those adjustments.
    - A decrease of $81,000 to current year revenue in the general fund and a corresponding increase to fund balance related to 2020 and 2019 expenditures that were reimbursed by federal grants.
9) We are in agreement with the accounting for the Fairfax Water capacity agreements, which are related to previous fiscal years. We also believe it is appropriate to include both principal and interest in the long-term obligation.
10) We are in agreement with the accounting and disclosures for the Comprehensive Agreement between Comstock Herndon Venture, LLC and the town.
11) The effects of all known actual or possible litigation, claims, and assessments have been accounted for and disclosed in accordance with U.S. GAAP.
12) Guarantees, whether written or oral, under which the entity is contingently liable, if any, have been properly recorded or disclosed.
13) We have provided the planning communication letter to all members of those charged with governance as requested.

Information Provided

14) We have provided you with:
    a) Access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters [and all audit or relevant monitoring reports, if any, received from funding sources].
    b) Additional information that you have requested from us for the purpose of the audit.
    c) Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
    d) Minutes of the meetings or summaries of actions of recent meetings for which minutes have not yet been prepared.
15) All material transactions have been recorded in the accounting records and are reflected in the financial statements.
16) We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
17) We have no knowledge of any fraud or suspected fraud that affects the entity and involves:
    - Management,
    - Employees who have significant roles in internal control,
    - Service organizations used by the entity, or
    - Others where the fraud could have a material effect on the financial statements.
18) We have no knowledge of any allegations of fraud or suspected fraud affecting the entity's financial statements communicated by employees, former employees, regulators, or others.
19) We have no knowledge of instances of noncompliance or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements, or waste or abuse, whose effects should be considered when preparing financial statements.

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20) We have disclosed to you all known actual or possible litigation, claims, and assessments whose effects should be considered when preparing the financial statements.

Government—specific

21) We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.

22) There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.

23) We have a process to track the status of audit findings and recommendations.

24) We have identified to you any previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.

25) We have provided our views on reported findings, conclusions, and recommendations, as well as our planned corrective actions, for the report.

26) The entity has no plans or intentions that may materially affect the carrying value or classification of assets, deferred outflows of resources, liabilities, deferred inflows of resources, and fund balance or net position.

27) We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us, including tax or debt limits and debt contracts; and legal and contractual provisions for reporting specific activities in separate funds.

28) We have identified and disclosed to you all instances, which have occurred or are likely to have occurred, of fraud and noncompliance with provisions of laws and regulations that we believe have a material effect on the financial statements or other financial data significant to the audit objectives, and any other instances that warrant the attention of those charged with governance.

29) We have identified and disclosed to you all instances, which have occurred or are likely to have occurred, of noncompliance with provisions of contracts and grant agreements that we believe have a material effect on the determination of financial statement amounts or other financial data significant to the audit objectives.

30) We have identified and disclosed to you all instances that have occurred or are likely to have occurred, of abuse that could be quantitatively or qualitatively material to the financial statements or other financial data significant to the audit objectives.

31) There are no violations or possible violations of budget ordinances, laws and regulations (including those pertaining to adopting, approving, and amending budgets), provisions of contracts and grant agreements, tax or debt limits, and any related debt covenants whose effects should be considered for disclosure in the financial statements, or as a basis for recording a loss contingency, or for reporting on noncompliance.

32) As part of your audit, you assisted with preparation of the financial statements and related notes, as well as certain non-audit journal entries resulting from the closure of the Downtown Parking Fund and related Comstock Agreement, the Schedule of Federal Expenditures as well as the comparative report transmittal form. We acknowledge our responsibility as it relates to those non-audit services, including that we assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services. We have reviewed, approved, and accepted responsibility for those financial statements and related notes.

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33) The entity has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral.

34) The entity has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.

35) The financial statements include all component units as well as joint ventures with an equity interest, and properly disclose all other joint ventures and other related organizations.

36) The financial statements properly classify all funds and activities, in accordance with GASB Statement No. 34, as amended, and GASB Statement No. 84.

37) All funds that meet the quantitative criteria in GASBS Nos. 34 and 37 for presentation as major are identified and presented as such and all other funds that are presented as major are particularly important to financial statement users.

38) Components of net position (net investment in capital assets; restricted; and unrestricted), and classifications of fund balance (non-spendable, restricted, committed, assigned, and unassigned) are properly classified and, if applicable, approved.

39) Investments, derivative instruments, and land and other real estate held by endowments are properly valued.

40) Provisions for uncollectible receivables have been properly identified and recorded.

41) Expenses have been appropriately classified in or allocated to functions and programs in the statement of activities, and allocations have been made on a reasonable basis.

42) Revenues are appropriately classified in the statement of activities within program revenues, general revenues, contributions to term or permanent endowments, or contributions to permanent fund principal.

43) Interfund, internal, and intra-entity activity and balances have been appropriately classified and reported.

44) Special and extraordinary items are appropriately classified and reported, if applicable.

45) Deposits and investment securities and derivative instruments are properly classified as to risk and are properly disclosed.

46) Capital assets, including infrastructure and intangible assets, are properly capitalized, reported, and, if applicable, depreciated.

47) Capital assets have been evaluated for impairment as a result of significant and unexpected decline in service utility.

48) We believe that the actuarial assumptions and methods used to measure pension and OPEB liabilities and costs for financial accounting purposes are appropriate in the circumstances.

49) We have not completed the process of evaluating the impact that will result from adopting new Governmental Accounting Standards Board (GASBS) Statements that are not yet effective, as discussed in the notes to financial statements. The entity is therefore unable to disclose the impact that adopting these Statements will have on its financial position and the results of its operations when the Statements are adopted.

50) We agree with the findings of specialists in evaluating the pension and OPEB liabilities and have adequately considered the qualifications of the specialist in determining the amounts and disclosures used in the financial statements and underlying accounting records. We did not give or cause any instructions to be given to specialists with respect to the values or amounts derived in an attempt to bias their work, and we are not otherwise aware of any matters that have had an impact on the independence or objectivity of the specialists.

TOWN OF Herndon VIRGINIA

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51) We have appropriately disclosed the entity's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position is available and have determined that net position is properly recognized under the policy.

52) We are following our established accounting policy regarding which resources (that is, restricted, committed, assigned, or unassigned) are considered to be spent first for expenditures for which more than one resource classification is available. That policy determines the fund balance classifications for financial reporting purposes.

53) We acknowledge our responsibility for the required supplementary information (RSI). The RSI is measured and presented within prescribed guidelines and the methods of measurement and presentation have not changed from those used in the prior period. We have disclosed to you any significant assumptions and interpretations underlying the measurement and presentation of the RSI.

54) With respect to the supplementary information on which an in-relation-to opinion is issued.

   a) We acknowledge our responsibility for presenting the supplementary information in accordance with accounting principles generally accepted in the United States of America, and we believe the supplementary information, including its form and content, is fairly presented in accordance with accounting principles generally accepted in the United States of America. The methods of measurement and presentation of the supplementary information have not changed from those used in the prior period, and we have disclosed to you any significant assumptions or interpretations underlying the measurement and presentation of the supplementary information.

   b) If the supplementary information is not presented with the audited financial statements, we will make the audited financial statements readily available to the intended users of the supplementary information no later than the date we issue the supplementary information and the auditor's report thereon.

55) With respect to federal award programs:

   a) We are responsible for understanding and complying with and have complied with the requirements of Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), including requirements relating to preparation of the schedule of expenditures of federal awards.

   b) We acknowledge our responsibility for preparing and presenting the schedule of expenditures of federal awards (SEFA) and related disclosures in accordance with the requirements of the Uniform Guidance, and we believe the SEFA, including its form and content, is fairly presented in accordance with the Uniform Guidance. The methods of measurement or presentation of the SEFA have not changed from those used in the prior period and we have disclosed to you any significant assumptions and interpretations underlying the measurement or presentation of the SEFA.

   c) If the SEFA is not presented with the audited financial statements, we will make the audited financial statements readily available to the intended users of the SEFA no later than the date we issue the SEFA and the auditor's report thereon.

   d) We have identified and disclosed to you all of our government programs and related activities subject to the Uniform Guidance compliance audit, and have included in the SEFA expenditures made during the audit period for all awards provided by federal agencies in the form of federal awards, federal cost-reimbursement contracts, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other direct assistance.

   e) We are responsible for understanding and complying with, and have complied with, the requirements of federal statutes, regulations, and the terms and conditions of federal awards related to each of our federal programs and have

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identified and disclosed to you the requirements of federal statutes, regulations, and the terms and conditions of federal awards that are considered to have a direct and material effect on each major program.

f) We are responsible for establishing and maintaining, and have established and maintained, effective internal control over compliance for federal programs that provides reasonable assurance that we are managing our federal awards in compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a material effect on our federal programs. We believe the internal control system is adequate and is functioning as intended.

g) We have made available to you all federal awards (including amendments, if any) and any other correspondence with federal agencies or pass-through entities relevant to federal programs and related activities.

h) We have received no requests from a federal agency to audit one or more specific programs as a major program.

i) We have complied with the direct and material compliance requirements (except for noncompliance disclosed to you), including when applicable, those set forth in the *OMB Compliance Supplement*, relating to federal awards and confirm that there were no amounts questioned and no known noncompliance with the direct and material compliance requirement of federal awards.

j) We have disclosed any communications from federal awarding agencies and pass-through entities concerning possible noncompliance with the direct and material compliance requirements, including communications received from the end of the period covered by the compliance audit to the date of the auditor's report.

k) We have disclosed to you the findings received and related corrective actions taken for previous audits, attestation engagements, and internal or external monitoring that directly relate to the objectives of the compliance audit, including findings received and corrective actions taken from the end of the period covered by the compliance audit to the date of the auditor's report.

l) Amounts claimed or used for matching were determined in accordance with relevant guidelines in OMB's Uniform Guidance (2 CFR part 200, subpart E).

m) We have disclosed to you our interpretation of compliance requirements that may have varying interpretations.

n) We have made available to you all documentation related to compliance with the direct and material compliance requirements, including information related to federal program financial reports and claims for advances and reimbursements.

o) We have disclosed to you the nature of any subsequent events that provide additional evidence about conditions that existed at the end of the reporting period affecting noncompliance during the reporting period.

p) There are no such known instances of noncompliance with direct and material compliance requirements that occurred subsequent to the period covered by the auditor's report.

q) No changes have been made in internal control over compliance or other factors that might significantly affect internal control, including any corrective action we have taken regarding significant deficiencies or material weaknesses in internal control over compliance, subsequent to the period covered by the auditor's report.

r) Federal program financial reports and claims for advances and reimbursements are supported by the books and records from which the financial statements have been prepared.

s) The copies of federal program financial reports provided you are true copies of the reports submitted, or electronically transmitted, to the respective federal agency or pass-through entity, as applicable.

t) We have charged costs to federal awards in accordance with applicable cost principles.

TOWN OF Herndon VIRGINIA

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u) We are responsible for and have accurately prepared the summary schedule of prior audit findings to include all findings required to be included by the Uniform Guidance and we have provided you with all information on the status of the follow-up on prior audit findings by federal awarding agencies and pass-through entities, including all management decisions.

v) We are responsible for and have ensured the reporting package does not contain protected personally identifiable information.

w) We are responsible for and have accurately prepared the auditee section of the Data Collection Form as required by the Uniform Guidance.

x) We are responsible for taking corrective action on each audit finding of the compliance audit and have developed a corrective action plan that meets the requirements of the Uniform Guidance.

y) We have disclosed to you all contracts or other agreements with service organizations, and we have disclosed to you all communications from the service organizations relating to noncompliance at the service organizations, if applicable.

56) We have evaluated and classified any subsequent events as recognized or non-recognized through the date of this letter. No events, including instances of noncompliance, have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustment to or disclosure in the aforementioned financial statements or in the schedule of findings and questioned costs.

57) To the extent our normal procedures and controls related to our financial close or other reporting processes at any of our locations were adversely impacted by the COVID-19 outbreak, we took appropriate actions and safeguards to reasonable ensure the fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of American.

58) Other than as disclosed in the notes to the financial statements, no other impacts from the COVID-19 outbreak are necessary to be reflected in those financial statements.

59) Other than as disclosed in the notes to the financial statements, no other impacts from the enactment of the CARES Act are necessary to be reflected in those financial statements.

60) We reaffirm the representations made to you in our letter dated November 20, 2020 regarding your audit for the fiscal year ended June 30, 2020.

Signature: William H. Ashton II

Title: Town Manager

Signature:

Title: Director of Finance

Signature: Jerry T Schulz

Title: Deputy, Director of Finance

TOWN OF Herndon VIRGINIA

STAFF REPORT

Town Council Public Hearing
December 14, 2021

Title:

RESOLUTION, to approve a Memorandum of Understanding between the Board of Supervisors of Fairfax County, Virginia and the Town of Herndon to accept a grant from the Economic Opportunity Reserve Fund in the amount of $5,000,000.00 for capital construction of the Herndon Downtown Redevelopment Project.

Staff Contact:

Dennis Holste, Economic Development Manager
(703)-435-6800 x2085
Dennis.holste@herndon-va.gov

Summary:

In 2016, the Town issued an RFP for award of a comprehensive agreement pursuant to the Virginia public private partnership act for the redevelopment of approximately 4.675 acres of Town owned land in downtown for a mixed-use town center project, Arts Center and associated parking. Two responses were received and Comstock Herndon Venture, LC was selected by the Town Council following extensive public input.

On November 1, 2017, the Town of Herndon entered into a Comprehensive Agreement, with Comstock Herndon Venture LC, under which Comstock agreed to design and develop the project, including approximately 273 residential apartments, approximately 17,000 square feet of retail space, a 16,265 square foot arts center, and an approximately 726-space parking garage.

On June 19, 2018, the Fairfax County Board of Supervisors approved a contribution of $1,200,000 from the Fairfax County Economic Opportunity Reserve Fund (EOR) and entered into a Memorandum of Understanding with the Town of Herndon to govern funding use and distribution.

To date, these funds have not been distributed to the Town, as the funding prerequisites per the 2018 MOU have not been met.

The Comprehensive Agreement was amended by the Town of Herndon and Comstock Herndon Venture, LC, on December 3, 2020, to address changes to the Metropolitan DC construction market related to materials, labor and workforce restrictions, and effects of the COVID-19 pandemic.

These market changes resulted in an estimated funding gap of $24,600,000, which the Town of Herndon and Comstock have negotiated to split equally.

Pursuant to the terms of the amended Comprehensive Agreement the Town of Herndon conveyed the 4.675-acre parcel to Comstock on December 15, 2020. The conveyance was performed in preparation for finalization of site plans, transitional arrangements with existing uses, and facilitate commencement of construction.

Section 4.B. (i) of the Comprehensive Agreement amendment required that the Town work with Comstock in good faith to secure from Fairfax County, Virginia an abatement of real estate taxes or an equivalent economic incentive (reasonably acceptable to Comstock) for the benefit of Comstock for a period commencing upon Comstock's acquisition of the Property and ending upon the date that is ten (10) years from the Commencement of Construction.

The EOR Funds of $5,000,000 will assist the Town of Herndon in contributing to the funding gap and meeting the commitment in the Comprehensive Agreement amendment.

Staff worked with Fairfax County to develop a new Memorandum of Understanding to govern how the new EOR funding would be transferred to the Town of Herndon for the purposes of the EOR award.

The Memorandum of Understanding has the following key provisions:

- Affirms the County's previous commitment of $1,200,000 for the Project;
- Commits the County to contribute $5,000,000 in additional funding from the Fairfax County Economic Opportunity Reserve Fund for the Project distributed in five payments of $1,000,000 per year;
- The first $1,000,000 payment will be upon certificate of occupancy for the first residential unit, with the remaining payments to be made on an annual basis.
- Details the process for payments.

Payments from Fairfax County to the Town are contingent upon delivery of the first multifamily residential unit. It is anticipated all residential units will be delivered at the same time as the project will be constructed in a single construction phase.

If for any reason the project were to have a work stoppage for a period of 180 days (6-months) after the first residential unit has been delivered, any future funding obligations from Fairfax County will be suspended. It will be at Fairfax County's discretion to restart future payments with resumption of construction activity.

The Town and Fairfax County believe that the project will stimulate economic growth in Herndon, provide additional public art space needed, and that further investment in the project will benefit Fairfax County and the town through increased tax revenue.

Fiscal Impact:

The town will receive $5,000,000 from the Fairfax County Economic Opportunity Reserve. The funds will be received over a five-year period likely beginning in FY 2024.

Attachments:

1. Resolution
2. Proposed Memorandum of Understanding approved by Fairfax County.

Prepared and Approved by:

Dennis Holste, Economic Development Manager

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 14, 2021

Resolution- **to approve a Memorandum of Understanding between the Board of Supervisors of Fairfax County, Virginia and the Town of Herndon to accept a grant from the Economic Opportunity Reserve Fund in the amount of $5,000,000.00 for capital construction of the Herndon Downtown Redevelopment Project.**

WHEREAS, the Town entered into a Comprehensive Agreement dated November 1, 2017, with Comstock Herndon Venture LC ("Comstock"), under which Comstock agreed to design and develop the Project, including approximately 273 residential apartments, approximately 17,000 square feet of retail space, a 16,265 square foot arts center, and an approximately 726-space parking garage; and

WHEREAS, on June 19, 2018, the Board approved a contribution of $1,200,000 from the Economic Opportunity Reserve (EOR) and entered into a Memorandum of Understanding with the Town to govern funding use and distribution; and

WHEREAS, to date, these funds have not been distributed to the Town, as the funding prerequisites per the 2018 MOU have not yet been met; and

WHEREAS, the Comprehensive Agreement was amended by the Town on December 3, 2020, to address changes to the Metropolitan DC construction market related to materials, labor and workforce restrictions, and effects of the COVID-19 pandemic. These market changes have resulted in an estimated funding gap of $24,600,000, which the Town and Comstock have negotiated to split equally. The EOR Funds will assist the Town providing $5,000,000 to assist with their contribution to the funding gap. The Comprehensive Amendment clarifies the financial contributions and development incentives that the Town is contributing to the Project for the public amenities, public infrastructure, and revitalization benefits; and

WHEREAS, pursuant to the terms of the amended Comprehensive Agreement the Town of Herndon conveyed the 4.675-acre parcel to Comstock on December 15, 2020. The conveyance was performed in preparation for finalization of site plans, transitional arrangements with existing uses, and facilitate commencement of construction; and

WHEREAS, Comprehensive Agreement amendment required that the Town work with Comstock in good faith to secure from Fairfax County, Virginia an abatement of real estate taxes or an equivalent economic incentive (reasonably acceptable to Comstock) for the benefit of Comstock for a period commencing upon Comstock's acquisition of the Property and ending upon the date that is ten (10) years from the Commencement of Construction.

WHEREAS, Town and County staff have worked to develop a new Memorandum of Understanding to govern how the EOR funding would be transferred to the Town for the purposes of the EOR award. The Memorandum of Understanding has the following key provisions:

- Affirms the County previous commitment of $1,200,000 for the Project;
- Commits the County to contribute $5,000,000 in additional funding from the Economic Opportunity Reserve Fund for the Project distributed in five payments of $1,000,000 per year;
- Ensures that the Project will be generating real estate tax revenue to the County by triggering the first $1,000,000 payment upon certificate of occupancy for the first residential unit, with the remaining payments to be made on an annual basis; and
- Details the process for payments; and

WHEREAS, The Town and Fairfax County believe that the project will stimulate economic growth in Herndon, provide additional public art space needed, and that further investment in the project will benefit Fairfax County and the town through increased tax revenue.

WHEREAS, the County Board of Supervisors unanimously approved the $5,000,000.00 award and the Memorandum of Understanding at its meeting on December 7, 2021.

NOW THEREFORE, BE IT RESOLVED by the Town Council for the Town of Herndon, Virginia that the Mayor is authorized to sign and deliver this MOU on such form approved by the Town Attorney and any other instrument with the County or Comstock Herndon Venture LC necessary to evidence or effectuate this MOU.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into on the ____ day of _________, 2021 (the "Effective Date"), by the Board of Supervisors of Fairfax County, Virginia (the "County") and the Town of Herndon ("Herndon"). The County and Herndon may be referred to individually as a "Party" or collectively as the "Parties".

Background

A. Herndon is in the process of redeveloping 4.675 acres of town-owned land in the Herndon downtown area into a mixed-use town center (the "Project") that will include residential and commercial structures, a public arts center, a pedestrian plaza, and a parking garage.

B. To further this redevelopment and pursuant to a Request for Proposals, Herndon entered into a Comprehensive Agreement dated November 1, 2017, with Comstock Herndon Venture LC ("Comstock"), under which Comstock agreed to design and develop for the Project approximately 273 residential apartments, approximately 17,000 square feet of retail space, a 16,265 square foot arts center, and an approximately 726-space parking garage. Construction of the Project was expected to begin in 2019 but experienced unexpected setbacks postponing the transfer of the land until December, 2020 and ground breaking to December 2021.

C. The County has created the Economic Opportunity Reserve (the "EOR Fund") to accelerate investments in capital development project funding of strategic investment opportunities identified by the County to create value, increase economic growth, and generate taxable revenue.

D. The County believes that the Project will stimulate economic growth in Herndon, provide additional public art space needed in Fairfax County, and that further investment in the project will benefit Fairfax County through increased tax revenue.

E. Pursuant to a Memorandum of Understanding dated June 19, 2018 (the "2018 MOU"), the County agreed to contribute $1,200,000 from the EOR Fund to Herndon for the Project, which funds have not yet been distributed.

F. Pursuant to Va. Code § 15.2-1202, the County desires to provide an additional $5,000,000 from the EOR Fund to Herndon to be used for the Project, for a total commitment of $6,200,000.

Agreement

1. **Purpose.** The Parties are entering into this MOU to set forth the terms under which the County will contribute $5,000,000 from its EOR Fund to Herndon for the Project.

2. **Contribution.** The County will contribute $5,000,000 to the Project in the manner outlined below and upon the occurrence of the following:

   (a) Herndon will notify the County in writing when it issues a certificate of occupancy (the "COO") for the first residential multi-family dwelling unit in the Project.

   (b) Within 90 days of receipt of the notice described in subsection (a) above, the County will transfer $1,000,000 to Herndon.

   (c) The remaining $4,000,000 will be transferred by the County to Herndon in $1,000,000 increments beginning on the first anniversary of date of the COO, and on each succeeding anniversary for a total of four years.

   (d) If at any time after the first payment under this MOU, work on the Project has been stopped for a period of 180 days, the remaining payments due under subsection (c) above will be suspended until work resumes, at the County's discretion.

3. **2018 MOU.** All terms and conditions of the 2018 MOU remain in full force and effect and nothing in this MOU may be construed as amending the 2018 MOU.

4. **Limited Scope.** Nothing in this MOU may be construed as an offer or commitment by either Party to enter into a joint redevelopment or make any additional expenditures, nor be construed to create a partnership or joint venture between the Parties, nor give rise to, or serve as a basis for, any additional obligation or other liability on the part of either Party.

5. **Appropriations.** Any terms of this MOU that would require the payment of money by the County are subject to appropriations by the Fairfax County Board of Supervisors. If appropriations are not made for any fiscal year, the County will not be obligated to make any payments beyond the amount appropriated.

6. **Notice.**

   (a) All notices or other communications between the Parties must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally-recognized, next-day courier service, addressed as follows:

      (1) If to the County, to: Fairfax County / Department of Economic Initiatives
      12000 Government Center Parkway, Suite 432
      Fairfax, Virginia 22035-0064
      Attention: Scott Sizer

with a copy to: Fairfax County
Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
Attention: County Attorney

(2) If to Herndon, to: Town of Herndon
777 Lynn Street
Herndon, Virginia 20170
Attention: Town Manager
Email: town.manager@herndon-va.gov

with a copy to: Town of Herndon
777 Lynn Street
Herndon, Virginia 20170
Attention: Town Attorney
Email: town.attorney@herndon-va.gov

(b) A notice given under this MOU will be effective upon receipt or refusal by the party to which it is given.

(c) For convenience, notices may be sent via email; however, such email notice will not be considered effective until the original notice is received by the party to which it is given pursuant to one of the delivery methods described in subsection (a) above.

(d) Either Party may change its notice address from time to time by informing the other Party in writing of such new address.

7. Miscellaneous

(a) The terms of this MOU may be amended or otherwise modified only by a written instrument executed by the Parties.

(b) This MOU and any dispute, controversy, or proceeding arising out of or relating to this MOU (whether in contract, tort, common or statutory law, equity or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than those of Virginia.

(c) This MOU contains the final and entire agreement between the Parties with regard to the County's $5,000,000 contribution to the Project. The Parties are not bound by any terms, conditions, statements, or representations, oral or written, not contained in this MOU.

(d) This MOU is not intended to and does not confer upon any other person or business entity, other than the Parties, any rights or remedies with respect to the subject matter of this MOU.

(e) This MOU may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

The Parties have caused this MOU to be executed by their authorized representatives.

The Board of Supervisors of Fairfax County, Virginia

____

Name:_____________________________

Title:______________________________

The Town of Herndon

____

Name:_____________________________

Title:______________________________

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 7, 2021

Resolution- **to Award and Disburse funds to charitable or non-profit organizations Resolution for Fiscal Year 2022 for the Town of Herndon.**

WHEREAS, and the Town of Herndon recognizes the important contribution non-profit organizations make to the overall quality of life in the Town of Herndon; and

WHEREAS, under the Code of Virginia, localities may appropriate funds to any charitable or non-profit organization if the organization provides services to residents of the locality and if such organizations are no controlled in whole or in part by any church or sectarian society; and

WHEREAS, under resolution 20-G-09, amended eligibility guidelines are established for charitable or non-profit organizations

WHEREAS, the Town Council must make informed decisions regarding disbursements of town funds

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby adopts the below table of eligible charitable or non-profit organizations for disbursement in the amount totaling $198,560 by the FY 2022 year end with all required documents and verified before issuance. Also, Town Council approves the disbursement of HCTV funds by FY 2022 year end in the amount of $108,425 separately from this process

GL Account	Organization	Amount
420571	Food for Neighbors	$ 4,500
420571	The Closet	$ 20,000
420571	Express Care	$ 4,500
420571	NextStop Theatre	$ 60,000
420571	Optimist Club of Herndon	$ 15,060
420571	Herndon High School PTSA for the All Night Grad Party	$ 2,000
420571	Green Lizard Foundation	$ 2,500
420571	Herndon Elem School PTA [$5k]	$ 5,000
420571	Herndon Elem School PTA [$25k]	$ 25,000

420571	ArtsHerndon	$ 60,000
	TOTAL	**$ 198,560**

GL Account	Organization	Amount
420571	HCTV	$108,425

Future recommendation: Staff recommends the future amendment of the Community Donation application process, selection criteria and scoring practices, that will allow for unbiassed and careful evaluation of the future community donation applications.

Attachment 1

TOWN OF HERNDON, VIRGINIA

RESOLUTION

December 14, 2021

Resolution- Authorizing two applications to the Northern Virginia Transportation Authority (NVTA) for federal Regional Surface Transportation Program (RSTP) and Congestion Mitigation - Air Quality (CMAQ) transportation funding for fiscal year 2028.

WHEREAS, the town's RSTP project titled *'Sterling Road Multimodal Improvements'* is for access management and multi-modal measures to improve traffic signalization, add applicable turning lanes and bike facilities as well as provide for landscaping and safer ADA accessible sidewalks and crosswalks; all in an effort to increase safety, reduce congestion, enhance circulation and connectivity while retaining the residential character of the Sterling Road corridor; and

WHEREAS, the Town of Herndon adopted FY2022-FY2027 Capital Improvement Program, includes the improvement of Sterling Road between Elden Street and the Herndon Parkway and transitioning to the town limits; and

WHEREAS, the initial funding source for this project includes $114,000 of NVTA previously approved federal 2027 CMAQ funds and $204,000 from NVTA's Local Revenue, per the town's FY22-FY27 Capital Improvement Program; and

WHEREAS, the study now underway and being prepared by the town's transportation consultant includes the preparation of right-of-way survey, traffic impact analysis and proposed concept designs to include ADA accessible sidewalks and proposed new traffic signalization at Crestview Drive as well as the feasibility of a bike facility between Elden Street and Herndon Parkway; and

WHEREAS, the town's CMAQ project is titled '*Herndon Parkway Improvements at Worldgate Drive Extension*' is for new intersection signalization as well as multimodal roadway, pedestrian, bike and transit enhancements that will serve transit-oriented development along Herndon Parkway; and

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, adopted August 12, 2008 and as amended through November 17, 2020, advises roadway capacity and multimodal improvements at the intersection of Herndon Parkway and future Worldgate Drive Extension; and

WHEREAS, on March 11, 2014, the Town Council adopted a resolution (14-G-22) that authorized the Mayor to sign a Memorandum of Agreement for the distribution of NVTA's Local Share funding revenues to the town for Public Works staff and the town's transportation consultant to begin right-of-way survey, concept and engineering design for the Worldgate Drive Extension project; and

WHEREAS, on December 13, 2016, the Town Council adopted a resolution (16-G-75) that selected Option 5 as the preferred engineering design for this project, based on review of the traffic data analysis, safety considerations, private property owner feedback and land acquisition requirements; and

WHEREAS, the adopted Option 5 and its roadway design for Worldgate Drive Extension also included the engineering design for the intersection with Herndon Parkway and its adjoining bus bay drop-off/pick-up facility to access the northside of the Herndon Metrorail Station; and

WHEREAS, the total project cost to construct the 'Herndon Parkway Improvements at Worldgate Drive Extension' project is estimated at $6,536,000 million; and

WHEREAS, the Town of Herndon has previously utilized approved NVTA Local share revenue of $150,000 to complete the initial engineering design phase, and since 2017 the town has accumulated $1,805,000 million of NVTA approved CMAQ funding for this project; and

WHEREAS, both of the town's candidate RSTP and CMAQ projects will improve and integrate pedestrian and bicycle facilities within the street and transit network in concert with the town's adopted 2030 Comprehensive Plan as amended as well as other project components of the town's Capital Improvement Program involving multimodal transportation initiatives; and

WHEREAS, both of the town's candidate RSTP and CMAQ transportation projects for federal funding are included in NVTA's adopted TransAction Plan and VDOT's adopted FY22-FY27 Six Year Improvement Program; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, does hereby authorize the Town Manager to submit two applications to the Northern Virginia Transportation Authority, and through the Virginia Department of Transportation, for FY2028 federal funding for the following projects:

a) an allocation funding request of up to $500,000 in Regional Surface Transportation Program (RSTP) funding for the '*Sterling Road Multimodal Improvements'* project (Elden Street to Herndon Parkway); and

b) an allocation funding request of up to $1,000,000 in Congestion Mitigation and Air Quality (CMAQ) funding for the '*Herndon Parkway Improvements at Worldgate Drive Extension*'

TOWN OF HERNDON, VIRGINIA

RESOLUTION

DECEMBER 14, 2021

Resolution – to ratify a License Agreement pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and Green Lizard Cycling, LLC for use of a designated public parking space on Lynn Street for a portable bicycle rack for public bicycle parking purposes.

WHEREAS, the Town of Herndon Town is the owner of public parking spaces on Lynn Street between Elden and Station Streets; and

WHEREAS, Green Lizard Cycling, LLC desires to use a designated public parking space on Lynn Street for a portable bicycle rack for public bicycle parking purposes on weekends and Town of Herndon recognized Holidays for a term of 5 years beginning on December 1, 2021 and expiring on December 1, 2026; and

WHEREAS, pursuant to Ordinance 20-O-23, Continuity of Governmental Operations, as amended, the Town Manager was authorized to approve license agreements for use of public property or public right-of-way.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia hereby ratifies the License Agreement dated November 30, 2021 between the Town of Herndon and Green Lizard Cycling, LLC for use of a designated public parking space on Lynn Street for a portable bicycle rack for public bicycle parking purposes.

LICENSE AGREEMENT

This License dated November 30, 2021, by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation (Town) and GREEN LIZARD CYCLING, LLC, a Virginia corporation (Green Lizard).

Recitals

Town is the owner of parking on Lynn Street between Elden and Station Streets. Green Lizard operates a business at 718 Lynn Street and desires to erect a portable bicycle rack in a single parking space adjacent to 718 Lynn Street. This parking space ("the site") is referred to herein and is located within the area depicted on Exhibit A attached hereto.

THEREFORE, the parties agree as follows in consideration of the mutual covenants in this agreement:

1. Town grants to Green Lizard, its officers, employees, or volunteers a revocable temporary license to use the site for a portable public bicycle rack consistent with this agreement.

2. Commencement and Ending Date of Term. The term of this agreement and the obligations to perform under this agreement shall commence on December 1, 2021, and end upon termination by either party. In no event shall this agreement extend beyond December 1, 2026. Each party has the right to terminate this agreement upon 30 days prior written notice to the other.

3. Consideration. Beginning December 1, 2021, Green Lizard shall pay Town $1 per year for the license.

4. Use of the Site. Green Lizard may use the site for the temporary placement of a portable bicycle rack for downtown customers and visitors' bicycles on

Saturdays, Sundays and Holidays. Holidays are defined as those officially recognized by the Town of Herndon. The site shall not be used for any other purpose including, but not limited to, retail displays, sales or other business activities. No signage or advertising for Green Lizard or any other entity shall be allowed on the site.

Green Lizard shall comply with all applicable town, state and federal laws and regulations and obtain and maintain at all times any permit required under applicable law.

5. Liability Insurance. Green Lizard shall keep in effect a General Liability insurance policy for the site with a combined liability limit of $2,000,000.00 of coverage. The policy shall name the Town of Herndon as an additional insured. Satisfactory proof of insurance will be required. The required insurance shall be maintained in effect for the duration of this Agreement. Insurance Policy(s) shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) calendar days advance written notice thereof to the Town.

6. Hold Harmless. Each party shall hold each other harmless for any claim, cause of action, or judgment growing out of any act or omission under this agreement.

7. Default. A party shall be in default upon failure to perform any term of this agreement for more than five days after written notice of such failure shall have been given by the other. Upon default, the nondefaulting party may exercise rights and powers provided by general law.

8. Notification of Hazard. The Town and Green Lizard shall give immediate notice to the other in case of accident or defect in the site.

9. Surrender of Premises. At the expiration or termination of the term of this agreement, Green Lizard shall surrender the site to Town.

10. Binding on Successors/Assigns. All of the terms of this agreement shall bind the successors and assigns of Green Lizard and Town. This agreement is not assignable without consent of the non-assigning party.

TOWN OF HERNDON, VIRGINIA	GREEN LIZARD CYCLING, LLC
By: ______________	By: ______________
Name: William H. Ashton, II	Name: David A Meyer JR
Title: Town Manager	Title: Owner

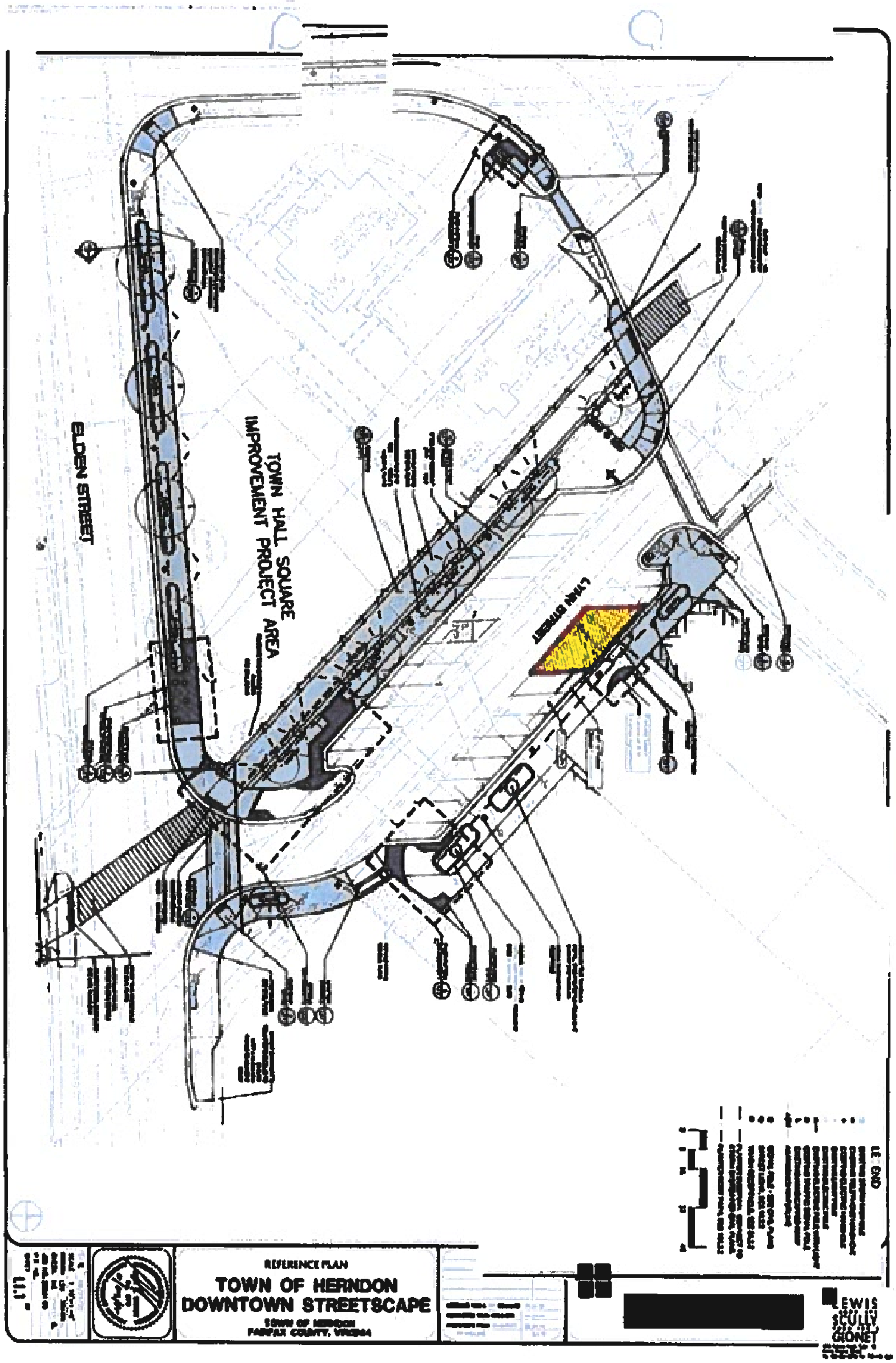
APPROVED AS TO FORM

By: ______________

Name: Lesa J. Yeatts

Title: Town Attorney

EXHIBIT A


TOWN HALL SQUARE IMPROVEMENT PROJECT AREA
ELDEN STREET
LYNN STREET
REFERENCE PLAN
TOWN OF HERNDON
DOWNTOWN STREETSCAPE
TOWN OF HERNDON
FAIRFAX COUNTY, VIRGINIA