

**TOWN OF LEESBURG  
NOTICE OF PUBLIC HEARING**

**PROPOSED ORDINANCE  
AUTHORIZING A LEASE OF A PORTION OF REAL PROPERTY  
OWNED BY THE TOWN OF LEESBURG, VIRGINIA  
TO LOUDOUN COUNTY, VIRGINIA, FOR A TUNNEL UNDERNEATH CHURCH ST.,  
N.E., TO CONNECT THE EXISTING COURTHOUSE WITH THE PROPOSED  
COURTHOUSE EXPANSION COMPLEX**

Pursuant to §§ 15.2-1800, 15.2-2030, 15.2-2100 and 15.2-2101 of the Code of Virginia of 1950, as amended, the **LEESBURG TOWN COUNCIL** will hold a Public Hearing on **Tuesday, February 9, 2016, at 7:30 p.m.** in the Town Council Chambers, 25 West Market Street, Leesburg, Virginia, to consider a 40 year lease of approximately 1,650 square feet of real property owned by the Town of Leesburg, Virginia, (“Town”) and located under Church Street, N.E., to Loudoun County, Virginia, to allow the county to construct an underground tunnel connecting the current courthouse complex located at 18 E. Market Street, Leesburg, Virginia, to the proposed new courthouse expansion project located at 2 Church St., N.E.

A copy of the Lease Agreement for Pedestrian Tunnel between the Town and Loudoun County, and additional information regarding the proposed lease of real property is available from the Town Clerk, located in Town Hall, 25 West Market Street, Leesburg, Virginia, during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.); or by calling Lee Ann Green, Town Clerk, at 703-771-2733.

At this hearing, all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at 703-771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.

1/27/16, 2/3/16



**Date of Council Meeting: February 9, 2015**

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

**Subject:** Tunnel Lease for Courthouse Expansion Project

**Staff Contact:** Barbara Notar, Town Attorney

**Council Action Requested:** Authorize the Vice Mayor to Execute the Tunnel Lease.

**Staff Recommendation:** Approve the Tunnel Lease.

**Commission Recommendation:** The Planning Commission recommended approval of application TLZM-2015-0002 which included the lease to allow for an underground pedestrian tunnel.

**Fiscal Impact:** None. The Town will lease the area beneath Church St. to the County for the nominal charge of \$1.00 annually.

**Work Plan Impact:** Not Applicable

**Executive Summary:** The Town of Leesburg (Town) and the County of Loudoun (County) through their attorneys and with the assistance of Town and County engineers, have negotiated a 40-year lease to allow for an underground pedestrian tunnel to be constructed below Church Street to connect the current Courthouse with the new Courthouse Expansion Project.

The Code of Virginia, Section 15.2-2030, authorizes the Town Council to enact an ordinance, after a public hearing, authorizing a 40-year lease agreement with another entity for the area beneath a town street. Under the terms of the lease, the County will be responsible for the construction and maintenance of the tunnel. The County will also provide adequate insurance for the tunnel and its operations. The lease area will be no more than 55 feet wide, 30 feet long and 16 feet deep. The tunnel within the lease area will be 30 feet long, 18 feet wide and 10 feet tall. Provisions exist for the County to renew the lease for an additional 40-year period.

**Background:** As part of the Courthouse Expansion Project, a tunnel is necessary to connect the current Courthouse Building (18 E. Market St.) with the new Courthouse Expansion Project (2 Church St.). This tunnel will be used for prisoners, their escorts, and other security personnel, but will not be open or utilized by the general public. Town staff estimates that Church Street will be closed for approximately 4 to 6 weeks to allow the County to construct the tunnel. In addition to the lease, Town staff will issue a Right of Way Permit which will contain additional conditions for closing Church Street during construction.

Agenda Memo — Tunnel Lease  
February 9, 2016  
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Attachment:

- 1) Proposed Ordinance
- 2) Draft Tunnel Lease Agreement

## LEASE AGREEMENT FOR PEDESTRIAN TUNNEL

**THIS LEASE AGREEMENT** (“Lease”), dated \_\_\_\_\_, 2016, by and between the **TOWN OF LEESBURG, VIRGINIA**, (“Town”), a Virginia municipal corporation, and the **COUNTY OF LOUDOUN, VIRGINIA**, (“County”), a political subdivision of the Commonwealth of Virginia.

### RECITALS

R-1. The County desires to construct a new General District Courts facility on property within the Town known as 2 Church Street NE and in connection with such construction, to provide for an underground pedestrian tunnel linking the new court facility with the existing Courts complex generally addressed as 18 E. Market Street.

R-2. The tunnel connecting the two court facilities must cross public right-of-way owned by the Town known as Church Street (the “Property”), which is an integral part of the Town’s street and pedestrian network.

R-3. The Town is prepared to approve a lease pursuant to Va. Code section 15.2-2030 providing for a 40-year term allowing the County the exclusive use of an underground corridor through Church Street for construction of the pedestrian tunnel (the “Facilities”), but only in accordance with the terms of this lease agreement.

**NOW, THEREFORE, THIS LEASE AGREEMENT, WITNESSETH**, that in consideration of the foregoing and the further consideration of \$1.00 and the mutual undertakings set forth herein, the parties agree as follows:

**1. LEASED PREMISES:** (a) The Town hereby leases to the County and the County hereby leases from the Town an underground corridor of no more than 55 feet wide(centered on the tunnel), 30 feet long, and 16 feet deep, within and underneath the improved surface of the Property, as depicted on Exhibit A, (“the Premises”). The highest point of the Premises shall be located not closer than four and a half (4.5) feet to the crown of Church Street. The Town may agree to a lesser distance, based on reasonable engineering justification.

(b) The Lease is conditioned upon approval of plans and specifications as required by the Town. No construction or modification of the Facilities shall proceed until the County has submitted plans to the Town and the Town has approved such plans in accordance with paragraph 6. All construction shall be consistent with the installation approved by the Town upon the County’s site plan application and related construction drawings. Following such approval and construction, the County shall submit as-built drawings certified by an engineer in accordance with the requirements of paragraph 6. Thereafter, no changes in the Facilities or modification of the installation of the Facilities shall be made without the express approval of the Town, upon submission and approval of a site plan modification, or other required process, in accordance with the requirements of paragraph 6.

(c) The County shall have the exclusive right to construct, maintain and operate its Facilities within the Premises as a pedestrian tunnel supporting court operations, which construction,

maintenance and operation shall be at the County's sole cost and expense, including the cost of any existing utility relocations and new utility installations required to accommodate the Facilities.

(d) It is understood and agreed by the Parties that the Town retains the authority to co-locate utility facilities such as water and sewer lines, electrical power lines and gas lines for transmission purposes serving customers located within the Town but outside of the Property or the County's court facilities being accommodated under this Lease when in the sole reasonable judgment of the Town such utility facilities cannot be feasibly located elsewhere. The Town will make its best reasonable efforts to avoid locating such utility facilities in a manner that will interfere with County's use of the Facilities in support of court operations.

(e) The County's ability to use the Premises is contingent upon County, at its sole cost and expense, obtaining and maintaining all certificates, permits, licenses and other approvals required by any federal, state, or local authority for construction and use of the Facilities.

(f) In the event any approval required for use of the Premises as intended shall lapse, be canceled or otherwise terminated for any reason, this Lease shall terminate in accordance with the provisions of paragraphs 14 (Default) and 7 (Restoration/Closure).

**2. TERM:** The term of this Lease shall be forty (40) years, commencing on the date of approval of construction plans or issuance of a right-of-way permit by the Town, whichever is later, authorizing construction of the Facilities (the "Commencement Date"). Not earlier than two (2) years prior to expiration, the County may notify the Town of its desire to extend the Lease for an additional period on the same terms provided in this Lease, and the Town shall have sixty (60) days in which to notify the County of its approval or disapproval of the extension request. The Town may disapprove the extension request if, in its sole reasonable judgment, renewal is not in the public interest.

In event of termination of the Lease, whether by expiration of the term or other reason, the County shall be required to remove the Facilities and restore the Premises or perform the approved plan for closure of the Facilities within as required in paragraph 7.

**3. RENT:** The County shall pay the Town rent of one dollar (\$1.00) annually, due upon the Commencement Date and each anniversary thereafter for the term of this Lease.

**4. REMOVAL/RELOCATION OF FACILITIES; REIMBURSEMENT OF LANDLORD'S EXCESS COSTS:** (a) Removal: The Town reserves the right to require the County to close or relocate the Facilities if the operation of the Facilities materially impairs or threatens the operation of Church Street as a fully utilitarian part of the Town's street and pedestrian network. In such event, the County may at its own discretion decide to relocate the Facilities to another location designated by the Town, at County expense, or alternatively may elect to close the Facilities in accordance with the requirements of paragraph 7 and terminate this Lease.

(b) Reimbursement of excess costs or damages: In the event the Town's maintenance of improvements on the Property results in additional costs to the Town, by reason of special

engineering consulting, extra time, additional materials or manpower needed for such maintenance purposes, or the Town's facilities located on the Property are damaged by reason of the construction, maintenance or location of the Facilities, the County agrees to pay the additional cost (as a payment separate from the Rent), provided that the Town shall supply the County with reasonable documentation of such costs or damages due to the presence of the Facilities within the Property.

(c) Subparagraphs (a) and (b) notwithstanding, whenever the Town determines in its sole reasonable judgment that an emergency exists requiring work on the Property be undertaken that may interrupt or interfere with County's operations of the Facilities or may result in damage or destruction to some or all of County's Facilities despite the Town's reasonable best efforts to minimize same, the Town may enter upon the Property and Premises to undertake such work. The Town shall give the County such notice in advance as is reasonably practicable under the circumstances. Provided that Town or its agents proceed in good faith, the Town shall incur no obligations to the County for such damage or destruction and the County shall bear the entire risk of loss for operations by the Town under this subparagraph.

## **5. ACCESS; UTILITIES**

(a) Subject to the Town's right to co-locate utility lines within the Premises in accordance with the provisions of paragraph 1(d), the Town hereby grants to the County an exclusive right for the term of this Lease for ingress, egress, and access, to construct, install, maintain, modify, replace, operate and service the Facilities twenty-four (24) hours a day, seven (7) days a week and to bring utilities across/within the Premises in order to service the Facilities. The County shall pay all costs and charges for utilities and services necessary to install, maintain and operate the Facilities. The Town will cooperate with the County in the County's efforts to obtain utility services to serve the Facilities, including signing easement agreements with utility companies to provide service to the Facilities subject to approval by the Town.

After construction, access by the County or its agents to the Premises and the Facilities located therein shall be from the properties owned by the County served thereby and access originating from the Church Street right-of-way outside of the Premises shall be permitted only in accordance with the provisions of an approved Town right-of-way permit for such purposes.

(b) The Town shall have access to the Facilities for routine inspections and emergency purposes; provided that for reasonable routine inspections the Town shall notify the County not less than seventy-two (72) hours in advance and as soon as practicable for emergencies as provided in paragraph 4(c).

(c) The County's obligations under this paragraph shall include notifying the Town with the names and contact information for 24/7 access to any employee or agent or contractor who may require access to the Premises, in accordance with the notice provisions of paragraph 19, and promptly updating such information in the event of change. Persons authorized to access the Premises may be required to meet the standards of any access policy as may be adopted or amended by the Town so as to afford protection of the Property as part of the transportation network of the Town. The Town shall provide the County the names and phone numbers of

authorized employees or agents for access and notification in accordance with the notice provisions of paragraph 19.

**6. INSTALLATION, MODIFICATION, RELOCATION:**

All installations, modifications or relocation of Facilities shall be subject to the Town's approval. The County shall submit to the Town with each request for such approval, detailed plans reflecting current conditions on the Property and a complete structural analysis, prepared by an engineering firm approved or selected by the Town, showing any and all installations, modifications or relocation of the Facilities. If, in the sole opinion of the Town, an independent review of the structural analysis or of detailed plans provided by the County is required, the County shall reimburse the Town for the cost of such review. Following installation, modification or relocation, the County shall provide to the Town, at the County's expense, As-Built construction drawings meeting the requirements of the Town's Design and Construction Standards Manual, documenting all of the County's Facilities installed on the Premises. For any reason sufficient to the Town in its reasonable good faith, the Town may inspect or obtain an on-site inspection of the County's installation and the County shall be responsible for reimbursing the Town its reasonable costs in procuring such inspection.

**7. RESTORATION/CLOSURE UPON TERMINATION:**

(a) Upon termination of this Lease, the County, at its expense, shall remove the Facilities and restore the Premises to their condition as of the commencement of this Lease or, at its election, shall close the Facilities and stabilize the Property in accordance with the closure plan required by sub-section (b).

(b) As an alternative to restoration of the Premises in accordance with the provisions of the foregoing subparagraph (a), the County may elect, at its expense, to seal the Facilities in accordance with a closure plan approved by the Town that provides for sealing off access at both entries into the Facilities by a structural concrete wall and filling the Facilities with sand, stone dust, or other approved fill material as specified in the closure plan.

(c) When the Facilities that are the subject of this Lease are completely removed or closed in a manner that complies with all applicable regulations and any permits issued pursuant to such regulations, then upon final completion of such removal and the release of any permits issued by the Town related to such removal, this Lease shall terminate and be of no further effect.

**8. RIGHT-OF-WAY ACCESS, GRADING AND CONSTRUCTION PERMIT:**

The construction plans submitted by the County and the right-of-way permit issued by the Town will encompass sufficient authorization for the County to do the construction of the Facilities on or after the Commencement Date, including, among others, ingress-egress access necessary for construction, grading, and building of a temporary wooden walk or bridge to allow pedestrian transit across the Property for the duration of the construction of the Facilities.

## **9. COUNTY'S COVENANTS**

The County covenants during the Initial Term and any Renewal Terms that the Facilities and all installation, operation and maintenance associated therewith shall:

- (a) Keep the Facilities in a state of repair reasonably acceptable to the Town and free of any stored hazardous, flammable, radioactive, or explosive substances.
- (b) Comply with all applicable rules and regulations of all federal, state and local laws governing use of the Premises.
- (c) Comply with all applicable laws and ordinances and promptly discharge or bond any lien for labor or material within fifteen (15) days of filing.
- (d) Upon either (i) the completion of the initial installation of the Facilities on the Premises; or (ii) within thirty (30) days of the completion of the relocation of the Facilities or installation of additional Facilities on the Premises but in any event no later than December 1 of each year throughout the Initial Term or any Renewal Term of this Lease, provide the Town with all applicable information on completed documents required to be filed with any federal agency and state and local authorities as required by applicable law. Further, within thirty (30) days of the County's receipt of a written request from the Town, the County will provide the Town with any other required documents relating to the Facilities located on the Premises which the Town may be required to file with any other governmental agencies. The County agrees to bear all costs arising from any liabilities resulting from any inaccuracies in such documentation in accordance with the provisions of this paragraph.
- (e) Upon proper invoice by the Town, pay within thirty (30) days, unless a shorter period of time is otherwise specified, all sums due under the terms of this Lease.
- (f) Comply with the requirements of paragraph 7 for restoration or closure of the Facilities and Premises in timely fashion. In the event the County has not completed the restoration or closure within the time required, or any approved extension thereof, the Town is authorized to perform on the County's behalf and at the County's expense and the County shall reimburse the Town for such expenses upon demand.

## **10. TOWN'S COVENANTS**

The Town covenants that during the Initial Term or any Renewal Terms of this Lease that it will:

- (a) Maintain its improvements within the Church Street right-of-way in a manner consistent with its maintenance programs for other portions of the Town's street and sidewalk networks.
- (b) Except as otherwise set forth in the Lease, take no unnecessary action that would adversely affect the County's proposed use of the Premises.
- (c) Upon the County's payment of Rent and performance of its covenants, provide for the

County's quiet use and enjoyment of the Premises; provided, however, that this covenant shall be subordinated to any duty the Town may have as a Virginia municipal corporation, and to any other right, power or privilege conferred upon the Town by law or by the terms of this Agreement.

#### **11. ASSIGNMENT OR SUBLETTING; NO LIENS**

(a) The County agrees that it shall not assign, convey, sublet or transfer its interest in this Lease.

(b) The County shall keep the Property, the Premises and the Facilities free from any liens arising from any work performed, materials furnished or obligations incurred by or at the request of the County. All persons either contracting with the County or furnishing or rendering labor and materials to the County shall be notified in writing by the County that they may look only to the County or the surety on any applicable bond for payment for any labor or materials. If any lien is filed against the Property, the Premises or the Facilities as a result of any acts or omissions of the County, its employees, agents or contractors, the County shall discharge it within fifteen (15) days after the County learns that the lien has been filed.

#### **12. INSURANCE: RISK OF LOSS**

(a) Insurance. Prior to installation of the Facilities and having access to the Premises and at all times during the term of this Lease, the County shall provide proof of insurance, as outlined below, satisfactory to the Town, and maintain the coverages specified below during the term hereof and until all Facilities are removed from the Premises following expiration or earlier termination of this Lease: (i) Commercial General Liability Insurance in a Combined Single Limit of at least \$2,000,000 each Occurrence; (ii) Workers' Compensation Coverage in the Statutory Amount; (iii) Employers Liability Occupational Disease and Bodily Injury with a Combined Single Limit of at least \$1,000,000; (iv) Automobile Liability for Owned and Non-Owned Autos with a Combined Single Limit of at least \$2,000,000 per occurrence; and (v) All Risk Insurance Without Coinsurance Factor for Full Replacement Value of the County's Facilities and Personal Property located on Premises. In addition to the foregoing, umbrella coverage in the amount of \$5,000,000 shall be provided and will apply over the Commercial General Liability and the Automobile Liability insurances. The County shall provide current certificates of insurance each anniversary following the Commencement Date and shall update such certificates each time any policy or insuring company is changed.

(b) Additional Insured. The Town shall be named as additional insured on the Builder's Risk and Commercial General Liability policies. Additionally, the County shall obtain a waiver of subrogation from its insurers on its Commercial General Liability, Automobile Liability and All Risk Insurance policies. The County may satisfy this requirement by obtaining appropriate endorsements to any master or blanket policy of insurance the County may maintain. No policy may be canceled or subject to reduction of coverage without prior notice to the Town.

(c) Third Parties. The County shall require its contractors and subcontractors to carry workers' compensation insurance and adequate liability insurance in conformity with the minimum requirements listed above. The County shall also require its contractors to carry Builder's Risk

coverage during construction of the Facilities, naming the County and the Town as additional insured.

(d) Risk of Loss; Limitation of Liability. The County shall bear the risk of loss of or damage to the Facilities during construction and the term of this Lease and the Town shall not be liable for any consequential or incidental damages incurred by the County due to any malfunction, vandalism, acts of God (including without limitation, lightning, wind, rain, hail, fire or storms) or any other damage resulting from any reason. Notwithstanding the foregoing, nothing herein shall preclude the County from obtaining contracts or indemnification from other persons or persons with respect to the performance of or liability for the construction or maintenance of the structure.

In the event the Facilities or other portions of the Premises are destroyed or so damaged as to be unusable, either party shall be entitled to elect to cancel and terminate this Lease, or in the alternative, the County may elect to restore the Premises, in accordance with plans approved as required by paragraph 6. Termination under the provisions of this paragraph shall not relieve the County of the duty to remove the Facilities and restore the premises or perform the obligations of the approved closure plan in accordance with paragraph 7. In no event shall the leasehold or other interest created hereby be specifically enforceable.

(e) Except where otherwise specifically provided, all insurance coverages required by this Paragraph 11 shall be primary in the event of a loss.

(f) Removal of Facilities. The County's obligation to provide the insurance coverages set forth in this paragraph 11 shall survive the expiration or earlier termination of this Lease but only until the County's Facilities are removed from the Premises and the Premises are restored to their condition as of the Commencement Date of the Lease or secured in accordance with the approved closure plan in accordance with paragraph 7.

(g) Insurance Increases. The County shall pay the cost of any increase to the Town's liability insurance premium in place as of the Commencement Date of this Lease provided that the construction or the installation of the Facilities on the Property is the direct and only reason for the increase to the Town's liability insurance premium.

### **13. TORT LIABILITY**

The Parties understand and acknowledge that, with respect to tort liability for acts or occurrences on or about the Property, the Parties are either:

- (a) constitutionally immune (or partially immune) from suit, judgment or liability,
- (b) insured, or
- (c) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.

No provision, covenant or agreement contained in this Agreement shall be deemed, in any manner, to be a waiver of the sovereign immunity of either Party, from tort or other liability except as permitted by Virginia law, provided that nothing herein is intended to abridge or limit the contractual indemnification or reimbursement obligations provided in Paragraph 12.

#### **14. DEFAULT**

(a) Each of the following shall be considered a default by the County:

(1) The failure to pay amounts due by reason its duty to reimburse the Town's expenses as provided in paragraphs 4, 6 and 12 or arising out of breach of any covenant as provided in paragraph 9, or failure to discharge liens as provided in paragraph 11(b), or by reason of any other duty to reimburse the Town as provided in the Lease.

(2) The failure to cure, within thirty (30) days after receipt of the Town's written notice of the nonmonetary breach of any term herein, provided, however, that the Town shall have the right to cure at the County's expense upon 48 hours advance notice, any subsequent breach of the same nature and charge the cost thereof to the County with payment due within 30 days of the Town's invoice therefor.

(b) Upon default by the County under this Lease, in addition to all other remedies provided at law or in equity, the Town may, at its option, upon thirty days advance notice by the Town of intent to proceed under this subparagraph, elect to terminate this lease and require the County to proceed in accordance with the requirements of paragraph 7.

#### **15. ENTIRETY**

This writing constitutes the entire agreement and understanding between the Town and the County and any modification hereof must, in order to be effective, be in writing, signed by authorized representatives of each party.

#### **16. WAIVER**

Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right under this Lease preclude any other or further exercise thereof or the exercise of any other right.

#### **17. BINDING EFFECT**

This Lease shall inure to the benefit of and bind the parties hereto and its heirs, personal representatives, successors, permitted assigns and successors in interest.

#### **18. GOVERNING LAW**

This Lease and performance hereunder shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia. A dispute arising under this Lease which cannot be resolved in a non-judicial proceeding must be resolved in the Circuit Court of County of Loudoun, Virginia and in no other forum.

**19. NOTICE**

(a) All notices and payments due hereunder shall be deemed validly given if sent by certified mail, return receipt requested, or with a nationally recognized courier which provides notice of receipt, postage fully prepaid, addressed as follows, or to such other addresses as may be given from either party in writing to the other:

If to the Town:  
Town of Leesburg Virginia,  
Kaj Dentler  
Town Manager  
25 W. Market Street  
Leesburg, VA 20176

If to the County:  
County of Loudoun  
Tim Hemstreet  
County Administrator  
One Harrison Street. S.E.  
5<sup>th</sup> Floor, P.O. Box 7000  
Leesburg, VA 20177-7000

The Town or the County may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

(b) The County shall supply the Town with the name and address of any person entitled to notice under this Agreement and any notice to such person may be made in accordance with the provisions of subparagraph (a) above.

**20. HEADINGS**

Paragraph headings in this Lease are included for the convenience of reference only and shall not constitute a part of this Lease for any other purpose.

**21. MEMORANDUM OF AGREEMENT**

At the request of the County, the Town hereby agrees to execute a Memorandum of Agreement, in form satisfactory to the Town's attorney, and such Memorandum of Agreement may be filed of record by the County, at the County's sole cost, including taxes or assessments incurred in connection therewith. The Memorandum of Agreement, if executed, shall become Exhibit B. The parties understand and agree that this Lease shall not be recorded.

**22. COUNTERPARTS**

This lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

**23. SEVERABILITY**

If any term, covenant, condition or provision of this Lease or any application hereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Witness the following signatures and seals:

**LANDLORD:**  
TOWN OF LEESBURG, VIRGINIA

**TENANT:**  
COUNTY OF LOUDOUN

BY: \_\_\_\_\_

BY: \_\_\_\_\_

STATE OF VIRGINIA  
County of Loudoun, to wit:

I, \_\_\_\_\_, a Notary Public in and for the City and State aforesaid, do hereby certify that this day personally appeared before me in my jurisdiction aforesaid, Mayor of the Town of Leesburg, whose name is signed to the foregoing writing dated \_\_\_\_\_, and acknowledged the same before me.

Given under my hand \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

STATE OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to wit:

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, do hereby certify that this day personally appeared before me in my jurisdiction aforesaid \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_ is signed to the foregoing writing dated \_\_\_\_\_, and acknowledged the same before me.

Given under my hand \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

PRESENTED: February 9, 2016

ORDINANCE NO. \_\_\_\_\_

ADOPTED: February 9, 2016

AN ORDINANCE: APPROVING AND AUTHORIZING A 40-YEAR LEASE OF A PORTION OF REAL PROPERTY OWNED BY THE TOWN OF LEESBURG, VIRGINIA TO LOUDOUN COUNTY, VIRGINIA, FOR A TUNNEL UNDERNEATH CHURCH STREET, N.E., TO CONNECT THE EXISTING COURTHOUSE WITH THE PROPOSED COURTHOUSE EXPANSION COMPLEX

WHEREAS, the Town of Leesburg (“Town”) owns and maintains Church Street, N.E., Leesburg, Virginia; and

WHEREAS, the Town and the County of Loudoun (“County”) have negotiated a 40-year lease to allow for an underground pedestrian tunnel to be constructed below Church Street, N.E., to connect the existing Courthouse, located at 18 E. Market Street, with the new Courthouse Expansion Project, located at 2 Church Street, N.E.; and

WHEREAS, under the terms of the lease, the County will be responsible for the construction and maintenance of the tunnel; and

WHEREAS, the leased area will be no more than 55 feet wide, 30 feet long and 16 feet deep and will contain a tunnel that is approximately 30 feet long, 18 feet wide and 10 feet tall; and

WHEREAS, duly advertised Planning Commission public hearings were held on January 7, January 21, and January 28, 2016, on application TLZM-2015-0002; and

WHEREAS, at the January 28, 2016, meeting, the Planning Commission recommended approval of application TLZM-2015-0002, which includes the lease to allow for an underground pedestrian tunnel; and

WHEREAS, staff recommended approval; and

WHEREAS, Virginia Code Section 15.2-2030 authorizes the Town Council to enact an

ordinance, after a public hearing, authorizing a 40-year lease agreement with another entity for the area beneath a town street.

THEREFORE ORDAINED, by the Council of the Town of Leesburg in Virginia as follows:

**SECTION I.** The lease of the real property described below to the County is hereby approved and authorized:

An underground corridor beneath Church Street, NE, of no more than 55 feet wide, 30 feet long and 16 feet deep, which will contain a tunnel connecting 2 Church Street, N.E., with 18 E. Market Street, Leesburg, Virginia, 20176.

**SECTION II.** That the Vice Mayor is hereby authorized, on behalf of the Town of Leesburg, to do all things necessary and desirable to carry out the lease of the real property described in Section 1, including but not limited to, the execution and delivery of a lease agreement.

**SECTION III.** Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of the Leesburg Town Code.

**SECTION IV.** This Ordinance shall become effective upon its adoption.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Kelly Burk, Vice Mayor  
Town of Leesburg

ATTEST:

\_\_\_\_\_  
Clerk of Council