

**TOWN OF HERNDON, VIRGINIA
PUBLIC HEARING AGENDA
HERNDON COUNCIL CHAMBERS BUILDING
765 LYNN STREET
February 8, 2022
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

September 28, 2021 Town Council Public Hearing Draft Minutes
October 19, 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

CONSENT

6. Resolution 22-G-12, award of Contract, Carnival Operations – RFP 22-06
7. Resolution 22-G-13, to approve and authorize the Town Manager and Director of Finance to sign a Memorandum of Understanding between the Fairfax County Board of Supervisors and the Town of Herndon to permit the County to collect non-delinquent and delinquent Real Property Taxes for the Town
8. Resolution 22-G-14, to award Contract #B-22-07, Van Buren Street Multi-Modal Improvements Phase I and Phase II
9. Resolution 22-G-15, to approve the donation of the former Darrell Trust Funds in the amount of approximately \$101,761.37 to Educate Fairfax to be used solely for education assistance to Herndon Students residing in the Town of Herndon and enrolled in the Fairfax County Schools in the Town of Herndon

Future Town Council Meetings

February 15, 2022	Town Council Work Session	7:00 PM
February 22, 2022	Town Council Public Hearing	7:00 PM
March 1, 2022	Town Council Work Session	7:00 PM
March 8, 2022	Town Council Public Hearing	7:00 PM

TOWN OF HERNDON, VIRGINIA

RESOLUTION

February 8, 2022

Resolution – Award of Contract- Carnival Operation - RFP 22-06

WHEREAS, the competitive negotiation process (request for proposal) was used to solicit offers from carnival operation contractors; and

WHEREAS, the request for proposal solicited services for an initial one (1) year contract with an option of four (4) one (1) year renewals; and

WHEREAS, the request for proposal was published on eVA and a single offer was received from Frank Joseph and Sons, Inc dba Jolly Shows, Inc.; and

WHEREAS, an evaluation committee reviewed the proposal, evaluating quality and capacity of the rides, ride ticket prices, concession and games operation; and professionalism of the carnival operations; and

WHEREAS, based on the evaluation, negotiations were conducted with the responsive carnival operation vendor; and

WHEREAS, a favorable arrangement that maintains (1) the quality of rides, (2) reasonable prices for ride tickets, and (3) maintains or improve levels of revenue, was negotiated with Jolly Shows, Inc.; and

WHEREAS, the revenue share for the 2022 Carnival operation will be:

- Carnival Rides:
 - 39 percent for the first \$150,000 of gross revenue
 - 45 percent of revenue from \$150,000 to \$200,000
 - 50 percent above \$200,000
- Games:
 - 20 percent of the first \$40,000 of gross revenue
 - 25 percent of revenue above \$40,000
- Food Booth:
 - \$2,200 fee for each food booth (maximum of 4); and

WHEREAS, single ticket prices will be one dollar and fifty cents per ticket, with multi-ticket discount booklets, a 10 percent presale discount and special all-you-can-ride passes; and

WHEREAS, the carnival operation is a revenue source for the Town, that is used to offset in part the Department of Parks & Recreation operating expenditures for the event.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, that an award of contract is granted to Frank Joseph and Sons, Inc dba Jolly Shows, Inc., for the 2022 carnival, and the contract may be renewed for up to four, one-year agreements.

BE IT FURTHER RESOLVED that the Town Manager, in conjunction with the Director of Parks & Recreation, may renew the contract on an annual basis to ensure that carnival operations are providing an appropriate revenue source to offset, in part, the Parks & Recreation Department's event operating expenses.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

February 8, 2022

Resolution – To approve and authorize the Town Manager and Director of Finance to sign a Memorandum of Understanding between the Fairfax County Board of Supervisors and the Town of Herndon to permit the County to collect non-delinquent and delinquent real property taxes for the Town.

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

1. The Town Council approves a Memorandum of Understanding (MOU) between the Fairfax County Board of Supervisors and the Town of Herndon authorizing the County to bill and collect both non-delinquent and delinquent Herndon Real Estate Taxes. This MOU results from Virginia Code § 15.2-826
2. The inception date will be June 1, 2022 for the County to start billing and collecting Real Property Taxes for the Town to coincide with the County's schedule.
3. The Town Manager and Director of Finance are authorized to sign and deliver this MOU on such form approved by the Town Attorney and any other instrument necessary to evidence or effectuate this MOU.

MEMORANDUM OF UNDERSTANDING BETWEEN FAIRFAX COUNTY BOARD OF SUPERVISORS AND THE TOWN OF HERNDON

This Memorandum of Understanding (MOU) is made and entered into this _____ day of _____, 2022, by the FAIRFAX COUNTY BOARD OF SUPERVISORS ("County") and the TOWN OF HERNDON ("Town") located within the County of Fairfax. The County and the Town are referred to herein as "the Parties" to this MOU.

WHEREAS, currently, the Town issues real property tax bills for, and collects current and delinquent ad valorem taxes on, real property located in, ("Real Property Taxes, "Tax", "Taxes") the Town; and

WHEREAS, currently, The County assesses, bills, and collects real property taxes to the County Taxpayers for real property located in the County, and who are also liable for Real Property Taxes to the Town.

WHEREAS, the parties desire to enter into this MOU pursuant to the authority conferred by Virginia Code §58.1-3912 (D), which authorizes the Town and the County, upon approval of both governing bodies, to enter into an agreement permitting the County Department of Tax Administration ("DTA") to mail a single bill for Real Property Taxes to County and Town Taxpayers; and

WHEREAS, the Town desires to authorize DTA to collect current and delinquent real property taxes following the normal processes of DTA in accordance to the Code of Virginia; and

WHEREAS, the parties desire to enter into this MOU pursuant to the authority conferred by Virginia Code § 15.2-826, which authorizes the County and the Town to enter into an agreement that allows DTA to collect current and delinquent real property taxes owed to the Town; and

WHEREAS, the Parties desire to have DTA commence sending bills and collecting current and delinquent Town Real Property Taxes beginning June 1, 2022 ("inception date") and

WHEREAS, the Town agrees, if necessary, to amend the Herndon Town Code, to conform to the Fairfax County Code regarding billing and collection of Real Property Taxes before the inception date.

TAX BILLING AND COLLECTION

1. Cooperation Between Parties

- a. The parties each agree they will cooperate to achieve the intent of this MOU and in the provision and exchange of information subject to applicable law.
- b. The Town agrees to timely provide all information and documents requested by the Director of DTA, or his/her designee, that the Director of DTA deems necessary to comply with the provisions of this MOU. The Director of DTA shall timely notify the Town of any missing information and documents necessary for the County to perform its obligations. If the Town fails to timely provide all such requested information and documents, then the County shall have no obligations under this MOU for that item for the applicable tax year.

2. County Department of Tax Administration Scope of Services and Compensation

- a. The Parties agree that the County will bill for and collect current and delinquent Real Property Taxes owed to the Town, including late penalties, interest, collection fees, and other costs and expenses authorized under the law beginning in tax year 2022. The Parties agree that the Town is responsible to collect all Real Property Taxes billed by the Town prior to January 1, 2022, and the County will have no responsibility for collection of such taxes. There will be no data conversion of historical records from the Town to the County.
- b. DTA will provide the Town with any written estimates of expenses that are incurred for the set up or initiation costs to set up the tax billing and collection efforts. The Town will be responsible for any additional costs outside the normal business processes of the County provided that DTA has advised Town of such costs.

- c. As reasonable compensation for DTA's billing and collection efforts, the County will retain a quarter of a percent (.25%) of the Real Property Taxes and penalty and interest collected for the Town (not billed). All revenue collected by DTA related to collection fees and costs and expenses for collecting delinquent Town bills, including attorney's fees, collected by DTA as authorized by law, shall belong to the County. No other payment for regular billing and collection activities will be due to the County or DTA, except as provided in this MOU.
- 3. Revenues Collected, Application of Payments, Tax Refunds, and Distribution to the Town
 - a. DTA will collect Real Property Tax revenue, including any interest, penalties or other collection fees, (hereafter "revenue") due to the Town and perform an accurate and timely reconciliation of the revenue collected during each month end. By the last business day of each month, the Director of DTA agrees to distribute to the Town the revenue he/she collected the preceding month. The revenue to be distributed to the Town shall be the net amount after any deductions and refunds to taxpayers are deducted. If for any reason, the County cannot precisely reconcile the revenue due to the Town, the Director of DTA must estimate the total amount due and distribute 98% of that amount to the Town by the last business day of the following month. The Director of DTA shall distribute to the Town the remaining exact amount no later than the following month's distribution to the Town.
 - b. The Parties agree that, for the application of partial payments, DTA shall prorate such partial payment between the County's and the Town's Real Property Taxes based upon the percentage of the tax of each party on the original amount billed, unless a taxpayer expressly and unequivocally directs DTA to apply a payment to either the Town or the County.
 - c. DTA shall pursue collection of all Real Property Tax and fees should the bills become delinquent. The Director of DTA will utilize his/her established procedures authorized under the law, and without the requirement of Town involvement. The Director of DTA shall utilize the collection tools authorized under the law, including, but not limited to: Summons, liens, distraint, debt-set off program, litigation, and payment plans.
 - d. Tax refunds of the Town resulting from taxes billed and collected by DTA pursuant to this MOA will be processed by DTA against the Town's Tax and Fees revenue collected by DTA. Refunds will be deducted from the taxes and fees collected by DTA monthly. DTA shall provide a monthly report detailing the refunds. If the total refunds in any particular month exceed the taxes and fees collected for the Town in the same month, DTA will deduct the amount of refund, including penalties, interests, and costs, if any, from the following months revenue of the Town, until paid in full.
- 4. Tax Rates, Due Dates, Other Common Tax Procedures, and Terms
 - a. This MOU is contingent upon the Town setting its tax rates, rate of penalty and interest, and tax relief rates on the same schedule as the County, so long as the County publishes its schedule to the Town in a reasonable amount of time to allow for the Town's compliance with this requirement. If the Town fails to set its Real Property Tax rate on the same schedule as the County, then the Town, in addition to section 2 (b) of this MOU, will be responsible for all costs and expenses of any supplemental billing and collecting of Real Property Taxes incurred by the County, including time and actual costs.
 - b. This MOU is contingent upon the Town Amending its Herndon Town Code, practices, procedures for penalties, minimum billable amounts, tax exemptions, tax refunds, and payment due dates in accordance with the County's ordinances, practices, and procedures.
- 5. Reporting Requirements
 - a. The Director of DTA agrees to provide the Town with monthly and fiscal year to date summary reports for the Town's review along with the remittance of each month's net revenue. The form and content of such report is to be mutually agreed upon by the Director of DTA and the Town Director of Finance. All reporting and data shall be sent over a secure network.
 - b. Parties shall exchange confidential tax information through secure channels. This confidential tax information and other information provided by DTA will be utilized for local tax administration and budget purposes and shall not be subsequently disclosed, redistributed or made available to any other person or entity that is not authorized to receive confidential tax information unless authorized or required by law. Confidential tax information, to include electronic files, reports, hard-copy documents, print outs, etc., cannot be shared with any governmental agency or local official unless specifically authorized by law. In the event of a data breach or disclosure incident

concerning the confidential tax information, the Party discovering the breach or disclosure shall notify the other Party, and both Parties shall take appropriate steps for mitigation and remediation of the breach or disclosure. Each Party shall be responsible for the security of its own information technology infrastructure.

- c. The Town will have sixty (60) days from receipt of any monthly reporting and reconciliation to question or challenge any allocations or processing of revenue and any such question or challenge must be addressed in writing to the Director of DTA. If any such issues arise within the sixty (60) days, the Parties must resolve such issues in a mutually agreed-upon process. If the Town fails to question or challenge a reconciliation within sixty (60) days from its receipt, then the reconciliation will be considered final.
6. Auditing Requirements
 - a. The Director of DTA agrees to provide sufficient reporting and detailed reconciliation of the Town's Accounts to the Town. Additionally, the Director of DTA agrees to include as part of Fairfax County's external auditor obligations, a task to audit a sufficient sample of the Town's accounts to ensure that the Director of DTA is properly and accurately sending bills and collecting current and delinquent Real Property Taxes on behalf of the Town. The Director of DTA will also provide an additional reporting or information that is required for the Town's external audit regarding Real Property tax billing and collection.
7. Termination
 - a. This MOU may be terminated by the governing body of either the County of Fairfax or the Town of Herndon upon written notice to the other party, which shall be effective when the non-terminating party actually receives the written notice of termination, subject to the qualifying provisions set forth in the remainder of this paragraph. If written notice of termination is received during the tax year, the Director of DTA, in consultation with the Town's Director of Finance, shall be responsible for determining whether there is sufficient time to change the billing process in the current tax year, or whether the MOU termination becomes effective in the following tax year.
8. Liability
 - a. Each Party's Liability will be limited to their respective obligations under this MOU
9. Venue
 - a. The Parties agree that this MOU will be governed by the laws of the Commonwealth of Virginia. The Parties further agree that any dispute that may occur because of the terms of this MOU will be resolved in the Fairfax County Circuit Court. In the event of such dispute, each Party shall be responsible for its own attorney's fees and costs incurred because of such dispute.
10. Force Majeure
 - a. Neither Party shall be held responsible for the failure or the delay of performance cause by an act of war, hostility, or sabotage; government restrictions; act of God; pandemic, electrical, weather-related disasters, internet, or telecommunication outage. Both Parties will use reasonable efforts to mitigate the effect of a force majeure event.
11. Notice
 - a. Whenever it is provided herein that notice or other communication shall or may be given to, or served upon, either of the parties by the other, and/or whenever either of the parties shall desire to give or serve upon the other any notice or other communication with respect to this MOU, each such notice or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows:

CONTACT PERSON(S)

For the Purposes of communication between the County and the Town regarding the administration of this MOU, the respective contact persons are as follows:

Town of Herndon Contact:	Director of Finance
Name of current person:	Robert Tang
Mailing Address:	777 Lynn Street
	Herndon, VA 20170

Telephone Number: (703) 435-6898
Email Address: Robert.Tang@Herndon-va.gov

Fairfax County Contact: Director of Department of Tax Administration
Name of current person: Jay Doshi
Mailing Address: 12000 Government Center Parkway, Suite 357
Fairfax, VA 22035
Telephone Number: (703) 324-4804
Email Address: Jay.Doshi@fairfaxcounty.gov

The contacts listed in this Section may be changed by any party through the Notice process set forth in in this MOU.

IN WITNESS WHEREOFF, the Parties herein have caused this document to be executed as of the date of the last signature shown below.

County of Fairfax

BY: _____
Jay Doshi
Director of Department of Tax Administration

Date: _____

Attest:

Clerk of the Board

Approved as to Form:

County Attorney

Town of Herndon, VA

BY: _____
William H. Ashton, II
Town Manager

Date: _____

BY: _____
Robert Tang
Director of Finance

Date: _____

Attest:

Town Clerk

Approved as to Form:

Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

February 8, 2022

Resolution- to award Contract #B-22-07, Van Buren Street Multi-Modal Improvements Phase I and Phase II Project.

WHEREAS, the Van Buren Street Multi-Modal Improvements Phase I and Phase II Project is in the Capital Improvement Program; and

WHEREAS, Contract #B-22-07, Van Buren Street Multi-Modal Improvements Phase I and Phase II, was advertised on November 23, 2021; and

WHEREAS, a pre-bid conference was held on December 6, 2021, and was attended by two firms; and

WHEREAS, the following bids were received and opened on December 28, 2021, at a public bid opening:

<u>Contractor</u>	<u>Bid</u>
A&M Concrete Corporation	\$5,332,282.75
Fort Myer Construction Corporation	\$6,134,220.82
Sagres Construction Corporation	\$6,377,247.67

WHEREAS, the A&M Concrete Corporation submitted the lowest bid which was found to be responsive and responsible; and

WHEREAS, staff recommends in addition to the contract that a contingency of \$800,000, which is approximately 15 percent of the bid, be authorized; and

WHEREAS, funds to support this contract are available in the Capital Projects Account Number #015-0886-491810; and

WHEREAS, reimbursement of funds up to \$5,332,282.75 or 100% of total construction costs, including contingency costs, are available through a combination of agreements that the Town of Herndon holds with the Virginia Department of Transportation (VDOT), NVTA, HMSAM, and General Obligation Bonds.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #B-22-07, Van Buren Street

Multi-Modal Improvements Phase I and Phase II, to A&M Construction Corporation, in the amount of \$5,332,282.75.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia hereby authorizes a contingency of \$800,000.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Town Manager's designee to approve contract modifications (change orders) that increase project scope and costs, utilizing the project contingency.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

FEBRUARY 1, 2022

Resolution- to approve the donation of the former Darrell Trust Funds in the amount of approximately \$101,761.37 to Educate Fairfax to be used solely for educational assistance to Herndon students residing in the Town of Herndon and enrolled in Fairfax County Schools in the Town of Herndon.

WHEREAS, the Town of Herndon recognizes the importance of providing quality educational opportunities to the school aged children of the town; and

WHEREAS, the town has funds in the amount of \$101,761.37 for which the Town no longer has a Town entity to distribute it; and

WHEREAS, Educate Fairfax is a 501(c)3 foundation of the Fairfax County Public School System that accepts monetary gifts from the community. 100 percent of the funds raised go directly to support students, schools and programs within Fairfax County School System; and

WHEREAS, Educate Fairfax has agreed to accept the funds and use the funds solely for the educational assistance and benefit of students residing in the Town of Herndon and enrolled in Fairfax County Schools in the Town of Herndon.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby approves the donation of \$101,761.37 to Educate Fairfax who agrees to disburse funds to students residing in the Town of Herndon and enrolled in Fairfax County Schools in the Town of Herndon, and hereby authorizes the Mayor to sign any instrument to effectuate this donation.