TOWN COUNCIL MEETING AGENDA

Town Council Chambers
765 Lynn Street, Herndon, VA 20170

Tuesday, September 12, 2023 | 7:00 p.m.

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1. **Call to Order**

2. **Pledge of Allegiance to the Flag of the United States of America**

3. **Presentations/Reports/Comments**
   a. Proclamation in Recognition of National Hispanic American Heritage Month
   b. Town Manager Report
   c. Councilmember Comments

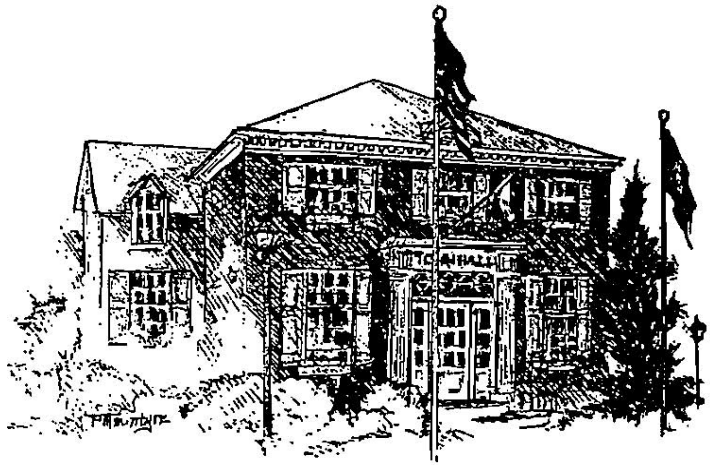
4. **Comments from the Audience**
   Members of the public may, for one 3-minute period, provide public comments, requests, consent or general item comments, and comments on matters not included on the agenda.

5. **General**
   a. Resolution 23-G-60 to approve a contract modification for IFB Contract #23-05, Swimming Pool Whitecoat project

6. **Consent**
   a. Resolution 23-G-61 to amend the Parks and Recreation Fees – Special Facilities Use and Facility Rental Fees
   b. Resolution 23-G-62 to approve and adopt the amendment and restatement of the Town of Herndon Cafeteria Plan
   c. Resolution 23-G-63 to approve the adoption of the 2022 Northern Virginia Regional Hazard Mitigation Plan
   d. Resolution 23-G-64 to establish the Herndon Town Council meeting schedule for January 1, 2024 to December 31, 2024
   e. Resolution 23-G-65 to award Contract #D-23-04, Geotechnical Engineering and Construction Materials Testing and Inspection Services
   f. July 11, 2023 Town Council Work Session Minutes
   g. July 13, 2023 Town Council Special Meeting – Strategic Planning Minutes
   h. July 18, 2023 Town Council Meeting Minutes
   i. August 2, 2023 Town Council Work Session Minutes
   j. August 8, 2023 Town Council Meeting Minutes

7. **Adjournment**

Interpretación en Español está disponible en esta sesión.



TOWN OF HERNDON, VIRGINIA
PROCLAMATION
NATIONAL HISPANIC AMERICAN HERITAGE MONTH
SEPTEMBER 15 - OCTOBER 15, 2023

Formally proclaimed as a weeklong celebration by Congress in 1968, National Hispanic Heritage Month, or "Mes de la Herencia Hispana," has been annually observed as September 15 to October 15 since 1988, when it was enacted into public law. This month-long celebration honors the history, heritage, and contributions of Americans who trace their ancestry to Spain, Mexico, the Caribbean, and Central and South America.

National Hispanic American Heritage Month starts on September 15 to mark the anniversary of independence for five Latin American countries ~ Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Mexico and Chile celebrate their independence days shortly thereafter, on September 16 and September 18, respectively.

Together with this year's theme, "Latinos: Driving Prosperity, Power and Progress in America," the Town of Herndon recognizes the significant impact that Hispanic and Latino Americans have on the economic, political, and social growth of the Town of Herndon and in the United States; and highlights the positive impact and enduring influence that Americans of Hispanic and Latino heritage have on our community across many fields ~ including business, law, politics, education, community service, the arts, sciences, and as members of our Armed Forces.

Therefore, the Mayor of the Town of Herndon, together with the Herndon Town Council, hereby proclaims September 15 through October 15, 2023, as **National Hispanic American Heritage Month** in the Town of Herndon; celebrates the heritage and culture of Hispanic and Latino Americans; and encourages Herndon citizens to observe this month with appropriate programs and activities celebrating these diverse cultures.

TOWN OF Herndon VIRGINIA

STAFF REPORT

Town Council
September 12, 2023

Title:

Resolution to approve a contract modification for IFB Contract #23-05, Swimming Pool Whitecoat project.

Staff Contact:

Marjorie Sloan, Director of Finance
Phone: (703) 435-6898
Email: marjorie.sloan@herndon-va.gov

Cindy S. Roeder, Director of Parks & Recreation
Phone: (703) 435-6800 ext. 2123
Email: cindy.roeder@herndon-va.gov

Background:

The construction project to whitecoat the Herndon Community Center Pool was awarded to the lowest responsive and responsible bidder, Millenium Pools and SPAS LLC (Millenium) for $69,356 on July 18, 2023, per Resolution 23-G-49. The intent of the Invitation for Bid (IFB) was to establish a contract with a qualified contractor to furnish all labor, tools, materials, chemicals, paint, and equipment necessary for applying a whitecoat to the Town's swimming pool.

The desired work dates were August 21, 2023, through September 1, 2023, corresponding with the conclusion of summer programs and the end of season shut down and general cleaning of the Community Center. This schedule allowed time for the pool to be refilled, chemicals balanced, and reopened to the community on September 11, 2023.

On August 21, 2023, Millenium started the project. Almost immediately, the contractor and its subcontractor found that substantially more work should be done to prepare and repair the pool surfacing before the new white coat could be applied. According to Millenium, there were too many hollows and soft spots around the pool and stripping one entire layer of plaster would be necessary. On August 23, Parks and Recreation management reviewed the quote sent by Millenium. It was also indicated that two to three weeks would be added to the project schedule for this additional work.

On September 5, 2023, the Contractor stated that the entire Pool needed a second layer of plaster removed and submitted an additional quote. The Department of Public Works project management staff, with Parks and Recreation management, reviewed the condition of the pool and agreed with the assessment. Millenium then submitted a quote of $65,551.20 to remove both layers of plaster.

Contract clause 41, "Contract Modifications", describes the conditions under which the contract can be amended. Staff agrees that while the scope of the project has not materially changed, the magnitude of the effort well exceeds what was anticipated at the time of the solicitation and

therefore falls under Clause 41. Executing this contract modification is urgent and necessary to continue the work in progress and complete the pool white coating as soon as possible.

Approval is also requested for a project contingency of 20 percent to allow for the Town Manager to address any further issues immediately, to ensure the project is completed, for a total of $78,662.

Impact Analysis:

This project is critically important to be completed as quickly as possible. Over 150 swim team members, age group swim lessons for youth and adult lessons, water exercise classes, pool parties, pool rentals, and general access to the pool for residents and visitors were all anticipated to begin on the original reopening date of September 11. If the pool were to reopen with only a one-week delay, refunds for swim lessons to 222 students would approach $5,200 and a loss of $1,100 in rental revenue. Due to the delay, the department contracted for outdoor pool space for the swim team at a rate of $5,200 for two weeks, plus $1,000 spent on necessary materials for outdoor practices. The delay may also result in refund requests for time lost by passholders and delays the implementation of the reduced fee access to the pool.

Funds to support IFB Contract #23-05 are available in the Town's American Rescue Plan Act funds.

Staff Recommendation:

Staff recommends the Mayor and Town Council approve the contract modification, including contingency, for IFB Contract #23-05, Swimming Pool Whitecoat in the Total Amount of $78,662.

Attachments:

1. Resolution

Prepared and Approved by:

Cindy S. Roeder

Cindy S. Roeder, Director of Parks & Recreation

Marjorie Sloan

Marjorie Sloan, Director, Finance Department

Lesa J. Yeatts

Lesa J. Yeatts, Town Attorney

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 12, 2023

Resolution- to approve a contract modification for IFB Contract #23-05, Swimming Pool Whitecoat project.

On July 18, 2023, a construction contract for the Herndon Community Center Swimming Pool Whitecoat project was awarded to Millenium Pools and Spas, LLC in the amount of $69,356 per Town Council Resolution 23-G-49. Funded by the American Rescue Plan Act (ARPA), project construction began on August 21, 2023, and is currently in progress.

After project work began, the contractors notified the Town that substantially more work was needed to repair and prepare the pool prior to the whitecoat application. As a result, a contract modification in the amount of $78,662, which includes a 20 percent project contingency, is needed as the project amount exceeds the threshold described in Section 41 of the contract.

Execution of this contract modification is urgent and necessary to continue the work in progress and complete the pool white coating project as soon as possible.

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

1. The Town Manager is authorized to execute a contract modification up to the amount of $78,662 with Millenium Pools and Spas, LLC.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 12, 2023

Resolution- to amend the Parks and Recreation Fees - Special Facilities Use and Facility Rental Fees.

The Parks and Recreation Department provides recreation facilities at the Community Center, including an indoor pool, gymnasium, fitness room, and racquetball courts, that are accessible with a daily fee or multi-visit admission pass. Parks and Recreation staff have worked with staff from Cornerstones and representatives of Herndon Opportunities Neighborhood to develop a reduced fee schedule for admission to the Community Center. These rates, reflected in Attachment A, reduce the financial burden on qualified youth and adults and encourage use of the Community Center for health and wellness, socialization, and development of life skills.

Further, upon review of all Council adopted fees, the staff recommend an adjustment to the Field Use hourly light fee from $4 per hour to $5 per hour. This fee applies only to the lit fields at Bready Park when reserved and requested by users.

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

1. The Parks and Recreation Fees - Special Facilities Use and Facility Rental Fees as outlined in Attachment A, and any other documents or actions required to implement the fee schedule, are approved.

2. The Town Manager is authorized to make any future amendment to fees.

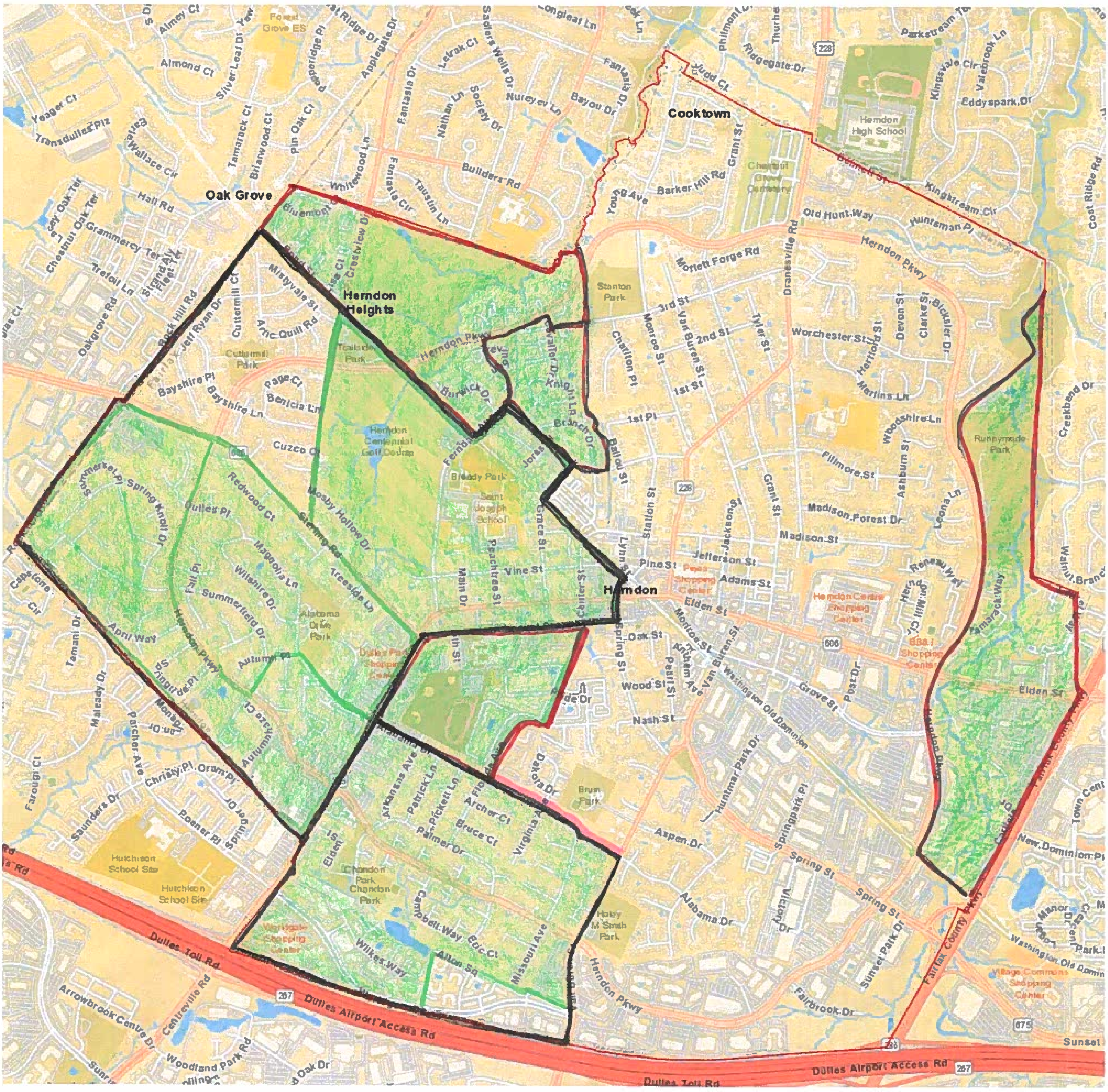
Daily Rate	Qualified Resident	Qualified non-Resident HHS pyramid discount
Adult	$4.00	$5.00
Youth, Student	$3.00	$3.00
Family (2 Adults/3 Youth max)	$10.00	$15.00
Senior	$4.00	$5.00

Individual 10 Visit Pass[1]	Qualified Resident	Qualified non-Resident HHS pyramid discount
Adult	$40.00	$50.00
Youth, Senior, Student	$30.00	$40.00

25 Visit Pass[2]	Qualified Resident	Qualified non-Resident HHS pyramid discount
Adult	$90.00	$100.00
Youth, Student	$50.00	$50.00
Senior	$67.00	$90.00

Individual 30-day pass[3]	Qualified Resident	Qualified non-Resident HHS pyramid discount
Adult	$42.00	$54.00
Youth, Senior, Student	$34.50	$44.25
Adult 2-person[4]	$63.00	$81.00
Senior 2 person[4]	$51.75	$66.00
Adult/Senior 2 person[4]	$55.50	$71.25
Dependent Youth[5]	$10.50	$13.50

[1]expires 1 year after purchase
[2]expires 2 years after purchase
[3]expires 30 consecutive days after purchase
[4]Both individuals in the 2-person pass must reside in the same household
[5]Dependent pass must be purchased with adult pass


Oak Grove
Cooktown
Herndon Heights
Herndon
Forest Grove ES
Herndon High School
Chestnut Grove Cemetery
Stanton Park
Cuttermill Park
Trailside Park
Herndon Centennial Golf Course
Bready Park
Saint Joseph School
Alabama Drive Park
Dulles Park Shopping Center
Chandon Park
Worldgate Shopping Center
Hutchison School Site
Bruin Park
Haley M Smith Park
Runnymede Park
Pines Shopping Center
Herndon Centre Shopping Center
BB&T Shopping Center
Village Commons Shopping Center
Herndon Pkwy
Elden St
Spring St
Dranesville Rd
Monroe St
Van Buren St
Station St
Grant St
Fairfax County Pkwy
Dulles Toll Rd
Dulles Airport Access Rd
Centreville Rd
Washington Old Dominion
Sterling Rd
Mosby Hollow Dr
Alabama Dr
Herndon Pkwy
Barker Hill Rd
Bennett St
Old Hunt Way
Worchester St
Madison St
Jefferson St
Pine St
Adams St
Vine St
Grove St
Aspen Dr
Fairbrook Dr
Sunset Park Dr
Springpark Pl
Huntmar Park Dr
Rock Hill Rd
Bayshire Ln
Summerset Pl
April Way
Wilkes Way
Campbell Way
Missouri Ave
Virginia Ave
Arkansas Ave
Builders Rd
Tamarack Way
228
606
267
28
675

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 12, 2023

Resolution- to approve and adopt the Amendment and Restatement of the Town of Herndon Cafeteria Plan

The amendment and restatement of the Town's Section 125 of the IRS code, Cafeteria Plan modernizes the plan in accordance with current IRS regulations to reflect (i) that a participant may roll over unused amounts in the health flexible spending account remaining at the end of one plan year to the immediately following plan year up to 20% of the statutory amount under Code Section 125(ii), as adjusted for increases in the cost of living (iii) participants may use credit card provided by the Administrator of the plan for payment of medical expenses under IRS Publication 502.

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

1. The Town Council approves and adopts the amendment and restatement of the Town of Herndon Cafeteria Plan.

2. The Town Manager is authorized to sign and deliver this Amendment and Restatement of the Town of Herndon Cafeteria Plan, effective July 1, 2023, and all future amendments and restatements.

EXHIBIT A

TOWN OF HERNDON
CAFETERIA PLAN
(FORMERLY CAFETERIA PLAN WITH FLEXIBLE SPENDING ARRANGEMENT PROVIDED BY TOWN OF HERNDON)

AND ALL SUPPORTING FORMS HAVE BEEN PRODUCED FOR

MCGRIFF INSURANCE SERVICES, LLC

TOWN OF HERNDON
CAFETERIA PLAN

(FORMERLY CAFETERIA PLAN WITH FLEXIBLE SPENDING ARRANGEMENT PROVIDED BY TOWN OF HERNDON)

PLAN DOCUMENT

RESTATEMENT EFFECTIVE: JULY 1, 2023

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TOWN OF HERNDON
CAFETERIA PLAN
(FORMERLY CAFETERIA PLAN WITH FLEXIBLE SPENDING ARRANGEMENT PROVIDED BY TOWN OF HERNDON)

INTRODUCTION

The Employer has amended this Plan effective July 1, 2023, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on January 1, 2008. The Plan shall be known as Town of Herndon Cafeteria Plan (formerly Cafeteria Plan with Flexible Spending Arrangement Provided by Town of Herndon) (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

ARTICLE I
DEFINITIONS

1.1 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 9.1 to administer the Plan on behalf of the Employer. If the Employer is the Administrator, the Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit"** or **"Benefit Options"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract for purposes of coverage under that Contract only or under Code Section 152 (as modified by Code Section 105(b)).

"Dependent" shall include any Child of a Participant who is covered under an Insurance Contract, as defined in the Contract, or under the Health Flexible Spending Account or as allowed by reason of the Affordable Care Act.

For purposes of the Health Flexible Spending Account, a Participant's "Child" includes his/her natural child, stepchild, foster child, adopted child, or a child placed with the Participant for adoption. A Participant's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency or residency status with the Employee or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year.

The phrase "placed for adoption" refers to a child whom the Participant intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Employee of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

1.8 **"Effective Date"** means January 1, 2008.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

All Employees not defined as regular Employees by the Employer shall not be eligible to participate in the Plan.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means Town of Herndon and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating, Affiliated or Adopting Employer.

1.13 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.

1.14 **"Insurance Premium Payment Plan"** means the plan of benefits contained in Section 4.1 of this Plan, which provides for the payment of Premium Expenses.

1.15 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.

1.16 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.17 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.18 **"Plan"** means this instrument, including all amendments thereto.

1.19 **"Plan Year"** means the 12-month period beginning July 1 and ending June 30. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.20 **"Premium Expenses"** or **"Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.21 **"Premium Expense Reimbursement Account"** means the account established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant shall be paid or reimbursed. If more than one type of insured Benefit is elected, sub-accounts shall be established for each type of insured Benefit.

1.22 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.1. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.23 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.24 **"Spouse"** means spouse as determined under Federal law.

ARTICLE II
PARTICIPATION

2.1 ELIGIBILITY

Any Eligible Employee shall be eligible to participate hereunder as of his date of employment (or the Effective Date of the Plan, if later). However, any Eligible Employee who was a Participant in the Plan on the effective date of this amendment shall continue to be eligible to participate in the Plan.

2.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which he met the eligibility requirements of Section 2.1.

2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate in a manner set forth by the Administrator. The election shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to complete a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured Benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

(a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.6;

(b) **Change in employment status.** The end of the Plan Year during which the Participant became a limited Participant because of a change in employment status pursuant to Section 2.5;

(c) **Death.** The Participant's death, subject to the provisions of Section 2.7; or

(d) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

2.5 CHANGE OF EMPLOYMENT STATUS

If a Participant ceases to be eligible to participate because of a change in employment status or classification (other than through termination of employment), the Participant shall become a limited Participant in this Plan for the remainder of the Plan Year in which such change of employment status occurs. As a limited Participant, no further Salary Redirection may be made on behalf of the Participant, and, except as otherwise provided herein, all further Benefit elections shall cease, subject to the limited Participant's right to continue coverage under any Insurance Contracts. However, any balances in the limited Participant's Dependent Care Flexible Spending Account may be used during such Plan Year to reimburse the limited Participant for any allowable Employment-Related Dependent Care incurred during the Plan Year. Subject to the provisions of Section 2.6, if the limited Participant later becomes an Eligible Employee, then the limited Participant may again become a full Participant in this Plan, provided he otherwise satisfies the participation requirements set forth in this Article II as if he were a new Employee and made an election in accordance with Section 5.1.

2.6 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

(a) **Insurance Benefit.** With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.

(b) **Dependent Care FSA.** With regard to the Dependent Care Flexible Spending Account, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for employment related Dependent Care Expense reimbursements for claims incurred up to the date of termination and submitted within 90 days after termination, based on the level of the Participant's Dependent Care Flexible Spending Account as of the date of termination.

(c) **COBRA applicability.** With regard to the Health Flexible Spending Account, the Participant may submit claims for expenses that were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Flexible Spending Account have already been made. Thereafter, the health benefits under this Plan including the Health Flexible Spending Account shall be applied and administered consistent with such further rights a Participant and his Dependents may be entitled to pursuant to Code Section 4980B and Section 11.14 of the Plan.

2.7 DEATH

If a Participant dies, his participation in the Plan shall cease. However, such Participant's spouse or Dependents may submit claims for expenses or benefits for the remainder of the Plan Year or until the Cafeteria Plan Benefit Dollars allocated to each specific benefit are exhausted. In no event may reimbursements be paid to someone who is not a spouse or Dependent. If the Plan is subject to the provisions of Code Section 4980B, then those provisions and related regulations shall apply for purposes of the Health Flexible Spending Account.

ARTICLE III
CONTRIBUTIONS TO THE PLAN

3.1 SALARY REDIRECTION

Benefits under the Plan shall be financed by Salary Redirections sufficient to support Benefits that a Participant has elected hereunder and to pay the Participant's Premium Expenses. The salary administration program of the Employer shall be revised to allow each Participant to agree to reduce his pay during a Plan Year by an amount determined necessary to purchase the elected Benefit Options. The amount of such Salary Redirection shall be specified in the Salary Redirection Agreement and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article IV.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

3.2 APPLICATION OF CONTRIBUTIONS

As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld for the Health Flexible Spending Account or Dependent Care Flexible Spending Account shall be credited to such fund or account. Amounts designated for the Participant's Premium Expense Reimbursement Account shall likewise be credited to such account for the purpose of paying Premium Expenses.

3.3 PERIODIC CONTRIBUTIONS

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. However, with regard to the Health Flexible Spending Account, the payment schedule for the required contributions may not be based on the rate or amount of reimbursements during the Plan Year.

ARTICLE IV
BENEFITS

4.1 BENEFIT OPTIONS

Each Participant may elect any one or more of the following optional Benefits:

(1) Health Flexible Spending Account

(2) Dependent Care Flexible Spending Account

In addition, each Participant shall have a sufficient portion of his Salary Redirections applied to the following Benefits unless the Participant elects not to receive such Benefits:

(3) Health Insurance Benefit

(4) Dental Insurance Benefit

(5) Vision Insurance Benefit

(6) Prescription Drug Coverage Benefit

(7) Other Insurance Benefit

4.2 HEALTH FLEXIBLE SPENDING ACCOUNT BENEFIT

Each Participant may elect to participate in the Health Flexible Spending Account option, in which case Article VI shall apply.

4.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT BENEFIT

Each Participant may elect to participate in the Dependent Care Flexible Spending Account option, in which case Article VII shall apply.

4.4 HEALTH INSURANCE BENEFIT

(a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.

(b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

4.5 DENTAL INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's dental Insurance Contract. In addition, the Participant may elect either individual or family coverage under such Insurance Contract.

(b) **Employer selects contracts.** The Employer may select suitable dental Insurance Contracts for use in providing this dental insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such dental Insurance Contract shall be determined therefrom, and such dental Insurance Contract shall be incorporated herein by reference.

4.6 VISION INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's vision Insurance Contract. In addition, the Participant may elect either individual or family coverage.

(b) **Employer selects contracts.** The Employer may select suitable vision Insurance Contracts for use in providing this vision insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such vision Insurance Contract shall be determined therefrom, and such vision Insurance Contract shall be incorporated herein by reference.

4.7 PRESCRIPTION DRUG COVERAGE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's Prescription Drug Coverage Contract.

(b) **Employer selects contracts.** The Employer may select suitable prescription drug coverage for use in providing this benefit, including, but not limited to, if applicable, by-mail services and prescription drug cards, which will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such prescription drug coverage contract shall be determined therefrom, and such Contract shall be incorporated herein by reference.

4.8 OTHER INSURANCE BENEFIT

(a) **Employer selects contracts.** The Employer may select additional health or other policies allowed under Code Section 125 or allow the purchase of additional health or other policies by and for Participants, which policies will provide uniform benefits for all Participants electing this Benefit.

(b) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from any additional Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

4.9 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **25% concentration test.** It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with the Code and regulations. Any act taken by the Administrator shall be carried out in a uniform and nondiscriminatory manner. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Flexible Spending Account Benefits and Dependent Care Flexible Spending Account Benefits, and once all these Benefits are expended, proportionately among insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.

ARTICLE V
PARTICIPANT ELECTIONS

5.1 INITIAL ELECTIONS

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so on or before his effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

5.2 SUBSEQUENT ANNUAL ELECTIONS

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which spending account Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

(a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;

(b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year;

(c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

5.3 FAILURE TO ELECT

With regard to Benefits available under the Plan for which no Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No further Salary Redirections shall therefore be authorized or made for the subsequent Plan Year for such Benefits.

With regard to Benefits available under the Plan for which Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have made the same Benefit elections as are then in effect for the current Plan Year. The Participant shall also be deemed to have elected Salary Redirection in an amount necessary to purchase such Benefit options.

5.4 CHANGE IN STATUS

(a) **Change in status defined.** Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status which is acceptable under rules and

regulations adopted by the Department of the Treasury, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

In general, a change in election is not consistent if the change in status is the Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, and the Participant's election under the Plan is to cancel accident or health insurance coverage for any individual other than the one involved in such event. In addition, if the Participant, Spouse or Dependent gains or loses eligibility for coverage, then a Participant's election under the Plan to cease or decrease coverage for that individual under the Plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the individual, the individual's Spouse, or Dependent becomes eligible for continuation coverage under the Employer's group health plan as provided in Code Section 4980B or any similar state law, then the individual may elect to increase payments under this Plan in order to pay for the continuation coverage. However, this does not apply for COBRA eligibility due to divorce, annulment or legal separation.

Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For the purposes of this subsection, a change in status shall only include the following events or other events permitted by Treasury regulations:

(1) Legal Marital Status: events that change a Participant's legal marital status, including marriage, divorce, death of a Spouse, legal separation or annulment;

(2) Number of Dependents: Events that change a Participant's number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent;

(3) Employment Status: Any of the following events that change the employment status of the Participant, Spouse, or Dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, or a change in worksite. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, Spouse, or Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;

(4) Dependent satisfies or ceases to satisfy the eligibility requirements: An event that causes the Participant's Dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance; and

(5) Residency: A change in the place of residence of the Participant, Spouse or Dependent, that would lead to a change in status (such as a loss of HMO coverage).

For the Dependent Care Flexible Spending Account, a Dependent becoming or ceasing to be a "Qualifying Dependent" as defined under Code Section 21(b) shall also qualify as a change in status.

Notwithstanding anything in this Section to the contrary, the gain of eligibility or change in eligibility of a child, as allowed under Code Sections 105(b) and 106, and guidance thereunder, shall qualify as a change in status.

(b) **Special enrollment rights.** Notwithstanding subsection (a), the Participants may change an election for group health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f), including those authorized under the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (SCHIP); provided that such Participant meets the sixty (60) day notice requirement imposed by Code Section 9801(f) (or such longer period as may be permitted by the Plan and communicated to Participants). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

(c) **Qualified Medical Support Order.** Notwithstanding subsection (a), in the event of a judgment, decree, or order (including approval of a property settlement) ("order") resulting from a divorce, legal separation, annulment, or change in legal custody which requires accident or health coverage for a Participant's child (including a foster child who is a Dependent of the Participant):

(1) The Plan may change an election to provide coverage for the child if the order requires coverage under the Participant's plan; or

(2) The Participant shall be permitted to change an election to cancel coverage for the child if the order requires the former Spouse to provide coverage for such child, under that individual's plan and such coverage is actually provided.

(d) **Medicare or Medicaid.** Notwithstanding subsection (a), a Participant may change elections to cancel or reduce accident or health coverage for the Participant or the Participant's Spouse or Dependent if the Participant or the Participant's Spouse or Dependent is enrolled in the accident or health coverage of the Employer and becomes entitled to coverage (i.e., enrolled) under Part A or Part B of the Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other

than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). If the Participant or the Participant's Spouse or Dependent who has been entitled to Medicaid or Medicare coverage loses eligibility, that individual may prospectively elect coverage under the Plan if a benefit package option under the Plan provides similar coverage.

(e) **Cost increase or decrease.** If the cost of a Benefit provided under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such Benefit. Alternatively, if the cost of a benefit package option increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under another benefit package option with similar coverage, or drop coverage prospectively if there is no benefit package option with similar coverage.

A cost increase or decrease refers to an increase or decrease in the amount of elective contributions under the Plan, whether resulting from an action taken by the Participants or an action taken by the Employer.

(f) **Loss of coverage.** If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another plan with similar coverage, or drop coverage prospectively if no similar coverage is offered.

(g) **Addition of a new benefit.** If, during the period of coverage, a new benefit package option or other coverage option is added, an existing benefit package option is significantly improved, or an existing benefit package option or other coverage option is eliminated, then the affected Participants may elect the newly-added option, or elect another option if an option has been eliminated prospectively and make corresponding election changes with respect to other benefit package options providing similar coverage. In addition, those Eligible Employees who are not participating in the Plan may opt to become Participants and elect the new or newly improved benefit package option.

(h) **Loss of coverage under certain other plans.** A Participant may make a prospective election change to add group health coverage for the Participant, the Participant's Spouse or Dependent if such individual loses group health coverage sponsored by a governmental or educational institution, including a state children's health insurance program under the Social Security Act, the Indian Health Service or a health program offered by an Indian tribal government, a state health benefits risk pool, or a foreign government group health plan.

(i) **Change of coverage due to change under certain other plans.** A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of a Spouse's, former Spouse's or Dependent's employer if (1) the cafeteria plan or other benefits plan of the Spouse's, former Spouse's or Dependent's employer permits its participants to make a change; or (2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a Spouse's, former Spouse's or Dependent's employer.

(j) **Change in dependent care provider.** A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the dependent care provider. The availability of dependent care services from a new childcare provider is similar to a new benefit package option becoming available. A cost change is allowable in the Dependent Care Flexible Spending Account only if the cost change is imposed by a dependent care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).

(k) **Health FSA cannot change due to insurance change.** A Participant shall not be permitted to change an election to the Health Flexible Spending Account as a result of a cost or coverage change under any health insurance benefits.

(l) **Changes due to reduction in hours or enrollment in an Exchange Plan.** A Participant may prospectively revoke coverage under the group health plan (that is not a health Flexible Spending Account) which provides minimum essential coverage (as defined in Code §5000A(f)(1)) provided the following conditions are met:

Conditions for revocation due to reduction in hours of service:

(1) The Participant has been reasonably expected to average at least 30 hours of service per week and there is a change in that Participant's status so that the Participant will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the Participant ceasing to be eligible under the group health plan; and

(2) The revocation of coverage under the group health plan corresponds to the intended enrollment of the Participant, and any related individuals who cease coverage due to the revocation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

The Administrator may rely on the reasonable representation of the Participant who is reasonably expected to have an average of less than 30 hours of service per week for future periods that the Participant and related individuals have enrolled or intend to enroll in another plan that provides minimum essential coverage for new coverage that is effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

Conditions for revocation due to enrollment in a Qualified Health Plan:

(1) The Participant is eligible for a Special Enrollment Period to enroll in a Qualified Health Plan through a Marketplace (federal or state exchange) pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or the Participant seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; or

(2) One or more related individuals of the Participant is eligible for a Special Enrollment Period to enroll in a Qualified Health Plan through a Marketplace (federal or state exchange) pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or related individual(s) seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and

(3) The revocation of the election of coverage under the group health plan – either revocation in whole or revocation of other-than-self coverage – corresponds to the intended enrollment of the Participant and/or any related individuals who cease coverage due to the revocation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

The Administrator may rely on the reasonable representation of a Participant (on behalf of themselves or related individuals) who has an enrollment opportunity for a Qualified Health Plan through a Marketplace that the Participant or related individuals have enrolled or intend to enroll in a Qualified Health Plan for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

ARTICLE VI
HEALTH FLEXIBLE SPENDING ACCOUNT

6.1 ESTABLISHMENT OF PLAN

This Health Flexible Spending Account is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this Health Flexible Spending Account may submit claims for the reimbursement of Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Health Flexible Spending Account. Periodic payments reimbursing Participants from the Health Flexible Spending Account shall in no event occur less frequently than monthly.

6.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan, the terms below have the following meaning:

(a) **"Health Flexible Spending Account"** means the account established for Participants pursuant to this Plan to which part of their Cafeteria Plan Benefit Dollars may be allocated and from which all allowable Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents may be reimbursed.

(b) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

(1) one of the 5 highest paid officers;

(2) a shareholder who owns (or is considered to own applying the rules of Code Section 318) more than 10 percent in value of the stock of the Employer; or

(3) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(c) **"Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and the rulings and Treasury regulations thereunder, and not otherwise used by the Participant as a deduction in determining his tax liability under the Code. “Medical Expenses” may include personal protective equipment, such as masks, hand sanitizer, sanitizing wipes, and any other equipment for the primary purpose of preventing the spread of COVID-19 as defined in Announcement 2021-7 and allowed under Code Section 213(d). "Medical Expenses" can be incurred by the Participant, his or her Spouse and his or her Dependents. "Incurred" means, with regard to Medical Expenses, when the Participant is provided with the medical care that gives rise to the Medical Expense and not when the Participant is formally billed or charged for, or pays for, the medical care.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's Spouse or individual policies maintained by the Participant or his Spouse or Dependent.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

(d) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Flexible Spending Account.

6.3 FORFEITURES

The amount in the Health Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.7 hereof, excluding any carryover) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason, subject to Section 8.2.

6.4 LIMITATION ON ALLOCATIONS

(a) Notwithstanding any provision contained in this Health Flexible Spending Account to the contrary, the maximum amount of salary reductions that may be allocated to the Health Flexible Spending Account by a Participant in or on account of any Plan Year is the statutory amount under Code Section 125(i), as adjusted for increases in the cost of living. The cost of living adjustment in effect for a calendar year applies to any Plan Year beginning with or within such calendar year. The dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year, the limit shall be an amount equal to the limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

(b) **Participation in Other Plans.** All employers that are treated as a single employer under Code Sections 414(b), (c), or (m), relating to controlled groups and affiliated service groups, are treated as a single employer for purposes of the statutory limit. If a Participant participates in multiple cafeteria plans offering health flexible spending accounts maintained by members of a controlled group or affiliated service group, the Participant's total Health Flexible Spending Account contributions under all of the cafeteria plans are limited to the statutory limit (as adjusted). However, a Participant employed by two or more employers that are not members of the same controlled group may elect up to the statutory limit (as adjusted) under each Employer's Health Flexible Spending Account.

(c) **Carryover.**A Participant in the Health Flexible Spending Account may roll over unused amounts in the Health Flexible Spending Account remaining at the end of one Plan Year to the immediately following Plan Year, up to 20% of the statutory amount under Code Section 125(i), as adjusted for increases in the cost of living. The cost of living adjustment in effect for a calendar year applies to any Plan Year beginning with or within such calendar year. The dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. These amounts can be used during the following Plan Year for expenses incurred in that Plan Year. Amounts carried over do not affect the maximum amount of salary redirection contributions for the Plan Year to which they are carried over. Unused amounts are those remaining after expenses have been reimbursed during the runout period. These amounts may not be cashed out or converted to any other taxable or nontaxable benefit. Amounts in excess will be forfeited. The Plan is allowed, but not required, to treat claims as being paid first from the current year amounts, then from the carryover amounts.

6.5 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Flexible Spending Account not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this Health Flexible Spending Account, it may, but shall not be required to, reject any elections or reduce contributions or Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Health Flexible Spending Account by the member of the group in whose favor discrimination may not occur pursuant to Code Section 105 that elected to contribute the highest amount to the fund for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section or the Code are satisfied, or until the amount designated for the fund equals the amount designated for the fund by the next member of the group in whose favor discrimination may not occur pursuant to Code Section 105 who has elected the second highest contribution to the Health Flexible Spending Account for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section or the Code are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and credited to the benefit plan surplus.

6.6 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Health Flexible Spending Account. The enrollment under the Cafeteria Plan shall constitute enrollment under this Health Flexible Spending Account. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

6.7 HEALTH FLEXIBLE SPENDING ACCOUNT CLAIMS

(a) **Expenses must be incurred during Plan Year.** All Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents during the Plan Year shall be reimbursed during the Plan Year subject to Section 2.6, even though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Medical Expenses were incurred during the applicable Plan Year. Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Flexible Spending Account for the Plan Year. Reimbursements shall be made available to the Participant throughout the year without regard to the level of Cafeteria Plan Benefit Dollars which have been allocated to the fund at any given point in time. Furthermore, a Participant shall be entitled to reimbursements only for amounts in excess of any payments or other reimbursements under any health care plan covering the Participant and/or his Spouse or Dependents.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage and, if reimbursed from the Health Flexible Spending Account, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Claims for reimbursement.** Claims for the reimbursement of Medical Expenses incurred in any Plan Year shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those Medical Expense claims shall not be considered for reimbursement by the Administrator. However, if a Participant terminates employment during the Plan Year, claims for the reimbursement of Medical Expenses must be submitted within 90 days after termination of employment.

6.8 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Medical Expenses, subject to the following terms:

(a) **Card only for medical expenses.** Each Participant issued a card shall certify that such card shall only be used for Medical Expenses. The Participant shall also certify that any Medical Expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Health Flexible Spending Account. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Health Flexible Spending Account.

(c) **Maximum dollar amount available.** The dollar amount of coverage available on the card shall be the amount elected by the Participant for the Plan Year. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in Section 6.4.

(d) **Only available for use with certain service providers.** The cards shall only be accepted by such merchants and service providers as have been approved by the Administrator following IRS guidelines.

(e) **Card use.** The cards shall only be used for Medical Expense purchases at these providers, including, but not limited to, the following:

(1) Co-payments for doctor and other medical care;

(2) Purchase of drugs as allowed under law or IRS regulations;

(3) Purchase of medical items such as eyeglasses, syringes, crutches, etc.

(f) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(g) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as a Medical Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

(1) Repayment of the improper amount by the Participant;

(2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;

(3) Claims substitution or offset of future claims until the amount is repaid; and

(4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

ARTICLE VII
DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT

7.1 ESTABLISHMENT OF ACCOUNT

This Dependent Care Flexible Spending Account is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Dependent Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Dependent Care Flexible Spending Account.

7.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan the terms below shall have the following meaning:

(a) **"Dependent Care Flexible Spending Account"** means the account established for a Participant pursuant to this Article to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Dependent Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for dependent care assistance to the Participant.

(c) **"Employment-Related Dependent Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any period for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Dependent Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the dependent care that gives rise to the Employment-Related Dependent Care Expenses, not when the Participant is formally billed or charged for, or pays for the dependent care. The determination of whether an amount qualifies as an Employment-Related Dependent Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Dependent Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and

(3) Employment-Related Dependent Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse.

(d) **"Qualifying Dependent"** means, for Dependent Care Flexible Spending Account purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;

(2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Dependent Care Flexible Spending Account.

7.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

The Administrator shall establish a Dependent Care Flexible Spending Account for each Participant who elects to apply Cafeteria Plan Benefit Dollars to Dependent Care Flexible Spending Account benefits.

7.4 INCREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

A Participant's Dependent Care Flexible Spending Account shall be increased each pay period by the portion of Cafeteria Plan Benefit Dollars that he has elected to apply toward his Dependent Care Flexible Spending Account pursuant to elections made under Article V hereof.

7.5 DECREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

A Participant's Dependent Care Flexible Spending Account shall be reduced by the amount of any Employment-Related Dependent Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 7.12 hereof.

7.6 ALLOWABLE DEPENDENT CARE REIMBURSEMENT

Subject to limitations contained in Section 7.9 of this Program, and to the extent of the amount contained in the Participant's Dependent Care Flexible Spending Account, a Participant who incurs Employment-Related Dependent Care Expenses shall be entitled to receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

7.7 ANNUAL STATEMENT OF BENEFITS

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year. This statement is set forth on the Participant's Form W-2.

7.8 FORFEITURES

The amount in a Participant's Dependent Care Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

7.9 LIMITATION ON PAYMENTS

(a) **Code limits.** Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Dependent Care Flexible Spending Account in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or $5,000 ($2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

7.10 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Dependent Care Flexible Spending Account that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **25% test for shareholders.** It is the intent of this Dependent Care Flexible Spending Account that not more than 25 percent of the amounts paid by the Employer for dependent care assistance during the Plan Year will be provided for the class of individuals who are shareholders or owners (or their Spouses or Dependents), each of whom (on any day of the Plan Year) owns more than 5 percent of the stock or of the capital or profits interest in the Employer.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Dependent Care Flexible Spending Account by the affected Participant that elected to contribute the highest amount to such account for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the account equals the amount designated for the account of the affected

Participant who has elected the second highest contribution to the Dependent Care Flexible Spending Account for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.

7.11 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Dependent Care Flexible Spending Account. The enrollment and termination of participation under the Cafeteria Plan shall constitute enrollment and termination of participation under this Dependent Care Flexible Spending Account. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

7.12 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT CLAIMS

The Administrator shall direct the payment of all such Dependent Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred during the Plan Year and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Program for Employment-Related Dependent Care Expenses submit a statement which may contain some or all of the following information:

(a) The Dependent or Dependents for whom the services were performed;

(b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;

(c) The relationship, if any, of the person performing the services to the Participant;

(d) If the services are being performed by a child of the Participant, the age of the child;

(e) A statement as to where the services were performed;

(f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;

(g) If the services were being performed in a day care center, a statement:

(1) that the day care center complies with all applicable laws and regulations of the state of residence,

(2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and

(3) of the amount of fee paid to the provider.

(h) If the Participant is married, a statement containing the following:

(1) the Spouse's salary or wages if he or she is employed, or

(2) if the Participant's Spouse is not employed, that

(i) he or she is incapacitated, or

(ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.

(i) **Claims for reimbursement.** If a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator. However, if a Participant terminates employment during the Plan Year, claims for reimbursement must be submitted within 90 days after termination of employment.

7.13 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Employment-Related Dependent Care Expenses, subject to the following terms:

(a) **Card only for dependent care expenses.** Each Participant issued a card shall certify that such card shall only be used for Employment-Related Dependent Care Expenses. The Participant shall also certify that any Employment-Related Dependent Care Expense paid with the card has not already been reimbursed by any other plan covering dependent care benefits and that the Participant will not seek reimbursement from any other plan covering dependent care benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Dependent Care Flexible Spending Account. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Dependent Care Flexible Spending Account.

(c) **Only available for use with certain service providers.** The cards shall only be accepted by such service providers as have been approved by the Administrator. The cards shall only be used for Employment-Related Dependent Care Expenses from these providers.

(d) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(e) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as an Employment-Related Dependent Care Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

(1) Repayment of the improper amount by the Participant;

(2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;

(3) Claims substitution or offset of future claims until the amount is repaid; and

(4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

ARTICLE VIII
BENEFITS AND RIGHTS

8.1 CLAIM FOR BENEFITS

(a) **Insurance claims.** Any claim for Benefits underwritten by Insurance Contract(s) shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.

(b) **Dependent Care Flexible Spending Account or Health Flexible Spending Account claims.** Any claim for Dependent Care Flexible Spending Account or Health Flexible Spending Account Benefits shall be made to the Administrator. For the Health Flexible Spending Account, if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator. However, if a Participant terminates employment during the Plan Year, claims for the reimbursement of Medical Expenses must be submitted within 90 days after termination of employment. For the Dependent Care Flexible Spending Account, if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator. However, if a Participant terminates employment during the Plan Year, claims for reimbursement must be submitted within 90 days after termination of employment. If the Administrator denies a claim, the Administrator may provide notice to the Participant or beneficiary, in writing, within 90 days after the claim is filed unless special circumstances require an extension of time for processing the claim. The notice of a denial of a claim shall be written in a manner calculated to be understood by the claimant and shall set forth:

(1) specific references to the pertinent Plan provisions on which the denial is based;

(2) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and

(3) an explanation of the Plan's claim procedure.

(c) **Appeal.** Within 60 days after receipt of the above material, the claimant shall have a reasonable opportunity to appeal the claim denial to the Administrator for a full and fair review. The claimant or his duly authorized representative may:

(1) request a review upon written notice to the Administrator;

(2) review pertinent documents; and

(3) submit issues and comments in writing.

(d) **Review of appeal.** A decision on the review by the Administrator will be made not later than 60 days after receipt of a request for review, unless special circumstances require an extension of time for processing (such as the need to hold a hearing), in which event a decision should be rendered as soon as possible, but in no event later than 120 days after such receipt. The decision of the Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.

(e) **Forfeitures.** Any balance remaining in the Participant's Health Flexible Spending Account (excluding any carryover) or Dependent Care Flexible Spending Account as of the end of the time for claims reimbursement for each Plan Year shall be forfeited and deposited in the benefit plan surplus of the Employer pursuant to Section 6.3 or Section 7.8, whichever is applicable, unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in his account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus.

8.2 APPLICATION OF BENEFIT PLAN SURPLUS

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan (excepting any carryover); nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the benefit plan surplus shall be used to defray any administrative costs and experience losses or used to provide additional benefits under the Plan.

ARTICLE IX
ADMINISTRATION

9.1 PLAN ADMINISTRATION

The Employer shall be the Administrator, unless the Employer elects otherwise. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing acceptance in writing (or such other form as acceptable to both parties) with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

If the Employer elects, the Employer shall appoint one or more Administrators. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing acceptance in writing (or such other form as acceptable to both parties) with the Employer. An Administrator may resign by delivering a resignation in writing (or such other form as acceptable to both parties) to the Employer or be removed by the Employer by delivery of notice of removal (in writing or such other form as acceptable to both parties), to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Employees entitled to participate in the Plan in accordance with the terms of the Plan and the Code.

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power and discretion to administer the Plan in all of its details and determine all questions arising in connection with the administration, interpretation, and application of the Plan. The Administrator may establish procedures, correct any defect, supply any information, or reconciles any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan. The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the Plan, including, but not limited to, in addition to all other powers provided by this Plan:

(a) To make and enforce such procedures, rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;

(b) To interpret the provisions of the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;

(c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;

(d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;

(e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan and to assist any Participant regarding the Participant's rights, benefits or elections under the Plan;

(f) To keep and maintain the Plan documents and all other records pertaining to and necessary for the administration of the Plan;

(g) To review and settle all claims against the Plan, to approve reimbursement requests, and to authorize the payment of benefits if the Administrator determines such shall be paid if the Administrator decides in its discretion that the applicant is entitled to them. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;

(h) To appoint such agents, counsel, accountants, consultants, and other persons or entities as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

9.2 EXAMINATION OF RECORDS

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

9.3 PAYMENT OF EXPENSES

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

9.4 INSURANCE CONTROL CLAUSE

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

9.5 INDEMNIFICATION OF ADMINISTRATOR

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

ARTICLE X
AMENDMENT OR TERMINATION OF PLAN

10.1 AMENDMENT

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

10.2 TERMINATION

The Employer reserves the right to terminate this Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Insurance Contract.

No further additions shall be made to the Health Flexible Spending Account or Dependent Care Flexible Spending Account, but all payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or account as of the end of such period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period.

ARTICLE XI
MISCELLANEOUS

11.1 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 11.12.

11.2 GENDER, NUMBER AND TENSE

Wherever any words are used herein in one gender, they shall be construed as though they were also used in all genders in all cases where they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

11.3 WRITTEN DOCUMENT

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

11.4 EXCLUSIVE BENEFIT

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

11.5 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

11.6 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

11.7 EMPLOYER'S PROTECTIVE CLAUSES

(a) **Insurance purchase.** Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) **Validity of insurance contract.** The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

11.8 NO GUARANTEE OF TAX CONSEQUENCES

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

11.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

11.10 FUNDING

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

11.11 GOVERNING LAW

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the Commonwealth of Virginia.

11.12 SEVERABILITY

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

11.13 CAPTIONS

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

11.14 CONTINUATION OF COVERAGE (COBRA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B, and related regulations. This Section shall only apply if the Employer employs at least twenty (20) employees on more than 50% of its typical business days in the previous calendar year.

11.15 FAMILY AND MEDICAL LEAVE ACT (FMLA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

11.16 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

11.17 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder.

11.18 COMPLIANCE WITH HIPAA PRIVACY STANDARDS

(a) **Application.** If any benefits under this Cafeteria Plan are subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.

(b) **Disclosure of PHI.** The Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including genetic information and information about treatment or payment for treatment.

(c) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of Plan administrative functions. The Plan's administrative functions shall include all Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill Plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care. Protected Health Information that consists of genetic information will not be used or disclosed for underwriting purposes.

(d) **PHI disclosed to certain workforce members.** The Plan shall disclose Protected Health Information only to members of the Employer's workforce who are designated and authorized to receive such Protected Health Information, and only

to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

(1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the Plan.

(2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the Plan's privacy official. The privacy official shall take appropriate action, including:

(i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;

(ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;

(iii) mitigation of any harm caused by the breach, to the extent practicable; and

(iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.

(e) **Certification.** The Employer must provide certification to the Plan that it agrees to:

(1) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law;

(2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;

(3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;

(4) Report to the Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;

(5) Make available Protected Health Information to individual Plan members in accordance with Section 164.524 of the Privacy Standards;

(6) Make available Protected Health Information for amendment by individual Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;

(7) Make available the Protected Health Information required to provide an accounting of disclosures to individual Plan members in accordance with Section 164.528 of the Privacy Standards;

(8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Department of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Standards;

(9) If feasible, return or destroy all Protected Health Information received from the Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

(10) Ensure the adequate separation between the Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

11.19 COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS

Under the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et. seq., the "Security Standards"):

(a) **Implementation.** The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the Plan. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.

(b) **Agents or subcontractors shall meet security standards.** The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.

(c) **Employer shall ensure security standards.** The Employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in Section 11.18.

11.20 MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Mental Health Parity and Addiction Equity Act.

11.21 GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Genetic Information Nondiscrimination Act.

11.22 WOMEN'S HEALTH AND CANCER RIGHTS ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Women's Health and Cancer Rights Act of 1998.

11.23 NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Newborns' and Mothers' Health Protection Act.

IN WITNESS WHEREOF, this Plan document is hereby executed this _____ day of _____.

Town of Herndon

_____ By _____
EMPLOYER

_____
WITNESSES AS TO EMPLOYER

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 12, 2023

Resolution- to approve the adoption of the 2022 Northern Virginia Regional Hazard Mitigation Plan.

The Town of Herndon recognizes the threat that natural hazards pose to people and property within our community and that undertaking hazard mitigation actions will reduce the potential for future harm from such hazard occurrences.

An adopted Local Hazard Mitigation Plan is required as a condition of funding for mitigation projects under multiple Federal Emergency Management Agency (FEMA) pre- and post-disaster mitigation grant programs. The Town of Herndon is located within the Northern Virginia Region planning area, and fully participated in the mitigation planning process to prepare this Local Hazard Mitigation Plan. The Virginia Department of Emergency Management and Federal Emergency Management Agency, Region 3, officials have reviewed the Northern Virginia Hazard Mitigation Plan and approved it contingent upon the adoption by the governing body.

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

1. The 2022 Northern Virginia Hazard Mitigation Plan and the Town of Herndon Annex as an official plan is hereby adopted.
2. The Town of Herndon will submit this Adoption Resolution to the Virginia Department of Emergency Management and the Federal Emergency Management Agency, Region 3, officials to enable the Plan's final approval.

Northern Virginia Hazard Mitigation Plan

Annex 7-B: Town of Herndon

November 2022

Town of Herndon Overview

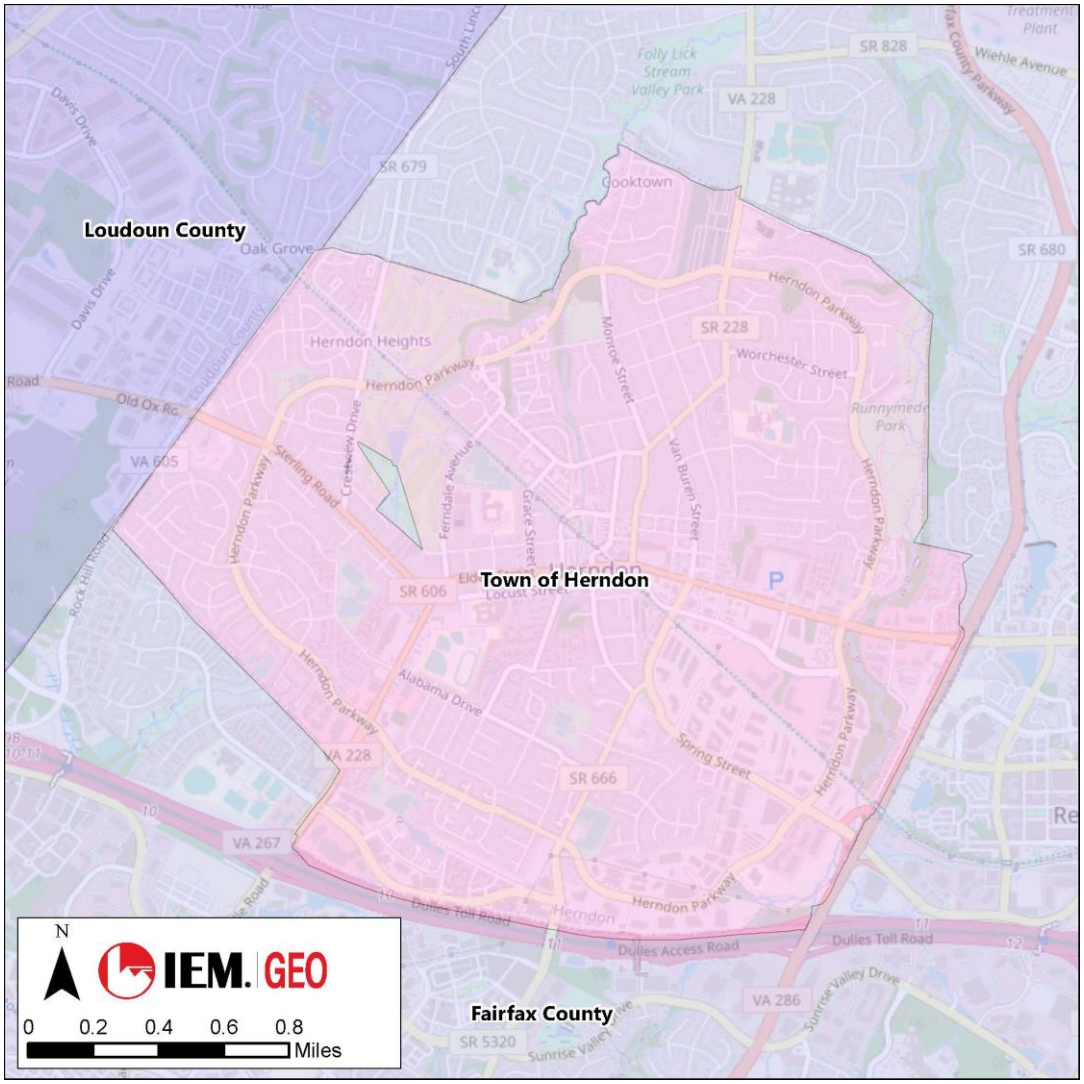

Table 1: Specific Jurisdictional Data

ESTABLISHED	LAND AREA	2020 POPULATION	GOVERNMENT ADDRESS	HOUSEHOLDS	MITIGATION FOCUS
1879	4.29 sq. mi.	24,367	777 Lynn Street, Herndon, VA 20170	7,920	Winter Weather, Flood/Flash Flood, High Wind/ Storm

Town of Herndon's Risk Environment

The following is a snapshot of the details in this annex. The well-researched details form the basis of effective mitigation strategies to improve community resilience.

Hazard Event History

National Centers for Environmental Information (NCEI),1950–June 2021

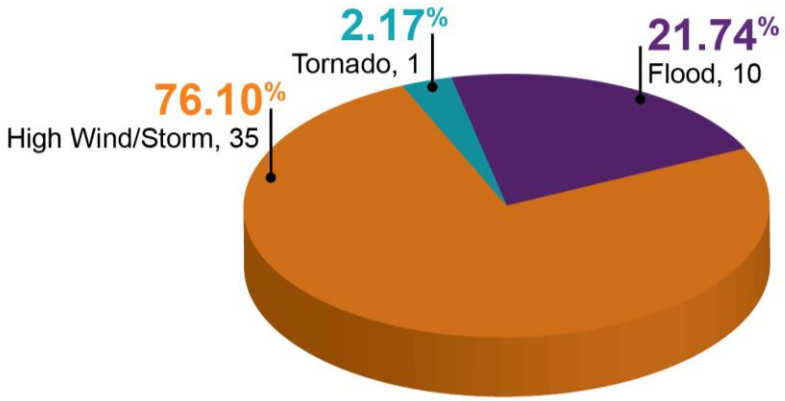

Figure 1: Number/Percentage of Hazard Events

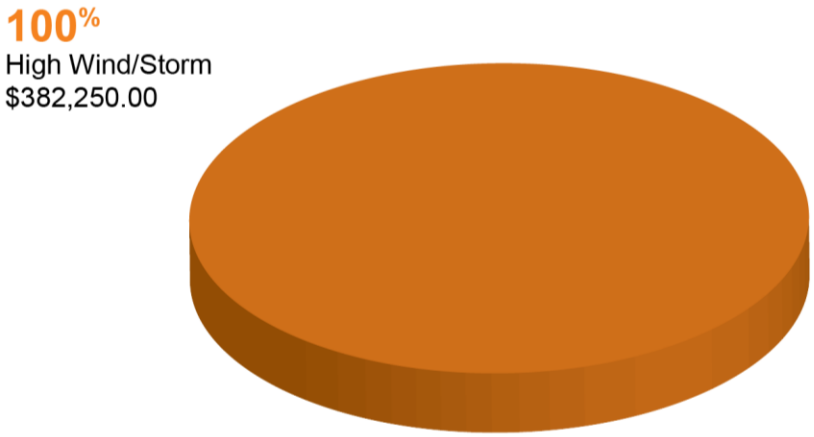

Figure 2: Property Damage Costs from Natural Hazard Events

Natural Hazard Risk Ranking

Table 2: Ranking of Natural Hazards by Risk

Hazard	Hazard Ranking
Winter Weather	**High**
Flood/Flash flood	**High**
High Wind/Severe Storm	**High**
Dam Failure	**High**
Tornado	**Medium**
Drought	**Medium**
Extreme Temperatures	**Medium**
Earthquake	**Medium**
Wildfire	**Low**
Sinkhole/Karst/Land subsidence	**Low**
Landslide	**Low**

Community Lifelines/Critical Assets

Table 3: Number of Critical Assets for Community Lifelines/Sectors

Lifeline/Sector	Number of Assets
Safety and Security	6
Food, Water and Shelter	2
Health and Medical	-
Energy	2
Communications	-
Transportation	8 highway bridges
Hazardous Materials	-
Education	26
Cultural/Historical	District
High Hazard Dams	-

A lifeline enables the continuous operation of government and business functions which are critical for human health, safety, or economic security. Lifelines are the most fundamental services for a community that, when stabilized, enable all other aspects of society to function. These lifelines are assets that may be a facility, infrastructure, operation, or entity.

Figure 3: Community Lifeline Components

Community Lifelines Outlined

- **Safety and Security:** Law Enforcement/Security, Fire Service, Search and Rescue, Government Service, Community Safety
- **Food, Water, Shelter:** Food, Water, Shelter, Agriculture
- **Health and Medical:** Medical Care, Public Health, Patient Movement, Medical Supply Chain, Fatality Management
- **Energy:** Power Grid, Fuel
- **Communications:** Infrastructure, Responder Communications, Alerts Warnings and Messages, Finance, 911 and Dispatch
- **Transportation:** Highway/Roadway/Motor Vehicle, Mass Transit, Railway, Aviation, Maritime
- **Hazardous Materials:** Facilities, HAZMAT, Pollutants, Contaminants

Mitigation Capabilities Summary

Table 4: Capability Assessment Summary Ranking, Town of Herndon

Capability	Ranking
Planning and Regulatory	High
Administrative and Technical	Moderate
Safe Growth	High
Financial	Moderate
Education and Outreach	Moderate

Hazard Mitigation Plan Point of Contact

Table 5: Point of Contact Information

Contact Type	Contact Information
Primary Point of Contact	Mark Dale, Lieutenant Town of Herndon Police Department 571-455-5407 Mark.Dale@Herndon-va.gov 397 Herndon PW Herndon, VA 20170

Town of Herndon

This annex presents the following jurisdiction-specific information provided by the Town of Herndon for the 2022 update to the *Northern Virginia Hazard Mitigation Plan (NOVA HMP)*.

Table of Contents

List of Tables

List of Figures

1. Jurisdiction Profile

Established	1879
Total Land Area	4.29 sq. mi.
Geographic Region	Piedmont/Coastal Plain
Persons Per Household	3.17
Persons Per Square Mile	5,220
Median Age	35.5
Elevations	361 feet

1.1. Location

Located in the northwest of Fairfax County. The Town of Herndon is bounded by Loudoun County on the west, the unincorporated areas of Dranesville on the north, Reston on the east, and Hunter Mill on the south. Herndon is part of the suburban ring of Washington, D.C.

1.2. History

Incorporated in 1879, the area on which the Town was built was originally granted to Thomas Culpeper by King Charles II of England in 1688. Much of the downtown was destroyed by a fire on March 22, 1917 but was rebuilt with brick instead of wood. Much of the early development was agricultural, but the building of the railroad in the 1850s encouraged more residential growth. The Town population grew significantly in the decades between 1970 and 2010.

1.3. Demographics, Economy, and Governance

The Northern Virginia regional profile is presented in **Section 1, Base Plan** as context to the entire plan. The 2020 U.S. Census population estimate for the Town of Herndon is 24,367, an approximate 4.6% increase since 2010. The Town is densely populated with 5,220 residents per square mile.

Table 6: Population and Growth Rate

Year	Population	Percent Increase over Previous Census
1970	4,301	-
1980	11,449	166.2%
1990	16,143	41%
2000	21,655	34.2%
2010	23,292	7.6%
2020	24,367	4.6%

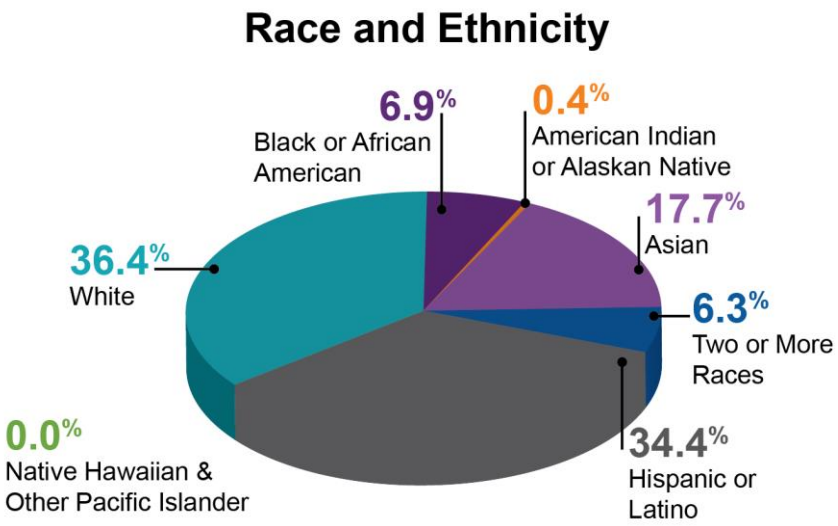

Figure 4: Race and Ethnicity Demographics from 2020 Census*

*Due to how people view Race and Ethnicity and answer the questions in the Census, there is overlapping of responses and results equal greater than 100% of the population.

Table 7: Economic Data

Economy	Data
Median Household Income (2019)	$111,371
Unemployment Rate (September 2021)	4.1%
Per Capita Income (2019)	$45,008
Percentage Below Poverty (2019)	6.3%

Approximately 44 percent of the town residents speak only English, while 56 percent speak other languages, predominantly Spanish.

1.4. Built Environment and Community Lifelines

The information related to Community Lifelines and critical assets in the Town of Herndon presented in this section has been collected from multiple sources, including Hazus (Version 4.2), and government websites. Data extracted from the Hazus Level 1 assessment indicates that the Town has an estimated 45 critical and historic assets. Due to the time lag in collecting and verifying data, and the method of documenting location and jurisdiction used in Hazus, this may not reflect the current inventory maintained by the Town of Herndon.

The Town of Herndon maintains a detailed list of community lifeline facilities, sites, and critical assets.

Table 8: Number of Assets per Community Lifeline/Sector[1]

Lifeline/Sector	Number of Assets
Safety and Security	6
Food, Water, Shelter	2
Health and Medical	-
Energy	2
Communications	-
Transportation	8 highway bridges
Hazardous Materials	-
Education	26
Cultural/Historical	District
High Hazard Dams	-

1.4.1. Safety and Security

One police station and four fire stations serve the Town. In addition, the Herndon Emergency Operations Center provides a multi-agency coordination center for all-hazard response.

1.4.2. Food, Water, Shelter

Food commodities are available throughout the Town from public retail providers, wholesalers, and contracted services for specific institutions and facilities. Additional contracts may be entered into for post-disaster needs.

The Town of Herndon provides water and sewer services for its residents. Two potable water facilities are identified for the Town in the Hazus database.

The Hazus database does not identify schools that might be used as public shelters.

1.4.3. Health and Medical

The Hazus database does not identify health and medical facilities offering patient care, urgent care, emergency rooms, and other healthcare services in the Town of Herndon.

1.4.4. Energy

There are two utility companies that provide services to the Town of Herndon – Dominion Energy and Columbia Gas of Virginia.

1.4.5. Communications

The Hazus database does not identify town-level communication/broadcast facilities.

[1] Source: Fairfax County, Hazus-MH

Most communications and information systems and infrastructure in the United States are privately owned; however, Fairfax County maintains authority and control over public safety communications for fire, police, and other responding agencies for the Town of Herndon. In recent years, the federal government has taken a stronger role in protecting information and communications infrastructure, which may also present a challenge in relation to disaster impacts. Increasing reliance on this infrastructure by individuals, businesses, and government could cause vulnerabilities that emergency managers should take into consideration in pre- and post-incident planning and operations.

1.4.6. Transportation

The Town of Herndon is served by the following major highways and commuter rail lines:

- State Routes 228 and 606
- Washington Metropolitan Area Transit Authority (WMATA) Metrorail—Silver Line

Hazus identifies eight highway bridges in the Town. The maintenance of transportation facilities and systems is the responsibility of the owner or entity with authority, including municipal, county, state, and federal highway departments, and agencies; toll and rail authorities; and the military. The Virginia Department of Transportation maintains most primary and secondary roads in Fairfax County, except for the Dulles Toll Road, which is under the authority of the Metropolitan Washington Airports Authority (MWAA), and the George Washington Memorial Parkway, which is under the authority of the National Park Service. Metrorail maintains the authority for the operation and maintenance of the commuter rail system.

The Washington Dulles International Airport is located less than five miles from the Town of Herndon. The Hazus database identifies transportation assets at the county level only.

1.4.7. Hazardous Materials

The Hazus database identifies one oil refinery, one natural gas facility, and thirteen natural gas pipeline locations within Fairfax County; however, these are not identified at the town level.

1.4.8. Education

There are 26 public and private educational facilities listed in the Hazus database for the Town of Herndon.

1.4.9. Recreational, Cultural and Historic Sites, and Assets

The Herndon Parks and Recreation Department develops and maintains the community's park system to support recreation and the residents' health through the preservation of environmentally sensitive land and resources and areas of historic significance as well as the provision of recreational facilities and services.

The Town of Herndon maintains a historic preservation program that identifies and designates historic sites and structures. The Historic District Review Board provides guidance to property owners on appropriate measures for preserving and protecting historic properties and buildings. In addition, the Board educates the community on historic preservation and publishes guidelines that describe the Board's oversight and regulatory responsibilities for the Town's four historic districts an additional sites and structures. Historic District Overlay Guidelines educating property owners about appropriate changes to historic structures were most recently published in October 2020.

These sites are designated by the National Register of Historic Places, Virginia Landmarks Register, and/or the Historic Overlay District. Historic assets are addressed in the Town's Comprehensive Plan. The four Historic Overlay Districts are recognized under the Zoning Ordinance to provide regulations over and above the regular zoning protection to prevent the destruction of or encroachment upon such areas and structures, and to prevent the creation of environmental influences adverse to the purposes of these assets. These sites serve as an asset by providing significant context to the Town's development over time and contributing to the community's tourism economy.

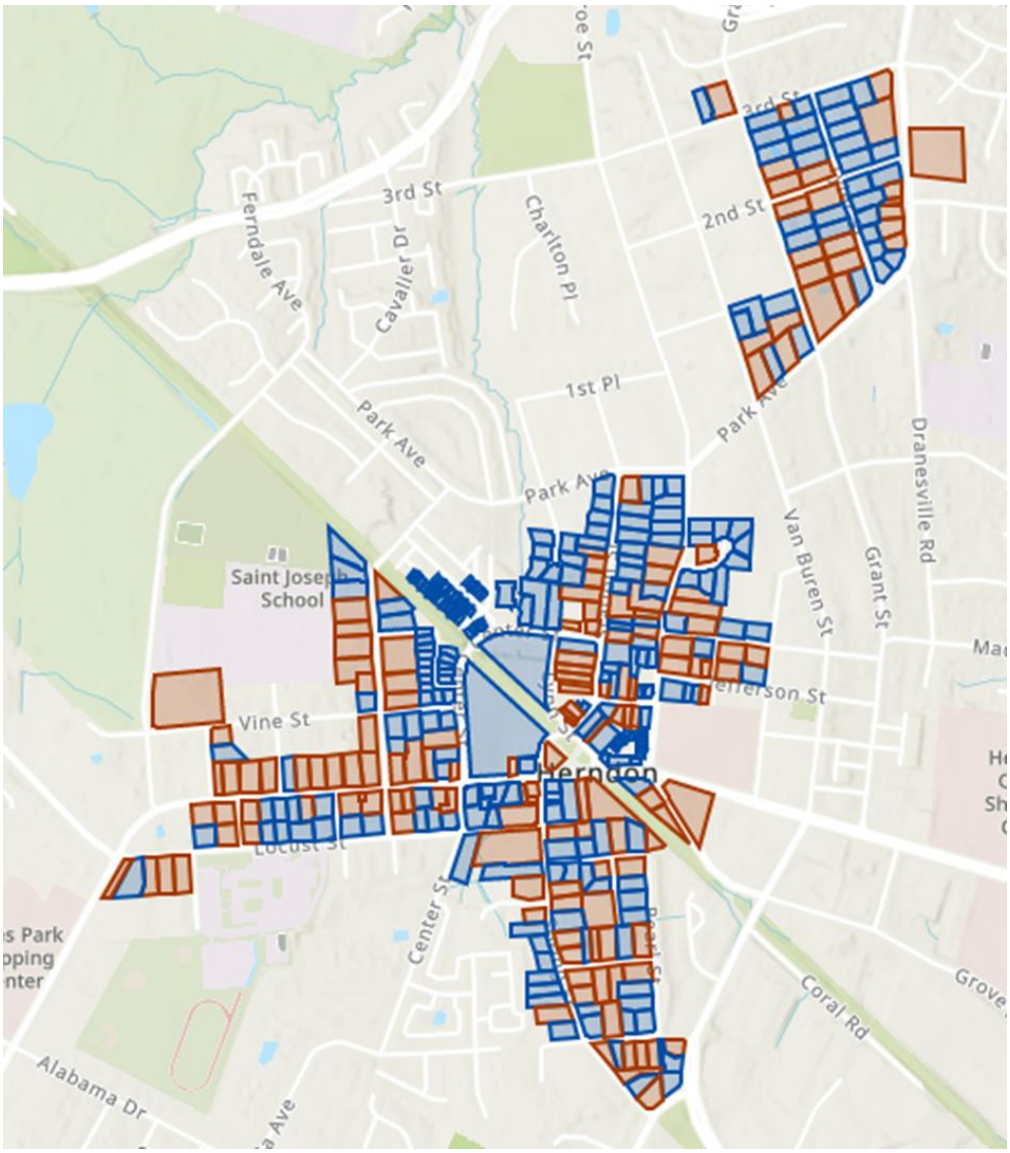

Figure 5: Town of Herndon Historic Overlay District Properties (Contributing and Non-Contributing)[2]

[2] Town of Herndon Department of Community Planning, https://www.herndon-va.gov/departments/community-development/planning-policy/heritage-preservation

1.5. Growth and Development Trends

The Town's population grew rapidly between the 1970s and 2000s, more than quadrupling during those decades. Since 2010, the rate of population growth stabilized, with the most recent change showing a 6.6% growth rate between 2010 and 2020.

The Town's 2030 land use plan indicates business corridors (pink), office parks (light blue), and the area designated for Regional Corridor Mixed Use (purple) which includes the Herndon Metrorail Station with a pedestrian bridge. The area in dark pink with the dotted border represents the Downtown Master Plan which is detailed in the Town's Comprehensive Plan. Areas in light yellow indicate neighborhood conservation areas. All areas in green indicate open space or recreational land uses.

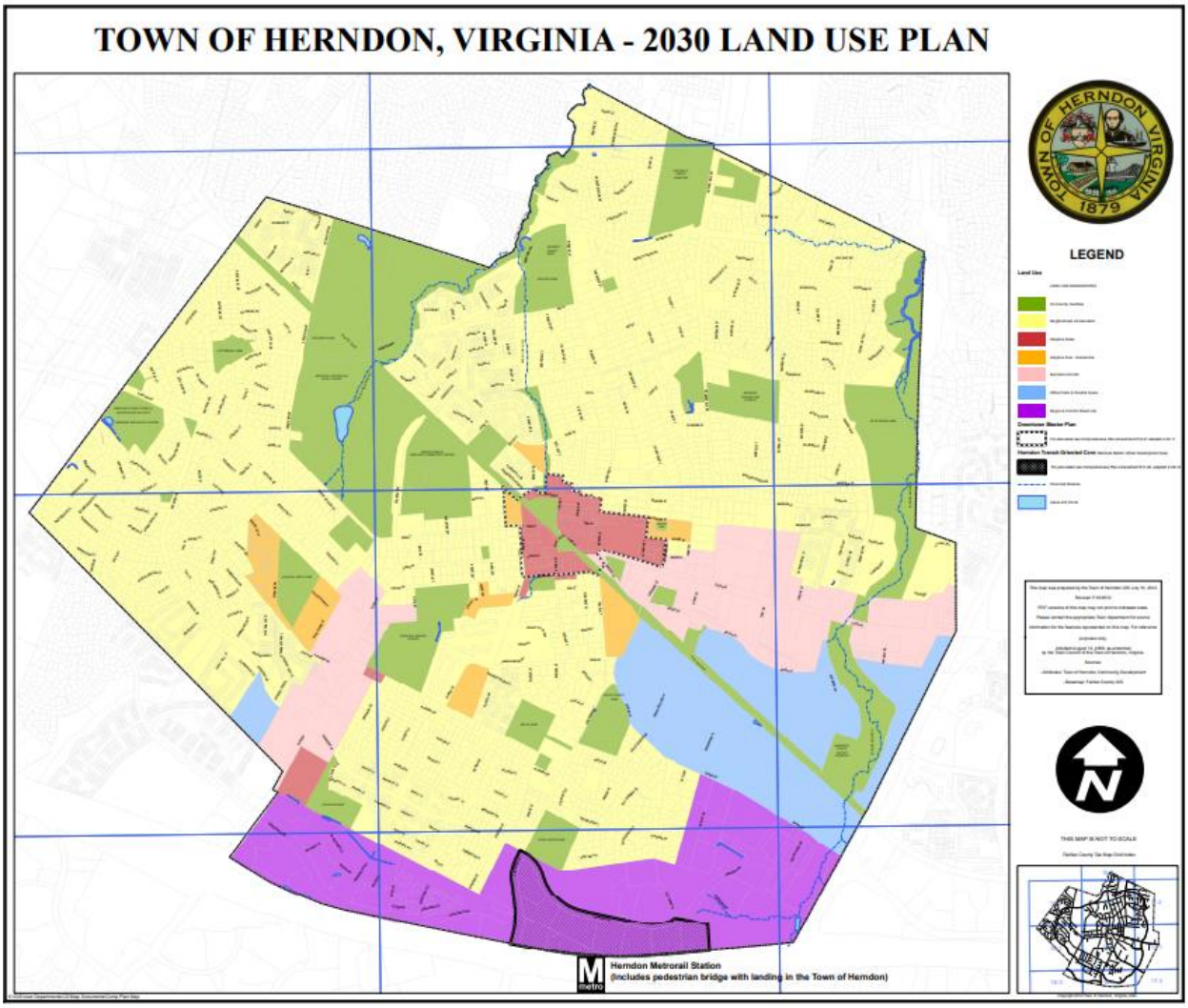

Figure 6: Town of Herndon 2030 Land Use Plan[3]

[3] Town of Herndon; https://www.herndon-va.gov/home/showpublisheddocument/3620/635986400070270000

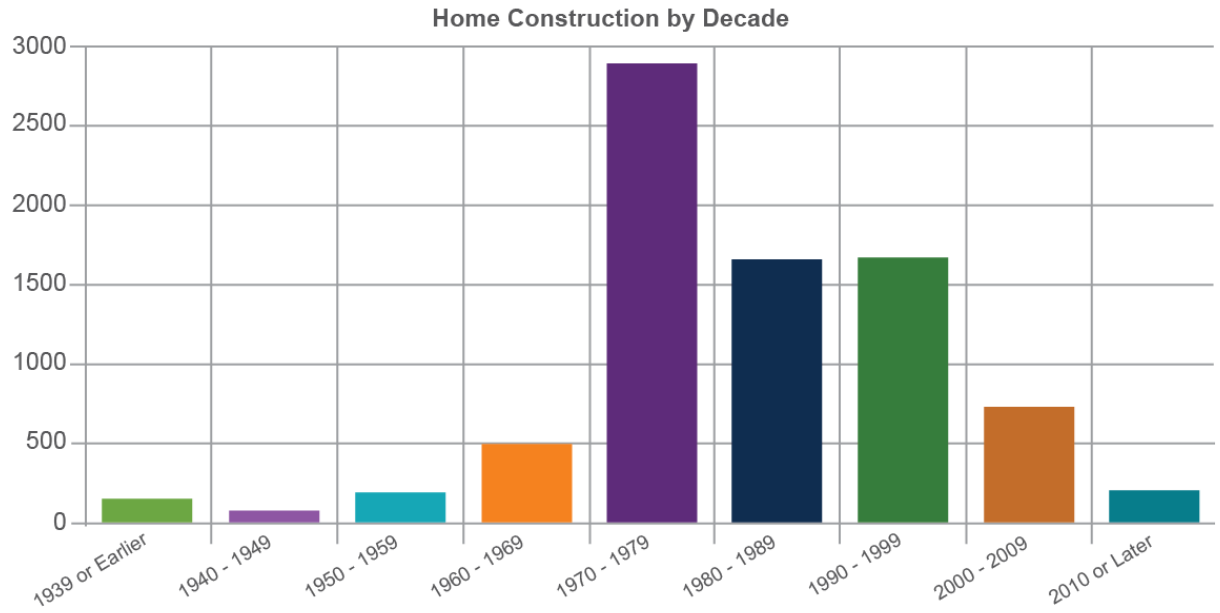

Figure 7: Home Construction by Decade, Town of Herndon[4]

Demands for increases in development and infrastructure in the future may result in pressures to build in areas that are susceptible to impacts from natural hazards such as floods. Land-use controls through the county's ordinances and regulations provide some protection against this pressure but should be continuously monitored for new demands that could increase hazard risks in the future.

The Town of Herndon controls the land use policies and practices within its jurisdiction and will continue to be a planning partner with the county and regional entities to identify hazard mitigation opportunities related to growth and development that reduce risk.

[4] Point2Homes.com. Retrieved at: https://www.point2homes.com/US/Neighborhood/VA/Herndon-Demographics.html

2. Jurisdiction Planning Process

For the 2022 NOVA HMP update, the Town of Herndon followed the planning process described in **Section 2, Base Plan**. In addition to providing representation to the Northern Virginia Hazard Mitigation Planning Team, the Town supported the local planning process requirements by coordinating with representatives from other departments and agencies within its jurisdiction.

Table 9: Local Planning Group Participants

Name	Position/Title	Department/Agency
Mark Dale	Lieutenant	Town of Herndon Police Department
David Stromberg	Zoning Administrator	Community Development
Tammy Chastain	Deputy Director	Town of Herndon Public Works

The Town identified its chief hazard mitigation planning responsibility as representing the Town in coordination with the Fairfax County representative to the Emergency Managers Group. The Town also identified the following tasks as part of its mitigation planning responsibilities:

- Conduct a Hazard risk and vulnerability assessment
- Provide technical data and hazard information
- Conduct a Capabilities assessment
- Develop a Mitigation strategy
- Sponsor mitigation actions
- Review Plan drafts and provide input
- Lead Public outreach activities
- Implement of the Plan
- Maintain the Plan

Town of Herndon planning participants coordinated primarily by means of virtual meetings with Fairfax County during the planning process, and as needed, independently to carry out planning activities completed through a series of worksheets that provided background information on the history of hazard events, hazard risks and vulnerabilities, capabilities, and past mitigation efforts. Additional planning process documentation of the Planning Group meetings is included in the **Base Plan, Appendix A.**

2.1. Public Participation

Several opportunities for public involvement were provided during the planning process, including a Public Hazard Survey, which was posted and advertised on the Police Department's Facebook and Twitter pages. The survey was opened on August 8th, 2021, and closed on November 3rd, 2021, with over 1,000 responses coming in over that period of time. The Town of Herndon had 15 responses from those who reported living in the Town.

There were 2 questions that got almost the same answer from everyone that took the survey, and those responses identified the natural hazard of climate change and the non-natural hazard of the pandemic to be the most concerning hazards for those who resided in the Northern Virginia Area.

In addition to the survey, the public was offered the opportunity to review and provide input to the Draft 2022 Plan update. Notification of the Draft Plan release was made social media pages. Documentation of the public survey and draft plan review is included in **Attachment 2 of Annex 7, Fairfax County**.

3. Jurisdiction-Specific Hazard Event History

The Town of Herndon's comprehensive hazard history is combined with Fairfax County, and described in **Sections 4 and 5, Base Plan**.

The National Oceanic and Atmospheric Administration (NOAA) National Center for Environmental Information (NCEI) Storm Events Database includes 1,478 recorded natural meteorological events that took place in Fairfax County between January 1, 1950, and May 2021. The county and its municipalities have been included in three Federal Disaster Declarations and emergencies between 2017 and May 2021.

Table 10: Federal Disaster and Emergency Declarations (2017–2021), Fairfax County[5]

Declaration	Date	Hazard	Assistance Type
DR-4512-VA	4/2/2020 (continuing)	COVID-19 Pandemic	Individual Assistance, Public Assistance
EM-3448-VA	3/13/2020 (continuing)	COVID-19 Pandemic	Public Assistance (Category B)
EM-3403-VA	9/11/2018	Hurricane Florence	Public Assistance (Category B)

The Town of Herndon Planning Team highlighted severe thunderstorms, snowstorms, and the March 2018 winter storm as significant hazards that have occurred since the 2017 plan. Data related to these hazard events is included in **Annex 7, Fairfax County**.

[5] Source: FEMA

4. Hazard Risk Ranking

After developing hazard profiles, the Town of Herndon conducted a two-step quantitative risk assessment for each hazard that considered population vulnerability, geographic extent/location, probability of future occurrences, and potential impacts and consequences. The numerical scores for each category were totaled to obtain an Overall Risk Score, which is summarized as one of these risk and vulnerability classifications:

- **Low:** Two or more criteria fall in lower classifications or the event has a minimal impact on the planning area. This rating is sometimes used for hazards with a minimal or unknown record of occurrences or for hazards with minimal mitigation potential.
- **Medium:** The criteria fall mostly in the middle ranges of classifications and the event's impacts on the planning area are noticeable but not devastating. This rating is sometimes used for hazards with a high extent rating but very low probability rating. The potential damage is more isolated and less costly than a widespread disaster.
- **High:** The criteria consistently fall in the high classifications and the event is likely/highly likely to occur with severe strength over a significant to extensive portion of the planning area.

The two-step hazard risk ranking methodology is detailed in **Section 4, Base Plan**.

The Overall Risk Score for each hazard served as the basis for determining whether a vulnerability assessment should be conducted. Natural hazard profiles are presented within the hazard sub-sections in **Section 5, Base Plan**, and local detail is provided in the Jurisdiction Annexes. Non-natural hazard profiles are presented in **Volume II of the Base Plan**.

Table 11: Hazard Risk Ranking Summary, Natural Hazards

Hazard	Total Probability Score	Total Consequence Score	Overall Risk Score	Hazard Ranking
Winter Weather	3.7	3.5	7.2	**High**
Flood/Flash flood	1.7	4.2	5.9	**High**
High Wind/Severe Storm	2.7	3.2	5.8	**High**
Dam Failure	1.0	4.5	5.5	**High**
Tornado	1.3	4.2	5.5	**Medium**
Drought	2.0	3.2	5.2	**Medium**
Extreme Temperatures	2.7	2.5	5.2	**Medium**
Earthquake	1.7	3.2	4.9	**Medium**
Wildfire	1.0	3.0	4.0	**Low**
Sinkhole/Karst/Land subsidence	1.0	2.5	3.5	**Low**
Landslide	1.0	2.5	3.5	**Low**

Table 12: Hazard Risk Ranking Summary, Non-Natural Hazards

Hazard	Total Probability Score	Total Consequence Score	Overall Risk Score	Hazard Ranking
Infectious Disease/Public Health	3.0	5.8	8.8	**High**
Terrorism	1.0	6.4	7.4	**High**
Cyber Attack	2.0	4.7	6.7	**High**
Civil Unrest	1.3	5.0	6.3	**Medium**
Communication Disruption	1.3	3.7	5.0	**Medium**
Hazardous Materials	1.0	3.9	4.9	**Low**
Active Violence	1.0	3.6	4.6	**Low**

Based on the hazard risk scores, the Town of Herndon evaluated the level of risk for 18 hazards: 11 natural and 7 non-natural.

Eight natural hazards were identified as high or medium risk hazards to which the jurisdiction is vulnerable:

- **High:** Winter weather, Flood/Flash Flood, High Wind/Severe Storm, and Dam Failure
- **Medium:** Tornado, Drought, Extreme Temperatures, and Earthquake

Five non-natural hazards were ranked as high or medium risk:

- **High:** Infectious Disease/Public Health, Terrorism, and Cyber Attack
- **Medium:** Civil Unrest, and Communication Disruption

All other hazards are ranked as “low,” signifying a minimal risk to the Town of Herndon.

4.1. Additional Hazard Risk Considerations

Volume II of the *2022 Northern Virginia Hazard Mitigation Plan* addresses non-natural hazards identified by the jurisdiction. During the needs assessment process, the Town of Herndon identified the risk of cyber-related incidents on Critical Infrastructure/Key Resources (CI/KR). This hazard should be monitored in the next planning cycle to identify potential incidents, define risks and vulnerabilities, and develop a potential mitigation strategy.

5. Vulnerability Assessment

The methodology for calculating loss estimates presented in this annex is the same as that described in **Section 4, Base Plan**. Quantitative loss estimates are provided when available. Qualitative measurement considers hazard data and characteristics, including the potential impact and consequences based on past occurrences. A discussion of community assets potentially at risk during a hazard event accompanies the data.

Annex 7, Fairfax County includes a statistical compilation of the number of events and related impacts for the two highest-ranked hazards for the Town of Herndon, severe winter weather and flood/flash flood.

5.1. National Flood Insurance Program

The Town of Herndon is a participant in the National Flood Insurance Program (NFIP).

Table 13: National Flood Insurance Program Status, Town of Herndon[6]

Init FHBM Identified	6/14/1974
Init FIRM Identified	8/1/1979
Current Effective Map Date	9/17/2010
Reg-Emer Date	8/1/1979

Table 14: NFIP Policy and Claims Status, Town of Herndon [7]

Policies In-Force	101
Premiums Paid	Unknown
Total Claims	16
Total Payment	$19,000

Table 15: NFIP Status, as of October 11, 2021[8]

Category	NFIP Topic	Source of Information	Comments
Insurance	How many NFIP policies are in the community? What is the total premium and coverage?	FEMA Risk Map – March 2020	70 Policies
Insurance	How many claims have been paid in the community? What is the total amount of paid claims? How many of the	FEMA Risk Map – March 2020	16 Paid Claims totaling $19,000

[6] FEMA NFIP Community Status Report, September 9, 2021
[7] FEMA NFIP Policy Information by State and Community Report, February 29, 2020
[8] Town of Herndon, Floodplain/NFIP Administrator Richard Smith, PE

Category	NFIP Topic	Source of Information	Comments
	claims were for substantial damage?		
Insurance	How many structures are exposed to flood risk within the community?	FEMA Risk Map – March 2020	Between 40 -45 structures under current effective FEMA maps; 15 structures under draft FEMA maps
Insurance	Describe any areas of flood risk with limited NFIP policy coverage	Community FPA and FEMA Insurance Specialist	This information is not available. Information from the State NFIP Coordinator or the FEMA Insurance Specialist must be compared against those properties within a floodplain that lack any NFIP policy coverage.
Staff Resources	Is the Community FPA or NFIP Coordinator certified?	Community FPA	The Community FPA is a Professional Engineer licensed in the Commonwealth of Virginia. The FPA is not a Certified Floodplain Manager.
Staff Resources	Is floodplain management an auxiliary function?	Community FPA	Yes. Floodplain management in the Town is managed with overlay districts within the Town's zoning ordinance. The Senior Civil Engineer serves as the Floodplain Manager and administers all necessary permits and reviews of improvements within the floodplain limits. The Zoning Administrator administers the overlay district which addresses the RPA areas through a Special Exception process. Both staff members combine to enforce the Floodplain Ordinance.
Staff Resources	Provide an explanation of NFIP administration services (e.g., permit review, GIS, education or outreach, inspections, engineering capability)	Community FPA	The Town provides the following NFIP administration services: • Administers permit requirements for all improvements within the floodplain • Performs engineering technical review of all required aspects of floodplain applications

Category	NFIP Topic	Source of Information	Comments
			• Interprets mapping using GIS provided by state agencies
Staff Resources	What are the barriers to running an effective NFIP program in the community, if any?	Funding for a dedicated CFM position and a GIS staff position	Community FPA
Compliance History	Is the community in good standing with NFIP?	Yes	State NFIP Coordinator, FEMA NFIP Specialist, community records
Compliance History	Are there any outstanding compliance issues (i.e., current violations)?	No	Community FPA
Compliance History	When was the most recent Community Assistance Visit (CAV) or Community Assistance Contact (CAC)?	Unknown. This occurred prior to either the current Zoning Administrator or my employment with the Town. (The Zoning Administrator administers the Floodplain Overlay District within the Town).	Community FPA

5.2. Population

Estimates of the number of residents in the Town of Herndon vulnerable to each hazard are presented in the various hazard sections in the **Base Plan**.

The Centers for Disease Control and Prevention's (CDC) Social Vulnerability Index (SVI) is a tool that can be used to identify specific vulnerable populations.

The Overall CDC SVI for Fairfax County, including the Town of Herndon is presented in **Annex 7, Fairfax County**.

5.3. Built Environment and Community Lifelines and Assets

The Town of Herndon provided a list of thirty-seven town-owned sites and structures as part of its critical facilities inventory. The listing identifies the location (including address, latitude, and longitude), construction type, roof type, building value, contents value, property in open value, and total insured value of all assets. The inventory does not identify whether facilities are in hazard-prone areas such as flood zones and was not categorized by the FEMA Community Lifelines, but this could be addressed in the next planning cycle by sorting the sites in the Lifeline categories and creating GIS maps of the sites overlaid on flood zones, wildfire risk areas, and other areas susceptible to specific hazards.

Using the best Hazus data available, scenarios were run at the county level for earthquake, flood, and hurricane wind to determine potential exposure of buildings, infrastructure, and economy. Information presented in **Annex 7, Fairfax County** includes the Town of Herndon.

Vulnerabilities include structures, systems, resources, and other assets defined by the community as susceptible to damage and loss from hazard events.[9] The vulnerability of critical infrastructure is presented within the lifeline sector categories identified by FEMA.

The assets at risk were identified during the planning process as potential assets vulnerable to one or more hazards.

Table 16: Community Lifelines/Critical Facilities Exposed to FEMA Floodplains, Town of Herndon[10]

Facility Type	Total Number	In 100-Year Floodplain	In 500-Year Floodplain
Highway Bridges	8	5	0

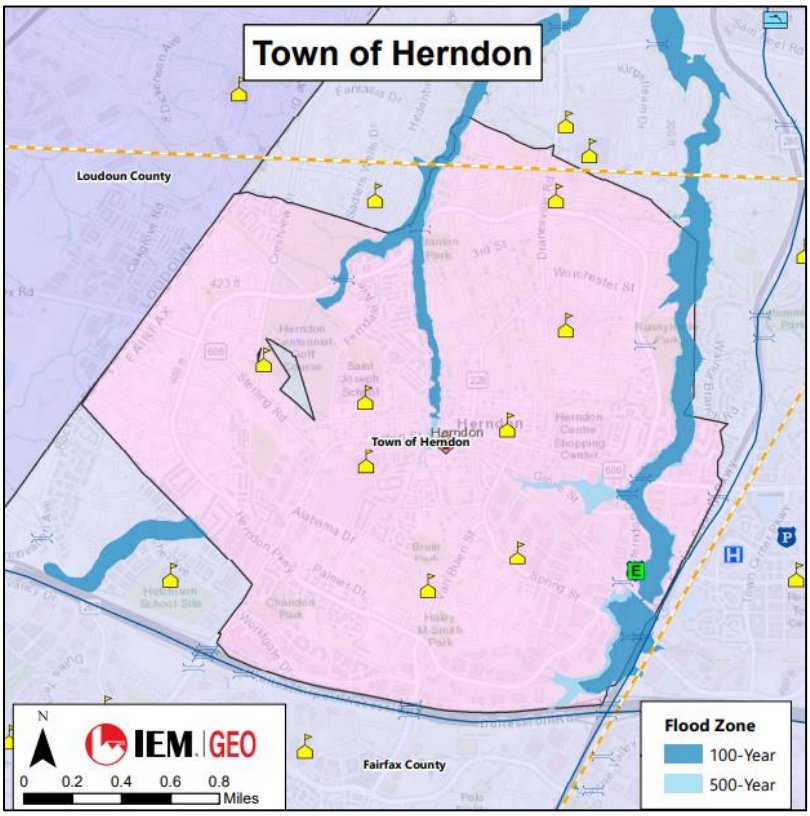

Figure 8: Critical Facilities Exposed to FEMA Floodplains, Town of Herndon[11]

[9] Although Fairfax County maintains a separate critical facilities inventory, information used in this analysis is extracted from the Hazus-MH critical facilities database to maintain consistency with other jurisdictions.
[10] Source: Hazus-MH
[11] Hazus 100- and 500-Year Flood Scenarios, August 3, 2021.

Overlaying the critical facilities in Herndon on the mapped flood zones illustrate that the only facilities within the 100- or 500-year floodplains are highway bridges.

5.4. Environment

Information related to environmental vulnerability is presented in the hazard-specific sections of the **Base Plan**.

5.5. Economy

Information related to economic vulnerability is presented in the hazard-specific sections of the **Base Plan**. Specific direct economic losses (in thousands of dollars) related to a 2500-year 6.5 magnitude earthquake event are identified by Hazus for specific assets and presented in **Annex 7, Fairfax County**.

5.6. Cultural/Historical

Information related to the vulnerability of cultural and historical assets are presented in the hazard-specific sections of the **Base Plan**.

Historic structures and sites are frequently more vulnerable to flood hazards due to the typical development of a city or town along waterways. Because removing historic structures from their original sites affects their historical value, there are challenges to protecting these fragile sites.

The Town of Herndon has significant historical and cultural landmarks that are identified and protected by overlay districts. The *Historic District Overlay Guidelines*, adopted on November 17, 2020, provide a process and detailed procedures that may be applied in post-disaster impact conditions to protect cultural and historical assets from inappropriate repair, demolition, or redevelopment. As a Certified Local Government, under the Virginia Department of Historic Resources, the Town of Herndon indicates its commitment to protect and maintain these assets.

6. Capability Assessment

The Town of Herndon reviewed its legislative and departmental capabilities to identify resources, strengths, and gaps for implementing hazard mitigation efforts. Using a Capabilities Assessment Worksheet, the community documented existing institutions, plans, policies, ordinances, programs, and resources that could be brought to bear on implementing the mitigation strategy. The capabilities in relation to hazard mitigation were assessed in the following categories:

- Planning and regulatory
  - Implementation of ordinances, policies, site plan reviews, local laws, state statutes, plans, and programs that relate to guiding and managing growth and development
- Administrative and technical
  - County, city, and town staff and their skills and tools that can be used for mitigation planning and to implement specific mitigation actions
- Safe growth
  - Use of community planning through comprehensive plans as hazard mitigation to increase community resilience

- Financial
  - Resources that a jurisdiction has access to or is eligible to use to fund mitigation actions
- Education and outreach
  - Programs and methods that could be used to implement mitigation activities and communicate hazard-related information

In addition to the Capabilities Assessment Worksheet, the Town completed a Jurisdiction Needs Identification Questionnaire that summarized changes in and enhancements of capabilities since the last plan. This information is integrated into the summaries in this section.

6.1. Capability Assessment Summary, Ranking, and Gap Analysis

The Town of Herndon ranked the level of capability in relation to each assessment category as a means of identifying where elements could be strengthened or enhanced. Capabilities were ranked on a qualitative basis as demonstrated by the jurisdiction's authorities, programs, plans, and/or resources:

- **Limited:** The jurisdiction has limited capabilities within this category and is generally unable to implement most mitigation actions.
- **Low:** The jurisdiction has some capabilities within this category and can implement a few mitigation actions.
- **Moderate:** The jurisdiction has some capabilities within this category, but improvement is needed in order to implement some mitigation actions.
- **High:** The jurisdiction has significant capabilities within this category as demonstrated by its authorities, programs, plans and/or resources, and can implement most mitigation actions.

Table 17: Capability Assessment Ranking Summary

Capability	Ranking
Planning and Regulatory	High
Administrative and Technical	Moderate
Safe Growth	High
Financial	Moderate
Education and Outreach	Moderate

6.1.1. Planning and Regulatory Capabilities Summary

The Town utilizes the all-hazards approach when developing any jurisdictional plans, including emergency operations, continuity of operations, and hazard-specific plans, as well as the hazard mitigation plan.

The following plans have been newly developed or updated since the 2017 HMP:

- Town of Herndon 2030 Comprehensive Plan
- Town of Herndon Adopted FY 2021–FY 2026 Capital Improvement Program

- Fairfax County Community-Wide Energy and Climate Action Plan (CECAP)
- Fairfax County Emergency Operations Plan, dated June 2019
- Fairfax County Pre-Disaster Recovery Plan, dated April 2020

While currently working with FEMA to update flood maps, the Town also maintains a Floodplain Management Plan, Flood Response Plan, and Historic Preservation Plan. Additionally, the Town is a part of Fairfax County's Radiological Emergency Plan and Disaster Recovery Plan, and regional Evacuation Plan. During the COVID-19 pandemic, the Town implemented temporary Continuity of Governmental Operations procedures.

Capability Analysis: High

Significant planning and regulatory tools are in place within the Town of Herndon and illustrate successes in integrating hazard mitigation planning with existing planning mechanisms. This demonstrates that the Town recognizes the benefit of incorporating hazard mitigation in local planning and regulatory processes such as the Comprehensive Plan, Capital Improvement Plan, and land development and floodplain regulations and how to use these to develop and implement mitigation actions. Area of improvement for this capability include following and updating codes and increasing economic planning activities. The Town also identifies the need to monitor the plan to incorporate the other organizations and partnerships identified throughout the plan to enhance this capability.

6.1.2. Administrative and Technical Capabilities Summary

- The staff of the Community Development and Public Works departments include planners, engineers, and a floodplain manager who are integrated into mitigation planning and understand natural and non-natural hazards.
- A contracting firm is used to provide the surveying function for the Town.
- The Information Technology Department includes personnel skilled in GIS that can provide hazard related data and mapping support.
- The Police Department currently executes emergency management duties and includes a one-person Emergency Management Department.
- Staff with grant writing capabilities are available in the Community Development, Public Works, and Police Departments.
- The Town coordinates with Everbridge as an emergency warning system for internal and external notification and warning.

Capability Analysis: Moderate

The Town of Herndon has a sufficient staffing capability to provide for significant coordination for the purpose of mitigation planning and action implementation. While this is identified as sufficient at the current time, the need for continued funding for positions through general budget and grant opportunities and the need for ongoing education, training, and exercises offers an area for improvement.

6.1.3. Safe Growth Capabilities Summary

- Growth guidance instruments such as future land-use policies, zoning regulations, and maps identify natural hazard areas such as floodplains and discourage or prohibit development or redevelopment within these areas.

- The Comprehensive Plan includes a transportation element that addresses the appropriate placement and utilization of transportation systems.
- Environmental policies and the Chesapeake Bay Preservation Overlay district encourage appropriate development to protect ecosystems.
- Public safety plans and procedures address emergency evacuation and other safety measures associated with safe growth.
- The capital improvement program integrates hazard mitigation projects identified in the hazard mitigation plan.
- The building code and floodplain regulations provide for a Base Flood Elevation (BFE) sufficient to protect property from the 100-year flood event.

Capability Analysis: High

The Town of Herndon has well-established safe growth regulatory and enforcement capabilities to limit or prevent inappropriate development in identified hazard areas and protect the natural environment. No additional enhancements are identified at this time.

6.1.4. Financial Capabilities Summary

- The Town has used capital improvement project funding in the past to increase storm drainage and repair roads, and this funding source could be used to fund future mitigation actions.
- The Town has the authority to levy taxes for specific purposes and incur debt through general obligation bonds and/or special tax bonds. These funding sources could be used in the future to complete mitigation actions, although it is likely that other funding sources will be utilized first.
- The Town participates in multiple federal and state funding programs through various disciplines.
- Fees for water, sewer, gas, electric, or stormwater utilities and services and impact fees for new development are a part of the Town's general fund. The general fund could be used to support future mitigation actions and projects.

Capability Analysis: Moderate

Although rising operational costs and limited financial resources are an everyday challenge to most local governments, the Town of Herndon has achieved moderate success in leveraging and combining local, state, and/or federal funding sources to implement mitigation-related projects. The Town notes that public/private partnerships are an unlikely option for funding. The process of identifying potential grants, developing and submitting applications, and managing grant-funded projects is time-consuming and challenging, especially if multiple disasters have occurred simultaneously. In addition, onsite work restrictions imposed during the COVID-19 pandemic between March 2020 and continuing into 2022 have presented challenges in staff availability and coordination. To address these shortfalls, the Town may access technical assistance available to potential applicants provided by many grant programs, seek support from the county, or expand its capabilities to develop and manage mitigation actions through contracted services to enhance this capability.

6.1.5. Education and Outreach Capabilities Summary

- The Town of Herndon historical preservation groups and historical society are proactive in educating about the importance and protection of cultural and historical assets.

- Fairfax County is designated as a StormReady community, which includes the Town in components of public education and training.
- The Fairfax County Park Authority promotes the concepts and actions of the FireWise program.
- The county partners with local schools to participate in the Student Tools for Emergency Planning (STEP) program curriculum, which includes packing an emergency preparedness bag for fifth-grade students.
- Community Rating System initiatives within the NFIP program can increase public awareness of and involvement in hazard mitigation.
- The Town promotes information about recycling and reusing items, does educational outreach about stormwater at the farmers market, and sends out educational flyers and e-newsletters about public works in water bills.

Capability Analysis: Moderate

The Town has existing education and outreach mechanisms that can be utilized to increase awareness about mitigation. This capability can be enhanced by engaging the Virginia Department of Emergency Management mitigation staff to provide technical assistance to support increased jurisdictional involvement. Many hazard mitigation educational tools and materials are available from state agencies, as well as disaster preparedness and response organizations such as the American Red Cross, FEMA, and faith-based organizations with disaster response missions.

As a component of the capability assessment, the Town of Herndon identified activities related to each natural hazard that support risk reduction.

Table 18: Capability Summary – Activities that Reduce Natural Hazard Risk or Impacts

Hazard	Activity
Dam Failure (including Levees)	• Public education and operational plans address preparedness and response to reduce risk.
Drought	• Public education and operational plans address preparedness and response to reduce risk. • Land use and environmental policies acknowledge the importance of protecting the natural environment.
Earthquake	• State and international building codes provide for seismic design regulations. • Public education and operational plans address preparedness and response to reduce risk.
Extreme Temperature	• Public education and operational plans address preparedness and response to reduce risk.
Flood/Flash Flood	• Floodplain administration and regulations ensure that inappropriate activities and future development in the floodplain are prohibited. • Stormwater management program and projects address flood prevention and risk reduction.
High Wind/Severe Storm	• State and international building codes provide for wind load design regulations.
Karst/Sinkhole/Land Subsidence	• Land use and environmental policies acknowledge the importance of protecting the natural environment.

Hazard	Activity
Landslide	• Land use and environmental policies acknowledge the importance of protecting the natural environment.
Winter weather	• Public education and operational plans address preparedness and response to reduce risk.
Tornado	• Public education and operational plans address preparedness and response to reduce risk.
Wildfire	• Public education and operational plans address preparedness and response to reduce risk.
Non-Natural Hazards	• Public education and operational plans address preparedness and response to reduce risk. • Beginning with the 2022 NOVA HMP, hazard mitigation planning is being integrated into existing planning and risk reduction activities for technological and human-caused hazards.
Climate Change	• Ongoing resilience planning and utilizing the *Community-Wide Energy and Climate Action Plan* will allow for the identification and mitigation of climate change-related issues in future planning cycles.

7. Resilience to Hazards

7.1. National Risk Index

The National Risk Index (NRI) is a dataset and online tool developed by FEMA and other partners to help illustrate communities in the United States at risk for 18 natural hazards. Hazard risk is calculated on data for a single hazard type and reflects the relative risk for that hazard type and should be considered only as a baseline relative risk measurement for the purpose of a general comparison with the local hazard risk ranking in the Hazard Risk Ranking section of this annex. In addition, some hazards are defined differently from the hazards in this plan so a direct hazard-to-hazard comparison of risk is not able to be determined. The NRI provides an overview of hazard risk, vulnerability, and resilience. The designation of "low risk" is driven by lower loss due to natural hazards, lower social vulnerability, and higher community resilience. The Town of Herndon is included in the Fairfax County NRI in **Annex 7, Fairfax County**.

7.2. Community Resilience Estimate

The Community Resilience Estimate (CRE) is a data product produced by the U.S. Census Bureau that can be utilized to estimate potential community resilience to disasters by combining data from several sources to analyze individual and household level risk factors.

The index produces aggregate-level (Census tract, county, and state) small area estimates that help determine how at risk specific neighborhoods might be to disasters due to characteristics that may make specific segments of the population more vulnerable to the impacts and consequences of disasters. The 10 risk factors[12] include the following:

1. Income-to-poverty ratio
2. Single or zero caregiver household
3. Unit-level crowding
4. Communication barrier
5. Aged 65 years or older
6. Lack of full-time or year-round employment (household)
7. Disability
8. No health insurance coverage
9. No vehicle access (household)
10. No broadband internet access (household)

[12] The Community Resilience Estimates are developed by the U.S. Census Bureau; initial release date, August 10, 2021. Methodology is described at the U.S. Census Bureau Community Resilience Methodology page (https://www.census.gov/programs-surveys/community-resilience-estimates/technical-documentation/methodology.html).

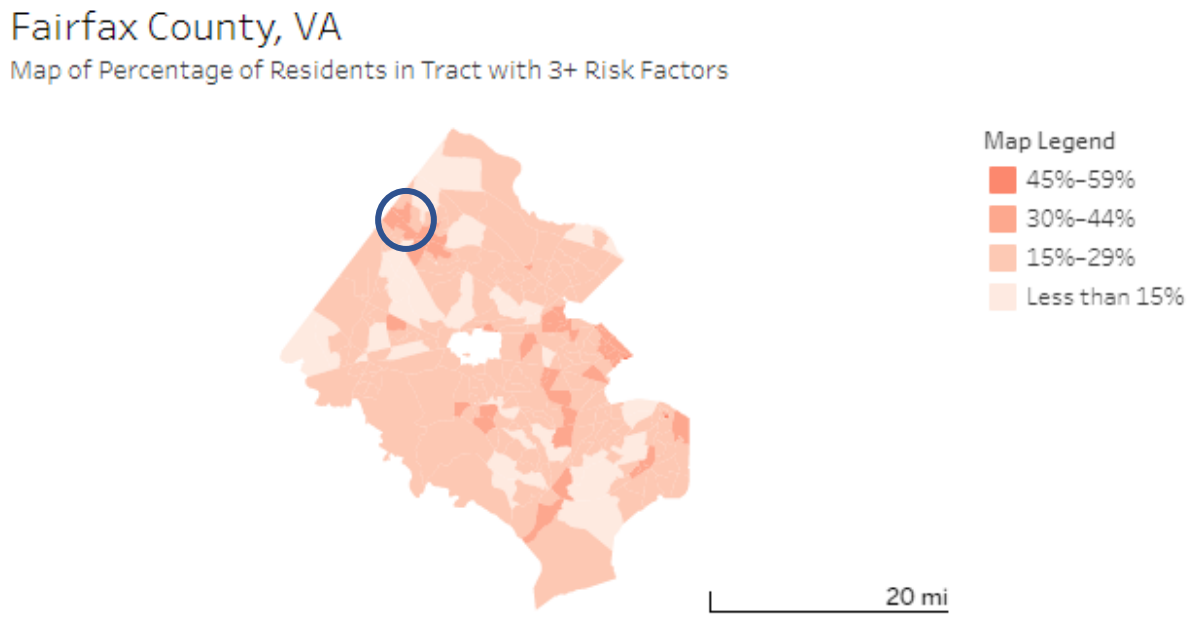

Figure 9: Community Resilience Estimate[13]

The estimate is categorized into three groups: zero risks, one or two risks, and three or more risks. The CRE for Fairfax County is 14.72 percent, meaning that 167,857 of county residents have three or more risk factors.

The combination of data and analysis described in this section provides a comprehensive representation of Fairfax County's risk, vulnerability, and resilience to all hazards.

7.3. New Hazard Risk Challenges or Obstacles to Be Monitored in the Next Planning Cycle

The Town of Herndon Planning Team identified specific hazard challenges and obstacles to be monitored in the next planning cycle:

- The risk of cyber-related incidents on critical infrastructure and key resource sites.
- Climate change causing increased precipitation intensity and quantities, increased extreme heat, increased storm severity, and increased coastal (Potomac River) flooding.
- Increases in the number of excessive rainfall events that impact new areas with floods.

[13] Community Resilience Estimates, U.S. Census Bureau

8. Mitigation Actions

8.1. Goals and Objectives

The Town of Herndon Planning Team adopted the regional goal statement presented in **Section 8, Base Plan**.

8.2. Status of Previous Actions

The Town of Herndon monitors actions and tracks progress through the periodic review, evaluation, revision, and update of the NOVA HMP. Some projects that contribute to risk reduction have been completed or are currently in progress, but have not been included in this plan for one of the following reasons:

- Project funding has been approved, received, or identified, and additional resources are not needed to complete the project.
- The project scope is inconsistent with the hazard mitigation planning goals defined in this plan.
- The responsible department, agency, or organization maintains an internal tracking system that documents progress and resulting risk reduction.

All five of the Town's previous mitigation actions are in progress and are being carried forward for the 2022 plan update.

8.3. New Mitigation Actions

The Town of Herndon Planning Team identified four new mitigation actions to include in this plan. Proposed actions address risks consistent with the jurisdiction's highest risk hazards—flood/flash flood and winter weather—in addition to actions that address hazard mitigation education programs for all hazards.

The Town of Herndon Jurisdiction Needs Assessment Questionnaire highlighted Fairfax County's *Community-wide Energy and Climate Action Plan (CECAP)*, September 14, 2021, as providing the opportunity to identify actions and strategies to mitigate climate-related hazards and reduce the impact of climate-related events on residents and businesses.

8.4. Action Plan for Implementation and Integration

The new actions, combined with those carried forward from the 2017 plan, result in a total of nine actions that will be implemented in the upcoming planning cycle.

The Town of Herndon Police Department is responsible for coordinating municipal departments and agencies participating in hazard mitigation activities. The department's designated Mitigation Coordinator is responsible for implementing the mitigation plan on two levels: implementation of the jurisdiction's actions and facilitating the implementation of the multi-jurisdictional regional plan. Tasks to ensure that the Town's actions are implemented are integrated into the *Action Plan for Implementation and Integration* (which includes the prioritized list of Mitigation Actions) and plan maintenance procedures described in the next section. The Action Plan for Implementation and Integration describes how the Town's hazard mitigation risk assessment and goals will be incorporated into its existing plans and procedures.

Table 19: Action Plan for Implementation and Integration, Town of Herndon

Existing Plan or Procedure	Description of How Mitigation Will Be Incorporated or Integrated
Integrate goals into the local comprehensive plan.	Continue to coordinate with the Department of Community Development and other applicable departments to incorporate current and emerging risks and actions into planning efforts.
Review/update land development regulations for consistency with mitigation goals.	Continue coordination with the Department of Community Development regarding future land use projects.
Review/update building/zoning codes for consistency with mitigation goals.	Work with Zoning Administrator regarding town zoning ordinances and consistency with mitigation goals.
Maintain regulatory requirements of the floodplain management program (NFIP).	Support the Community Development Department who is responsible for floodplain management.
Continue public engagement in mitigation planning.	Continue to promote awareness of hazards and incorporate public feedback into planning processes and seek resident feedback supporting mitigation.
Identify opportunities for mitigation education and outreach.	Identify opportunities to conduct community outreach to promote the importance of mitigation projects.
Review/update emergency plans to address evacuation and sheltering.	Evacuation has been identified as a priority incident annex to be developed as part of the 2021 update to the Town 's EOP.
Maintain ongoing enforcement of existing policies.	Support the Department of Community Development with any applicable enforcement policies.
Monitor funding opportunities.	Police Department will continue to monitor funding sources and coordinate with Departments on projects that support mitigation actions.
Incorporate goals and objectives into day-to-day government functions.	Police Department will incorporate the concept of mitigation into day-to-day government functions, including continual monitoring of the action items identified in the 2022 update.
Incorporate goals into day-to-day development policies, reviews, and priorities.	Continue work with Departments of Public Works and Community Development to incorporate mitigation into day-to-day activities.

9. Annex Maintenance Procedures

9.1. Maintenance of the NOVA HMP, Base Plan

The point of contact for the Northern Virginia Mitigation Project Team is the facilitator for the process to monitor, evaluate, and update the **NOVA HMP, Base Plan**. This facilitator is responsible for initiating the annual activities, convening the NOVA Planning Team (made up of the Emergency Managers Group and Planning Group), and providing follow-up reports to designated entities defined in the method and schedule for the plan maintenance process, as outlined in **Section 3, Base Plan**.

Table 20: Town of Herndon Plan Maintenance Responsibilities for the Northern Virginia Hazard Mitigation Plan, Base Plan

Activity	Responsibilities
Monitoring the Plan	• Represent the jurisdiction during the monitoring process. • Collect, analyze, and report data to Fairfax County/NOVA Planning Group. • Maintain records and documentation of all jurisdictional monitoring activities. • Assist in disseminating reports to stakeholders and the public. • Promote the mitigation planning process with the public and solicit public input.
Evaluating the Plan	• Represent the jurisdiction during the evaluation process. • Collect and report data to the Fairfax County/NOVA Planning Group. • Maintain records and documentation of all jurisdictional evaluation activities. • Assist in disseminating information and reports to stakeholders and the public.
Updating the Plan	• Represent the jurisdiction during the planning cycle, including plan review, revision, and update process. • Collect and report data to the Fairfax County/NOVA Planning Group. • Maintain records and documentation of all jurisdictional plan review and revision activities. • Help disseminate reports to stakeholders and the public.

9.2. Maintenance of the Jurisdiction Annex

In addition to maintenance of the **NOVA HMP, Base Plan**, the Town of Herndon Mitigation Planning Coordinator will facilitate the method and schedule for maintaining the **Jurisdiction Annex**. The Town's maintenance method and schedule may coincide with that of Fairfax County and be conducted simultaneously.

9.2.1. Plan Maintenance Schedule

- **Monitor:** Annually and/or following major disaster(s)
- **Evaluate:** Annually and/or following a major disaster(s)
- **Update:** Annual tasks over the five-year planning cycle; planning process in the fifth year

Table 21: Town of Herndon Jurisdiction Annex Maintenance Procedures

Activity	Procedure and Schedule	Outcome
Monitoring the Annex	1. Schedule the annual plan review with the jurisdiction planning team. 2. Review the status of all mitigation actions, using the *Mitigation Action Implementation Worksheet* (**Section 3, Attachment A, NOVA HMP Base Plan**).	• Produce an annual report that includes the following: ▪ Status update of all mitigation actions ▪ Summary of any changes in hazard risk or vulnerabilities and capabilities ▪ Summary of activities conducted for the Action Plan for Implementation and Integration
Evaluating the Annex	3. Schedule the annual plan evaluation with jurisdiction planning team. 4. Evaluate the current hazard risks and vulnerabilities and hazard mitigation capabilities using the *Planning Considerations Worksheet*, (**Section 3, Attachment C, NOVA HMP Base Plan**).	• Submit the annual report to the NOVA HMP Planning Project Team Point of Contact.
Updating the Annex	1. Coordinate with Fairfax County and the Northern Virginia jurisdictions to identify the method and schedule for the five-year update of the NOVA HMP. 2. Participate in the planning process. 3. Provide input related to the plan components. 4. Following FEMA Approvable Pending Adoption (APA) designation, adopt the updated plan.	• Adoption of the FEMA-approved plan every five years will maintain the jurisdiction's eligibility for federal post-disaster funding.

Mitigation actions presented in the Town of Herndon Jurisdiction Annex may be reviewed, revised, and updated at any time.

The Town of Herndon will continue to be a planning partner with multiple jurisdictions and regional entities, including Fairfax County, to identify hazard mitigation opportunities that reduce risk to the hazards identified in this plan.

10. Annex Adoption

The Town of Herndon Jurisdiction Annex will be adopted simultaneously with the adoption of the *NOVA HMP*.

11. Attachments

- Attachment 1: Adoption Resolution
- Attachment 2: Documentation of Public Participation
- Attachment 3: Mitigation Action Worksheets

11.1. Attachment 1: Adoption Resolution

[This page is a placeholder for the Adoption Resolution for this jurisdiction.]

11.2. Attachment 2: Documentation of Public Participation

Figure 10: Town of Herndon HMP Survey Social Media Outreach Twitter

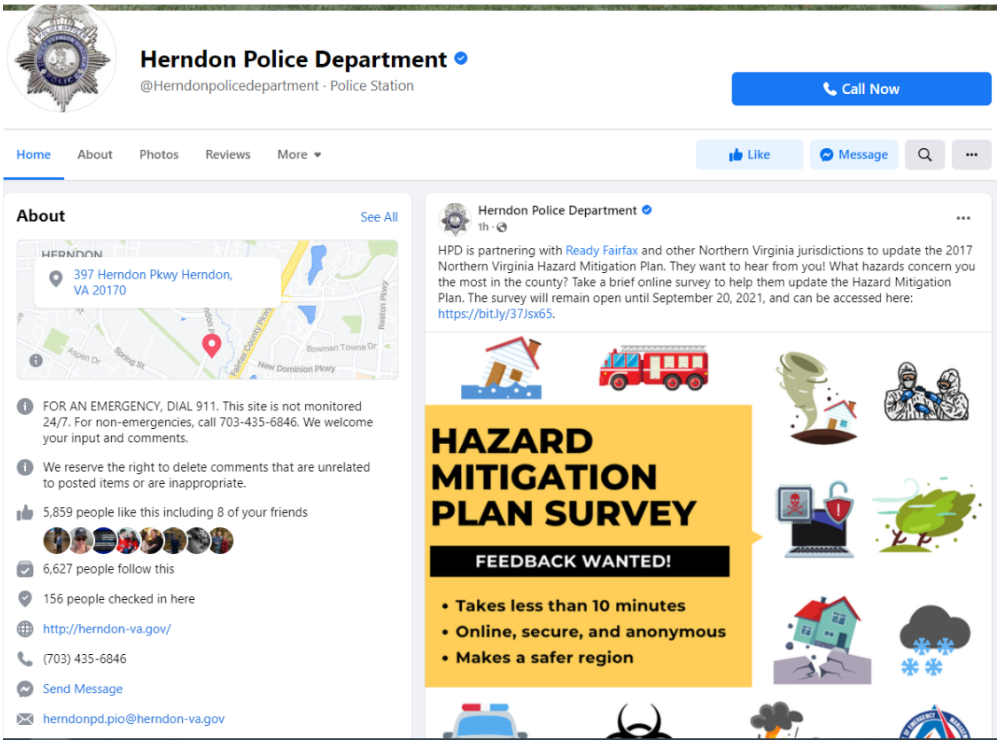

Figure 11: Town of Herndon HMP Survey Social Media Outreach Facebook

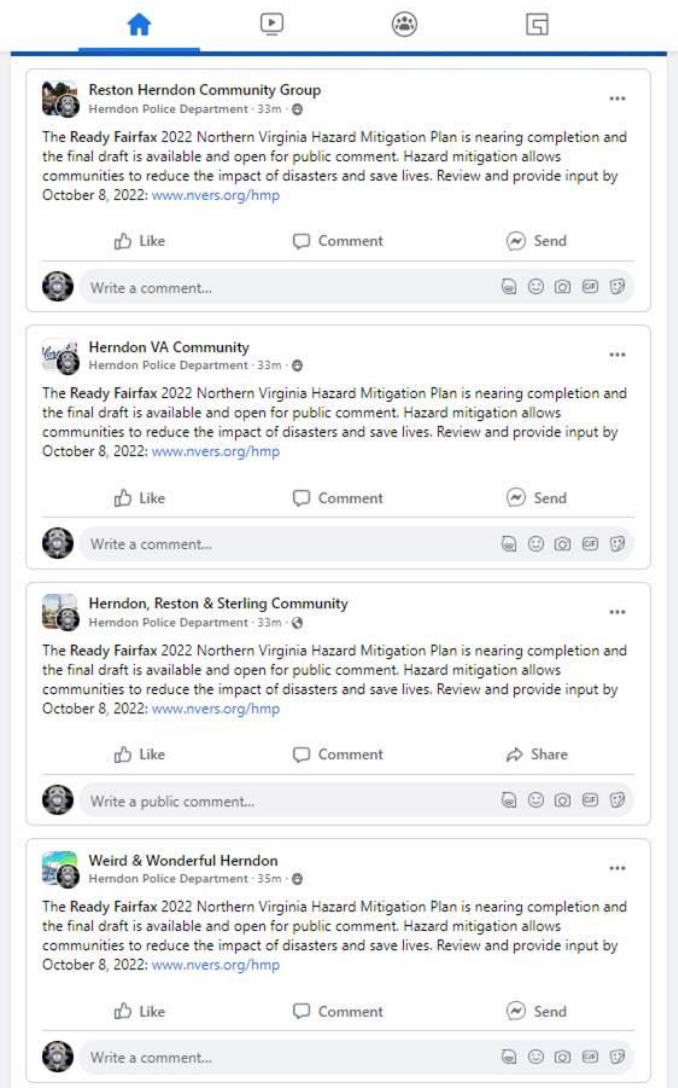

Figure 12: Final Draft Public Comment Social Media Outreach

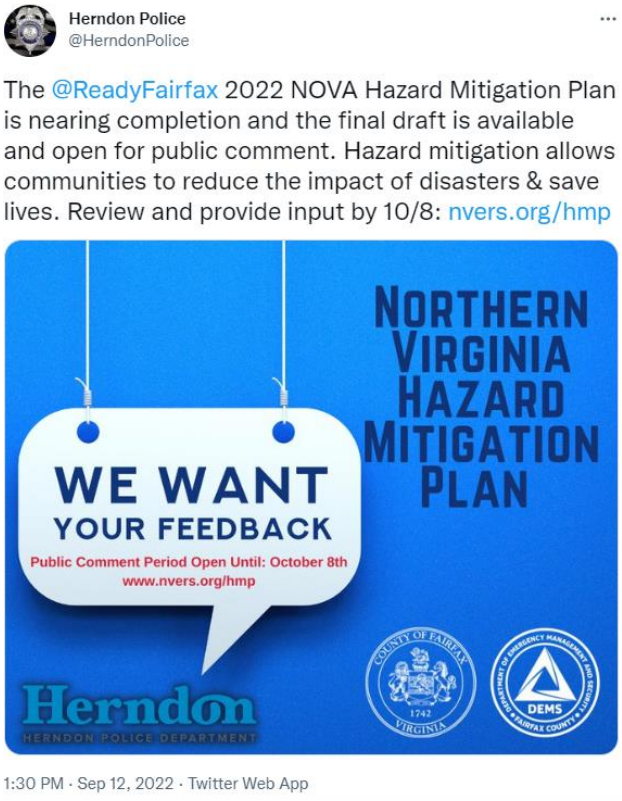

Figure 13: Final Draft Public Comment Twitter

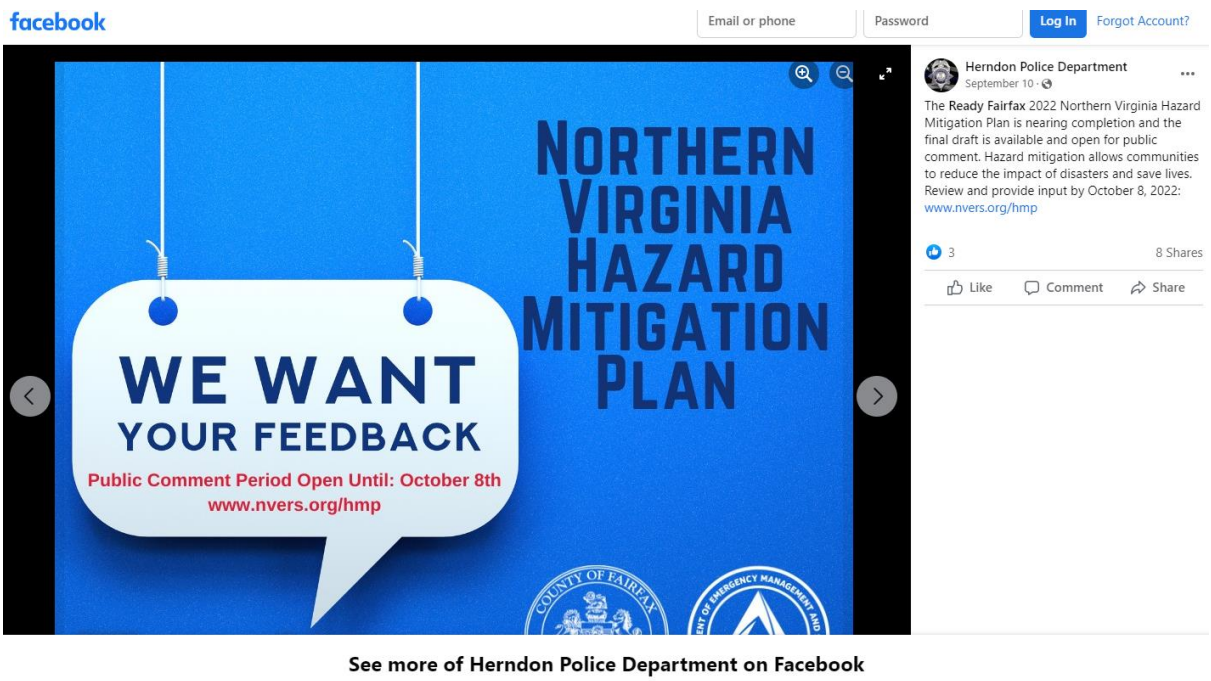

Figure 14: Final Draft Public Comment Facebook

11.3. Attachment 3: Mitigation Actions

Table 22: Previous Mitigation Actions

Project No.	Agency/ Department Mitigation Action	Lead Agency/ Department/ Organization	Hazard(s)	Funding Source	Target Completion Date	Interim Measure of Success	Priority	Current Status
2017-1	Purchase and plan for deployment of industrial-grade water pumps to mitigate floodwaters in known flood-prone locations, including roadways.	Public Works	• Flood/Flash Flood • Winter Weather	FEMA Unified Hazard Mitigation Assistance Funding	Ongoing	Identify and prioritize locations for placement of pumps, identify funding.	Medium	In progress
2017-2	Improve flood prone intersections by adding new drainage structures and systems. Two known intersections: 1) Herndon Pkwy and Van Buren Street, 2) Monroe Street and Worldgate Drive.	Public Works	• Flood/Flash Flood • Winter Weather	Currently included in town 2022 CIP budget	Expected completion in 2022	Meet construction milestones and deadlines.	Medium	In progress
2017-3	Evaluate and assess older stormwater systems in the Town to include 5-year CCTV inspections and trenchless repair methods.	Public Works	• Flood/Flash Flood • Winter Weather	FEMA Unified Hazard Mitigation Assistance Funding, town's capital budget	Ongoing	Initiate and follow a plan and schedule for evaluation and assessment.	Medium	In progress

Project No.	Agency/ Department Mitigation Action	Lead Agency/ Department/ Organization	Hazard(s)	Funding Source	Target Completion Date	Interim Measure of Success	Priority	Current Status
2017-4	Support mitigation of priority flood-prone structures through the promotion of acquisition/demolition, elevation, floodproofing, minor localized flood control projects, mitigation reconstruction, and, where feasible and appropriate, using FEMA HMA programs.	Public Works	• Flood/Flash Flood • High Wind/Severe Storm • Winter Weather	FEMA Unified Hazard Mitigation Assistance Funding	Ongoing	Identify Properties.	Medium	In progress (Currently no repetitive loss properties. Updated NFIP mapping may change properties impacted. Exploring all options, including buyouts.)
2017-5	Review locality's compliance with the National Flood Insurance Program with an annual review of the Floodplain Ordinances and any newly permitted activities in the 100-year floodplain. Additionally, conduct an annual review of repetitive loss and severe repetitive loss property list requested of VDEM to ensure accuracy. The review will include verification of the geographic location of each repetitive loss property and determination if that property has been mitigated and by what means. Provide corrections if needed by filing form FEMA AW-501.	Community Development/ Public Works	• Flood/Flash Flood • High Wind/Severe Storm • Winter Weather	General Funds	Ongoing	Establish a schedule of review.	Medium	In progress

Table 23: New Mitigation Actions

Project No.	Agency/ Department Mitigation Action	Lead Agency/ Department/ Organization	Hazard	Funding Source	Target Completion Date	Interim Measure of Success	Priority	Comment
2022-1	Reclaim Sugarland Run Creek creekbanks to reduce and eliminate destabilization.	Public Works	• Flood • Severe Weather	FEMA Unified Mitigation Assistance Funding, town's capital budget	Ongoing	Complete geomorphic assessment.	Medium	None
2022-2	Work with FEMA to re-examine flood zones and update FIRMS. Use this information to reevaluate NFIP activities.	Public Works	• Flood • Severe Weather	FEMA Unified Hazard Mitigation Assistance Funding town's capital budget	Ongoing	Multi-year project; meet FEMA deadlines throughout project.	Medium	Use this information to re-evaluate NFIP activities.
2022-3	Continue to implement building and development standards as required under the NFIP.	Planning and Zoning	• Flood	Hazard Mitigation Assistance grant funding, US Army Corps of Engineers, town Funding, VDEM				
2022-4	Develop an outreach/education program aimed at promoting hazard mitigation for the residents of Herndon	Police Dept. Planning and Zoning	• All Hazards	Town Funding			High	This program will be completed when funding is available.

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 12, 2023

Resolution- to establish the Herndon Town Council meeting schedule for January 1, 2024 to December 31, 2024.

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

1. Town Council incorporates the meeting schedule set out in Section 2-1 of the Herndon Town Code (2000), as amended, and establishes the meeting schedule for calendar year (CY) 2024 as described in Attachment A, *Town Council CY 2024 Meeting Schedule.*

2. Town Council directs staff to include the meeting schedule in the 2024 annual town calendar.

23-G-64

TOWN COUNCIL CY 2024 MEETING SCHEDULE

Date	Meeting Type
January 2, 2024	Work Session
January 9, 2024	Regular Meeting (Public Hearing)
January 16, 2024	Work Session
January 23, 2024	Regular Meeting (Public Hearing)
February 6, 2024	Work Session
February 13, 2024	Regular Meeting (Public Hearing)
February 20, 2024	Work Session
February 27, 2024	Regular Meeting (Public Hearing)
March 5, 2024	Work Session
March 12, 2024	Regular Meeting (Public Hearing)
March 19, 2024	Work Session
March 26, 2024	Regular Meeting (Public Hearing)
April 2, 2024	Work Session
April 9, 2024	Regular Meeting (Public Hearing)
April 16, 2024	Work Session
April 23, 2024	Regular Meeting (Public Hearing)
May 7, 2024	Work Session
May 14, 2024	Regular Meeting (Public Hearing)
May 21, 2024	Work Session
May 28, 2024	Regular Meeting (Public Hearing)
June 4, 2024	Work Session
June 11, 2024	Regular Meeting (Public Hearing)
July 9, 2024	Work Session
July 16, 2024	Regular Meeting (Public Hearing)
August 7, 2024 (Wednesday)	Work Session
August 13, 2024	Regular Meeting (Public Hearing)
September 3, 2024	Work Session
September 10, 2024	Regular Meeting (Public Hearing)
September 17, 2024	Work Session
September 24, 2024	Regular Meeting (Public Hearing)
October 1, 2024	Work Session
October 8, 2024	Regular Meeting (Public Hearing)
October 15, 2024	Work Session
October 22, 2024	Regular Meeting (Public Hearing)
November 6, 2024 (Wednesday)	Work Session
November 12, 2024	Regular Meeting (Public Hearing)
December 3, 2024	Work Session
December 10, 2024	Regular Meeting (Public Hearing)

TOWN OF HERNDON, VIRGINIA

RESOLUTION

SEPTEMBER 12, 2023

Resolution- to award Contract #D-23-04, Geotechnical Engineering and Construction Materials Testing and Inspection Services.

The Town issued Request for Proposal (RFP #D-23-04) for a general Geotechnical Engineering and Construction Materials Testing and Inspection Services contract to support design and engineering efforts required for Town CIP projects and other Town Council approved effort.

Initial proposals were received by seven (7) firms. Following the interviews, the evaluation committee selected DMY Engineering Consultants Inc. as the top-rated firm and thereafter negotiated favorable hourly and unit rates.

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

1. The Town Council approves the award of Contract #D-23-04, Geotechnical Engineering and Construction Materials Testing and Inspection Services between the Town of Herndon and DMY Engineering Consultants Inc. at the negotiated hourly and unit rates for a variety of professional and non-professional disciplines and supporting tasks. The contract is a one-year contract that may be extended for three one-year periods. No minimum volume of work is guaranteed.

2. The Mayor is authorized to sign and deliver this contract agreement on such a form approved by the Town Attorney and any other instrument necessary to evidence or effectuate this agreement.