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HERNDON TOWN COUNCIL
Tuesday
September 8, 2015

The Town Council met in public session on Tuesday, September 8, 2015, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were:

Mayor Lisa C. Merkel, Vice Mayor Jennifer Baker and Councilmembers: Steven Lee Mitchell; Jasbinder Singh, Sheila A. Olem and Grace Han Wolf (arrived at 7:07 pm). Councilmember David A. Kirby was absent.

Others present during the meeting: Arthur Anselene, Town Manager; Lesa Yeatts, Town Attorney; Maggie DeBoard, Chief of Police; Elizabeth Gilleran, Director of Community Development; Tanya Kendrick, Director of Human Resources; Mary Tuohy, Director of Finance; Mike Doi and Dana Singer, Deputy Directors of Public Works; Mark Holland, Zoning Administrator; Dana Heiberg, Senior Planner; Bobby Galpin, Police Sergeant; Dennis Holste, Economic Development Manager; and Margie Tacci, Deputy Town Clerk.

The meeting was called to order at 7:00 p.m. with all members present, with the exception of Councilmember Kirby, who was absent, and Councilmember Wolf, who was late arriving, and with Mayor Merkel presiding. Mayor Merkel led the audience in the Pledge of Allegiance to the Flag of the United States of America.

1. ANNOUNCEMENT

Mayor Merkel announced that Councilmember Kirby is out of town and that Councilmember Wolf would be late in arriving.

Mayor Merkel announced, for those present for the public hearings on Ordinance 15-O-28 and Ordinance 15-O-29, that the applicant and staff have respectively requested that the public hearing on these items be continued until September 22nd. Since both public hearings were properly advertised, she stated that she would open the public hearings for citizen comments, and then the Council would consider action to continue the public hearings.

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2. APPROVAL OF MINUTES

On motion of Councilmember Olem, seconded by Vice Mayor Baker, the minutes of the August 11, 2015 public hearing, August 25, 2015 special meeting and the September 1, 2015 work session, were approved by a 3-1 vote. The vote was: Councilmembers Mitchell, Olem and Vice Mayor Baker voting "Aye." Councilmember Singh voting "No." Councilmember Wolf had not yet arrived and Councilmember Kirby was absent.

Mayor Merkel abstained from the approval of the September 1st work session, as she was not present at that meeting.

3. PRESENTATIONS

Proclamation, to recognize "POW/MIA Recognition Day," September 18, 2015.

The following proclamation recognizing "POW/MIA Recognition Day" was read into the record by Mayor Merkel, since Councilmember Kirby was not present. She asked that the Town Clerk's office transmit the proclamation to the American Legion Wayne M. Kidwell Post 184 on the Council's behalf.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
POW/MIA Recognition Day
September 18, 2015**

For many years, the American Legion supported the observance of a National **POW/MIA Recognition Day**, which ~ with the Legion's support ~ was first recognized at the national level on July 18, 1979. That first year, Congress passed a resolution and the national ceremony was held at the National Cathedral in Washington, D.C. Every year following, **POW/MIA Recognition Day** legislation was introduced until 1985, when the President began to issue a proclamation honoring this important day each year, on the third Friday in September.

POW/MIA Recognition Day honors the commitment and sacrifices made by our nation's prisoners of war; those who are still missing in action; and their families. On this commemorative day, we pay tribute to the service men and women who have not returned home from past conflicts; stand beside their families and loved ones; and honor those who are held captive as prisoners of war. We remain focused on America's responsibility to achieve the fullest possible accounting of the missing members of our armed forces and to bring them home.

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Therefore, in recognition of these brave Americans, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim Friday, September 18, 2015 as **POW/MIA Recognition Day** in the Town of Herndon, and offer full support to all members of the United States armed forces, who defend American lives and liberties with unwavering devotion.

Further, the Mayor and Town Council of the Town of Herndon, hereby proclaim that the Town of Herndon shall annually observe the third Friday of each September as **POW/MIA Recognition Day** and encourage citizens to acknowledge this day of honor and remembrance through the display of the POW/MIA flags and with appropriate ceremonies and activities.

For more information about *POW/MIA Recognition Day*, please visit the Department of Defense POW/Missing Personnel Office's (DPMO) website at: www.dtic.mil/dpmo.

Resolution 15-G-59, to express appreciation to Robert P. Burk, Herndon Planning Commission.

Mayor Merkel recognized Mr. Burk, his family and other special guests who were in attendance for the presentation.

There were comments from the Council.

On the motion of Councilmember Mitchell, seconded by Mayor Merkel, Resolution 15-G-59 was approved by a 6-0 vote. The vote was: Councilmembers Mitchell, Olem, Singh, Wolf, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Kirby was absent.

The following individuals came forward to provide comments on the presentation:

- Melissa Jonas; Chair, Town of Herndon Planning Commission;
- Chairman Jonas also provided comments on behalf of Kevin East, former Chairman, Town of Herndon Planning Commission; and
- Paul LeReche, Town of Herndon Planning Commission.

On behalf of the Council, Mayor Merkel extended her best wishes to Mr. Burk and thanked him for his service.

Mr. Burk provided brief comments.

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Resolution 15-G-59, to express appreciation to Robert P. Burk, Chair, Vice Chair and Member of the Herndon Planning Commission.

WHEREAS, appointed to the Board of Zoning Appeals in August 1997, Mr. Burk served as a dedicated member of that body until his appointment to the Herndon Planning Commission; and

WHEREAS, Mr. Burk was first appointed to the Herndon Planning Commission in July 2000, and was reappointed to consecutive terms through July 2015, serving as chair of that body from July 2010 through December 2010, and as vice chair from June 2009 through June 2010; and

WHEREAS, as a member, chair and vice chair of the Herndon Planning Commission, Mr. Burk was a pragmatic, conscientious, skillful and capable leader, dedicated to protecting and preserving the town's sense of community; while shaping change to create a productive, attractive and vibrant future; and was well-respected by those on both sides of any issue, willing to listen to opposing views with patience and an open mind; and

WHEREAS, whether considering an application for a single homeowner or a long-range transformative town-wide plan, Mr. Burk demonstrated his commitment to sound planning principles; the well-being of the community; and administered fair, equitable and considerate recommendations in all matters before the Commission ~ quietly leading with understanding and balance, seeking in-depth answers to questions regarding physical, economic and social impacts ~ all while remaining calm and collected; and

WHEREAS, throughout his service, Mr. Burk was part of some of the most important planning decisions in the town's history, including the 2030 Comprehensive Plan and its update; Streetscape Guidelines; Countywide Bicycle Transportation Plan; Herndon Fire Station redevelopment; Herndon Commerce Center; Herndon Metrorail Station Area Plan; Planned Development Transit-Oriented Core Zoning District and rezoning; development of the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core; the Metrorail Vicinity Roadway Capacity Study; Downtown Master Plan; and several residential developments ~ including Vinehaven, Villages at Herndon Mills, Darlington Oaks and Monroe Hill; and

WHEREAS, during his tenure on the Planning Commission, Mr. Burk served on the Zoning and Subdivision Ordinance Re-write Project Committee; was selected by his fellow commissioners to serve as the co-chair of the Herndon Metrorail Station Area Plan Project Committee; and

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extensively contributed to the Commission's efforts to define and redevelop the town's historic business core ~ actively participating in the Feasibility Study for the Cultural Arts Center, Downtown Charrette, Herndon Downtown Pattern Book, creation of the Planned Development Traditional Downtown Zoning District, and the rezoning of several parcels within the Downtown; and

WHEREAS, Mr. Burk selflessly gave his time, knowledge and expertise to serve the town and its citizens, and his detailed review of rezoning requests and applications, his succinct and insightful comments concerning the safety and functionality of plans and designs, will be greatly missed by the Town Council, Planning Commission and staff.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the Town Council of the Town of Herndon, Virginia, on behalf of a grateful community, hereby express deep appreciation to **Robert P. Burk** for the dedicated service he so willingly provided to the citizens of our town; look forward to his continued involvement in our community; and wish him a long, happy and fulfilling life.

Proclamation, to recognize Virginia Bicyclist and Pedestrian Awareness Month, September 2015.

The following proclamation recognizing "Virginia Bicyclist and Pedestrian Awareness Month" was read into the record by Councilmember Olem. The proclamation was presented to Councilmember Sheila Olem, Chair, and members of the Pedestrian and Bicycle Advisory Committee.

There were comments from Council.

Following the presentation, Sergeant Bobby Galpin provided comments on the proclamation.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
Virginia Bicyclist and Pedestrian Awareness Month
September 2015**

In 2014, 102 bicyclists and pedestrians were killed and thousands were injured on roadways in the Commonwealth of Virginia. To combat these tragic statistics, hundreds of partners ~ including towns, cities, counties, businesses, local organizations, schools and sporting groups from across the state ~ are teaming up with DRIVE SMART Virginia, Bike Virginia, the Virginia Highway Safety Office at the Division of Motor Vehicles and other like-minded organizations to raise awareness about the importance of sharing the road, in order to reduce the number of crashes and

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injuries. During the month of September, the public awareness campaign known as **Virginia Bicyclist and Pedestrian Awareness Month** encourages bicyclists, pedestrians and motorists to work together to find solutions to reduce roadway injuries and fatalities, while promoting safety, respect and cooperation.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim September 2015 as **Virginia Bicyclist and Pedestrian Awareness Month** in the Town of Herndon; recognize the importance of safety for all individuals traveling on the roadways; and promote bicycling and walking as healthy, efficient and sustainable forms of transportation.

Be it further resolved that the Mayor and Town Council of the Town of Herndon, Virginia, express support for the Herndon Police Department, Herndon Police Citizens' Support Team and the town's Pedestrian and Bicycle Advisory Committee in their efforts to make our roads, trails and paths safer, and remind pedestrians, bicyclists and motorists to be safe, aware and **'share the road.'**

For more information about motorist, bicyclist and pedestrian safety, visit www.drivesmartva.org or contact Sergeant Bobby Galpin at the Herndon Police Department at bobby.galpin@herndon-va.gov.

4. COMMENTS FROM THE TOWN MANAGER

Arthur Anselene, Town Manager, stated staff would forgo the presentation of the staff report on Ordinance 15-O-28, and would provide a staff report on Ordinance 15-O-29.

5. COMMENTS FROM THE TOWN COUNCIL

Councilmember Wolf: Extended her congratulations to the Herndon Police Department for receiving first place for their category in the Virginia Law Enforcement Challenge Awards. She stated that this award recognizes the best traffic safety programs in the Commonwealth of Virginia.

Councilmember Olem: Expressed her appreciation to the Departments of Public Works and Community Development for the Park and Monroe Street improvements.

Councilmember Olem stated that the new fire station is coming along and that she was able to see the foundation for the garage.

Councilmember Olem stated that the Council had received an email from a citizen expressing safety concerns about the W&OD Trail crossing at the intersection of Station and Lynn Streets. She stated that the Pedestrian and Bicycle Advisory Committee continues to discuss the confusing configuration, and stated that she hoped that the town could find a solution to improve the intersection for motorists, pedestrians and bicyclists.

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Vice Mayor Baker: Welcomed back to school all the Fairfax County students and teachers.

Vice Mayor announced that JamBrew, sponsored by the Herndon Hospitality Association, had its first concert on Friday, September 4th and would continue to have concerts every Friday through the month of September. On Saturday, September 26th, JamBrew would be holding an all-day event, "Octobrewfest," from noon to 10:00 pm. She stated that she looked forward to seeing everyone there.

Mayor Merkel: Announced that effective midnight on August 31st, the town's western boundary was officially adjusted to include 2.4 acres of land located in Loudoun County. She stated that this was determined by a Virginia Supreme Court decision, which was the result of a joint petition filed by the town and Loudoun County. She stated the town greatly appreciates Loudoun County's collaboration and cooperation with the town.

Mayor Merkel announced that on Tuesday, September 15th, the Virginia Pesticide Disposal Program would be hosting a free program to safely dispose unwanted pesticides from 9:00 am to 1:00 pm at the Merrifield Garden Center. More information on this program is available on the town's website at www.herndon-va.gov.

Mayor Merkel stated that the vehicle decal bills that were recently mailed to town residents were incorrect, with many receiving bills for cars they do not own. She stated everyone should disregard these incorrect bills. Town staff is correcting the errors and should have the revised vehicle decal notices mailed out by this Friday. Individuals with questions should contact the revenue department at revenue@herndon-va.gov.

6. COMMENTS FROM THE AUDIENCE

The following individuals came forward to provide comments:

- Melissa Jonas, 124 Fortnightly Boulevard, Herndon, on behalf of herself; Rebecca Messman, Associate Pastor, Trinity Presbyterian Church; and Kathleen Jacoby, Band Director, Herndon High School, expressed appreciation to the Council for their support to the families of Herndon High School students Kyle Mathers, Dale Neibaur and Holly Novak, who recently passed away.

Ms. Jonas also expressed appreciation to the following individuals:

- Anne Curtis, Chief Communications Officer, for her assistance in notifying the media of the tragedy and continually updating information for all in the area to know what was happening.
- Jessica Bynaker, Office Assistant II, Communications and Economic Development, and Signe Friedrichs, Executive Director, Council for the Arts of Herndon, for their assistance in the making of the "MarchOn" memorial t-shirt with Kyle, Dale and Holly's names on the back for the Herndon High Marching Band.

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- Michael Moore, Cemetery Manager, for his gentleness, kindness, patience and resources during this difficult time.
- The Herndon Police and Public Works departments for their support during the memorials and funerals.

Ms. Jonas stated that Jeff and Jackie Johnson would be holding a benefit at Woody's Golf Course on Saturday, September 12th to help support the families of Kyle, Dale and Holly.

- Ralph Redmond, 1484 Oak Trail Court, Herndon, expressed his appreciation to the Mayor and town staff for their assistance to research the record on the Sterling Road improvement project. He stated he continues to be concerned about the noise levels.

Mayor Merkel stated that staff would be addressing this matter at a future work session and would notify Mr. Redmond of the date.

7. PUBLIC HEARINGS

Resolution 15-G-60, to approve Special Exception SE#15-04, to permit a home-based child daycare use with an allowed maximum of 12 children, 715 Fall Place.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, August 21, 2015 and Friday, August 28, 2015 issues.

Mark Holland, Zoning Administrator, presented the staff report and a PowerPoint, which are on file in the Town Clerk's office. He stated that the applicant, Hiromi Waite, was present this evening. The proposed resolution is a request for a special exception to permit a home-based child daycare use in the Planned Development-Residential, zoning district. The use, identified as Warabe, is requesting to care for a maximum of 12 children. The town's zoning ordinance currently permits a maximum of seven children without a special exception. The property is located at 715 Fall Place. Staff recommends approval of the special exception, with conditions and modifications as recommended by the Planning Commission.

There were brief comments from Council.

Following the public hearing (there were no comments from the applicant or audience), on motion of Councilmember Olem, seconded by Councilmember Wolf, Resolution 15-G-60 was approved by a 6-0 vote. The vote was: Councilmembers Mitchell, Olem, Singh, Wolf, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Kirby was absent.

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Resolution 15-G-60, Application for a Special Exception, SE #15-04, Home-based Child Daycare Use.

WHEREAS, the applicant, Hiromi Waite, has submitted a request for a Special Exception to permit a home-based child daycare use with a maximum of twelve children on the property located at 715 Fall Place, Herndon, Virginia and identified as Fairfax County Tax Map Reference 0161-18-0067; and

WHEREAS, the Planning Commission has reviewed this application and has held a public hearing in accordance with the provisions of §15.2-2204 of the State Code; and

WHEREAS, the Planning Commission has recommended that the application be approved with conditions based upon the finding that the proposed use with conditions is not adverse to the purpose and intent of the Zoning Ordinance, in particular §78-202.3(e) and Section 78-402.7(k)(3); and

WHEREAS, the Town Council has reviewed the application and the Planning Commission recommendations and has found that the proposed use, with conditions, is not adverse to the purpose and intent of the Zoning Ordinance, in particular §78-202.3(e) and Section 78-402.7(k)(3).

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

1. Determines that this proposed use meets the following standards as found in §78-202.3(e):
 - a. Is consistent with the comprehensive plan.
 - b. Is free of conflict with any provision of this chapter and related town regulations or any other applicable local, state, or federal laws and regulations.
 - c. Does not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.
 - d. Consistent with the purpose and intent of the zoning district in which it is located, or will improve compatibility among uses and will ensure efficient development within the town.
 - e. Minimizes adverse visual impact of the proposed use on adjacent lands.

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- f. Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.
 - g. Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.
 - h. Avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are permitted in the zoning district.
 - i. Does not significantly and adversely impact the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
 - j. Results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the town's transportation network would occur and whether or not the proposed use is designed to ensure safe ingress and egress onto the site and safe road conditions on and around the site.
 - k. Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).
 - l. If infill and redevelopment is consistent with the redevelopment criteria and other applicable guidelines as stated in the Herndon 2030 Comprehensive Plan (adopted August 12, 2008), as amended.
 - m. If located in the floodplain overlay district, meets floodplain overlay standards.
2. The Town Council hereby grants to Hiromi Waite, the applicant, Special Exception #15-04 with the following conditions:
- a. Substantial Conformity. The site shall be developed and maintained in substantial conformance with the special exception plan submitted on May 20, 2015.
 - b. Permitted use. The use shall be limited to a home-based child daycare with an on-site play area. Prior to operation, the use

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shall receive a family day home license as issued by the Department of Social Services of the Commonwealth of Virginia. Upon issuance, the use shall maintain compliance with any conditions set forth in that family day home license, as well as the conditions set forth in this special exception.

- c. Hours of Operation. The permitted hours of operation shall be 6:30 a.m. until 6:30 p.m. Monday through Friday.
- d. Number of Permitted Children. The total number of non-resident children present on site for the home-based child daycare use shall not exceed twelve per day. The children shall range in age from two years to twelve years. The ratio of employees to children shall be as required by the State.
- e. On-Site Play Area. When playing outside all children shall be within the fenced playground area.
- f. Child Drop-off and Pick-up. Child drop-off and pick-up shall be limited to the driveway and the adjacent south-bound curbside of the subject property. Child drop-off and pick-up shall not occur on north-bound side of Fall Place. Child drop-off and pick-up shall not occur from any adjacent property. The applicant shall notify all current clients in writing of the procedures for child drop-off and pick-up within 7 days of the issuance of the zoning inspection permit referenced below in condition "g." A copy of the written procedures shall be provided to the Zoning Administrator within the same timeframe. All new clients shall receive a copy of the child drop-off and pick-up prior child's first day of care. Violation of the drop-off and pick-up procedures may result in revocation of this special exception permit as described below in condition "j."
- g. Compliance with Other Regulations. The home-based child daycare use shall meet all applicable Town, County, State and Federal regulations.
- h. Signage. No signage shall be permitted.
- i. Commencement of Operation. Prior to commencement of operation, as permitted by this application if it is approved, a new zoning inspection permit shall be applied for by the applicant and approved, if it is approved, by the town.

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- j. Termination. This special exception may be terminated by the Town Council, following public hearing, based upon information provided by the Zoning Administrator, if the use is not operated in accordance with the zoning ordinance and the conditions set forth above.
 - k. Expiration. This special exception shall automatically expire, without notice, twelve months after the date of Town Council approval unless the proposed use has commenced operation. Additional time to commence the operation may be granted by the Town Council if a written request is submitted to the Zoning Administrator at least sixty days prior to the expiration date.
 - l. Transferability. This special exception shall not run with the land identified as Fairfax County Tax Map Number 0161-18-0067 and shall terminate by a change in substantial ownership or possession of the subject land; or by the discontinuance for a continuous period of two years or more of the home-based childcare use, whichever occurs first.
 - m. Inspection. The property owner shall during reasonable hours upon prior notice make provisions to allow town officials to inspect the property.
3. This resolution by its terms shall be effective on and after the date of its adoption.

Ordinance 15-O-27, to grant a 10 year franchise to Level 3 Communications of Virginia, Inc.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, August 21, 2015 and Friday, August 28, 2015 issues.

Michael Doi, Deputy Director of Public Works, presented the staff report and a PowerPoint, which are on file in the Town Clerk's office. The proposed ordinance would grant a 10-year franchise agreement to Level 3 Communications of Virginia, Inc. This franchise agreement would consolidate the following affiliates and their respective agreements with the town: WilTel Communications of Virginia, Inc. ("WilTel") dated August 13, 2004; Looking Glass Networks of Virginia, Inc. ("LGN") dated December 1, 2005; tw telecom of Virginia llc (formerly known as Time Warner Telecom of Virginia, LLC, formerly known as Xspedius Management Co. of Virginia, LLC) ("TW") dated November 10, 2003, as amended on October 22, 2007 and April 23, 2013; and Level 3 Communications, LLC ("Level 3") dated March 25, 2005. Staff recommends approval of the franchise agreement with Level 3 Communications of Virginia, Inc. for the

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consolidation of affiliate franchises and revisions to the existing and proposed facility descriptions.

There was brief discussion amongst Council and staff on this item.

Councilmember Singh requested staff to provide him with Exhibits A, B and C for his review.

Responding to Councilmember Singh, Mr. Doi stated that staff would provide him with copies of the Exhibits.

Mayor Merkel stated that the town received one bid from Level 3 Communications of Virginia, Inc. She asked Mr. Doi if the town had received any additional bids.

Responding to Mayor Merkel's request, Mr. Doi stated that the town had not received additional bids.

Mayor Merkel opened the bid process and called for additional bids from the audience. Hearing none, she closed the bidding.

Following the public hearing (there were no comments from the applicant or audience), on the motion of Councilmember Olem, seconded by Vice Mayor Baker, Ordinance 15-O-27 was approved by a 6-0 roll call vote. The vote was: Councilmembers Mitchell, Olem, Singh, Wolf, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Kirby was absent.

Ordinance 15-O-27, Granting a 10 year franchise to Level 3 Communications of Virginia, Inc.; consolidating affiliate franchises; and updating existing and proposed facility descriptions.

BE IT ORDAINED by the Town Council of the Town of Herndon that:

1. The Town Council accepts the bid of and grants to Level 3 Communications of Virginia, Inc. a 10 year telecommunications franchise to use Town streets as set out in the franchise dated for identification purposes August 4, 2015 for installation and maintenance of underground telecommunication facilities. This franchise is on file in the office of the Town Attorney and incorporated by reference.
2. This franchise agreement consolidates the following affiliates and their respective agreements with the town: WilTel Communications of Virginia, Inc. ("WilTel") dated August 13, 2004; Looking Glass Networks of Virginia, Inc. ("LGN") dated December 1, 2005; tw telecom of virginia llc (formerly known as Time Warner Telecom of Virginia, LLC, formerly known as Xspedius Management Co. of Virginia, LLC) ("TW") dated November 10, 2003, as amended on October 22, 2007 and April 23, 2013; and Level 3 Communications, LLC ("Level 3") dated March 25, 2005.

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3. The franchise agreement updates existing and proposed facility descriptions.
4. In conjunction with the major data center project at 520 Van Buren Street, Level 3 Communications of Virginia, Inc. would be allowed to construct the proposed underground facilities necessary to serve the new hub, as long as the total number of existing and proposed conduits per street owned and operated by the franchisee would not exceed sixteen (16).
5. The franchise shall provide for a franchise fee determined by the public rights-of-way use fee legislation, § 56-468.1, Code of Virginia; shall provide for tree preservation, restoration of streets, utility marking standards, and for insurance and indemnity provisions in favor of Town; and shall be on such form as approved by the Town Attorney.
6. The Mayor is authorized to sign and deliver the franchise and any instrument to effect or support the franchise.
7. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is the franchise agreement dated August 4, 2015, b/n Level 3 Communications of Virginia, Inc. and the town.]

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TOWN OF HERNDON, VIRGINIA

FRANCHISE AGREEMENT

TERMS AND CONDITIONS FOR USE OF TOWN'S RIGHTS OF WAY

This Agreement (the "Agreement") is dated for identification this 4th day of August, 2015, by and between the TOWN OF HERNDON, a Virginia municipal corporation (the "Town") and Level 3 Communications of Virginia, Inc., a Virginia corporation, on behalf of itself and its Affiliates who are parties to the Affiliate Franchise Agreements ("Franchisee"), having a place of business at 1025 Eldorado Blvd, Broomfield, Colorado 80021.

Section 1: In consideration of Franchisee's collection and transmission to the Town of a monthly public rights-of-way use fee as set by the Virginia Department of Transportation (VDOT) pursuant to §56-468.1, Code of Virginia (1950), as amended, Town awards to Franchisee, its successors and assigns, for the term of ten years after the Effective Date (as defined in Section 11), and subject to the conditions and limitations described herein, a non-exclusive franchise to use the streets, alleys, rights-of-way, and public places of the Town as shown on the drawings referenced as Exhibit A. The locations of Facilities, as that term is defined below, shown on the drawing are only approximate and Level 3 hereby disclaims any responsibility to third parties for the accuracy of this information. Exhibit A depicts the approximate location of the Facilities within the boundaries of the Town. The purpose of this grant is to allow Franchisee to use and maintain a system of underground facilities which were installed by Franchisee or its Affiliates, as that term is defined below, and for which additional permits may be issued by the Town for the purpose of constructing new or maintaining new or existing underground wires, cables and appurtenances thereto owned by Franchisee for providing telecommunications services as shown on Exhibit A ("Facilities").

Except as provided below in this Section 1, no new construction under this franchise on any route described by Exhibit A may feature Facilities that exceed four conduits, whether free conduits or conduits encased in steel, plastic, or concrete; and no conduit may exceed two inches in diameter. The Town, acting by Ordinance, and Franchisee, may agree to amend Exhibit A to allow placement of additional Facilities.

1. Franchisee shall be allowed to undertake construction activities, make network improvements, and construct new fiber optic facilities necessary to implement their 520 Van Buren Street data center project. The improvements and construction will be limited to the routes and facilities detailed in Exhibit B and Exhibit C of this agreement.
2. Neither new facilities, nor expansions to existing facilities, shall be constructed within either the public Right-of-Way along Elden Street (Rt. 228), between Sterling Road (Rt. 6656) and Monroe Street (Rt. 666); along a public Right-of-Way within the Heritage Preservation District, as determined at the time of permitting; or along

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those routes depicted in Exhibits B and C of the franchise agreement, after such time that the construction depicted in Exhibits B and C has been completed.

3. Franchisee shall be allowed to construct a maximum of four (4) additional conduits along any route (length of Right-of-Way), except for those routes and facilities limited or excluded by items 1 and 2 above, or when the total number of conduits owned or operated by the franchisee would exceed sixteen (16) along that given route.
4. Nothing in this section or its parts shall preclude the franchisee from the requirements to apply for, and obtain, permits to perform any work within the public Right-of-Way, or from obtaining franchise amendments to allow for additional facilities not depicted in Exhibits A, B, or C.

Section 2: Franchisee represents that all existing Facilities, under or along streets, alleys, rights-of-way, and public places of the Town authorized by this Agreement are placed, constructed and located as shown on Exhibit A and incorporated by reference and that any new construction will be located as shown on a new Exhibit A that shall be submitted to the Town for legislative approval. Prior to any new construction in and under the streets, alleys, rights-of-way, and public places of the Town as shown on Exhibit A, Franchisee must obtain (if it can) administrative approval from the Town of Franchisee's plans, showing the location of the proposed Facilities. Any administrative approval will be in the form of an excavation permit. If such Facilities are already in existence, Franchisee is authorized to use those Facilities.

Franchisee shall assure that all utility markings it makes shall meet these standards: (i) Utility markings in the Heritage Preservation Districts, as shown on the Town of Herndon Zoning Map, must be accomplished by flags or stakes, or by "spot markings" with water soluble paint; (ii) Outside of the Heritage Preservation Districts, utility markings shall be made with water soluble paint. The Town supports and encourages utility markings with flags or stakes, or by "spot markings" with water soluble paint.

Section 3: Franchisee agrees to relocate at its own expense unless otherwise provided by general law of this Commonwealth and by the ordinance of the Town, within one hundred twenty days of written notification from the Town, all Facilities which, in the reasonable discretion of the Town using recognized engineering standards, interfere, disturb or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, rights-of-way, public grounds, storm drainage systems, sewer systems, water mains or other public facilities.

Franchisee shall relocate the Facilities using like construction, or better, if technological advances warrant such, to such places designated by the Town. The Town shall use reasonable good faith efforts to designate locations for any relocated Facilities that will permit Franchisee to continue efficiently to serve its existing and future customers. Any Town permits needed as a result of a relocation request by the Town, shall

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be of no cost to Franchisee. All Facilities shall be relocated underground. Any reimbursement for relocation costs for new installations allowed by general law of this Commonwealth and ordinances of the Town, shall be in accordance with Va. Code Ann. §56-468.2 and any other relevant laws.

Section 4: In the location, erection, operation and maintenance of Facilities, Franchisee shall comply with the requirements of Article II, "Tree Protection and Preservation," Chapter 26 "Environment," Herndon Town Code (2000), as amended, and as may be amended. This article, among other things, provides that "no person, public utility or other firm shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any tree within any public right-of-way or town owned property without first filing an application and procuring a tree permit from the urban forester. The person, public utility or firm receiving the tree permit shall abide by the Arboriculture Specifications and Standards of Practice adopted by the National Arborist Association Standards."

Section 5: If Franchisee shall, in the construction, operation, replacement, maintenance, removal or repair of its Facilities, damage any pavement, street, alley, sidewalk, sewer, water or other pipe or other public property belonging to the Town, Franchisee shall promptly repair the same at its own cost and expense. If Franchisee shall default in this obligation, the Town may cure such default and shall charge the work to the Franchisee in accordance with the Town's then current standard rates for such work. However, prior to performing any such work, the Town will give Franchisee written notice of the default and a period of thirty days after receipt of such notice within which to cure the default. The Town shall extend the thirty-day period for a reasonable time if such default cannot reasonably be cured within such period and Franchisee has commenced and is diligently pursuing such cure. If Franchisee does not so cure the default, the Town will provide Franchisee with a written notice advising of the expiration of the cure period and stating the date (which date shall be no less than three business days after Franchisee's receipt of such notices) on which the Town intends to commence the work on Franchisee's behalf.

Notwithstanding the foregoing, if such default threatens the public health or safety, the Town shall make a reasonable effort to provide Franchisee with telephonic notice and an opportunity to immediately cure such default. If the Town is unable to reasonably provide such notice or Franchisee fails to immediately cure the default, the Town may commence the cure on Franchisee's behalf. In any event, the Town shall immediately thereafter provide Franchisee with written notice of Town's performance of such emergency work.

Except in an emergency, prior to commencing work on any street, alley, right-of-way, or public ground, Franchisee shall obtain an excavation permit or other necessary approval to do such work and shall exercise reasonable judgment in order to avoid any inconvenience to the general public or the Town's work forces. Franchisee shall not impede the flow of traffic to any greater extent than is reasonably necessary in performing any

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maintenance, removal, replacement, construction or repairs. Franchisee shall strictly abide by the permit or approval requirements, including those requirements relating to time limitations.

Franchisee is bound by all applicable police power measures now or in the future adopted by the Town, in addition to the terms of this Agreement.

Section 6: Franchisee shall indemnify the Town, its officers, officials and employees (for purposes of this section only, collectively the "Town"), and shall hold the Town harmless from liability on account of injury, death or damage to persons or property arising out of the construction, improvement, removal, maintenance, repair or operations of its Facilities. If such suit shall be brought against the Town, either independently or jointly with Franchisee, Franchisee will defend, indemnify and hold the Town harmless in any such suit, at the cost of Franchisee. If a final judgment is obtained against the Town, either independently or jointly with Franchisee, Franchisee will pay the judgment, including all costs, and will hold the Town harmless therefrom. This indemnity shall not apply to claims for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence or willful misconduct of the Town, its agents or employees.

Franchisee shall obtain and maintain during the life of this agreement general and motor vehicle liability insurance with commercially reasonable limits of coverage, insuring against liability arising under this agreement. Franchisee shall name Town as an additional insured on this coverage and shall on Town's demand provide to Town an insurance certificate indicating such coverage.

Section 7: If Franchisee does not comply with the terms of this Agreement within thirty days after written notice of such non-compliance from the Town, the Town, at its option, may terminate the Franchise. However, such thirty-day period will be extended for an additional period as is reasonable under the circumstances if Franchisee's non-compliance cannot reasonably be cured within the thirty-day period and if Franchisee has commenced a cure within such period and continues to diligently pursue such cure.

Section 8: If this Agreement is terminated for default, Franchisee shall remove its Facilities or convey to the Town all right, title and interest that Franchisee has in the Facilities and shall release any and all permits it may have to operate the Facilities.

Section 9: This Franchise is not assignable or transferable without the express written permission of the Town, which permission shall not be unreasonably conditioned, withheld or delayed. However, Franchisee may assign, transfer or sublet its rights, without the consent of the Town, to any person or entity that controls, is controlled by or is under common control with Franchisee ("Affiliate"), or to any lender of Franchisee, provided the Town is advised of the action prior to enactment. Any successor(s) of Franchisee shall be bound by all of the terms and conditions of this Franchise and shall be subject to all the provisions, obligations, and stipulations here prescribed.

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Section 10: The rights, privileges and duties here granted shall continue for ten years, after the Effective Date (as defined in Section 11). Prior to the expiration of this Agreement, the parties may make a good faith effort to negotiate and enter into a Franchise agreement upon reasonable terms and conditions. Franchisee shall remove all Facilities from the streets, alleys and public places of the Town at the expense of Franchisee as soon as possible after the expiration, termination or abandonment of this Agreement, or by such reasonable time to be prescribed by the Town Council. Such Facilities may be abandoned without removal upon approval by the Town.

Section 11: This Agreement shall become effective on the date of Franchisee's written acceptance of this Franchise (the "Effective Date"). Franchisee shall then enter into a bond in the sum of Ten thousand dollars with good and sufficient surety, acceptable to the Town Attorney, conditioned to the effect that Franchisee will construct and maintain, or if constructed, will maintain, the Facilities in good order throughout the term of the grant, and (subject to the cure rights set forth in Section 7 hereof) will comply with this Agreement in all respects. This Agreement shall be void if the Effective Date does not occur within one year after the Town adopts an ordinance approving this Franchise, or if Franchisee does not obtain (or has not obtained) an initial permit for installation of Facilities within one year after the date of Town's adoption of the approving ordinance.

Section 12: Any notice given under this Agreement shall be mailed or delivered to the Town of Herndon, Attention: Town Manager, 777 Lynn Street, P.O. Box 427, Herndon, Virginia 20172-0427, and to Franchisee at 1025 Eldorado Blvd, Broomfield, Colorado 80021, Attn: Manager, Right-of-Way Contract Management with a copy to the attention of the General Counsel at the same address, by registered or certified mail, if mailed, return receipt requested; and shall be deemed delivered when received or refused by the addressee. The parties may change addresses by like notice.

Section 13: Both the Town and Franchisee reserve and may seek any and all remedies available at law. Neither the Town nor Franchisee shall be deemed to have waived any rights or remedies at law by virtue of executing this Agreement.

Section 14: This Agreement replaces the following franchise agreements between the listed Affiliates of Franchisee and the Town: WilTel Communications of Virginia, Inc. ("WilTel") dated August 13, 2004, Looking Glass Networks of Virginia, Inc. ("LGN") dated December 1, 2005, tw telecom of virginia llc (formerly known as Time Warner Telecom of Virginia, LLC, formerly known as Xspedius Management Co. of Virginia, LLC) ("tw") dated November 10, 2003 as amended on October 22, 2007 and April 23, 2013, and Level 3 Communications, LLC ("Level 3") dated March 25, 2005 (collectively the "Affiliate Franchise Agreements"). To the extent an Affiliate Franchise Agreement is in existence, the Affiliate Franchise Agreements are terminated as of the Effective Date. Franchisee is the successor to the franchisees represented by the Affiliate Franchise Agreements.

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LEVEL 3 COMMUNICATIONS OF VIRGINIA, INC.

By: _____
Name: _____
Title: _____
Date of Acceptance: _____

TOWN OF HERNDON, VIRGINIA

By: _____
Name: Lisa C. Merkel
Title: Mayor

ATTEST:

Viki L. Wellershaus
Town Clerk

APPROVED AS TO FORM:

Lesa J. Yeatts
Town Attorney

Exhibit A

Facilities Map "Level 3 Facilities within Herndon, Virginia", dated July 6, 2015, forthwith referred to as "Exhibit A", is physically on file with the Department of Public Works located at 1479 Sterling Road, Herndon, Virginia and is hereby incorporated by reference.

Exhibit B

Construction Permit plans "520 Van Buren & 251 Exchange Pl. Lateral 1 Proposed Fiber Route", dated April 13, 2015, forthwith referred to as "Exhibit B", is physically on file with the Department of Public Works located at 1479 Sterling Road, Herndon, Virginia and is hereby incorporated by reference.

Exhibit C

Construction Permit plans "520 Van Buren & 251 Exchange Pl. Lateral 2 Proposed Fiber Route", dated April 13, 2015, forthwith referred to as "Exhibit C", is physically on file with the Department of Public Works located at 1479 Sterling Road, Herndon, Virginia and is hereby incorporated by reference.

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Ordinance 15-O-28, to amend Chapter 78 (ZONING), Section 78-303.2 (Additional development standards for planned development districts), to permit an increase in allowable square footage for major tenant wall signs in the Planned Development – Worldgate (PD-W) zoning district, ZOTA #15-02.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, August 21, 2015 and Friday, August 28, 2015 issues.

Mayor Merkel stated that earlier in the evening, she mentioned that the applicant had respectively requested that the public hearing on this item be continued until September 22nd. She stated with the Council's concurrence, staff would forgo the presentation of the staff report this evening.

Mayor Merkel stated that because this item was properly advertised, she would open the public hearing to receive comments from the audience. Following the public hearing, the Council may consider action to continue the public hearing to September 22nd.

Following the public hearing (there were no comments from the Council, applicant, or audience), on the motion of Councilmember Olem, seconded by Councilmember Wolf, Ordinance 15-O-28 was continued to September 22nd by a 6-0 vote. The vote was: Councilmembers Mitchell, Olem, Singh, Wolf, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Kirby was absent.

Ordinance 15-O-29, to consider a change of zoning classification, of property at 770 Elden Street, 782-786 Elden Street and 724 Center Street, from Central Commercial (CC) to Planned Development Traditional Downtown (PD-TD); Ashwell LLC; applicant and contract purchaser Town of Herndon, ZMA #15-101.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the Friday, August 21, 2015 and Friday, August 28, 2015 issues.

Mayor Merkel stated that earlier this evening she mentioned that staff had requested that the public hearing on this item be continued until September 22nd. She stated that the town is the applicant and staff has requested additional time to resolve remaining issues related to the purchase of the property.

Mayor Merkel stated that because this item was properly advertised, she would open the public hearing to receive comments from the audience. Following the public hearing, the Council may consider action to continue the public hearing to September 22nd.

Mayor Merkel stated that prior to tonight's meeting, the Council received comments from individuals interested in this item, which have been entered into the record.

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Elizabeth Gilleran, Director of Community Development, presented the staff report and a PowerPoint, which are on file in the Town Clerk's office. The proposed is the rezoning of property located in downtown Herndon at 770 and 782-786 Elden Street and 724 Center Street. The property is currently zoned Central Commercial (CC) and the request is to change the zoning to Planned Development Traditional Downtown (PD-TD). The parcels are collectively known as the Ashwell Property. She stated that the town negotiated a contract to purchase this land. The Council adopted an ordinance approving the purchase on May 26, 2015. After closing on the property, the town intends to pursue private sector development of this land and the adjacent land that is also under town ownership and zoned PD-TD. The form of development to be pursued would be guided by the adopted comprehensive plan and Downtown Pattern Book.

Ms. Gilleran stated that at last week's work session, there was some confusion relating to the parking proffer language. She stated that staff is reviewing the parking proffer and would be providing replacement language at next week's work session.

There was brief discussion amongst Council and staff on this item.

The public hearing was held and the following individual provided testimony:

- Barbara Glakas, 935 Barton Oaks Place, Herndon.

Following the public hearing, on the motion of Councilmember Olem moved to continue Ordinance 15-O-29, to September 22nd. This motion was seconded by Councilmember Wolf.

Following brief discussion, staff was requested to provide the following information for next week's work session:

- The minimums and maximums in the diagonal/hatched area at higher density than the 40 and 70 percent;
- The height restrictions in the Residential District (R-10) area;
- The retail usages on the first floor of the English basements;
- Could there be more flexibility on the loading space; and
- Ways to ensure that the architectural aesthetics proposed by a developer remain in line with the town's small town charm and character. Several members of Council stated that the town does not want to see a development that resembles Ashburn's One Loudoun or the National Harbor.

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The question was called on the motion to continue the public hearing on Ordinance 15-O-29 to September 22nd, which was approved by a 6-0 vote. The vote was: Councilmembers Mitchell, Olem, Singh, Wolf, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Kirby was absent.

Ordinance 15-O-30, to approve a five-year term renewal of the lease, 397 Herndon Parkway to the Fairfax County School Board.

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers*, showing that notice of said public hearing had been duly advertised in the Friday, August 28, 2015 issue.

Mary Tuohy, Director of Finance, presented the staff report, which is on file in the Town Clerk's office. She stated that the applicant representative, Donnie Rasnake, Manager, Herndon Support Center, was present this evening. The proposed ordinance would approve a five-year term renewal of the lease of real estate at 397 Herndon Parkway to the Fairfax County School Board to provide satellite maintenance offices, workshops and outdoor fleet storage for Fairfax County Public Schools' Department of Facilities Services. Staff recommends approval of the proposed lease amendment and ordinance, as presented.

There was brief discussion amongst Council and staff on this item.

Following the public hearing (there were no comments from the applicant or audience), on the motion of Councilmember Olem, seconded by Vice Mayor Baker, Ordinance 15-O-30 was approved by a 6-0 vote. The vote was: Councilmembers Mitchell, Olem, Singh, Wolf, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Kirby was absent.

Ordinance 15-O-30, Approving a five-year term renewal of the lease of real estate at 397 Herndon Parkway to Fairfax County School Board to provide satellite maintenance offices, workshops and outdoor fleet storage for Fairfax County Public Schools' Department of Facilities Services.

BE IT ORDAINED by the Council of the Town of Herndon that:

1. The Town Council approves a five-year term renewal of the lease dated March 2, 2005, as amended by lease amendments dated March 29, 2010 and amended October 1, 2010 (collectively, the Lease) for real estate located at 397 Herndon Parkway. This instrument continues the lease of space at 397 Herndon Parkway to the Fairfax County School Board, a body corporate.
2. The annual rental rate beginning October 1, 2015 and ending September 30, 2016 will be \$19.00 per square foot which is equivalent to \$21,522.25 per month. Beginning on October 1st of years two through five of the lease, the square foot rental rate will increase three percent each year over the previous lease year's rental rate as follows:

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- October 1, 2016 through September 30, 2017 - \$19.57 per square foot or \$22,167.92 per month;
 - October 1, 2017 through September 30, 2018 - \$20.16 per square foot or \$22,836.24 per month;
 - October 1, 2018 through September 30, 2019 - \$20.76 per square foot or \$23,515.89 per month; and
 - October 1, 2019 through September 30, 2020 - \$21.38 per square foot or \$24,218.20 per month.
3. There shall be no additional rent unless real estate taxes are assessed on the property. In this case the tenant will pay a prorated shared of the real estate taxes assessed based on the square footage rented by the tenant in comparison to the entire square footage so assessed.
 4. Should the Town or Fairfax County Public Schools (FCPS) choose to terminate the lease prior to its expiration, a written notice of one to the other must be given at least 270 days prior to the termination. Should the Town's notice to FCPS be issued less than 270 days prior to the termination date, the Town shall be liable for a rent credit to FCPS for two months of rent based on the lease rate in effect at the time, not to exceed \$45,000. Should FCPS's notice to the Town be issued less than 270 days prior to the termination date, FCPS shall be liable for 270 days of rent, based on the lease rate in effect at the time.
 5. With the exception of those terms listed above, all other terms and conditions contained in the Lease will remain in effect until September 30, 2020.
 6. The lease renewal may contain other terms agreed to by the Mayor or Town Manager and shall be on such form approved by the Town Attorney.
 7. The Mayor is authorized to sign and deliver this lease extension. The Mayor, Town Manager, and Town Attorney are authorized to sign and deliver any ancillary documents or instruments necessary or convenient to evidence or effectuate the lease or assignment of lease.
 8. This ordinance shall be effective on and after the date of its adoption.

[Note: Attached for reference is the lease amendment dated October 1, 2015, b/n the town and Fairfax County School Board.]

**September 8, 2015
(public hearing)**

LEASE AMENDMENT

This lease amendment dated October 1, 2015, between the Town of Herndon, Virginia (Landlord) and the Fairfax County School Board (Tenant).

PROVIDES

that, in consideration of the rent paid to Landlord and the space provided to Tenant, the parties agree as follows:

1. The parties amend the lease between them dated March 2, 2005, as amended by lease amendments dated March 29, 2010 and October 1, 2010 (collectively, the Lease) for lease of 13,593 square feet of space at 397 Herndon Parkway (the Premises) as set out in this lease amendment.

2. The Lease is incorporated by reference into this lease amendment. Except as modified hereby, the Lease shall remain in effect and is ratified by Landlord and Tenant. This lease amendment takes precedence over the Lease (if there is any conflict between the terms of the Lease and the terms hereof).

3. The Lease will be renewed for a term of five years beginning October 1, 2015 through September 30, 2020. The Lease may not be extended beyond September 30, 2020.

4. The rental for the initial year of the renewal term shall be as follows:

October 1, 2015 through September 30, 2016 - \$19.00 per square foot
or \$21,522.25 per month.

5. Beginning with the second year of the renewal term, the square foot rental rate will increase three percent (3.0%) over the immediate preceding year's rental rate.

The rentals for years two through five of the renewal term shall be as follows:

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October 1, 2016 through September 30, 2017 - \$19.57 per square foot
or \$22,167.92 per month

October 1, 2017 through September 30, 2018 - \$20.16 per square foot
or \$22,836.24 per month

October 1, 2018 through September 30, 2019 - \$20.76 per square foot
or \$23,515.89 per month

October 1, 2019 through September 30, 2020 - \$21.38 per square foot
or \$24,218.20 per month

6. Other than the rent payments described in Sections 4 and 5 of this lease amendment, there shall be no additional rent or other sums due hereunder or under the Lease (whether under Section 1.6 of the Lease or otherwise) unless ad valorem real estate taxes are assessed on the Premises by the County of Fairfax or the Town of Herndon. If such real estate taxes are assessed against the Premises, then Tenant shall pay a proportional share of the real estate taxes assessed based on the square footage of the Premises rented by the Tenant in proportion to the entire square footage of the Premises.

7. Should Landlord or Tenant choose to terminate the Lease prior to its expiration, a written notice of one to the other must be given at least 270 days prior to the termination date. Should Landlord's notice to Tenant be issued less than 270 days prior to the termination date, Landlord shall be obligated to give Tenant either (i) a rent credit equal to two months of rent based on the lease rate in effect at the time, not to exceed \$45,000, or (ii) if the Lease will terminate before a period of two complete months such that Tenant will not receive the full benefit of two months of rent credit, then the credit shall be prorated to correspond to the remaining period of occupancy. Should Tenant's notice to the Landlord be issued less than 270 days prior to the termination date, Tenant shall be obligated to pay Landlord a sum equal to the difference between 270 days of rent,

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based on the lease rate in effect at the time, and the rent due for the number of days Tenant remains on the Premises. Any payment made under this section shall be made within 30 days after Tenant vacates the Premises.

TOWN OF HERNDON, VIRGINIA

by: _____
Lisa C. Merkel, Mayor

ATTEST:

Town Clerk

FAIRFAX COUNTY SCHOOL BOARD

by: _____
Jeffrey K. Platenberg
Assistant Superintendent

APPROVED AS TO FORM:

Lesa J. Yeatts
Town Attorney

8. CONSENT AGENDA

Resolution 15-G-61, to authorize the Mayor to sign the Standard Project Agreement between the Northern Virginia Transportation Authority and the town, East Elden Street improvements; and

Resolution 15-G-62, to amend the eligibility for Town Council to participate in town health insurance.

On motion of Vice Mayor Baker, seconded by Councilmember Olem, the following Consent agenda items were approved by a 6-0 vote, without comment. The vote was: Councilmembers Mitchell, Olem, Singh, Wolf, Vice Mayor Baker and Mayor Merkel voting "Aye." Councilmember Kirby was absent.

Resolution 15-G-61, To authorize the Mayor of the Town of Herndon to sign the 'Standard Project Agreement for Funding and Administration between Northern Virginia Transportation Authority and Town of Herndon

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(recipient entity)' of House Bill 2313 70% Funding that the Authority is allocating to the town's regional project titled: East Elden Street Widening and Improvements (UPC 50100).

WHEREAS, the Town of Herndon 2030 Comprehensive Plan, as amended through January 13, 2015, advises the widening and improvement of East Elden Street from Monroe Street to the town line; and

WHEREAS, on March 25, 2014, the Town Council adopted a resolution to provide additional guidance on the design for improvements to East Elden Street, between the Eastern Town line and the Monroe Street intersection; and

WHEREAS, the Standard Project Agreement was approved by the Authority on March 13, 2014; and

WHEREAS, the Standard Project Agreement establishes the terms and conditions associated with the funding the Authority has agreed to provide to regional projects and to ensure that the requirements of HB 2313 are met; and

WHEREAS, HB 2313 directs the Authority to use 70-percent of the revenue collected from the three Northern Virginia taxes and fees for (i) transportation projects selected by the Authority that are contained in the regional transportation plan or (ii) mass transit capital projects that increase capacity; and

WHEREAS, on April 23, 2015 the Northern Virginia Transportation Authority (NVTA) adopted its FY2015-16 Two Year Program consisting of 16 transit and 21 highway projects, of which the town's East Elden Street Improvements & Widening Project (UPC 50100) project was allocated \$10.4 million; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby authorizes the Mayor to sign the 'Standard Project Agreement for Funding and Administration between Northern Virginia Transportation Authority and Town of Herndon (recipient entity)' of House Bill 2313 70% Funding that the Authority is allocating to regional projects.

[Note: Attached for reference is the Standard Project Agreement for Funding and Administration b/n Northern Virginia Transportation Authority and the town.]

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Attachment 2

**Standard Project Agreement for Funding and Administration
between
Northern Virginia Transportation Authority
and**

(Recipient Entity)

Project Name: _____

NVTA Project Number: _____

This Standard Project Agreement for Funding and Administration ("this Agreement") is made and executed in duplicate on this _____ day of _____, 20____, as between the Northern Virginia Transportation Authority ("NVTA") and _____ ("Recipient Entity").

WITNESSETH

WHEREAS, NVTA is a political subdivision of the Commonwealth of Virginia created by the Northern Virginia Transportation Authority Act ("the NVTA Act"), Chapter 25 of Title 33.2 of the Code of Virginia, as amended;

WHEREAS, Section 33.2-2500(4) of the Code of Virginia authorizes NVTA to enter into project agreements with certain statutorily designated entities for the provision of transportation facilities and services to the area embraced by NVTA;

WHEREAS, Section 33.2-2509 of the Code of Virginia authorizes NVTA to use funds from a fund established pursuant to that Code section (the "NVTA Fund") in order to assist in the financing, in whole or in part, of certain regional transportation projects in accordance with Code Section 33.2-2510;

WHEREAS, the NVTA Fund provides for the deposit therein of certain dedicated revenues and other funds appropriated by the Virginia General Assembly;

WHEREAS, Section 33.2-2510 of the Code of Virginia authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA debt issuances ("NVTA Bond Proceeds") to be used by NVTA solely for transportation purposes benefiting those counties and cities embraced by NVTA;

WHEREAS, the Project set forth and described on Appendix A to this Agreement ("the Project") satisfies the requirements of Virginia Code Section 33.2-2510;

Revised: July 28, 2015

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WHEREAS, the Project is to be financed, as described in Appendix B, in whole or in part, by funds from the NVTA Fund and/or from NVTA Bond Proceeds, is located within a locality embraced by NVTA's geographical borders, or is located in an adjacent locality, but only to the extent that any such extension is an insubstantial part of the Project and is essential to the viability of the Project within the localities embraced by NVTA;

WHEREAS, _____ formally requested that NVTA provide funding to the Project by timely submitting an application for NVTA funding in response to NVTA's call for projects;

WHEREAS, NVTA has reviewed _____'s application for funding and has approved _____'s administration and performance of the Project's described scope of work;

WHEREAS, based on the information provided by _____, NVTA has determined that the Project complies with all requirements of the NVTA Act related to the use of moneys identified in Virginia Code Sections 33.2-2510(A),(C)1 and all other applicable legal requirements;

WHEREAS, the funds to be provided by NVTA described in Appendix B have been duly authorized and directed by _____ to finance the Project;

WHEREAS, NVTA agrees that _____ will design and/or construct the Project or perform such other specific work for the Project and _____ agrees that it will perform such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

WHEREAS, both parties have concurred in the _____'s administration, performance, and completion of the Project on the terms and conditions set forth in this Agreement and its Appendices and in accordance with all applicable federal, state, and local laws and regulations; and

WHEREAS, NVTA's governing body and _____'s governing body have each authorized that their respective designee(s) execute this agreement on their respective behalf(s) as evinced by copies of each such entity's clerk's minutes which are appended hereto as Appendix E;

NOW THEREFORE, in consideration of the promises made mutual covenants, and agreements contained herein, the parties hereto agree as follows:

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A. Recipient Entity's Obligations

_____ shall:

1. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement.
2. Ensure that all work performed or to be performed under this Agreement is in accordance with the Project Description Sheets attached to Appendix A and complies with Va. Code Ann. Sections 33.2-2510(A), (C)1.
3. Perform or have performed, and remit all payment requisitions and other requests for funding for design and engineering, including all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions for the Project, as is required by this Agreement and that may be necessary for completion of the Project.
4. Not use the NVTA funds specified on Appendix B to pay any Project cost if the NVTA Act does not permit such Project cost to be paid with NVTA funds.
5. Recognize that, if the Project contains "multiple phases" (as such "multiple phases" are defined for the Project on Appendix A), for which NVTA will provide funding for such multiple phases (as set forth on Appendix B), NVTA may not provide funding to _____ to advance the Project to the next phase until the current phase is completed. In any circumstance where _____ seeks to advance a Project to the next phase using NVTA funds, _____ shall submit a written request to NVTA's Executive Director explaining the need for NVTA's funding of an advanced phase. NVTA's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTA's current and projected cash flow position and make a recommendation to NVTA whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit _____ from providing its own funds to

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advance a future phase of the Project and from requesting reimbursement from NVTA for having advance funded a future phase of the Project. However, _____ further recognizes that NVTA's reimbursement to _____ for having advance funded a Project phase will be dependent upon NVTA's cash flow position at the time such a request for reimbursement is submitted and to the extent that any such advanced funding is consistent with Appendix B.

6. Acknowledge that NVTA's Executive Director will periodically update NVTA's project cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. _____ shall provide all information required by NVTA so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.
7. Provide to NVTA requests for payment consistent with Appendix B and the most recently approved NVTA cash flow estimates that include NVTA's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by NVTA and that certify all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by NVTA, _____ can expect to receive payment within twenty (20) days upon receipt by NVTA. Approved payments may be made by means of electronic transfer of funds from NVTA to or for the account of _____.
8. Promptly notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances and provide to NVTA detailed estimates of additional costs associated with those circumstances. _____ understands that it will be within NVTA's sole discretion whether to provide any additional funding to the Project in such circumstances and that NVTA will do so only in accordance with NVTA's approved Project Selection Process and upon formal action and approval by NVTA. _____ shall timely provide to NVTA a

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complete and accurate update to Appendix B, if NVTA approves funding of any additional Project costs for the Project under this Paragraph.

9. Release or return any unexpended funds to NVTA no later than 90 days after final payment has been made to the contractors.
10. Review and acknowledge the requirements of NVTA Resolution No. 14-08 adopted January 23, 2014; to wit that, if applicable to _____'s Project: a) Prior to any NVTA funds being released for a project that may be part of a larger project, projects, or system undertaken with an extra-territorial funding partner, all such extra-territorial funding partners must commit to pay their appropriate, respective proportionate share or shares of the larger project or system cost commensurate with the benefits to each on a basis agreed upon by the NVTA member localities; b) any such funds released by NVTA for such project will be in addition to the funds that the NVTA member locality is to receive from or be credited with by the extra-territorial funding partner for the project or system; and c) there shall be no funding made available by NVTA until such time as all extra-territorial funding partners for such project or system pay or officially commit to fund their appropriate, respective proportionate shares of such large project or system commensurate with the benefits to each on a basis agreed upon with NVTA.
11. Should _____ be required to provide matching funds in order to proceed or complete the funding necessary for the Project, _____ shall certify to NVTA that all such matching funds have been either authorized and/or appropriated by _____s governing body or have been obtained through another, independent funding source;
12. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations, unless superseded by the laws that govern _____ and provide copies of any such financial records to NVTA, free of charge, upon request.

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13. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations, unless superseded by the laws that govern _____; and provide to NVTA copies of all such drawings and plans free of charge, upon request.
14. Reimburse NVTA for all NVTA funds (with interest earned at the rate earned by NVTA) that _____ misapplied or used in contravention of Sections 33.2-2500 *et. seq.* of the Virginia Code ("the NVTA Act") Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766"), or any term or condition of this Agreement.
15. Name NVTA and its Bond Trustee or require that all _____'s contractors name NVTA or its Bond Trustee as an additional insured on any insurance policy issued for the work to be performed by or on behalf of _____ for the Project and present NVTA with satisfactory evidence thereof before any work on the Project commences or continues.
16. Give notice to NVTA that _____ may use NVTA funds to pay outside legal counsel services (as opposed to utilizing the services of its own in-house counsel or NVTA's in-house legal counsel) in connection with the work performed under this Agreement _____ so as to ensure that no conflict of interest may arise from any such representation.
17. Provide certification to NVTA, that upon final payment to all contractors for the Project, _____ will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTA be considered responsible or obligated to operate and/or maintain the Project after its completion.
18. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, or local ordinances which govern the letting of public contracts, unless superseded by the laws that govern _____.

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19. Acknowledge that if the Project is being funded in whole or in part by NVTA Bond Proceeds, comply with the tax covenants attached as Appendix D.
20. Acknowledge that if _____ expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that _____ agrees to comply with the Virginia Department of Transportation's ("VDOT's") "Standards, Requirements and Guidance."
21. Recognize that _____ is solely responsible for obtaining all permits and permissions necessary to construct and/or operate the Project, including but not limited to, obtaining all required VDOT and local land use permits, applications for zoning approvals, and regulatory approvals.
22. Recognize that if _____ is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTA funds and/or NVTA Bond Proceeds that _____ will need to comply with all federal and Commonwealth funding requirements, including but not limited to, the completion and execution of VDOT's Standard Project Administration Agreement and acknowledges that NVTA will not be a party or signatory to that Agreement; nor will NVTA have any obligation to comply with the requirements of that Agreement.
23. Provide a certification to NVTA no later than 90 days after final payment to the contractors that _____ adhered to all applicable laws and regulations and all requirements of this Agreement.

B. NVTA's Obligations

NVTA shall:

- I. Provide to _____ the funding authorized by NVTA for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s) on a reimbursement basis as set forth in this Agreement and as specified in the Project Budget and Cash Flow contained in

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Appendix B to this Agreement or the most updated amendment thereto, as approved by NVTA.

2. Assign a Program Coordinator for the Project. NVTA's Program Coordinator will be responsible for monitoring the Project on behalf of NVTA so as to ensure compliance with this Agreement and all NVTA's requirements and with overseeing, managing, reviewing, and processing, in consultation with NVTA's Executive Director and its Chief Financial Officer ("CFO"), all payment requisitions submitted by _____ for the Project. NVTA's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the Project Scope of Work as set forth on Appendix A or to the Project Budget and Cash Flow as set forth on Appendix B.
3. Route to NVTA's assigned Program Coordinator all _____'s payment requisitions, containing detailed summaries of actual Project costs incurred which are in substantially the same form as shown on Appendix C submitted to NVTA for the Project. After submission to NVTA, NVTA's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. NVTA's Program Coordinator will then make a recommendation to the NVTA's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from _____. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is deemed insufficient, within twenty (20) days from receipt, NVTA's Program Coordinator will notify _____ in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed for processing the payment request. Payment will be withheld until all deficiencies identified by NVTA have been corrected. Under no circumstances will NVTA authorize payment for any work performed by or on behalf of _____ that is not in conformity with the requirements of the NVTA Act, Chapter 766, or this Agreement.

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4. Route all _____'s supplemental requests for funding from NVTA under Paragraphs A.5 and A.8 of this Agreement to NVTA's Executive Director. NVTA's Executive Director will initially review those requests and all supporting documentation with NVTA's CFO. After such Initial review, NVTA's Executive Director will make a recommendation to NVTA's Finance Committee for its independent consideration and review. NVTA's Finance Committee will thereafter make a recommendation on any such request to NVTA for final determination by NVTA.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the NVTA Act, Chapter 766, and other applicable law. Such compliance reviews may entail review of _____'s financial records for the Project and on-site inspections.

6. Acknowledge that if, as a result of NVTA's review of any payment requisition or of any NVTA compliance review, NVTA staff determines that _____ has misused or misapplied any NVTA funds in derogation of this Agreement or in contravention of the NVTA Act, Chapter 766 or applicable law, NVTA staff will promptly advise NVTA's Executive Director and will advise _____'s designated representative in writing. _____ will thereafter have thirty (30) days to respond in writing to NVTA's Initial findings. NVTA's staff will review _____'s response and make a recommendation to NVTA's Finance Committee. NVTA's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to NVTA. Pending final resolution of the matter, NVTA will withhold further funding on the Project. If NVTA makes a final determination that _____ has misused or misapplied funds in contravention of this Agreement, the NVTA Act, Chapter 766, or other applicable law, NVTA will cease further funding for the Project and will seek reimbursement from _____ of all funds previously remitted by NVTA (with interest earned at the rate earned by NVTA) which were misapplied or misused by _____. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.

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7. Make guidelines available to _____ to assist the parties in carrying out the terms of this Agreement in accordance with applicable law.
8. Upon recipient's final payment to all contractors, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans for the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.
9. Be the sole determinant of the amount and source of NVTA funds to be provided and allocated to the Project and the amounts of any NVTA funds to be provided in excess of the amounts specified in Appendix B.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.
2. _____ may terminate this Agreement, for cause, in the event of a material breach by NVTA of this Agreement. If so terminated, NVTA shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by _____ to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds to NVTA as described in paragraph F of this Agreement or repeal of the legislation establishing the NVTA fund created pursuant to Chapter 766 shall not be considered material breaches of this Agreement by NVTA. Before initiating any proceedings to terminate under this Paragraph, _____ shall give NVTA sixty (60) days written notice of any claimed material breach of this Agreement; thereby allowing NVTA an opportunity to investigate and cure any such alleged breach.
3. NVTA may terminate this Agreement, for cause, resulting from _____'s material breach of this Agreement. If so terminated, _____ shall refund to NVTA all funds NVTA provided to _____ for the Project (including interest earned at the rate earned by NVTA). NVTA will provide _____ with sixty (60) days written notice that NVTA is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, _____ may

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request that NVTA excuse _____ from refunding all funds NVTA provided to _____ for the Project based upon _____'s substantial completion of the Project or severable portions thereof; and NVTA may, in its sole discretion, excuse _____ from refunding all or a portion of the funds NVTA provided to _____ for the Project. No such request to be excused from refunding will be allowed where _____ has either misused or misapplied NVTA funds in contravention of applicable law.

4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, _____ will release or return to NVTA all unexpended NVTA funds with interest earned at the rate earned by NVTA no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. NVTA's Executive Director and _____'s Chief Executive Officer or Chief Administrative Officer shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to NVTA and to _____'s governing body for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law, including all judicial remedies.

E. NVTA's Financial Interest in Project Assets

_____ agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by NVTA under this Agreement ("Project Assets") for the designated transportation purposes of the Project under this Agreement and in accordance with applicable law throughout the useful life of each Project Asset. NVTA shall retain a financial interest in the value of each of the of the Project Assets, whether any such Project Asset may have depreciated or appreciated, throughout its respective useful life proportionate to the amount of the cost of the Project Asset funded by NVTA under this

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Agreement. In the event that _____ fails to use any of the Project Assets funded under this Agreement for the transportation purposes as authorized by this Agreement or applicable law throughout its respective useful life, _____ shall refund to NVTA with interest at the rate earned by NVTA the amount attributable to NVTA's proportionate financial interest in the value of said Project Asset. If _____ refuses or fails to refund said monies to NVTA, NVTA may recover its proportionate financial interest from _____ by pursuit of any remedies available to NVTA, including but not limited to NVTA's withholding of commensurate amounts from future distributions of NVTA funds to _____.

F. Appropriations Requirements

1. Nothing herein shall require or obligate any party to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by their respective governing bodies.

2. The parties acknowledge that all funding provided by NVTA pursuant to Chapter 766 is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the NVTA Fund pursuant to Va. Code Ann. Sections 58.1-638, 58.1-802.2, and 58.1-1742 and any other moneys that the General Assembly appropriates for deposit into the NVTA Fund are subject to appropriation by the General Assembly and (ii) NVTA's obligations under this Agreement are subject to such moneys being appropriated for deposit in the NVTA Fund by the General Assembly.

G. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

1) to: NVTA, to the attention of its Executive Director;
3040 Williams Drive, Suite 200
Fairfax, VA 22031

2) to _____, to the attention of _____

_____ (address)

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H. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

I. Modification or Amendment

This Agreement may be modified, in writing, upon mutual agreement of both parties.

J. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

K. No Agency

_____ represents that it is not acting as a partner or agent of NVTAA; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

M. Incorporation of Recitals

The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that such recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

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O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Northern Virginia Transportation Authority

By: _____

Date: _____

_____ (Name of Recipient Entity)

By: _____

Date: _____

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Resolution 15-G-62, to amend the Eligibility for Town Council to participate in Town Health Insurance.

WHEREAS, the Town of Herndon maintains health insurance for eligible town employees and current Town Councilmembers; and

WHEREAS, due to recent health insurance changes, the Town of Herndon desires to amend the eligibility of Town Councilmembers' participation in town offered health insurance.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby adopts the following amendment to its health insurance eligibility, effectively immediately:

- Town of Herndon, Virginia, Councilmembers are not eligible to participate in town offered health insurance.

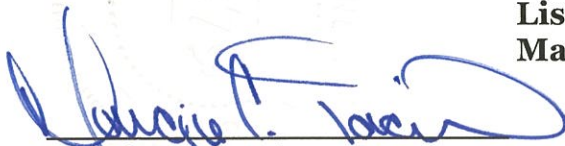
BE IT FURTHER RESOLVED by the Town Council of the Town of Herndon, Virginia, that this Amendment shall supersede the provisions of the town's health insurance plan to the extent those provisions are inconsistent with the provisions of this amendment.

9. ADJOURNMENT

There being no further business, the meeting adjourned at 8:41 p.m.



Lisa C. Merkel
Mayor



Margie C. Tacci
Deputy Town Clerk

Minutes approved by Town Council: September 22, 2015.